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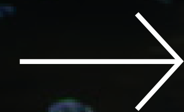
2023 AGM Season Review

AUSTRALIA MARCH 2024



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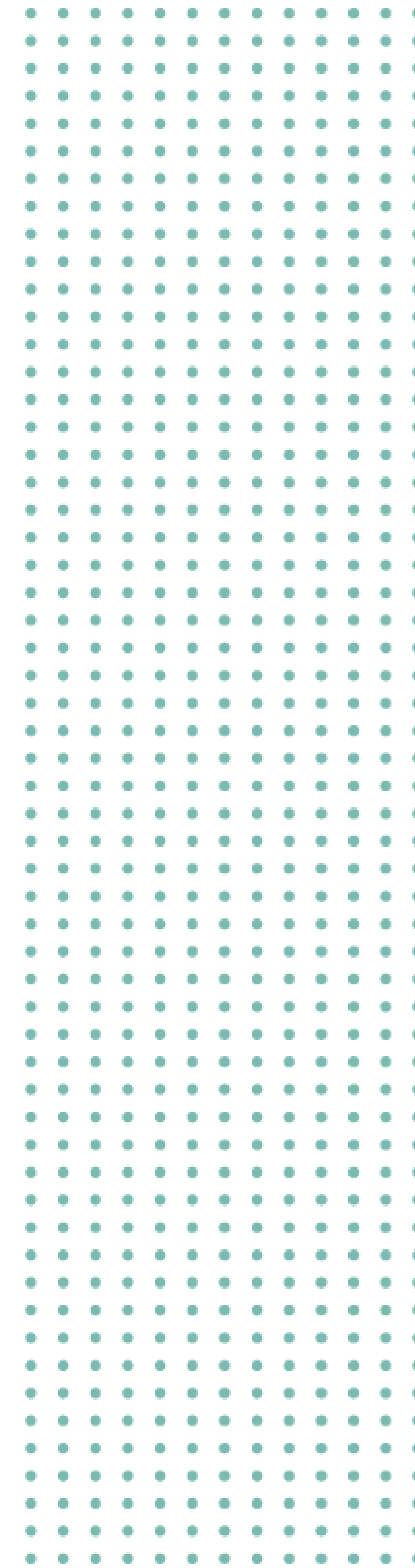
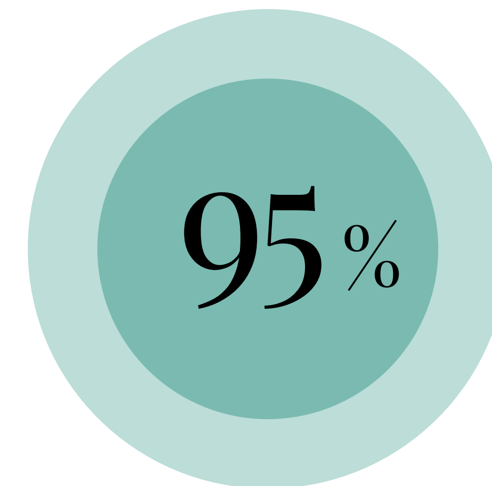
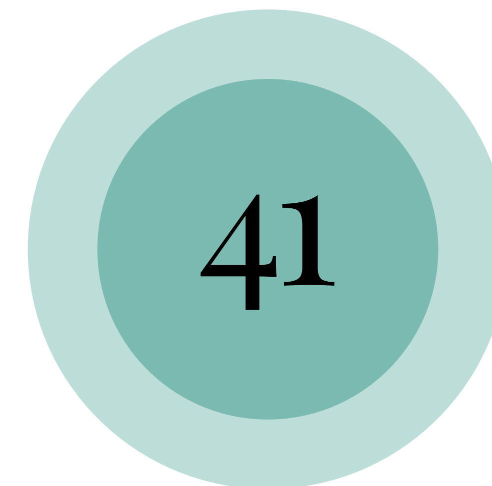
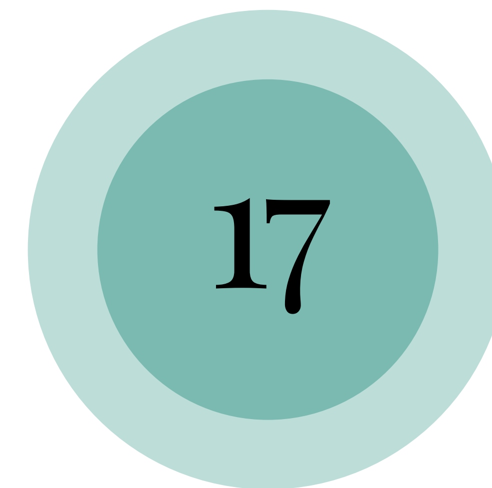




Average support for director elections at 2023 AGMs (compared to 96% in 2022 and 95% in 2021)



Number of ASX300 remuneration strikes 2023, 17 more than in 2022 and surpassing the previous record of 26



Number of resolutions lodged by shareholder activists across 10 different companies at 2023 AGMs

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infosydney@morrowsodali.com

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Proxy Advisor Research Trends Report 2023

Our team of experts are committed to providing unparalleled Corporate Governance and Shareholder Engagement solutions, as we continuously strive to provide insights that will support our clients to meet their stakeholder expectations and achieve the best possible outcomes at AGMs.

Our experience working as proxy advisors at firms like ISS and Glass Lewis uniquely positions us to offer our clients our latest research offering: Proxy Advisor Research Trends Report 2023. We've assessed the trends in proxy advisor recommendations and shareholder voting outcomes across the 2023 AGM season. The Report offers unique insights into shareholder sentiment and proxy advisor sensitivities and will support you to understand proxy advisor and investor policies and how these impact voting outcomes.

With Morrow Sodali's Proxy Advisor Research Trends Report, you can:

- Gain a deeper understanding of proxy advisor recommendations and their influence on shareholder voting decisions for individual companies (de-identified), with a focus on remuneration-related resolutions.
- Identify recurring remuneration themes and common issues raised by proxy advisors, helping you anticipate challenges and mitigate risks effectively.
- Access detailed insights and analysis, crafted by our team of experts, to guide your strategic decisions and ensure compliance with best practice expectations in corporate governance.

Our dedicated team has proactively supported a diverse range of clients in navigating corporate governance challenges, ensuring they avoid strikes and maintain shareholder confidence. We understand the importance of staying ahead of the curve, especially in today's dynamic business landscape. That's why we have designed our service to provide you with comprehensive insights into remuneration-related proxy voting recommendations issued by proxy advisors and their impact on AGM voting outcomes.

To learn more about this offering or to speak with our Corporate Governance Advisory team, please contact **Madeleine Whiteman** at m.whiteman@morrowsodali.com.

Foreword

By all accounts, 2023 appeared to mark the first full year returning to "normalcy" post the COVID-19 pandemic. However, as the threat of COVID-19 has faded from the public psyche, a return to pre-pandemic "business as usual" remained aspirational due to the impacts of a challenging macroeconomic environment and several geopolitical factors. Economic volatility was driven by lingering supply chain disruptions, workforce transformation in terms of remote work and labour market shortages, weakening consumer sentiment and behaviour driven by global cost-of-living pressures, government policy responses to increasing inflation, as well as rising geopolitical tensions (notably the continuing Russia/Ukraine conflict).

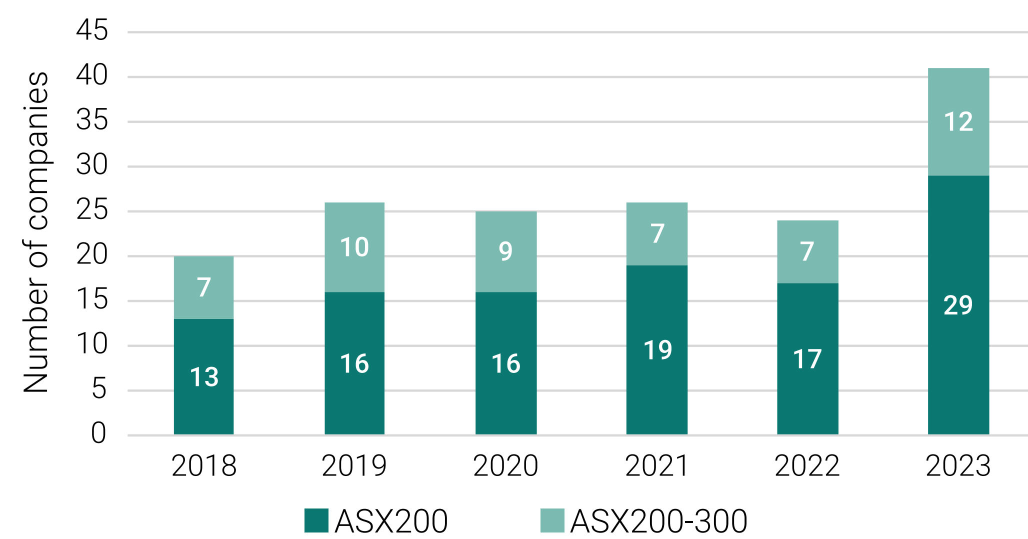
Impacted by the challenging market conditions, investors appeared to adopt a more activist-like mindset in 2023. Several fund managers launched highly publicised campaigns against ASX300 companies, using the remuneration report resolution and/or director elections as a protest vote to voice discontent with companies' underperformance or poor execution of strategies (including M&A and capital management decisions). Where investors and proxy advisors may have been 'on the fence' with supporting companies in prior years, the link between share price performance, management of ESG controversies, and remuneration outcomes played a substantial role in influencing voting recommendations and decisions. In 2023, we witnessed a record 41 remuneration 'strikes' across the ASX300, significantly surpassing the prior record of 26 strikes set in 2019 since the introduction of the 'two-strikes" rule in 2011. Similarly, we saw a near doubling in 2023 in the number of director re/elections that received significant dissenting votes (greater than 20%). It remains to be seen if this increase in protest votes are cyclical or an indication of a broader trend.

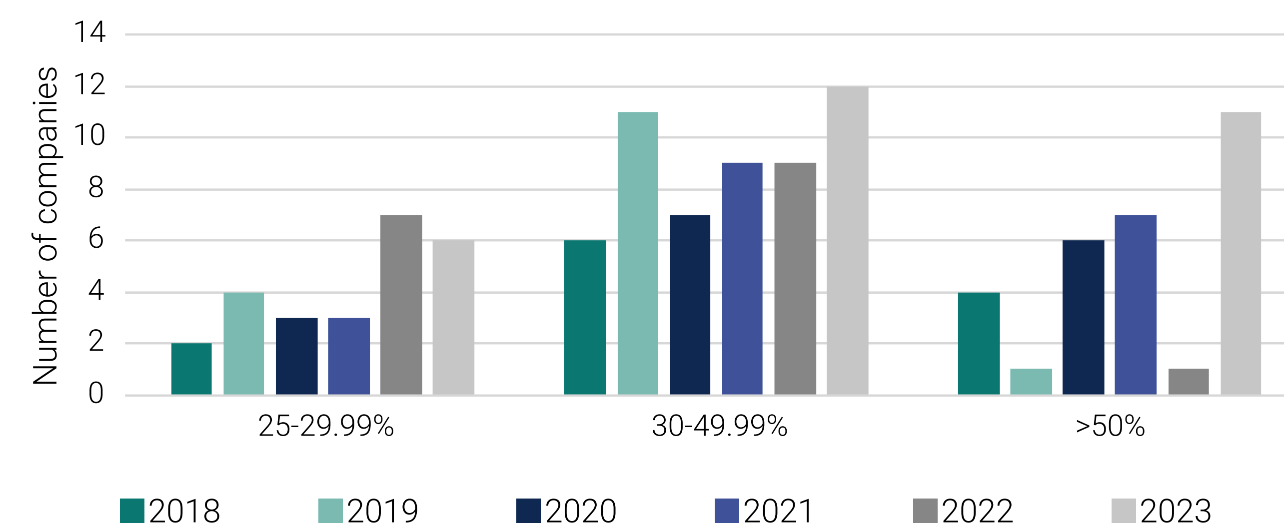
Given this uncertainty, engagement with shareholders and proxy advisors throughout the year will become increasingly crucial for companies. The annual general meeting (AGM) is the key milestone in a company's annual calendar, but canvassing the views of key stakeholders should start much earlier in the year, particularly if a company is responding to a strike or embarking on significant changes in their remuneration or governance practices/structures. Large passive funds and superannuation funds engage from the perspective of a long-term investor, seeking to have ongoing dialogue with their investee companies to understand the challenges they face, rather than a once-off engagement leading up to the AGM.

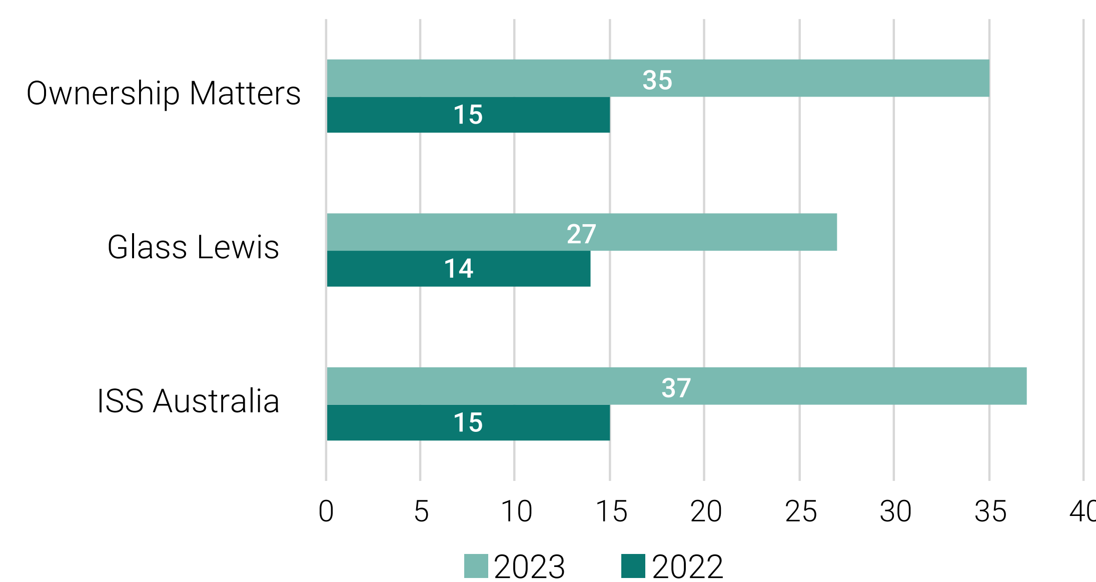
Over the past 12 months, we have observed a notable increase in activist equity positions in companies across the APAC region, resulting in the region potentially becoming a 'hot bed' for activism campaigns; particularly in Japan and South Korea. Notably, Australia is one of the few countries globally where activists have increased their net positions in this period, which may be an indication of things to come in the market. It is therefore imperative that companies responding to a strike, or high votes against their remuneration report and/or directors elections, gain an understanding of the 'personality' of their shareholder base and the influences over them, to ensure an effective stakeholder engagement strategy.

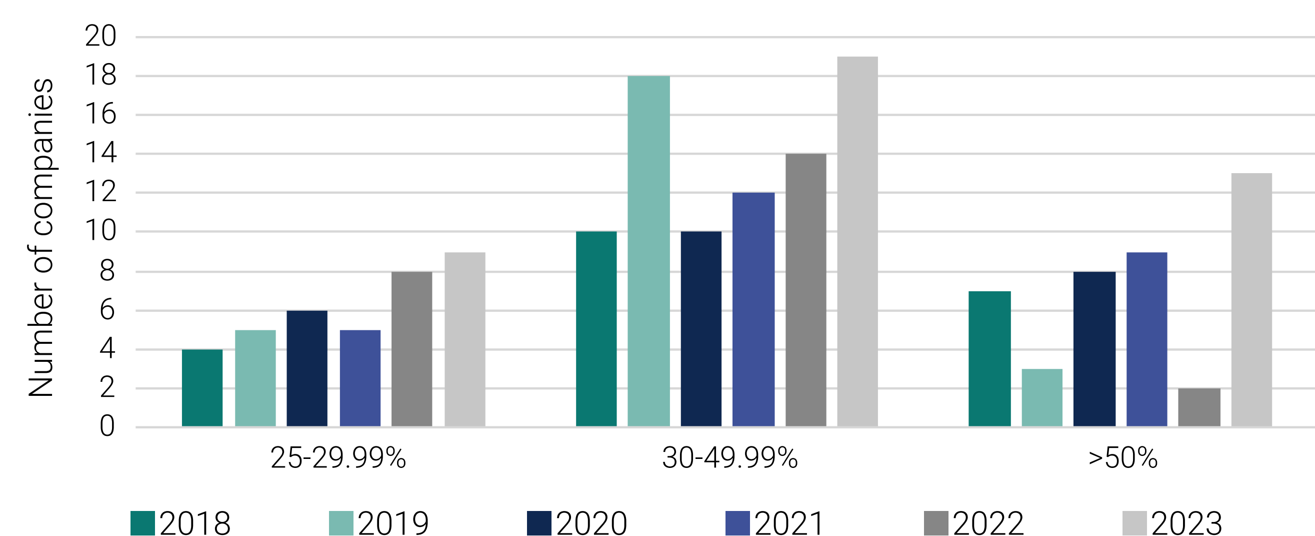
Our AGM Season Review – Australia, attempts to provide a snapshot of some of the voting outcomes, trends, sentiments, and key reasons for proxy advisor recommendations and shareholder voting patterns that we believe are important, with a focus on S&P/ASX300 companies (Index). We trust that it is useful and we welcome any feedback or follow up.

Executive Remuneration









Overview

The macroeconomic environment in 2023 has been characterised by high inflation, interest rate rises and geopolitical disruptions, all of which has contributed to cost-of-living pressures in Australia. This has sharpened the focus of proxy advisors and investors on the extent to which remuneration outcomes and decisions have aligned to the shareholder experience in 2023.

In 2023, the ASX300 recorded 41 remuneration 'strikes', far exceeding the 24 strikes recorded in 2022 (71% increase) and the previous record of 26 strikes set in 2019 (58% increase). Of the 41 strike companies, 32 (78%) recorded more than 30% of votes against the remuneration report – with five companies recording their second strike, one company recording its third consecutive strike, and one company receiving its sixth strike in a row.

In concert with the increased remuneration strikes, the number of proxy advisor recommendations Against the remuneration reports of ASX200 companies increased dramatically in 2023 – at least twice the number of Against recommendations for each proxy advisor compared to 2022, with the largest increases by ISS (147% increase) and Ownership Matters (133% increase). These results may suggest that proxy advisors and investors shared similar concerns regarding company performance issues and remuneration practices, and were increasingly willing to oppose remuneration reports in 2023.

Emerging Trends

The primary concerns driving Against recommendations from proxy advisors were the perceived misalignment between incentive outcomes and company performance or shareholder returns, as well as the inappropriate application of board discretion in remuneration decisions.

In 2023, the remuneration report resolution was also increasingly used by investors and proxy advisors to protest broader organisational issues, including accountability for material ESG controversies and the resulting impact to remuneration. For example, proxy advisors opposed some remuneration reports where incentive outcomes did not appropriately reflect the magnitude of significant safety incidents.

Scrutiny of remuneration disclosures and evolving pay structures remained a focus in 2023, as APRA-regulated entities continued to embed the changes required under the CPS 511 Remuneration Standard (CPS 511), and other sectors looked to meet increasing stakeholders expectations to consider ESG factors in remuneration. In particular, proxy advisors continued to pay close attention to the use of non-financial measures (including ESG) and longer deferral periods for executive variable remuneration plans.

It remains to be seen whether this upward trend in strikes will continue in 2024; however, with many companies already providing a cautious outlook for FY24, there is likely to be an even stronger focus on company performance in FY24.

The most common issues referenced by proxy advisors that influenced recommendations Against remuneration-related resolutions[1] in 2023 included the following:

1. **Pay and performance misalignment**
2. **Inappropriate board discretion**
3. **Lack of rigour of performance targets**
4. **High executive pay quantum**
5. **Inadequate remuneration disclosure**
6. **Inappropriate incentive plan measures**
7. **Inappropriate weighting/nature of non-financial measures**
8. **Other remuneration concerns[2]**
9. **One-off/discretionary awards**
10. **Generous termination provisions.**

1. Remuneration Report, MD/CEO Equity Grant
2. Unique remuneration issues that could not be assigned to other categories.

Key trends observed from Morrow Sodali's analysis of 2023 remuneration reports and proxy advisor research

Significant shareholder protest due to pay-for-performance concerns

Pay-for-performance misalignment was the primary issue that drove opposition from investors and proxy advisors, influencing several remuneration strikes in 2023. Proxy advisors and investors sought to apply pressure on underperforming companies, particularly where short-term incentive (STI) and/or long-term incentive (LTI) outcomes appeared misaligned with company performance and/or shareholder outcomes.

Increased scrutiny was placed on the persistence/consistency of incentive outcomes over consecutive years, leading proxy advisors to question the rigour of performance measures and targets (e.g., lack of variability in STI outcomes despite a decline in share price over 3-5 years). Concerns were further compounded where targets were poorly disclosed, preventing proxy advisors and investors from assessing their appropriateness and rigour. This concern was most evident for vesting outcomes against non-financial measures – perceived to compensate for weaker financial performance or allowing for excessive subjective board discretion in performance assessments.

Similarly, the use of underlying/normalised rather than statutory profit measures attracted ire from Ownership Matters and ACSI, particularly where they observed a track record of excessive adjustments by a company; thereby reducing the link between remuneration outcomes and accountability for genuine costs borne by shareholders. For one company, Ownership Matters analysed the divergence between underlying and statutory profit over several years, raising concerns that the quantum of exclusions for transaction and integration costs had increased substantially in recent years. They perceived this as reducing the incentive for the company to integrate acquisitions in a cost-effective manner and minimise transaction costs.

Ownership Matters and ACSI also raised concerns where they observed a lack of variability in STI outcomes of a company relative to its industry peers, particular within sectors that have been subject to major regulatory issues, and therefore, reduced STI outcomes may be expected to reflect these issues.

Heavy scrutiny of board discretion in remuneration decisions

The application of board discretion in determining incentive outcomes was a highly contentious issue for investors and proxy advisors in 2023, contributing to their concerns with pay-for-performance misalignment.

While boards often justify discretion to account for factors beyond management's control or to address retention challenges, proxy advisors and investors were generally critical of:

- Board discretion to increase incentive outcomes, perceived to be misaligned with company performance or shareholder outcomes (e.g., adjusting outcomes of a LTI measure despite not meeting the original hurdle; increasing the overall STI scorecard outcome to recognise achievements beyond the scorecard); or
- Insufficient downward adjustments applied to incentive outcomes in certain circumstances (e.g., safety measure in the STI awarded at stretch levels despite the occurrence of fatalities, as considering fatalities was not originally built into the measure).

Factoring ESG issues into remuneration decisions

Following a series of major corporate scandals and ESG controversies in 2023, proxy advisors have been closely examining the consequence management frameworks of companies, and the ability of boards to exercise appropriate discretion in determining remuneration outcomes following these events.

Multiple ASX300 companies incurred a strike in 2023 due to concerns with the inadequate application of board discretion to adjust remuneration outcomes for executives (including enacting malus or clawback), where the event resulted in severe financial or reputational damage to the company, regulatory action or lawsuits.

In 2023, proxy advisors were increasingly focused on how boards considered the remuneration impact of major environmental and/or safety events on executive remuneration, particularly workplace fatalities. Proxy advisors opposed remuneration reports where the board's remuneration consequence was considered insufficient to reflect the severity of the incident (e.g., only forfeiting the safety measure rather than the entire STI), particularly when the board exercised upward discretion on the overall STI outcome to reflect positive performance factors – effectively viewed as negating the forfeiture of the safety component. Some proxy advisors suggest that safety gateways could apply to the entire STI (not just a safety measure), whereby the entire STI may be forfeited in the event of a fatality.

Excessive quantum of executive and non-executive director (NED) remuneration

High executive pay quantum was often a key concern driving dissent from proxy advisors in 2023. For example:

- Fixed remuneration and/or total remuneration opportunity (inclusive of STI and LTI) perceived to be excessive relative to peers.
- Substantial increases in remuneration quantum during the year, or consecutive increases over multiple years, without sufficient justification.
- One-off/discretionary awards to executives continued to attract scrutiny, although we observed fewer instances of sign-on or retention awards provided to executives in 2023 compared to prior years (particularly during the height of COVID-19 in 2020 and 2021). In general, proxy advisors oppose retention awards without a clear and robust rationale, taking the view that the total remuneration opportunity (fixed remuneration, STI and LTI) should be appropriately set to attract and retain key executive talent, without the need for additional awards.
- Scrutiny of board discretion in determining the remuneration of departing executives considered to be 'good leavers', particularly in the wake of a major corporate scandal.

NED remuneration quantum has also been under the spotlight in 2023. Research by Ownership Matters[3] illustrates an overall trend of increasing NED remuneration across the ASX300, with an 8.7% increase in average ASX100 non-Chair fees over the last five years and an 8.9% increase in ASX300 Chair fees between 2021 and 2022.

3. Source: **Board composition, director pay and 'skin in the game' in the ASX300**, Ownership Matters, September 2023

Increasing prevalence of ESG factors linked to remuneration

ESG measures continue to be integrated into remuneration frameworks globally, as investor and public expectations on these issues continue to mature. Research into U.S. companies by Glass Lewis[4] found that 68% of S&P 500 companies incorporated ESG factors[5] into their incentive plans in 2023, a substantial uptick from 39% in 2020.

This has presented challenges for companies in setting objective non-financial measures with robust targets, to meet proxy advisors' and investors' expectations for Australian companies. Proxy advisors (particularly ISS) remain sceptical of non-financial/ESG measures that are seen as a reward for 'day job' responsibilities and/or subject to excessive board discretion in assessments.

This scepticism by proxy advisors presents a dichotomy for APRA-regulated entities, who are now embedding remuneration frameworks to align with the requirement under CPS-511 to provide 'material weight' to non-financial measures in determining remuneration outcomes. While the use of non-financial measures (including ESG) has been common practice within STI plans, CPS 511 has driven companies to consider evolving their LTI plans, which historically have included only financial (e.g. earnings per share) or market-based measures (e.g., total shareholder return). This evolution has largely resulted into two key LTI approaches:

1. A traditional LTI structure with a non-financial measure (e.g., carbon-emissions reduction, reputational, strategic, customer) alongside existing financial / market-based measures.
2. LTI plan with a restricted stock component, subject to ongoing service and board discretionary assessments of various non-financial indicators (e.g., prudential soundness, risk management, material adverse events). This structure has been adopted by Australia's 'Big Four' major banks, with the first of these restricted stock grants due to vest in 2024 or 2025. Proxy advisors and investors will undoubtedly scrutinise the rigour and extent to which boards apply any downward adjustments to vesting outcomes, following an assessment of non-financial indicators.

Beyond APRA-regulated entities, large companies in other sectors are increasingly adopting ESG measures into their LTI plans – particularly carbon-emission intensive sectors (e.g., energy, materials), as well as some companies in consumer-facing industries that are exposed to significant reputational or regulatory risks. Ownership Matters believes that incentives tied to carbon abatement for the sake of it in a company without significant emissions concerns is not

4. Source: E&S Metric Usage in S&P 500 Executive Compensation – 2024 Update, Glass Lewis, September 2023
5. This may be in the form of a performance measure, a modifier (that may scale outcomes upwards or downwards), or as a general board consideration in determining final payouts.

appropriate and recognises that it may be difficult to assess whether climate-related targets are sufficiently challenging. GL, ACSI and some major institutional investors (e.g., BlackRock, Vanguard) take a more pragmatic stance towards ESG metrics. However, they expect ESG metrics to be clearly linked to business strategy and incorporate the same rigour and disclosure as with other financial and/or operational metrics.

In a few cases, we have observed companies reducing the weighting of non-financial measures in their incentive plans (or removing altogether from LTI plans), in response to negative feedback from proxy advisors and/or shareholders.

Greater calls for longer LTI deferral periods

While CPS 511 is already driving the adoption of longer LTI deferral periods for APRA-regulated entities[6], proxy advisors have continued to pressure large companies in other sectors to consider longer LTI deferral periods to better align with the long-term interests of shareholders. In 2023, ISS consistently criticised ASX100 companies that did not have LTI performance periods of at least four years. As more ASX100 companies consider extending their LTI deferral periods, it remains to be seen if this will be adopted across the broader ASX300.

Notable questions from shareholders relating to remuneration at 2023 AGMs

1. How rigorous is the board's evaluation when exercising discretion?
2. Given the significant investor backlash against the remuneration report, do you think you made the wrong call in exercising discretion?
3. If there was a cyber-attack, would that be reflected in remuneration outcomes?
4. What is the alignment between senior executive pay and those below them?
5. Do you believe executive remuneration quantum is appropriate? Do you believe an increase is justified given executives are already adequately remunerated?
6. Why do you use a three-year performance period, given other companies are moving to four years?
7. How are you approaching safety and how is this reflected in remuneration?
8. Why would you consider granting share rights when the return to shareholders has diminished?
9. Why do you continue to use Net Promoter Score when it is not an adequate performance measure?
10. Do you consider sustainability risk or remediation programs in assessing remuneration outcomes?

6. For a CEO, at least 60% of total variable remuneration (40% for other executives) must be deferred over a minimum deferral period of six years (five years for other executives), vesting no faster than on a pro-rata basis and only after four years. The deferral period must include the period over which performance is assessed, as well as any required service, retention and holding periods.

Director Elections

Overview

Several corporate scandals and ESG controversies contributed to greater scrutiny of director re/elections during calendar year 2023, against a backdrop of challenging economic and geopolitical conditions, and worsening climate change events.

Continuing a trend over the past few years, proxy advisors and investors enhanced their scrutiny of directors for poor oversight of company performance (both financial and non-financial indicators, including ESG) and strategy execution, contributing to a near doubling of ASX300 directors attracting dissenting votes greater than 20% in 2023 compared to 2022.

It is critical for boards to keep abreast of influences impacting their key investors and proxy advisors, as stakeholders continue to react to a slowing economy, cost-of-living increases and a challenging consumer environment.

Number of ASX300 director re/elections in 2023

46

Directors in the ASX300 who attracted more than 20% votes against their re/election at AGMs (compared to 25 in 2022)

95%

Average support for directors at 2023 AGMs (compared to 96% in 2022)

Emerging Trends

Key considerations and voting trends in 2023

Heightened director accountability in challenging market conditions

While the average level of director support in 2023 was comparable to prior years (95% compared to 96% in 2022; 95% in 2021; and 91% in 2020), 46 directors across the ASX300 attracted dissent of more than 20% of votes cast compared to 25 in 2022. Criticism of boards and management teams that were perceived to be poorly executing their business strategy, contributed to increasing levels of voter dissent in 2023.

Investors and proxy advisors closely scrutinised directors of companies that were seen to have poorly executed M&A and/or capital management transactions (including where this impacted future dividends and share buyback programs), resulting in declining shareholder returns. Investors and proxy advisors were particularly critical where synergies/value from corporate transactions were not crystallised within appropriate timeframes, or where integration has not occurred as planned.

In 2023, we observed a few a few high-profile contested director elections off the back of increased shareholder activism due to concerns over company performance, strategic direction, and leadership instability.

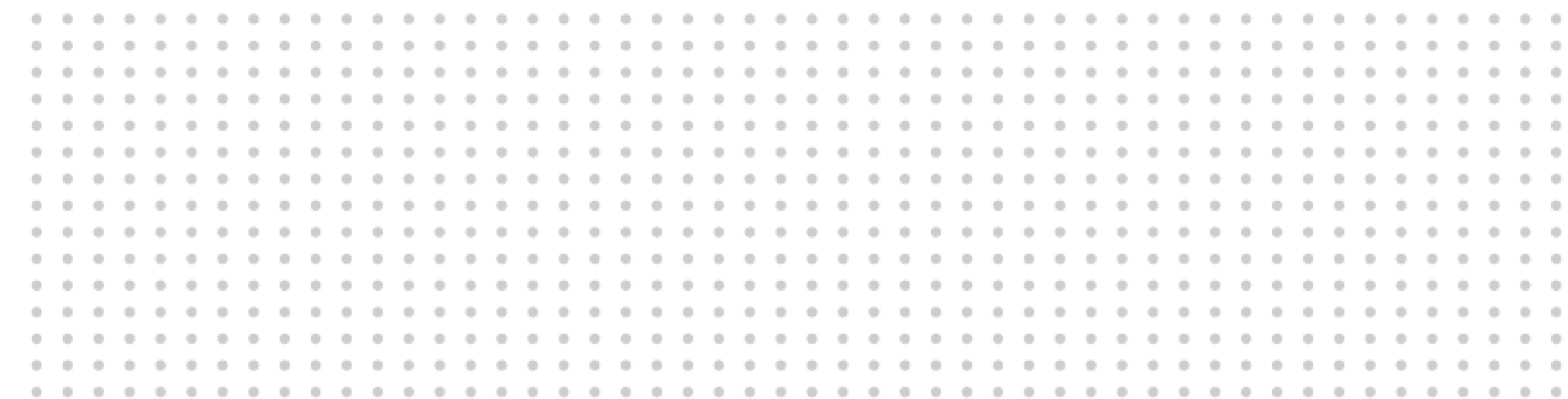
Directors with long board tenures typically faced considerable scrutiny where prolonged underperformance had been observed under their stewardship, calling into question a company's board renewal process. Similarly, director overcommitment continues to be a key concern for proxy advisors, as they questioned the ability of directors to manage competing priorities in challenging market conditions. In some cases, we observed directors receiving up to 25% of votes against their re-elections due to over-boarding concerns.

Growing investor and regulatory focus on directors' oversight of ESG factors, particularly cyber security

Boards' oversight and management of ESG risks and opportunities remained a strong focus for proxy advisors and investors in 2023. In several cases, material ESG controversies (e.g., cyber security breaches, worker fatalities, accounting scandals, regulatory investigations, and poor customer outcomes) caused reputational and financial damage to the company, driving proxy advisors and investors to hold directors responsible for their poor oversight. Following a major ESG controversy, there is a strong expectation from proxy advisors that companies are proactively embarking on a board and management renewal process to demonstrate accountability. In 2023, a few cases of substantial board and executive resignations eventuated in the wake of a major corporate scandal, succumbing to significant external stakeholder pressure.

Following major cyber security breaches in Australia in recent years, investors and regulators continue to increase their expectations of boards in providing accountability over cyber security and technology resilience. In 2023, APRA introduced its new CPS 230 Operational Risk Management prudential standard (CPS 230), partly in response to material cyber breaches caused by operational risk control failures and disruptions[1]. ASIC has also increased its expectations of directors to ensure that organisational risk management frameworks adequately address cyber security risk, indicating that failing to prioritise cyber security will expose boards to the potential risk of enforcement action by ASIC (i.e., for breaching

1. Source: **APRA finalises new prudential standard on operational risk**, APRA, 17 July 2023.



their director's duties to act with reasonable care and diligence). The updated **2023 proxy voting guidelines** of ACSI also introduced new requirements covering board oversight and governance of cyber security. Lastly, research by the Australian Institute of Company Directors (AICD)[2] showed that cyber-crime / data security remained the top issue "keeping directors awake at night", as cited by survey participants (45%).

Large carbon-emitting companies continued to draw criticism from proxy advisors and investors where there has been a perceived lack of progress against climate plans and initiatives. This included dissent towards the substance and disclosures of 'Say on Climate' (SOC) resolutions and Net Zero targets and commitments. In 2023, there were a few instances of proxy advisors recommending against the chair/member of the committee responsible for the company's climate change strategy, in cases where the company:

- demonstrated a continued lack of responsiveness to shareholder opposition to their SOC vote; or
- was considered to be misaligned with investor expectations on Net Zero by 2050 targets and commitments.

2. Source: **2023 Director Sentiment Index Survey (2nd Half 2023)**, AICD, November 2023.

Director accountability over problematic remuneration practices

The significant increase in remuneration strikes in 2023 has partly contributed to increased recommendations against director re/elections by proxy advisors, to provide accountability for problematic pay practices. This reflects the voting policies of proxy advisors, such as Glass Lewis and ISS, who will typically consider recommending against a remuneration committee chair/ member, if they are also opposing the remuneration report resolution.

In a few cases, ESG controversies were also deemed to be driven by poor remuneration frameworks, or proxy advisors were highly critical of incentive outcomes that did not reflect the magnitude of ESG events (e.g., worker fatalities, corporate governance scandals).

Voting recommendations based on directors' track records

Proxy advisors are increasingly monitoring the track records of directors who are repeatedly involved in companies that have experienced sustained underperformance and/or high-profile ESG controversies. In 2023, Glass Lewis updated its **voting policy guidelines** to include a new policy regarding the assessment of a director's current and past track record at other companies or boards, when providing voting recommendations on their re-elections. They consider a wide range of performance aspects including (but not limited to):

- Board succession practices;
- Accounting-related practices;
- Remuneration practices;
- Risk management, legal or compliance practices;
- Capital allocations (including M&A and projects);
- Management of environmental and social issues; and
- Engagement and response to shareholder protest.

The voting policies of Ownership Matters, ACSI and ISS also consider a director's performance at the company in question or at other companies they are involved in. We continue to observe instances where negative commentary/ recommendations by proxy advisors are levelled at directors who were tied to past ESG controversies, even if several years have passed since they were in the relevant role.

Ensuring future-fit boards

Investor and proxy advisors' focus on directors' skills and competencies continues to extend beyond the typical industry and technical skills, as new ESG risks and opportunities emerge and regulatory pressures continue to mount. While having expertise in sustainability, climate change and human capital management is already a core expectation for boards of large ASX-listed companies, investors and proxy advisors are increasingly interested in board expertise in other areas, such as cyber security and artificial intelligence. Emerging Australian regulations regarding these evolving risk areas will undoubtedly increase the obligations and accountabilities of boards to provide effective oversight of these areas.

In 2023, we saw developments in Australia's mandatory climate reporting regime, as well as strengthened remuneration and accountability-related regulations – including ongoing implementation of CPS 511 and the introduction of the Financial Accountability Regime (FAR). Of note was the aforementioned introduction of APRA's CPS 230 in response to growing cyber security threats, and the Australian Government's increased focus on the potential capabilities (positive and negative) of artificial intelligence (AI) through the release of its consultation paper: **'Safe and responsible AI in Australia consultation interim response'**. The Australian Securities and Investments Commission (ASIC) has reiterated that while uncertainty remains over the application of AI, there is no uncertainty over directors obligations to ensure appropriate risk and governance arrangements and oversight over their use of AI is in place[3].

3. Source: **We're not there yet**, ASIC, 31 January 2024.

Diversity remains a core focus for investors and proxy advisors

Research by Watermark Search International and the Governance Institute of Australia (GIA) indicates that the proportion of female directors on ASX300 boards continues to increase; with women representing 35% of ASX300 directors in 2022, compared with 32% in 2021 and 20% in 2016[4]. The proportion of boards with more than 30% female representation has similarly increased, with 64% of ASX300 boards versus 56% in the preceding year. However, there remains a number of boards with no women (approximately 15), with a considerable portion falling within the resources sector. This may change as more women are likely to pursue careers in the traditionally male-dominated resources sector.

In addition, super fund and ACSI-member HESTA, released its inaugural **40:40 vision[5] progress report**, which highlighted the progress made to date and gaps remaining in achieving gender balance across executive leadership teams (ELT) of ASX300 companies. The report shows that the proportion of ASX300 companies that achieved 40:40:20 was 23% in 2023, up from 17% in 2022 after falling from 20% in 2021. Despite some progress, HESTA notes that women remain significantly underrepresented in ELTs overall (29% in 2023, up from 27% in 2022), and 36% of ASX300 companies are yet to set gender composition targets. The report also details the framework companies are employing to develop female talent pipelines and ensure accountability for achievement of targets – including regular visibility at the board level and incorporation into performance and/or remuneration frameworks (60% of surveyed companies). Meanwhile, 75% of 40:40 Vision investors surveyed have continued to drive gender diversity through their voting decisions and 90% are raising gender-related objectives in ASX-listed company board engagements.

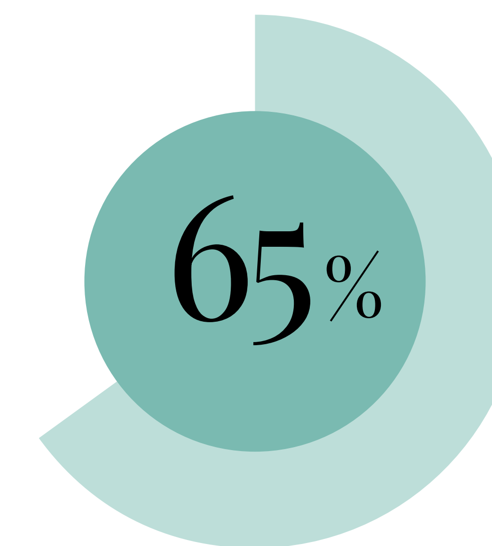
Gender diversity also continues to be a focus for proxy advisors. In May 2023, ACSI released a new voting policy to further enhance accountability on ASX300 companies with poor board gender diversity. Going forward, ACSI will consider recommending its members vote against directors of ASX300 companies if the board has less than 30% female representation. While ACSI is likely to target male directors in the first instance, the policy will focus on opposing individual directors most accountable for board succession and composition (male or female), for example, the board chair or nominations committee chair. For companies with poor gender diversity, ACSI expects companies to clearly articulate (both in disclosures and engagements) their commitments and initiatives to improve diversity throughout the organisation, as well as their board succession plans, as this will be a key consideration in ACSI's voting recommendation.

In addition to gender diversity, cultural and racial diversity on boards has attracted investor focus; with increasing calls for boards to include traditionally marginalised groups (including people with disabilities, members of the LGBTQ+ community and those from diverse socio-economic backgrounds). While research shows an uptick in the number of Indigenous directors across ASX300 boards in 2023 (doubling to four directors across six board memberships), racial and ethnic diversity remains stubbornly low on ASX300 boards – with roles filled by directors with non-Anglo-Celtic backgrounds remaining stagnant at 10% since 2020[6].

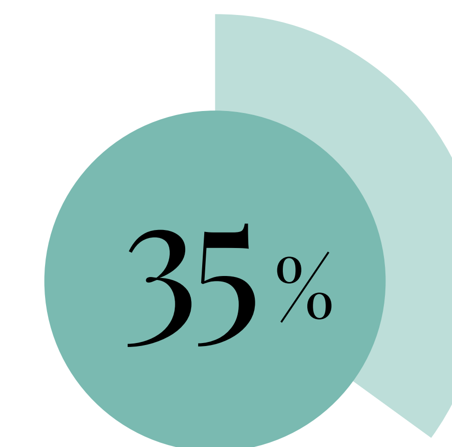
4. Source: **2023 Board Diversity Index**, Watermark Search International and GIA, April 2023. Data as of 1 January 2023, looking back at 2022 as the latest year.
5. 40:40 Vision defines gender balance as 40% women, 40% men and 20% identifying as any gender (40:40:20).

6. Source: **2023 Board Diversity Index**, Watermark Search International and the Governance Institute of Australia (GIA), April 2023.

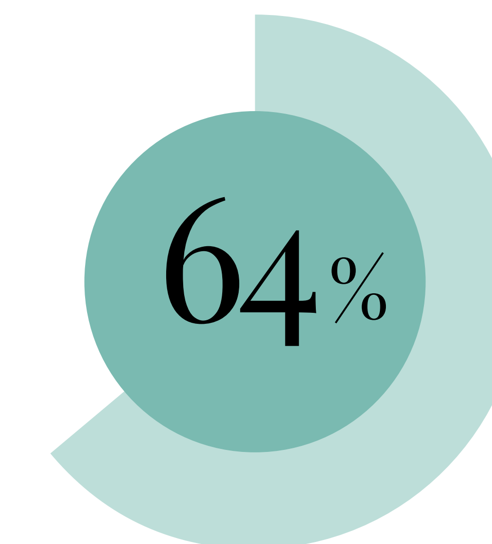
Gender Diversity of ASX300 Directors[4]



Male board members in the ASX300



Female board members in the ASX300



of boards in the ASX300 have 30% or more female representation

Qantas Case Study

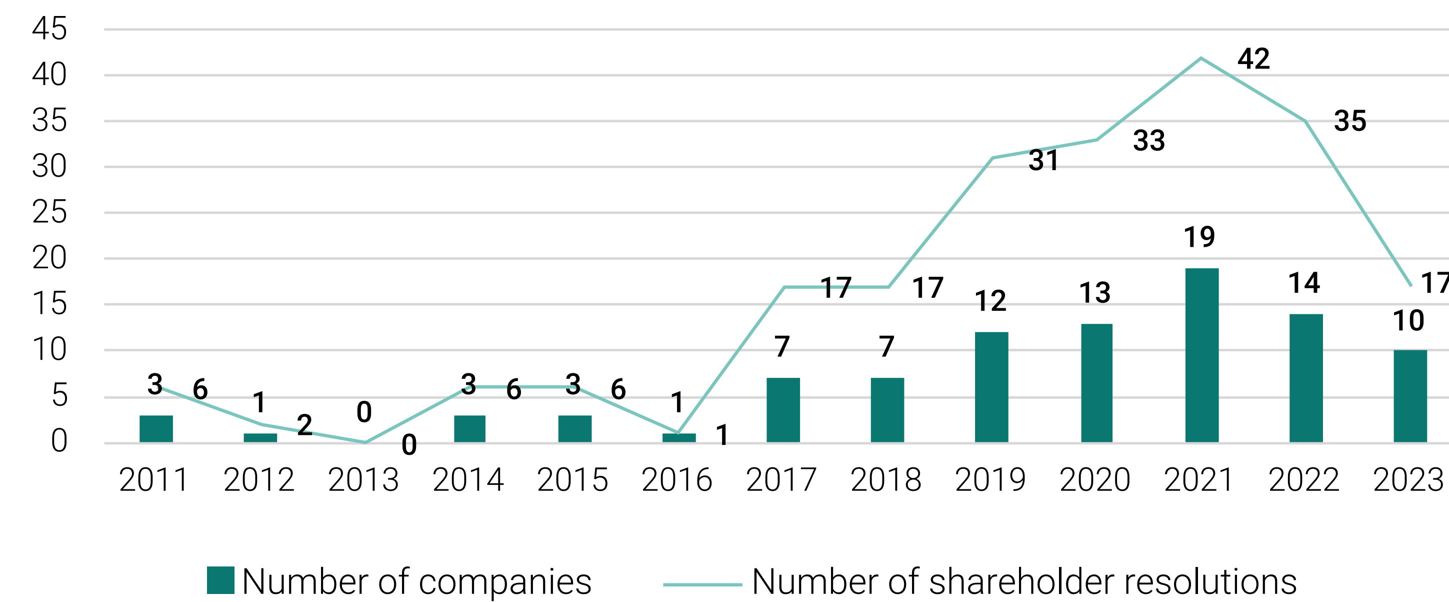
Australia's flagship national airline, Qantas Airways, has experienced a number of challenges over the past 3 years as it navigated through the pandemic and its return to normal operations in 2023. Through a combination of highly publicised customer service concerns and the departure of its long-tenured CEO (including concerns regarding the treatment of his remuneration), the national carrier's reputation was negatively impacted amongst the public.

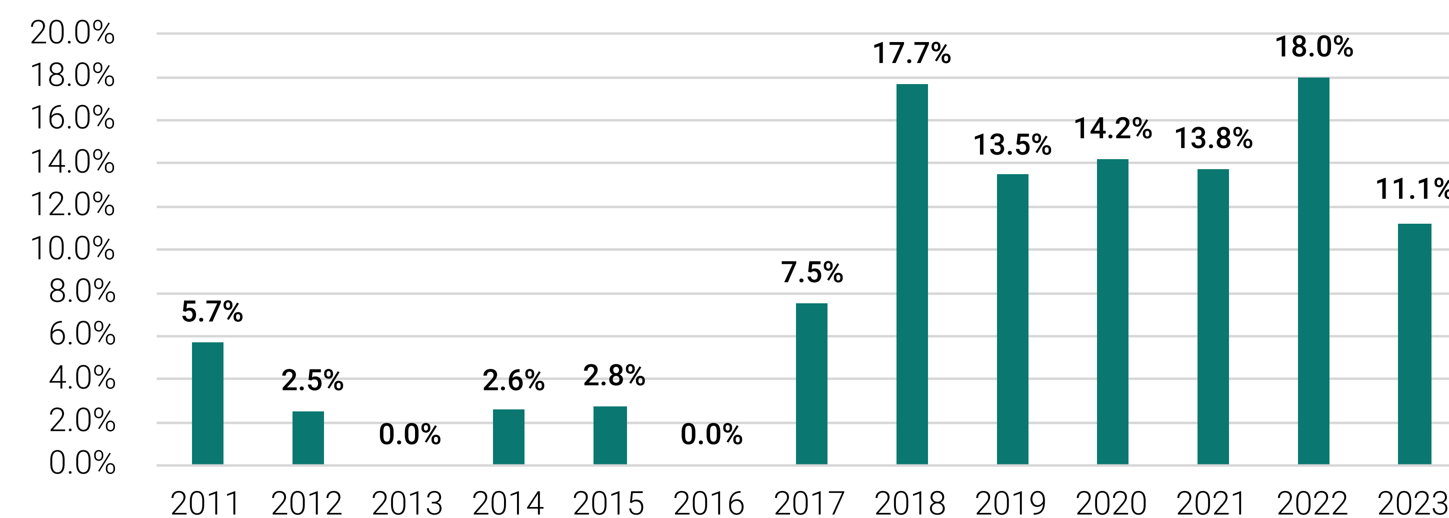
Acknowledging investor frustration, the Qantas board announced a renewal process which will see four of the nine board members (including the Chair) retiring in a staggered approach between the 2023 and 2024 AGMs, amongst other initiatives to improve the customer service experience at the airline. Nevertheless, the longest serving director up for re-election at the 2023 AGM, Todd Sampson (9-year tenure), received a 33% vote against his re-election, while the remuneration report received 82.16% of votes against.

Qantas' 2023 AGM highlights the growing willingness of investors and proxy advisors to hold board members accountable for reputational issues at their companies, as well as the increasing focus on remuneration decisions by boards to account for major ESG issues.

Notable questions from shareholders relating to directors at 2023 AGMs

1. It concerns me that the various problems have occurred due to the board, yet you have confidence that you have a capable board. Do you need additional directors with the right experience, or a change?
2. Can you mention the specific skills that you can bring or have brought to the board that will add value to the business and its culture?
3. Looking at your board skills matrix, what skills are you looking to cover in the appointment of this director?
4. The Chair is also the long-term chair of another company that experienced a high-profile cyber incident. Does the Chair believe they are still suitable for this company, and do they get to keep their job?
5. Will you also consider addressing the other diversity deficiencies on your board, so it better reflects the wider community?
6. Are you ensuring gender plays no part in board appointments and that it is based on merit?
7. Given this director sits on a lot of boards, do they have enough time to commit to this board?
8. Will you consider moving to annual director elections, given some ASX-listed companies now do this?





Sustainability and E&S Activism

Overview

The year was marked by investors seeking greater director accountability for material business risks and opportunities, particularly those relating to climate and cyber security. Data privacy, use of AI, board diversity, and corporate's role in social advocacy were also common themes raised by investors during the 2023 AGM season.

Although a relatively quiet year for shareholder activism across the ASX300 in comparison to 2022 and 2021, sustainability-related topics remained a prominent feature of campaigns in 2023. Advocacy organisation, Market Forces, was the dominant proponent, continuing to put pressure on companies to align their climate strategy with the goals of the Paris Agreement.

The year was also marked by significant developments in sustainability-related regulations and standardising of global reporting frameworks. In Australia, a new mandatory climate-reporting regime is in the final stages of being legislated. With this legislation due to be in place from FY25, investors are looking for greater transparency in climate disclosures, including transition plans and emission reduction strategies.

The Taskforce on Nature-related Financial Disclosures (TNFD) also launched a new reporting framework, shining a spotlight on how boards are overseeing material biodiversity and nature-related risks and value-drivers in their business models.

ESG related shareholder resolutions

While investors globally continued to incorporate ESG factors into their investment decisions, the 2023 season in Australia saw fewer ESG-related resolutions, compared to previous years.

Shareholders lodged 17 ESG-related resolutions across 10 different companies in the ASX300 during 2023, versus 35 resolutions across 14 companies in 2022. This was primarily led by Market Forces, who lodged 10 shareholder resolutions targeting four coal, oil & gas/energy companies[1], and two of the Big 4 Banks, National Australia Bank (NAB) and Westpac Banking Corporation (Westpac). The average support of non board-endorsed resolutions has decreased significantly from 18.0% in 2022 to 11.1% in 2023. No shareholder resolutions in 2023 received more than 30% support (versus 4 in 2022) across the ASX300.

The decline in the number of shareholder resolutions and level of support is arguably the result of many companies improving their climate commitments and disclosures and responding to market-led pressures to manage climate risks. Additionally, companies are becoming more transparent about progress and board oversight of ESG topics, reflecting well with investors.

However, Market Forces maintained pressure on companies to demonstrate how capital expenditure and operations align with the goals of the Paris Agreement. In the case of Westpac and NAB, the activist sought further disclosure on which fossil fuel companies will need to have a credible transition plan and how transition plans would be assessed to receive financing from each bank, under their new climate reports.

In recent years, Market Forces has targeted the Big 4 banks and their role in financing coal, oil & gas/energy companies. The other Big 4 banks (i.e., Commonwealth Bank and ANZ) avoided shareholder resolutions by responding to activist feedback and making stronger climate commitments. Notably, Commonwealth Bank now requires all fossil fuel companies to have credible transition plans before 2025. Westpac's requirement for a transition plan only applies to oil and gas companies, with this deadline now pushed back by nine months to October 2025. Similarly, from October 2025, NAB will require the majority of fossil fuel companies to have transition plans in place in order to provide additional lending.

A notable feature of the 2023 season was the absence of the Australasian Centre for Corporate Responsibility (ACCR) in lodging shareholder resolutions. In 2022, the advocacy organisation put forward six resolutions targeting better performance on climate across four companies – Santos, Woodside Energy, Origin Energy and BHP. However, these climate-related resolutions were ultimately withdrawn from the respective AGMs, as they were conditional on resolutions lodged by ACCR to amend the constitutions[2] of those companies – which were ultimate not passed.

In 2023, ACCR led a more focused agenda targeting other jurisdictions. Two companies were put under the spotlight to set emissions targets aligned with the Paris Agreement – Glencore PLC (UK) and Electric Power Development Co., Ltd. (J-POWER) (Japan). These resolutions were supported by 21% and 29% of their investors, respectively.

Block Inc. received a shareholder resolution targeting workplace diversity and inclusion, reflecting its primary listing on the New York State Exchange; with a secondary listing on the ASX. The resolution lodged by Nia Impact Capital requested Block Inc. to report to shareholders on the effectiveness of its diversity and inclusion strategy, focusing on gender, race, and ethnicity performance. While we are yet to see any ASX-listed companies receiving a shareholder resolution related to diversity and inclusion, such resolutions are common in the U.S. Research from Morningstar shows that social issues have consistently represented over 70% of key shareholder resolutions in the U.S. since 2020, with racial equity and diversity being key topics[3].

1. These companies were New Hope Corporation, Santos, Woodside Energy, and Whitehaven Coal.
2. These resolutions would amend the company's constitution to allow shareholders to submit non-binding proposals at shareholder meetings. Proxy advisors consistently oppose such resolutions as they may have broader ramifications as there is no regulatory framework to oversee shareholder proposals.
3. Source: Proxy Voting Insights: Key ESG Resolutions, Morningstar, October 2023.

Say on Climate

For the last three years, a growing number of companies held non-binding advisory votes asking investors to approve their climate transition strategies – or Say on Climate (SoC) proposals. While the initiative had a quiet year in 2023, largely due to those involved only putting their plan to vote every three years, three SoC resolutions were put to AGMs; Orica, Incitec Pivot and Westpac. All were well supported by investors with at least 90% of votes cast in favour. Westpac is the first banking/ financial services company to voluntarily put forward a SoC resolution at the AGM.

The experience of companies to date has provided clarity on what investors expect in a credible SoC plan, including tangible Scope 3 emissions targets, clear short-term Scope 1 and 2 emissions-reduction targets, and ambitious medium-term targets.

While most Australian companies' SoC resolutions were met with significant support from investors, two of the early adopters of SoC in Australia received marginal support for their initial SoC resolutions (i.e., Santos and Woodside, where support was 63% and 51%, respectively) and were also targeted by Market Forces in 2022 and 2023. It remains to be seen if ACCR and other activists will agitate first movers to set more ambitious climate targets ahead of their second SoC vote.

Proxy advisors have mixed views regarding the effectiveness of SoC resolutions. Glass Lewis' voting policy continues to highlight some concerns with SoC, including the potential for the resolution to abdicate the board's responsibility for setting climate strategy to shareholders. Irrespective of disclosure regarding a company's SoC vote, Glass Lewis will evaluate the quality of the climate transition plans presented by companies on a case-by-case basis, with their key focus being the board governance of the SoC vote, as well as the company's engagement with investors before and after the vote.

ACSI continues to be a strong supporter of the SoC vote for companies that are materially exposed to climate risk – expecting such companies to hold a vote on their climate strategy every three years, as well as an annual vote in intervening years on progress and implementation of the climate strategy (in line with international best practice).

In 2023, there were instances of proxy advisors recommending against the chair or member of the committee responsible for the company's climate change strategy, in cases where the company demonstrated a continued lack of responsiveness to shareholder opposition to their SOC vote and/or failed to commit to another SoC vote after its inaugural vote.

YEAR	COMPANY	RESOLUTION	SoC RESOLUTION RESULT – SUPPORT FOR (POLL VOTES)
2023	Westpac Banking Corporation	To support the Climate Change Position Statement and Action Plan	92.31%
2023	Orica Limited	Advisory Vote on Climate Action Report	91.92%
2023	Incitec Pivot	Progress on Climate Change Transition	89.93%
2022	Origin Energy	Approve Climate Transition Action Plan	93.55%
2022	Sims Limited	Approval of Climate Transition Plan	89.66%
2022	South32	Approve Advisory Vote on Climate Change Action Plan	89.57%
2022	Rio Tinto	Approve Climate Action Plan	84.30%
2022	APA Group	Approval of Climate Transition Plan	79.40%
2022	AGL Energy	Approve Climate Transition Action Plan	69.31%
2022	Santos	Advisory Vote On Climate Change	62.89%
2022	Woodside Energy	Approve Climate Report	51.03%
2021	BHP	Approve Climate Transition Action Plan	84.90%

From a global perspective, SoC proposals were predominantly increasing in European jurisdictions over the past two years – both in terms of willingness to support what is proposed, and the overall level of interest in the proposals. However, a decline in SoC resolutions has been observed across Europe during 2023. During the year, French legislators also sought to introduce a compulsory requirement for SoC resolutions to be included in the AGM agenda of French companies; however, this requirement was withdrawn in late 2023.

Although investor interest in climate-related issues will remain strong, the withdrawal of France's mandatory voting provisions along with the declining number of advisory votes on climate strategy, may suggest that global activity on SoC may be slowing down. Contributing to this downward trend may be the influence of some major institutional investors, including Vanguard and State Street, which continue to approach SoC with a similar caution as Glass Lewis, and do not require companies to hold a SoC vote in their voting policies. Dimensional Fund Advisors continues to maintain a global voting policy to automatically oppose all SoC resolutions put forward by companies, viewing that boards should not delegate responsibility for management and oversight of climate change risks and opportunities to shareholders.

Corporate social advocacy

With the Australian Indigenous Voice Referendum held in October 2023, a number of ASX-listed companies publicly advocated for change across their stakeholder groups and committed financial assets to support the 'Yes' campaign.

As a result, the 2023 season saw heightened focus at AGMs regarding corporate Australia's role in advocating and advancing social topics as deemed relevant to their business and key stakeholders – a topic that is only expected to gain momentum in future years.

Australia's leading advocacy group for retail shareholders, the Australian Shareholders' Association (ASA) stated "broad agreement for companies supporting charities that align with their purpose, strategy, and objectives, but strong opposition to throwing weight behind any political causes."

ESG related shareholder resolutions

COMPANY	AGM DATE	RESOLUTION TYPE	PROPONENT	SUPPORT FOR – PROXY VOTES	SUPPORT FOR – POLL VOTES
Aristocrat Leisure	24/02/2023	Elect Shareholder Nominee (not Board-endorsed) – Stephen Mayne	Self	0.32%	0.33%
ASX	19/10/2023	Elect Shareholder Nominee (not Board-endorsed) – Philip Galvin	Self	1.05%	1.50%
Endeavour Group	31/10/2023	Elect Shareholder Nominee (not Board-endorsed) – William Wavish	Bruce Mathieson	4.25%	27.75%
National Australia Bank	15/12/2023	Elect Shareholder Nominee (not Board-endorsed) – Stephen Mayne	Self	0.88%	1.25%
		Amendment to Constitution	Market Forces	5.18%	5.27%
		Transition Plans Assessment	Market Forces	29.17%	Not put to meeting
New Hope Corporation	23/11/2023	Amendment to Constitution	Not put to meeting	0.70%	0.71%
		Capital Protection	Market Forces	11.73%	Not put to meeting
Block Inc.	13/6/2023	Diversity and Inclusion Lobbying	Nia Impact Capital	n/a	14.88%
Santos	6/4/2023	Amendment to Constitution	Market Forces	6.68%	6.67%
		Capital Protection	Market Forces	18.18%	Not put to meeting
Westpac Banking	14/12/2023	Amendment to Constitution	Market Forces	5.97%	6.18%
		Transition Plans Assessment	Market Forces	22.21%	Not put to meeting
Woodside Energy	28/4/2023	Amendment to Constitution	Market Forces	6.67%	6.65%
		Capital Protection	Market Forces	15.60%	Not put to meeting
Whitehaven Coal	26/10/2023	Amendment to Constitution	Market Forces	3.63%	3.63%
		Capital Protection	Market Forces	17.80%	Not put to meeting

Notable questions from shareholders relating to ESG at 2023 AGMs

1. What practical steps are being taken to achieve your disclosed climate ambitions?
2. How appropriate are Scope 1, 2 and 3 GHG emissions reduction targets?
3. What steps are being taken to prepare for mandatory climate reporting?
4. How committed are you to gender diversity on the board?
5. Why did you support the Australian Indigenous Voice Referendum when it is not relevant to your core business?
6. Is it true that the protection of personal customer information is not 100% guaranteed?
7. How is data being used to train AI models? Is data being de-identified?

A heightened regulatory environment

International Sustainability Standards Board

Marking the most significant sustainability reporting change in a decade, in June 2023 the International Sustainability Standards Board (ISSB) launched two new standards – *IFRS S1: General Requirements for Disclosure of Sustainability-related Financial Information*, and *IFRS S2: Climate-related Disclosures*. These standards seek to create a global baseline for investor-focused sustainability reporting and are now being used to create region-specific requirements.

In Australia, the Treasury and the Australian Accounting Standards Board (AASB) wrapped up its second consultation on draft Australian legislation in February 2023, proposing a phased-in approach for the adoption of mandatory climate disclosures, with large companies (determined by employee headcount, assets, and revenue) set to report first from either FY25 or FY26.

A total of 194 submissions were received in the second consultation, with two provided by Ownership Matters and ACSI. Both proxy advisors strongly supported the need for mandatory climate disclosure that is internationally credible and comparable. Ownership Matters was critical of using employee numbers, assets, and revenue to determine a phased in approach, as these factors may not reflect exposure to climate-risks.

Taskforce on Nature-related Financial Disclosures

The TNFD launched a voluntary framework in September 2023, providing clarity and structure for companies as they begin to assess emerging nature-related risks and opportunities. The new framework closely models the existing Task Force on Climate-related Financial Disclosures (TCFD) framework.

Several Australian companies will be early adopters of this new framework and will provide TNFD-aligned disclosures in 2024 – Brambles, Telstra, GPT Group and Transurban. It is expected that risks and opportunities relating to nature loss and biodiversity will continue to gain momentum this year, catalysing increased focus from proxy advisors and investors.

Corporate Sustainability Reporting Directive

The European Commission's Corporate Sustainability Reporting Directive (CSRD) adopted the European Sustainability Reporting Standards (ESRS) in July 2023.

The new ESRS aligns closely with IFRS S2 but does create more onerous requirements for companies to consider double materiality and complete a value chain assessment. Disclosures will also need to be made in a digital, machine-readable format.

These rules require large companies with substantial business activity in Europe to comply with CSRD requirements, including Australian companies with a net annual turnover in the EU over €150m from 2029.

Investors, ESG Associations and Regulatory Bodies in 2023

January

- Republican attorneys from 21 U.S. states wrote to proxy advisors **ISS** and **Glass Lewis**, informing them that their support of Net Zero and other climate goals may violate state and federal laws.

February

- The **Australian Securities and Investments Commission (ASIC)** launched its first court action against alleged greenwashing conduct, commencing civil penalty proceedings against Mercer Superannuation (Australia) Limited for allegedly making misleading statements about the sustainable nature and characteristics of some of its superannuation investment options. ASIC argued that the firm's Sustainable Plus investment option held nearly 50 fossil fuel, gambling and alcohol stocks despite statements saying that they were excluded from the fund.
- The **International Sustainability Standards Board (ISSB)** approved the final versions of the Board's first two voluntary standards: International Financial Reporting Standards (IFRS) S1 General Requirements for Disclosure of Sustainability-related Financial Information, and IFRS S2 Climate-related Disclosures.
- The **Australian Treasury** completed its first round of consultation to design and implement standardised, internationally aligned mandatory disclosure requirements for climate-related financial risks and opportunities.
- **ISS** was delisted from the UK Stewardship Code. The Financial Reporting Council did not disclose the reasons for the delisting.

March

- **Blackrock's** Larry Fink used his annual letter to argue that: "It is not the role of an asset manager like BlackRock to engineer a particular outcome in the economy, and we don't know the ultimate path and timing of the (climate) transition. Government policy, technological innovation, and consumer preferences will ultimately determine the pace and scale of decarbonisation. Our job is to think through and model different scenarios to understand implications for our clients' portfolios."
- The **Australian Government** passed legislation requiring major carbon-emitting companies to reduce their emissions. The legislation is expected to deliver about a third of what is required for the Government to meet its 2030 reduction target of 43%.
- The U.S. **Securities and Exchange Commission (SEC)** asked for feedback on proposed rules that will require climate risk disclosures to be made by public reporting companies in the U.S.

April

- The **Investor Group on Climate Change (IGCC)** called on the Australian Government to emulate the U.S. and EU by creating markets and demand for low-carbon investments. The IGCC argued that: "Investors are not finding enough attractive opportunities to sufficiently invest in Australian transition industries."

May

- **Sustainalytics** launched a Conflict Zones Team to provide expertise on issues related to human rights in conflict zones and disputed territories.
- The **Science Based Targets Network (SBTN)** issued the world's first science-based targets for nature. The detailed methodologies would allow companies to assess and prioritise their environmental impacts, and to prepare to set targets, beginning with freshwater and land, alongside climate.
- The **Impact Investing Institute** launched the Just Transition Criteria, a framework backed by 21 global financial institutions designed to be used by assets owners and managers to design investments that help advance a just transition.
- **Climate Action 100+** produced a consultation draft of a Net Zero Standard for Diversified Mining. The hope is that a new standard will help investors assess the progress of diversified mining companies as they move to Net Zero.
- The **Australian Council of Superannuation Investors (ACSI)** released a new voting policy aimed at promoting gender diversity. The new policy extends to ASX300 companies (previously only ASX200) and could see them facing recommendations Against male director re/elections if women do not occupy a minimum of 30% of board seats.

June

- The **ISSB** publicly issued its first two voluntary standards: IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information, and IFRS S2 Climate-related Disclosures. The standards go beyond the TCFD requirements by asking companies to quantify ESG and climate impacts on financial performance and cash flows, as well as "anticipated financial effects" over the short-, medium-, and long-term. Every jurisdiction will determine if, and to what extent, it adopts the proposed standards.
- The **Nature Action 100** initiative unveils the sectors it intends investors will engage companies. The global investor engagement initiative is focused on driving greater corporate ambition and action to reduce nature and biodiversity loss. Investors participating in the initiative will engage companies in key sectors that are deemed to be systemically important in reversing nature and biodiversity loss by 2030.
- **Climate Action 100+** opened its next phase to scale up collaborative engagements through 2030 by shifting its focus from corporate disclosure to the adoption and implementation of transition plans. The next phase will target more sectors and add thematic engagements such as political lobbying.
- The **Australian Government** released the "Safe and responsible AI in Australia" discussion paper focused on a governance mechanism that will ensure AI is developed and used safely and responsibly in Australia. The release of this paper follows the low level of public trust and confidence in AI technologies.

July

- The **Australian Treasury** completed their second round of consultation to design and implement mandatory climate reporting requirements in Australia.
- **ASIC** lodged civil penalty proceedings in the Federal Court against Vanguard Investments Australia, alleging misleading conduct in relation to claims about certain ESG exclusionary screens applied to investments in a Vanguard ethical fund. ASIC alleged Vanguard made false and misleading statements and engaged in conduct liable to mislead the public in representing that all securities in the Vanguard fund were screened against certain ESG criteria.
- The EU adopted the **European Sustainability Reporting Standards (ESRS)** for use by all companies subject to the Corporate Sustainability Reporting Directive. The ESRS cover all ESG matters. The ESRS apply to large companies with substantial business interests in Europe, and feature double materiality, value chain assessments, a requirement for information to be disclosed in a digital format and assurance.
- The **IFRS Foundation** announced that it will assume monitoring responsibilities for the TCFD, from 2024.
- **BlackRock iShares** announced that, subject to board approval, it will expand its Voting Choice program to its largest ETF, the iShares Core S&P 500 ETF (with US$305 billion in assets under management). The asset manager stated that it is committed to ensuring a future where every investor can participate in the shareholder voting process.
- The **SEC** adopted new rules requiring companies to disclose material cyber security incidents and to annually disclose material information regarding their cyber security risk management, strategy, and governance.
- **APRA** finalised its new CPS 230 Operational Risk Management (CPS 230) prudential standard, aimed at ensuring banks, insurers and superannuation trustees can better manage operational risks and respond to business disruptions. The introduction of CPS 230 followed a number of recent operational risk control failures and disruptions, including material cyber breaches.

August

- **ASIC** lodged civil penalty proceedings in the Federal Court against LGSS Pty Limited (Active Super), alleging misleading conduct and misrepresentations to the market in relation to claims it made that it was an ethical and responsible superannuation fund. Active Super represented on their website that it excluded investments that posed too great a risk to the environment and the community, including tobacco manufacturing, oil tar sands and gambling. It also stated that they had added Russia to their list of excluded countries, following the invasion of Ukraine. ASIC alleged Active Super exposed its members to investments it claimed to exclude.
- The **Commonwealth Bank of Australia (CBA)** announced new fossil fuel restrictions, bringing Australia's largest bank closer to alignment with its commitments to the goals of the Paris Agreement and Net Zero targets. CBA's new policy ruled out direct finance for all new and expanded oil and gas extraction projects, along with enabling infrastructure like pipelines.
- **ISS** was relisted on the UK Stewardship Code.
- **APRA** unveiled its 2023-24 Corporate Plan covering the four years to 2026-27. APRA's plan identifies system-wide risks, operational resilience in the event of cyber-attacks, climate-related financial risks and improved superannuant outcomes, as key priorities for the financial sector.

September

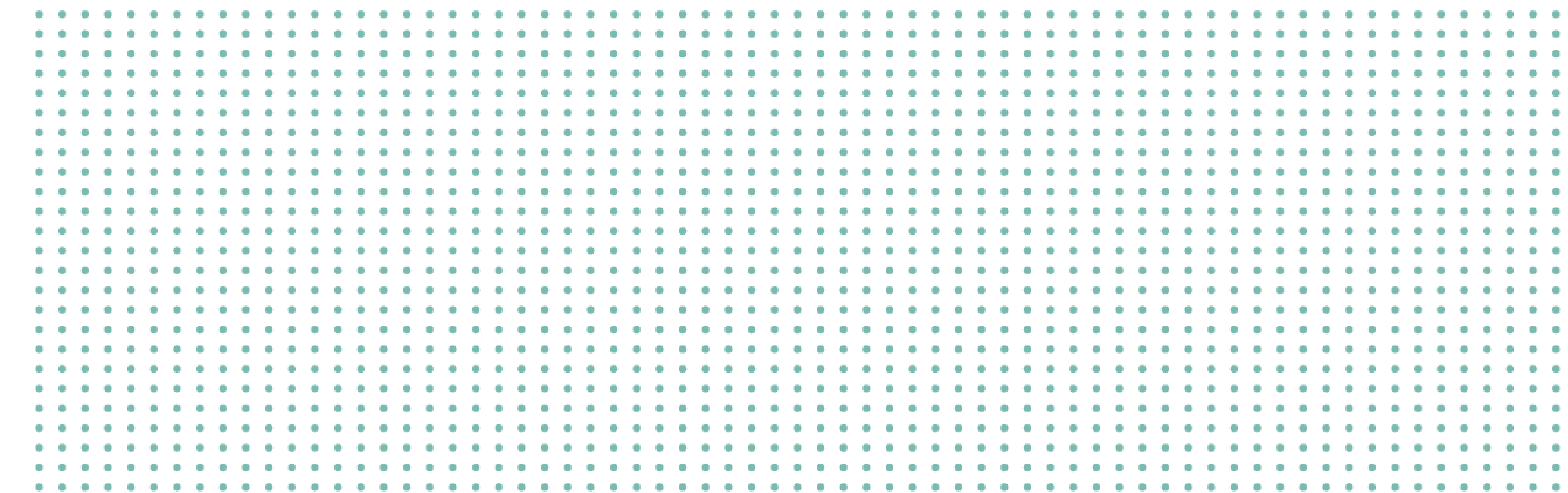
- The **Taskforce on Nature-related Financial Disclosures (TNFD)** released a landmark framework that allows companies and financial institutions to report and act on evolving nature-related risks. The framework is seen as a critical step towards holistic sustainability disclosures and supporting a shift in global financial flows away from nature-negative outcomes and toward nature-positive outcomes.
- Legislation was passed by the **Californian State Senate** that would require corporate emission disclosures and climate risk reports by large companies that do business in California, regardless of where the companies are incorporated.
- The **New York Stock Exchange (NYSE)** asked the SEC for permission to create a new class of listed equities called Natural Asset Companies (NAC) that would help investors meet what it described as "an unmet need for efficient, pure-play exposure to nature and climate". NACs would be required to make disclosures that address risks such as carbon emissions and the economic value of each of the ecosystem services their natural assets produce.
- The **Australian Government** passed the Financial Accountability Regime (FAR) Bill 2023 to replace the Banking Executive Accountability Regime (BEAR). The FAR aims to improve risk and governance cultures by imposing a strengthened responsibility and accountability framework for APRA-regulated entities.

October

- The **Australian Accounting Standards Board (AASB)** released three proposed reporting standards that are based on the voluntary disclosure standards released by the ISSB in June. Notably, the proposed Australian mandatory climate reporting standards modify the ISSB's requirement by limiting climate reporting to greenhouse gases and omitting SASB standards until they are internationalised. Comment on the new standards are due by March 2024.
- The **Australasian Centre for Corporate Responsibility (ACCR)** published findings that show leading Australian listed companies are lagging US-listed S&P 500 companies on transparency and governance of corporate political expenditure.

November

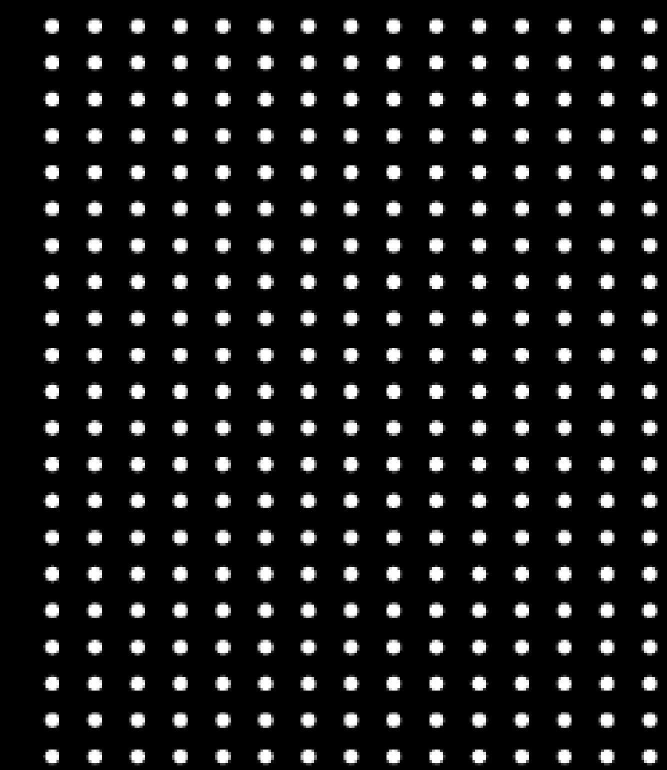
- The **Australian Treasury** released a proposed Sustainable Finance Strategy, with feedback and comments due by December 2023. The proposed strategy included drafting a taxonomy, setting ESG disclosure standards starting with climate, and developing a labelling system for sustainable financial products. The consultation also asked open-ended questions about whether there should be more regulatory oversight of investor stewardship by pension funds, asset managers, banks and insurers, as well as director obligations.
- **Westpac Banking Corporation (Westpac)** announced immediate project finance restrictions for new and expanded fossil fuel projects and brought forward its exit date from thermal coal from 2030 to 2025. Westpac also gave oil and gas companies until 30 September 2025 before requiring them to have a credible transition plan.
- A report by **ASIC** exposes significant deficiencies in cyber security risk management among Australian companies. The report finds that 58% of survey participants have limited or no capability to protect confidential information, while 33% of participants do not have a cyber incident response plan.
- **National Australia Bank (NAB)** released their 2023 Climate Report, that will require all fossil fuel companies (including metallurgical coal) to have a Paris-aligned transition plan in place, for new or renewed project-level lending. These new requirements will take effect from 1 October 2025.
- **Glass Lewis** released their 2024 voting guidelines on shareholder proposals and ESG matters. The proxy adviser indicated it would start considering board oversight of exposure to climate risk from company operations and may recommend against directors responsible for any shortfalls. The approach will cover large companies in industries where emissions represent a financially material risk.
- **ANZ Group Holdings (ANZ)** announced new lending restrictions to fossil fuel companies. These include a commitment to reduce ANZ's exposure to upstream oil and gas companies by 40%, and a requirement for all new lending to oil and gas companies to be accompanied by a transition plan, from October 2025.
- The **Basel Committee** of banking regulators from G20 countries proposed that banks make climate-related disclosures from January 2026, so investors can compare climate exposure at lenders and ensure that banks hold enough capital to remain stable.
- The **Australian Government** released the 2023-2030 Australian Cyber Security Strategy to improve the country's resilience to cyber security attacks by 2030. The release of this strategy followed several high-profile cyber security incidents in Australia, including at Optus, Medibank and Latitude Financial Services.



December

- **ACSI** released the 11th edition of their biennial Governance Guidelines. Updates to the guidelines were made on several subjects including worker safety, nature-related risks, gender diversity and executive remuneration. The update also included a new section covering board oversight and governance of cyber security.
- The **SEC** delays the adoption of its final climate disclosure rules until April 2024.
- The United Nations Climate Change Conference **(COP28)** ended with a roadmap for "transitioning away from fossil fuels" used in energy systems. The roadmap laid the ground for a swift, just, and equitable transition, underpinned by deep emissions cuts and scaled-up finance. However, the deal stopped short of a call for a "phase-out" of oil, coal and gas.

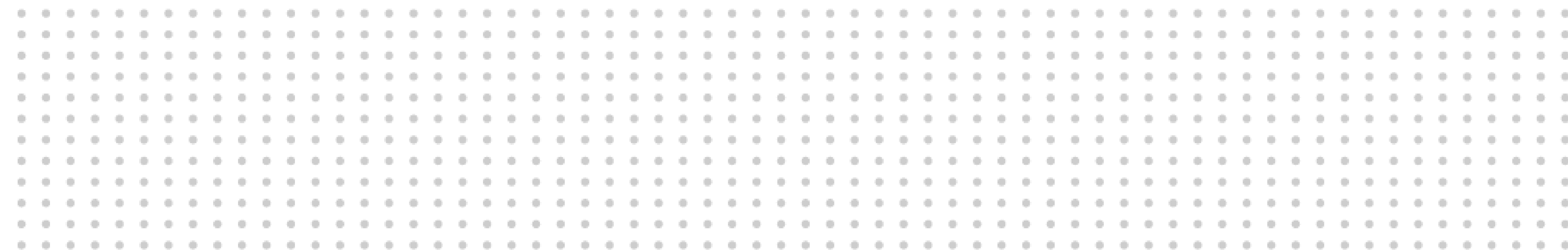
Outlook: 2024



The year 2023 was a year of 'not-so-positive' records in the world of governance and sustainability. From the hottest northern hemisphere summer ever recorded, to the largest number of people around the world displaced by conflict or humanitarian crises, and everything in between, such as the record penalty ever imposed on a company (Facebook) of €1.2 billion (almost A$2 billion)[1]. Bringing it back home, this year saw a record number of remuneration strikes in Australia since the legislation came into effect in 2011.

Unfortunately, 2024 will not fall short of its own records. According to the World Bank, the global economy is on course to record its worst half decade of growth in 30 years, and scientists are forecasting that 2024 has a one-in-three chance of hitting even higher temperatures than last year, and a 99% chance that it would rank among the top five warmest years in human history[2]. There are no signs of easing of the conflicts in Europe and elsewhere, and we are also seeing political agendas penetrating every aspect of business, including the backlash against ESG in the U.S.

1. For illegally transferring personal data between Europe and the U.S.
2. Source: **US scientists say one-in-three chance 2024 another year of record heat | Reuters**, 13 January 2024.



This is all in stark contrast to the concept of 'stakeholder primacy' that the business community has been calling for and is now largely following. We are seeing more clear policies, risk management and quality data related to climate, biodiversity, cyber security, safety, supply chain management, diversity, talent retention, and many other aspects impacting all stakeholders. Businesses are allocating more capital toward reducing emissions and are becoming very transparent around how they manage climate change risks and how they generate revenues from sustainable products and services.

The regulators around the world have also started enforcing these initiatives and disclosures, ensuring that even the laggards now lift their game. The Australian Government is swiftly progressing plans to phase in a new mandatory climate disclosure reporting regime for heavy emitters, large listed and unlisted companies, and funds and asset managers. The new climate disclosure and assurance requirements are planned to be phased in according to the table below[3]. At least two of the three requirements below must be met for a company to fall into a category for reporting.

3. There are indications suggesting that the start of the first reporting period may be deferred to 1 January 2025.

SIZE	NUMBER EMPLOYEES	CONSOLIDATED GROSS ASSETS	CONSOLIDATED REVENUE	TIMING
Large	>500	>$1bn	>$500m	2024/25 onwards
Medium	>250	>$500mn	>$200mn	2026/27 onwards
Small	>100	>$25mn	>$50mn	2027/28 onwards

Companies will be required to report on Scope 1 and 2 emissions as outlined in **IFRS S2**, and include them as part of the annual financial reporting cycle in the company's annual report. Disclosure of Scope 3 emissions are not required for the first year of reporting, but will be required from the second year.

While the reporting standards and guidance will bring much needed clarity on what needs to be reported, the risk of greenwashing, 'greenhushing' and many other new colourful '-ings' are still present. In December 2023, the Australian Competition and Consumer Commission (ACCC) issued a guide for businesses **A Guide for Business** in making environmental claims, outlining eight principles to ensure that any environmental claims are useful for consumers (and other stakeholders), true, accurate, easy to understand and appropriately qualified[4]. We would argue that these principles can certainly be applied to disclosures on many other sustainability claims.

4. Source: **Making environmental claims – A guide for business**, ACCC, December 2023.

Earlier this year, the European Council adopted a **directive** aimed at protecting consumers from misleading green claims and other greenwashing practices. The directive is an answer to a recent study by the European Commission which found that more than half of green claims by companies in the EU were vague or misleading, and 40% were completely unsubstantiated. In response, unverified generic environmental claims such as 'environmentally friendly,' 'biodegradable', and those based on emissions offsetting schemes will now be banned.

The directive also requires guarantee information on products to be more visible, and mandating the creation of a harmonised label to give more prominence to goods with an extended guarantee period, and bans unfounded durability claims, prompts to replace consumables earlier than strictly necessary, or presenting goods as repairable when they are not.

The draft legislation regarding Australian mandatory climate reporting also calls for an annual declaration by the directors of their opinion on whether the statements are in accordance with the Corporations Act, including in compliance with the relevant sustainability standards. The declarations will have to be made with a resolution of the directors, dated, and signed.

This provides further evidence of the ever-increasing expectations regarding directors' liability, responsibility, accountability and skills. Going forward, directors will need to be equipped with the right tools (including AI), systems and information in order to provide proper oversight, and manage existing and emerging risks and opportunities in the most effective way. While shareholders and other stakeholders cannot expect directors to have all the answers, they certainly require them to question and steer management in the right way, while navigating the ever-changing and often polarised business environment.

Following a number of high-profile cyber breaches and leaks of sensitive data in Australia and overseas, dealing with cyber risks, but also opportunities, will be among the top priorities for directors, in the short and long-term. In fact, widespread cybercrime and cyber insecurity has been listed as No. 8 on the World Economic Forum's 2023 global risks list, ranked by severity over the two and ten years[5].

COVID-19 has forever changed the way we work and has created far-reaching ripple effects on how businesses recruit, manage, nurture and upskill talent. The new generation of the workforce demands flexible work arrangements, work-life balance, focus on mental health and well-being, and alignment of values regarding ethics, diversity, equity and impact. While these topics form the basis of any sustainable business, they still present a challenge for many leaders and directors, particularly with regard to metrics and direct links to financial performance and executive remuneration. The answer might lie in a 2023 study by Bain & Co and EcoVadis[6], which study found that while not every company will automatically perform better on the financial side, ESG activities are not negatively correlated with financial outcomes. In fact, they are associated with encouraging revenue growth and EBITDA margins. Interestingly, businesses with the most satisfied employees have shown to have three-year revenue growth up to 6% above those in their sectors with the least satisfied employees.

There is an ever-growing list of issues and areas that require attention. At the same time, our 2023 AGM season statistics show that shareholders and other stakeholders are losing patience with boards and management teams that are seen to be poorly executing their business strategy and ESG initiatives, or insufficiently applying discretion, including with regard to executive pay.

The only truly effective tool that can help directors and other leaders navigate through these challenges is engagement. Knowing who the stakeholders are, how they need to be prioritised, how to communicate with them and mainly, how to understand their needs, is key to unlocking the true potential of any business. Only a proper and regular engagement strategy can provide confidence that all its risks, opportunities and impact are included in decision-making processes, and that the business strategy that directors approve, is focused on sustainable value creation.

> “Without a major course correction, the 2020s will go down as a decade of wasted opportunity.”
>
> **Indermit Gill, the World Bank Group's chief economist and senior vice president**

5. Source: The Global Risks Report 2023, 18th Edition, World Economic Forum, January 2023.

6. Source: Do ESG Efforts Create Value?, Bain & Company, April 2023.

Who we are?

We *bring together* all the expertise, information, technology and resources companies need *to engage effectively with shareholders* and *maximize support* for their business initiatives.

Integrated

We offer a spectrum of services surrounding the stakeholder engagement lifecycle.

Trusted

Our track record crosses borders, industries and transaction type.

2000+	CORPORATE CLIENTS
200+	MERGER SOLICITATIONS
100+	PROXY CONTESTS
$600bn	TENDER OFFERS

Responsive

With a presence in over 70 markets, we're able to act and adapt.

	MARKETS
Americas	7
APAC	17
EMEA	35
LATAM	10

Contact

Aldi Djajaputra
Managing Director,
Corporate Governance

P: +61 2 9066 6165
M: +61 424 013 834
a.djajaputra@morrowsodali.com

Andrew Vasey
Senior Director,
Corporate Governance

P: +61 2 8022 7911
M: +61 405 914 505
a.vasey@morrowsodali.com

Prashilta Naidu
Manager,
Corporate Governance

P: +61 2 7912 2956
M: +61 450 430 695
p.naidu@morrowsodali.com

Kelly Kim
Senior Advisor

M: +1 206 817 7187
k.kim@morrowsodali.com

Liz Park
Manager,
Corporate Governance

P: +61 2 9066 6164
M: +61 424 646 234
l.park@morrowsodali.com

Madeleine Whiteman
Manager,
Corporate Governance

P: +61 2 9066 6152
M: +61 452 646 159
m.whiteman@morrowsodali.com

Danny Hunt
Chief Operating Officer,
APAC

T: +61 2 9066 4057
M: +61 449 677 550
d.hunt@morrowsodali.com

YooShin Choi
Senior Associate,
Corporate Governance

T: +82 10 9676 8325
y.choi@morrowsodali.com

Ingrid Bonney
Specialist,
Corporate Governance

P: +61 2 0966 4087
i.bonney@morrowsodali.com

Lauren Thompson
Senior Managing Director

T: +61 2 9119 3079
M: +61 438 954 729
lauren.thompson@morrowsodali.com

Peter Brookes
Senior Managing Director

T: +61 2 8234 0104
M: +61 407 911 389
p.brookes@morrowsodali.com

Angus Booth
Senior Managing Director,
APAC

P: +61 2 9066 4062
M: +61 457 560 179
a.booth@morrowsodali.com

Our expert APAC team providing listed companies with market-leading services.

P: (02) 9066 4040
Level 9, 9 Castlereagh Street,
Sydney NSW 2000, Australia
morrowsodali.com