Annual general meeting season 2018

Report 609 | January 2019

About this report

This report provides an overview of the annual general meeting season in 2018 for S&P/ASX 200 listed entities. It sets out some key observations from our review.

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About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents: consultation papers, regulatory guides, information sheets and reports.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations. Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Background to this report

Most listed companies in the S&P/ASX 200 (ASX 200) hold their annual general meetings (AGMs) between 1 October and 30 November each calendar year (AGM season).

We actively monitor each AGM season to identify emerging trends, corporate governance issues and the extent to which companies are using AGMs as a forum to meaningfully engage with shareholders. We do this by:

- attending a number of AGMs in an observational capacity
- reviewing meeting materials, resolutions proposed and voting outcomes.

Our work in this area promotes and supports our:

- ongoing focus on corporate governance
- vision of a fair, strong and efficient financial system for all Australians
- administration of the *Corporations Act 2001* (Corporations Act) generally.

In January 2018 we published Report 564 *Annual general meeting season 2017* (REP 564), the first report of its kind, which provided our observations on the 2017 AGM season for ASX 200 listed companies.

This report sets out our high-level observations following our review of the 2018 AGM season for ASX 200 listed companies. This report is not a comprehensive statement of all of our views on the topics discussed.

Summary of key findings

Figure 1: Summary of key findings

12	remuneration report strikes	**91%**	average 'for' vote on remuneration reports
92	material 'against' votes	**23%**	average material 'against' vote
11	shareholder-requisitioned resolutions	**14%**	average 'for' vote on shareholder-requisitioned resolutions

Note 1: Material 'against' votes are resolutions that received a vote of 10% or more against the resolution (excluding remuneration reports and shareholder-requisitioned resolutions).
Note 2: 'Shareholder-requisitioned resolutions' excludes one resolution for the election of a director.

Executive remuneration

Executive remuneration proved to be topical this AGM season, with the number of remuneration strikes increasing significantly compared to last year's calmer season (12 compared to 5 in 2017). This trend was accompanied by an upsurge in the magnitude of 'against' votes on remuneration reports, with a number of record highs in 2018. Strikes appeared to be driven by a number of factors, including:

- negative shareholder sentiment towards executive pay and accountability, arising from concerns highlighted by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission)
- remuneration amounts (including performance-based payments) and how the remuneration is structured (including 'combined' plan incentive structures)
- company underperformance.

Shareholder engagement (including ESG issues)

The 2018 AGM season saw a strong display of shareholder engagement. Environmental, social and governance (ESG) issues continued to attract shareholder attention, with climate change risk and sustainability emerging as the most frequently raised ESG issue. ESG issues received a broader level of support from shareholders this season, suggesting such issues may continue to be raised in years to come.

Director elections and re-elections persisted as an area where shareholders voiced discontent by 'protest votes', with some material 'against' votes coinciding with high 'against' votes on remuneration.

Royal Commission

The Royal Commission, including the interim report released on 28 September 2018, cast a long shadow over the 2018 AGM season. This was particularly so for companies and directors directly involved in the Royal Commission, but also more generally. It was an impetus for heightened shareholder focus on matters such as social licence to operate and community expectations.

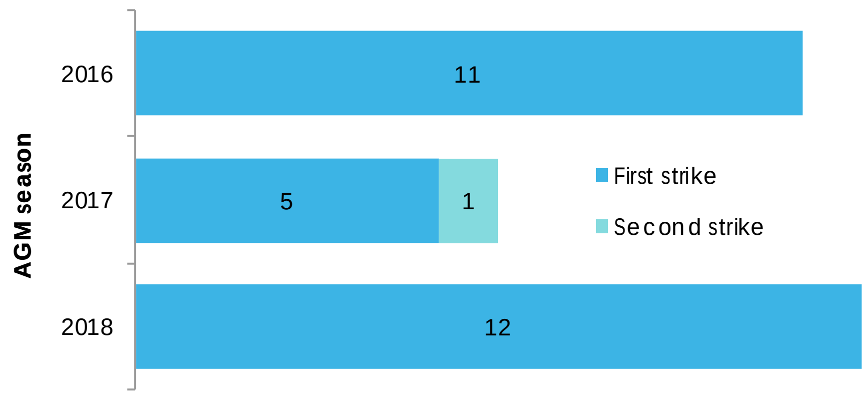
Executive remuneration

Remuneration strikes

In 2018, we observed for ASX 200 companies:

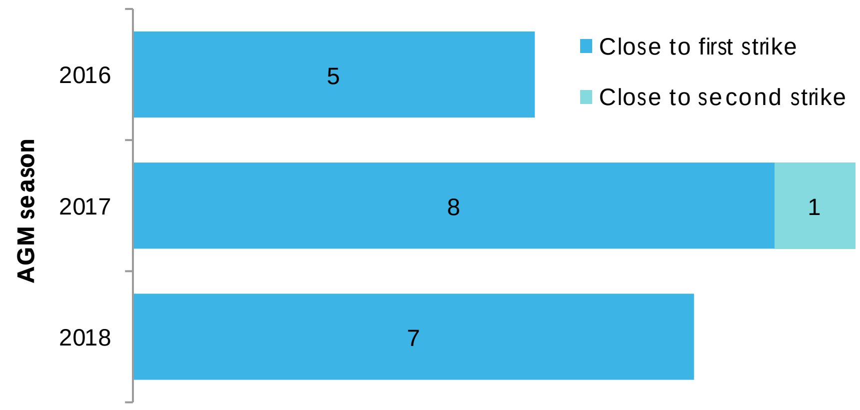
- a significant increase in the number of first strikes on the remuneration report, from 5 in 2017 to 12 in 2018 (see Figure 2)
- no second strikes (see Figure 2)
- a steady number, year to year, of companies close to receiving a strike – that is, between 20% and 25% of votes against the remuneration report (see Figure 3).

Figure 2: Number of companies that received remuneration strikes (2016, 2017 and 2018 AGM seasons)



Note: See Table 1 in the appendix for the data shown in this figure (accessible version).

Figure 3: Number of companies close to receiving remuneration strikes (2016, 2017 and 2018 AGM seasons)



Note 1: See Table 2 in the appendix for the data shown in this figure (accessible version).
Note 2: The ASX 200 companies used for each yearly data set in Figure 2–Figure 3 and Figure 5 are the ASX 200 companies at the beginning of that respective year's AGM season (except 2016). We have not adjusted prior year data for companies that subsequently moved in, or out of, the ASX 200 (e.g. Myer Holdings Ltd).
Note 3: Not all ASX 200 companies held an AGM during the seasons (e.g. those with a 31 December financial year end).

Of the eight companies that were close to a first strike in 2017, four went on to receive a first strike in 2018. This is perhaps indicative that, for those companies, shareholder concerns leading to the close call in 2017 were not addressed in 2018.

On the other hand, none of the companies that received a first strike in 2017, and were still in the ASX 200 in 2018, went on to receive a second strike in 2018. This may indicate that the action proposed by the boards of those companies (and disclosed under s300A(1)(g) of the Corporations Act) addressed previous shareholder concerns.

Remuneration practices

External commentary suggests that, if a company received a strike this year, it was generally a result of any or all of that company's:

- share price performance
- remuneration amount and/or structure
- conduct issues (most relevantly in relation to issues highlighted by the Royal Commission).

Shareholder dissatisfaction with remuneration appeared to centre on:

- the amount of pay
- there being no or little consequences on pay for poor performance
- the complexity of the remuneration structure
- combined or tailored incentive plans
- a lack of transparency about the operation of incentive plans.

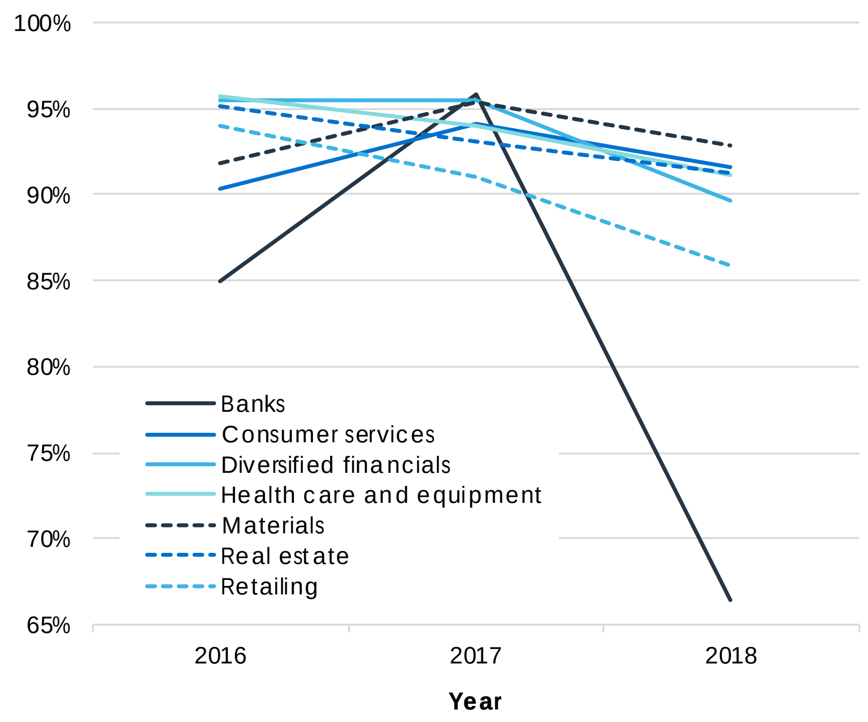
It also appears that shareholders have used their votes on the remuneration report to demonstrate their discontent with boards more broadly, rather than just on executive remuneration.

As illustrated by Figure 4, 'for' votes in the banking sector fell significantly from around 96% in 2017 to around 66% in 2018. This result appears to be directly related to the conduct-related concerns highlighted by the Royal Commission and, in particular, those companies' failure to account for this through their remuneration practices.

Case study: National Australia Bank

In 2018 National Australia Bank Ltd's remuneration report received a record first strike 'against' vote of 88%. This is the highest first strike we have observed for an ASX 200 company since we began reviewing the outcome of ASX 200 remuneration resolutions.

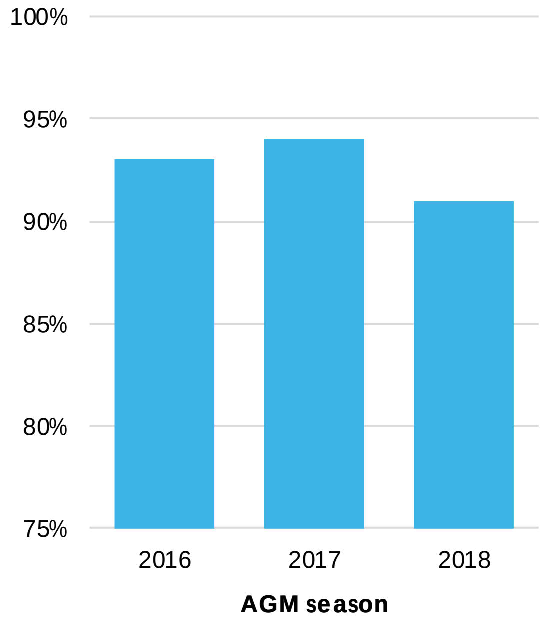
Figure 4: Average 'for' vote on remuneration reports, by industry (2016, 2017 and 2018)



Note: See Table 3 in the appendix for the data shown in this figure (accessible version).

Looking more broadly across the ASX 200 in 2018, we observed a decrease in shareholder support for remuneration reports compared to prior years: see Figure 5.

Figure 5: Average 'for' vote on remuneration reports (2016, 2017 and 2018 AGM seasons)



Note: See Table 4 in the appendix for the data shown in this figure (accessible version).

> 'At a time when public trust in business is at a low ebb and wages growth is weak, board decisions to pay large bonuses just for hitting budget targets rather than exceptional performance, are especially tone-deaf. This may be a sign that boards have lost sight of the link between a company's social licence and the expectations of communities and investors.'

Louise Davidson | CEO, Australian Council of Superannuation Investors (ACSI), *CEO pay reaches new heights*, media release, 17 July 2018

Observations from our attendance at AGMs

This AGM season highlighted an emerging theme of accountability from boards in some industries. A number of chairpersons and CEOs used their opening addresses to shareholders at AGMs to acknowledge failings or mistakes made by the company and to commit to improving.

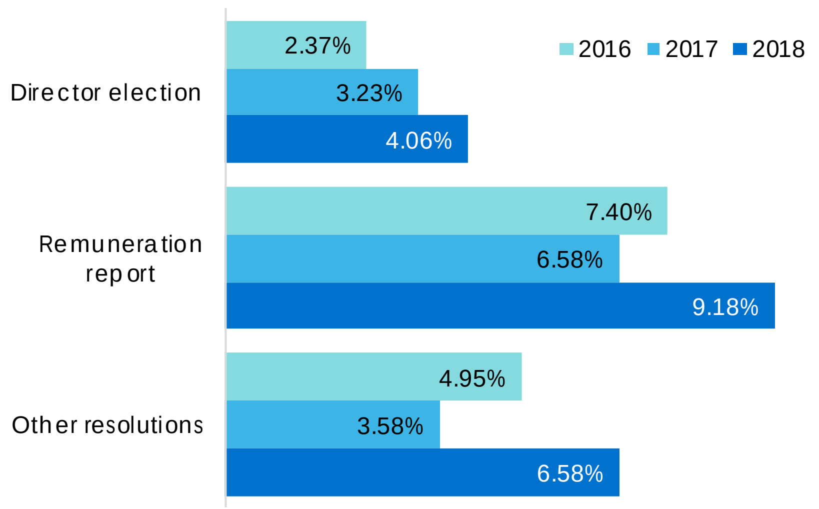
Remuneration remained a key issue, with shareholders continuing to voice concerns about the amount, structure and transparency of executive remuneration. Issues raised by shareholders included the complexity of remuneration structures (particularly 'combined' plans, which amalgamate long-term and short-term incentives) and a sense of inequality where wage growth of other company employees is low or stagnant.

Shareholder engagement

Similar to our 2017 observations, we saw a high level of shareholder engagement in the 2018 AGM season, with some shareholders actively voicing discontent or raising questions on various matters.

Figure 6 shows that 'against' votes on ASX 200 companies' resolutions were highest in the 2018 AGM season, compared to prior years.

Figure 6: Average 'against' vote, by resolution type (2016, 2017 and 2018 AGM seasons)



Note 1: See Table 5 in the appendix for the data shown in this figure (accessible version).
Note 2: The ASX 200 companies used for each yearly data set in Figure 6–Figure 7 are the ASX 200 companies at the beginning of that respective year's AGM season (except 2016). We have not adjusted prior year data for companies that subsequently moved in, or out of, the ASX 200.

Director elections

The average vote 'against' director election resolutions continued to creep up in 2018 compared to prior years. Some commentators have suggested that votes against director re-election may have been because of concerns about director workloads. For example:

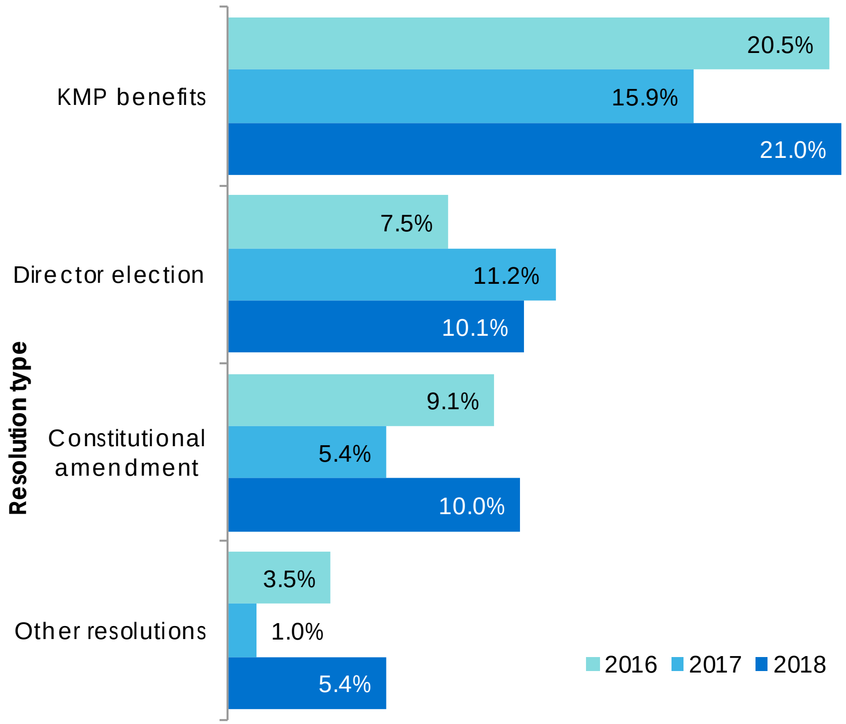
> 'Whether some directors have taken on too many boards has been a point of discussion ... Some directors this year were targeted by investor groups or proxy advisors on concerns they held too many board positions.'
>
> **Christopher Niesche | '**The wrap up from the latest AGM season', *Company Director Magazine*, 1 December 2018

Material 'against' votes

The 2018 material 'against' votes were similar to those of 2016, and an increase on the less tumultuous 2017 AGM season. Notably, the material 'against' votes on director elections have consistently been high since 2016.

As shown in Figure 7, 1 in 5 resolutions on key management personnel (KMP) benefits and 1 in 10 resolutions on director elections or constitutional amendments attracted a material 'against' vote, which demonstrates negative shareholder sentiment across various types of proposed company activities.

Figure 7: Percentage of resolutions receiving material 'against' votes, by resolution type (2016, 2017 and 2018 AGM seasons)



Note 1: See Table 6 in the appendix for the data shown in this figure (accessible version).
Note 2: Shareholder-requisitioned resolutions and remuneration resolutions have been excluded.

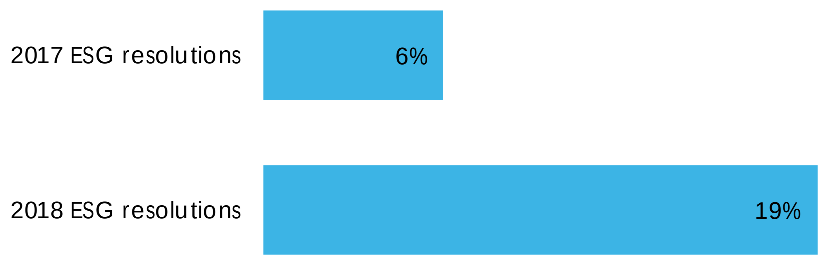
> '… investors are voting to hold companies to account for behaviour that falls below community and market expectations. In doing so, investors acknowledge the strong link between good corporate governance (including effective management of their environmental and social impacts) and sustainable long-term returns.'
>
> **Louise Davidson |** CEO, ACSI, 'Season of investor discontent', *Investment Magazine*, 19 December 2018

ESG issues

Shareholders requisitioned resolutions on ESG issues in four ASX 200 companies in the 2018 AGM season (a total of 11 shareholder-requisitioned resolutions overall). This is a decrease from 2017, where six ASX 200 companies received shareholder requisitions on ESG issues. These resolutions focused predominantly on climate change and, to a lesser extent, human rights issues. As shown in Figure 8, the 2018 AGM season saw an increase in the level of shareholder support for a number of these resolutions.

Note: Generally, ESG resolutions proposed by shareholders in listed companies are conditional on the separate approval of constitutional amendments.

Figure 8: Percentage of votes cast 'for' shareholder-requisitioned resolutions on ESG issues (2017 and 2018 AGM seasons)



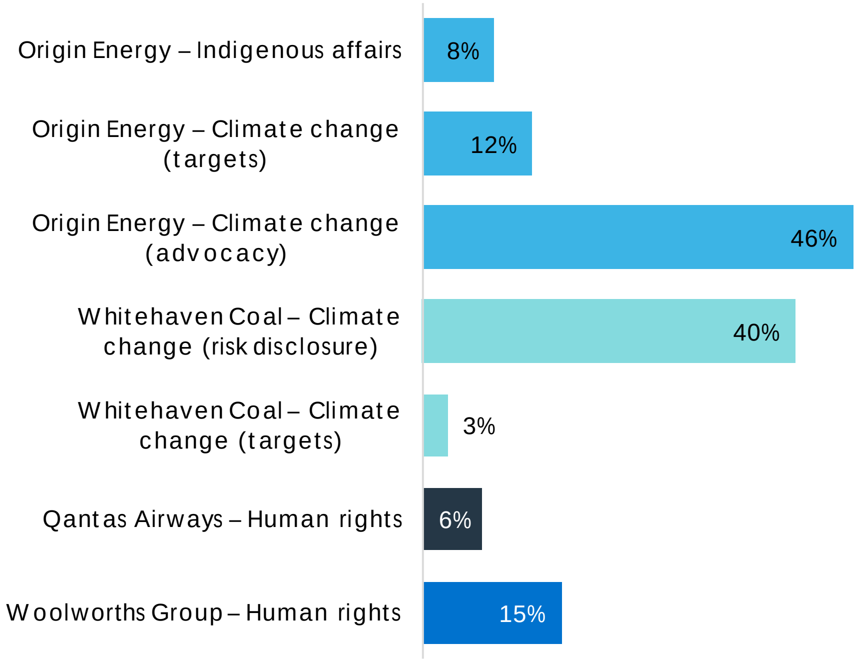
Note 1: See Table 7 in the appendix for the data shown in this figure (accessible version).
Note 2: These results exclude constitutional amendment resolutions.

Case Study: Origin Energy

A contingent resolution – which proposed that Origin Energy Limited's board commission a comprehensive review of the public policy advocacy positions on climate change adopted by the industry associations of which Origin Energy is a member – received 46% of proxy votes cast in favour.

The resolution was ultimately not put to the floor of the meeting, as it was conditional on successful passage of a constitutional amendment that was not approved by company shareholders.

Figure 9: Percentage of votes cast 'for' shareholder-requisitioned resolutions on ESG issues, by company and resolution type (2018 AGM season)



Note 1: See Table 8 in the appendix for the data shown in this figure (accessible version).
Note 2: The majority of the resolutions in Figure 9 were conditional on the passing of a constitutional amendment resolution. None of the relevant constitutional amendment resolutions were successful; however, the companies released the proxy voting outcomes. Figure 9 includes the percentage of proxy votes 'for' those resolutions.

As highlighted by Figure 9, of the seven shareholder-requisitioned resolutions on ESG issues, two climate change resolutions put forward by shareholders received broad support. In these cases the relevant resolution was conditional on shareholders separately passing a constitutional amendment. In all cases, the relevant amendment failed to pass.

Regardless, we consider that these results are indicative of broader shareholder focus on the issue of climate change – which, in our view, appears to be increasingly a 'mainstream' reporting and disclosure issue for ASX 200 companies. Further information about climate change disclosure practices, along with our high-level recommendations, are located in Report 593 *Climate risk disclosure by Australia's listed companies* (REP 593).

> 'As the financial implications of climate change become more apparent to investors, their consideration of this issue is increasingly relevant to companies. As such, the impetus is on companies to ensure that they are providing decision-useful disclosure concerning the bottom line impacts of climate change.'
>
> **Max Darrow** | Glass, Lewis & Co., 'TCFD: Year One', *Glass Lewis Blog*, 2 October 2018

> 'Strong corporate governance facilitates better information flow within a company and facilitates active and informed engagement and oversight by the board in identifying and managing risk.
>
> Transparency is one of fundamental tenets of strong corporate governance. When climate risk is material, consideration should be given to disclosing the company's governance and risk management practices around climate risk.'
>
> **ASIC** | REP 593, September 2018, p. 12

Observations from our attendance at AGMs

We observed that shareholder engagement at AGMs remained significant this season and shareholders continue to use AGMs as an avenue of direct engagement with company boards.

ESG issues featured prominently at a number of AGMs, and climate change was the most commonly raised ESG issue we observed. Shareholders sought to understand the steps boards were taking to identify, address and mitigate climate-related risks to the company's business, as well as advocating for boards to take action – for example, by committing to certain emissions targets or limiting business with non-renewable energy companies.

Other ESG issues of concern to shareholders included asylum seekers' rights, board diversity, public health and welfare concerns relating to business activities, and labour and employment issues.

Related party transactions

Approval under the Corporations Act

This year, in addition to our general review of the AGM season for ASX 200 companies, we analysed all listed public company notices of meeting lodged with ASIC under s218(1) of the Corporations Act.

Many companies, particularly small listed companies, proposed related party transactions for shareholders to consider and approve at AGMs. In many cases, these proposed transactions included the grant of securities or performance rights to directors and/or other related parties.

The mechanisms for the consideration and disclosure of related party transactions, and related shareholder-approval processes, are prescribed by the Corporations Act.

We have provided guidance to help issuers and advisers understand their obligations: see Regulatory Guide 76 *Related party transactions* (RG 76).

During 2018, we observed a decrease (20% year to year) in the number of notices of meeting lodged with ASIC under s218(1) before and during the AGM season: see Figure 10.

Our data is not conclusive, but it is reasonable to infer that smaller listed companies are placing greater reliance on the arm's length exception in s210 of the Corporations Act than previous years.

> 'It is important that the arm's length exception in s210 is applied correctly so that members are given an appropriate opportunity to vote on a proposed related party transaction where the terms of that transaction are not truly arm's length terms.'
>
> **ASIC** | RG 76, March 2011, RG 76.61

Figure 10: Notices of meeting lodged with ASIC under s218(1) (2017 and 2018)

Note 1: See Table 9 in the appendix for the data shown in this figure (accessible version).
Note 2: Notices of meeting are usually lodged in September and October of that year.

Other observations

Proxy advisers

Each year proxy advisers provide their clients, typically institutional investors, with recommendations for voting on company resolutions. Proxy advisers play an important role in the market by assisting shareholders to make voting decisions and promoting a focus on corporate governance.

In 2018, we separately undertook specific surveillance work on:

- the engagement policies of major proxy advisers in Australia
- 80 proxy adviser reports that made an 'against' recommendation for one or more resolutions considered at a meeting held during the 2017 AGM season
- other information voluntarily provided by proxy advisers on their engagement practices and activities during the 2017 AGM season.

In June 2018, we published Report 578 *ASIC review of proxy adviser engagement practices* (REP 578), which summarised the results of our surveillance work and issued a number of good practice recommendations to encourage more effective engagement between companies and proxy advisers.

Gender diversity

Gender diversity on boards continued to improve this AGM season – 30% of ASX 100 board members this season are women. In addition, this season 29% of the ASX 200 board members are women, up from 25% in the 2017 season and compared to 22% of board members in the ASX All Ordinaries.

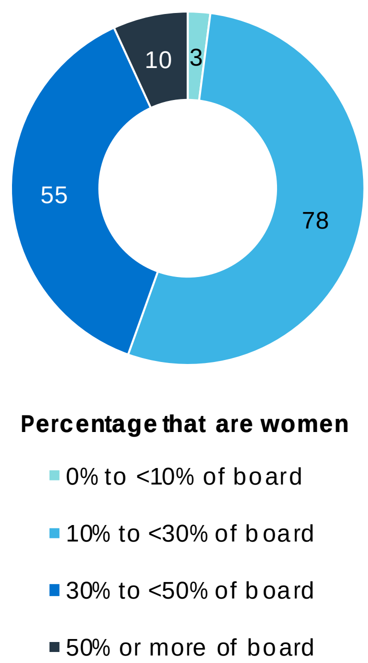
Note: Percentage of women on ASX All Ordinaries boards is as at 31 October 2018, published by the Australian Institute of Company Directors (AICD).

We observed three ASX 200 boards that participated in the 2018 AGM season with no women. This is down from seven in the 2017 AGM season.

Note: The three companies whose boards had no women at the end of the AGM were ARB Corporation Limited, Tassal Group Limited and TPG Telecom Limited. Tassal Group Limited appointed two women to its board after its AGM.

Ten companies from the 2018 AGM season had 50% or more women on their boards: see Figure 11.

Figure 11: Number of ASX 200 companies by percentage of the company board that are women (2018 AGM season)



Note: See Table 10 in the appendix for the data in this figure (accessible version).

‘All directors should be looking around their board table asking themselves – how diverse is this group of people and am I putting this organisation in the best possible position for the future with those present?’

Elizabeth Proust | Former Chairman, AICD, *30% by 2018: Gender diversity progress report*, vol 11, January 2018

Effectiveness of meetings

We were particularly concerned that 11 companies in the ASX 200 continued to decide resolutions by a show of hands rather than by conducting a poll. While this is down from the 2017 AGM season (indicating that listed companies are implementing our recommendation in REP 564 to use polls), we remain concerned that this practice is still adopted in a number of ASX 200 listed companies.

Note: The 11 companies who decided resolutions by a show of hands were Blackmores Limited, Harvey Norman Holdings Limited, IDP Education Limited, IPH Limited, Mineral Resources Limited, Nanosonics Limited, National Storage Group, Nufarm Limited, Regis Resources Limited, Tassal Group Limited and Washington H Soul Pattinson & Company Limited.

ASIC Corporate Governance Taskforce

Poor corporate governance practices have led to significant investor and consumer losses, as well as a loss of confidence in our markets. This has been starkly emphasised by the Royal Commission’s interim report and the Australian Prudential Regulation Authority’s (APRA) *Prudential inquiry into the Commonwealth Bank of Australia*.

On 7 August 2018, ASIC received additional funding to establish a dedicated taskforce to conduct a proactive, targeted and thematic review into corporate governance practices of large listed entities.

The Corporate Governance Taskforce will review a selection of entities within the ASX 100 (both those providing financial services and those not), to closely observe governance practices across the spectrum of large listed companies.

The taskforce has three key areas of focus:

- the role of the board and officers in the oversight (and in the case of officers, the management) of non-financial risk
- board decision making on executive remuneration, including the granting and vesting of variable remuneration
- the adequacy and effectiveness of existing corporate governance disclosures against entities’ governance practices.

The purpose of the taskforce’s review is to:

- report on our observations of governance practices, both good and bad, in market-leading entities
- provide the market with our expectations and recommendations for improvement in governance practices.

Appendix: Accessible versions of figures

This appendix is for people with visual or other impairments. It provides the underlying data for each of the figures included in this report.

Table 1: Number of companies that received remuneration strikes (2016, 2017 and 2018 AGM seasons)

AGM season	First strike	Second strike
2016	11	0
2017	5	1
2018	12	0

Note: This is the data shown in Figure 2.

Table 2: Number of companies close to receiving remuneration strikes (2016, 2017 and 2018 AGM seasons)

AGM season	Close to first strike	Close to second strike
2016	5	0
2017	8	1
2018	7	0

Note: This is the data shown in Figure 3.

Table 3: Average 'for' vote on remuneration reports, by industry (2016, 2017 and 2018 AGM seasons)

Industry	2016	2017	2018
Banks	84.9%	95.8%	66.5%
Consumer services	90.3%	94.1%	91.5%
Diversified financials	95.5%	95.5%	89.7%
Health care and equipment	95.7%	94.0%	91.2%
Materials	91.8%	95.4%	92.8%
Real estate	95.2%	93.0%	91.2%
Retailing	94.0%	91.1%	85.9%

Note: This is the data shown in Figure 4.

Table 4: Average 'for' vote on remuneration reports (2016, 2017 and 2018)

2016	2017	2018
93%	94%	91%

Note: This is the data shown in Figure 5.

Table 5: Average 'against' vote, by resolution type (2016, 2017 and 2018 AGM seasons)

Resolution type	2016	2017	2018
Director election	2.37%	3.23%	4.06%
Remuneration report	7.40%	6.58%	9.18%
Other resolutions	4.95%	3.58%	6.58%

Note: This is the data shown in Figure 6.

Table 6: Percentage of resolutions receiving material 'against' votes, by resolution type (2016, 2017 and 2018 AGM seasons)

Resolution type	2016	2017	2018
KMP benefits	21.0%	15.9%	20.5%
Director election	10.1%	11.2%	7.5%
Constitutional amendment	10.0%	5.4%	9.1%
Other resolutions	5.4%	1.0%	3.5%

Note: This is the data shown in Figure 7.

Table 7:Percentage of votes cast 'for' shareholder-requisitioned resolutions on ESG issues (2017 and 2018 AGM seasons)

2017 ESG resolutions	2018 ESG resolutions
6%	19%

Note: This is the data shown in Figure 8.

Table 8: Percentage of votes cast 'for' shareholder-requisitioned resolutions on ESG issues, by company and resolution type (2018 AGM season)

Company and resolution	Percentage
Origin Energy – Indigenous affairs	8%
Origin Energy – Climate change (targets)	12%
Origin Energy – Climate change (advocacy)	46%
Whitehaven Coal – Climate change (risk disclosure)	40%
Whitehaven Coal – Climate change (targets)	3%
Qantas Airways – Human rights	6%
Woolworths Group – Human rights	15%

Note: This is the data shown in Figure 9.

Table 9: Notices of meeting lodged with ASIC under s218(1) (September and October: 2017 and 2018)

2017	2018
135	108

Note: This is the data shown in Figure 10.

Table 10: Number of companies by percentage of company board that are women (2018 AGM season)

Percentage that are women	Number of companies
0% to less than 10% of board	3
10% to less than 30% of board	78
30% to less than 50% of board	55
50% or more of board	10

Note: This is the data shown in Figure 11.

Key terms and related information

Key terms

ACSI	Australian Council of Superannuation Investors
AICD	Australian Institute of Company Directors
AGM	Annual general meeting
AGM season	1 October and 30 November each year, when most listed companies on the ASX 200 hold their AGMs
APRA	Australian Prudential Regulation Authority
ASX 200	S&P/ASX 200
Corporations Act	*Corporations Act 2001*, and regulations made for the purposes of that Act
ESG	Environmental, social and governance
KMP	Key management personnel
REP 564 (for example)	An ASIC report (in this example numbered 564)
Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Related information

Headnotes

AGM season, annual general meetings, remuneration, resolutions, shareholder engagement

ASIC documents

REP 564 *Annual general meeting season 2017*

REP 578 *ASIC review of proxy adviser engagement practices*

REP 593 *Climate risk disclosure by Australia's listed companies*

RG 76 *Related party transactions*

Other documents

APRA, *Prudential inquiry into the Commonwealth Bank of Australia*, May 2018

ACSI**,** *CEO pay reaches new heights*, July 2018

Darrow, M, 'TCFD: Year One', *Glass Lewis Blog*, October 2018

Davidson, L, 'Season of investor discontent', *Investment Magazine*, December 2018

Niesche, C, 'The wrap up from the latest AGM season', *Company Director Magazine*, December 2018

Proust, E, *30% by 2018: Gender diversity progress report*, vol 11, January 2018

Royal Commission, *Interim report*, September 2018