Key trends to emerge from the 2016-2019 AGM season

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Introduction

This insight provides a high level snapshot of trends from the AGMs of Australia's largest public companies (ASX 100) over the course of four years from 2016 to 2019.

Commenting on the data, MinterEllison Partner Mark Standen said that the overarching theme to emerge is accountability.

'Over the past few years we've seen attitudes to accountability shift. Though on paper, 2019 looks like a quieter AGM season than was perhaps anticipated, the higher incidence of 'protest' votes against individual directors, and the uptick in shareholder requisitioned ESG proposals, are two important indicators of the levels of shareholder concern around a range of issues. Shareholders appear increasingly willing to express their dissatisfaction by voting against individual directors. They're also keeping up the pressure on boards through requisitioning resolutions pushing for change.

Shareholders' apparent unwillingness to force a board spill when given the chance, is perhaps less indicative of an unwillingness to hold boards collectively to account than an unwillingness to further destabilise often already unstable boards and even perhaps to "let directors off the hook".

Further, it's interesting to note that boards across the ASX 100 were similarly targeted.'

[1] This report is based on the ASX official list of ASX 100 companies as at 29 November 2019.

Remuneration

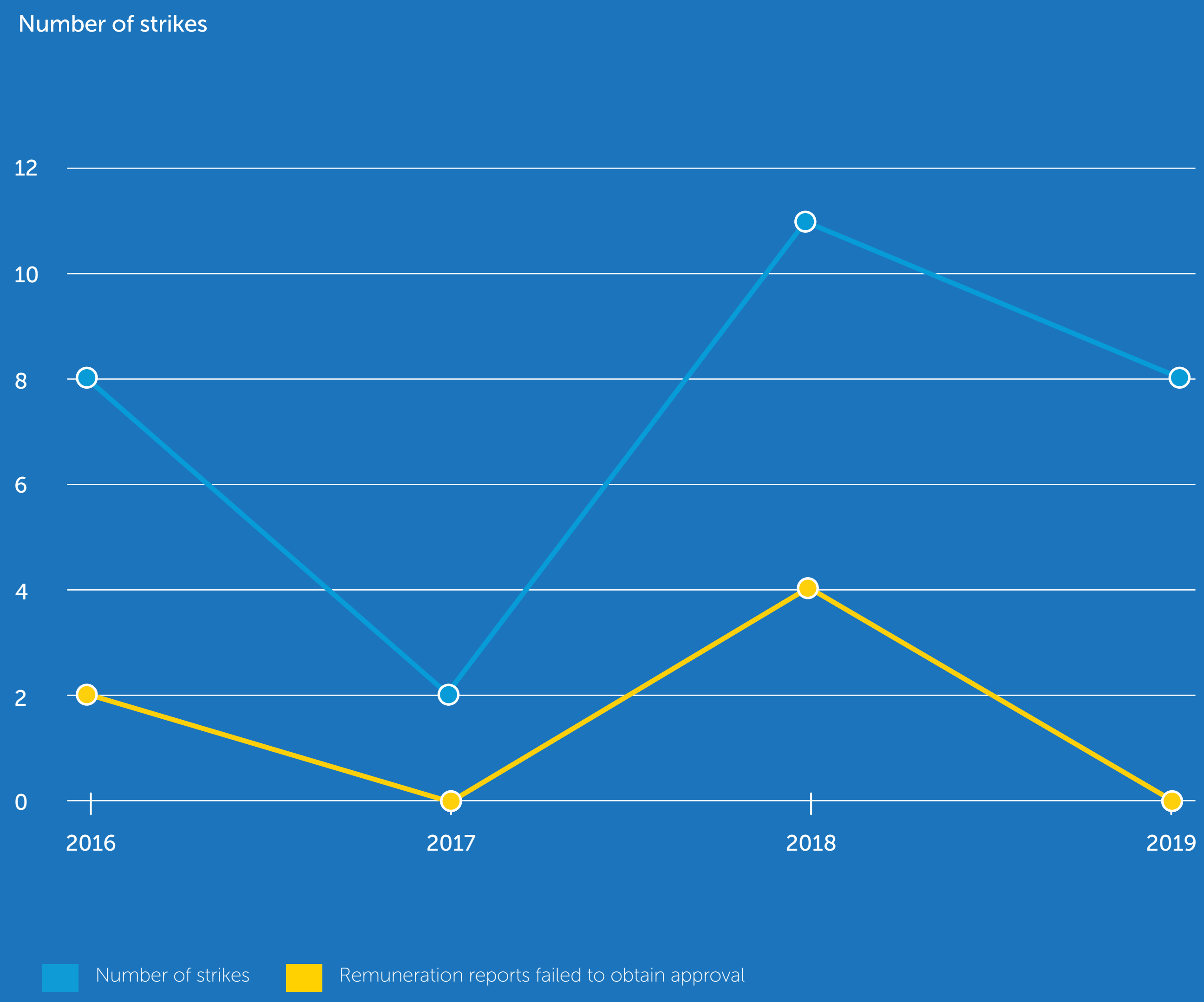
Overall Trends

Following last year's record 'against' vote rejecting a remuneration report (over 88.43%), there were few second strikes (two) and a notable absence of board spills in the ASX 100.

As can be seen from the adjacent chart [Figure 1], the number of companies that have received a strike (ie over 25% vote against) has varied from eight in 2016 to a high of 11 in 2018, back to eight in 2019.

The number of companies that failed to obtain approval for the remuneration report is at its lowest point since 2017 (at zero) from a high of four in 2018.

Support for the remuneration report at the eight companies that received a strike ranged from 64.10% to 74.44% (averaging at 69.96%), with two companies only narrowly receiving strikes. By comparison, the average approval rate was 51.47% in 2018.



Sector Snapshot

2019 sector snapshot: Financial Services

In 2018 there was an overall increase in the number of 'strikes' against remuneration reports at financial firms with the number of strikes increasing from one in 2016 to five in 2018.

Likewise, the number of remuneration reports that failed to pass tripled over three years with the average level of support for remuneration reports 10.15% lower in the financial services sector than in other sectors.

In 2019, of the eight companies that received a strike, only one is in the financial services industry and in that case, the firm in question received a second strike (though it avoided a board spill).

Of the remainder, one is in the retail sector, two are in resources and four are from other sectors.

Further, the number of financial services directors who received a 'protest' votes of more than 10% of votes against his/her re-election, decreased slightly from four in 2018 to three in 2019. Of these three directors, two were actually on the board of the firm that received a second strike!

No board spills?

Two firms received a second strike. Despite this, neither faced a board spill with shareholders overwhelmingly voting against the spill resolution (over 88%). The lack of appetite to spill a board since the introduction of the 'two-strikes' rule highlights the importance of board stability to shareholders.

One firm received their 'third' consecutive strike – interestingly this firm did not face the prospect of a vote to potentially spill the board in 2019 because the strike count effectively resets after two strikes.

Increasing willingness to vote against individual directors

There was a marked increase in the number of directors who received a 'protest vote' (more than 10% of votes against his or her election) in 2019 as compared with previous years.

This highlights that stakeholders are increasingly holding boards accountable for governance and company performance – with particular concerns around lengthy director tenures jeopardising independence.

- In 2019, 27 directors at 23 companies received a 'protest vote' against his/her election as compared with 17 directors at 16 companies in 2018. (noting that no directors failed to be re-elected).
- No particular sector was targeted. Of the 23 companies at which directors received protest vote, five were in the resources sector, four were in the retail sector, three were in financial services sector, two were in the telecommunications sector and the remaining nine were in various other sectors.

'Near misses'

- **2019 near misses:** In 2019, four companies narrowly avoided a strike by less than 5% (as compared with six in 2018).
- **2018 near misses:** what came next? Of the six companies that narrowly avoided a strike in 2018, two narrowly received a strike in 2019, one is no longer in the ASX 100 and the remainder received support for the 2019 remuneration report averaging over 88%.

Environmental, social and governance

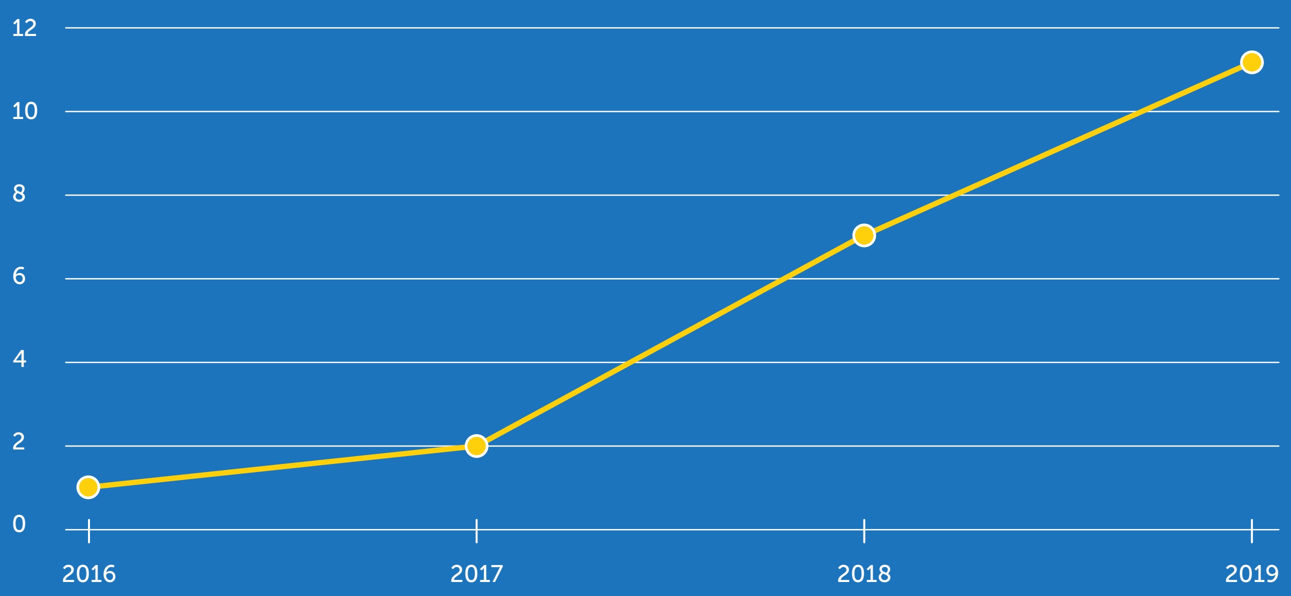
Overall Trends

Globally the focus on the importance of environmental, social and governance (ESG) issues and the associated risks and opportunities continues to increase. In Australia, boards and financial regulators (APRA, ASIC and the RBA) have identified climate related risk as a key area of focus and as a financial risk issue and have pushed companies to improve the depth and quality of their management, planning and reporting.

These developments, in addition to an increase in incidence and duration of extreme-weather events, have elevated expectations around corporate disclosure of climate-related financial risk.

However, the number of shareholder resolutions, though increasing, remains relatively modest as can be seen in the graphic below.

Number of ESG shareholder proposals



Commenting on this, MinterEllison Head of Climate Risk Governance, Sarah Barker said,

'The relatively low numbers of ESG resolutions that proceed to meetings and their failure to pass, is not necessarily indicative of a lack of investor concern. For example, BlackRock CEO Larry Fink recently nominated climate risk as 'almost invariably the top issue' that clients around the world (including Australian clients) raise with BlackRock'.

'Rather, as identified in our previous report, there are a number of factors at play. Chief among these includes the fact that, in Australia, the passage of such resolutions would necessitate a change to the company's constitution, which is often a bridge too far for Australian shareholders hesitant to encroach on what they perceive to be management's territory. In other jurisdictions such as the US, where constitutional amendments are not required, the number of ESG resolutions is higher as is their success rate'.

'In addition, there is the associated difficulty of securing management support for AGM ESG resolutions. However, concessions are sometimes made, and resolutions withdrawn, where a company makes relevant commitments during the investor engagement process'.

'Finally, broader engagement from stakeholders (such as regulators, shareholders and the wider community) outside of the AGM process can also play a significant role - particularly on issues such as climate change, diversity and inclusion'.

A closer look

Topics of ESG resolutions

As can be seen in the top adjacent chart, over time, the topics of ESG resolutions have diversified beyond climate related resolutions (though climate resolutions continue to account for the majority of resolutions), to include broader social and governance issues.

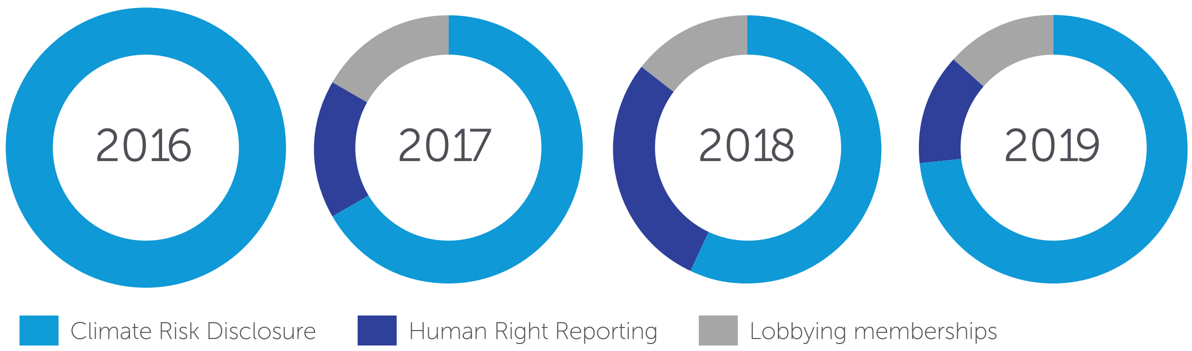
Commenting on this, MinterEllison Head of Climate Risk Governance, Sarah Barker attributed the shift to a range of factors including changing stakeholder expectations of corporate behaviour in the wake of recent corporate scandals including the issues identified by the Royal Commissions and increased regulatory and investor pressure on firms around their management of social and governance issues.

'Stakeholders - from regulators to institutional investors, shareholders and the broader community - increasingly expect firms to demonstrate that they operate fairly, responsibly, sustainably and with integrity. Firms' actions are expected to match their rhetoric on these issues'.

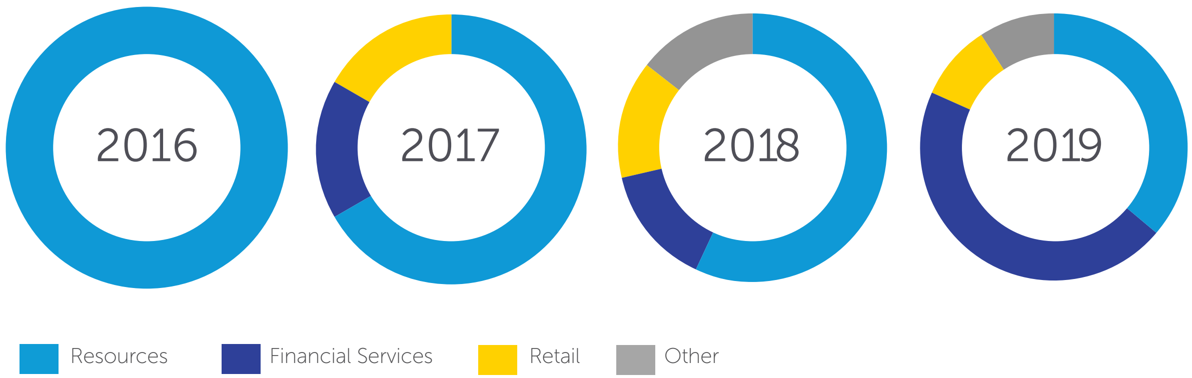
Sectors targeted?

Likewise, the sectors targeted have expanded beyond the resources sector to include the financial services, retail and other sectors as can be seen in the lower adjacent chart.

Number of ESG shareholder proposals



Industry sectors most impacted byESG resolutions



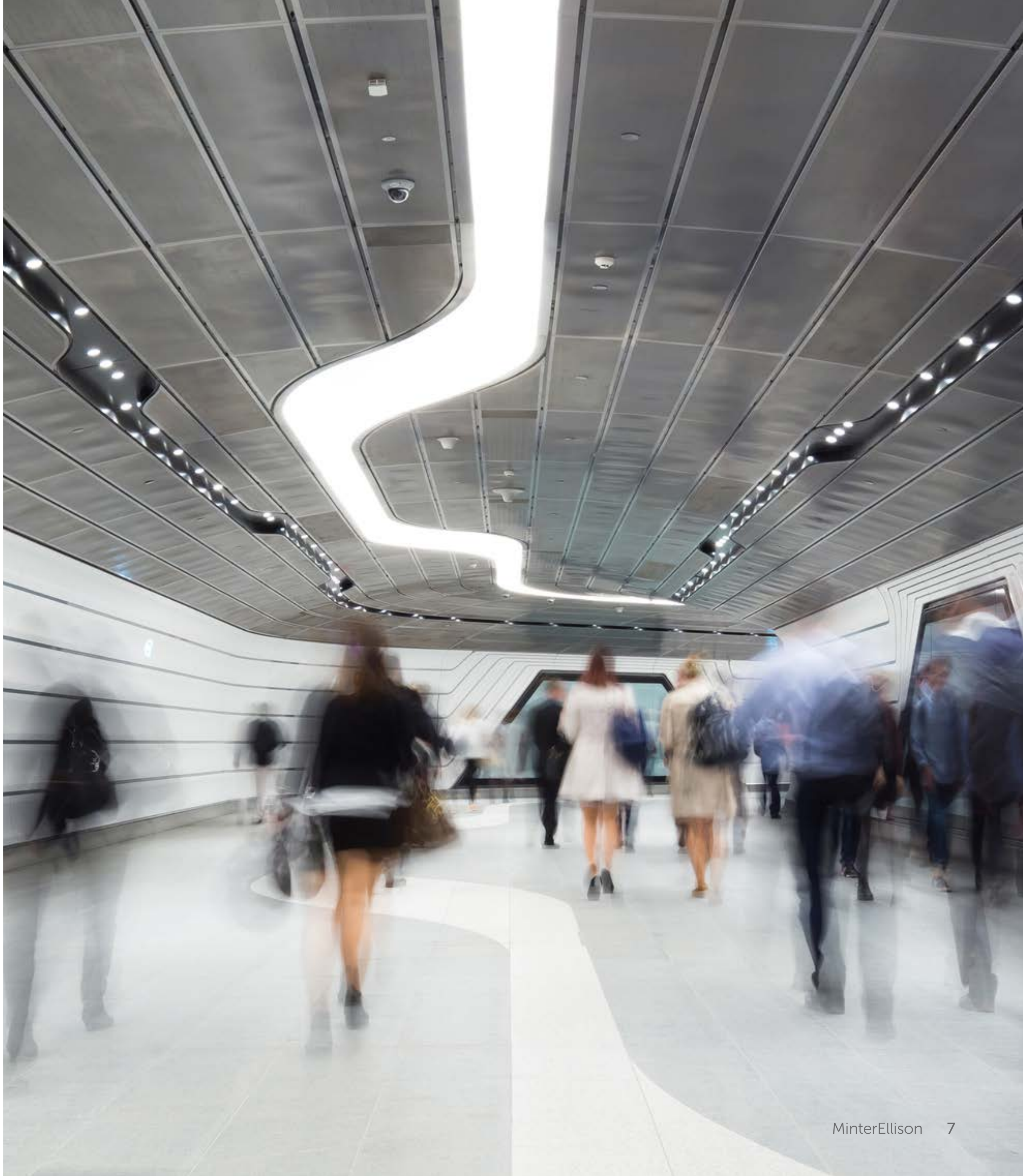
Possible barriers to the passage of ESG resolutions

Passage of a constitutional amendment appears unlikely to be supported

- All ESG resolutions in 2019 were subject to a constitutional amendment and none passed.
- One resolution in four years has not been subject to a constitutional amendment and this was the only resolution to pass (though this was also a special resolution).

Lack of board support

- Only one resolution has had board endorsement and this remains the only ESG resolution to have passed in the period 2016-2019. This suggests that board support is a key contributing factor.



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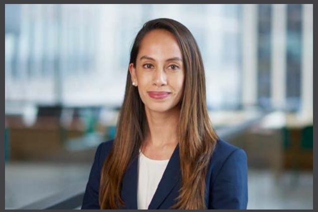

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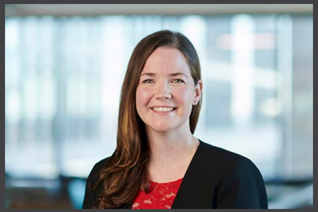

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