

WaveStone ESG Report

Quarter ending September 2024

ESG Quarterly: ASX Mining Sector – A Review of the State of Play Since Juukan

The lawful destruction of Juukan Gorge in 2020 marked a pivotal moment for the mining industry, imparting significant lessons to all major stakeholders: government, companies, investors, and society at large.

The incident underscored the classic conflict between a shareholder-focused approach and a stakeholder-focused approach in shaping a company's long-term success. A federal inquiry revealed that the mine planning option, which included the destruction of Juukan Gorge, would generate an additional revenue of AUD 135 million (an extra 8 million tonnes of high-grade iron ore) compared to other evaluated options¹. While the superior financial outcome and the legality of the action initially justified the corporate decision, the incident was later criticized for failing to uphold and protect culturally significant heritage and the voices of Indigenous people as key stakeholders in mine planning.

The incident also highlighted that Australian legislation does not shield companies from financial and reputational fallout related to First Nations and cultural heritage management. To meet societal expectations, companies must operate beyond the current legislative framework.

Furthermore, the absence of Free, Prior, and Informed Consent (FPIC) processes has contributed significantly to conflicts between First Nations and mining companies. Although not a legislative requirement in Australia, FPIC is a specific right for Indigenous Peoples, enshrined under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It allows Indigenous Peoples to give or withhold consent to projects affecting them or their territories, enabling them to negotiate the conditions under which projects are designed, implemented, monitored, and evaluated.

We believe that it is crucial for companies have an inclusive approach to First Nations Peoples culture and heritage supported by a relationship of mutual trust and respect. Whilst the Australian legislation is currently under review, for now we have well recognised business investor guides and principles such as the *Dhawura Ngilan Principles*².

This research note explores some evolved practices at ASX miners since the Juukan Gorge incident. While we observe overall positive momentum including increased awareness and dialogue, the key question remains: how effective and meaningful are these in practice, and what's ahead looking forward?

¹ [Rio Tinto Juukan Gorge federal inquiry may be suspended indefinitely due to WA's COVID-19 restrictions - ABC News](#)

² Developed by the First Nations Heritage Protection Alliance, these principles help businesses and investors protect and promote Aboriginal and Torres Strait Islander cultural heritage in Australia. <https://culturalheritage.org.au/business-investor-guides/>

Where have we got to since Juukan...the existing state of play

First Nations Policy and Governance

In the face of growing reputational, legal, financial and operational risks relating to First Nations Cultural Heritage Protection, several ASX mining companies have implemented strengthened policies and governance measures to implement their Indigenous engagement strategy. Key areas of policy and governance explored below include (i) board representation; (ii) board governance and oversight; (iii) dedicated Policy and Position statements; and (iv) increased transparency in corporate reporting and disclosure.

Board Representation

Mining companies to have appointed directors on board with Indigenous background include:

- **Rio Tinto (RIO)** appointed Ben Wyatt in September 2021.

Ben has been the first Indigenous treasurer of the Australian parliament and is seen to bring extensive knowledge of public policy, finance, international trade and Indigenous affairs to the company's board.

- **Fortescue Metals Group Limited (FMG)** appointed Noel Pearson in August 2024.

Mr Pearson is a prominent Indigenous leader, social advocate and lawyer and comes from Guugu Yimithirr community of Hope Vale, on the south eastern Cape York Peninsula. Mr Pearson served as a member of the Expert Panel on Constitutional Recognition of Indigenous Australians and the Referendum Council and continues to advocate for structural reforms to empower Indigenous people.

- **Mineral Resources Limited (MIN)** appointed Emeritus Professor Colleen Hayward AM in January 2023.

Colleen is a respected senior Noongar woman with more than 35 years' experience developing and leading programs to support and empower Indigenous Australians. The company notes that *"[h]er appointment has enhanced Board diversity and brought specialist skills and experience reflecting the growing needs of the business, particularly with regards to cultural heritage, Traditional Owner partnerships and community engagement."*

Board Governance and Oversight

ASX mining companies have been prompted to review and strengthen their governance and risk management frameworks to ensure they adequately address First Nations engagement and Cultural heritage considerations. This includes establishing dedicated committees, such as the Sustainability Committee, to oversee these matters and ensure Indigenous engagement and inclusion is part of relevant decision-making processes.

Dedicated First Nations Policy or Position Statements

Several mining companies have now revised or developed new internal policies to address a more uniform approach to First Nations engagement and cultural heritage protection. This includes training for employees on the importance of cultural heritage and the implementation of stricter guidelines for project approvals.

Some mining companies have developed dedicated Indigenous policy or position statements, examples include:

- **BHP Group Limited (BHP)** has a dedicated [Indigenous Peoples Policy Statement](#)
- **Fortescue Metals (FMG)** has a dedicated [FPIC Position Statement](#)
- **Mineral Resources (MIN)** has a dedicated [Indigenous Peoples Policy](#)

Increased transparency in corporate reporting and disclosure

ASX mining companies are increasing transparency in their reporting on Indigenous engagement and strategy and are remaining open to scrutiny from stakeholders. For instance, both **BHP** and **RIO** provide disclosure in relation to the footprint of their assets on Indigenous People's territories (see below).

Chart 1: BHP Asset Footprint

Country	Operated assets located in or adjacent to Indigenous peoples' territories	Operated assets with a formal agreement with Indigenous peoples
Australia	27	13
Canada	14	1
Chile	2	2
USA	10	0
Total	53	16

Source: BHP ESG Databook 2024

Chart 2: RIO Asset Footprint

Indigenous Peoples' territories	Operations located in or adjacent to Indigenous Peoples' territories	Number of formal agreements with Indigenous People*
Australia/New Zealand ¹	53	64
Americas ²	16	25

* In 2022, 27 formal agreements with Indigenous people was reported for the Americas. This has been revised down to 20 due to an error noted in reporting.

1. Includes 32 Rio Tinto Exploration (RTX) sites and formal agreements

2. Includes 6 RTX sites and formal agreements

Source: RIO Sustainability Fact Book 2023

The above practices are positive and highlight the growing importance of First Nations Peoples as a key stakeholder for mining companies.

Focus on First Nations Engagement at Operational Level

One of the key lessons learnt from the Juukan Gorge incident was that Indigenous People want to talk directly to management running mining operations, rather than a central head office. The disconnect and lack of Traditional Owner (TO) inclusion in corporate decision making was apparent contributor to the incident.

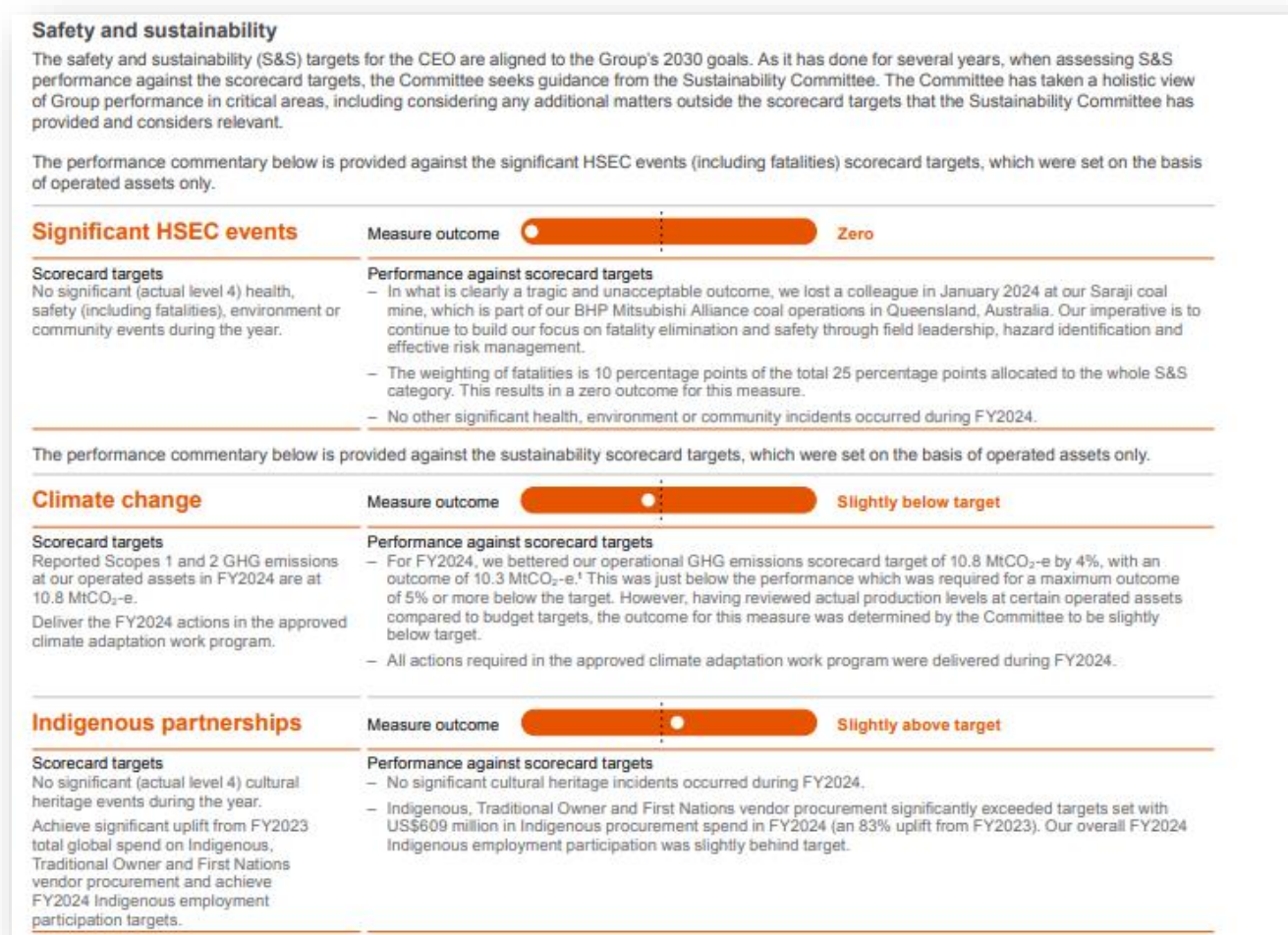
RIO for instance has now made structural changes across their entire business in decentralising TO engagement, so that cultural heritage responsibilities lie with product groups and are fully embedded within their mining operations.³ This engagement at mining operations level is crucial to ensure that Indigenous people culture and heritage is respected and integrated in mining activities.

In our view, this is supportive of a culture across the business in observing responsible corporate behaviour in TO engagement, with accountability across corporate hierarchy, and reinforced via link to management and executive remuneration.

Examples of ASX miners reflecting this in CEO's remuneration goals include **BHP**, **RIO**, and **FMG** – where CEOs short term incentive is linked to First Nations engagement related goals. For instance, at BHP the short term incentive scorecard for the CEO has a 25% weighting to Safety and Sustainability measures that includes Indigenous Partnerships.

³ [Working together \(riotinto.com\)](https://www.riotinto.com)

Chart 3: BHP STI Framework



Source: Page 122 BHP 2024 Annual Report

Free Prior Informed Consent (FPIC)

A key recommendation as part of the Australian Government's *Never Again Report*⁴ was that mining companies operating in Western Australia, whether on Native Title land, should undertake independent review of their agreements with Traditional Owners (TO) and commit to ongoing regular review to ensure consistency with best practice.

We note more and more ASX miners beginning to mention FPIC within their corporate disclosures. Notable ASX-miners who outline commitment to FPIC principles include:

- **BHP:** BHP mentions FPIC in their dedicated [Indigenous Peoples Policy Statement](#). Specifically, the miner's default approach is stated as *"proposed new operation or capital project should not proceed without consent; and where consent has not been provided, BHP will escalate senior management involvement in the process to determine if the new operation or capital project will proceed and actively engages with Indigenous communities to ensure their rights and cultural heritage are respected."*

⁴ [Never Again – Parliament of Australia \(aph.gov.au\)](#)

- **RIO:** RIO states in its disclosure, that the company is committed to improving its engagement with Indigenous communities and strive to “*achieve the free, prior and informed consent of Indigenous Peoples (as defined in the IFC Performance Standard 7 on “Indigenous Peoples”) in line with the International Council on Mining and Metals position statement on Indigenous Peoples and mining.*”
- **FMG:** FMG has a dedicated Free Prior Informed Consent Position Statement which states that the company will “*strive to obtain and maintain the FPIC of affected Indigenous Peoples across all phases of an activity’s lifecycle.*”

Reconciliation Action Plan (RAP)

RAPs serve as a public declaration of an organization’s commitment to reconciliation. These plans not only demonstrate a company’s commitment to social responsibility but also help build trust and strengthen relationships with Indigenous communities and other stakeholders. Examples of companies in the mining sector with RAPs include **BHP, IGO Limited (IGO), Lynas Rare Earths (LYC), and Pilbara Minerals Limited (PLS)**. Companies’ RAPs can vary significantly in commitments, targets, and initiatives. Overall, we expect that as companies progress along their RAP journey, they establish clear targets and provide progress reports as part of meaningful RAP disclosures. An example of targets within a company’s RAP is as below:

BHP

- **Increase Indigenous Employment:** BHP aims to have 8% of its workforce comprised of Indigenous Australians by 2027.
- **Increase Indigenous Procurement:** BHP’s Billion Opportunities program aims to create economic opportunities for Indigenous businesses. Through this program, BHP has committed to spending \$1 billion with Indigenous businesses by 2025.

We believe that collaboration between First Nations businesses and broader corporate Australia is a positive step towards a more inclusive and equitable economy. This engagement not only benefits First Nations communities but also enriches the overall business and economic landscape in Australia.

Challenges Remain...

Challenges Faced by Mining Companies

Mining companies face several challenges when collaborating with Indigenous communities. Here are some of the key issues:

1. **Cultural differences:** understanding and respecting the cultural values, traditions, and practices of Indigenous communities can be challenging. Misunderstandings or lack of cultural sensitivity can lead to conflicts and mistrust.
2. **Historical grievances:** many Indigenous communities have historical grievances related to land rights and past injustices. These unresolved issues can complicate current negotiations and collaborations.
3. **Communication barriers:** effective communication is crucial, but language differences and varying communication styles can create barriers. Ensuring that all parties fully understand each other requires effort and patience.
4. **Legal and regulatory frameworks:** navigating the complex legal and regulatory frameworks that govern Indigenous land rights and cultural heritage protection can be challenging. Companies must ensure compliance with these laws while also respecting community protocols.
5. **Economic disparities:** there can be significant economic disparities between mining companies and Indigenous communities. Ensuring that benefits are fairly distributed and that communities are not exploited is a critical concern.

6. **Trust building:** building trust takes time and consistent effort. Past negative experiences with mining companies can make communities wary of new projects, requiring companies to demonstrate genuine commitment to positive outcomes.
7. **Environmental concerns:** Indigenous communities often have deep connections to their land and environment. Mining activities can pose environmental risks, and addressing these concerns while maintaining project viability is a delicate balance.
8. **Capacity building:** ensuring that Indigenous communities have the capacity to engage effectively in negotiations and project management is important. This may require investment in education, training, and resources.

Despite these challenges, many mining companies are making concerted efforts to improve their relationships with Indigenous communities, recognizing that successful collaboration can lead to more sustainable and mutually beneficial outcomes.

Challenges Faced by TO Groups

Traditional owner groups are beset by demands for heritage assessments and land use agreements that need to be conducted in short time frames to meet the industry's development priorities. These agreements are not only urgent, but numerous and complex, and being negotiated in a landscape with historical grievances and cumulative social and environmental impacts. One agreement between the PKKP and Rio Tinto was said to have been a 740-page document. The inquiry heard from a representative of the PKKP that the regional representative body, the Yamatji Marlpa Aboriginal Corporation (YMAC), created plain English summaries but that they were handed out as they arrived at the meetings, not beforehand. On this basis, the representative said they were not able to exercise FPIC.⁵

Controversies Continue, Litigation on Rise

There is growing legal scrutiny on mining projects. Indigenous groups are increasingly organized and vocal in asserting their rights, often leveraging international frameworks like UNDRIP. There is a heightened focus on comprehensive environmental and cultural impact assessments before project approvals. Examples of projects facing this issue in 2024 include:

1. **Regis Resources (RRL):** The Australian government ordered Regis Resources to find a new site for a tailings dam related to a proposed A\$1 billion gold project. This decision was made to protect cultural heritage associated with the river in the area.
2. **Energy Resources of Australia (ERA):** Whilst majority-owned by RIO, the minority shareholders at ERA are suing the government after its exploration lease on uranium-rich land was not renewed, citing procedural fairness⁶.

These cases highlight the ongoing tensions between mining operations and the protection of Indigenous cultural heritage in Australia.

⁵ Hansard - Committee 12/10/2020 Parliament of Australia (aph.gov.au)

⁶ ERA claims Jabiluka mining lease refusal 'secret' and 'unfair' - ABC News

Conclusion: The Way Forward

Need for Legislative Reforms

The incident provided significant impetus for changes to Australian legislation regarding First Nations and cultural heritage protection. Here are some key developments:

1. **Reforms in Federal Legislation:** The government is planning to introduce standalone federal legislation to protect First Nations cultural heritage. This new regime would aim to replace the current federal, state, and territory regimes⁷.
2. **First Nations Involvement:** Indigenous groups across Australia to have a greater say in shaping the country's cultural heritage protection systems. This is part of a new agreement with the First Nations Heritage Protection Alliance⁸.
3. **Budget Allocations:** The 2024-25 Federal Budget includes significant investments aimed at delivering better outcomes for First Nations people, including measures to support cultural heritage protection⁹.

First Nations Peoples – a key stakeholder in achieving decarbonisation goals

Indigenous Peoples represent about 6% of the world population but conserve 80% of the remaining natural resources and biodiversity, including critical minerals.¹⁰ Their role as a critical stakeholder in planning a decarbonised economy is quintessentially important as well as material from a financial, operational and reputational perspective. As mineral and metal extraction is projected to soar in the coming decades, Indigenous Peoples' exposure to extractive industries is likewise expected to intensify. As investors, our focus on decarbonisation essentially involves ensuring First Nations and Cultural Heritage protection as key sustainability consideration.

Promoting the establishment of genuine engagement and collaboration with First Nations communities that promotes benefit sharing and respects the land and water rights and interests of First Nations people and communities requires all key stakeholders: government, businesses, investors and society at large, to play their part.

The balance between resource extraction and cultural preservation remains a complex and sensitive issue, requiring ongoing dialogue and cooperation between all key stakeholders: mining companies, Indigenous communities, investors and regulatory bodies.

The Importance of Ongoing Investor Engagement

WaveStone Capital recognises the importance of sustainability for all companies, and that we as a fund manager, have an active role to play in ensuring that companies are taking responsibility for First Nations Engagement and are actively working towards adopting best practice in this area. This reflects our obligation to clients to both maximise long term returns and manage risk. Our analysts and portfolio managers engage with non-executive directors, senior management as well as external organisations via one on one meetings, group discussions, site visits etc. to inform our research and views on this topic as well as other material sustainability related topics of relevance. We will continue to closely monitor developments in this area as well as engage with companies and via industry bodies for positive progress on behalf of our clients.

⁷ [Options Paper: First Nations cultural heritage protection reform \(dceew.gov.au\)](https://www.dceew.gov.au)

⁸ <https://culturalheritage.org.au/indigenous-australians-given-say-on-new-cultural-protection-laws-social-news/>

⁹ <https://www.indigenous.gov.au/news-and-media/announcements/budget-2024-25-delivering-better-outcomes-first-nations-people>

¹⁰ [Indigenous Peoples Overview \(worldbank.org\)](https://www.worldbank.org/en/indigenous-peoples)

Carbon Emission and Intensity Tracker:

WaveStone – Australian Share Fund (WASF)	Carbon Emissions		
	Portfolio	Benchmark	Difference
Carbon Emissions Scope 1+2 (tonnes CO2e/USD M invested)	66.9	104.6	-36.0%
Carbon Intensity Scope 1+2 (tonnes CO2e/USD sales)	93.1	166.7	-44.2%

Source: MSCI ESG (as at 30/09/2024)

Benchmark is the S&P ASX 300 Accumulation Index

Engagement

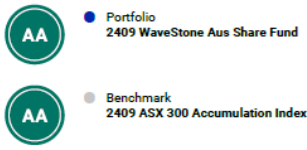
ESG-related Engagements during the Quarter

Company	ESG Category	Topics
IGO	Environment Governance General	Decarbonisation, impairments, CEO/senior leadership
WDS	Environment Governance General	WDS Tellurian and Ammonia deal
COH	Social Governance	BOD and management succession planning, Board oversight of R&D pipeline – safety and innovation
RIO	Environment General	Market risk in iron ore with Simandou ramping up
CKF	Governance	Executive remuneration, succession planning
NCK	Governance	Succession planning, supply chain sourcing
TCL	Governance	ELT turnover, social licence and government relations
CAR	Environment	NVES (New vehicle efficiency standards) potential impact on industry, car prices and dealer network
RMD	Governance Social	Management restructure and strategy, balance between reinvestment in product and profitability, implications on ongoing Philips absence and servicing larger market, interplay between GLP-1 and CPAP demand
LIC	Governance	Capital allocation in soft market
TWE	Governance	Chair and directorships, capital allocation on capex
ARB	Environment	NVES (New vehicle efficiency standards) potential impact on industry
CWY	Environment Governance Social	Safety performance, workforce, training, impending NSW landfill capacity issues and EfW, management team structure and strategy development
CHC	Governance	New Chair
GMG	Governance	Capital allocation, new DC leads
DMP	Social Governance	Culture, employee turnover and managing nepotism
WTC	Social Governance	Managing cyber security risks, CEO succession
STO	Environment Social General	Barossa development, court case with EDO, H1 result, capital allocation, management succession, project development update
BHP	Environment Social Governance	Capital allocation post Driftwood and OCI, dividend views, market update including risks to LNG with supply increasing, H1 result, climate targets ahead of CTAP vote, commodity exposure, M&A, BOD and governance, fatalities and linkage to remuneration, Samarco settlement, AUS government policy

SFR	Environment Social General	Succession planning, rigour of net zero targets and decarbonisation progress, fatalities
LYC	Environment Governance General	Learnings post artefact disturbance, labour update at key assets, capital allocation
WTC	Governance	License to operate in Malaysia, Kalgoorlie development, BOD succession, strategy in updating market
CBA	Environment Social Governance	Sustainability (Climate Change, Modern Slavery, Frauds and Scams, First Nations, AI and Cyber), CEO succession, new BOD member, ANZ bond scandals, strategy, technology rollout
IEL	Governance	Remuneration incentives
CSL	Social Governance	Management succession, balance between profitability and reinvestment in product and market growth
XRO	Governance	CEO LTIs, change of CFO, Board succession
ANZ	Governance	APRA operational risk capital impost due to markets business, ASIC investigation into markets (specifically Fed Government bond issue)
MQG	Governance	Departure of key executive, CEO and Board succession, rates and the Australian economy

MSCI ESG Ratings*

MSCI ESG Ratings



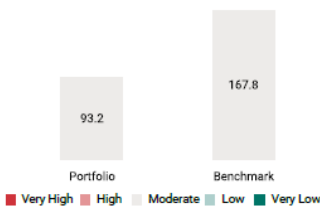
Portfolio ESG Rating Summary

ESG Quality	Leaders 0.69% above benchmark
ESG Ratings Distribution	Leaders 2.86% over benchmark Laggards 0.03% under benchmark
ESG Ratings Momentum	Upward momentum 3.54% over benchmark Downward momentum 2.81% under benchmark

Carbon Risk

(t CO2e/\$M SALES)

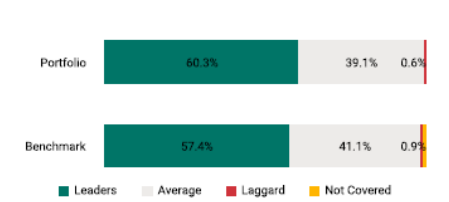
Moderate Carbon Risk
44.44% less than benchmark



How the MSCI ESG Rating is calculated

	Portfolio	Benchmark
Weighted Avg ESG Score	7.56	7.50
ESG Quality Score	7.56	7.50
ESG Rating	AA	AA

ESG Ratings Distribution



Reputational Risk

(Red Flag Controversy Exposure)

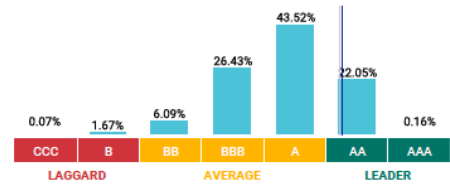
Very Low Reputational Risk
Portfolio = Benchmark



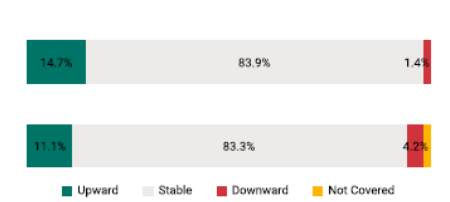
Portfolio : 2409 WaveStone Aus Share Fund
 Benchmark : 2409 ASX 300 Accumulation Index
 Currency : USD

Distribution of MSCI ESG Fund Ratings Universe

As of: 04/11/2023



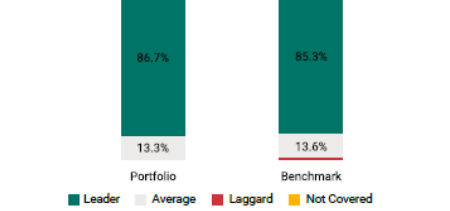
ESG Ratings Momentum



Governance Risk

(Global Percentile)

Leaders 1.48% greater than benchmark
 Laggards 0.43% less than benchmark



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Memberships and initiatives

- Principles of Responsible Investment (PRI)
- Climate Action 100+
- 40:40 Vision

Links to WaveStone Policies

- ESG Policy: **WaveStone ESG Policy**
- ESG Activity Report: **WaveStone ESG Activity Reports**
- Proxy Voting Policy: **WaveStone Proxy Voting Policy**
- Engagement Policy: **WaveStone Engagement Policy**
- **WaveStone PRI Transparency Report 2023**
- **WaveStone PRI Assessment Report 2023**

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