

**ATTACHMENT A**  
**Resolutions and supporting  
statements**

## RESOLUTION 1

### Special resolution to amend our company's constitution

To amend the constitution to insert a new clause 46:

#### **Member resolutions at general meeting**

The shareholders in general meeting may by ordinary resolution express an opinion, ask for information, or make a request, about the way in which a power of the company partially or exclusively vested in the directors has been or should be exercised. However, such a resolution must relate to an issue of material relevance to the company or the company's business as identified by the company, and cannot either advocate action which would violate any law or relate to any personal claim or grievance. Such a resolution is advisory only and does not bind the directors or the company.

### **SUPPORTING STATEMENT TO RESOLUTION 1 (618 words including footnotes)**

Shareholder resolutions are a healthy part of corporate democracy in many jurisdictions other than Australia. As a shareholder, the Australasian Centre for Corporate Responsibility (**ACCR**) favours policies and practices that protect and enhance the value of our investments.

The Constitution of our company is not conducive to the right of shareholders to place ordinary resolutions on the agenda of the annual general meeting (**AGM**). In our view, this is contrary to the long-term interests of our company, our company's Board, and all shareholders in our company.

Permitting the raising of advisory resolutions by an ordinary resolution at a company's AGM is global best practice, and our fellow shareholders in BHP Group Plc already enjoy this right,<sup>1</sup> as do shareholders in any listed company in the UK, US, Canada or New Zealand.

Australian legislation and its interpretation in case law means that Australian shareholders are unable to directly propose ordinary resolutions for consideration at Australian companies' AGMs. In Australia, the *Corporations Act 2001* provides that 100 shareholders or those with at least 5% of the votes that may be cast at an AGM with the right to propose a resolution<sup>2</sup>. However, section 198A specifically provides that management powers in a company reside with the Board<sup>3</sup>.

---

<sup>1</sup> By virtue of s338 of the UK *Companies Act 2006*

<sup>2</sup> sections 249D and 249N of the *Corporations Act 2001* (Cth).

<sup>3</sup> S198A of the *Corporations Act* provides that "[t]he business of a company is to be managed by or under the direction of the directors", and that "[t]he directors may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting."

Case law in Australia has determined that these provisions, together with the common law, mean that shareholders cannot by resolution either direct that the company take a course of action, or express an opinion as to how a power vested by the company's constitution in the directors should be exercised<sup>4</sup>.

Australian shareholders wishing to have a resolution considered at an AGM have dealt with this limitation by proposing two part resolutions, with the first being a 'special resolution,' such as this one, that amends the company's constitution to allow ordinary resolutions to be placed on the agenda at a company's AGM. Such a resolution requires 75% support to be effective, and as no resolution of this kind has ever been supported by management or any institutional investors, none have succeeded. It is open to our company's Board to simply permit the filing of ordinary resolutions, without the need for a special resolution. We would welcome this, in this instance.

We note that the drafting of this resolution limits the scope of permissible advisory resolutions to those related to "an issue of material relevance to the company or the company's business as identified by the company," and that recruiting 100 individual shareholders in a company to support a resolution is by no means an easy or straightforward task. Both of these factors act as powerful barriers to the actualisation of any concern that such a mechanism could 'open the floodgates' to a large number of frivolous resolutions.

Passage of this resolution would simply extend to us a right already enjoyed by our BHP Group Plc counterparts.

ACCR urges shareholders to vote for this proposal.

---

<sup>4</sup> National Roads & Motorists' Association v Parker (1986) 6 NSWLR 517; ACCR v CBA [2015] FCA 785). Parker turned on whether the resolution would be legally effective, with ACCR v CBA [2016] FCAFC 80 following this precedent on the basis that expressing an opinion would be legally ineffective as it would usurp the power vested in the directors to manage the corporation.

## RESOLUTION 2

### Ordinary resolution on lobbying inconsistent with the goals of the Paris Agreement

Shareholders recommend that our company suspend memberships of Industry Associations where:

- a. a major function of the Industry Association is to undertake lobbying, advertising and/or advocacy relating to climate and/or energy policy (**Advocacy**); and
- b. the Industry Association's record of Advocacy since January 2018<sup>5</sup> demonstrates, on balance, inconsistency with the Paris Agreement's goals.<sup>6</sup>

Nothing in this resolution should be read as limiting the Board's discretion to take decisions in the best interests of our company.

### SUPPORTING STATEMENT TO RESOLUTION 2 (996 words including footnotes)

The Australasian Centre for Corporate Responsibility (**ACCR**) and co-filing shareholders support our company's commitment to the goals of the Paris Agreement (**Paris Goals**). However, meeting the Paris Goals requires public policy support. Lobbying by industry associations against public policy designed to meet the Paris Goals is therefore of increasing concern to investors worldwide.<sup>7</sup> The activities of our company's industry associations in Australia, a key jurisdiction for our company, conflict with the prospect of policy supportive the Paris Goals being implemented, counter to our company's stated policies and long-term financial and strategic interests.<sup>8</sup>

#### Our company's lobbying profile in Australia

Our company remains a member of some of the most influential industry associations opposing effective climate policy in Australia. Our company published a review of its industry associations in December 2017<sup>9</sup> (**Review**), and set criteria for acceptable advocacy on climate and energy issues.

Almost two years since the Review, material differences between our company's stated policies and advocacy by our company's industry associations remain apparent and unresolved. Below is a non-exhaustive list illustrating some of this advocacy.

---

<sup>5</sup> This resolution takes January 2018 as its starting point, given that our company undertook a review of industry association memberships, published in December 2017 BHP: Industry Association Review, 19 December 2017

[https://www.bhp.com/-/media/documents/ourapproach/operatingwithintegrity/industryassociations/171219\\_bhpindustryassociationreview.pdf?la=en](https://www.bhp.com/-/media/documents/ourapproach/operatingwithintegrity/industryassociations/171219_bhpindustryassociationreview.pdf?la=en).

<sup>6</sup> "Lobbying positively in line with the Paris Agreement" is Principle 1 of the Investor Principles on Lobbying, set out in IIGCC's *European Investor Expectations on Corporate Lobbying on Climate Change*, October 2018.

<https://www.iigcc.org/download/investor-expectations-on-corporate-lobbying/?wpdmdl=1830&refresh=5d52233df01791565664061>.

<sup>7</sup> IIGCC, *European Investor Expectations on Corporate Lobbying on Climate Change*, October 2018.

<https://www.iigcc.org/download/investor-expectations-on-corporate-lobbying/?wpdmdl=1830&refresh=5d52233df01791565664061>

<sup>8</sup> BHP Climate Change Position Statement 2018:

<https://www.bhp.com/-/media/documents/investors/annual-reports/2018/bhpcclimatechangeositionstatement.pdf?la=en>.

<sup>9</sup> BHP: Industry Association Review, 19 December 2017

[https://www.bhp.com/-/media/documents/ourapproach/operatingwithintegrity/industryassociations/171219\\_bhpindustryassociationreview.pdf?la=en](https://www.bhp.com/-/media/documents/ourapproach/operatingwithintegrity/industryassociations/171219_bhpindustryassociationreview.pdf?la=en)

- **The Minerals Council of Australia (MCA)** has advocated for: new HELE coal-fired power stations to be built in Australia<sup>10</sup>; government subsidies for new coal-fired power generation<sup>11</sup>; the development of a new thermal coal basin in Queensland<sup>12</sup>; and the use of Kyoto carryover credits<sup>13</sup>. The MCA has also funded pro-coal advertising on Facebook<sup>14</sup> and in The Australian newspaper<sup>15</sup>. The MCA shares key staff with Coal21, and was implicated in Coal21's pro-coal advertising plans, *below*<sup>16</sup>.
- **Coal21** spent \$3.9 million on political expenditure (including, substantially, on pro-coal advertising) in FY2018. In October 2018, Coal21 funded a promotional tour for six Australian Members of Parliament to visit coal-fired power stations in Japan<sup>17</sup>. Leaked documents revealed in August 2019 that Coal21 is planning to spend \$4-5million on pro-coal advertising intended to "invoke national pride" in coal<sup>18</sup> in the second half of 2019.
- **The NSW Minerals Council (NSWMC)** has: argued for government support for HELE coal-fired power stations<sup>19,20</sup>; criticised the NSW state government's target of net zero emissions by 2050<sup>21</sup>; and opposed the closure of coal-fired power stations in NSW<sup>22</sup>.
- **The Queensland Resources Council (QRC)** has advocated for: the Queensland government to underwrite development of a new coal-fired power station<sup>23</sup>; new thermal coal mines in the Galilee Basin<sup>24</sup>; and promoted the export of thermal coal for combustion in Asia<sup>25</sup>.
- **The Australian Petroleum Production and Exploration Association (APPEA)** has advocated: ; for LNG plants to be exempt from publicly disclosing their emissions<sup>26</sup>; for opening new areas on the East Coast for petroleum exploration<sup>27</sup>; against state-based renewable energy targets<sup>28</sup>; against a WA EPA recommendation to require new emissions intensive projects to offset carbon emissions<sup>29</sup>; and for the use of Kyoto carryover credits<sup>30</sup>.
- **The Business Council of Australia (BCA)** has advocated: for the scrapping of "green schemes" and the removal of moratoria on onshore gas development<sup>31</sup>; for new investment in existing coal-fired

<sup>10</sup> <https://www.abc.net.au/news/2018-10-13/coal-power-stations-needed-to-close-to-meet-ipcc-target-report/10368194>

<sup>11</sup> <http://www.minerals.org.au/news/submission-department-environment-and-energy-underwriting-new-generation-investment>

<sup>12</sup> <http://www.minerals.org.au/news/adani-carmichael-mine-will-boost-regional-jobs-fund-services-and-open-new-mining-region>

<sup>13</sup> <https://minerals.org.au/news/labor%E2%80%99s-policy-falls-short-reducing-emissions-least-cost>

<sup>14</sup> [https://www.facebook.com/ads/library/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=AU](https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=AU)

<sup>15</sup> <https://specialreports.theaustralian.com.au/1352317/>

<sup>16</sup> Briefing note to advertising agencies was created by an executive assistant to the MCA's CEO, Tania Constable. The briefing of advertising agencies was undertaken by MCA staff.

<sup>17</sup>

<https://www.theaustralian.com.au/nation/politics/george-christensen-asks-japan-for-coalfired-power-plant-in-australia/news-story/aaa94b504bcc27cc64d9479d26ce17f3>

<sup>18</sup> <https://www.abc.net.au/news/2019-08-07/coal-lobby-hopes-to-make-australians-proud-about-coal/11388830>

<sup>19</sup> <https://www.theherald.com.au/story/5451487/global-coal-demand-will-secure-our-mining-future/>

<sup>20</sup> <http://www.nswmining.com.au/menu/media/news/2018/june/nsw-is-missing-out-we-need-a-strategy-on-coal>

<sup>21</sup> <http://www.nswmining.com.au/menu/media/news/2018/december/net-zero-emissions-target-puts-nsw-economy-and-job>

<sup>22</sup> <https://www.dailytelegraph.com.au/rendezview/dicey-power-game-could-leave-us-in-the-dark/news-story/19e5a452303cc0a52c5594b245affe5c>

<sup>23</sup> <https://www.qrc.org.au/media-releases/hele-power-plant-strengthen-queenslands-trade-energy-leadership/>

<sup>24</sup> <https://www.qrc.org.au/media-releases/all-mps-must-heed-bipartisan-committee-call-to-bin-galilee-ban-qrc/>

<sup>25</sup> <https://www.australianmining.com.au/news/record-coal-exports-continues-to-drive-queensland-economy/>

<sup>26</sup> <https://www.theguardian.com/environment/2018/nov/16/nothing-to-hide-oil-and-gas-lobby-pushes-to-limit-data-on-its-emissions>

<sup>27</sup>

<https://www.theaustralian.com.au/nation/politics/ease-drilling-ban-to-increase-gas-oil-supply-says-peak-body/news-story/16b5b3e1a28b86de821e6477bd6b239f>

<sup>28</sup> APPEA, Submission to ESB, 15 June 2018.

<http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/APPEA%20Consultation%20Paper.pdf>

<sup>29</sup> [https://www.appea.com.au/media\\_release/wa-epa-guidelines-put-investment-at-risk](https://www.appea.com.au/media_release/wa-epa-guidelines-put-investment-at-risk)

<sup>30</sup> [https://www.appea.com.au/media\\_release/appea-welcomes-commitment-to-further-consultation-on-labors-climate-change-action-plan/](https://www.appea.com.au/media_release/appea-welcomes-commitment-to-further-consultation-on-labors-climate-change-action-plan/)

<sup>31</sup> BCA *Plan for a Stronger Australia*, 10 April 2019 [https://www.bca.com.au/business\\_council\\_releases\\_a\\_plan\\_for\\_a\\_stronger\\_australia](https://www.bca.com.au/business_council_releases_a_plan_for_a_stronger_australia)

power stations<sup>32</sup>; against a 45% 2030 emissions reduction target, which it said would be “economy wrecking”<sup>33</sup> and lead to “deindustrialisation”<sup>34</sup>; and for the use of Kyoto carryover credits<sup>35</sup>.

We are also concerned about the advocacy of the **Australian Industry Greenhouse Network**, the **Australian Institute of Petroleum**, the **Chamber of Minerals and Energy of Western Australia** and the **South Australian Chamber of Mines & Energy**.

This advocacy directly obstructs the implementation of Paris-aligned climate policy in Australia; worse, the cumulative effect is a political environment in which Paris-aligned policy is unachievable. The negative impact dwarfs any direct positive advocacy by our company and its CEO. Australia has no policies to adequately reduce emissions<sup>36</sup> resulting in rising greenhouse gas emissions year-on-year for the last five years<sup>37</sup>, policy uncertainty in the electricity sector<sup>38</sup>, the mooted prolonging of the operation of coal-fired power stations,<sup>39</sup> and government policy to use Kyoto carryover credits to reduce Australia’s already weak nationally determined commitment from 26-28% to roughly 15%.

Many of our company’s associations are dominated by companies whose business models depend on the extraction or combustion of fossil fuels, whose prospects for growth would be severely, necessarily constrained if policy to meet the Paris Goals is implemented. Other associations have a specific agenda to advocate for Australia’s continued reliance on fossil fuels for power generation and export. Our company should chart a new course for policy advocacy, free from the interference of industry associations whose interests are irreconcilable with ours.

### **Recommended approach**

While commendable, our company’s attempts over the last two years to constrain the activities of associations that undermine our interests, through its Review and ‘inside the tent engagement’ or ‘dialogue’ strategies, have proven ineffective. Suspension of memberships is now the preferable course of action, to ensure that shareholder funds are not spent on activities counter to our interests, as well as leaving room for re-entry once material differences have been resolved.

Echoing our CEO’s own words<sup>40</sup>, human-induced climate change poses “existential” risks not only to our company but to humanity, and a “coordinated global response” is urgently needed. It is no longer tolerable for our company to spend shareholder funds supporting lobby groups that delay the implementation of that response, the bedrock of which is the Paris Goals.

ACCR and co-filing shareholders urge shareholders to vote for this proposal.

---

<sup>32</sup> [https://www.youtube.com/watch?v=hlij\\_Ky\\_mIA](https://www.youtube.com/watch?v=hlij_Ky_mIA) at 9min

<sup>33</sup> <https://twitter.com/BCAcomau/status/1011414577702031361>

<sup>34</sup> <https://twitter.com/SkyNewsAust/status/1025867269719519232>

<sup>35</sup> <https://www.smh.com.au/business/the-economy/let-s-be-sensible-minerals-council-warns-against-labor-s-12-8b-kyoto-ban-20190409-p51ci9.html>

<sup>36</sup> <https://www.climatecouncil.org.au/resources/f-for-fail-australias-climate-report-card/>

<sup>37</sup> <https://www.theguardian.com/environment/2019/feb/28/australias-annual-emissions-continue-to-rise-driven-by-lng-production>

<sup>38</sup> <https://www.abc.net.au/radionational/programs/backgroundbriefing/energy-policy-inaction-sparks-business-uncertainty/10766582>

<sup>39</sup> <https://www.afr.com/politics/the-morrison-governments-big-stick-energy-bill-explained-20181206-h18sz1>

<sup>40</sup> <https://www.bhp.com/media-and-insights/reports-and-presentations/2019/07/evolving-our-approach-to-climate-change>