Resolution 1 - Special resolution to amend our company’s constitution

Shareholders request that the following new clause 5.10 be inserted into our company’s constitution:

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.

Resolution 2 - Ordinary resolution on Human Rights Risks

Shareholders request that:

1. the Board commit to engaging a heightened due diligence process in relation to any involuntary transportation activity it is involved in as a service provider to the Australian Department of Home Affairs (the Department);
2. the Board commission a comprehensive review of our company's policies and processes relating to involuntary transportation (Human Rights Review), with a specific focus on risk and responsibility according with our company's commitment to aligning its business with the the UN Guiding Principles on Business and Human Rights;
3. the Board prepare (at reasonable cost and omitting confidential information) a report describing the completed Human Rights Review, to be made available to shareholders on the company website prior to any further involvement in removal or involuntary transportation activity as a service provider to the Department.

Supporting statement to resolution 1

Shareholder resolutions are a healthy part of corporate democracy in many jurisdictions other than Australia.

The Constitution of our company is not conducive to the right of shareholders to place ordinary resolutions on the agenda of an 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.

Australian legislation and its interpretation in case law means that shareholders are unable to directly propose ordinary resolutions for consideration at the AGMs of Australian companies. In Australia, the *Corporations Act 2001* provides 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.[1] However, section 198A specifically provides that management powers in a company reside with the Board.[2]

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.[3]

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. Permitting the raising of advisory resolutions by ordinary resolution at a company's AGM is global best practice, and this right is enjoyed by shareholders in any listed company in the UK, US, Canada or New Zealand.

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.

ACCR urges shareholders to vote for this proposal.

[1] sections 249D and 249N of the *Corporations Act 2001* (Cth)

[2] S198A 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."

[3] 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.

Supporting statement to resolution 2

The Australasian Centre for Corporate Responsibility (ACCR) favours policies and practices which protect the long term value of our company. Given the materiality of our company's brand to its value, shareholders have an interest in understanding our company's risk management processes in relation to its reputation.

Numerous international authorities have found that Australia's domestic refugee law system contravenes international human rights law in a number of respects. Centrally, section 197C of the *Migration Act 1958* (Cth), which was introduced in 2014, provides that the requirement to remove unlawful non-citizens from Australia is not limited by Australia's *non-refoulement* obligations. The introduction of this section represents a significant and deliberate step by Australia away from honouring the country's international legal obligations. Its effect is that the Australian legal system and its institutions can no longer be relied upon to ensure compliance with international human rights law in this area.

There are of course compelling moral and legal reasons for businesses to avoid any involvement in human rights abuses. However, as shareholders, we are acutely concerned about the material reputational, financial and legal risk of our company's participation, as a service provider to the Australian Department of Home Affairs ('the Department'), in activities which expose us to the probability of complicity in serious human rights violations.

Activities which are of concern include our company's involvement in:

- deportations and removals, where the risks of irreparable harm are most acute. This concern extends to the domestic legs of removal activities; and
- transporting people between places of detention (both within Australian territories and to territories in other jurisdictions) in circumstances that have consistently been found by UN human rights bodies to amount to arbitrary detention.

Existing company commitments under the UN Guiding Principles

- We commend our company's commitment "to align our business to the United Nations Guiding Principles on Business and Human Rights (UNGPs)." This commitment is at risk of being severely undermined through our company's service provision to the Department.
- The UNGPs note that business enterprises have a responsibility, independent of States, to avoid adverse human rights impacts in their operations, products and services including through their business relationships, and that this responsibility exists 'over and above compliance with national laws'.[4] Our company's media statement that governments, not airlines, are "best placed to make decisions on complex immigration matters" is misaligned with this responsibility as properly understood.

Deportations as a flashpoint in shifting social risk landscape

- Public concern over the complicity of airlines in removals practices is highly topical,[5] and there exists precedent for airlines withdrawing from involuntary deportations in accordance with international human rights law and Australia's international treaty obligations.[6]

[4] United Nations, Office of the High Commissioner, 2011, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' available at <https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf> 13.

[5] See for example the recent actions of Elin Errson on a Turkish Airlines flight on 23 July 2018, Sydney Morning Herald, 27 July 2018, 'Swedish Student Protest of refugee deportation on plane goes viral' available at <https://www.smh.com.au/world/europe/swedish-student-s-protest-of-refugee-deportation-on-plane-goes-viral-20180725-p4ztlq.html>

[6] The Guardian, 30 June 2018, 'Virgin Airlines says it will no longer help to deport immigrants' available at: <https://www.theguardian.com/uk-news/2018/jun/29/virgin-airlines-no-longer-help-deport-immigrants-lgbt-windrush>

- On Thursday 9 August, refugee support groups protested outside our company's offices in Sydney and Melbourne. These groups are also coordinating social media campaigns targeting our company around this issue.[7]
- A public statement signed by prominent individuals across business, investment, academia, civil society, trade unions and the arts provides: **"***To discharge their responsibility [to respect human rights under the UNGPs], airlines should not participate in deportations where there is evidence that the fundamental human rights to an adequate legal process have been denied, as well as where there is a real risk of serious, irreparable harm to an individual. ...Contribution to human rights abuses and failure to discharge their international obligations can do damage to a company's reputation, undermine its social licence to operate, and pose material risks to a company's financial interests."*[8]
- These risks have been acknowledged by companies in other jurisdictions. In June 2018, six US airlines announced their refusal to participate in transporting children who have been separated from their families at US borders. In June 2018, Virgin airlines in the UK announced that it would 'end all involuntary deportations on [the Virgin Atlantic] network', from 1 August 2018. There have been several other instances of pilots from the UK, Germany and Israel refusing to personally participate in forced deportations.

Inadequate existing processes

- We note that our company does not presently disclose to shareholders the processes in place to manage these responsibilities, and the risks to our company and its shareholders in relation to the activities outlined above.
- Furthermore, we are concerned that risks of this kind receive insufficient attention within our company. Our concerns were underscored by our company's refusal to meet with us earlier this year, when two meeting requests were made in relation to this issue.
- Our company has failed to adequately deal with these issues in the past. In 2015, Jasmine Pilbrow acted to prevent a Tamil asylum seeker on board a Qantas flight from being deported to Sri Lanka. Our company responded by banning Ms Pilbrow from travel with our company,[9] attracting negative attention to and ongoing community campaigning interest in our company.

ACCR urges shareholders to vote for this proposal.

[7] https://www.facebook.com/QantasTakeAStand/
[8] https://accr.org.au/qantas-expert-statement/
[9] http://www.abc.net.au/news/2015-03-06/qantas-bans-passengers-protest-tamil-asylum-seeker-transfer/6286614