

ATTACHMENT A Resolutions and supporting  
statements

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AUSTRALASIAN CENTRE FOR CORPORATE RESPONSIBILITY

## Resolution 1 - Special resolution to amend our company's constitution

Shareholders request that the following new clause 8.25 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.

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## Resolution 2 - Ordinary resolution on public policy advocacy on climate change and energy by Relevant Industry Associations

Shareholders request that:

1. the Board commission a comprehensive review of our company's positions, oversight and processes

related to direct and indirect public policy advocacy (Lobbying Review), including through industry associations of which our company is a member or at which our company is formally represented (Relevant Industry Associations), on energy and climate change, covering the period 2013 to the present day.

We request that the Lobbying Review:

a. for each Relevant Industry Association, disclose all payments (including membership fees) by

our company to Relevant Industry Associations for direct or indirect public policy advocacy

relating to climate and energy policy; b. evaluate whether advocacy positions taken by Relevant Industry Associations, in respect of

Australian climate and energy policy serve our company's policy and financial interests; C. evaluate whether advocacy positions\* taken by Relevant Industry Associations are consistent

with our company's pledge of support for the Paris Agreement as a global framework for

reducing emissions; and d. detail proposed actions to be taken as a result of the Review.

\*Given that 'advocacy positions' by Relevant Industry Associations are not always taken in written form, we request that the Lobbying Review include, as evidence of such advocacy positions, credible media reporting.

2. the Board prepare (at reasonable cost and omitting confidential information) a report describing the

completed Lobbying Review, to be made available to shareholders on the company website within six months of the AGM at which this proposal is discussed.

3. the Board determine, and disclose to shareholders, the criteria by reference to which

the company

would discontinue membership of a Relevant Industry Association, in circumstances where the company's interests in respect of energy and climate policy are not promoted by that Association.

## **Supporting statement to resolution 1 (573 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 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 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'. However, section 198A specifically provides that management powers in a company reside with the Board?

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?

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.**

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.

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## **Supporting statement to resolution 2 (924 words including footnotes)**

As a shareholder, the Australasian Centre for Corporate Responsibility (ACCR) favours policies and practices that protect and enhance the value of our investments.

The IPCC's recent report on the impacts of global warming of 1.5°C stated that global net carbon emissions must decline by 45% from 2010 levels by 2030, and reach net zero by around 2050. The report warns of the severe consequences of further temperature increases, including heat extremes, heavy rainfall and drought".

We commend our company's Climate Change Position Statement and 2020 Action Plan, including its commitment to lending for climate change solutions of \$10 billion by 2020 and to \$25 billion by 2030. Our company's continued advocacy for effective climate action has distinguished it from its peers.

It is not in our company's long term financial and strategic interests, nor the interest of shareholders, to make financial contributions to the activities of industry associations which take positions in conflict with this commitment, given our company's exposure to climate-related risk. Investors are, increasingly, concerned by the role of industry associations in blocking effective action on climate change. The UNPRI has identified several risks to investors from the advocacy of industry associations, particularly where powerful cross-sector groups "tend to adopt positions of the most vocal members or largest financial contributors".

Accordingly, we urge companies in all sectors to review their relationships with industry bodies that act as obstacles to the effective uptake of national and global climate and energy frameworks aimed at limiting

global warming to 1.5°C. We urge companies to put in place a governance process for industry association memberships which looks beyond 'high level positions' and evaluates all advocacy activities of industry associations aimed at exerting influence on climate policy.

In particular we question the long-term attractiveness to shareholders of our company's public policy advocacy through the Business Council of Australia (BCA). Influence Map's analysis of the 50 most influential industry associations on climate policy globally found the BCA to be one of the most 'oppositional to

effective climate policy, scoring -12.7 (on a scale of -100 to +100, oppositional to supportive)

For five consecutive years to 2017, our company disclosed its membership of the BCA in submissions to the Carbon Disclosure Project (CDP), assessing that BCA climate and energy positions are aligned with our company's. Our 2017 submission disclosed that "The BCA has a high level position on energy and climate change issues, which is consistent with our company's view".

However, despite the BCA's 'high level support for policy measures "capable of meeting our 2030 target" 1, its advocacy activities have consistently undermined such policy measures. For example, the BCA has:

4 <http://www.ipcc.ch/report/sr15/>

5 *ibid.*

6 <https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/aw/sustainability/WestpacCCEActionPlan.pdf> 7 *ibid.* 8 UNPRI, *Converging on Climate Lobbying*, May 2018 9 *Influence Map, Trade Associations and their Climate Policy Footprint*, December 2017 10 Westpac Banking Corporation, *CDP Climate Change Submission 2017* 11 <http://www.bca.com.au/policy-agenda/energy-policy-principles>



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- opposed, and celebrated the repeal of Australia's price on carbon in 2014<sup>12</sup>;

argued against any extension of the Commonwealth's renewable energy target (RET)<sup>13</sup>; stated that "there was no role for state-based" renewable energy targets<sup>14</sup>, called for the removal of state-based moratoria on gas development<sup>15</sup>; proposed that the Clean Energy Finance Corporation (CEFC) be permitted to invest in nuclear or thermal power generation with carbon capture and storage; argued for exemptions from climate policy for energy intensive, trade-exposed industries <sup>17</sup>; argued that Australia's coal and gas will contribute to "improved carbon efficiency" in other countries <sup>18</sup>, argued that the government should incentivise investment in upgrading ageing coal-fired power stations

Counter to our company's interests, the BCA has set about corroding ambition on the emissions reduction targets necessary for Australia to play its part in limiting global warming to 1.5°C. The BCA has:

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stated that a 45% emissions reduction target would be "economy wrecking"<sup>20</sup>; supported a pro-rata emissions reduction target of 26% for the electricity sector<sup>21</sup> (rather than seeking the lowest cost abatement across the economy); stated that Australia's emissions reduction target of 26-28% by 2030 (on 2015 levels) is ambitious, realistic and consistent with the Paris Agreement<sup>22</sup>;

stated that the emissions reduction targets required to deliver the Paris Agreement would cause the "deindustrialisation" of the economy<sup>23</sup>, advocated for embedding a 26-28% target in legislation (under the now defunct National Energy Guarantee<sup>24</sup>), despite criticism of the policy by institutional investors for its lack of ambition<sup>25</sup>.

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Further, the BCA has reportedly sought \$200,000 from each of its members to

fund a campaign in the lead-up to the next Federal election<sup>26</sup>, and told the Federal government party room that it would campaign against the Federal opposition's more ambitious climate policies<sup>27</sup>. Any contribution to the BCA's activities on this front would appear inconsistent with our company's stated policy on political donations<sup>28</sup>.

<sup>12</sup> <http://www.bca.com.au/media/senate-should-support-carbon-tax-repeal> <sup>13</sup> Business Council of Australia, Submission to Independent review into the future security of the National Electricity Market, March 2017 <sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*

<sup>16</sup> Business Council of Australia, Submission to Review of Climate Change Policies, May 2017

<sup>17</sup> *ibid.*

<sup>18</sup> <http://www.bca.com.au/media/gladstone-at-the-centre-of-nations-growth> <sup>19</sup>

<http://www.bca.com.au/media/business-buzzing-over-energy-aim> <sup>20</sup>

<https://twitter.com/BCAcomau/status/1011414577702031361> <sup>21</sup> Business Council of Australia, Submission to Energy Security Board's Draft Detailed Consultation Paper, July 2018 <sup>22</sup>

<http://www.bca.com.au/media/interview-with-ticky-fullerton-sky-business> <sup>20</sup>

<http://www.bca.com.au/media/iennifer-westacott-interview-with-kieran-gilbert-speers-on-sunday> <sup>24</sup>

<http://www.bca.com.au/media/large-energy-users-call-for-the-neg-to-be-implemented-without-delay>

<https://igcc.org.au/investors-call-for-ambition-shortfall-to-be-addressed-in-the-national-energy-guarantee> <sup>26</sup> <http://www.abc.net.au/news/2018-04-30/business-council-to-ramp-up-role-in-politics/9710190>

<https://www.theguardian.com/australia-news/2018/jun/26/turnbull-quashes-abbotts-bid-to-give-party-room-a-say-on-energy-guarantee> <sup>28</sup>

<https://www.westpac.com.au/about-westpac/sustainability/our-positions-and-perspectives/political-donations/>

## ACCR3

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ACCR believes that our company's ambition on climate policy is far greater than that of the BCA and many of its members.

The disclosures and governance processes sought in this resolution seek to prevent or mitigate the risk of policy conflict undermining our company's interests in the future.

**ACCR urges shareholders to vote for this proposal.**