

ATTACHMENT A

**RESOLUTIONS AND
SUPPORTING STATEMENTS**

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

To insert into our company's constitution the following new clause 32.4:

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 (786 words including footnotes)

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.

Shareholders in the United Kingdom have successfully proposed resolutions directing the board to provide additional information in routine annual reporting on the impact of climate change.¹ Known as the 'Aiming for A' shareholder resolutions,² each was supported by management and a large group of institutional investors, and accordingly passed with near unanimous support from shareholders with voting rights³. The 'Aiming for A' resolutions have inspired investors around the world to exercise their legal rights to drive better governance on climate change.

Australian legislation and its interpretation in case law means that Australian shareholders are unable to directly propose an ordinary resolution similar to the 'Aiming for A' 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.⁴ However, section 198A specifically provides that management powers in a company reside with the Board.⁵

¹ See <https://shareaction.org/wp-content/uploads/2017/10/InvestorReport-AimingForA-Shell.pdf>

² Filed with Royal Dutch Shell and BP in 2015 and Anglo American, Rio Tinto and Glencore in 2016. As Rio Tinto is dual listed it also included the Aiming for A resolution on the ballot at its 2016 Australian AGM, held in Brisbane. Although this was not technically required, the company stated that it did so in order to ensure the equality of rights between all of its shareholders.

³ Each resolution passed with well above the 75% threshold required to make the resolution a 'special resolution' that now forms part of each company's constitution (section 17 Companies Act 2006).

⁴ sections 249D and 249N of the Corporations Act 2001 (Cth)

⁵ 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."

Case law in Australia has determined that these provisions, together with the common law, mean that shareholders cannot by ordinary 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.⁶ Australian shareholders wishing to have an ordinary 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. A special resolution requires 75% support to pass, and as no resolution of this kind has ever been supported by management or any institutional investors, none have succeeded.

We note that the drafting of our 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.

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.

ACCR urges shareholders to vote for this proposal.

⁶ 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 public health risks of coal operations

Shareholders request that, by 30 June 2020, the board prepare and disclose an assessment of the capital and operating expenditure required to install and maintain pollution controls at the Bayswater and Loy Yang A coal-fired power stations, sufficient to mitigate public health risks associated with non-carbon air pollution at those operations.

The assessment should be prepared at reasonable expense and omit proprietary information.

Supporting statement to Resolution 2 (860 words including footnotes)

Our company operates three coal-fired power stations: Bayswater and Liddell in NSW, and Loy Yang A in Victoria. The burning of coal to generate electricity is a major contributor to climate change, and it produces air pollution and coal ash, both of which are harmful to public health.

Public health impacts from air pollution include heart disease, stroke, asthma attacks, low birth weight of babies, lung cancer and type 2 diabetes⁷. Air pollution from NSW's five coal-fired power stations is estimated to lead to 279 early deaths every year for people aged 30 to 99⁸. It is estimated that operating Bayswater and Liddell until their planned closure dates will cause an additional 792 deaths, 660 low birth weight babies, and 991 cases of new onset diabetes in NSW⁹. These estimates are based only on PM_{2.5} pollution, so there are likely to be broader health impacts from other emissions.

Unlike other OECD countries, Australia does not impose limits on stack emissions (the amount of pollution that is allowed to leave the power station stack) at a national level. Emissions limits vary for each state and each power station. Typically, each state-based Environmental Protection Authority (EPA) sets emissions limits on each power station within the terms of their licences.

While our company may comply with the emissions limits in its licences, on almost all measures, the licence limits themselves — imposed on the Bayswater, Liddell and Loy Yang A power stations — are far less stringent than limits applied in China, the European Union and the United States¹⁰:

⁷ Ewald, B., The health burden of fine particle pollution from electricity generation in NSW, November 2018

⁸ *ibid.*

⁹ *ibid.*

¹⁰ Environmental Justice Australia, Toxic and Terminal, August 2017

Power station / Jurisdiction	Sulfur dioxide (SO ₂)	Oxides of nitrogen (NO _x)	Mercury	Particles
Bayswater (NSW)	1716 mg/m ³	1500 mg/m ³	1000 µg/m ³	100 mg/m ³
Liddell (NSW)	1716 mg/m ³	1500 mg/m ³	1000 µg/m ³	100 mg/m ³
Loy Yang A (VIC)	2370 mg/m ³	677 mg/m ³	No limit in licence	258 mg/m ³
United States	1517 mg/m ³	875 mg/m ³	1.5 µg/m ³ (black coal) 14 µg/m ³ (brown coal)	125 mg/m ³
European Union	400 mg/m ³	200 mg/m ³	30 µg/m ³ (Germany only)	50 mg/m ³ (black coal) 100 mg/m ³ (brown coal)
China	200mg/m ³	200 mg/m ³ (400 mg/m ³ for provinces with high sulfur coal)	30 µg/m ³	30 mg/m ³

Note: mg = milligrams, µg = micrograms

In other jurisdictions, power station operators must install modern pollution controls in order to comply with the stricter licence limits. These include:

- Flue Gas Desulfurisation (FGD), which reduces SO₂ emissions by as much as 99%;
- Selective Catalytic Reduction (SCR) which reduces NO_x emissions by 95%; and
- activated carbon injection to reduce emissions of mercury by about 90%.

While our company reports monthly and annual aggregate air pollution statistics, it has not disclosed any assessment of the risk of public health impacts, nor has it disclosed a financial assessment of the capital and operating expenditure required to retrofit and maintain Bayswater and Loy Yang A with modern pollution controls (Liddell is scheduled to close in 2022, making an upgrade unfeasible).

It is imperative that our company take measures to reduce the impacts on public health from the Bayswater and Loy Yang A power stations, which are scheduled to close in 2035 and 2048, respectively. Our company's failure to address air pollution between now and the announced closure dates for Bayswater and Loy Yang A exposes our company to as yet undetermined but potentially serious legal, regulatory and reputational risks.

Legal and regulatory risk

In Europe, various legal actions have been taken against national governments for failing to address air pollution, including Italy, Poland and the United Kingdom¹¹. In China, civil society organisations have filed a number of lawsuits against companies responsible for air pollution¹². Our company faces the credible threat of litigation if it fails to adequately address air pollution.

As the public health impacts of air pollution are more widely understood and demonstrated in research, it is likely that state-based EPAs will come under increasing pressure to strengthen air pollution standards on existing licences for coal-fired power stations. Our company is therefore vulnerable to abrupt regulatory change requiring unplanned expenditure, rather than via planned, orderly upgrades and scheduled maintenance.

Reputational risk

Our company has in excess of 2 million individual customers, and one of its three strategic priorities is its social licence¹³. Our company says that “social licence is about meeting and exceeding community expectations”¹⁴. Those communities most affected by air pollution from coal-fired power stations expect our company to minimise harm. It is in the interests of shareholders that our company take appropriate steps to protect its social licence.

It is likely that the capital and operating expenditure required to retrofit and maintain adequate pollution controls at Bayswater and Loy Yang A will have a material impact on our company’s financial position. In order to better assess our company’s short to medium term profitability, shareholders must be informed about the costs required to protect public health and protect our company’s social licence to operate.

ACCR urges shareholders to vote for this proposal.

¹¹ <https://www.clientearth.org/air-pollution/>

¹²

<https://www.newsecuritybeat.org/2018/08/people-vs-pollution-empowering-ngos-combat-pollution-environmental-law/>

¹³ <https://www.agl.com.au/about-agl/who-we-are/our-strategy>

¹⁴ *ibid.*

ATTACHMENT B

AGENCY AGREEMENTS