Recommended Investor Response to 2019 Shareholder Resolutions on BHP’s Trade Association Memberships

ShareAction recommends that shareholders in BHP vote for the shareholder resolutions put forward at the 2019 AGMs in Australia and the UK, and encourage the company to leave trade associations that obstruct the realisation of the goals of the Paris Agreement.

Executive Summary

• Corporate climate lobbying has become a mainstream investor concern in recent years, due to the economic, regulatory, reputational and legal risks of obstructive lobbying;

• In September 2019, the Australasian Centre for Corporate Responsibility (ACCR) and institutional investors with over US$90 billion in assets filed a shareholder resolution at BHP Ltd requesting that the company suspends its membership with industry associations if their lobbying activities are inconsistent with the Paris Agreement;

• In 2017, BHP released an Industry Association Review, which identified significant material differences on climate policy between the Minerals Council of Australia (MCA), the US Chamber of Commerce (‘the Chamber’) and the World Coal Association (WCA). The company terminated its membership of the WCA but remained in the MCA and the Chamber due to the “high level of benefit” obtained from membership;

• The MCA has a history of obstructing the implementation of sensible climate policy through coal advocacy, opposition to emission reduction targets, and links to pro-coal advertising both directly and by association with research and advocacy group Coal21;

• The Chamber and the Business Council of Australia (BCA) have also been identified as groups that are significantly misaligned with BHP’s internal position on climate and energy policy;

• The message from shareholders in BHP is clear: BHP must suspend membership from trade associations that obstruct positive climate action and undermine the realisation of the goals of the Paris Agreement.

We recommend that shareholders vote **FOR** the special resolution requesting that BHP alter its constitution to allow the requisition of a shareholder resolution at its UK and Australian AGMs.

We recommend that shareholders vote **FOR** the ordinary resolution requesting that BHP suspends memberships of industry associations that undertake lobbying, advertising and/or advocacy activities relating to climate and/or energy policy that are inconsistent with the Paris Agreement.
Why should corporate climate lobbying be on the investor agenda?

In recent years, the topic of corporate climate lobbying has shifted beyond the remit of ESG analysis to become a feature of mainstream investor concern. While resolutions on political contribution disclosure and lobbying are relatively common in the US, the last few years have seen investors in Australia and Europe increasingly willing to hold companies to account on their lobbying records, and those of their trade associations.

In 2017, a lobbying resolution filed by the Australasian Centre for Corporate Responsibility (ACCR) at BHP Ltd received 10% of the votes cast by its Australian shareholders.

In 2018, global investors worth $84 billion called on Rio Tinto Ltd to review its membership to industry bodies with misaligned positions on climate and energy policy. This proposal received 18% of the shareholder vote, the largest shareholder revolt against management on the issue of climate change in Australian corporate history at the time.

In 2019, the investor initiative Climate Action 100+ (CA100+) also filed lobbying resolutions at Ford Motor Company and at General Motors, receiving 16.5% and 29.5% of votes respectively. A similar resolution at ExxonMobil received 37.3% of the votes.

Why are investors waking up to corporate climate lobbying?

1. Economic Risk – Companies and the industry bodies that represent them are blocking the realisation of the goals of the Paris Agreement, and the orderly transition to a net zero carbon world. Investors have a fiduciary duty to protect portfolios and beneficiaries from the uncertainty, volatility, and systemic long-term risks associated with climate change. Delay in action now is also likely to lead to more drastic and costly interventions in the future.

2. Regulatory Risk – Companies delaying the implementation of the Paris Agreement risk non-compliance with the evolving body of climate regulation. Adverse climate lobbying is a sign that a company is not prepared for the low-carbon transition, which is a mainstream business risk for both the company and its investors. The automotive sector’s lobbying and fraudulent response to emissions limits demonstrates how this risk can play out in practice.

3. Reputational and Legal Risk – Companies are likely to face backlash from consumers, investors and other stakeholders if they delay or block effective climate policy, either directly or by association with industry bodies with contradictory advocacy positions. Allegations of misconduct may arise where corporate disclosures are misaligned with the activities of industry bodies, leading to claims of greenwashing and possibly litigation.

4. Impact – Arguably, the influence that powerful multinational corporations such as BHP and Rio Tinto have on public policy has a bigger impact on climate change than their direct operations through Scope 1, 2 and 3 emissions.

BHP - Background of Advocacy on Lobbying

ACCR has been engaging with BHP on the topic of corporate climate lobbying by its trade associations since 2017. That year, the Australian NGO filed a resolution at the company, requesting that the company review its trade association memberships based on the lobbying they undertake on climate change and energy policy.

The shareholder resolution received 10% of the vote at the BHP Ltd AGM in Australia, and 71% support at the BHP plc AGM in London. However, BHP still committed to conduct a limited review of its memberships to trade associations.

BHP published an ‘Industry Association Review’ of 21 industry associations the company considered to hold an active position on climate and energy policy in December 2017. BHP excluded Coal21 from this review, as it did not consider it to be an industry association.
BHP identified seven “material differences” between its own positions on climate and energy policy, and those of the following industry associations:

- **Minerals Council of Australia (MCA)** – BHP found misalignment with MCA’s advocacy for coal-fired power stations over other forms of energy generation, and for energy policies that prioritise energy affordability and reliability over emissions reduction.

- **US Chamber of Commerce (‘the Chamber’)** – BHP found misalignment with the Chamber’s opposition to carbon pricing, and its opposition to the Paris Agreement and the 2°C temperature goal.

- **World Coal Association (WCA)** – BHP found misalignment with the WCA’s opposition to the proposed Australian Clean Energy Target.

BHP did not find material differences with any other of its other member groups, including the Australian Petroleum Production and Exploration Association and the BCA.

BHP also established criteria for when it would cease membership of a trade association. The company committed to “ceas[ing] membership of the industry association where there is a finding of material difference that is likely to have a significant impact on policy debate, and where BHP has not established that there is sufficient benefit derived from the association’s broader activities.”

On this basis, BHP concluded that it would leave the WCA. However, it remained in the MCA and the Chamber because of the “high level of benefit” it derives from membership, but committed to keep its membership in these organisations under review.

BHP’s continued membership of the MCA and other influential industry associations that block climate change policy is the focus of the 2019 shareholder resolution at the company.

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**BHP - 2019 Shareholder Resolutions**

In September 2019, ACCR co-filed two shareholder resolutions at BHP together with global investors worth more than US$90 billion in assets, namely ACTIAM, the Church of England Pensions Board, Grok Ventures, MP Pension and Vision Super.

The first is a special resolution, which requests that the company alter its constitution to allow the requisition of a shareholder proposal at the AGM. This is required because Australian law does not allow ‘advisory’ shareholder resolutions, in which shareholders express an opinion, ask for information or make a request of the public companies that they own.¹

The second is an ordinary resolution, which makes the substantive request of the company:

“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 demonstrates, on balance, inconsistency with the Paris Agreement’s goals.”

In BHP’s official response, the board recommend that shareholders vote against the resolutions.⁴

The board argues that BHP supports the Paris Agreement and the need for collaboration.

The board also argues that there is a high level of benefit to membership to industry associations, and that it has conducted a review of the advocacy of its industry associations. Yet despite the Industry Association Review conducted by BHP in 2017, and subsequent attempts by the company to drive change via engagement, there remains material differences between BHP’s position on climate and energy policy and those taken by some of its trade associations.

Focus: Which trade associations are the most problematic?

This report identifies three influential industry associations active in adverse climate lobbying that are worthy of further consideration by the company and its investors, namely the MCA, the Chamber and the BCA.

This list is not exhaustive. There is also concern about the advocacy of the American Petroleum Institute, the Australian Petroleum Production and Exploration Association (APPEA), the New South Wales Minerals Council, the Queensland Resources Council, and other industry groups.

1. Minerals Council of Australia (MCA)

The table below highlights significant material differences between the advocacy activities of the MCA and BHP’s position on climate and energy policy.

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<th>BHP Position</th>
<th>MCA Activities</th>
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<td>The Paris Agreement and coal</td>
<td>“We welcomed the Paris Agreement and the 2°C goal. We have undertaken scenario planning to explore the implications of, and plan for, a 2°C world.”</td>
<td>The MCA has supported pro-coal advertising in recent years. It organised the “Making the Future Possible” marketing campaign in 2017, funded pro-coal advertising on Facebook and in <em>The Australian</em> newspaper, and there are concerns over the group’s involvement in the leaked Coal21 advertising campaign (see below).</td>
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<td>BHP’s chief financial officer Peter Beaven told investors and analysts that thermal coal will be phased out “potentially sooner than expected” and that “the world will be a very different place in 10 to 20 years’ time”. A briefing slide also stated that BHP has “no appetite for growth in energy coal.”</td>
<td>In 2018, the MCA advocated for the development of a new thermal coal basin in Queensland and hailed it as a “significant and welcome boost for regional communities, jobs and the Australian mining industry.”</td>
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<td>In 2018, the MCA was involved in a report asking the Asian Development Bank to offer coal the same level of funding priority as other electricity generation technologies.</td>
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<td>Emissions reduction targets</td>
<td>“We welcomed the Paris Agreement formalised in December 2015 at COP21. We support efforts by government and industry to set targets for emissions reduction.”</td>
<td>In 2015, the MCA strongly opposed ambitious emission reduction targets of 40-60% by 2030 in Australia. The MCA has also advocated for the repeal of state-based greenhouse gas emissions targets in Australia, and for no restrictions on the use of carbon offsets.</td>
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<td>The MCA has called for the use of Kyoto carryover credits under an “economy-wide pragmatic approach” to meeting international commitments, which undermines Australia’s weak NDC commitment of 26-28% emissions reduction under the Paris Agreement.</td>
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<td>The MCA has argued, “energy affordability and reliability should be the overriding priority for policy makers.” BHP’s 2017 Industry Association Review also highlighted the MCA’s prioritisation of other policy goals instead of emissions reduction.</td>
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The Intergovernmental Panel on Climate Change (IPCC) found that coal use for the electricity sector must be reduced to “close to 0%” by 2050 to limit warming to 1.5°C. In response, the MCA argued that “new high-efficiency, low-emissions (HELE) coal-fired electricity generation plants will be a part of this mix” to “significantly reduce emissions from coal-fired electricity generation.” The MCA had also previously advocated for HELE coal to help meet Australia’s emissions reduction targets.

The MCA has lobbied for government subsidies for new coal-fired power generation. In a submission to the Australian Department of Environment and Energy, the MCA advocated for continued government investment in “baseload power generation... [which] means coal, gas and hydro.”

Since BHP’s Industry Association Review in 2017, the MCA has continued to lobby against positive climate action such as emissions reduction targets, and lobby in favour of coal.

There is also concern about the relationship between the MCA and Coal21, an industry fund of which BHP is also a member. In August 2019, leaked documents revealed that Coal21 is planning to spend approximately AUS$4-5 million on pro-coal advertising in late 2019 to “invoke national pride” in coal. The MCA and Coal21 share key staff and services including Coal21’s Chief Executive Officer Mark McCallum, and an executive assistant to Tania Constable (chief executive of the MCA) was responsible for creating the briefing that was sent to creative agencies about the campaign.

In light of these significant material differences, ShareAction recommends BHP to suspend its membership of the MCA.

2. The US Chamber of Commerce (‘the Chamber’)

The Chamber is an American lobby group that represents more than 3 million businesses.

BHP’s 2017 Industry Review identified four material differences between BHP and the Chamber on climate and energy policy. Yet, the company decided to remain in the association because of the “broader benefits [provided by the trade association] and the role [it] plays in the US business community,” subject to a number of actions.

In 2019, the company reiterated that the benefits of remaining a member of the Chamber outweighed the costs, but committed to:

• Monitor the Chamber’s lobbying activities and ongoing advocacy approach for alignment with its new climate change statement;

• Expect that the Chamber will refrain from policy activity or advocacy on issues where no broad industry consensus exists; and

• Keep its membership of the Chamber under review.

The table overleaf clearly illustrates the significant material differences in positions taken by the Chamber on climate and energy issues and those of BHP.

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<td>Technology neutrality</td>
<td>“We believe energy markets should be both fuel and technology neutral, and should not artificially favour one type of technology over another.”</td>
<td>The Intergovernmental Panel on Climate Change (IPCC) found that coal use for the electricity sector must be reduced to “close to 0%” by 2050 to limit warming to 1.5°C. In response, the MCA argued that “new high-efficiency, low-emissions (HELE) coal-fired electricity generation plants will be a part of this mix” to “significantly reduce emissions from coal-fired electricity generation.” The MCA had also previously advocated for HELE coal to help meet Australia’s emissions reduction targets. The MCA has lobbied for government subsidies for new coal-fired power generation. In a submission to the Australian Department of Environment and Energy, the MCA advocated for continued government investment in “baseload power generation... [which] means coal, gas and hydro.”</td>
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<td>The Paris Agreement</td>
<td>BHP &quot;welcomed the agreement reached at COP21 in Paris to hold the increase in the global average temperature to well below 2°C&quot;, and has also signed the UNFCCC Paris Pledge. In 2017 BHP’s CEO, Andrew Mackenzie, spoke directly to Donald Trump urging him to stay in the Paris Agreement and in June BHP stated it was disappointed with the US decision to withdraw from the deal.</td>
<td>The Chamber has also been critical of the Paris Agreement. It claimed that the agreement is ineffectual as a framework for reducing emissions. The Chamber has also expressed concerns regarding the impact of the Paris Agreement on the United States economy. The Chamber also funded a now-debunked study that significantly overstated the potential economic costs of the Paris Agreement and ignored its benefits. President Trump used this report to justify his decision to withdraw from the Paris Agreement.</td>
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<td>Ambition of action</td>
<td>BHP believes the world must seek to limit climate change &quot;to the lower end of the IPCC emission scenarios.&quot; In July 2019, BHP’s Chief Executive Andrew Mackenzie endorsed drastic action to combat global warming, which he called &quot;indisputable&quot;, and an emerging crisis.</td>
<td>The Chamber’s Global Energy Institute has indicated that the 2°C goal is &quot;fantastically unrealistic&quot;. The Chamber has qualified the US government climate strategy as &quot;making energy more expensive and less abundant to satisfy international constituencies, many of whom compete against the United States, [which] should worry the business community, American workers, and consumers.&quot;</td>
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<td>Emissions reduction targets</td>
<td>BHP “support[s] efforts by government and industry to set targets for emissions reduction.”[^37]</td>
<td>The Chamber has supported the repeal of the Clean Power Plan, having fought the rule with legal action throughout 2015–2016 and in 2019.[^40]</td>
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<td>The company has set the longer-term goal of achieving net-zero operational GHG emissions by 2050. Its existing target is to maintain its total operational emissions in FY2022 at or below FY2017 levels.[^38]</td>
<td>The Chamber lobbied hard to repeal Obama-era regulations relating to methane emissions, which it qualified as “needlessly burdensome and costly” and “fails to recognize that the sector has successfully reduced methane emissions voluntarily”.[^41]</td>
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<td>In July 2019, the company announced that it would establish a new medium-term, science-based target for scope one and two emissions in line with the Paris Agreement and strengthen the link between emissions performance and executive remuneration.[^39]</td>
<td>The Chamber has claimed that the United States’ Nationally Determined Contribution is unachievable (due to a lack of specificity and congressional backing) and would impose too high of a cost on American businesses (particularly relative to their international competitors).[^42]</td>
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<td>Technology neutrality</td>
<td>“We believe energy markets should be both fuel and technology neutral, and should not artificially favour one type of technology over another. We also believe governments should focus on setting policies to facilitate efficient markets. Government intervention in resources and energy markets should only be in response to a demonstrated market failure and informed by cost-benefit analysis.”[^43]</td>
<td>The Chamber’s “EnergyInnovates” project argues for increasing “access for production of domestic natural gas, oil, and wind by finalising a robust offshore energy program” and removing “unnecessary barriers to building new energy infrastructure.”[^44]</td>
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<td>An analysis of the Chamber’s Institute for 21st Century Energy’s lobbying and tweeting reveals that the organisation almost exclusively promotes fossil fuels, with zero support for alternative energy sources. One tweet even redirected users to a report by the Heartland Institute, a notorious climate change denial group.[^45]</td>
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<td>Carbon pricing</td>
<td>“Emissions reductions are necessary to mitigate climate change. An effective global framework to reduce emissions should use a portfolio of complementary measures, including a price signal on carbon, implemented in a way that addresses competitiveness concerns and achieves lowest cost emissions reductions.”[^46]</td>
<td>The Chamber lobbied in favour of the Transparency and Honesty in Environmental Regulations Act of 2016, a bill that “prohibits the Department of Energy and the EPA from considering the social cost of carbon or methane as part of any cost benefit analysis.”[^47]</td>
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<td>The Chamber maintains that introducing a price on carbon would impose significant costs on the United States economy, and would be unlikely to garner popular support from the American people.[^48]</td>
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In light of these significant material differences, ShareAction recommends BHP to suspend its membership of the Chamber.
### Business Council of Australia (BCA)

Analysis of BCA’s lobbying activities highlight that the group has consistently lobbied against positive action on climate change.

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<td>The Paris Agreement</td>
<td>“We welcomed the Paris Agreement formalised in December 2015 at COP21. We support efforts by government and industry to set targets for emissions reduction.”49</td>
<td>The BCA has communicated its support for the Paris Agreement publicly50 but has undertaken lobbying activities that contradict this position, choosing to prioritise economic interests over ambitious climate and energy policy.</td>
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<td>The BCA has lobbied against proposals to increase Australia’s emissions reduction targets, labelling a proposed Labour target of 45% as “economy-wrecking” in 2018.51 The BCA chief executive also told government MPs that it would run a campaign to oppose the target.52</td>
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<td>The group has also criticised the decision not to utilise Kyoto carry-over credits, expressing its “concern” about the impact on economic growth and the strength of the economy.53</td>
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<tr>
<td>Technology neutrality</td>
<td>“We believe energy markets should be both fuel and technology neutral, and should not artificially favour one type of technology over another.”54</td>
<td>The BCA has supported the sustained role of unconventional gas and coal in the energy mix, protecting short-term business interests over the long-term interests of the economy as a whole. This was reinforced in an opinion piece by BCA President Grant King in 2018, which argued the economic case for coal and natural gas.55</td>
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<td>The BCA has also consistently opposed renewable energy targets and subsidies at state and federal level56, 57 while arguing for exemptions from climate policy for EITE industries.58</td>
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<td>The MCA has argued, “energy affordability and reliability should be the overriding priority for policy makers.”54 BHP’s 2017 Industry Association Review also highlighted the MCA’s prioritisation of other policy goals instead of emissions reduction.15</td>
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<tr>
<td>Carbon pricing</td>
<td>There should be a price on carbon, implemented in a way that addresses competitiveness concerns and achieves lowest cost emissions reductions.59</td>
<td>The BCA has consistently lobbied against a carbon tax in Australia, and issued a statement welcoming its repeal in 2014.60</td>
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In light of the material differences between their positions on climate and energy policy, ShareAction believes that it is in BHP’s long-term interests to suspend its membership to the BCA.
Conclusion and Recommendations

In July 2019, BHP made a series of climate commitments including the establishment of a five-year US$400 million Climate Investment Programme, science-based targets for Scope 1 and 2 emissions and a stronger approach to tackling Scope 3 emissions.

This announcement on climate change from a major player in the fossil fuel industry is to be welcomed, and the language used by CEO Andrew Mackenzie - “an escalation towards a crisis” - suggests that BHP recognises the severity of the climate challenge.

However, membership to trade associations that engage in adverse lobbying on climate and energy policy undermines BHP’s climate credentials. Public statements and glossy sustainability reports act as a form of corporate greenwashing if the company continues to fund industry associations which slow down the low-carbon transition and impede the realisation of the goals of the Paris Agreement.

There is clear evidence that there are material differences between BHP’s position on climate change and the activities of its industry associations such as the Minerals Council of Australia, the Business Council of Australia and the US Chamber of Commerce.

ShareAction believes that BHP should suspend its membership of trade associations that pursue an agenda that conflicts with the company’s stated policies and long-term financial and strategic interests, and that undertake lobbying, advertising and/or advocacy relating to climate and/or energy policy that are inconsistent with the goals of the Paris Agreement.

We recommend that shareholders vote FOR the special resolution requesting that BHP alter its constitution to allow the requisition of a shareholder resolution at its UK and Australian AGMs.

We recommend that shareholders vote FOR the ordinary resolution requesting that BHP suspends memberships of industry associations that undertake lobbying, advertising and/or advocacy activities relating to climate and/or energy policy that are inconsistent with the Paris Agreement.


38. BHP (No Date). *Climate Change* [webpage]. Available online at: https://www.bhp.com/environment/climate-change [Accessed 9 September 2019].


47. Public Citizen (2017). *The Chamber’s Smokescreen: The truth behind the chamber’s “all of the above” energy policy*. Ibid.


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The opinions expressed in this publication are based on the documents specified. We encourage readers to read those documents. Online links accessed September 2019.

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About ShareAction

ShareAction (Fairshare Educational Foundation) is a registered charity that promotes responsible investment practices by pension providers and fund managers. ShareAction believes that responsible investment helps to safeguard investments as well as securing environmental and social benefits.

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