

16 August 2023

ASX ANNOUNCEMENT

Response to Notice received under section 249D of the Corporations Act & Notice of General Meeting

ImpediMed Limited (**ImpediMed** or the **Company**) (ASX: IPD) announced on 3 August 2023, that the Company had received a notice under section 249D of the *Corporations Act 2001* (Cth) (**Corporations Act**) from the shareholders listed in the Schedule (**Requisitioning Parties**) holding at least 5% of the votes that may be cast at a general meeting of the Company.

To comply with the notice, the Company has called a meeting of Shareholders to be held at 9:00am AEST on Thursday, 28 September 2023. The Notice of Meeting (which includes the statement from the Requisitioning Parties to which this response relates) has been lodged simultaneously with this response.

Vote Against

The Board is unanimously recommending shareholders **vote against** all eight proposed resolutions:

- four resolutions are proposed for the removal of each of Don Williams, Amit Patel, David Anderson, and Daniel Sharp as directors of the Company; and
- four resolutions are proposed for the appointment of each of McGregor Grant, Christine Emmanuel-Donnelly, Andrew Grant, and Janelle Delaney as directors of the Company (the **Nominated Directors**).

The reasons to vote against the resolutions are:

1. **Distraction from strategy execution:** The Board's priority is to enable the success of the Company to benefit patients, employees, and all shareholders. The actions of the Requisitioning Parties, representing a minority group of shareholders, is a significant distraction to management and employees that risks our ability to deliver on our commitments and generate value at this critical juncture for the Company.
2. **Need to capitalise on US commercialisation and NCCN Guidelines®:** The Company's addressable market has doubled to more than AU\$2 billion, and the successful recent capital raise was essential to accelerating investment in resources and infrastructure to capitalise on the anticipated near-term sales demand.
3. **Action triggers acquisition of control but there is an absence of strategy:** The proposal to replace a majority of the Board constitutes an overt attempt to gain Board (and therefore Company) control. The Requisitioning Parties and their Nominated Directors have not presented a view on Company strategy and approach, nor proposed a Chairperson should they gain control, which should be a significant concern to all of our shareholders.
4. **Proposed directors lack independence and relevant skills:** Replacing four board members on a seven-member Board nominated by, and aligned with, a small group of shareholders does not support the Requisitioning Parties' assertion of independence. Our current Board comprises a majority of independent Directors. Moreover, the skills of the Nominated Directors are not additive, and Shareholders should be concerned at the lack of public company Director and US commercialisation experience.
5. **Current directors have full Management support:** The Board has the full support of management. The Directors have been integral to ImpediMed's success. In recent times the Directors have stabilised the ImpediMed workforce, made critical leadership changes, and established a focused business strategy for more rapid commercial activation.

The Board has taken a measured approach to its response, informed through discussions with shareholders, representatives of the Requisitioning Parties, employees, and other market participants. It is with conviction that we provide this detailed response.

Rationale for Voting Against All Eight Resolutions

We cannot risk disrupting our positive momentum and near-term success.

ImpediMed is in the strongest position it has been for many years under a new CEO, with a Board that has the right skills and experience, and with a clear strategy in place which was recently reviewed, refined, and endorsed by the Board.

The Board appointment of Rick Valencia as CEO in December 2022 came with a clear direction to execute a commercial strategy that could capitalise on the growing opportunities and build shareholder value. With the Board's support and a strong leadership team we have made considerable progress and we are confident of maintaining our substantive momentum.

This action by the Requisitioning Parties is presenting a **serious risk** to stability and focus.

We are at a critical juncture where any distraction could have significant adverse impact from both a commercial operations and market perception perspective. Our employees are highly motivated and focused on what we need to achieve, and this action is already impacting our ability to finalise several important leadership roles, which will hinder our ability to fully operationalise our strategy.

We must maintain momentum which includes the strategic prioritisation of certain US Payors to expedite changes to published policies and achievement of critical mass coverage and a large uplift in the number of system sales and patient tests completed. Evidence of our successful momentum includes:

- In under five months we have secured 12 positive published medical policy changes including SOZO® and BIS with critical mass coverage (80% covered lives) secured in Michigan and Alabama and nearly 80% of six other states. This includes a major top 5 national payor, Cigna, who operates across 38 states.
- A record number of patient tests of >100,000 conducted in the last six months.
- 54 SOZO systems sold globally in Q4 FY23 alone, up more than 200% on Q4 last year.
- 15 new customers secured and expansion within five NCCN centres in Q4 FY23.

Capital raising for accelerated growth with NCCN Guidelines®

The United States has always been the key region of strategic importance for ImpediMed. When the NCCN Guidelines® were updated in March 2023, the total addressable market for ImpediMed in the United States more than doubled to over AU\$2 billion. The changes presented an opportunity for ImpediMed to accelerate the capture of market share and to rapidly drive value for the benefit of all shareholders, and on which we had to act quickly on to realise.

To immediately accelerate and invest in our growth we completed a Placement and Share Purchase Plan (**SPP**), raising AU\$30 million. This capital raise was carefully structured to be fair and accessible to all shareholders and was modelled to ensure that more than 98% of shareholders could achieve a pro-rata or better participation. This meant shareholders who made the decision to participate at the maximum subscription experienced no dilution.

Only shareholders that chose not to participate experienced dilution, albeit that dilution was modest given only AU\$30 million was raised on a market capitalisation of nearly AU\$300 million at the time, and the subsequent increase in the value of their shares post-raising has been substantial.

Prior to the capital raise, we met with a substantial cross section of our shareholder base. The overwhelming majority of shareholders understood the immediate opportunity and the need to fundraise to capitalise on it and establish SOZO BIS as the standard of care for cancer patients at risk of lymphoedema.

We acknowledge there were a small number of shareholders who expressed an opinion to delay the fundraising. But the Board and management concluded that the acceleration of the payor policy timelines required the Company to have the resources in place to properly build the organisation for scale, and failure to do so would have compromised our progress and revenue projections to the detriment of all shareholders. In this respect, the following additional factors were considered:

- The 2-year cash runway asserted by the Requisitioning Parties assumed a slow, conservative pathway to cashflow breakeven prior to the impact of the Company's technology being specified in the NCCN Guidelines®.
- The cash flow was inadequate to resource the Company to deliver on the increased scale of a more robust growth plan post NCCN, and failure to immediately resource the Company would have risked being unable to service customer enquiries, site deployment, and customer service to support the sales activation strategy.
- Given ImpediMed had conducted the only randomised trial in lymphoedema management in breast cancer patients, management and the Board believed that it was imperative to protect the 'first mover' advantage and have the infrastructure and resources in place to respond to anticipated customer enquiries and expectations.

The capital raise provided the funds to scale over the coming 12-months and beyond, which we expect will allow time to demonstrate the change in the Payor landscape and positive medical policies and the resulting revenue uplift and demand for SOZO. Further, funding and equity capital market risks have been removed.

The Board also believes that it was prudent to complete the capital raising expeditiously. Waiting for further news prior to raising capital would not have necessarily re-rated the share price. Having a strong balance sheet in place is a critical component to attracting key, top tier talent in the US, such as a Chief Commercial Officer and a Chief Medical Officer. With the capital raise completed, the Company has been very successful in attracting world-class talent to consider our organisation, the likes of which would not have previously been available to the Company.

The actions of the Requisitioning Parties have put that process in jeopardy and is a significant distraction to management that risks our ability to deliver on our value creation initiatives.

A Board with the right skills and suitability

The Board is committed and connected to all shareholders irrespective of their location or size of holding. We have an independent Board with a broad, capable, and highly relevant skill set. The Board demonstrates an alignment with shareholders by taking most of its directors' fees in shares rather than cash. Similarly, our Board has shown support for the Company by purchasing shares on market, within the designated trading periods.

ImpediMed's business strategy leverages the experience of all Directors and positions us strongly for accelerated future growth, the execution of which has already begun and is evident in the positive news flow and share price momentum. Since 8 March 2023, we have seen our share price appreciate over 250% and shares are trading at or near a 2-year high.

Directors have actively supported management on critical elements of the business and have acted with urgency. Examples include:

- Facilitated CEO replacement, with Non-Executive Director David Anderson stepping into the interim CEO role to ensure stability.
- Recruited a highly experienced new CEO.
- Supported the ImpediMed team to improve morale and stabilise retention risk during challenging times.
- Re-prioritised the reimbursement strategy.
- Utilised the clinical evidence and rallied key opinion leader clinician support for guideline inclusion.

- Reversed previous negative Private Payor rulings.
- Commenced obtaining positive national and large regional Private Payor coverage.
- Redesigned the SOZO technology to automate it into clinical workflow.
- Introduced a software as a Service (SaaS) high margin sales model that will enable future recurring revenues.
- Expanded the market opportunity with a focus on oncology.

Our Board has evolved for the right reasons and as part of a strategic process to align skills and experience with our development and growth. A process of Board evolution has been undertaken over the last 12 months to reflect the skills and experience required. This process identified the need for stronger commercial expertise in oncology and Australian capital markets experience to maintain a closer link to our majority Australian shareholder base. We have addressed both these needs with the announcement of the appointment of Daniel Sharp and Michael Seiden, MD in June 2023.

The addition of Daniel Sharp to the Board responds to the Board's desire to have a strong capital markets' representative from Australia. Daniel is well connected to investors, stockbrokers and analysts in the Australian market and has a history that directly connects and aligns him to shareholder interest.

Michael Seiden has extensive board, management, and leadership experience. His experience in oncology in a variety of hospital based and community clinics, directly links to the opportunity that is now ahead of us. His appointment is strategically aligned with the priorities and focus of the Company.

We maintain a commitment to further Board diversity measures and will continue to evaluate Director skills and experience annually. We have not identified skills gaps in the areas held by the Nominated Directors proposed by the Requisitioning Parties. Our director succession plan will continue to evolve as we grow and mature.

The experience of the four Directors targeted by the Requisitioning Parties in conjunction with other Directors and the management team provide a comprehensive skillset specialised in the commercial growth and development of medical devices and health technology companies across all regions of strategic importance to us. They have a demonstrated history of delivering growth and rapid industry uptake for a range of emerging and large life sciences companies across the globe.

Serious control risk

A small percentage of shareholders have handpicked four Nominated Directors who will, if four of the existing seven directors are removed, take majority control of the Board and therefore the strategy and direction of the Company without any indication of their views on Company strategy and direction or a proposed Chairperson.

This lack of transparency and strategic foresight should be a **significant concern** to shareholders.

It is the Board's strong view that any appointments to the Board should be considered through a proper process to determine a nominee's alignment with the skills and capability needs of the Company. Accordingly, the Board intends to extend an invitation to each of the Nominated Directors to meet with the Nominations Committee to properly assess the skills and experience that each could bring to the Board. If through this process the Board considers that our observations on the appropriateness of the Nominated Director should be supplemented, shareholders will be informed of the additional information.

Strong support for Directors targeted

We maintain strong support in retaining all Directors named in the Notice. We share the following:

- Don Williams is an accredited public company board director and a life sciences growth expert with over 20 years' experience delivering strategic guidance and operational oversight. His public company board service has included global med tech companies growing from US\$25 million to over US\$1.7 billion in market cap. He no longer holds this Board position, stepping down in 2021 to focus on ImpediMed.
- Amit Patel has deep experience in securing FDA approvals, structuring strategic relationships, and delivering international growth (US, Europe, and India) of IoT technology-based medical devices, including for some of the world's largest medical device companies. Amit is currently CEO of the company he founded and sold to Murata Manufacturing, thereby bringing decades of operational expertise in US markets to the board.
- David Anderson has deep expertise and strong relationships within the Private Payor network and has been instrumental in guiding conversations to secure the first changes to published policies. David is also a former CEO of HighMark Blue Cross Blue Shield of New York, a US\$3 billion Private Payor with decades of operational expertise.
- Daniel Sharp is an independent and experienced Australian Director with over 25 years' experience within the Australian capital markets. He has supported the commercial and corporate growth for some of Australia's leading ASX companies. Since 2021, he has not been connected to any single broking firm

US Representation critical for growth

Despite the US-focus, the Company is proudly Australian and has no intention to leave the ASX or seek listing on the NASDAQ or any other foreign exchange.

We have strong US representation on our Board because our business is predominantly US based and a critical growth market that requires relevant skills and experience to guide management.

We know from experience that it is critical that the Board has direct experience and capability to guide local US management on US reimbursement and commercialisation issues. The current Directors have intimate knowledge of the US market, regulatory environment and healthcare markets including reimbursement. They have run commercial operations in the US for global businesses.

Early in our Company history, under an Australian-based Board and management team, the Company entered the US market without understanding the need for clinical evidence, guidelines, reimbursement, and a technology that fits into clinical workflow. While the Board and management team in place at that time succeeded in getting the Company's technology a Medicare Category III CPT Code, this means it was classified as an "emerging technology" or "experimental", and once it propagates through the Payor network it is extremely difficult to get the label removed. Unfortunately, this created years of delay for the Company in achieving full Private Payor reimbursement. We have subsequently addressed these issues under the guidance of our US based Directors, who fully understood what was required to make our Company a success.

The current Board understands what needs to be done to continue to grow our success in the US market, because they have done it before. Replacing our highly experienced Directors would result in a significant loss of this knowledge, and any replacement with the Directors proposed by the Requisitioning Parties, that have virtually no, or very limited Board experience nor up-to-date US operations experience, would be detrimental to growth in this market.

Governance

The Board has an unambiguous approach to its governance role, guided by the principles in its Corporate Governance Statement and regulatory requirements. As an example, is the review process the Board undertook before responding to the Requisitioning Parties. The Board has undertaken an extensive review of the Requisitioning Parties' claims and its responsibility to Company Shareholders in

its response. Further, the Directors who are not being targeted by the Requisitioning Parties were recommended to secure separate counsel before the Board issued this response.

No examples of poor governance have been provided by the Requisitioning Parties, and we strongly refute and challenge any suggestion of such. Directors are held to high account in their roles and contribution to the Board.

Concerns about the experience of the Nominated Directors

Based on the very limited information provided by the Requisitioning Parties, the Board has many concerns with the relevance of the skills and experience of Nominated Directors proposed. While they each look to be experienced professionals, well suited for their current positions, we urge Shareholders to review their skills and experience carefully as it relates to how they would add value to the Company. None of the Nominated Directors have themselves reached out to speak to the CEO or anyone on the Board, so we can only go on the bios provided and what we can find through public sources.

Based on the information made available by the Requisitioning Parties our concerns include:

- None of the Nominated Directors have CEO experience leading a medical technology company in the US market.
- Only one has prior experience as a director of an ASX-listed company.
- ImpediMed has a strong CFO in place and an experienced Australian finance professional as our Audit & Risk chair so a CFO without previous ASX NED experience will not strengthen the Board.
- While we have an extensive amount of intellectual property, our IP is well established, and we use a well-regarded Australian law firm to help us manage our IP portfolio and IP strategy. We have no current plans to license or independently commercialise our IP and there is no need for IP specialisation at Board level.
- The one Nominated Director's stated US operational experience is substantively out of date. In recent years his focus appears to have been on private consulting and running private hospital networks in Australia and China, which is not relevant or additive in value to our Board.
- The Requisitioning Parties have proposed removing our current Chairperson but are not proposing a new director with the requisite experience to become the new chair.
- Moreover, whilst the replacement of four out of seven directors will result in the Nominated Directors acquiring control, the Nominated Directors have not presented any plan or strategy on how they would utilise that control.

As earlier stated, the Board intends to extend an invitation to each of the Nominated Directors to meet with the Nominations Committee and if the Board considers that our observations on the appropriateness of the Nominated Director should be supplemented, shareholders will be informed of the additional information.

This should present significant concerns for all Shareholders given the current positive momentum and strategic direction. We reiterate our recommendation for all shareholders to vote against all eight resolutions.

Next steps

The Board will host an investor call on Thursday 17th August 9.30am AEST and will be in Australia to meet with shareholders irrespective of size of holdings to ensure all shareholders are properly informed on the facts and therefore in a position to make an informed decision. Shareholders are encouraged to view the Notice of Meeting that has been lodged simultaneously and we welcome your contact at investorrelations@impedimed.com.

Yours sincerely



Don Williams
Chairperson

Authorised for release by the Board of ImpediMed Limited.

Contact Details

Investor Relations Contact:

Hannah Howlett
WE Communications
T: +61 450 648 064

E: hhowlett@we-worldwide.com

E: investorrelations@impedimed.com

About ImpediMed

Founded and headquartered in Brisbane, Australia with US and European operations, ImpediMed is a medical technology company that uses bioimpedance spectroscopy (BIS) technology to generate powerful data to maximise patient health. ImpediMed produces the SOZO® Digital Health Platform, which is FDA-cleared, CE-marked, and ARTG-listed for multiple indications, including lymphoedema, heart failure, and protein calorie malnutrition and sold in select markets globally.

In March 2023, the NCCN Clinical Practice Guidelines In Oncology (NCCN Guidelines®) for Survivorship were updated and reference bioimpedance spectroscopy as the recommended objective tool to screen at-risk cancer patients for early signs of lymphoedema. With the SOZO Digital Health Platform and L-Dex®, ImpediMed is the only company to offer FDA-cleared technology that uses bioimpedance spectroscopy for the clinical assessment of lymphoedema. The connected digital health platform and large, attractive cancer-related lymphoedema market present an opportunity for continued strong growth through ImpediMed's SaaS subscription-based business.

For more information, visit www.impedimed.com.

Forward-Looking Statements

This announcement contains or may contain forward-looking statements that are based on management's beliefs, assumptions and expectations and on information currently available to management.

All statements that address operating performance, events or developments that we expect or anticipate will occur in the future are forward-looking statements, including without limitation our expectations with respect to our ability to expand sales and market acceptance in the US and Australia including our estimates of potential revenues, costs, profitability and financial performance; our ability to develop and commercialise new products including our ability to obtain reimbursement for our products; our expectations with respect to our clinical trials, including enrolment in or completion of our clinical trials and our associated regulatory submissions and approvals; our expectations with respect to the integrity or capabilities of our intellectual property position.

Management believes that these forward-looking statements are reasonable as and when made. You should not place undue reliance on forward-looking statements because they speak only as of the date when made. ImpediMed does not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. ImpediMed may not actually achieve the plans, projections or expectations disclosed in forward-looking statements. Actual results, developments or events could differ materially from those disclosed in the forward-looking statements.