



ASX ANNOUNCEMENT

21 April 2017

Dispatch of Notice of General Meeting

Attached is a copy of a Notice of General Meeting which has been dispatched to the shareholders of Tox Free Solutions Limited, for a meeting to be held on 24 May 2017.

Yours sincerely



David McArthur
Company Secretary



Notice of General Meeting

Date of Meeting

Wednesday 24 May 2017

Time of Meeting

10:00 am (WST)

Place of Meeting

BDO, Rokeby Room,
38 Station Street, Subiaco,
Western Australia

Notice of Annual General Meeting

Notice is hereby given that the General Meeting of Tox Free Solutions Limited (“**Company**” or “**Tox Free**”) will be held at 10.00 am (WST) on Wednesday 24 May 2017 at BDO, Rokeby Room, 38 Station Street, Subiaco, Western Australia.

An Explanatory Memorandum containing information in relation to each of the Resolutions to be put to the Meeting accompanies this Notice.

AGENDA

To consider and, if thought fit, to pass the following Resolutions.

ORDINARY BUSINESS

Ordinary Resolution 1:

Ratification of issue of Consideration Shares to Catilina

To consider and, if thought fit, to pass, with or without amendment, the following resolution as an ordinary resolution:

“That for the purposes of Listing Rule 7.4 and for all other purposes, Shareholders ratify the issue of 12,568,000 fully paid ordinary Shares in the capital of the Company to Catilina on the terms and conditions contained in the Explanatory Statement.”

Voting Exclusion Statement:

The Company will disregard any votes cast on Resolution 1 by Catilina and any of its associates. However, the Company need not disregard a vote if it is cast by a person as a proxy for a person who is entitled to vote, in accordance with the directions on the Proxy Form, or, it is cast by the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with a direction on the Proxy Form to vote as the proxy decides.

SPECIAL BUSINESS

Special Resolution 2:

Approval of Financial Assistance

To consider and, if thought fit to pass the following as a special resolution:

“That for the purposes of section 260B(2) of the Corporations Act and for all other purposes, approval is given for financial assistance to be provided by the Acquired Companies in connection with the Daniels Acquisition as described in the Explanatory Statement.”



By order of the Board
D M McARTHUR
Company Secretary

Date: 31 March 2017

ENTITLEMENT TO ATTEND AND VOTE

The Company may specify a time, not more than 48 hours before the Meeting, at which a “snap-shot” of Shareholders will be taken for the purposes of determining Shareholder entitlements to vote at the General Meeting.

The Company’s Directors have determined that all Shares of the Company that are quoted on ASX at 5.00 pm (Sydney time) on 22 May 2017 shall, for the purposes of determining voting entitlements at the General Meeting, be taken to be held by the persons registered as holding the Shares at that time.

PROXIES

Please note that:

- (a) a member of the Company entitled to attend and vote at the General Meeting is entitled to appoint a proxy;
- (b) a proxy need not be a member of the Company; and
- (c) a member of the Company entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise, but where the proportion or number is not specified, each proxy may exercise half of the votes.

The enclosed Proxy Form provides further details on appointing proxies and lodging Proxy Forms.

CORPORATE REPRESENTATIVE

A Shareholder that is a corporation may appoint an individual to act as its corporate representative to vote at the Meeting in accordance with section 250D of the Corporations Act. Any corporation wishing to appoint an individual to act as its representative at the Meeting should provide that person with a certificate or letter executed in accordance with the Corporations Act authorising him or her to act as that company’s representative. The authority may be sent to the Company and/or Share Registry in advance of the Meeting or handed in at the Meeting when registering as a corporate representative. A ‘Certificate of Appointment of Corporate Representative’ is enclosed if required.

ENQUIRIES

Shareholders are invited to contact the Company Secretary, David McArthur on +61 8 9423 3200 if they have any queries in respect of the matters set out in this Notice or the accompanying Explanatory Memorandum.

Explanatory Memorandum

This Explanatory Memorandum is intended to provide Shareholders with sufficient information to assess the merits of the Resolutions contained in the accompanying Notice of General Meeting (“**Notice**”) of the Company.

The Directors of the Company (“**Directors**”) recommend Shareholders read this Explanatory Memorandum in full before making any decision in relation to the Resolutions.

The following information should be noted in respect of the various matters contained in the accompanying Notice.

ORDINARY RESOLUTION 1

Ratification of issue of Consideration Shares to Catilina

On 26 October 2016, the Company announced to ASX that it had signed a binding agreement under which the Company would acquire 100% of the shares and related assets of Daniels Health Pty Ltd and Daniels Manufacturing Pty Ltd (together, **Daniels**) for an enterprise value of \$186 million from entities associated with the vendor, Dan Daniels (**Seller**) (**Daniels Acquisition**).

Daniels was founded in 1986 and is the leading player in medical waste services in Australia¹. The business provides a range of waste management solutions, including medical waste collection and treatment, proprietary reusable sharps containers and safety devices, point-of-use disposal technology, recycling, gatewaste, waste stream auditing, controlled substance destruction, secure shredding training, compliance and education.

The Company’s announcement on 26 October 2016 disclosed that the Company intended to fund the Daniels Acquisition through a combination of equity, cash and an increase in its debt facilities, including approximately \$85 million via a fully underwritten pro-rata accelerated non-renounceable entitlement offer, \$29 million through a placement to the Seller’s nominee Catilina (**Placement**), \$67 million from increased debt facilities arranged with the Company’s existing lenders, and \$14 million cash from the completion of a proposed sale and leaseback transaction.

On 1 December 2016, the Company announced to ASX that it had completed the Daniels Acquisition, and issued 12,568,000 Shares to Catilina under the Placement (**Consideration Shares**).

Resolution 1 seeks to ratify the issue of the Consideration Shares pursuant to Listing Rule 7.4.

¹ By pro forma FY2016 revenue.

Listing Rule requirements

Listing Rule 7.1 provides that a Company must not, subject to specified exceptions, issue or agree to issue more Equity Securities during any 12 month period than that amount which represents 15% of the number of fully paid ordinary securities on issue at the commencement of that 12 month period.

Listing Rule 7.4 provides that where a company in general meeting ratifies a previous issue of securities made pursuant to Listing Rule 7.1 (and provided that the previous issue did not breach Listing Rule 7.1) those securities will be deemed to be made with shareholder approval for the purpose of Listing Rule 7.1.

By ratifying the issue of shares under the Placement, the Company will retain the flexibility to issue Equity Securities in the future up to the 15% annual placement capacity set out in Listing Rule 7.1 without the requirement to obtain Shareholder approval.

Resolution 1 is an ordinary resolution.

The following information is provided for the purposes of Listing Rule 7.5:

- (a) 12,568,000 Shares were issued to Catilina on 1 December 2016.
- (b) The Shares were issued at an issue price of \$2.30 per Share.
- (c) The Shares issued rank pari passu with the Company’s existing Shares.
- (d) The Shares were issued to Catilina, an unrelated party of the Company.
- (e) Funds raised from the issue of the Shares were used to partly fund the Daniels Acquisition.
- (f) A voting exclusion statement in respect of Resolution 1 is set out under Resolution 1 in the Notice of General Meeting preceding this Explanatory Statement.

Recommendation

The Directors recommend that Shareholders vote in favour of Resolution 1.

Explanatory Memorandum

SPECIAL RESOLUTION 2 **Approval of Financial Assistance**

Background

As noted above, the Company completed the Daniels Acquisition on 1 December 2016.

As a result of the Daniels Acquisition, each of the Acquired Companies became subsidiaries of the Company.

Financing

As noted above, the Company partly funded the Daniels Acquisition from an additional credit facility arranged with the Company's existing lenders, Australia and New Zealand Banking Group Limited and Westpac Banking Corporation ("**Financiers**"). The Company's debt facilities ("**Facilities**") are provided pursuant to a syndicated facility agreement entered into between the Company and the Financiers dated 9 November 2015 as amended and restated on 30 November 2016 ("**Facility Agreement**"). The aggregate commitment of the Financiers under the Facilities is \$270,000,000.

The terms of the Facility Agreement, including in relation to interest payments, events of default, undertakings, representations and warranties (from the Company and Tox Australia), are customary for a facility of this nature.

Guarantee

The terms of the Facility Agreement require the Company to procure that each of the Acquired Companies, accede to the Facility Agreement as guarantors and thereby guarantee the obligations of the Company and Tox Australia under the Facility Agreement. Accordingly, each of the Acquired Companies propose to execute an accession agreement whereby it agrees to become an additional guarantor under the terms of the Facility Agreement. By its execution of the accession agreement, each of the Acquired Companies gives a guarantee and indemnity in favour of the Financiers in respect of all amounts owing under or in relation to the Facility Agreement ("**Guarantee**").

The terms of the Guarantee are customary for a guarantee and indemnity of credit facilities such as the Facilities and include representations and warranties and undertakings by each of the Acquired Companies as guarantor. The undertakings include negative undertakings which restrict each Acquired Company from, among other things, granting security over its assets, disposing of assets and incurring financial indebtedness without the consent of the Financiers.

Upon the Company, Tox Australia or the Acquired Companies committing an event of default under the Facility Agreement, the Financiers will have a number of rights including accelerating the monies loaned under the Facility Agreement. The Financiers are not required to make a claim against the Company or any other obligor under the Facility Agreement before claiming on a guarantor of the Facilities.

The Company and/or its subsidiaries may arrange refinancing and additional financing facilities at some time in the future. In order to secure and regulate the obligations of the Company and any applicable subsidiary or related entity of it in relation to new financing facilities, each of the Acquired Companies may have to:

- (a) execute, or accede to, a new facility agreement on substantially the same terms as the Facility Agreement (or on terms approved by its directors or its member (or both) at the relevant time);
- (b) give one or more of a guarantee, indemnity or security interest over its assets to secure any obligor's obligations under any new facility agreement and any related document; and/or
- (c) execute, or accede to, any document in connection with, or ancillary to, any new facility agreement or guarantee, indemnity or security interest given in connection with any new facility agreement and any related document.

Financial assistance – Corporations Act requirement for shareholder approval

Section 260A of the Corporations Act prohibits a company from giving financial assistance for the purpose of, or in connection with, the acquisition by any person of any shares in that company or a holding company of that company, unless:

- (a) the giving of the assistance does not materially prejudice:
 - (i) the interests of the company or its shareholders; or
 - (ii) the company's ability to pay its creditors;
- (b) the assistance is approved by shareholders under section 260B of the Corporations Act; or
- (c) the assistance is exempted under section 260C of the Corporations Act.

The expression "financial assistance" is a broad concept and includes such things as payments, loans, the provision of guarantees, indemnities and securities, releasing pre-existing obligations and the forgiving of debt. For present purposes, the provision by the Acquired Companies of the Guarantee in favour of the Financiers in connection with the Company's acquisition of the shares in the Acquired Companies may be considered to be "financial assistance" for the purposes of section 260A of the Corporations Act.

The directors of each of the Acquired Companies and the Directors have not formed the view that the giving of the Guarantee by the Acquired Companies will have the effect of materially prejudicing the interests of creditors or the shareholders of the Acquired Companies. However, due to uncertainty surrounding the expression "material prejudice" and the fact that, on the face of it, providing the Guarantee does to some extent prejudice the Acquired Companies' balance sheets and freedom to operate its businesses, the directors of the Acquired Companies and the Directors believe it is prudent to obtain the approval of their shareholders to ensure that the Acquired Companies comply with section 260A of the Corporations Act.

Explanatory Memorandum

Each of the Acquired Companies will therefore seek the approval of its own shareholder of the following resolution:

“THAT for the purposes of section 260B(1) of the Corporations Act 2001 (Cth) and for all other purposes that approval is given to [the Acquired Company] (“Company”) to enter into all the transactions described in the Explanatory Statement attached to this resolution and all elements of those transactions that may constitute financial assistance by the Company for the purposes of section 260A of the Corporations Act 2001 (Cth), including (without limitation) that the Company:

- a) accede to the Facility Agreement as an additional guarantor through the execution of an accession agreement;*
- b) if the Facility Agreement needs to be refinanced at some time in the future, from time to time:
 - i. execute or accede to a new facility agreement on substantially the same terms as the Facility Agreement (or on terms approved by the Board of directors or the members (or both) at the relevant time); and*
 - ii. give one or more of a guarantee, indemnity or security interest over its assets to secure any obligor’s obligations under any new facility agreement and any related document; and**
- c) execute or accede to, any document ancillary to, or in connection with, the Facility Agreement, any new facility agreement and any guarantee, indemnity or security given in connection with the Facility Agreement, and any new facility agreement and any related document.”*

Under section 260B of the Corporations Act, if immediately after the acquisition, the company giving financial assistance will be a subsidiary of another corporation which is listed in Australia (“**Listed Australian Holding Company**”), the financial assistance must also be approved by a special resolution of the shareholders of the Listed Australian Holding Company.

Accordingly, the Company, as the Listed Australian Holding Company of the Acquired Companies immediately following the Daniels Acquisition, will need to obtain approval of its shareholders for the giving of the financial assistance (through the provision of the Guarantee in favour of the Financiers) by each of the Acquired Companies.

Accordingly, the Resolution seeks Shareholder approval in accordance with section 260B(2) of the Corporations Act for the Acquired Companies to provide the financial assistance through the provision of the Guarantee.

Reasons for the proposal of financial assistance

As a condition of providing debt financing to partly fund the acquisition of shares by the Company in each of the Acquired Companies the Financiers required the Company, under the terms of the Facility Agreement, to procure that each of the Acquired Companies guarantee the repayment of the Facility.

Effect of the financial assistance

In accordance with section 260B(4) of the Corporations Act and in addition to the information set out elsewhere in this Explanatory Memorandum, the Company provides the following further information in relation to the proposed financial assistance by the Company.

(a) Effect of the financial assistance for the Company

Advantages

By agreeing to procure the Guarantee from each of the Acquired Companies, the Company was able to negotiate finance on better terms than may have been available to the Company without this support. If each of the Acquired Companies grants the Guarantee this will allow the Company to satisfy its obligations to the Financiers and thus avoid a potential event of default under the Facility Agreement.

Disadvantages

As the Company is already liable for the amounts due under the Facility Agreement, the Directors of the Company do not believe there are any disadvantages to the Company of the Resolution.

(b) Effect of the financial assistance for the Acquired Companies

Advantages

The funding which has been provided under the Facilities benefits the corporate group and includes a provision for working capital which will allow the Company to continue its support to the Acquired Companies.

If the Resolution is passed and the financial assistance is given through the provision of the Guarantee then the Acquired Companies will be able to accede to the Facility Agreement as additional guarantors and so allow the Company to meet its obligations under the Facility Agreement and avoid the occurrence of an event of default.

If an event of default occurs, the Financiers may require immediate repayment of the amounts due under the Facility which would have a material impact on the operations of both the Company and the Acquired Companies. In such case, the Company may be forced to refinance the Facilities on less advantageous terms.

Disadvantages

If the Resolution is passed and the financial assistance is given through the provision of the Guarantee then each of the Acquired Companies will be liable to repay all moneys payable under the Facility Agreement.

This may have an adverse effect on the financial position of the Acquired Companies as they will become liable for the debts and obligations of the Company and Tox Australia under the Facility Agreement. If the Company were to default under the Facility Agreement, the Financiers may make a demand under the Guarantee given by the Acquired Companies requiring them to immediately repay amounts due under the Facility Agreement, which may result in a winding up of some or all of the Acquired Companies.

The operations of the Acquired Companies, including their ability to borrow money in the future from other financiers may also be restricted by the representations and undertakings and the Guarantee given by them under the Facility Agreement.

The Directors have no reason to believe that there are any prevailing circumstances making a claim under the Guarantee probable or likely. In any event, the Directors believe that any potential disadvantages relating to the potential liability of the Acquired Companies under the Guarantee are outweighed by the advantages to the Company in granting the Guarantee.

Explanatory Memorandum

Disclosure

The Directors consider that the Notice and this Explanatory Memorandum contains all information known to the Company that would be material to the Shareholders in deciding how to vote on the Resolution, other than information which would be unreasonable to require the Company to include because it has been previously disclosed to the Shareholders of the Company.

Prior notice to Australian Securities and Investments Commission

As required by section 260B(5) of the Corporations Act, a copy of the Notice and Explanatory Memorandum as sent to Shareholders, was lodged with ASIC prior to its dispatch to Shareholders.

Recommendation

The Directors have had regard to the advantages and disadvantages of passing the Resolution to allow the provision of financial assistance, including those referred to above. Each of the Directors recommends that the Shareholders vote in favour of the Resolution.

Glossary of Terms

The following terms and abbreviations used in the Notice of General Meeting and this Explanatory Memorandum have the following meanings:

\$ means Australian dollars.

Acquired Companies means Daniels Manufacturing Australia Pty Ltd ACN 603 568 172, Daniels Health Pty Ltd ACN 060 871 249, Daniels Health NSW Pty Ltd ACN 003 716 256, Daniels Health Vic Pty Ltd ACN 001 623 392, SteriHealth Sharpsmart Pty Ltd ACN 126 447 685, Daniels Health Australia Pty Ltd ACN 094 425 448, Daniels Health Wollongong Pty Ltd ACN 074 368 559, Daniels Health Services Pty Ltd ACN 093 315 014, Daniels Health Laboratory Products Pty Ltd ACN 131 685 973, Kolback Environmental Services Pty Limited ACN 089 668 235, Daniels FMD Pty Ltd ACN 092 921 527, Redlam Waste Services Pty Ltd ACN 102 934 743 and RWS Admin Pty Ltd ACN 122 375 599.

ASX means ASX Limited ACN 008 624 691 and, where the context permits, the Australian Securities Exchange operated by ASX.

Catilina means Catilina Nominees Proprietary Limited ACN 005 197 455 as trustee for the Danny Boulas Daniels Family Trust.

Company or **Tox Free** means Tox Free Solutions Limited ABN 27 058 596 124.

Consideration Shares has the meaning given to it under ordinary resolution 1 in the Explanatory Memorandum.

Corporations Act means the Corporations Act 2001 (Cth) as amended from time to time.

Daniels has the meaning given to it under ordinary resolution 1 in the Explanatory Memorandum.

Daniels Acquisition has the meaning given to it under ordinary resolution 1 in the Explanatory Memorandum.

Directors means the directors of the Company, from time to time.

Equity Securities has the same meaning as in the Listing Rules.

Explanatory Memorandum means this explanatory memorandum.

Facility means each of the Company's existing facilities provided by the Financiers pursuant to the Facility Agreement.

Facility Agreement means the facility agreement entered into between the Company and the Financiers, among others, dated 9 November 2015 as amended and restated on 30 November 2016.

Financiers means Australia and New Zealand Banking Group Limited and Westpac Banking Corporation.

General Meeting or **Meeting** means the meeting of Shareholders convened by this Notice.

Guarantee means the guarantee and indemnity to be given by each Acquired Company in favour of the Financiers by their accession to the Facility Agreement as additional guarantors.

Listing Rules means the listing rules of ASX.

Notice or **Notice of Meeting** or **Notice of General Meeting** means this notice of General Meeting including the Explanatory Statement and the Proxy Form.

Proxy Form means the proxy form attached to the Notice.

Resolution means a resolution contained in the Notice.

Seller has the meaning given to it under ordinary resolution 1 in the Explanatory Memorandum.

Share means a fully paid ordinary share in the capital of the Company.

Shareholder means a registered holder of Shares.

Tox Australia means Tox Free Australia Pty Ltd ACN 127 853 561.

WVAP means the volume weighted average price for Shares.

WST means Australian Western Standard Time.

Certificate of Appointment of Corporate Representative

Shareholder Details

This is to certify that by a resolution of the directors of:

.....
(Company),
Insert name of Shareholder Company

the Company has appointed:

.....
Insert name of corporate representative

in accordance with the provisions of section 250D of the Corporations Act 2001, to act as the body corporate representative of that Company at the General Meeting of the members of Tox Free Solutions Limited to be held on Wednesday 24 May 2017 commencing at 10.00 am (WST) and at any adjournments of that General Meeting.

DATED2017

Please sign here

Executed by the Company)
in accordance with its constituent documents)

.....
Signed by authorised representative

.....
Signed by authorised representative

.....
Name of authorised representative (print)

.....
Name of authorised representative (print)

.....
Position of authorised representative (print)

.....
Position of authorised representative (print)

Instructions for Completion

- Insert name of appointing Shareholder company and the name or position of the appointee corporate representative (eg "John Smith" or "each director of the company").
- Execute the Certificate following the procedure required by your Constitution or other constituent documents.
- Print the name and position (eg director) of each authorised company officer who signs this Certificate on behalf of the company.
- Insert the date of execution where indicated.
- Prior to the Meeting, send or deliver the Certificate to the registered office of Tox Free Solutions Limited at Level 2, 55 Carrington Street, Nedlands WA 6009 or fax to 08 64447408.



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