



ABN 27 621 105 824  
ACN 621 105 824

## **ASX Announcement 27 March 2019**

### **Smiles Inclusive Limited: Notice of requisition under 249D**

Smiles Inclusive Limited (ASX:**SIL**) confirms receipt of a notice requisitioning a shareholders' meeting pursuant to section 249D of the Corporations Act from shareholders holding more than 5% of the ordinary shares of the company (**Notice**).

The Notice was received from MikeTim Super Pty Ltd, MRT49 Pty Ltd, DJ Herlihy Super Fund Pty Ltd and David Herlihy Pty Ltd, which are entities associated with current directors Mr Mike Timoney and Mr David Herlihy respectively.

The Notice requests that the Company hold a general meeting (**Meeting**) to consider resolutions to remove Ms Tracy Penn as a director, remove Mr David Usasz as a director, remove any person appointed between 25 March 2019 and the Meeting as a director and appoint Mr Joao Comacho as a director.

#### **Background**

Mr Timoney was the company's CEO from its listing on ASX through to 28 February 2019. Mr Herlihy was the company's chairman from listing through to 25 March 2019. The company's business performance under their leadership was well below expectation.

Mr Tony McCormack was appointed as the company's CEO on 5 March 2019. Mr McCormack's appointment has seen the company start to address many operational matters.

The company notes that Mr Timoney first indicated to the board that he may requisition a shareholders meeting on 25 March 2019.

Following this, the company sent a letter (**Letter**) to Mr Timoney outlining a number of concerns about Mr Timoney's and Mr Herlihy's behaviour in connection with the company and expressing the view of Mr Usasz, Mr Peter Evans and Ms Penn (**Responding Directors**) that the Meeting and the resolutions would not be in the company's best interests.

Mr Timoney's representative nevertheless served the Notice after market close on 26 March 2019, a copy of which is **enclosed** with this announcement.

The Responding Directors do not consider that the actions of Mr Timoney or Mr Herlihy are consistent with their duties to the company and accordingly they strongly encouraged Mr Timoney not to requisition a meeting and cause unnecessary distraction to the company. To that end, as part of a board renewal process, Mr Usasz and Ms Penn offered to resign from Smiles' board on the basis that Mr Herlihy also resigned and the company's CEO Mr Tony McCormack be appointed as a director.

Mr Timoney rejected this approach, for reasons including that Mr Herlihy was not willing to resign as a director. Unfortunately the Responding Directors do not consider any scenario where:

- Mr Herlihy remains a director on a smaller board; or
- Mr Herlihy, Mr Timoney and their nominees have a majority of board seats,

to be in the best interests of the company.

The Responding Directors note that Mr Timoney has failed to elucidate any clear or compelling plan to improve the company's performance, either as CEO or subsequently.

In contrast, they consider that under Mr McCormack's leadership the company has taken a number of important steps towards improving the performance of its business and repairing relationships with key stakeholders in the short time since being appointed CEO.

#### **Next steps**

Under section 249D of the Corporations Act, the company must call and arrange to hold a general meeting on the request of members with at least 5% of the votes that may be cast at the general meeting. The company must call the meeting within 21 days after the request is given, and the meeting is to be held not later than 2 months after the relevant notice has been received.

The company will arrange for an extraordinary general meeting (**EGM**) proposing the resolutions to be held within the timeframe prescribed by the Corporations Act. Once the meeting date has been set, a notice of EGM will be prepared and dispatched to all shareholders.

The Responding Directors have appointed Jones Day to provide them with legal advice.

-ends-

For further information please contact:

David Usasz, Chairman

M +61 408 738 040

E [davidu@smilesinc.com.au](mailto:davidu@smilesinc.com.au)

**SMILES INCLUSIVE LIMITED****ACN 621 105 824****(The "Company")****REQUISITION OF GENERAL MEETING BY MEMBERS UNDER SECTION 249D OF THE  
CORPORATIONS ACT 2001 ("Act")**

The undersigned, being members of the Company with at least 5% of the votes that may be cast at a general meeting, and having given notice to the Company pursuant to section 203D of the Act of their intention to move resolutions 1 to 3 below, request that the directors of the Company call and arrange to hold a general meeting of the Company under section 249D of the Act to consider and, if thought fit, to pass the following resolutions:

**1. RESOLUTION 1 – Removal of Director – Ms Tracy Penn**

*"That, pursuant to section 203D of the Corporations Act 2001 (Cth), Ms Tracy Penn be removed as a director of Smiles Inclusive Limited with effect from the end of the general meeting of Smiles Inclusive Limited at which this resolution is passed."*

**2. RESOLUTION 2 – Removal of Director – Mr David Usasz**

*"That, pursuant to section 203D of the Corporations Act 2001 (Cth), Mr David Usasz be removed as a director of Smiles Inclusive Limited with effect from the end of the general meeting of Smiles Inclusive Limited at which this resolution is passed."*

**3. RESOLUTION 3 – Removal of additional Director/s**

*"That, pursuant to section 203D of the Corporations Act 2001 (Cth), any person appointed as a director of Smiles Inclusive Limited on and from 25 March 2019 until the commencement of the general meeting at which this resolution is passed be removed as director of Smiles Inclusive Limited with effect from the end of the general meeting of Smiles Inclusive Limited at which this resolution is passed."*

**4. RESOLUTION 4 – Election of Director – Mr Joao Manuel De Oliveira Camacho**


*"That Mr Joao Manuel De Oliveira Camacho, having consented to act, be appointed a director of Smiles Inclusive Limited with effect from the end of the general meeting of Smiles Inclusive Limited at which this resolution is passed."*

Date: 26 March 2019

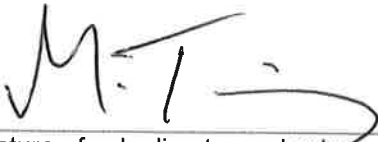
Signed by:

**SIGNED by MIKETIM SUPER PTY LTD** )  
 ACN 617 662 076 in its capacity as )  
 trustee for the **MIKETIM** )  
**SUPERANNUATION FUND**

in the presence of

  
 \_\_\_\_\_  
 Witness

A.W. KING  
 \_\_\_\_\_  
 Name of witness

  
 \_\_\_\_\_  
 Signature of sole director and sole  
 company secretary


M. TIMONEY  
 \_\_\_\_\_  
 Name of sole director and sole company  
 secretary (print)

**SIGNED by MRT49 PTY LTD ACN 617** )  
 486 923 in its capacity as trustee for )  
**THE PEVENSEY TRUST** )

in the presence of

  
 \_\_\_\_\_  
 Witness

A.W. KING  
 \_\_\_\_\_  
 Name of witness

  
 \_\_\_\_\_  
 Signature of sole director and sole  
 company secretary

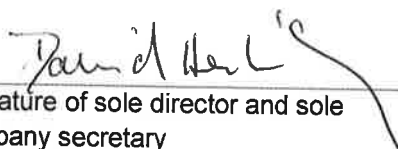
M. TIMONEY  
 \_\_\_\_\_  
 Name of sole director and sole company  
 secretary (print)

**SIGNED by DJ HERLIHY SUPER FUND** )  
**PTY LTD ACN 621 410 991 in its** )  
**capacity as trustee for the DJ HERLIHY** )  
**SUPERANNUATION FUND**

in the presence of

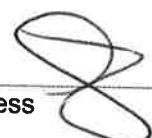
Witness 

A.W.KING  
 Name of witness

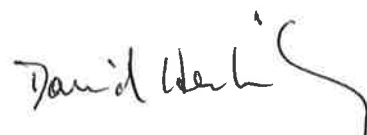
  
 Signature of sole director and sole  
 company secretary

DAVID HERLIHY  
 Name of sole director and sole company  
 secretary (print)

**SIGNED by DAVID HERLIHY PTY LTD** )  
**ACN 001 964 674** )  
 in the presence of )

Witness 

A.W.KING  
 Name of witness

  
 Signature of sole director and sole  
 company secretary

DAVID HERLIHY  
 Name of sole director and sole company  
 secretary (print)

**CONSENT TO ACT AS A DIRECTOR OF COMPANY, NOTICE OF PERSONAL DETAILS AND  
DECLARATION OF INTEREST**

TO: **SMILE INCLUSIVE LIMITED** ACN 621 105 824 (the "Company")

1. **Consent**

For the purpose of the *Corporations Act 2001* (Cth), I confirm my consent to act as a director of the Company.

2. **Personal details**

For the purpose of the *Corporations Act 2001* (Cth), I give notice of the following personal details.

Present given and family names	Joao Manuel De Oliveira Camacho
All former given and family names	N/A
Date and place of birth	19/2/1971 Lorenzo Marques, Mozambique
Usual residential address	104/30 The Avenue, Nedlands, WA 6009

3. **Declaration of interest**

For the purposes of the *Corporations Act 2001* (Cth), I confirm that -

- I have no material personal interest

3. **Declaration of interest**

For the purposes of the *Corporations Act 2001* (Cth), I confirm that the other directors of the Company are aware of the nature and extent of my interest in the Company.

DATED this 28<sup>th</sup> day of March, 2019.

