

JONES DAY

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26 April 2019

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VIA E-MAIL
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The Company Secretary
Smiles Inclusive Limited
C/- Level 27, 123 Eagle Street
Brisbane QLD 4000
AUSTRALIA

Dear Madam

Response to press release issued by David Herlihy and Mike Timoney

We act for Mr Peter Evans, Ms Tracy Penn and Mr David Usasz regarding matters relating to the Smiles Inclusive Limited's ("Company") upcoming EGM on 22 May 2019.

Please find enclosed our clients' response to the press release jointly issued by Mr David Herlihy and Mr Mike Timoney on 23 April 2019.

Our clients intend to post this response to the Company's shareholders as soon as possible. In light of recent events, we request that you immediately provide this response to the ASX as it contains information that is material to shareholders.

We will separately write to you requesting a copy of the members register of the Company in accordance with the *Corporations Act 2001* (Cth).

Yours faithfully



Brett Heading
Partner

Encl: Response to press release

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26 April 2019

Dear Shareholders,

Evans, Penn & Usasz: Response to defamatory press release issued by David Herlihy and Mike Timoney

We are writing to you in response to a press release (**Press Release**) published by Mr Mike Timoney and Mr David Herlihy on Tuesday, 23 April 2019 making a number of spurious allegations about the Company, Mr Peter Evans, Mr David Usasz and Ms Tracy Penn as directors, and the Company's advisers.

The allegations are either false and/or misleading and are highly defamatory. We reserve our rights to institute proceedings against Mr Herlihy and Mr Timoney in respect of the statements contained in the Press Release.

We are all directors and shareholders of the Company. In both capacities, we are extremely disappointed with recent events and are highly motivated to turnaround the Company's poor performance since listing on the ASX.

The Company has also now received a further notice (**Notice**) from shareholders including entities associated with Mr Timoney and Mr Herlihy to call a second extraordinary general meeting to remove Mr Peter Evans, Mr David Usasz and Ms Tracy Penn as directors.

Alarming, the issue of the further Notice appears to show that Mr Timoney and Mr Herlihy will refuse to accept the judgement of the Company's shareholders at the extraordinary general meeting scheduled for 22 May 2019 (**EGM**).

Mr Evans has confirmed that he does not wish to be part of a company controlled by Mr Timoney and Mr Herlihy and accordingly intends to resign from the board immediately if Mr Usasz or Ms Penn are removed and Mr Timoney and Mr Herlihy remain as directors following the EGM. Ms Penn and Mr Usasz have also indicated they will resign from the board immediately if they are not voted off the board but the Company comes to be controlled by Mr Timoney and Mr Herlihy following the EGM.

Accordingly, the Notice and a second extraordinary general meeting to remove Mr Evans, Mr Usasz and Ms Penn is completely superfluous and a waste of the Company's limited resources in circumstances where shareholders vote in support of Mr Herlihy and Mr Timoney at the EGM.

The Press Release and the Notice are extremely disappointing. The Company, acting through Mr Evans, Ms Penn and Mr Usasz, and together with Mr Tony McCormack, remains focused on its plan to improve operational performance.

Unfortunately, the actions of Mr Timoney and Mr Herlihy have been a very significant distraction for the Company, its management and its financiers and have made the task of turning around the Company's performance significantly more difficult.

Shareholders will be conscious of the fact that there are bounds of propriety in the manner in which directors of listed public companies are expected to conduct themselves. It has been demonstrated that those bounds have been exceeded by Mr Herlihy and Mr Timoney. It is entirely not appropriate that they continue to sit on the board of the Company.

We respond as follows to each point raised in the Press Release in order to balance the debate that you are being asked to vote on at the EGM:

1. *Timoney / Herlihy Statement 1: Ms Penn's employment was terminated on 10 January 2019 for non-performance. Mr Usasz and Mr Evans reinstated Ms Penn on 25 March 2019 in order to gain control of your Smiles Inclusive Board.*

Mr Herlihy and Mr Timoney's recollection of events is materially inaccurate. On 4 April 2019, the Company wrote to Mr Herlihy and Mr Timoney's lawyers as follows:

"The meeting of 25 March 2019 specifically sought to clarify board composition. This is reflected in the agenda.

Prior to the meeting of 25 March 2019, there was genuine confusion as between directors as to the status of Ms Tracy Penn's employment. While there had been some discussion regarding Ms Penn's ongoing role, this was never considered or resolved by the board. As you would be aware the requirements for board decisions are set out in our client's constitution.

Our understanding is that the purported notice of termination (sent by Mr Mike Timoney and copying only your other client Mr David Herlihy) was not provided to the other directors until March 2019 when it was raised in discussion by Mr Herlihy, at around which time it had become apparent that he had

lost the support of a majority of the directors (including Ms Penn). This timing seems unlikely to be coincidental.

The reduction in Ms Penn's salary and title were not reflective of underperformance. As your clients are aware, our client's organisational structure has changed significantly with reference to the review undertaken by Mr Tony McCormack with many employees being repurposed. Numerous personnel have also accepted reduced remuneration packages given the present financial circumstances, including all executive and non-executive directors.

If your clients cannot (or refuse to) recollect the conversations regarding Ms Penn having an ongoing role as an employee and director, a notation to this effect can be included in the minutes. However, this would be surprising given the purported notice of termination does itself contemplate that Ms Penn would have an ongoing role, albeit with different responsibilities and entitlements."

At no time was it ever contemplated that Ms Penn's directorship with the Company would come to an end, regardless of her ongoing employment status with the Company.

The "real-life" quotation from a JVP relates to the Company's Dalyellup JVP. Ms Penn was only appointed as the caretaker business development manager in October 2018 following some shuffling of internal resources. She was scheduled to meet with three of the Company's joint venture practices (**JVPs**) in Western Australia during a four-day business trip in October 2018 (including the Company's Dalyellup JVP).

On that short trip Ms Penn visited the Company's Mt Hawthorn and Joondalup JVPs, however, was she prevented from travelling to Dalyellup. Instead, Ms Penn determined to meet with the Company's Joondalup JVP and Practice Manager for a second time to make full use of her business trip.

Ms Penn does communicate via telephone and email with the Western Australia Practice Managers. While it is true that Ms Penn has not been able to return to Western Australia since October 2018, the visits will resume as soon as possible as part of the Company's focus on improving operational performance.

2. *Timoney / Herlihy Statement 2: Ms Penn has a 2nd full-time job. This funds luxurious holidays – at your cost. Ms Penn is moonlighting. See www.stampwithtracy.com.*

These statements are grossly misinformed and misleading. They are also highly defamatory to Ms Penn's personal and professional reputation spanning over 30 years in the dental industry to suggest that Ms Penn is "moonlighting" at the Company's cost.

Anyone visiting the website put forward by Mr Herlihy and Mr Timoney (www.stampwithtracy.com) will see that Ms Penn's last blog was dated August 2017.

Stampin' Up! is nothing more than Ms Penn's personal hobby: as a demonstrator, Ms Penn hosts a monthly stamp club in her own home; technique workshops; and classes for the profoundly deaf, all outside of regular business hours.

Each year Stampin' Up! offers an incentive trip and Ms Penn has had the opportunity to participate in a number of them over the years. Ms Penn has only been on one trip Stampin' Up! trip since commencing employment with the Company; this trip was fully funded by Stampin' Up! and Ms Penn took annual leave in accordance with the Company's annual leave policy.

3. *Timoney / Herlihy Statement 3: Mr Evans is leading an unlawful EGM and promoting electoral fraud. Mr Evans is sponsoring invalid resolutions and excluded high quality candidates.*

These statements are grossly inaccurate and the defamatory imputations are highly damaging to Mr Evans' substantial personal and professional reputation spanning over 35 years.

Mr Evans is advised that the EGM and all resolutions (including those put by Mr Lev Mizikovsky and Mr Anthony Hamilton) have been properly called in accordance with all applicable laws, rules and best practices.

Furthermore, Mr Evans, Ms Penn and Mr Usasz were always unanimous in their agreement that changes to the existing board are in the Company's best interests. Indeed, prior to the Company receiving any shareholder requisitions, Ms Penn and Mr Usasz attempted to reason with Mr Timoney and Mr Herlihy to try to avoid the cost and distraction of the EGM by offering to resign as directors on 25 March 2019 if Mr Herlihy also stood down from the board. Mr Timoney and Mr Herlihy rejected this offer for reasons that they have never properly explained to the board, nor to shareholders and JVPs.

In light of recent events, Mr Evans believes that the appropriate time for considering new board candidates is after shareholders have voted on the persons best placed to lead the Company's efforts to improve operational performance.

Mr Evans' decision not to put resolutions appointing three new directors proposed by Mr Timoney and Mr Herlihy to EGM was made for a number of reasons on advice from the Company's lawyers. The most important is the fact that the resolutions were not notified by Mr Herlihy and Mr Timoney in accordance with applicable law, rules and best practices. Additionally, and perhaps more relevantly, Mr Timoney and Mr Herlihy can appoint these directors themselves if they regain control of the Company. In that circumstance, there is no benefit to complicating the documents or process in relation to the EGM.

It is astonishing to Mr Evans, Ms Penn and Mr Usasz that in the Company's current financial circumstances Mr Herlihy and Mr Timoney think that it is a good use of the Company's limited funds to call a second extraordinary general meeting, which is unnecessary, and hugely distracting to management's efforts to turnaround business performance. If shareholders vote to support Mr Herlihy and Mr Timoney such that they come to control the Company following the EGM, then none of Mr Evans, Ms Penn or Mr Usasz intend to continue to serve as directors on the board. In contrast, Mr Evans, Ms Penn and Mr Usasz are deeply concerned that in issuing the further Notice Mr Timoney and Mr Herlihy appear to be saying that they will refuse to accept the judgement of the Company's shareholders at the EGM if the vote goes against them.

Shareholders are being asked to carefully consider the merits of the competing views of the board and vote on who they think should be responsible for implementing reform to turnaround the Company's performance, including identifying appropriate new board candidates to lead the Company in that endeavour.

4. *Timoney / Herlihy Statement 4: Mr Evans' one-man EGM Committee is fake – it is a front for Mr Usasz / Ms Penn. Mr Evans is misleading Smiles' shareholders - Mr Evans is not acting alone.*

The defamatory imputation that Mr Evans is misleading the Company's shareholders is highly damaging to Mr Evans' long established personal and business reputation.

The independent committee comprised of Mr Evans (as the only director at the time whose removal had not been requisitioned) was established on legal advice to enable the Company to sensibly convene the EGM.

Mr Evans does share many of Mr Usasz and Ms Penn's concerns about the actions of Mr Timoney and Mr Herlihy and, as a significant shareholder in the Company, also has a similar desire to help restore the Company's value. This does not detract from his independence.

It is also not clear who Mr Timoney and Mr Herlihy consider should have formed the committee in circumstances where all other directors had had their removal requisitioned.

5. *Timoney / Herlihy Statement 5: Mr Usasz has prior form – bad governance / poor transparency / low compliance. 2012/13 EGM - Mr Usasz resigned as Chair of Queensland Mining Corporation.*

Mr Usasz has a long established personal and business reputation, which is significantly damaged by the defamatory imputation of these statements.

Mr Usasz stepped down from his role as chairman, and resigned as a director of Queensland Mining Corporation Limited in December 2012. Mr Usasz in fact offered to resign much earlier than that at the time that his CEO departed in October 2012. However, the new substantial investor requested that Mr Usasz remain as chair to conduct an orderly handover. Mr Usasz's formal resignation in December 2012 just happened to coincide with the receipt of a shareholder requisition that sought to remove directors including Mr Usasz. Mr Usasz was thanked by the Queensland Mining Corporation board for his 'enormous contribution to the Company'.

In this regard, Mr Timoney and Mr Herlihy have selectively omitted that Mr Herlihy was separately subject to a shareholder requisition that sought his removal as a director of Fraser Range Holdings Ltd. He resigned as a director before a vote was taken.

6. *Timoney / Herlihy Statement 6: Mr Usasz has doctored his CV for the Smiles EGM ballot paper. Mr Usasz fails to disclose his 6 years as Chair of Queensland Mining Corporation.*

Doctoring records is a very serious allegation and there is no proper basis for Mr Herlihy and Mr Timoney making such egregious statements about Mr Usasz.

Mr Usasz's established business reputation is undoubtedly damaged by these highly defamatory statements.

Mr Usasz determined only to list his relevant experience over the past five years as being material information relevant to shareholders consistent with the disclosure made in the listing prospectus. He is a highly experienced chairman, having served in such capacity on boards of a number of other family and unlisted public companies over many years. None of these additional experiences have been listed in his CV for the same reason.

7. *Timoney / Herlihy Statement 7: Mr Evans, Ms Penn and Mr Usasz are practising escalating corporate thuggery. They have issued verbal threats and vexatious legal claims – to avoid an EGM.*

These statements are false and highly defamatory.

Mr Evans, Ms Penn and Mr Usasz have at all times acted in the Company's best interests, and welcome the upcoming EGM to allow shareholders the opportunity to decide the future leadership of the Company.

The Press Release and the Notice follow from the conclusion of the Company's interim investigation into Mr Timoney's conduct whilst CEO. This investigation resulted in the Company having to take the very serious step of instituting proceedings to recover funds that it alleges were misappropriated by Mr Timoney and his related entities.

Based on the Company's findings the board (without Mr Timoney present) determined to terminate Mr Timoney's employment for cause on 24 April 2019. In accordance with applicable law, Mr Timoney will continue to act as a director of the Company until such time as he resigns or is removed by resolution of the Company's shareholders or otherwise in accordance with the Company's constitution. The vote of the board was three to one, with Mr Herlihy voting against the resolution.

At all times Mr Evans, Ms Penn and Mr Usasz have sought and acted upon legal advice to ensure they have complied with their duties as directors of the Company.

Additionally, the Company has received support from many of its JVPs and also from third parties. In particular, a number of JVPs named in the letter signed by Mr Joao Comacho and Mr Arthur Walsh have indicated that they did not consent to the inclusion of their names in that letter.

The Company has been in contact with Mr Timoney's former employer Abano (the parent company of Dental Partners) who confirmed that it was forced to terminate Mr Timoney's employment. A spokesperson for Abano also noted that Mr Timoney refused to accept this decision and responded in a very similar fashion to the manner in which Mr Timoney is conducting himself at present.

8. *Timoney / Herlihy Statement 8: Mr Evans, a corporate banker, has dismissed the relevance of Smiles' own dentists. Mr Evans has dismissed Dr John Camacho, Smiles' Head of Clinical Advisory.*

These statements are false and misleading.

Mr Evans is not and has never been a corporate banker; he was asked to join the Company's board given his very substantial experience as a junior founder of Morgans, which comprised establishing and ongoing responsibility for managing Morgans' large branch network. Mr Evans has a deep understanding of the level of services required to make a large network prosper, and is committed to turning around the Company's performance should shareholders vote against returning control of the Company to Mr Herlihy and Mr Timoney.

Mr Evans has been clear in the notice of meeting for the EGM that the Company is open to the appointment of a dentist or dentists to the board. After receiving feedback from a number of JVPs, Mr Evans concluded that Dr John Camacho, a paediatric specialist, was not the best choice given the make-up of this particular company.

While Dr Camacho's appointment to a future Clinical Advisory Committee occurred before Mr Timoney was sacked as CEO, the current management team and board never discussed or agreed to appoint Dr Camacho as the "head" or chair of that committee.

9. *Timoney / Herlihy Statement 9: Mr Usasz, a corporate advisor, has imposed on Smiles his best mates and clients. Mr Usasz hired his protegee Mr Innes. Mr McCormack is a tax client of Mr Usasz.*

These statements are grossly misinformed and misleading.

Mr Paul Innes was referred to Mr Usasz by an external party when he let it be known that the Company needed a strong CFO with ASX-listing experience. Regrettably, Mr Innes determined after a short time that he could not work with Mr Timoney and sought to resign. Mr Usasz was concerned that no quality replacement would easily be found at the end of a calendar year and in light of recent events, and Mr Innes was asked to complete the Company's 31 December 2019 accounts and half-year review.

Mr Innes employment with the Company ceased on 28 February 2019 after clearing the half-year review.

Mr Tony McCormack was never a personal tax client of Mr Usasz. A company of which Mr McCormack was an employee was a tax client of PWC. Mr McCormack and Mr Usasz became acquainted with one another at PWC through mutual clients, and later through engagements between PWC and companies with which Mr McCormack was employed. Many business connections are made in this manner.

Mr McCormack has communicated a very thorough turnaround plan to JVPs in recent weeks.

10. *Timoney / Herlihy Statement 10: Mr Evans, Mr Usasz and Mr McCormack have zero prior healthcare experience. Mr Evans ignores this FACT when he dismisses 3 experienced proven candidates.*

These statements are incorrect.

As mentioned above, Mr Evans was appointed to the Company's board given his very substantial and highly relevant experience as a junior founder of Morgans, which comprised establishing and ongoing responsibility for managing Morgans' large branch network.

Ms Penn has over 30 years of practice management experience in the dental industry. She has worked as a practice development specialist for Dental Partners and also developed and operated the Oasis Academy and The Discovery Program (supporting dental professionals in understanding their businesses through a more focussed approach).

Mr Usasz has over 40 years' experience in business in Australia and Hong Kong. He is an experienced company director of ASX-listed companies and has served in as chair on boards of a number of other family and unlisted public companies over many years. Additionally, as a tax partner at PWC, Mr Usasz had many dentists as clients and assisted them, among other things, to buy and sell dental practices.

Mr Evans, Ms Penn and Mr Usasz are unanimous in their agreement that changes to the existing board are in the Company's best interests.

However, in light of recent events, Mr Evans believes that the appropriate time for considering new board candidates is after shareholders have voted at the EGM on the persons best placed to lead the Company's efforts to improve operational performance and make appointments to refresh the Company's board.

Yours faithfully,

Mr Peter Evans, Ms Tracy Penn and Mr David Usasz