RUSSELLS

20 May 2020

Our Ref: MMC:20190211

Ms Michelle Aquilina
CEO and director
Smiles Inclusive Limited
WEST BURLEIGH QLD

By Email: michelle.aquilina@totallysmiles.com.au

Dear Madam

Smiles Inclusive Limited

We act for Drs John Camacho, Arthur Walsh and Philip Makepeace.

We have been provided with a copy of your letter to our clients dated 29 April 2020. We have also been briefed with an exchange of correspondence between your Ms Michelle Aquilina, Ms Abigail McGregor (of Norton Rose Fulbright) and correspondence between Talbot Sayer and Arnold Block Liebler in April 2019.

We are writing to you in relation to our clients' concerns regarding the following matters:

1. The lack of independence in response to the Whistleblower complaints by our clients;

2. That the Whistleblower Policy adopted by SIL does not comply with the legal requirements;

3. Announcements published on the Australian Stock Exchange (**ASX**) by Smiles Inclusive Limited (**SIL**) which are misleading;

4. A publication in the Gold Coast Bulletin on 15 May 2020.

Lack of independence

We refer to our clients' email to Ms Michelle Aquilina dated 16 April 2020 which raises a number of serious allegations and what our clients consider to be breaches of the *Corporations Act 2001* and the *Criminal Code*.

Our clients made the complaints to you expecting that Ms Aquilina would take them seriously, and to ensure that a proper and independent investigation was carried out ensuring complete transparency. We note that Ms Aquilina has rightly acknowledged that the complaints made by our clients regarding SIL's directors and officers must be the subject of an independent investigation and that, inferentially, the process cannot be independent unless a person entirely independent of SIL is appointed to investigate.

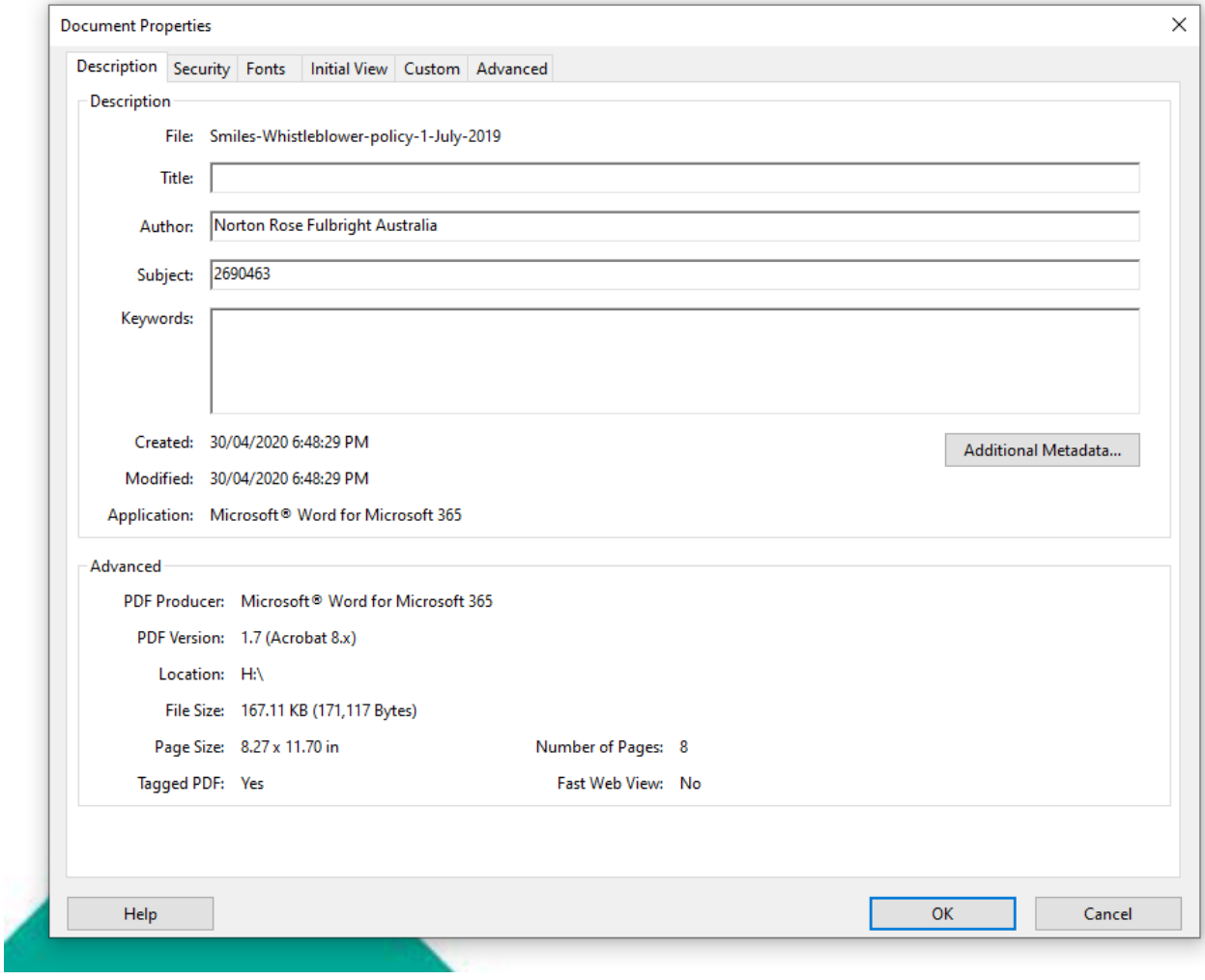
In addressing those complaints, and without any reference to our clients, Ms Aquilina appointed Ms Abigail McGregor, a Partner of the law firm Norton Rose Fulbright to investigate, all the while adopting the position that Ms McGregor was independent.

We regret to say that our clients do not agree. Ms McGregor is not independent.

We say this because we have been briefed with a copy of the Whistleblower Policy published by SIL and said to have been adopted on 12 March 2018. In examining the metadata properties of that document, it appears that the document was created on 26 July 2018, some four months after it is alleged to have been adopted.

You will appreciate then that this evidence causes our clients a significant amount of concern, which is heightened by their frustrations in their dealings with SIL over recent months. The metadata properties of the document suggest that the document was backdated, and that directors, staff, contractors and others relying upon that Policy have been misled as to the date in which it was, in fact, adopted by SIL. Naturally, there are flow on issues regarding these matters for the directors and officers of SIL for which SIL may wish to put its insurer on notice. We invite you to explain these anomalies and provide documentation to us in support.

SIL publishes only one Whistleblower Policy on its website, said to be current. The Policy states on the front page that it was adopted on 1 July 2019; it is markedly different to the Policy apparently adopted by SIL on 12 March 2018. Again, if one carefully examines the metadata properties of the document, it states that the document was created on 30 April 2020 at 6:48 pm by 'Norton Rose Fulbright Australia' as follows:



A number of issues arise from this.

Firstly, you will appreciate this evidence is incredibly disturbing; it suggests that the Policy was created on 30 April 2020 by law firm, Norton Rose Fulbright and then backdated to apply from 1 July 2019. We need not reiterate the concerns our clients have regarding the apparent duplicitous conduct of the directors in making such representations. We invite you to explain these anomalies and provide documentation in support.

Secondly, and more regrettably, Ms Aquilina has adopted the view that Ms McGregor is entirely independent, yet, she is a Partner of the law firm which apparently created and settled the SIL Whistleblower Policy on 30 April 2020. How can our clients have any faith whatsoever in an open and transparent investigation being conducted when Ms McGregor's firm appears to have been retained previously by SIL? This information only compounds our clients' concerns and serves to justify them. And whilst our clients feel no ill-will towards Ms McGregor, your Ms Aquilina cannot, with any sensibility, propose her appointment now knowing these matters. Likewise, Ms Aquilina cannot embark on a course of pretending that she is independent, when this is clearly not the case at all. Our clients have absolutely no faith in her appointment to investigate their concerns.

Thirdly, and remarkably, the amendments were made to the Policy after the ASX announcement SIL made to the market on 17 April 2020 which we address below. Ms Aquilina subsequently became the subject of a Whistleblower complaint by our clients in relation to that announcement; that Ms Aquilina should continue to insist that Ms McGregor be the person to investigate Ms Aquilina is deeply troubling.

Fourthly, the purported appointment of Ms McGregor contains a similar flavor to the allegations made by Arnold Bloch Leibler in their correspondence to SIL's solicitors, Talbot Sayer in early-mid 2019 regarding the inability of SIL to comply with simple governance issues and their preference only to comply with lawful directions from shareholders if they considered the directions appropriate.

The whole purpose of the Whistleblower legislation is to ensure that the process of investigating a complaint is not only independent, but it is perceived to be independent. The mere fact that SIL may potentially have a claim against Norton Rose Fulbright in relation to the Policy provides an additional ground upon which Ms Gregor ought not be retained.

Quite simply, and in order for the process to work as it was intended, the investigator must have no previous association with SIL.

We propose that the parties proceed on the following timetable:

1. By Monday 25 May 2020, the parties jointly approach the President of the Law Council of Australia for the nomination of three proposed investigators;

2. Within 7 days of receipt of those nominations, the parties agree on an investigator;

3. The investigator shall take whatever steps s/he considers is necessary to undertake the investigation.

Non-compliance with the Whistleblower legislation

As you would know, in accordance with section 1317AI(1) of the *Corporations Act 2001* (the Act), a public company must have a policy that sets out the matters referred to subsection (5) and the policy must be available to officers and employees of the company. Subsection (5) identifies the matters that the policy must contain and we note in particular, subsection (d) requires the company's policy to contain information about *how* the company will investigate disclosures that qualify for protection under that Part of the Act.

It seems to us that SIL's Whistleblower Policy fails to comply both with Part 9.4AAA of the Act and ASIC Regulatory Guide 270 published in November 2019. The Regulatory Guide of course contains what ASIC considers to be good practical guidance on implementing and maintaining a whistleblower policy and we would have expected a public listed company to ensure strict compliance with its terms.

We draw your attention to the material published at RG270.111-120 of the Guide and specifically, the requirements that a policy must include information about how the entity will investigate disclosures, how it will handle and investigate disclosures, including timeframes and the steps the entity will take after it receives a disclosure. The Policy published by SIL is, with respect, devoid of any such detail.

Importantly for our client and in circumstances where SIL concedes that an external investigation is necessary – as is the case here - SIL's Policy says nothing about the precise steps SIL will take to investigate, it says very little about the appointment of an external investigator, including the steps it will take to ensure that the investigator is independent, nor the timeframes in which those steps will be taken.

These deficiencies are astounding for a public listed entity.

In the circumstances, and even on the bases we have identified, our clients do not consider that the Whistleblower Policy published and apparently adopted by SIL on 1 July 2019 complies with either Part 9.4AAA of the Act, or the ASIC Regulatory Guide 270. More importantly, our clients consider that SIL has an obligation to release a statement to the ASX informing the market that its Policy does not meet the requirements of the Act or the Guide, and that it will prepare and publish an updated Policy to ensure it is complaint. Our clients believe they have an obligation to report these matters to ASIC and to the ASX to ensure that SIL properly and adequately meets its lawful obligations. This matter also requires independent investigation in accordance with the Whistleblower Policy.

And it may well be that if SIL retained Norton Rose Fulbright to update its Whistleblower Policy, and the firm failed to ensure that the Policy complied with the Act and ASIC's Guide, SIL may have an action against them.

Misleading publications on the Australian Stock Exchange

There have been at least two publications by SIL on the ASX which have been misleading to the market. The first publication was a media release made on 17 April 2020 in which SIL stated:

> *Smiles Inclusive Limited (ASX: SIL) today received notice from Dr John Camacho purporting to represent 16 of Totally Smiles' 98 dentists, seeking to terminate their service agreements.*
>
> *The Company is in the process of contacting the dentists named in Dr Camacho's letter to understand their intentions and is committed to work with them wherever possible. The majority of those dentists have informed the Company that they were unaware of Dr Camacho's letter to the Company and have stated that it is not their intention to terminate their service agreements.*
>
> …

In the publication, Ms Aquilina alleges that, in effect, Dr Camacho proceeded to terminate the services agreement on behalf of 16 dentists without any authority whatsoever. Such a statement is highly defamatory of Dr Camacho as it imputes, amongst other things, that Dr Camacho acts without authority, he has no regard for legal processes and he cannot be trusted. These imputations amount to a grave and indefensible defamation of Dr Camacho; they damage his good name and his well established reputation.

The fact of the matter is that Dr Camacho would not have provided written notice to terminate the services agreements on behalf of the dentists named in his correspondence unless he had their absolute and unequivocal commitment to doing so.

We are presently taking instructions from Dr Camacho in relation to his rights under the *Defamation Act 2005 (Qld)* and we reserve his rights accordingly. In the meantime, we invite you to identify the dentists who SIL says were not aware of Dr Camacho's letter to SIL.

Secondly, we refer to the announcement made by SIL on the ASX on 15 May 2020 in which SIL states:

> *Smiles Inclusive is pleased to announce the reopening of all dental centres following the Australian Health Protection Principle Committees (AHPPC) approval to move to Level 1 dental services…*

On our instructions, that statement is misleading as it gives the impression that **all** dental centres under the banner of Totally Smiles have re-opened. Our clients are aware that the following centres have not re-opened:

1. Lake Grace, Western Australia;
2. Karrinyup, Western Australia;
3. Warren, New South Wales;
4. Epping, New South Wales;
5. Miranda, New South Wales;
6. Bundaberg, Queensland.

This is, of course, because there is no dentist presently engaged to service patients at each of these locations. Even the practices that are open, are only operating a maximum of three days per week, rather than on a full time basis, as your announcement suggests.

Further, our clients understand that of the two Prime children's dental clinics in Western Australia, only one is open at any one time.

It is quite stunning that a public company would make an announcement to the market that all of its dental centres are open when that is simply untrue, and far from the truth. We invite SIL to re-publish a statement correcting both announcements.

Lastly, in relation to the announcement that Emma Corcoran, Chief Financial Officer and Company Secretary left SIL on Friday 15 May 2020, we are surprised that SIL made the announcement to the market on the day when Ms Corcoran left the employment of SIL. We would have expected SIL to make the announcement to the market at the time of Ms Corcoran's resignation; it appears necessary that we draw the directors' and officers' attention to the requirements of the continuous disclosure regime obliging public listed companies to make immediate disclosure of the change in management. Alternatively, if Ms Corcoran was dismissed, we would appreciate you confirming the date that occurred.

Gold Coast Bulletin article

We refer to an article that appeared in the Gold Coast Bulletin on 15 May 2020. The article refers to certain statements made by the former SIL CEO Mr Mike Timoney and specifically, that SIL *'… cut out a dentist from a share of the multimillion-dollar proceeds from the sale of two clinics'*. The reference

to the two clinics is of course a reference to the sale of Dr Chen's two practices in which he was not consulted at all in relation to the sale, nor did he receive any of the sale proceeds.

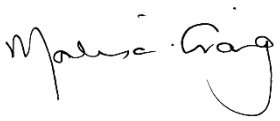
The article goes on to say that *'… a spokesman for the company denied the claims stating all financial obligations were settled at the time of sale in December last year'.*

Our clients have been liaising with Dr Chen and their enquiries are to the effect that not only was Dr Chen not consulted in relation to the sale of the two practices, nor did he receive any payment from the sale, but more concerning is that on our instructions Dr Chen and his family are still owed a significant sum from SIL, something in the order of $1.5 million, of which $700,000 for funds advanced to SIL in December 2018 and repayable on 13 December 2019 – those funds are now 5 months overdue - with the remaining portion due to Dr Chen and his family for what should have been their share of the sale proceeds of his two Queensland practices.

Further, we are instructed that for SIL's 'spokesman' to say that 'all financial obligations were settled at the time of sale in December last year' is, on our instructions, a complete fabrication and another example of SIL misleading the market. Our clients consider that this statement of itself will be the subject of a further complaint under the Whistleblower Policy for investigation by the independent investigator.

We look forward to receiving your agreement to approach the Law Council of Australia by Monday 25 May 2020 for the nomination of three independent investigators.

Yours faithfully



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