

Our Ref: CS:CS:20200265
Your Ref:

7 October 2020

Mr James Shipton
Chair
ASIC

Ms Amanda Zeller
Acting Regional Commissioner, Queensland
ASIC

Email: james.shipton@asic.gov.au; Amanda.zeller@asic.gov.au

Dear Mr Shipton and Ms Zeller

SMILES INCLUSIVE LIMITED ACN 621 105 824

We act for Philip Makepeace, Arthur Walsh and Makepeace Nominees Pty Ltd ACN 132 697 128 (the **Requisitioning Shareholders**) in relation to the calling of a general meeting of Smiles Inclusive Limited ACN 621 105 824 (SIL) pursuant to section 249F of the Corporations Act 2001 (**Act**) (**Meeting**) which is scheduled to be held on 23 October 2020 at 10.00am.

The Requisitioning Shareholders have made voluminous complaints to ASIC regarding the conduct of SIL and its directors. We do not intend to reiterate the contents of those complaints in this correspondence.

We been instructed that the Requisitioning Shareholders have received **complaints in the last 24 hours from SIL shareholders regarding the use of their personal information by agents of the current SIL directors** to contact them via telephone (Orient Capital, a division of Link Market Services).

The instructions provided by these agents of the SIL directors have related to completion of the proxy form (voting against the resolutions) to ensure that the resolutions seeking to remove the current SIL directors are defeated and seeking to circumvent the use of the bona fide third-party proxy collector (Advanced Share Registry).

Advanced Share Registry has been engaged by the Requisitioning Shareholders to ensure the integrity of the proxy collection given the allegations of proxy tampering which occurred during a similar meeting of members during 2019.

We are instructed that the Requisitioning Shareholders have three concerns and complaints regarding this unpermitted contact:

1. ASIC will be aware that the telephone numbers and email addresses of shareholders do not form part of the register of members available to the public pursuant to section 173(3) of the Corporations Act. Even if they were, this **use of personal information of shareholders by the directors for their individual personal gain and for furthering their personal position to remain a director of SIL is not a permitted purpose for use of the register pursuant to the Corporations Act.** Use by the directors is **also a breach of the Privacy Act 1988** and the privacy policy of SIL.
2. **Misinformation by agents acting for SIL Directors (who are acting for in their personal interest, rather than the interests of the company)** regarding the legitimacy of the proxy form circulated by the Requisitioning Shareholders with the Notice of Meeting and the use of Advanced Share Registry as a third party proxy collector.



AJ & Co Lawyers Pty Ltd
ABN 55 464 159 383

Level 18 Waterfront Place
1 Eagle Street Brisbane
Queensland 4000

GPO Box 215
Brisbane QLD 4001

P + 61 7 3708 0900
F + 61 7 3708 0999
E info@ajandco.com.au



3. **The directors of SIL are under a continuing duty not to spend Company funds for an improper purpose**, especially given the distressed state of SIL and its failure to inform the market of its true financial status through the non-lodgement of its 31 December 2019 and 30 June 2020 financial statements.

In the context of a requisitioned meeting to consider the composition of the Company's board, it is clear that the directors should not expend Company funds for the purpose of soliciting votes for themselves in a contested election of the Company board (see *Advance Bank Australia Ltd v FAI Insurances*). Accordingly, it would be **improper for the current SIL directors to spend company resources to secure their re-election.**

Yours sincerely



Caroline Snow
Partner
AJ & Co Lawyers

