

# ASIC approves public examination of former directors of collapsed dental roll-up Smiles Inclusive

By Matt Ogg

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*Photo: Sora Shimazaki, via Pexels.*

Several former directors of the previously ASX-listed dental group known as Smiles Inclusive and its Totally Smiles brand have been summoned by the Federal Court for a public examination of what went wrong at the failed company, which went into liquidation in mid-2021 and, according to administrators at Deloitte, "may have traded whilst insolvent from 31 December 2019, if not earlier".

After having more than 50 dental practices agglomerated into the group following its 2018 initial public offering (IPO), Smiles Inclusive's problematic financial performance led to vocal opposition against the board and leadership from a faction of dentists who had become joint venture partners (JVP) in the roll-up.

During liquidation, most of the company's assets were sold off to Genesis Capital with the shell of the group then picked up by Exit Solutions. From a brand that once had more than 50 practices to its name, Totally Smiles now has only nine under the new ownership.

When it all fell apart, JVPs claimed they were owed almost \$100 million by Smiles Inclusive, while as a secured creditor National Australia Bank (ASX: NAB) received around 15-16 cents to the dollar on its loans made to the Gold Coast-based group.

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For a couple of years it seemed like the whole ordeal would end up being a sunk cost for unsecured creditors, and it could still be, but the disgruntled former partners have sought to capitalise on a legal precedent set last year that allows for the public examination of former directors of failed companies even if they've been liquidated.

In February last year the High Court allowed an appeal of a NSW Supreme Court judgment relating to iron ore and steel producer Arrium, which was placed into administration in 2016 and went into liquidation just over three years later.

Arrium shareholders, who claimed information published in a 2015 capital raise did not "adequately or fairly" reflect the true state of its business, decided to apply to the Australian Securities and Investments Commission (ASIC) so they could be given the status of 'eligible applicant' in order to apply for a court order and examine former officers.

The regulator gave those shareholders the green light, and a majority of High Court judges allowed their appeal.

"The decision has far reaching implications for directors and officers of failed companies who may, for example, be examined about their examinable affairs by shareholders even if the liquidator has declined to examine the company directors or officers," HWL Ebsworth's Jonathan Kramersh, Josh Hanegbi and Thaivini Sathiyaseelan wrote in the aftermath.

Those implications have now spread to Smiles Inclusive in an initiative led by former JVPs, Drs John Camacho and Arthur Walsh, with the Federal Court of Victoria issuing summonses for former directors and officers Anthony McCormack, Emma Corcoran, Peter Evans, Michelle Aquilina, David Usasz and James Fuller.

The first hearing is due to take place on 29 March with examinations expected to start on 5 June.

"This groundbreaking legal action follows the landmark Arrium decision in the High Court last year. Smiles shareholders and creditors, courtesy of the new ASIC regime, will finally have the opportunity to learn exactly what went on at Smiles Inclusive behind closed doors that led to the loss of \$100 million," Walsh said.

"We are eternally grateful to Senator Deborah O'Neill for her support. This ASIC approved public examination of Smiles directors and officers in the Federal Court is only possible due to Senator O'Neill's intervention," he said, adding an intention to serve further summons covering bankers, stockbrokers, professional advisors and more.

"We will leave no stone unturned."

Camacho said there would be many actors involved with the Smiles IPO who have "been put on notice", and he will also be taking aim at the market operator.

"We have put the ASX on notice. The ASX was well aware of serious issues from very early on," he alleged.