

## CONFLICTS MANAGEMENT POLICY

LawFinance Limited ACN 088 749 008

This is the conflicts of interest management policy (**Policy**) of LawFinance. The Policy sets out the policies and procedures LawFinance has adopted to manage any conflicts of interest that may arise between any Lawyer, Members and LawFinance in connection with any Litigation Funding Scheme (including, for the avoidance of doubt, any litigation funding arrangement) funded, or proposed to be funded, by LawFinance in Australia. This Policy provides the necessary procedures to comply with the Corporations Regulations 2001, as amended, (**Regulations**) and addresses Australian Securities and Investments Commission Regulatory Guide 248 (**RG 248**).

1. For the duration of a Funding Agreement, LawFinance will:
  - a. comply with the requirements of the Regulation by implementing the Policy; and
  - b. provide timely and clear disclosure to a Member of any material breach of the Regulations by LawFinance which arise during the term of the Funding Agreement.
2. It is the responsibility of senior management of LawFinance to ensure that this Policy is implemented, monitored and managed. Senior management of LawFinance will identify and will regularly review LawFinance's Funding Agreements with the objective of identifying potential conflicts of interest and to ensure that this Policy is effectively integrated into LawFinance's business, with all employees understanding the operation of this Policy. Senior management will be responsible for reporting to the board of LawFinance on compliance with this Policy.

### Assessment of conflicts

3. Prior to engaging in any Litigation Funding Scheme, LawFinance will perform a thorough assessment of any potential conflicts of interest which may exist or arise in connection with the scheme. This will involve undertaking and obtaining clearance pursuant to LawFinance's standard conflict checks for each proposed Litigation Funding Scheme. In addition, LawFinance will also give consideration as to whether conflicts of interest may arise in connection with the proposed scheme. This assessment will involve:

- a. the identification of divergent interests (between LawFinance, Lawyers and Members) and where conflicts may arise;
  - b. the assessment of those divergent interests and potential conflicts; and
  - c. making a determination upon, and implementation of appropriate responses to, any divergent interest or potential conflict.
4. This assessment of potential conflicts and implementation of practices to address these will also take into account the particular nature, scale and complexity of the proposed Litigation Funding Scheme and may vary on a case by case basis to account for these factors.
5. The process of assessing conflicts in relation to each Litigation Fund Scheme will be overseen by a designated employee appointed by senior management of LawFinance (**Designated Employee**). The Designated Employee will also oversee the continued monitoring, assessment and evaluation of those divergent interests during the course of the relevant Litigation Funding Scheme and continue to assess whether the procedures in place to identify and manage divergent interests and potential conflicts remain adequate.

### **Implementing procedures**

6. LawFinance is committed to applying and monitoring the conflict management procedures set out in this Policy. As such, the Designated Employee will be responsible for ensuring that the conflict management procedures are adhered to and that compliance with this Policy is maintained and reviewed on a regular basis (and in any event, at least every six months). If the Designated Employee becomes aware that any aspect of this Policy has not been adhered to, the Designated Employee must escalate any such non-compliance to the board of LawFinance.
7. The board of LawFinance will regularly review the conflict management procedures set out in this Policy at least once every 12 months to ensure that the procedures are adequate to identify, assess and evaluate, and successfully manage, conflicts of interest which may be expected to arise for a litigation funder the size and scale of LawFinance.

### **Documentation of practices for managing conflicts**

8. To comply with the relevant Regulations, this Policy outlines the documentation and record keeping requirements engaged in by LawFinance relating to conflicts of interest. The Designated Employee will have responsibility for compliance with the requirement to maintain these records and also for associated record keeping and reporting. All documentation relating to the management of conflicts including the

following documentation:

- a. conflicts identified and actions taken;
  - b. any reports given to directors and senior managers of LawFinance regarding conflict of interest matters; and
  - c. copies of written conflicts of interest disclosures provided to prospective members or the public as a whole,
- must be kept for at least seven years.

### **Approval and oversight by senior management**

9. The Designated Employee has been appointed by the board of LawFinance to have primary responsibility for the implementation and continued monitoring of interests and potential conflicts, as set out in this Policy. The Designated Employee will be responsible for providing regular updates on conflict of interest matters to other senior management and the board. The Designated Employee will be free of any business or other relationship that could materially interfere (or be perceived to interfere) with the independent exercise of their judgement.
10. The Designated Employee will have responsibility for the following:
  - a. communicating the conflicts management procedures to those responsible for implementing them and other stakeholders;
  - b. ensuring that there are adequate staff and resources to undertake the required compliance functions in relation to conflicts management;
  - c. ensuring staff awareness of the conflicts management procedures;
  - d. implementing clear reporting guidelines for the staff (if any) responsible for the conflicts management procedures; and
  - e. receiving regular reports from staff (if any) tasked with conflicts management responsibilities on implementation of the conflicts management procedures and reporting on compliance with the conflicts management procedures to senior management and the board.

### **Protection of the interest of Members**

11. LawFinance will ensure it maintains robust practices to ensure that conflicts of interests are managed in a way which protects the interests of Members.

### **Disclosure to prospective members**

12. LawFinance will provide written disclosure to prospective Members outlining information on LawFinance 's procedure for the management of conflicts of interest. This disclosure will include the following relevant details:
  - a. information that will assist prospective Members in understanding the different interests of LawFinance, Lawyers and Members;
  - b. the specific situations where conflicts may arise in the Litigation Funding Scheme and how these interests may conflict; and
  - c. details of the dispute resolution options that are available to a Member who has a dispute with LawFinance.

### **Disclosure to existing Members**

13. LawFinance recognises that it has an ongoing obligation to disclose conflicts of interest to Members. As such, LawFinance will notify Members of any significant conflicts of interests which arise during the conduct of a Litigation Funding Scheme at the first reasonable opportunity. Such disclosure will be timely, prominent and specific and will provide sufficient detail for Members to understand the potential impact of the relevant divergent interests on the Litigation Funding Scheme. Any such disclosure will be delivered via email (if the Member has consented to electronic delivery) or otherwise in writing.

### **Recruitment of prospective members**

14. Recruitment campaigns for prospective members of Litigation Funding Schemes will likely involve the use of advertising materials. In these circumstances, LawFinance will ensure that these materials and recruitment strategies do not contain any information that is misleading or deceptive, or likely to mislead or deceive. The Designated Employee will be responsible for reviewing and approving all advertising and recruitment materials to ensure that there is no likelihood of prospective members being misled.

### **Settlements**

15. This Policy and the procedures for managing conflicts of interest apply in connection with the settlement of any Litigation Funding Scheme. If any Litigation Funding Scheme is settled without a proceeding being issued, the terms of any such settlement agreement should also be approved by counsel (or senior counsel, if involved). In reviewing a settlement agreement, counsel (or senior counsel, if involved) must satisfy themselves that the proposed settlement is fair and reasonable, taking into account the claims made on behalf of the Members who will be bound by the settlement and potential conflicts between LawFinance, Lawyers and

the Members, as well as between Members. In satisfying themselves that the proposed settlement is fair and reasonable, counsel (or senior counsel, if involved) must:

- a. advise whether, in counsel's opinion, settlement on the terms and in the circumstances is fair and reasonable in all the circumstances;
- b. in forming his or her opinion, have regard to the factors set out in the Schedule to this Policy, to the extent that counsel considers them relevant; and
- c. provide his or her opinion in writing.

## **Lawyers**

16. Our standard agreement with Lawyers requires:

- a. the Lawyers to disclose to each Member the sources of all fees or other income they may receive in relation to the Litigation Funding Scheme, including providing a budget for all estimated costs and expenses up to the conclusion of a trial in any funded proceedings;
- b. the Lawyers to inform LawFinance, in writing and as soon as they become aware of any of the information in (i) and (ii) below, namely whether:
  - i. the Lawyers or any director, partner or senior employee (or any spouse or child of any director, partner or senior employee) of the Lawyers beneficially owns at least 1% of LawFinance's issued share capital; and
  - ii. any barrister or expert witness retained or briefed by the Lawyers in relation to the Litigation Funding Scheme (or any spouse or child of any such barrister or witness) beneficially owns at least 1% of LawFinance's issued share capital;

and for:

- iii. the Lawyers to make all reasonable enquiries, at the commencement of these terms or when initially retaining all barristers and expert witnesses, in order to determine whether (i) or (ii) apply;
- iv. the Lawyers to require, for the duration of the proceedings, all directors, partners, senior employees, barristers and expert witnesses to immediately inform the partner of the Lawyers with responsibility for the Litigation Fund Scheme of any change in the information referred to in (i) and (ii) which has been previously disclosed to LawFinance; and

- v. the partner of the Lawyers with responsibility for the Litigation Fund Scheme to immediately inform LawFinance of any information received pursuant to this section.
  - c. the Lawyers to inform the Members of any significant developments in the proceedings by means of update reports which LawFinance will email or post to each funded claimant.
17. LawFinance will prominently disclose to Members if:
- a. LawFinance and the Lawyers are associates, or if their spouses, children, directors, partners or senior employees are associates;
  - b. there any relationships between LawFinance and other directors, partners or senior employees of the Lawyers;
  - c. any relationships (outside the provision of the services for the Litigation Funding Scheme) with any other parties to the scheme (including any involvement with any other Litigation Funding Scheme); and
  - d. any direct or indirect fee or benefit to be paid or given by one party to the Litigation Funding Scheme to another for providing services to, or participating in, that scheme.
18. In addition, all relationships between LawFinance and the Lawyers that are current, proposed or existed in the previous two years must be disclosed to Members.
19. If the Lawyer is appointed to act for both LawFinance and the Members in relation to a Litigation Funding Scheme, LawFinance will ensure that Members are aware that the Lawyer is also acting for LawFinance. It is noted that if the Lawyer is appointed by each Member, there will be a direct contractual relationship between the Lawyer and the Members and, as a result, the Lawyer will have a fiduciary obligation to the Members because the Members are the Lawyer's clients.
20. In contrast, if the Lawyer is appointed to act for both LawFinance and the Members in relation to a Litigation Funding Scheme and there is no direct contractual relationship between the Lawyer and each Member, LawFinance must ensure that the Lawyer is engaged on terms which specify that, if there is a divergence of interest between LawFinance and a Member, the Lawyer must ensure that the interests of each Member are adequately protected.

### **Compliance with ASIC Act**

21. LawFinance will ensure that the terms of its Funding Agreements are consistent with Division 2 of Part 2 of the *Australian Securities and Investments Commission Act 2001* (Cth).

**Notification of breach**

22. If LawFinance commits a material breach of the Regulations and does not remedy the breach within 30 days after receiving a notice from a Member requiring LawFinance to do so, the Member may terminate their Funding Agreement by giving written notice of termination to LawFinance.

## Glossary

23. In this Policy, capitalised terms have the following meanings:

**Designated Employee** means the LawFinance employee appointed by senior management of LawFinance to oversee the conflict assessment process;

**Funding Agreement** means the agreement entered into between LawFinance and each Member in relation to a Litigation Funding Scheme;

**LawFinance** means LawFinance Limited (ACN 088 749 008);

**Member** means each person belonging to a Litigation Funding Scheme in a Funding Agreement with LawFinance;

**Lawyer** means any lawyer appointed to act, or proposed to be appointed to act, in relation to a Litigation Funding Scheme;

**Litigation Funding Scheme** has the same meaning as contained within Regulation 5C.11.01 of the *Corporations Amendment Regulation 2012 (No. 6)* and also includes a 'litigation funding arrangement' as defined within Regulation 5C.11.01 of the *Corporations Amendment Regulation 2012 (No. 6)*; and

**Policy** means this conflicts of interest management policy.

If you have any queries regarding this Policy or the Policy's implications for you, please contact LawFinance by email at [enquiries@LawFinance.com.au](mailto:enquiries@LawFinance.com.au) or by telephone on +61 2 9696 0220.

Dated: 31 December 2018

## SCHEDULE

Criteria to be applied by counsel in giving an opinion on a proposed settlement

1. In reviewing a proposed settlement, counsel must be satisfied that the settlement will be fair and reasonable, taking into account the claims that will be the subject of the settlement and any potential conflicts between LawFinance, the Lawyer and the Members whose claims are subject to the proposed settlement.
2. In satisfying himself or herself that the proposed settlement is fair and reasonable, counsel should take into account, among other things, the following factors:
  - a. the amount offered and the likely share (or means of calculating the likely share) of each Member;
  - b. the prospects of success in the proceedings (i.e. the weaknesses, substantial or procedural, in the case advanced by the Members);
  - c. the likelihood of the Members obtaining judgment for an amount significantly in excess of the proposed settlement sum;
  - d. whether the proposed settlement sum falls within a realistic range of likely outcomes;
  - e. the terms of any advice received from an independent expert on the issues that arise in the case;
  - f. the attitude of the Members to the proposed settlement;
  - g. the likely duration and cost of the proceedings if continued to judgment;
  - h. the terms of the LawFinance's funding agreement about the procedure to be applied in reviewing and deciding whether to accept any settlement offer, including any factors that will and will not be taken into account in deciding to settle;
  - i. whether LawFinance might refuse to continue to fund the proceedings if the proposed settlement does not take place; and
  - j. whether the proposed settlement involves any unfairness to any Member or categories of Members for the benefit of others.
3. Counsel should also take into account the potential for conflicts of interest between Members in accordance with the test applied by Jessup J in *Darwalla Milling Co Pty Ltd v F Hoffman-La Roche Ltd (No 2) (2006) 236 ALR 322* at [41], which relevantly states: "I propose to turn then to the question whether the settlement, including the distribution scheme, involves any actual or potential unfairness to any group members, or categories of group members, having regard to all relevant matters, including whether the overall settlement sum, even if reasonable as such, involves

unfair compromises by some members, or categories of members, for the benefit of others, and whether the distribution scheme fairly reflects the apparent or assumed relative losses suffered by particular members, or categories of members. Any consideration of the fairness and reasonableness of the settlement in the present case must take into account not only the overall settlement sum and its relationship with the amount that might be considered a best possible outcome after a successful trial, but also the structure and workings of the scheme by which that sum is proposed to be distributed amongst group members. The fairness and reasonableness of the settlement, from the point of view of any one group member, will necessarily depend on both of these factors."