
SCHEDULE 3 – CONFLICT OF INTEREST POLICY

Purpose

AUGUSTA VENTURES LIMITED Company Number 06687054 (AVL) relies on the exemptions under the Corporations Regulations 2001 (“the Regulations”) for litigation funding schemes and litigation funding arrangements. Augusta Ventures (Australia) Pty Limited (**AVA**) acts as a consultant to AVL and assists it in implementing this policy.

AVL recognises that potential conflicts of interest (**Conflicts**) may arise in the conduct of its business between AVL and claimants that use our services. AVL is committed to identifying any Conflicts; disclosing those to the claimant; and managing Conflicts in a way that is fair to AVL and the claimant.

Conflicts of Interest

According to RG 248.11, the nature of the arrangements between the parties involved in a litigation funding arrangement has the potential to lead to a divergence of interests between the claimants and the interests of the funder and the lawyers because:

- ❖ The funder has an interest in minimising the legal and administrative costs associated with the scheme and maximising their return;
- ❖ Lawyers have an interest in receiving fees and costs associated with the provision of legal services; and
- ❖ The claimants have an interest in minimising the legal and administrative costs associated with the scheme, minimising the remuneration paid to the funder and maximising the amounts recovered from the defendant or insolvent company.

The divergence of interests may result in conflicts between the interests of the funder, lawyers and the claimants. These conflicts can be actual or potential, and present or future.

Conflicts of interest between the funder, lawyers and claimants may arise in a litigation scheme where:

- ❖ The lawyers act for both the funder and the claimants;
- ❖ There is a pre-existing legal or commercial relationship between the funder, lawyers and/or claimants; or
- ❖ The funder has control of, or has the ability to control, the conduct of the proceedings.

The divergence of interests between the funder, lawyers and claimants in a litigation scheme could affect:

- ❖ The recruitment of prospective claimants;
- ❖ The terms of any funding agreement;
- ❖ A scheme where there are difficulties with the case of the representative party, but not with the cases of other claimants of the class; and
- ❖ Any decision to settle or discontinue the action.

Administration

AVL has conducted a review of its business operations that relate to litigation funding to identify and assess conflicting interests and has developed the following policy to meet the purpose described above and manage any conflicts of interest.

AVL's Managing Directors are responsible for devising and implementing the policy. All employees of AVL and AVA are kept informed of the policy and are expected to act in accordance with it.

AVL and AVA staff are required to advise the Managing Directors when they become aware of any conflict and the AVA Managing Director maintains a register detailing the conflict and actions taken to deal with it.

This policy shall be revised from time to time where necessary and reviewed annually by AVL's Managing Directors.

A copy of this policy shall be annexed to every litigation funding agreement between AVL and a claimant.

Measures in Place to Mitigate Conflicts of Interest

AVL has in place the following measures which serve to mitigate potential conflicts of interest:

- ❖ Neither AVL nor its employees nor the employees of AVA provide legal advice or legal services to claimants;
- ❖ Each Director of AVL provides an annual declaration of existing interests which states any interests held by that Director (direct or indirect) in incorporated or unincorporated entities, including any directorships, committee memberships or positions of office;
- ❖ The funding agreement provides that AVL acknowledges and agrees that the lawyers will take instructions from the claimant in the event that a conflict arises.
- ❖ Neither AVL or AVA engages the same lawyers to act for it in a particular matter as those that are engaged to act for the claimant, and neither AVL nor AVA will seek to influence the claimant's lawyers to cede control of the claim to AVL, or otherwise to act in breach of their professional duties.
- ❖ Any funds arising from a settlement or judgment are paid into the trust account of the claimant's solicitor and distributed to AVL by that solicitor according to the terms of the funding agreement.

Identification of Conflicts of Interest and Disclosure

AVL will review the claimant's claim before offering funding to the claimant to identify any interest that any of the AVL board members may have that may be divergent to those of the claimant.

If there are any divergent interests, then such interests are to be recorded in a register. The Managing Directors will determine whether AVL is in a position to proceed with offering funding.

AVL's Managing Directors will conduct half yearly reviews of all funded cases to assess whether a conflict of interest has arisen between AVL's interests and those of a claimant. The review will be documented in a register.

If any conflicts of interest or potential conflicts of interest are identified, AVL, through its consultant AVA, will promptly notify the claimant and the claimant's lawyers and the notification shall be filed in the conflicts register. The disclosure must be made promptly and contain sufficient detail for claimants to understand the potential impact of the conflicts of interest or potential conflicts of interest.

AVL will manage any conflicts or potential conflicts identified by recommending to the claimant that they seek legal advice in relation to the conflict and that any dispute arising from the conflict be mediated in accordance with the funding agreement.

Recruitment of Prospective Members

For representative proceedings or class actions, recruiting a sufficient number of prospective members with good claims to particulate in a litigation scheme or proof of debt scheme is of commercial importance to the person operating the scheme or arrangement. ASIC considers that this could be an area where divergent interests between a funder, lawyers and members could arise.

AVL's Managing Director will oversee all processes in respect of the recruitment of prospective members or claimants, including the recruitment of lead applicants in class actions to ensure that any conflicts do not result in misleading or deceptive conduct on the part of AVL. These processes include marketing, advertising, communications with potential claimants and communications with lawyers.

Where the recruitment of prospective members and claimants is undertaken by the lawyers, which is preferred by AVL, AVL will nevertheless take steps to check whether the lawyers' communications comply with the above and raise any concerns with the lawyers promptly.

Terms of the Funding Agreement

As recognised in RG 248.69, potential claimants do not always have legal knowledge, and may not be well placed to negotiate a funding agreement or have the ability to assess the terms they agree to. This can create an asymmetry of bargaining power between the funder and claimants.

AVL has included terms in the funding agreement as to managing conflicts of interest, including a cooling-off period, a clear statement that AVL will comply with the requirements of the regulations, an acknowledgement that the lawyer is to give priority to the instructions given by the claimant over those of AVL and clear procedures as to resolving any disputes as to settlement and any other disputes.

AVL will ensure that the terms of the funding agreement comply with the law, including the law on unfair contracts and unconscionability where relevant.

AVL recommends to the potential claimants that it seeks independent advice on the funding agreement prior to entering into it.

Settlement Decisions

This is an area that may be prone to conflict. The claimant may regard a settlement offer is too low whereas AVL may consider it is reasonable under the circumstances. In the event a funded case is lost at trial AVL forgoes its investment whereas the claimant does not suffer an actual financial loss. There is always a risk of losing a matter at trial, even where it is reasonably believed the claimant has a good arguable case.

Where a settlement offer is received, and the claimant does not wish to accept it, there is provision for the claimant's solicitor and counsel to consider the reasonableness of such offer and the claimant is bound to follow the advice of their legal team.

If a settlement is being considered prior to proceedings having been issued, the Managing Directors will ensure that the proposed settlement has been considered by counsel. The counsel's opinion will be binding.

In considering the settlement, counsel will be asked to take into account the following:

- ❖ The amount offered to a claimant;

- ❖ The prospects of success of the claim;
- ❖ The likelihood of the claimant(s) obtaining judgment for an amount in excess of the settlement sum;
- ❖ Whether the settlement sum falls within a realistic range of likely outcomes;
- ❖ The terms of any advice received from an independent expert on the issues that arise in the case;
- ❖ The attitude of the group claimants to the settlement;
- ❖ The likely duration and cost to a claimant of proceedings if continued to judgment;
- ❖ The terms of any funding agreement that specify the procedure that will be applied in reviewing and deciding whether to accept any settlement offer, including the factors that will and will not be taken into account in deciding to settle;
- ❖ Whether the funder might refuse to fund further proceedings if the settlement is not approved; and
- ❖ Whether the settlement involved unfairness to any claimant or categories of claimants for the benefit of others.

Conduct of the Case

There may be circumstances where AVL disagrees with the strategy for the conduct of the case being proposed by the claimant and/or his legal team.

AVL considers this is unlikely as AVL has an incentive for the case to be run as quickly as possible, to minimise the costs and maximise the likelihood of a successful resolution.

In the event that a conflict does arise, AVL will manage it by recommending to the claimant that they seek legal advice in relation to the conflict and that any dispute arising from the conflict be mediated in accordance with the funding agreement.

Independence of the funder, lawyers and claimants

It is AVL's policy that the lawyers are not to be engaged on terms that they act for both the funder and the claimant.

If AVL or AVA has an existing relationship with the lawyers instructed on a particular matter, it will disclose such relationship with the claimant, including the term of the relationship and the nature of the relationship.

Replacement of legal advisors

The claimant has a right to disengage the solicitor and any other advisors retained by them. They are also free to select their own solicitors and advisors subject to AVL's approval.

The Funding Agreement makes provision for dispute resolution where an independent counsel is appointed.