



# CONFLICTS MANAGEMENT POLICY

## 1. INTRODUCTION

### 1.1. Background

- (a) The *Corporations Regulations 2001* (Cth) (**Regulations**) require that businesses providing certain litigation funding services must maintain, for the duration of those services, adequate practices for identifying and managing any conflicts of interest that may arise<sup>1</sup>. ASIC's Regulatory Guide 248 *Litigation schemes and proof of debt schemes: Managing conflicts of interest (RG 248)* sets out ASIC's expectations for compliance with the obligation to have in place adequate practices and procedures for the management of conflicts of interest in the course of these litigation funding services.
- (b) CASL Governance Ltd (ACN 643 977 833 ) (**CASL Governance**) holds an Australian financial services licence (**AFS licence**) (No. 525889). The *Corporations Act 2001* (Cth) (**Corporations Act**) requires all AFS licence holders to "...have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative..."<sup>2</sup>. ASIC's Regulatory Guide 181 *Licensing: Managing conflicts of interest (RG 181)* sets out ASIC's expectations for AFS licence holders in order to demonstrate compliance with the obligation to have adequate arrangements for the management of conflicts of interest.
- (c) This Conflicts Management Policy (**Policy**) has been created with guidance from, amongst other sources, the Corporations Act, Regulations, RG 248 and RG 181.

### 1.2. Purpose and Application

- (a) This document sets out the Policy of CASL Group Pty Limited (ACN 645 222 546) (**CASL Group**) and all present or future related corporate entities (unless otherwise indicated), including the subsidiaries listed below:
  - (i) CASL Governance;
  - (ii) CASL Management Pty Limited (ACN 645 229 116, AFS Representative No. 1292680);
  - (iii) CASL Funder Pty Limited (ACN 645 229 643, AFS Representative No. 1296364),(collectively **CASL** and each a **CASL Entity**).
- (b) This Policy applies where:
  - (i) a CASL Entity provides the following services to litigation funding schemes or litigation funding arrangements (as defined in the Regulations<sup>3</sup>):
    - (A) funding for a claim (**Claims Funding**); and/or

<sup>1</sup> Reg 7.6.01AB of the Regulations.

<sup>2</sup> Section 912A(1)(aa) of the Corporations Act.

<sup>3</sup> Reg 5C.11.01 of the Regulations.

- (B) funding management services for a claim (**Claims Management**),  
(together, **Litigation Funding Services**); and/or
- (ii) a CASL Entity provides other financial services that it is authorised to provide as an AFS Licence holder or AFS Representative (as relevant) (**Other Services**).
- (c) In this Policy the terms “funder” and “manager” apply as relevant to the CASL Entity providing Claims Funding or Claims Management services, respectively.
- (d) Litigation Funding Services includes Claims Funding provided pursuant to a law firm portfolio funding facility.
- (e) This Policy stipulates the principles, practices and procedures to be followed by the employees, contractors, consultants and directors of CASL and, where applicable, representatives of CASL Governance (**CASL Personnel**) in relation to identifying and managing any conflicts of interest that may arise.
- (f) CASL will continue to implement best practice in relation to conflicts management and ensure that they and their staff fully comply with the Policy at all times.
- (g) Any breaches of this Policy must be reported to the Compliance Officer and Chief Executive Officer (**CEO**).

### **1.3. Adoption and Review**

- (a) This Policy was last updated with effect from 30 May 2023.
- (b) CASL will continuously review its current and future business operations to identify and assess any actual, emerging or potential conflicts of interest.
- (c) This Policy is to be reviewed by the Compliance Officer (or other designated person) at least every 12 months. A report of the review, together with the recommendation, if any, of the Compliance Officer, must be provided to the Board of CASL Group and CASL Governance after the report is completed.
- (d) The Compliance Officer may, in consultation with the CEO, review and recommend amendments to the Policy from time to time to improve CASL’s conflict management practices.

## **2. WHAT IS A “CONFLICT OF INTEREST”?**

### **2.1. Conflicts of Interest - General**

- (a) Conflicts of interest are circumstances where some or all of the interests of people or entities whom a CASL Entity provides services to are inconsistent with, or diverge from, some or all of the interests of CASL. This includes actual, apparent and potential conflicts of interest.

### **2.2. Conflicts of Interest – Litigation Funding Services**

- (a) The nature of the relationships between the parties involved in funded litigation has the potential to lead to a divergence between the interests of the claimants and the interests of the funder, the manager and the lawyers. For example, this divergence of interests may arise as:
  - (i) the funder and manager have an interest in minimising the legal and administrative costs associated with the claim and maximising their financial return;

- (ii) lawyers have an interest in receiving fees and costs associated with the provision of legal services; and
  - (iii) the claimants have an interest in minimising the legal and administrative costs associated with the claim, minimising the remuneration paid to the funder and manager and maximising the amounts recovered from the defendant.
- (b) The divergence of interests may result in conflicts between the interests of the funder, manager, lawyers and the claimants. These conflicts can be actual or potential, and present or future.
- (c) Examples where conflicts of interest between the funder, manager, lawyers and/or claimants may arise in funded litigation include where:
- (i) the lawyers act for both the funder and the claimants;
  - (ii) there are pre-existing legal or commercial relationships between the funder, manager, lawyers, claimants and/or defendants;
  - (iii) the funder or manager have control of, or have the ability, through their contractual rights, to control the conduct of the litigation.
- (d) The divergence of interests between the funder, manager, lawyers and/or claimants in funded litigation could affect:
- (i) the recruitment of prospective claimants;
  - (ii) the terms of any funding agreement;
  - (iii) the way a claim is conducted where there are, for example, difficulties with the case of the representative party, but not with the cases of other claimants of the class; and
  - (iv) any decision to settle or discontinue the action.

### **2.3. Conflicts of Interest – Other Services**

- (a) Conflicts of interest may also arise between a CASL Entity and people or entities whom a CASL Entity provides Other Services to.

### **3. RESPONSIBILITIES OF CASL PERSONNEL**

- (a) Delegations and responsibilities are to positions and not to individuals.
- (b) All individual positions nominated are responsible for understanding the responsibilities assigned to them and are obligated to execute their responsibilities as outlined within this Policy.
- (c) All CASL Personnel are responsible for identifying conflicts, whether actual, apparent or potential, that arise in their course of business and employment. All CASL Personnel must notify the Compliance Officer and the CEO of such actual, apparent or potential conflicts.
- (d) All CASL Personnel shall:
- (i) read and become familiar with the Policy; and
  - (ii) adhere to the Policy at all times and integrate the Policy in their day-to-day duties.

### 3.1. The Chief Executive Officer and Compliance Officer

- (a) The Compliance Officer is responsible for monitoring and managing the Policy.
- (b) The CEO is responsible for implementing the Policy.

### 3.2. Litigation Funding Services – Investment Managers

- (a) Investment Manager (**IM**) includes any role designated as Investment Manager, Claim Manager, Litigation Manager, or variations on these with the same or similar role or responsibilities.
- (b) in respect of actual or prospective funded litigation managed by each IM, IMs shall:
  - (i) identify and assess any divergent interests between CASL Entities, the actual or prospective funded claimants, and the lawyers that may give rise to conflicts and ensure that disclosure is made to all actual or prospective funded claimants in accordance with **section 4.4** of this Policy;
  - (ii) ensure that the funding agreement between a CASL Entity and a claimant relating to the funded litigation (**Claim Funding Agreement**) complies with **section 4.5(c)** of this Policy;
  - (iii) advise the Compliance Officer immediately of any conflicts or relationships which have not been disclosed to the funded claimants or any other non-compliance with this Policy of which the IM is aware;
  - (iv) assist the CEO in determining and implementing an appropriate response to any such conflicts and work with the funded claimants and the lawyers to resolve the conflicts having regard to the principles and procedures set out in this Policy; and
  - (v) provide feedback to the Compliance Officer on the operation of this Policy and assist the Compliance Officer, where requested, in any review or implementation of this Policy.

## 4. PROCEDURES

### 4A. Litigation Funding Services

#### 4.1. Protecting the Interests of Claimants in Funded Litigation

- (a) Protecting claimant interests includes ensuring that they are treated fairly in funded litigation.
- (b) Whenever a conflict of interest is identified between the interests of any CASL Entity, the lawyers and a funded claimant, CASL shall ensure that the claimant's interests are adequately protected and that CASL will prefer the interests of claimants over those of the funder where those interests conflict.
- (c) In particular, there may be common directors between the respective CASL Entities, which raises the potential for a conflict of interest arising from duties owed to claimants and each of the CASL Entities. This potential conflict is addressed on the overriding principle that CASL Entities will ensure the claimant's interests are adequately protected and that CASL will prefer the interests of claimants over those of the funder where those interests conflict.
- (d) In order to minimise the potential for conflicts to arise and to protect funded claimants' interests, CASL will ensure that in all funded litigation:

- (i) neither CASL nor its employees (including contractors or consultants) provide legal advice or legal services to claimants;
  - (ii) the disclosed interests of relevant director(s) and officer(s) of CASL Entities are explicitly reviewed to identify any potential divergent interests with the claimant. Any potential divergent interests identified will be discussed with the CEO and an appropriate response determined;
  - (iii) all funded claimants are to be represented by lawyers (this is to apply to all litigation from the date the funder(s) commences funding);
  - (iv) CASL Entities do not hold any material ownership interest in the lawyers;
  - (v) neither the lawyers providing services in relation to the claim, or any immediate family member of such lawyers, have a direct or indirect material financial interest in CASL;
  - (vi) CASL will consider, before and during the provision of Litigation Funding Services, whether there are any potential divergent interests and whether those interests can be managed, in accordance with **section 4.2** and **section 4.3**;
  - (vii) the funded claimant(s) receive sufficient and timely disclosure about any actual or potential conflict, in accordance with **section 4.4**;
  - (viii) CASL will not seek to influence the lawyers to cede control of the claim to CASL, or otherwise to act in breach of their professional duties;
  - (ix) Claim Funding Agreements shall include terms designed to protect the interests of claimants, such as transparent, fair and independent dispute resolution procedures as well as the ability to override certain instructions given by the funder and manager, as set out in **section 4.5(c)**.
  - (x) in the event there is a pre-existing relationship between CASL and any representative in any funded class action litigation, such that the representative cannot fairly represent the interests of the group members, CASL will take all reasonable steps to ensure that the funder will find and fund a new representative who can so represent the group members' interests and who is appointed in the place of the existing representative;
  - (xi) CASL will not fund or manage any litigation against an existing funded claimant that may materially detrimentally affect the interests of the funded claimant in relation to their claims unless the funded claimant gives him, her or its informed consent in writing that CASL may do so.
  - (xii) any funds arising from a settlement or judgment are paid into the trust account of the claimant's solicitor (subject to any court order) and distributed to CASL according to the terms of the Claim Funding Agreement;
  - (xiii) CASL will not enter into any agreements to provide funding for any claims where the company's appointed statutory external auditor or AFS licence compliance auditor or other professional services provider is joined or likely to be joined unless CASL has commenced steps to replace that auditor or services provider.
- (e) If a conflict is identified and CASL determines that the conflict cannot be managed through the controls and disclosure procedures provided by this Policy such that the interests of claimants are adequately protected, CASL will refrain from providing the Litigation Funding Services.

#### 4.2. Procedures for Identifying Conflicts of Interest

- (a) The IM will monitor CASL's operations on an ongoing basis to identify potential conflicting interests in funded litigation.
- (b) At the time CASL identifies a potential claim for funding, the IM will undertake an initial conflict check in accordance with the procedures prescribed by the Compliance Officer and notified to IMs from time to time. A confirmation of the check will be maintained on the claim file which may be in digital form. Any potential divergent interests or conflicts identified will be reported to and discussed with the CEO and Compliance Officer to determine whether CASL may proceed to investigate the claim.
- (c) The conflict check procedure will include:
  - (i) identifying the key parties in the proposed litigation and funding arrangements;
  - (ii) checking CASL's records (including the relevant CASL Director's and Officer's interest registers and the files of past and current prospective or funded litigation) and where necessary make enquiry of relevant directors, executives and IMs of CASL Entities to identify any mutual past, present or future relationships; and
  - (iii) considering whether, in the circumstances, there is a likely divergence or conflict of interest.
- (d) At the time CASL determines that it will make an offer to provide Litigation Funding Services in relation to funded litigation, the IM will review the claimant's claim and will seek to identify any additional or new interests CASL has that may be divergent to those of the claimant.

#### 4.3. Procedures for Managing Identified Conflicts of Interest

- (a) Any potential divergent interests identified will be reported to and discussed with the CEO and Compliance Officer to determine an appropriate response and whether CASL may proceed with the offer and any disclosures to be made in accordance with **section 4.4**.
- (b) The Compliance Officer will document any identified divergent interests and the key agreed outcomes CASL's Register of Actual or Potential Conflicts of Interest (**Conflicts Register**).
- (c) The IM will conduct a quarterly review of each funded claim, with a view to assessing whether a conflict of interest has arisen, or is likely to arise, as against the interests of a claimant or claimant(s). The review will be documented in the Conflicts Register.
- (d) The IM will report and discuss any conflicts of interest that are identified as part of ongoing monitoring or quarterly review with the CEO and the Compliance Officer, and summarise the agreed key outcomes for inclusion in the Conflicts Register.
- (e) If the CEO or Compliance Officer considers it necessary, the claim giving rise to the conflict will be referred to the relevant CASL Board and the agreed key outcomes will be recorded in the Conflicts Register.
- (f) The CEO will review the Conflicts Register on a quarterly basis and sign-off that all potential and existing conflicts of interest have been appropriately addressed and documented and that this Policy has been complied with.
- (g) Following each quarterly review of the Conflicts Register by the CEO, a statement will be issued to the Board confirming that the review has been completed and whether the regulatory requirements have been met.

#### **4.4. Procedures for Disclosure of Conflicts of Interest**

##### ***General***

- (a) Timely identification and disclosure to claimants of actual or potential conflicts is a central requirement of this Policy.
- (b) Disclosure may take place in a number of ways and at different times in the course of funded litigation as set out below.
- (c) No disclosure will be made by CASL which contains any misleading or deceptive information.

##### ***When is Disclosure to be made?***

- (d) If, prior to entering a Claim Funding Agreement, CASL has identified that a potential conflict exists, CASL will notify the claimant of those potential conflicts and the proposal for managing those conflicts should those potential conflicts become actual conflicts.
- (e) If, prior to entering a Claim Funding Agreement, CASL has identified that an actual conflict exists, CASL will notify the claimant of those conflicts, together with a proposal for managing those conflicts of interest.
- (f) If, during the course of funded litigation, CASL determines that a conflict of interest has arisen, or is likely to arise, CASL will notify the claimant(s) as soon as practicable and will provide the claimant with a proposal to manage the conflict.

##### ***Format and Content of Disclosure***

- (g) Disclosure may be made to each relevant claimant, or to their lawyer, if appropriate, via the Claim Funding Agreement or other disclosure document, by letter, email or via a hypertext link to CASL's website and may be made to the public generally through advertising in print or electronic media, by brochures or via CASL's website. CASL will consider the most appropriate and effective means of disclosure on a case-by-case basis.
- (h) Disclosures about actual or potential conflicts of interest in relation to funded litigation shall:
  - (i) in most cases be in writing, unless oral disclosure has been approved by the CEO;
  - (ii) be timely, prominent and specific and be provided to the most relevant party or parties;
  - (iii) contain sufficient specific details for claimants to understand the potential impact of the divergent interests on the funded litigation and make an informed decision about how the conflict of interest may affect the services being provided to them;
  - (iv) include written disclosure about any material pre-existing relationship between CASL Entities, the funder, the manager, the lawyers and any of the funded claimants, including whether the lawyers have previously acted for CASL, or have previously benefited from funding from CASL. Disclosure must be made in relation to:
    - (A) all relationships or interests that are current, proposed or existed in the previous two years; and
    - (B) relationships that pre-date the two-year period that are considered sufficiently significant, in the reasonable opinion of the CEO, to warrant



disclosure.

- (v) include written disclosure about the sources of all fees or other income CASL, funder, manager, the lawyers or any other party may receive in relation to the funded litigation, including estimated legal costs and disbursements through to the completion of a trial;
- (vi) include written disclosure about any relationships (outside the provision of services for the litigation) with any party or prospective party to the litigation (including any involvement with any other litigation);
- (vii) in the case of written disclosure, be prepared by the IM with responsibility for the funded litigation and approved in writing by the CEO prior to publication;
- (viii) in the case of oral disclosure as far as is reasonably practical, be in accordance with written speaking notes prepared by the IM with responsibility for the funded litigation and approved in writing by the CEO. This is the least preferred method of disclosure of a conflict and written disclosure should be adopted wherever possible. The IM shall make a written record of any such oral disclosure, once given; and
- (ix) comply with all other relevant sections of this Policy.
- (i) The Compliance Officer will record in the Conflicts Register the date that the disclosure was provided to the claimant, along with a copy of that correspondence (or a summary of the notes from that meeting). The claimant's response will also be documented in the Conflicts Register.

***When is Disclosure not Required?***

- (j) Disclosure of an actual or potential conflict shall not be made where, in the reasonable opinion of the CEO, the source of the conflict is confidential and it would not be in the interests of the funded claimant(s) to disclose that conflict. The CEO shall fully document his or her decision and retain this document as part of the Conflicts Register.

**4.5. Procedures for Managing Situations in which Interests May Conflict**

- (a) In addition to the procedures described in **section 4.1** to **section 4.4** above, the procedures below apply to certain situations where interests may conflict:
- (b) **Procedures for the Recruitment of Prospective Funded Claimants**
  - (i) The following procedures and principles shall apply to the recruitment of prospective funded claimants to any funded litigation:
    - (A) CASL will not engage in recruitment strategies that are misleading or deceptive, or likely to misled or deceive, in particular in relation to significant features, risks or returns in the funded litigation;
    - (B) the CEO must approve all promotional material (including any advertising or recruitment scripts) to ensure prospective members are not misled;
    - (C) all disclosures shall comply with applicable legislation and regulatory requirements in the marketing of litigation funding schemes; and
    - (D) appropriate disclosures are made in accordance with **section 4.4** (as relevant) of this Policy.



- (c) **Reviewing the terms of Funding Agreements between CASL Entities and Claimants (the Claim Funding Agreements)**
- (i) All Claim Funding Agreements relating to any funded litigation are to comply with this Policy and the laws of New South Wales (or the relevant State jurisdiction as agreed with the CEO) and Australia (the **Laws**) at all times.
  - (ii) Claim Funding Agreements may be amended from time to time to ensure they remain compliant with this Policy and the Laws. Periodic legal reviews will be undertaken of precedent Claim Funding Agreements from time to time for this purpose.
  - (iii) All Claim Funding Agreements and amendments to Claim Funding Agreements are subject to approval by the CEO and Compliance Officer.
  - (iv) A copy of the Claim Funding Agreement signed by the funded claimant (or the representative in class action litigation) is to be maintained on the claim file which may be in digital form and accessible by the Compliance Officer.
  - (v) In order to manage situations in which interests may conflict, CASL will ensure that the following terms are expressly contained in each Claim Funding Agreement:
    - (A) disclosure, by way of recitals or otherwise, of any pre-existing relationship between the CASL Entities and the lawyers;
    - (B) adequate terms, which may include a cooling-off period, to enable the potential claimant an opportunity to obtain independent legal advice;
    - (C) that the funder and the manager will comply with all legislative and regulatory obligations relating to conflicts of interest and will provide timely and clear disclosure to the claimant of any breach;
    - (D) the professional, ethical and fiduciary duties and obligations owed by the lawyers to the claimant under the terms of any retainer prevail over the terms of the Claim Funding Agreement;
    - (E) disclosure of the terms of the agreement between the funder and the lawyers;
    - (F) except in relation to settlement of claims, if the lawyers consider they may be in a position of conflict with respect to any obligations they owe to the claimant, they may take instructions from or give advice to any claimant, whose instructions will override those of the funder or manager and may be contrary to the interests of the funder or manager;
    - (G) disputes, other than those arising in respect of the settlement of claims, between the parties to the Claim Funding Agreement will be resolved by submitting the dispute to the Australian Financial Complaints Authority, if applicable, or by mediation or arbitration conducted by the Australian Disputes Centre;
    - (H) an obligation on the funder or manager to facilitate any disclosure to or by claimants required for court approval of any settlement (where applicable);
    - (I) disputes regarding whether or not to accept any settlement offer will be resolved in accordance with **section 4.5(d)** below. CASL may amend, supplement or replace any of the dispute resolution procedures described in this Policy from time to time whilst embracing the principles of a structured and transparent dispute resolution process; and

- (J) the rights which the parties may have to terminate the Claim Funding Agreement.

(d) **Procedures for Settlements**

- (i) CASL shall observe the following procedures in relation to settlements of funded litigation where proceedings have been commenced. If the funded claimant (or representative in class action litigation) wishes to settle the funded litigation for less than the funder or the manager considers appropriate or does not want to settle the litigation when the funder or the manager considers it appropriate to do so, then:
  - (A) the difference of opinion between the funder, the manager and the funded claimant (representative in class action litigation) shall be resolved by referring the question to counsel for counsel's opinion on whether the proposed settlement, on the terms and in the circumstances identified by either the funder, the manager or the funded claimant (representative in class action litigation), is fair and reasonable in all of the circumstances;
  - (B) counsel shall be the most senior counsel of those retained by the lawyers to act in the funded litigation. If no counsel has been retained, or counsel retained to act in the funded litigation are unable to act independently when considering the dispute, then the lawyers in consultation with the funder, the manager and the funded claimant (the representative in class action litigation) will appoint a counsel for that purpose;
  - (C) if the funder, the manager and the funded claimant (the representative in class action litigation) are unable to agree on the selection of counsel, then one will be appointed as selected by the President of the New South Wales Bar Association for that purpose;
  - (D) if counsel's opinion is that the settlement is fair and reasonable then the funder, the manager and the funded claimant (the representative in class action litigation) agree that the lawyers will be instructed to do all that is necessary to settle the funded litigation consistent with the terms of the settlement advised by counsel, provided that the approval of the court to the settlement is sought and obtained; and
  - (E) the funder(s) will pay the costs of counsel in providing the opinion as part of the reimbursable project costs as defined in the relevant Claim Funding Agreement.
- (ii) Where there is a proposed settlement of funded class action litigation which is not the subject of proceedings, and the funded claimant wishes to settle the funded litigation for less than the funder or the manager considers appropriate or does not want to settle the litigation when the funder or the manager considers it appropriate to do so, the following procedures shall apply:
  - (A) the funded claimant agrees to be bound by the proposed settlement and the lawyers will be instructed to do all that is necessary to settle the claims as part of that proposed settlement provided:
    - (1) advice is received from counsel appointed in accordance with the procedure at **4.5(d)(i)(B)** to **4.5(d)(i)(C)** that the settlement is fair and reasonable in all of the circumstances; and
    - (2) all claimants whose claims are the subject of that proposed settlement have been given adequate notice of the proposed settlement and provided with reasonable opportunity to comment on or object to the proposed settlement.

The lawyers will determine the value of the claims for the purpose of this clause.

- (iii) The IM will provide a copy of the correspondence to counsel (or a copy of the notes for the meeting with counsel) and a copy of the advice to the Compliance Officer to be filed in the Conflicts Register.

#### **4.6. Other**

- (a) In situations where CASL provides Claims Funding pursuant to a law firm portfolio funding facility, or other bespoke Litigation Funding Services, the procedures in **section 4A** may be modified as required with the approval of the CEO, while maintaining consistency with the overriding principle of maintaining adequate practices for identifying and managing any conflicts of interest that may arise.

#### **4B. Other Services**

#### **4.7. Mechanisms for Managing Conflicts of Interest**

- (a) The three mechanisms that CASL uses to manage conflicts of interest are:
  - (i) controlling conflicts of interest;
  - (ii) avoiding conflicts of interest; and
  - (iii) disclosing conflicts of interest.

#### **4.8. Controlling Conflicts of Interest**

- (a) CASL will design services to minimise the possibility of conflicts before any service commences.
- (b) All CASL Personnel should immediately notify the Compliance Officer and the CEO of any matter they think might be a conflict of interest.
- (c) CASL will:
  - (i) assess and evaluate each conflict of interest situation on a case-by-case basis;
  - (ii) formulate and implement an appropriate response to the conflict of interest;
  - (iii) (except where a conflict of interest is to be avoided altogether (see **section 4.9**), make appropriate disclosure (see **section 4.10**) and work to resolve conflicts with affected parties in a legal, ethical and transparent manner, acting fairly; and
  - (iv) provide fair, transparent and independent dispute resolution procedures if/when required.

#### **4.9. Avoiding Conflicts of Interest**

- (a) In a situation where conflicts of interest cannot be adequately managed through disclosure or control to ensure that the interests of all parties are addressed appropriately, the conflict must be avoided altogether.
- (b) The CEO and Compliance Officer together with the relevant CASL Personnel, will assess identified or disclosed conflicts of interest. Where the CEO determines that a conflict of interest cannot be appropriate managed, it must be avoided.

#### **4.10. Disclosing Conflicts of Interest**

- (a) CASL will ensure that clients are adequately informed about any conflicts of interest that may affect the provision of financial services to them.
- (b) All disclosures of conflicts of interest will be assessed prior to issue to ensure they provide enough detail in a clear, concise and effective form to allow clients to make an informed decision about the how the conflict may affect the service being provided to them.
- (c) Disclosure about any conflicts of interest that arises or is identified as likely to arise will:
  - (i) in most cases be in writing, unless oral disclosure has been approved by the CEO;
  - (ii) be timely, prominent, specific and meaningful;
  - (iii) occur before or when the financial service is provided, but in any case at a time that allows the client a reasonable time to assess its effect; and
  - (iv) refer to the specific service to which the conflict relates and contain sufficient specific details for clients to understand the potential impact of the potential or actual conflict of interests and make an informed decision about how the conflict of interest may affect the services being provided to them;
  - (v) in the case of written disclosure, be prepared by relevant CASL Personnel and approved in writing by the CEO prior to publication; and
  - (vi) in the case of oral disclosure as far as is reasonably practical, be in accordance with written speaking notes prepared by the relevant CASL Personnel and approved in writing by the CEO.
- (d) The Compliance Officer will record in the Conflicts Register the date that the disclosure was provided to the client, along with a copy of that correspondence (or a summary of the notes from that meeting). The client's response will also be documented in the Conflicts Register.

#### ***When is Disclosure not Required?***

- (e) Disclosure of an actual or potential conflict shall not be made where, in the reasonable opinion of the CEO, the source of the conflict is confidential. The CEO shall fully document his or her decision and retain this document as part of the Conflicts Register.

### **5. MONITORING AND REVIEW OF THE CONFLICTS REGISTER, REPORTING TO THE BOARD AND RECORD KEEPING**

#### **5.1. Monitoring and Review of the Conflicts Register**

- (a) The Compliance Officer will conduct a quarterly review of all existing funded and/or managed cases and of the Conflicts Register in order to ensure that CASL is compliant with the Policy, and that the Conflicts Register is current. This review will be documented in the Conflicts Register.
- (b) The Compliance Offer will prepare a report of the quarterly review for the CEO.

#### **5.2. Reporting to the Board**

- (a) The CEO will summarise the key conflicts as part of his/her CEO Report to the Board on a quarterly basis.

### 5.3. Record Keeping

- (a) The Compliance Officer is responsible for maintaining the written records relating to this Policy (the **Records**):
  - (i) a copy of this Policy and of all amendments to this Policy;
  - (ii) details of who is responsible for ensuring compliance with the Policy and associated record-keeping and reporting;
  - (iii) maintaining the Conflicts Register with the written records, including those referred to in this Policy;
  - (iv) a record of all divergent interests/potential conflicts reported under this Policy;
  - (v) a record of all actual conflicts reported under this Policy and action taken;
  - (vi) a record of all reports provided to the Compliance Officer by IMs or others about conflicts;
  - (vii) a copy of all written disclosures provided in relation to Litigation Funding Services or Other Services;
  - (viii) a copy of all written speaking notes used by CASL in relation to any disclosure;
  - (ix) a copy of the Claim Funding Agreement in relation to all funded litigation signed by the funded claimant (or representative in class action litigation);
  - (x) a copy of correspondence with counsel and counsel's advice on settlement in relation to funded litigation;
  - (xi) a copy of reviews undertaken by the IMs, Compliance Officer and CEO;
  - (xii) a record of all reviews of this Policy; and
  - (xiii) a record of all compliance monitoring of the Policy undertaken by the Compliance Officer.
- (b) The Records are to be kept for at least 7 years from each record's date of creation and may be kept in electronic form.