

ASSOCIATION OF LITIGATION FUNDERS OF AUSTRALIA

AALF

LEVEL 13, 115 PITT STREET, SYDNEY NSW 2000

# **Association of Litigation Funders of Australia**

**Changes to the Membership Structure**

## Association of Litigation Funders of Australia

**Date: 31 August 2021**

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1. AALF was established in April 2018. AALF Members include Investor Claim Partner (**ICP**), Litigation Lending Services (**LLS**), Augusta Ventures (**Augusta**), Vannin Capital (**Vannin**), Balance Legal Capital (**Balance**), Southern Cross Litigation Finance (**Southern Cross**), Premier Litigation Funding (**Premier**), Ironbark Funding (**Ironbark**), Court House Capital (**Court House Capital**) and CASL (**CASL**) (together, **Members**).
2. AALF's primary purpose is to facilitate the enhancement of the Australian Litigation Funding Industry (**Industry**) including, by:
  - a. providing education, training and information concerning Litigation Funding and the Industry to its Members and the Industry's stakeholders and prospective plaintiffs;
  - b. actively lobbying the Government and legislators, and engaging with other regulators and policymakers to help shape the legal and regulatory framework of Litigation Funding in Australia; and
  - c. promoting best practice and ethical behaviour amongst litigation funders in Australia.
3. A copy of AALF's Constitution is attached.
4. One of AALF's first tasks was to establish a set of Best Practice Guidelines for Members to have regard to when establishing their own policies and procedures.
5. AALF and its Members have sought to help shape the legal and regulatory framework of litigation funding in Australia by:
  - a. making oral and written submissions to the Australian Law Reform Commission's (**ALRC**) inquiry into Class Action Proceedings and Third-Party Litigation Funders (**ALRC Inquiry**) in 2018 and 2019;
  - b. making oral and written submissions to the Parliamentary Joint Committee on Corporations and Financial Services into Litigation Funding and the Regulation of the Class Action Industry (**PJC Inquiry**) in Australia in 2020;
  - c. successfully applying for leave to be heard at the Federal Court of Australia's Full Court and High Court hearing in the Seven-Eleven Class Action based on public interest grounds on the question as to whether the Court has power at any time to grant a common fund order in favour of a funder;
  - d. making written submissions to the Australian Treasury in response to the Treasurer's announcement in May 2020 that he would be introducing regulations that would result in litigation funders being required to obtain an Australian Financial Services Licence (**AFSL**) and that funded class actions would be treated as managed investment schemes (**MISs**);
  - e. making written submissions to the Australian Treasury following the publication of the *Corporations Amendment (Litigation Funding) Regulations 2020* (Cth) (**Regulations**), which sought to implement the regulatory regime foreshadowed in May 2020;

- f. making written submissions to, and appearing before, the Senate Economics Legislation Committee Inquiry into Treasury Laws Amendment (2021 Measures No. 1) Bill (**Senate Economics Committee**), which sought to amend the continuous disclosure obligations and the misleading and deceptive conduct provisions of the *Corporations Act 2001* (**Corporations Act**) and the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**) to remove strict liability for companies and officers that fail to disclose market-sensitive information;
  - g. Making written submissions to Treasury and the Attorney-General's Department in relation to its consultation into guaranteeing a minimum return of class action proceeds to class members in July 2021;
  - h. Making written and oral submissions to the Te Aka Matua o te Ture | Law Commission (**NZ Law Commission**) in 2021;
  - i. Making written submissions to ASIC in relation to the Litigation Funding Schemes: Guidance and Relief | ASIC Consultation Paper 345 (CP 345);
  - j. Making a successful application to ASIC for conditional relief from the requirement to disclose the relevant information in dollar terms in the PDSs of registered litigation funding schemes. This application was made on behalf of AALF Members, but it benefits the litigation funding industry more broadly. In April 2021, ASIC granted this relief for a period of 12 months; and
  - k. held conferences in Sydney and Melbourne in 2018, 2019 and 2020 to discuss and debate issues arising in the Australian class action and litigation funding industry. These conferences attracted lawyers, barristers, insurers, regulators, academics and judges from both the Supreme and Federal Courts of Australia.
6. Due to the extensive changes in the class action industry, AALF has, by necessity, been very focused in this area. It is AALF's desire to broaden its industry focus and with that, its membership base.
7. The existing Member benefits are to:
- a. Be part of a collective that leads thinking and change;
  - b. Contribute to how the Litigation Funding Industry evolves - through advocacy and collaboration;
  - c. Access valuable industry insight and peer networking;
  - d. Tap into forums for practical discussion of tough issues – a mutual learning environment for subject matter experts to drive positive outcomes;
  - e. Have a voice with regulators, policy makers and other key industry segments, especially when advocacy is needed on the challenges, risks and costs of change;
  - f. Be informed of change in the industry ahead of time;
  - g. Benefit from an industry view on key policy issues that you can use to educate and inform your key stakeholders, both internal and external;
  - h. Understand the size and reach of the Litigation Funding Industry through official statistics and data collection; and
  - i. Participate in exclusive member events on the key themes affecting the Litigation Funding Industry, client segments and people.
8. The Existing Members are Full Members of AALF. Full Membership is open to all Funders and Managers who agree to comply with the Rules of the Association, the Constitution and the Best Practice Guidelines.
- a. A **Funder** is an **entity** which has access to funds immediately within its control to fund the resolution of Relevant Disputes pursuant to Litigation Funding Agreements (LFA's) to enable

a party to the dispute (the Funded Party) to make the costs (including pre-action costs and adverse costs orders) of the resolution of Relevant Disputes. In return, the Funder receives a share of the proceeds if the claim is successful (as defined in the LFA) and does not seek any payment from the Funded Party in excess of the amount of the proceeds of the dispute that is being funded, unless the Funded Party is in material breach of the provisions of the LFA.

- b. A **Manager** is an **entity** that manages litigation financed by a Funder and in return receives a share of the proceeds if the claim is successful (as defined in the LFA).
- c. A **Relevant Dispute** is a dispute whose resolution is to be achieved through a claims resolution process, including but not limited to, arbitration within Australian seat and, litigation procedures in Australian courts.

**Voting Rights:** 1 vote per Full Member

**Directorship:** Right to nominate one person to be a Director

**Entitlements:**

- Nominate one person to be a Director of AALF;
- Attend and vote at all meetings;
- Access Full Member information and attend events; and
- Participation in, and opportunity to Chair, AALF Working Groups and Taskforces.

9. AALF proposes to add the following membership categories to its existing membership structure (all subject to consideration and approval by the AALF Board in accordance with the Constitution):

**a. Honorary Membership of AALF**

**Criteria:** Honorary Membership is open to an **academic individual or body corporate** who agrees to comply with the Constitution, the Rules of the Association and the Best Practice Guidelines (to the extent they are applicable).

**Cost:** Free

**Entitlements:**

- Attend events (1 complimentary ticket per Honorary Member per event);
- Participation by invitation in AALF Working Groups and Taskforces; and
- Opportunity by invitation to sponsor AALF events and/or publications.

**Voting:** No voting rights

**Director:** No rights to appoint a Director

**b. Associate Membership of AALF is open to any body corporate or government entity that has an interest or involvement in Litigation Funding.**

**Criteria:** Associate Membership is open to any body corporate or government entity that has an interest in, or is involved in, Litigation Funding and who agrees to comply with the Constitution, the Rules of the Association and the Best Practice Guidelines (to the extent they are applicable). **Cost:** \$5,000 per yearly corporate membership

**Entitlements:**

- Attend events (5 complimentary ticket per Associate Member per event);
- Participation by invitation in AALF Working Groups, Taskforces and regular Member roundtable discussions; and

- Opportunity by invitation to sponsor AALF events and/or publications.

**Voting:** No voting rights

**Director:** No right to appoint a Director

10. The Rules of the Association and Constitution apply to Full, Honorary and Associate Members whereas the Best Practice Guidelines only applies to Full Members (amended Rules attached).
11. The Membership Application document is attached.

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31 August 2021