



## **Corporations Amendment (Litigation Funding) Regulations 2021**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 25 November 2021

David Hurley  
Governor-General

By His Excellency's Command

Josh Frydenberg  
Treasurer

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# Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules.....	1
<b>Schedule 1—Amendments</b>		<b>2</b>
Part 1—Licence conditions		2
<i>Corporations Regulations 2001</i>		2
Part 2—Class action litigation funding schemes		4
<i>Corporations Regulations 2001</i>		4
Part 3—Licence conditions in relation to class action litigation funding schemes		5
<i>Corporations Regulations 2001</i>		5



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## 1 Name

This instrument is the *Corporations Amendment (Litigation Funding) Regulations 2021*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	26 November 2021
2. Schedule 1, Part 1	The day after this instrument is registered.	26 November 2021
3. Schedule 1, Part 2	The later of: (a) the day after this instrument is registered; and (b) the day the <i>Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Act 2021</i> commences.  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 1, Part 3	Immediately after the commencement of the provisions covered by table item 3.  However, the provisions do not commence at all if the provisions covered by table item 3 do not commence.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Corporations Act 2001*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Licence conditions

#### *Corporations Regulations 2001*

##### **1 Paragraph 7.6.01AB(2)(a)**

Repeal the paragraph, substitute:

- (a) maintain, for the duration of the insolvency litigation funding scheme or litigation funding arrangement, adequate practices for:
  - (i) managing any conflict of interest that may arise in relation to activities undertaken by the person, or an agent of the person, in relation to the scheme or arrangement; and
  - (ii) ensuring that a lawyer providing services in relation to the scheme or arrangement, and any immediate family member of such a lawyer, do not have or obtain a direct or indirect material financial interest in the person; and

##### **2 At the end of subregulation 7.6.04(1)**

Add:

- ; (l) if the financial services licensee provides funds or indemnities as mentioned in paragraph 7.1.04N(3)(e) in relation to a litigation funding scheme mentioned in subregulation 7.1.04N(3)—a condition that:
  - (i) the licensee maintain, for the duration of the scheme, adequate practices for ensuring that a lawyer providing services in relation to the scheme, and any immediate family member of such a lawyer, do not have or obtain a direct or indirect material financial interest in the licensee; and
  - (ii) for the duration of the scheme, either no lawyer providing services in relation to the scheme has or obtains a direct or indirect material financial interest in the licensee or, if such a lawyer does have or obtain such an interest, the licensee meets the requirement in subregulation (2A); and
  - (iii) for the duration of the scheme, either no immediate family member of a lawyer providing services in relation to the scheme has or obtains a direct or indirect material financial interest in the licensee or, if such a person does have or obtain such an interest, the licensee meets the requirement in subregulation (2A).

##### **3 After subregulation 7.6.04(2)**

Insert:

(2A) If:

- (a) a financial services licensee provides funds or indemnities in relation to a litigation funding scheme mentioned in subregulation 7.1.04N(3); and
- (b) a lawyer providing services in relation to the scheme, or an immediate family member of the lawyer, has or obtains a direct or indirect material financial interest in the licensee;

the licensee must, immediately after becoming aware of the interest, take action to ensure that:

- (c) the lawyer stops providing such services; or
- (d) the lawyer or the lawyer's immediate family member, as the case may be, relinquishes the interest.

#### **4 In the appropriate position in Chapter 10**

Insert:

### **Part 10.47—Application provisions relating to the Corporations Amendment (Litigation Funding) Regulations 2021**

#### **10.47.01 Application of amendments relating to licence conditions in relation to a litigation funding scheme mentioned in subregulation 7.1.04N(3)**

The amendments made by items 2 and 3 of Part 1 of Schedule 1 to the *Corporations Amendment (Litigation Funding) Regulations 2021* apply in relation to:

- (a) an Australian financial services licence granted before, on or after the commencement of that Part; and
- (b) a litigation funding scheme mentioned in subregulation 7.1.04N(3) entered on or after that commencement; and
- (c) a litigation funding scheme mentioned in subregulation 7.1.04N(3) entered before that commencement, but only in relation to so much of the duration of the scheme that occurs on or after that commencement.

## Part 2—Class action litigation funding schemes

### *Corporations Regulations 2001*

#### **5 Subparagraphs 5C.11.01(4)(e)(ii) and (5)(e)(ii)**

Repeal the subparagraphs, substitute:

- (ii) a class action litigation funding scheme.

#### **6 Regulation 7.1.04N (heading)**

Omit “**funding schemes and arrangements relating to insolvency and litigation**”, substitute “**insolvency litigation funding schemes and litigation funding arrangements**”.

#### **7 Subregulations 7.1.04N(3) and (4)**

Repeal the subregulations.

#### **8 Paragraph 7.1.06(2A)(c)**

Repeal the paragraph, substitute:

- (c) a class action litigation funding scheme.



## **Part 3—Licence conditions in relation to class action litigation funding schemes**

### ***Corporations Regulations 2001***

#### **9 Paragraph 7.6.04(1)(l)**

Omit “paragraph 7.1.04N(3)(e) in relation to a litigation funding scheme mentioned in subregulation 7.1.04N(3)”, substitute “paragraph 9AAA(1)(c) of the Act in relation to a class action litigation funding scheme”.

#### **10 Paragraph 7.6.04(2A)(a)**

Omit “litigation funding scheme mentioned in subregulation 7.1.04N(3)”, substitute “class action litigation funding scheme”.

#### **11 At the end of Part 10.47**

Add:

#### **10.47.02 Application of amendments relating to licence conditions in relation to a class action litigation funding scheme**

The amendments made by Part 3 of Schedule 1 to the *Corporations Amendment (Litigation Funding) Regulations 2021* apply in relation to:

- (a) an Australian financial services licence granted before, on or after the commencement of that Part; and
- (b) a class action litigation funding scheme entered on or after that commencement; and
- (c) a class action litigation funding scheme entered before that commencement, but only in relation to so much of the duration of the scheme that occurs on or after that commencement.