



14 November 2025

Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

via email: rri.consultation@asic.gov.au

Dear Sir/Madam,

Proposed extension of relief for litigation funding arrangements and conditional costs schemes

Thank you for the opportunity to provide feedback on the proposal to extend the operation of two legislative instruments related to litigation funding (namely the *ASIC Credit (Litigation Funding-Exclusion) Instrument 2020/37* and the *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38*) until 31 March 2030.

The Federal Chamber of Automotive Industries (FCAI) is the peak industry body for the Australian importers and distributors of passenger motor vehicles, sports utility vehicles, light commercial vehicles, motorcycles and off highway vehicles. FCAI members are listed at <https://www.fcai.com.au/about-fcai/member-manufacturers/>.

FCAI's view

The FCAI notes that the proposed extension of the two instruments from 31 January 2026 until 31 March 2030 is *to provide certainty for litigation funders, lawyers and members of litigation funding and proof of debt funding arrangements whilst the Government considers its policy position for these arrangements.*¹

The FCAI supports further consideration by Government of its policy position in relation to the existing regulatory arrangements as they relate to litigation funding. The FCAI believes that a number of aspects of the regulation of litigation funders warrant review. The FCAI would therefore support a short extension of the existing regulatory relief to enable the Government's reconsideration to be undertaken.

On this basis, the FCAI believes that the instruments should not be extended for the entirety of the proposed period (up to 31 March 2030), but only for a shorter period of time (until 31 March 2028). This would enable an appropriate period of time for careful review of the regulatory arrangements applicable to litigation funders as well as allow for the timely implementation of any resultant adjustments to the litigation funding model.

Commentary

The regulation and role of litigation funders in Australia as they relate to class action proceedings has been the subject of a number of enquiries, namely the now somewhat dated:

- December 2018 report of the Australian Law Reform Commission (*Integrity, Fairness and Efficiency – An Inquiry into Class Action Proceedings and Third-Party Litigation Funders*); and
- December 2020 inquiry of the Parliamentary Joint Committee on Corporations and Financial Services (*Litigation funding and the regulation of the class action industry*).

¹ ASIC Media Statement, *ASIC consults on extending relief for litigation funding arrangements and conditional costs schemes*, published 20 October 2025.



The FCAI acknowledges the importance of class actions in facilitating the efficient resolution of multiple claims arising from the same or similar circumstances. Class actions enable consumers to obtain a remedy in circumstances where a person has suffered damage and it is impractical to pursue an individual claim. As such, class actions are widely recognised as a valuable access to justice mechanism, providing a practical avenue for redress of wrongs while promoting the efficient use of court and other legal resources. Funders can be important facilitators of the conduct of class actions.

However, the FCAI is concerned that the increasing prevalence of large corporate litigation funders has shifted the focus of class actions in Australia away from the provision of access to justice toward procuring a profitable return on investment for funders. This shift in focus can be at the expense of claimants. While it is reasonable for funders to receive a commercial return on investment, the return should be proportionate to the risk funders assume and not occur at the expense of class members receiving reasonable compensation for their damage.

The FCAI believes that litigation funding arrangements should be appropriately regulated so as to ensure that class actions continue to fulfil the original purpose of access to justice and the enforcement of group member rights. This may require some adjustment to the current levels of funder regulation, including for example reconsideration of the existing regulatory relief set out in the legislative instruments the subject of ASIC's current consideration. It is on this basis that the FCAI believes that only a short extension (to 31 March 2028) is warranted at this time.

The FCAI would be pleased to provide further information to ASIC.

Yours sincerely

A large black rectangular redaction box covers the signature of the Chief Executive.

Chief Executive