

Article Information

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Australian Financial Services Licence for Litigation Funders: What does the Government's announcement mean for the future of the industry?

As announced by the Hon Josh Frydenberg MP this morning, the Morrison Government intends litigation funders to hold an Australian financial services licence (AFSL) and comply with the managed investment scheme regime.

How are litigation funders currently exempt?

Litigation funders are currently exempt from the requirement to hold an AFSL by way of two classes of exemptions in the Corporations Regulations:

1. Regulation 7.06.01 of the Corporations Regulations specifically excludes certain litigation funders from the requirement to hold an AFSL ("upstream" funding); and
2. Regulation 5C.11.01 of the Corporations Regulations specifically excludes litigation funding arrangements from being considered a managed investment scheme for the purposes of the Corporations Act ("downstream" funding).

What are the proposed changes?

Although it is unclear which specific exemptions will be removed from the Corporations Regulations, it is possible that both the fund raising "upstream" and class action funding agreement "downstream" actions of litigation funders will require licensing.

The [press release](#) states that litigation funders will have three months from today to obtain an AFSL as a result of the removal of the exemptions. It is expected that the reforms will be achieved through amendments to the Corporations Regulations to remove the exemptions, meaning that there will be no need to seek Parliament's prior approval to implement the reforms.

This will have significant implications on the way litigation funders operate, as funders will be subject to the additional obligations of licensees, including the obligation to act efficiently, honestly and fairly under section 912A of the Corporations Act.

It is unclear to what extent the Morrison Government has given thought to the potential application of other consequential regulatory impacts, such as the soon-to-be commencing design and distribution obligations and ASIC's product intervention power.

How can Piper Alderman help?

Piper Alderman's Corporate and Financial Services teams have extensive experience in advising in relation to managed investment schemes and applying for AFSLs.

If you would like to discuss what the new changes will mean for your business, or the services we offer, please get in touch with the author.