Explanatory Statement

ASIC Corporations & Credit (Amendment) Instrument 2025/809

This is the Explanatory Statement for *ASIC Corporations & Credit (Amendment) Instrument 2025/809.*

The Explanatory Statement is approved by the Australian Securities and Investments Commission (***ASIC***).

Summary

1. *ASIC Credit (Litigation Funding-Exclusion) Instrument 2020/37* excludes litigation funding arrangements and proof of debt funding arrangements from the application of the National Credit Code in Schedule 1 to the *National Consumer Credit Protection Act 2009* (the **Code**).

2. *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38* provides exemptions for litigation funding arrangements and proof of debt funding arrangements funded under a conditional cost agreement (an arrangement between the member or members and a lawyer under which the payment of some or all fees is contingent on whether the outcome of the action is successful) from the requirements in Chapters 5C (managed investment schemes) and 7 (financial services licensing and disclosure) of the *Corporations Act 2001* (**Act**).

3. The instrument amends *ASIC Credit (Litigation Funding-Exclusion) Instrument 2020/37* and *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38* to continue the relief provided under these instruments until 31 January 2029.

Purpose of the instrument

4. The purpose of the instrument is to extend the relief in *ASIC Credit (Litigation Funding-Exclusion) Instrument 2020/37* and *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38* so that the relief continues to operate until 31 January 2029.

Consultation

5. In October 2025, ASIC consulted on extending the relief in *ASIC Credit (Litigation Funding-Exclusion) Instrument 2020/37* and *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38* until 31 March 2030 in CS 31 Proposed extension of relief for litigation funding arrangements and conditional

Authorised Version Explanatory Statement registered 12/12/2025 to F2025L01575

costs schemes. Stakeholders supported our proposal to extend the relief to allow time for the Government to further consider its policy position on regulating litigation funding arrangements but only sought an extension period of two or three years.

6. ASIC also consulted with Treasury on the effect of this Instrument.

7. Following consultation, ASIC decided to extend the relief in *ASIC Credit (Litigation Funding-Exclusion) Instrument 2020/37* and *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38* for a period of three years, until 31 January 2029. The extension period is intended to provide the Government with sufficient time to consider and implement its policy position on regulating litigation funding arrangements and conditional costs schemes.

Operation of the instrument

8. Section 1 provides that the name of the instrument is the ASIC Corporations and Credit (Amendment) Instrument 2025/809.

9. Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

10. Section 3 provides that the instrument is made under subsection 6(17) of the Code and subsections 601QA(1), 926A(2), 992B(1) and 1020F(1) of the Act.

11. Section 4 provides that each instrument specified in the Schedule is amended as set out in the Schedule.

Schedule 1

12. Item 1 amends subsection 5(2) of the *ASIC Credit (Litigation Funding-Exclusion) Instrument 2020/37* to provide that subsection 5(1) of the instrument applies until 31 January 2029.

13. Item 2 amends Section 10 of the *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38* to provide that the instrument has effect until 31 January 2029.

Legislative instrument and primary legislation

14. The relief provided in *ASIC Credit (Litigation Funding-Exclusion) Instrument 2020/37* and *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38* gives relief in circumstances where strict compliance with the primary legislation produces an unintended or unforeseen result.

15. The extensions of the relief provided in *ASIC Credit (Litigation Funding-Exclusion) Instrument 2020/37* and *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38* are intended to provide the Government with further time to consider its policy position in relation to the regulation under the *National Consumer Credit Protection Act 2009* and the Code of litigation funding arrangements and proof of debt funding arrangements, and the

Authorised Version Explanatory Statement registered 12/12/2025 to F2025L01575

regulation under the Act of litigation funding schemes and proof of debt funding schemes that are funded under a conditional costs agreement.

16. It will be a matter for the Government and for Parliament as to whether the Act or the *Corporations Regulations 2001* (**Regulations**) may be amended in future to include the relief in *ASIC Credit (Litigation Funding-Exclusion) Instrument 2020/37* and *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38*.

Duration of the instrument

17. The instrument will be automatically repealed under section 48A of the *Legislation Act 2003*.

Legislative authority

18. The instrument is made under subsection 6(17) of the Code and subsections 601QA(1), 926A(2), 992B(1) and 1020F(1) of the Act.

19. Under subsection 6(17) of the Code, ASIC may, by legislative instrument, exclude from the application of the Code, the provision of credit of a class specified in the instrument.

20. Under subsection 601QA(1) of the Act, ASIC may exempt a person from a provision of Chapter 5C of the Act, or ASIC may declare that Chapter 5C applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration. Under subsection 926A(2) of the Act, ASIC may grant an exemption from, or omit, modify or vary, a provision of Part 7.6 of the Act (other than Divisions 4 and 8). Under subsection 992B(1) of the Act, ASIC may exempt a person, class of persons or financial product or class of financial products from all or specified provisions of Part 7.8 of the Act or declare that Part 7.8 of the Act applies to a person, class of persons or financial product or class of financial products as if specified provisions were omitted, modified or varied. Under subsection 1020F(1) of the Act, ASIC may grant an exemption from, or omit, modify or vary, a provision of Part 7.9 of the Act.

21. The instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

22. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011.* A Statement of Compatibility with Human Rights is in the Attachment.

Authorised Version Explanatory Statement registered 12/12/2025 to F2025L01575

Attachment

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Corporations and Credit (Amendment) Instrument 2025/809

Overview

1. ASIC Corporations and Credit (Amendment) Instrument 2025/809:

   (a) extends the relief in *ASIC Credit (Litigation Funding-Exclusion) Instrument 2020/37* to enable the temporary operation of a litigation funding arrangement and a proof of debt funding arrangement without having to comply with the requirements of the National Credit Code in Schedule 1 to the *National Consumer Credit Protection Act 2009* until 31 January 2029; and

   (b) extends the relief in *ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38* to enable the temporary operation of conditional costs schemes without having to comply with the financial services provisions of the *Corporations Act 2001* until 31 January 2029.

Assessment of human rights implications

2. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

3. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Authorised Version Explanatory Statement registered 12/12/2025 to F2025L01575