

What are the Litigation Funding options?

Litigation funding, also known as legal financing, can provide some or all the legal costs when a party lacks cash flow or wishes to share the risk of the investment.

Type	Suitable when...	Considerations
<p>Third-Party Funding A funding business contributes funds in exchange for a portion of the settlement sum.</p>	<p>You have a sizeable claim (at least \$5-10M) against a party who either has assets in Australia or is insured, there is low risk and you wish to avoid all financial risk as a plaintiff.</p>	<ul style="list-style-type: none"> + Funders can cover your security for costs + Can be a sign of strength to the other party + There is no limit on the percentage of damages a funder can be allocated in a funding agreement + Potential loss of a degree of control to the funder
<p>Litigation Lending Costs fronted by a third party with the expectation of repayment, regardless of the outcome.</p>	<p>Your dispute does not meet the typical criteria accepted by third-party funders, or you run into cash flow issues before/during litigation. Available for plaintiffs and defendants.</p>	<ul style="list-style-type: none"> + Beware of pay-day lenders, who may charge high interest rates + Can appear on your credit report
<p>Conditional Fee Arrangements An agreement with a law firm whereby your costs are covered, and only charged in the event of a successful outcome (a.k.a. 'No Win No Fee').</p>	<p>You are a plaintiff with a highly substantiated claim with low risk.</p>	<ul style="list-style-type: none"> + Specific requirements exist under the Legal Profession Uniform Law + Your ability to change lawyers can be limited + Can carry uplift fees of up to 25% + Does not typically cover disbursements
<p>After-The-Event (ATE) Insurance An insurance product to protect against paying the other party's legal costs.</p>	<p>You wish to share the downside risk of pursuing a claim, or may be unable to pay a costs order in the event that your litigation is unsuccessful.</p>	<ul style="list-style-type: none"> + If unsuccessful without insurance, you will likely be required to repay between 60-70% of the other party's total costs

Type	Suitable when...	Considerations
<p>Disbursement-Only Funding Covers the third party costs incurred by lawyers in preparing your case, such as court fees and expert reports.</p>	<p>You want to minimise initial costs in exchange for a smaller risk reduction, or to supplement another funding method which does not cover disbursements.</p>	<ul style="list-style-type: none"> + Typically works by deferring costs until the time of settlement or a pre-determined time limit
<p>ATO Funding Funding from the ATO where you are engaged in a dispute them; includes (1) Small Business funding and (2) Test Case funding.</p>	<p>(1) Your dispute is in the AAT's Small Business Taxation Division, and the ATO engages external legal representation.</p> <p>(2) Your tax dispute has significance to a substantial section of the public, or has commercial implications for an industry.</p>	<ul style="list-style-type: none"> + The ATO will not cover GST if you are registered for GST + Counsel and solicitor's rates are subject to caps + Test case funding is not particularly common (typically only in the Federal Court)
<p>Crowd Funding Raising funds for litigation through online platforms by sourcing high volumes of small contributions from members of the public.</p>	<p>Your claim does not meet the typical criteria accepted by third party funders, or involves a legal issue of interest to the public.</p>	<ul style="list-style-type: none"> + There are important regulatory considerations to be aware of + You must be mindful of disclosing confidential information in a crowdfunding campaign + Crowdfunding may not cover adverse costs