

# EXPLANATORY STATEMENT for

## ASIC CORPORATIONS (REPEAL) INSTRUMENT 2016/898

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (**ASIC**) makes *ASIC Corporations (Repeal) Instrument 2016/898* under 601QA(1), 741(1), 992B(1) and 1020F(1) and paragraph 911A(2)(l) of the *Corporations Act 2001*.

This legislative instrument, which is an omnibus repeal instrument, repeals a number of class orders made by ASIC. A number of sources of power were used to make those class orders. As this instrument is revoking those class orders, the powers being exercised in this instrument are the multiple sources of power used to make those other class orders. Under subsection 33(3) of the *Acts Interpretations Act 1901* (as applicable to the relevant powers because of section 5C of the Act), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

### 1. Background

ASIC has recently reviewed 9 class orders which relate primarily to the property, strata and managed investment schemes. ASIC has decided to remake the relief found in the 8 of the class orders, where that relief is considered to still be both necessary and appropriate. ASIC has decided to combine 7 of the 8 remaining class orders into a single instrument. ASIC has decided to remake the eighth instrument as a single instrument, as the relief found in that class order is still considered to be both necessary and appropriate. ASIC has decided to cease to provide the relief found in one class order, where that relief is considered to be unnecessary.

The *Legislation Act 2003* (the **LA**) provides for the periodic expiry of legislative instruments ('sunsetting') to ensure that they are kept up to date and only remain in force for as long as they are needed. The 9 class orders reviewed, being legislative instruments, were scheduled to eventually expire under the sunsetting provisions of the LA.

ASIC's review of the policy underlying these class orders — and subsequent decision to reissue the relief (in the case of 8 class orders) or cease to provide the relief (in the case of one class order) has provided an opportunity to deal with this imminent expiry and ensure that the relevant relief will continue to be available.

### 2. Purpose of the instrument

The purpose of *ASIC Corporations (Repeal) Instrument 2016/898* is to repeal, in a single instrument, 9 class orders which relate primarily to the managed investment provisions in Chapter 5C.

The relief found in 8 of those class orders is remade in 2 new legislative instruments.

	<b>Repealed class order</b>	<b>New legislative instrument</b>
1.	[CO 02/182] <i>Real Property Rental Schemes</i>	<i>ASIC Corporations (Property Rental Schemes) Instrument 2016/870</i>
2.	[CO 99/463] <i>Serviced Strata Scheme Valuations</i>	<i>ASIC Corporations (Serviced Apartment and like Schemes ) Instrument 2016/ 869</i>
3.	[CO 00/185] <i>Sale of serviced strata units for \$500,000 or more</i>	<i>ASIC Corporations (Serviced Apartment and like Schemes ) Instrument 2016/ 869</i>
4.	[CO 00/245] <i>Closed Schemes</i>	<i>ASIC Corporations (Serviced Apartment and like Schemes ) Instrument 2016/ 869</i>
5.	[CO 02/303] <i>Management rights scheme-amendment</i>	<i>ASIC Corporations (Serviced Apartment and like Schemes ) Instrument 2016/ 869</i>
6.	[CO 02/304] <i>Management rights schemes - and</i>	<i>ASIC Corporations (Serviced Apartment and like Schemes ) Instrument 2016/ 869</i>
7.	[CO 02/305] <i>Management rights schemes</i>	<i>ASIC Corporations (Serviced Apartment and like Schemes ) Instrument 2016/ 869</i>
8.	[CO 07/189] <i>Management rights schemes where the strata unit cannot be used as a residence</i>	<i>ASIC Corporations (Serviced Apartment and like Schemes ) Instrument 2016/ 869</i>

The relief found in the following class order will no longer be provided:

Class Order [CO 02/183] *Small Property Schemes*

### **3. Operation of the instrument**

*ASIC Corporations (Repeal) Instrument 2016/898* repeals the 9 class orders specified in the schedule to that instrument.

### **4. Consultation**

On 8 February 2016 ASIC released CP 250 *Remaking ASIC Class Orders on Property, Strata and Management Rights Schemes (CP 250)* seeking feedback on proposals to update and consolidate a number of class orders relating primarily to Chapter 5C of the Act. CP 250 referred to the expiry of class orders scheduled to eventually sunset under the LA and also sought feedback on proposals to reissue the legislative instruments where it was considered the Class Orders were operating effectively and efficiently and still met ASIC's policy. The consultation period closed on 8 March 2016.

The submissions received in response to CP 250 largely supported of the proposals to update and consolidate the 7 class orders, remake Class Order [CO 02/182] *Real Property Rental Schemes* and repeal Class Order [CO 02/183] *Small Property Schemes*.

Following the consultation, ASIC decided to proceed to reissue the class orders as proposed by CP 250. Notwithstanding the consultation, ASIC considers that *ASIC Corporations (Repeal) Instrument 2016/898* is of a minor or machinery nature and, having regard to the contemporaneous reissuing of the class orders, does not substantially alter existing arrangements. ASIC has decided to repeal Class Order [CO 02/183] as there was no evidence that the relief was relied upon and applications for individual relief can be applied for if required.

**Statement of Compatibility with Human Rights**  
*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*  
**ASIC Corporations (Repeal) Instrument 2016/898**

*ASIC Corporations (Repeal) Instrument 2016/898* 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*.

**Overview**

*ASIC Corporations (Repeal) Instrument 2016/898* repeals 9 class orders which relate primarily to the managed investment, AFS licensing, disclosure and hawking provisions in Chapters 5C and Chapter 7 of the *Corporations Act 2001*.

**Human rights implications**

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

**Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Australian Securities and Investments Commission**