

## **EXPLANATORY STATEMENT for**

### **ASIC Corporations (Amendment and Repeal) Instrument 2016/914**

Prepared by the Australian Securities and Investments Commission

#### *Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations (Amendment and Repeal) Instrument 2016/914* under subsections 88B3 and 341(1), of the *Corporations Act 2001* (the Corporations Act).

Subsection 88B(3) provides that ASIC may, in writing, vary or revoke a declaration made under subsection 88B(2).

Subsection 341(1) provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, relieving any of the directors, the companies, registered schemes or disclosing entities themselves, or the auditors of the companies, registered schemes or disclosing entities from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the Corporations Act.

Under subsection 33(3) of the Acts Interpretation Act 1901 (as in force as at 1 January 2005 and 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.

*ASIC Corporations (Amendment and Repeal) Instrument 2016/914:*

- (a) repeals Class Order [CO 98/106] *Financial reports of superannuation funds, approved deposit funds and pooled superannuation trusts*, Class Order [CO 98/1417] *Audit relief for proprietary companies*, Class Order [CO 98/1418] *Wholly-owned entities*, Class Order [CO 99/1225] *Financial reporting requirements for benefit fund friendly societies* and Class Order [CO 01/1256] *Qualified accountant*; and
- (b) makes consequential amendments to *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73*.

## **1. Background**

Under the *Legislation Act 2003*, legislative instruments cease automatically, or ‘sunset’, after 10 years, unless action is taken to exempt or preserve them.

To preserve its effect, a legislative instrument, such as a class order, must be remade before the sunset date. The purpose of sunset is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.

[CO 98/1417] and [CO 98/1418] are due to sunset on 1 October 2016 and [CO 01/1256] is due to sunset on 1 April 2017. ASIC has reviewed its policy underlying the relief. In light of this review and following public consultation, ASIC considers that the class order relief is necessary, fit-for-purpose and relevant.

As such, ASIC has decided to:

- (a) reissue the relief underlying [CO 98/1417] in a new legislative instrument, *ASIC Corporations (Audit Relief) Instrument 2016/784*;
- (b) reissue the relief underlying [CO 98/1418] in a new legislative instrument, *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785*;
- (c) reissue the relief underlying CO [01/1256] in a new legislative instrument, *ASIC Corporations (Qualified Accountant) Instrument 2016/786*.

## **2. Purpose of the instrument**

In light of the relief in [CO 98/1417], [CO 98/1418] and [CO 01/1256] being remade in new legislative instruments, the purpose of *ASIC Corporations (Amendment and Repeal) Instrument 2016/914* is to repeal [CO 98/1417], [CO 98/1418] and [CO 01/1256] and to make consequential amendments to *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73*.

ASIC considers [CO 98/106] and [CO 99/1225] are no longer necessary, useful or effective and they have been repealed rather than allowed to sunset.

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

Schedule 1 of *ASIC Corporations (Amendment and Repeal) Instrument 2016/914* makes consequential amendments to *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73* which will update references to the repealed class orders.

Schedule 2 of *ASIC Corporations (Amendment and Repeal) Instrument 2016/914* repeals [CO 98/106], [CO 98/1417], [CO 98/1418], [CO 99/1225] and [CO 01/1256].

## **4. Consultation**

ASIC has not consulted on this instrument as it is machinery in nature.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **ASIC Corporations (Amendment and Repeal) Instrument 2016/914**

*ASIC Corporations (Amendment and Repeal) Instrument 2016/914 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**

This instrument repeals certain sunset class orders which have been remade as new legislative instruments or which are no longer necessary, useful or effective, and makes consequential amendments to instruments which refer to the revoked class orders.

#### **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**