



**ASIC**  
Australian Securities &  
Investments Commission

# Explanatory Statement

## *ASIC Corporations (Repeal) Instrument 2022/499*

This is the Explanatory Statement for *ASIC Corporations (Repeal) Instrument 2022/499 (Instrument)*.

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

### Summary

1. The Instrument repeals, in a single instrument:
  - a. seven legislative instruments which concern relief related to product disclosure statements (**PDS**), superannuation dashboards and Financial Services Guides (**FSG**); and
  - b. four further legislative instruments that are redundant ([CO 10/630] *Long-term superannuation returns*, [CO 12/574] *Revocation of Class Orders [SCO 00/184] and [SCO 04/1570]*, [CO 12/794] *Emissions units: Relief for representatives* and *ASIC Corporations (AFSL Audit Opinion) Instrument 2015/586 (LI 2015/586)*).

### Purpose of the instrument

2. Under the *Legislation Act 2003*, legislative instruments cease automatically or 'sunset' after 10 years, unless action is taken to exempt or preserve them.
3. To preserve its effect, a legislative instrument must be remade before the sunset date. The purpose of sunsetting is to ensure that instruments are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.
4. This Instrument repeals eleven legislative instruments.
5. The relief found in seven of these legislative instruments is remade in three new instruments (see table below), subject to limited changes to simplify requirements and language and to remove redundant relief. Reducing the number of legislative instruments ensures that relief on related topics are consolidated in one instrument and the sunsetting periods for each relief are more aligned.

	<b>Repealed class order</b>	<b>New legislative instrument</b>
1.	[CO 12/415] <i>In-use notices for employer-sponsored superannuation</i>	<i>ASIC Corporations (In-Use Notices and Dashboards) Instrument 2022/496</i>
2.	[CO 13/1534] <i>Deferral of Stronger Super amendments in relation to PDS and periodic statement disclosure</i>	<i>ASIC Corporations (In-Use Notices and Dashboards) Instrument 2022/496</i>
3.	[CO 14/443] <i>Deferral of choice product dashboard and portfolio holdings disclosure regimes</i>	<i>ASIC Corporations (In-Use Notices and Dashboards) Instrument 2022/496</i>
4.	[CO 12/417] <i>Information in a FSG given in a time-critical situation</i>	<i>ASIC Corporations (Financial Services Guide Given in a Time Critical Situation) Instrument 2022/498</i>
5.	[CO 12/749] <i>Relief from the Shorter PDS regime</i>	<i>ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/497</i>
6.	[CO 13/797] <i>Platform operators and trustees of superannuation entities using an agent to deliver a PDS</i>	<i>ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/497</i>
7.	<i>ASIC Corporations (Superannuation: Investment Strategies) Instrument 2016/65</i>	<i>ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/497</i>

6. ASIC Class Orders [10/630], [CO 12/574], [CO 12/794] and LI 2015/586 are redundant and have not been remade.
7. ASIC Class Order [CO 12/574] is redundant as it revokes class orders that are no longer applicable. [CO 12/794] is redundant as its relief only applied until 31 December 2012, which is the day mentioned in paragraph 911A(5B)(b) of the *Corporations Act 2001*.
8. ASIC Class Order [CO 10/630] and LI 2015/586 are redundant following registration of the *Treasury Laws Amendment (Miscellaneous and Technical Amendments No. 2) Regulations 2021*, which incorporated modifications the legislative instruments made into the *Corporations Regulations 2001*.

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## Consultation

9. On 15 February 2022, ASIC released CP 358 *Remaking ASIC relief on PDSs, superannuation dashboards and FSGs (CP 358)* seeking feedback on proposals to remake the legislative instruments listed in the table above. This included proposals to, without significant changes:
  - a. remake, as a single new instrument, non-redundant relief in [CO 12/415], [CO 13/1534] and [CO 14/443];
  - b. remake, as a new instrument, relief in [CO 12/417]; and
  - c. remake, as a single new instrument, relief in [CO 12/749], [CO 13/797] and LI 2016/65.
10. The consultation period closed on 12 April 2022.
11. ASIC received six submissions in response to CP 358. The submissions are publicly available on ASIC's website at [www.asic.gov.au](http://www.asic.gov.au).
12. Following the consultation, ASIC decided to proceed to remake the instruments without significant changes as proposed by CP 358.

## Operation of the instrument

### Part 1 – Preliminary

13. Section 1 provides the name of the Instrument.
14. Section 2 provides that the Instrument commences on the later of the day after it is registered on the Federal Register of Legislation, and the date of its gazettal.
15. Section 3 provides that the Instrument is made under powers in the *Corporations Act 2001 (Act)*, specifically those in section:
  - a. 741(1) that allows ASIC to exempt or declare that certain provisions of Chapter 6D do not apply to a person;
  - b. 911A(2)(l) that provides an exemption from the requirement to hold an AFS licence for the provision of a service, as specified by ASIC in writing and published in the *Gazette*;
  - c. 926A(2)(c) and 951B(1)(c) that allow ASIC to make declarations to exempt persons, financial products, or a class of persons or financial products from specific provisions of the Act;
  - d. 992B(1)(c) that allows ASIC to declare that Part 7.8 applies in relation to persons, financial products, or classes of persons or financial products, as if specified provisions of Part 7.8 were omitted, modified or varied as specified in the declaration; and

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- e. 1020F(1) that allows ASIC to make exemptions or declarations to exempt a person, financial product, or class or persons or financial products from specific provisions of the Act, or declare they operate in a modified or varied way.
  16. Section 4 provides that each instrument specified in the Schedule to the Instrument is amended or repealed according to its terms. See paragraph 17 below for further information.
  17. Section 5 provides that the repeal of an instrument by section 4 of the Instrument does not affect the simultaneous repeal of another instrument by the Instrument. Furthermore, it does not limit the effect of section 7 of the *Acts Interpretation Act 1901* as it applies to the repeal of an instrument by section 4 of the Instrument.

### **Schedule 1**

18. Sections 1 to 9 of Schedule 1 to the Instrument repeal, in their entirety, [CO 10/630], [CO 12/415], [CO 12/417], [CO 12/574], [CO 12/794], [CO 12/749], [CO 13/797], [CO 13/1534], [CO 14/443], LI 2015/586 and LI 2016/65.

### **Legislative authority**

19. This Instrument, which is an omnibus repeal instrument, repeals several legislative instruments made by ASIC. Several sources of power were used to make those instruments. 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) provides that where an Act confers a power to make any instrument, the power is to 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.
20. The Instrument is made under sections 741(1), 911A(2)(l), 992B(1)(c), 926A(2)(c), 951B(1)(c), and 1020F(1) of the Act.
21. The Instrument is a disallowable legislative instrument.

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

22. A Statement of Compatibility with Human Rights consistent with subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is in the 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 (Repeal) Instrument 2022/499***

#### Overview

1. *ASIC Corporations (Repeal) Instrument 2022/499* repeals:
  - a. seven legislative instruments which contain relief related to product disclosure statements, superannuation dashboards and Financial Services Guides that has been remade in new legislative instruments; and
  - b. ASIC Class Orders [CO 10/630], [CO 12/574] and [CO 12/794] and *ASIC Corporations (AFSL Audit Opinion) Instrument 2015/586* which are redundant.

#### 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*.