

EXPLANATORY STATEMENT for ASIC Corporations (Repeal) Instrument 2016/970

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (ASIC) makes ASIC Corporations (Repeal) Instrument 2016/970 under paragraph 926A(2)(c) of the *Corporations Act 2001* (the Act).

Paragraph 926A(2)(c) provides that ASIC may declare that provisions of Pt 7.6 (except for Divs 4 and 8) apply in relation to a person or class of persons as if specified provisions were omitted, modified or varied as specified.

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.

1. Background

Subsection 912B(1) requires a financial services licensee who provides financial services to persons as retail clients to have in place arrangements to compensate those persons for loss or damage suffered because of breaches of obligations under Ch 7 of the Act.

Under s912B(2), the arrangements must:

- (a) if the regulations specify requirements that are applicable to all arrangements, satisfy those requirements; or
- (b) be approved in writing by ASIC.

Section 912B was introduced by the *Financial Services Reform Act 2001* (FSR Act) but did not take immediate effect. Regulation 10.2.44(1) of the *Corporations Regulations 2001* (the

Regulations) deferred the application of s912B until 11 March 2004, in order to allow the Government time to consult on the issue of compensation arrangements and to finalise regulations under s912B.

ASIC made Class Order [CO 06/495] as a transitional measure to defer the commencement of the operation of s912B to give the Government more time to consult and consider a compensation regime: see reg 7.6.02AA and [CO 06/495]. Regulation 7.6.02AA was due to expire on 30 June 2006 but as a result of amendments to [CO 06/495] the transitional compensation arrangements continued to apply until 30 June 2007.

After a review of possible compensation arrangements and public consultation, the Government inserted a new reg 7.6.02AAA into the Regulations. It commenced on 1 July 2007, at the same time as section 912B. As such, [CO 06/495] did not need to be extended past 30 June 2007, meaning it ceased to have effect after that date.

2. Purpose of the instrument

The purpose of the ASIC Corporations (Repeal) Instrument 2016/970 is to repeal ASIC Class Order [CO 06/495].

ASIC Class Order [CO 06/495] no longer serves a regulatory purpose. ASIC will repeal instruments rather than allow them to sunset so that industry is certain of our intentions and confident that, where instruments are removed, this was our intention.

3. Operation of the instrument

ASIC Corporations (Repeal) Instrument 2016/970 repeals [CO 06/495] as it no longer forms a necessary and useful part of the regulatory framework.

4. Consultation

ASIC did not undertake any specific consultation with stakeholders before *ASIC Corporations (Repeal) Instrument 2016/970* was made because it is of a minor and machinery nature.

Statement of Compatibility with Human Rights

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

ASIC Corporations (Repeal) Instrument 2016/970

ASIC Corporations (Repeal) Instrument 2016/970 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 2016/970 repeals ASIC Class Order [CO 06/495] Extension of transitional arrangements as it is no longer required.

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