

## **ASIC Deputy Chairman discusses proposed ASIC power reforms**

On 17 July 2018, Deputy Chair of ASIC, Peter Kell, delivered a speech at the ASIC Regulatory Update to discuss topics including the proposed reforms to ASIC's powers.

In April 2018, the Treasurer and the Minister for Revenue and Financial Services announced that the Government will strengthen ASIC's penalties and powers. This announcement followed recommendations from the ASIC Enforcement Review Taskforce, which was established in 2016 to review the adequacy of ASIC's enforcement regime. The Government has agreed to the Taskforce's 50 recommendations and will prioritise the implementation of 30 of those recommendations.

The reforms propose the following powers:

- significantly stronger and clearer rules about the obligation of licensees to report breaches to ASIC honestly and in a timely manner
- stronger powers for ASIC to take regulatory action against senior managers or controllers of financial services businesses, including banning individuals from performing any role in a financial services business when they are found to be unfit, improper or incompetent
- a 'directions power' that will enable ASIC to direct licensees to take particular remedial actions such as consumer compensation programs
- stronger penalties for licensees, including the power for ASIC to strip wrongdoers of profits illegally obtained, or losses avoided from contraventions resulting in civil penalty proceedings
- strengthening ASIC's power to refuse, revoke or cancel an AFSL or ACL where the licence isn't fit or proper
- a 'product intervention' power that would enable ASIC to intervene where a product is identified as creating a risk of significant consumer detriment. This would be a broad flexible power to enable ASIC to intervene in relation to all products within its jurisdiction, and
- increasing ASIC's tools to investigate and prosecute serious offences by harmonising their search warrant powers to provide ASIC with greater flexibility to use seized materials, and granting ASIC access to telecommunications intercept material.

The Government also plans to increase and harmonise penalties for criminal and civil offences under the Corporations Act, with maximum criminal penalties for corporations increasing to the larger of \$9.45 million, three times the benefit or 10% of annual turnover.

**Peter Kell Full Speech:** <https://asic.gov.au/about-asic/media-centre/speeches/how-financial-services-firms-can-act-to-meet-community-expectations-through-transparency-and-accountability/>

**Scott Morrison's Media Release:** <http://sjm.ministers.treasury.gov.au/media-release/boosting-penalties-to-protect-australian-consumers-from-corporate-and-financial-misconduct/>