

ASIC directions power

Recommendation	Existing law	Summary of proposed reform	Comments
<p>Additional commitment in response to recommendation 7.2</p> <p>The recommendations of the ASIC Enforcement Review Taskforce made in December 2017 that relate to self-reporting of contraventions by financial services and credit licensees should be carried into effect.</p> <p>The ASIC Enforcement Review Taskforce in 2019 recommended that ASIC should have a directions power in Recommendations 46 to 48.</p>	<p>N/A</p>	<ul style="list-style-type: none">• ASIC may make a direction to an AFS or Australian credit licence holder if:<ul style="list-style-type: none">– ASIC has reason to suspect that a financial services licensee has engaged, or is engaging, in conduct that constitutes a contravention of a financial services law; or– ASIC has reason to suspect that a financial services licensee will engage in conduct that would constitute a contravention of a financial services law.• ASIC may make a direction to “address the contravention” and to “prevent a similar or related contravention”.• Directions may be given to a licensee to do a prescribed thing in the Act or Regulations. The list of prescribed things are broad and include a direction to “not accept new clients” or to carry out a specified remediation program.• Before giving a direction, ASIC must afford the licensee with a hearing and an opportunity to make submissions.• ASIC may also give an “interim direction” on the same grounds, which:<ul style="list-style-type: none">– does not require ASIC to afford a hearing or receive submissions; and– will cease to have effect within 21 days or until a direction is given.	<p>Technically, this appears narrower than APRA’s directions power. For example under the Banking Act 1959, APRA’s directions power is not expressly limited to “addressing the contravention”.</p>