

Schedule 6—Regulatory powers amendments

Personal Property Securities Act 2009

Item 1 – Section 3

1. Item 1 amends section 3 to omit ‘Parts 4 and 6 of the Regulatory Powers Act’ and substitute ‘Parts 4 to 7 of the Regulatory Powers Act’.
2. The *Personal Property Securities Act 2009* (the PPS Act) previously triggered Parts 4 and 6 of the Regulatory Powers Act, which provide the PPS Act with standard civil penalty and enforceable undertakings provisions.
3. This amendment is made because this Schedule amends the PPS Act to trigger the standard infringement notice (Part 5) and injunctions provisions (Part 7) of the Regulatory Powers Act, respectively (refer to Item 15 and Item 18 of this Schedule).
4. As the PPS Act does not contain an infringement notice scheme or the power to issue injunctions, application of these provisions results in an expansion of the current regulatory powers framework of the PPS Act.

Item 2 – Section 10 (at the end of the definition of *Regulatory Powers Act*)

5. Item 2 inserts a note in section 10, after the definition of ‘Regulatory Powers Act’.
6. The note clarifies, for the purposes of the PPS Act, the Regulatory Powers Act will apply as in force at the start of the date on which the [*Personal Property Securities Amendment (Framework Reform) Act 2023*] receives Royal Assent. Later amendments to the Regulatory Powers Act will not apply to the PPS Act. The note points to section 220A, which provides this rule.
7. The Regulatory Powers Act will be ‘frozen’ for the purposes of the PPS Act because the PPS Act relies in part on referral of powers from states and territories. Any subsequent change to the Regulatory Powers Act may affect the PPS Act, which would in turn require agreement from states and territories under the terms of the referral of powers.

Item 3 – Subsection 151(1) (note)

8. Item 3 amends the note in subsection 151(1) to refer to the ‘Enforcement of civil penalty provisions’ rather than ‘civil penalty proceedings’.
9. This amendment is made because Part 6.3 of the PPS Act is renamed ‘Enforcement of civil penalty provisions’ by Item 12 of this Schedule.

Item 4 – Subsection 151(2) (note)

10. Item 4 amends the note in subsection 151(2) to refer to the ‘Enforcement of civil penalty provisions’ rather than the ‘Civil penalty proceedings’.
11. This amendment is made because Part 6.3 of the PPS Act is renamed ‘Enforcement of civil penalty provisions’ by Item 12 of this Schedule.

Item 5 – Subsection 172(3) (note)

12. Item 5 amends the note in subsection 172(3) to refer to the ‘Enforcement of civil penalty provisions’ rather than ‘Civil penalty proceedings’.
13. This amendment is made because Part 6.3 of the PPS Act is renamed ‘Enforcement of civil penalty provisions’ by Item 12 of this Schedule.

Item 6 – Subsection 195A(4) (note)

14. Item 6 amends the note in subsection 195A(4) to refer to the ‘Enforcement of civil penalty provisions’ rather than ‘Civil penalty proceedings’.
15. This amendment is made because Part 6.3 of the PPS Act is renamed ‘Enforcement of civil penalty provisions’ by Item 12 of this Schedule.

Item 7 – At the end of section 197

16. Item 7 inserts new subsection 197(3) and a note at the end of section 197.
17. Section 197 allows the Registrar to delegate all or any of their functions or powers by written instrument to another person. New subsection 197(3) prevents the Registrar from delegating any of their powers under the Regulatory Powers Act, to which Part 6.3 (enforcement of civil penalty provisions) of the PPS Act applies.
18. Subsection 197(3) is inserted because this Schedule includes amendments to Part 6.3 of the PPS Act that specifically allow the Registrar to delegate their powers under the Regulatory Powers Act.
19. Item 13 and Item 16 of this Schedule make amendments to allow the Registrar to delegate their powers under Part 4 and 6 of the Regulatory Powers Act, respectively. This aligns Part 4 and Part 6, as earlier triggered by the PPS Act, with the delegation provisions for Part 5 and Part 7 of the Regulatory Powers Act (as triggered by Item 15 and Item 18 of this Schedule, respectively).
20. The note below subsection 197(3) provides references to where the delegations are found in Part 6.3 of the PPS Act. See sections 221 (civil penalty provisions), new section 221A (infringement notices), 222 (enforceable undertakings) and new section 223 (injunctions).

Item 8 – Chapter 6 (heading)

21. Item 8 repeals the heading ‘Chapter 6—Judicial proceedings’ and substitutes ‘Chapter 6—Judicial Proceedings and civil penalty provision enforcement’.
22. The change is to reflect the matters dealt with by the chapter and the triggered provisions of the Regulatory Powers Act.

Item 9 – Section 204

Section 204 – Guide to this Chapter

23. Item 9 repeals and replaces section 204, which provides the Guide to Chapter 6.
24. The new section 204 is similar to repealed section 204, but updated to note that the chapter also deals with the enforcement of civil penalty provisions. The new Guide to Chapter 6 notes that Part 6.3 now applies to Parts 4 to 7 of the Regulatory Powers Act to

enable the enforcement of contraventions of civil penalty provisions under the PPS Act by civil penalties, infringement notices, enforceable undertakings and injunctions.

Item 10 – Subsection 206(6)

25. Item 10 amends subsection 206(6) to omit the reference to ‘civil penalties and enforceable undertakings’ and substitute ‘enforcement of civil penalty provisions’, to better reflect the matters dealt with by Part 6.3.

Item 11 – Part 6.3 (heading)

26. Item 11 repeals the heading ‘Part 6.3–Civil penalties and enforceable undertakings’ and substitutes it with ‘Part 6.3–Enforcement of civil penalty provisions’ to reflect more accurately the matters dealt with by Part 6.3.

Item 12 – Section 220

Section 220 – Guide to this Part

27. Item 12 repeals and replaces section 220, which provides the Guide to Part 6.3.
28. New section 220 states that Parts 4 to 7 of the Regulatory Powers Act apply to Part 6.3. It includes descriptions of Part 5 (which relates to infringement notices) and Part 7 (which relates to injunctions) of the Regulatory Powers Act, which are triggered by amendments to the PPS Act made by this Schedule. The descriptions of Part 5 and Part 7 are in addition to descriptions of Part 4 and Part 6 of the Regulatory Powers Act, which were already triggered by the PPS Act.

Section 220A – Application of Regulatory Powers Act

29. Item 12 also inserts section new 220A ‘Application of the Regulatory Powers Act’, which provides the Regulatory Powers Act applies to the PPS Act as in force from the start of the day on which [Personal Property Securities Amendment (Framework Reform) Act 2021] receives the Royal Assent.
30. Subsection 220A(2) provides that amendments made to the Regulatory Powers Act after that time do not apply to the PPS Act. The Regulatory Powers Act will be ‘frozen’ for the purposes of the PPS Act because the PPS Act relies in part on referral of powers from states and territories. Any subsequent change to the Regulatory Powers Act may affect the PPS Act, which would in turn require agreement from states and territories under the terms of the referral of powers.

Item 13 – Subsection 221(2)

31. Item 13 repeals subsection 221(2) and inserts subsections 221(2), (2A) and (2B).
32. Section 221 sets out how a civil penalty provision in the PPS Act can be enforced under Part 4 of the Regulatory Powers Act. Current subsection 221(2) provides that only the Registrar is an authorised applicant in relation to civil penalty provisions for the purposes of Part 4 of the Regulatory Powers Act, with no power of delegation.
33. New subsection 221(2) provides that both the Registrar and the Deputy Registrar are authorised applicants for the purposes of Part 4 of the Regulatory Powers Act.
34. New subsection 221(2A) allows the Registrar to delegate their powers under Part 4 of the Regulatory Powers Act in relation to civil penalty provisions of the PPS Act, to an SES

employee or acting SES employee in the Australian Financial Security Authority. Delegations must be authorised in writing. Delegations of authorised applicant powers to the SES level accords with standard policy regarding the Regulatory Powers Act.

35. Subsection 221(2B) provides that a person exercising powers under a delegation under 221(2A) must comply with any directions of the Registrar.
36. This amendment aligns the delegation provisions under Part 4 of the Regulatory Powers Act, as earlier triggered by the PPS Act, with the delegation provisions provided by this Schedule for Parts 5 and 7 of the Regulatory Powers Act. Item 16 makes an equivalent amendment to the delegation provisions under Part 6 of the Regulatory Powers Act.

Item 14 – At the end of subsection 221(4)

37. Item 14 adds ‘of this Act’ to the end of subsection 221(4).
38. Subsection 221(4) provides that Part 4 of the Regulatory Powers Act extends to Norfolk Island and such other external territories as are prescribed by the Personal Property Securities Regulations 2010 (the PPS Regulations) for the purposes of section 7. This amendment makes it clear that the reference to section 7 in subsection 221(4) is to section 7 of the PPS Act.

Item 15 – After section 221

Section 221A – Infringement notices

39. Item 15 inserts new section 221A after section 221 which triggers the application of Part 5 of the Regulatory Powers Act to civil penalty provisions under the PPS Act.
40. Part 5 of the Regulatory Powers Act creates a framework for the use of infringement notices that may be issued in relation to a breach of an offence or civil penalty provision.
41. Subsection 99(2) of the Regulatory Powers Act states that, in order for Part 5 of that Act to operate, a provision of an Act or legislative instrument must be made subject to an infringement notice under that Part by a triggering Act. New subsection 221A(1) provides that a civil penalty provision of the PPS Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act. It also inserts a note which informs the reader that Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.
42. When a triggering Act applies Part 5 of the Regulatory Powers Act, it must nominate a person or persons as an infringement officer or officers for the purposes of exercising powers under that Part (see section 101 of the Regulatory Powers Act). New subsection 221A(2) provides that for the purposes of Part 5 of the Regulatory Powers Act, the Registrar and the Deputy Registrar are infringement officers.
43. New subsection 221A(3) allows the Registrar to delegate their powers under Part 5 of the Regulatory Powers Act, in writing, to an SES employee or acting SES employee in the Australian Financial Security Authority. Subsection 221A(4) provides that a person exercising powers under such a delegation must comply with any directions of the Registrar. Delegations of investigation officer powers to the SES level accords with standard policy regarding the Regulatory Powers Act.
44. A triggering Act must also identify the relevant chief executive for the purposes of exercising powers under Part 5 of the Regulatory Powers Act (see section 102 of the

Regulatory Powers Act). New subsection 221A(5) provides that for the purposes of Part 5 of the Regulatory Powers Act, the Registrar is the relevant chief executive.

45. New subsection 221A(6) allows the Registrar to delegate their powers as the relevant chief executive under Part 5 of the Regulatory Powers Act to an SES or acting SES employee. Delegation to the SES level is consistent with standard policy regarding the Regulatory Powers Act. New subsection 221A(7) states that a person exercising relevant chief executive powers under a delegation by the Registrar must comply with any directions of the Registrar
46. As it is the same cohort of officers who will be able to issue infringement notices (using the powers of an investigation officer) and review and revoke infringement notices (using the powers of the relevant chief executive), the Australian Financial Security Authority will have mechanisms in place to ensure that someone who receives an infringement notice can seek independent review of the notice by a different officer. Details of how to apply for independent review and how these will be handled will be included in Registrar's Practice Statement No. 3 (RPS 3). RPS 3 deals with the Registrar's policies and practices in relation to investigations under the PPS Act and existing regulatory powers (civil penalties and enforceable undertakings). On commencement this Schedule will be updated and reissued to include infringement notices and injunctions. RPS 3 is available publicly on the PPS Register website.
47. If offence or civil penalty provisions of a triggering Act are subject to an infringement notice and apply in external Territories or offshore areas, the triggering Act should identify whether Part 5 of the Regulatory Powers Act extends to any external Territories.
48. New subsection 221A(8) of the PPS Act extends the application of Part 5 of the Regulatory Powers Act, as that Part applies to civil penalty provisions of the PPS Act, to external Territories as in section 7 of the PPS Act.
49. Section 7 of the PPS Act provides that the PPS Act extends to Norfolk Island, and that all references in the PPS Act to 'Australia' includes a reference to Norfolk Island. The extension of the application of Part 5 of the Regulatory Powers Act, as that Part applies to civil penalty provisions of the PPS Act, includes other external Territories if prescribed as such by the PPS Regulations, for the purposes of section 7 of the PPS Act.

Item 16 – Subsection 222(2)

50. Item 16 repeals subsection 222(2) and inserts new subsections 222(2), (2A) and (2B).
51. Current subsection 222(2) provides that the Registrar is an authorised applicant in relation to civil penalty provisions for the purposes of Part 6 of the Regulatory Powers Act. New subsection 222(2) provides that both the Registrar and the Deputy Registrar are authorised applicants for the purposes of Part 6 of the Regulatory Powers Act.
52. New subsection 222(2A) allows the Registrar to delegate their powers under Part 6 of the Regulatory Powers Act in relation to civil penalty provisions of the PPS Act, to an SES employee or acting SES employee in the Australian Financial Security Authority. Delegations must be authorised in writing. Delegations of authorised applicant powers to the SES level accords with standard policy regarding the Regulatory Powers Act.
53. Subsection 222(2B) provides that a person exercising powers under such a delegation must comply with any directions of the Registrar.

54. This amendment aligns the delegation provisions under Part 6 of the Regulatory Powers Act, as earlier triggered by the PPS Act, with the delegation provisions provided by this Schedule for Parts 5 and 7 of the Regulatory Powers Act. Item 13 makes an equivalent amendment to the delegation provisions under Part 4 of the Regulatory Powers Act.

Item 17 – At the end of subsection 222(4)

55. Item 17 adds ‘of this Act’ to the end of subsection 222(4).

56. Subsection 222(4) provides that Part 6 of the Regulatory Powers Act extends to Norfolk Island and such other external territories as are prescribed by the Regulations for the purposes of section 7. This amendment makes it clear that the reference to section 7 in subsection 222(4) is to section 7 of the PPS Act.

Item 18 – At the end of Part 6.3

Section 223 - Injunctions

57. Item 18 inserts new section 223 which triggers the application of Part 7 of the Regulatory Powers Act to civil penalty provisions under the PPS Act.

58. Part 7 of the Regulatory Powers Act creates a framework for the use of injunctions to enforce provisions of an Act. New section 223 will allow for the use of injunctions to enforce civil penalty provisions of the PPS Act.

59. Subsection 117(2) of the Regulatory Powers Act states that, in order for Part 7 of the Regulatory Powers Act to operate, a provision of an Act or legislative instrument must be made enforceable under that Part by a triggering Act. New subsection 223(1) provides that a civil penalty provision of the PPS Act is enforceable under Part 7 of the Regulatory Powers Act. It also inserts a note which informs the reader that Part 7 of the Regulatory Powers Act allows a provision to be enforced by obtaining an injunction.

60. When a triggering Act applies Part 7 of the Regulatory Powers Act, it must identify an authorised person or persons that may exercise powers under Part 7 of the Regulatory Powers Act (see sections 119 of the Regulatory Powers Act). New subsection 223(2) provides that for the purposes of Part 7 of the Regulatory Powers Act, the Registrar and the Deputy Registrar are authorised officers.

61. A triggering Act must also express whether an authorised person or persons may delegate his or her powers and functions under Part 7 of the Regulatory Powers Act in relation to provisions subject to an injunction under the triggering Act (see subsection 119(3) of the Regulatory Powers Act). New subsection 223(3) allows the Registrar to delegate their powers provided in new subsection 223(2), in writing, to an SES employee or acting SES employee in the Australian Financial Security Authority. Subsection 223(4) provides that a person exercising powers under such a delegation must comply with any directions of the Registrar. Delegations of authorised officer powers to the SES level accords with standard policy regarding the Regulatory Powers Act.

62. When a triggering Act applies Part 7 of the Regulatory Powers Act, it must identify a relevant court or courts that may exercise powers under Part 7 of the Regulatory Powers Act (see section 120 of the Regulatory Powers Act). New subsection 223(5) provides that the Federal Court, the Federal Circuit and Family Court of Australia (Division 2) and a court of a State or a Territory that has jurisdiction in relation to matters arising under the

PPS Act are relevant courts for the purposes of injunction provisions applied to the PPS Act under Part 7 of the Regulatory Powers Act.

63. New subsection 223(6) modifies the standard injunction provisions contained in the Regulatory Powers Act in its application to the PPS Act. The subsection relates to where a relevant court grants an injunction under subsection 121(1) of the Regulatory Powers Act, as that Act applies to the PPS Act. Such an injunction restraining a person from engaging in conduct that contravenes a civil penalty provision of the PPS Act can also restrain the person from engaging in conduct of a similar kind. This modification addresses the risk that the standard provisions may not be construed widely enough to ensure that the Registrar can obtain an injunction to restrain persons who make baseless registrations on the Register from making further registrations without the consent of the Registrar.
64. If provisions of the triggering Act are subject to an injunction and apply in external Territories or offshore areas, the triggering Act should identify whether Part 7 of the Regulatory Powers Act extends to any external Territories. New subsection 223(7) of the PPS Act extends the application of Part 7 of the Regulatory Powers Act, as that Part applies to civil penalty provisions of the PPS Act, to external Territories as described in section 7 of the PPS Act.
65. Section 7 of the PPS Act provides that the PPS Act extends to Norfolk Island, and that all references in the PPS Act to 'Australia' includes a reference to Norfolk Island. The extension of the application of Part 7 of the Regulatory Powers Act, as that Part applies to civil penalty provisions of the PPS Act, includes other external Territories if prescribed as such by the Regulations for the purposes of section 7 of the PPS Act.