



National Rental Affordability Scheme Regulations 2008¹

Select Legislative Instrument 2008 No.

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *National Rental Affordability Scheme Act 2008*.

Dated 2008

Governor-General

By Her Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]

Minister for Housing

DRAFT ONLY

Part 1 Preliminary

1 Name of Regulations

These Regulations are the *National Rental Affordability Scheme Regulations 2008*.

2 Commencement

These Regulations are taken to have commenced on 1 July 2008.

3 The National Rental Affordability Scheme

For section 5 of the Act, these Regulations constitute the National Rental Affordability Scheme (the *Scheme*).

4 Definitions

In these Regulations:

Act means the *National Rental Affordability Scheme Act 2008*.

approved participant means a person or entity approved under regulation 13 or 20.

approved rental dwelling means a rental dwelling approved under regulation 11 or 19.

call for applications means a call for applications under regulation 6.

eligible tenant has the meaning given by regulation 18.

endorsed charitable institution means an entity that is endorsed as exempt from income tax by the Commissioner of Taxation under section 50-105 of the *Income Tax Assessment Act 1997*.

market value rent has the meaning given by regulation 17.

NRAS index means the Rents component of the Housing Group of the Consumer Price Index for the year, December quarter to December quarter at 1 March of the immediately preceding financial year, using the capital city index for the

relevant State, as published in the Australian Bureau of Statistics publication Cat no 6401.0 – *Consumer Price Index, Australia, CPI: Group, Sub-group and Expenditure Class, Index Numbers by Capital City table* (or equivalent), rounded to the nearest single decimal point.

project means a set of related dwellings, and may include:

- (a) a development of dwellings, or some dwellings within a development; or
- (b) a set of dwellings in a nominated location, or
- (c) for small pockets of dwellings — dwellings in more than 1 location.

proposal means a submission in an application to the National Rental Affordability Scheme for allocations.

Note A proposal may include 1 or more projects in a range of locations.

special conditions has the meaning given by regulation 12.

subsidiary dwelling means a rental dwelling that is separately identifiable and tenanted, but is part of a larger dwelling.

Note Terms used in these Regulations that are defined in the Act include the following:

allocation, in relation to an incentive period, means an allotment to an approved participant of an entitlement to receive an incentive for an approved rental dwelling in relation to an NRAS year that falls within the incentive period if conditions are satisfied in relation to the rental dwelling.

incentive means:

- (a) a National Rental Affordability Scheme Tax Offset; or
- (b) an amount payable for an NRAS year.

incentive period means a 10 year period that starts on or after 1 July 2008.

NRAS year (short for National Rental Affordability Scheme year) means:

- (a) the period beginning on 1 July 2008 and ending on 30 April 2009; and
- (b) the year beginning on 1 May 2009 and later years beginning on 1 May.

rental dwelling means a dwelling for which rent is payable and includes:

- (a) in the case of a dwelling or building that has been converted to create additional residences—a part of the dwelling or building that is capable of being lived in as a separate residence; and
- (b) a unit that is a dwelling; and
- (c) any dwelling prescribed by the regulations to be a rental dwelling for the purposes of this definition;

but does not include a caravan, houseboat, another kind of mobile dwelling or any dwelling prescribed by the regulations not to be a rental dwelling for the purposes of this definition.

Secretary means the Secretary of the Department.

Part 2 Application

5 Purpose

This Part sets out the process for a person or entity to make an application for allocations under the Scheme.

6 Call for applications

- (1) The Secretary may, from time to time, make a *call for applications* for allocations under the Scheme.
- (2) The Secretary may, with a call for applications or later, issue guidelines about how a person or entity may apply for allocations in response to the call.
- (3) A call for applications must specify:
 - (a) a closing date for applications; and
 - (b) the set of assessment criteria in Schedule 1 that will apply to applications in response to the call.

7 Form of application

- (1) An application for allocations in response to a call for applications may be made by:
 - (a) a person or entity to whom Division 380 of the *Income Tax Assessment Act 1997* applies; or
 - (b) an endorsed charitable institution.
- (2) An application must:
 - (a) be in writing; and
 - (b) comply with any guidelines for the call; and
 - (c) contain a proposal for one or more projects of rental dwellings to be approved for the Scheme; and

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- (d) describe the style, size and special attributes (if any) of the proposed dwellings.
 - (3) A project may include dwellings that will not be available for rent until a time in the future, including dwellings that have not yet been built and cannot yet be individually identified.

8 Time for dealing with applications

The Secretary must:

- (a) make reasonable efforts to determine the applications and notify applicants of the results within 6 months after the closing date for applications; and
- (b) in any case, notify each applicant of the status of the application by that time.

Part 3 Allocation

9 Purpose

This Part sets out the process for determining allocations under the Scheme.

10 Assessment criteria for allocations

Sets of assessment criteria for allocations in relation to calls are set out in Schedule 1.

11 Assessment of applications

- (1) The Secretary must assess applications in accordance with the assessment criteria specified for the call for applications taking into account the overall goals expressed in the criteria as well as considering the individual applications.
- (2) The Secretary may seek additional information from an applicant, or any other person, and may invite an applicant to vary an application.
- (3) The Secretary may choose any combination of dwellings from among the applications.

12 Offers of approval

- (1) The Secretary may make offers to applicants in accordance with an assessment made under regulation 11.
- (2) An offer must:
 - (a) identify:
 - (i) the location of each dwelling by:
 - (A) title reference or street address; or
 - (B) if title reference or street address are not available — postcode or other regional reference; and
 - (ii) the number of dwellings in each postcode or region; and
 - (iii) the size and special qualities (if any) of each dwelling; and
 - (b) set out any conditions (*special conditions*) that will apply to an allocation in relation to particular dwellings or groups of dwellings covered by the offer; and
 - (c) specify whether the offer may be accepted in part only; and
 - (d) set a period of not less than 4 weeks during which the offer remains open.
- (3) An offer that relates to a dwelling that is not yet available for rent must specify conditions, which may include a reporting timetable, that must be satisfied before an allocation will be made for the dwelling.
- (4) When the Secretary is satisfied that no offer is likely to be made to a particular applicant, he or she must notify the applicant.
- (5) No reasons need be given for not making an offer:
 - (a) to an applicant; or
 - (b) in relation to particular dwellings.

13 Allocations

- (1) When an offer is accepted by an applicant in relation to a dwelling, the Secretary must:

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- (a) make an allocation in relation to the dwelling, specifying the date from which the allocation will operate or is taken to have operated; or
 - (b) reserve an allocation in relation to the dwelling, to be made when the conditions are fulfilled.
- (2) If a dwelling for which an allocation has been reserved is not available for rent by the required date, or an agreed alternate date, or the Secretary is satisfied that it will not be available by that date, the reservation may be withdrawn and the allocation may be offered in relation to another dwelling or in relation to another call for applications.
- (3) On making an allocation, or deciding to withdraw a reservation of an application, the Secretary must notify the applicant.
- (4) For these regulations, a dwelling subject to an allocation becomes an ***approved rental dwelling***, and the applicant becomes an ***approved participant*** in the Scheme.

14 Notification to approved participants

A notification of allocation must include the following:

- (a) particulars of the allocation, including those identifying the dwelling;
- (b) the conditions that apply to the allocation; and
- (c) for subsidiary dwellings — the incentive amount for each dwelling under regulation 26.

15 Conditions of allocation

Note Subsection 7 (2) of the Act provides:

The conditions are that:

- (a) either:
 - (i) the rental dwelling has not been lived in as a residence at any time before the first day of the incentive period; or
 - (ii) the rental dwelling was unfit for anyone to live in, and since the day on which it has been made fit for living in, it has not been lived in as a residence between that day and the first day of the incentive period; and
- (b) to the extent that the rental dwelling is rented during an NRAS year that falls within the incentive period—both:

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- (i) the rental dwelling is rented to a tenant or tenants of a kind prescribed by the regulations; and
 - (ii) the rent that is charged for the rental dwelling is, at all times during the year, at least 20% less than the market value rent for the dwelling; and
 - (c) to the extent that the rental dwelling is not rented during an NRAS year that falls within the incentive period—the dwelling is not vacant:
 - (i) for longer than the period prescribed by the regulations; and
 - (ii) for longer than a continuous period prescribed by the regulations that begins in the previous NRAS year and ends in the first-mentioned NRAS year.
- (1) The approved participant for an approved rental dwelling at the end of an NRAS year must, by 13 May of the following NRAS year, lodge a Statement of Compliance for the dwelling with the Department.
 - (2) The approved participant must ensure that each approved rental dwelling, and the management of it, complies at all times during the year with the landlord, tenancy, building, health and safety laws of the State or Territory and local government area in which the dwelling is located.
 - (3) The approved participant must ensure that all special conditions are complied with.
 - (4) The approved participant must:
 - (a) when the dwelling is first allocated, or first available for rent under the Scheme, whichever is later; and
 - (b) at the end of the fourth and seventh years of the incentive period for the dwelling;
within the next 30 days lodge with the Department a market rent valuation of the dwelling, in accordance with regulation 17.
 - (5) The approved participant may review the rent that applies to an approved rental dwelling:
 - (a) upon entering a new lease: or
 - (b) for an existing lease — no more often than at 12 monthly intervals from the date of entering into the lease.
 - (6) Any increase in rent as a result of a review in subregulation (5) must be:

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- (a) based on information about the location, type and amenity of the approved rental dwelling; and
 - (b) supported by publicly available data about comparative rental rates in the locale of the dwelling, other than data relating to other dwellings owned or operated by the approved participant.
- (7) Any increase in rent as result of a review in subregulation (5) must not exceed the percentage change of the NRAS index.
 - (8) The approved participant may increase the rent in accordance with subregulations (5) and (7) if no information or data in subregulation (6) is available.
 - (9) If a Statement of Compliance is not lodged in accordance with subregulation (1), the Secretary cannot guarantee the incentive for that NRAS year.
 - (10) The approved participant must answer any queries from the Secretary on matters covered in this regulation.

16 Statement of Compliance

A Statement of Compliance for an approved rental dwelling, for an NRAS year, must include:

- (a) a statement that at all times during the year, the tenant or tenants of the dwelling were eligible tenants, or details of any way in which this requirement was not met;
- (b) details of the rental charged over the year;
- (c) a statement that the rental charged during the year was at all times at least 20% less than the market value rent for the dwelling, or details of any way in which this requirement was not met; and
- (d) details of any period during which the dwelling was vacant;
- (e) details of the tenancy manager of each approved rental dwelling;

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- (f) a statement that the approved participant complied at all times during the year with landlord, tenancy, building health and safety law of the State or Territory and local government area in which the dwelling is located, or details of any way in which this requirement was not met;
 - (g) a statement that all special conditions have been complied with or details of any way in which this requirement was not met.

17 Determining market value rent

- (1) For the Regulations, *market value rent* for an approved rental dwelling means the amount assessed as market rent in a written valuation prepared by a valuer who:
 - (a) is registered as a valuer:
 - (i) in the State or Territory in which the dwelling is located; and
 - (ii) with a professional organisation which has a code of conduct and adopts the professional practice standards of the Australian Property Institute; and
 - (b) has no commercial relationship with or interest in:
 - (i) the registered owner or manager of the dwelling; or
 - (ii) a recipient of a Commonwealth, State or Territory government benefit in relation to the dwelling.
- (2) A valuer preparing a valuation under subregulation (1) must assess the market value rent of an approved rental dwelling on the basis of the condition in which the dwelling is to be rented, including whether the dwelling will be rented fully or partially furnished.

18 Eligible tenants

- (1) In this regulation:
 - (a) a reference to the *tenants* of an approved rental dwelling is a reference a particular individual or couple who are tenants of the dwelling;
 - (b) the day on which those tenants become tenants of the dwelling is their *start day*;

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- (c) the 12 month period beginning on their start day or an anniversary of their start day is an *eligibility year* for those tenants;
 - (d) *child* means a person under 18 years of age who is financially dependant on an eligible tenant;
 - (e) *couple* means a member of a couple for subsection 4 (2) of the *Social Security Act 1991* and his or her partner.
- (2) For these Regulations, the tenants of an approved rental dwelling become *eligible tenants* on their start day if:
- (a) their household is of a type mentioned in column 2 of the table in subregulation (4); and
 - (b) their gross income for the 12 months ending on the day before the start day does not exceed the corresponding income limit in column 3 of the table.
- (3) Eligible tenants cease to be eligible tenants if:
- (a) they cease to be tenants of the dwelling; or
 - (b) their household ceases to be of a type mentioned in column 2 of the table in subregulation (4); or
 - (c) their gross income exceeds the corresponding income limit in column 4 of the table in 2 consecutive eligibility years.
- (4) The income limits for eligibility are set out in the following table:

Item	Household type	Income limit \$	Upper income limit \$
1	Single person with no children	39 351	49 189
2	Couples or sole parents with up to 1 child	55 991	69 989
3	Couples or sole parents with 2 children	69 423	86 779
4	Couples or sole parents with 3 or more children	82 855	103 569

- (5) The Secretary may, by legislative instrument, change from time to time, any or all of the household types, income limits, or upper income limits mentioned in the table in subregulation (4).

19 Substitution of one dwelling for another

- (1) The Secretary may, on application by the approved participant for an approved rental dwelling, transfer the allocation to a different rental dwelling.
- (2) A dwelling that is substituted becomes an *approved rental dwelling*.

20 Transfer of allocation

- (1) The Secretary may, on application by the approved participant for an approved rental dwelling, transfer an allocation to:
 - (a) another approved participant; or
 - (b) another person or entity.
- (2) A person or entity to whom an allocation is transferred becomes the *approved participant* for the dwelling.

21 Revocation of allocation

- (1) The Secretary may revoke an allocation if the conditions of the allocation are not complied with.
- (2) If an allocation is revoked under subregulation (1), no incentive is payable for the NRAS year in which the revocation occurred, or in any subsequent NRAS year.

22 Variation of special conditions

The Secretary may, with the agreement of the approved participant, vary the special conditions attaching to a dwelling.

Part 4 Receiving incentives

23 Purpose

This Part sets out the process for receipt of incentives under the National Rental Affordability Scheme.

24 Eligibility to receive incentives

An approved participant for an approved rental dwelling that has satisfied the conditions of the allocation is entitled to receive an incentive.

25 Full incentive amount for standard dwelling

- (1) The amount of the incentive for an approved rental dwelling other than a subsidiary dwelling, for a full NRAS year is:
 - (a) for the period beginning on 1 July 2008 and ending on 30 April 2009 — \$5 000; and
 - (b) for the year beginning on 1 May 2009 and later years beginning on 1 May — \$6 000.
- (2) The amount in paragraph (1) (b) is indexed to the percentage change of the NRAS index.

26 Full incentive amount for subsidiary dwelling

- (1) The Secretary must determine an incentive for a subsidiary dwelling proportionately to the number of tenancies in the dwelling, to a maximum of:
 - (a) for the period beginning on 1 July 2008 and ending on 30 April 2009 — \$5 000; and
 - (b) for the year beginning on 1 May 2009 and later years beginning on 1 May — \$6 000.

Example: If a dwelling consists of 5 subsidiary dwellings, the maximum incentive amount for each of them is \$1 200.

- (2) The amount in paragraph (1) (b) is indexed to the percentage change of the NRAS index.
- (3) Other than for subregulation (1), these Regulations apply to a subsidiary dwelling in the same way as they apply to other approved rental dwellings.

27 Deductions from full incentive amount

- (1) The Secretary must, for each allocation, determine the deductions that are to be made from the amount of the incentive.

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- (2) In determining the amount of the incentive, the Secretary must:
- (a) if an approved rental dwelling is made available for rent for less than a full NRAS year — proportionately reduce the incentive for the period that the dwelling was not available to the Scheme; or
 - (b) if an approved rental dwelling is vacant for a cumulative or continuous period of more than 13 weeks in an NRAS year — proportionately reduce the incentive for each week (or part of a week) that the dwelling is vacant beyond 13 weeks; or
 - (c) if an approved rental dwelling is vacant for a continuous period of more than 13 weeks across 2 NRAS years — proportionately reduce the incentive for the second NRAS year for each week (or part of a week) that the dwelling is vacant beyond 13 weeks.
- (3) An approved participant may request a review by the Secretary of the amount of an incentive in accordance with guidelines issued by the Department.

Example 1: If a dwelling would otherwise attract an incentive of \$6 000 but is not made available for rent until 6 months into the NRAS year, the incentive would be \$3 000.

Example 2: If a dwelling would otherwise attract an incentive of \$6 000 but is vacant for a 3 periods of 5 weeks in the NRAS year, the Secretary must reduce the incentive by \$230 (\$6 000 divided by 365 days, multiplied by 14 days).

Example 3: If a dwelling would otherwise attract an incentive of \$6 000 but is vacant for a continuous period of 17 weeks across 2 NRAS years, the Secretary must reduce the incentive for the second NRAS year by \$460 (\$6 000 divided by 365 days, multiplied by 28 days).

28 Receipt of incentives

- (1) The Secretary must:
- (a) if an approved participant is an endorsed charitable institution — pay the incentive for each allocation; or
 - (b) for other approved participants — issue a tax offset certificate as set out subregulation (2); and
 - (c) if an approved participant is:

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- (i) an endorsed charitable institution for part of an NRAS year; and
 - (ii) an otherwise eligible approved participant for the remainder of the year;
- provide the incentive by way of:
- (iii) for the period that the approved participant was an endorsed charitable institution — a payment of the incentive apportioned for that period; and
 - (iv) for the period that the approved participant was an otherwise eligible approved participant — a tax offset certificate, apportioned for that period.
- (2) A tax offset certificate for subregulation (1) must contain the following:
- (a) an identifying number;
 - (b) if applicable — identification as ‘an amended, replacement certificate’;
 - (c) if applicable — the Australian Business Number and associated entity name for that ABN;
 - (d) the date of issue of the certificate (being the date the Secretary approves the certificate showing the amount of tax offset);
 - (e) the NRAS year to which the certificate relates;
 - (f) the total National Rental Affordability Scheme Tax Offset covered by the certificate;
 - (g) a listing of each dwelling covered by the certificate and the incentive determined for each dwelling for the NRAS year;
 - (h) any offset, adjustment or apportionment made to the Tax Offset and the NRAS year to which it relates.

29 Variation of incentive amount

- (1) If the Secretary determines that an error arose making an incentive for a particular allocation, he or she may vary the incentive to correct the error and, where appropriate, recoup any overpayment.

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- (2) If the Secretary determines that an incentive should be increased, he or she must:
- (a) for an endorsed charitable institution:
 - (i) make an additional payment to the institution; or
 - (ii) if the institution agrees — add the additional amount to an incentive for a future NRAS year; and
 - (b) for other approved participants:
 - (i) issue an amended certificate; or
 - (ii) if the approved participant agrees — add the additional amount to a certificate for a future NRAS year
- (3) If the Secretary determines that an incentive should be decreased, he or she may:
- (a) for an endorsed charitable institution:
 - (i) offset an overpayment against any other incentives payable to the institution in the current NRAS year or a future NRAS year; or
 - (ii) seek repayment by the institution of the overpaid amount, including debt recovery action; or
 - (b) for other recipients:
 - (i) issue an amended certificate; or
 - (ii) deduct the overpayment from a certificate for a current or future NRAS year.

Part 5 Ancillary matters

30 Record keeping

A recipient must maintain all records in relation to an application, an allocation or a payment of an incentive, for 5 years.

31 Sharing and use of information

If personal information was obtained from an application made under the National Rental Affordability Scheme or in administering the Scheme, the Secretary may:

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- (a) use the information; or
 - (b) disclose the information to a government agency of the Commonwealth or a State or Territory for the purposes of administering the Scheme.

Schedule 1 Sets of assessment criteria

(regulation 10)

Set 1

1. Criteria

- (1) The assessment criteria are the following:
 - (a) there is a demonstrated need for the proposal;
 - (b) the proposal addresses the priority areas of interest in subitem (2);
 - (c) the proposal delivers accessibility and sustainability outcomes, including the following:
 - (i) proximity of dwellings to transport, schools, shops, health services and employment opportunities;
 - (ii) types of dwellings and proposed household compositions that facilitate a balanced social mix;
 - (iii) use of universal design principles or other measures that make properties more accessible to people who are ageing or live with disabilities;
 - (d) the applicant has demonstrated capacity and experience;
 - (e) the proposal is financially viable.
- (2) The priority areas of interest are the following:
 - (a) proposals for rental dwellings that will become available for the National Rental Affordability Scheme between 1 July 2008 and 30 June 2010;
 - (b) proposals involving 100 or more rental dwellings;
 - (c) smaller proposals of not less than 20 rental dwellings where those proposals deliver dwellings in areas of especially high rental stress or deliver innovative and affordable rental housing solutions;

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- (d) proposals that are consistent with State, Territory or local government affordable housing priorities;
 - (e) proposals that include rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
 - (f) proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.