

**Inquiry into National Rental
Affordability Scheme Bill 2008 and
National Rental Affordability Scheme
Bill 2008 (Consequential
Amendments) Bill 2008**

**Department of Families, Housing, Community
Services and Indigenous Affairs**

**Submission to the Senate Community Affairs
Committee**

October 2008

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1. Introduction

The Australian Government's National Rental Affordability Scheme is underpinned by the National Rental Affordability Scheme Bill 2008 and the National Rental Affordability Scheme (Consequential Amendments) Bill 2008. The two Bills have been referred to the Senate Community Affairs Committee on the recommendation of the Selection of Bills Committee on 25 September 2008.

Much of the detail of the National Rental Affordability Scheme will be set out in regulations. An exposure draft of the National Rental Affordability Scheme Regulations 2008 was provided to the Committee and publicly released on 14 October 2008, to assist with understanding the scope and operation of the Scheme. Providing for the Scheme's operation through regulations allows the Government to respond quickly and flexibly to changing circumstances. A copy of the exposure draft regulations is at Appendix 1.

2. Background to the National Rental Affordability Scheme

The National Rental Affordability Scheme is a major part of the Government's \$2.2 billion affordable housing package. The package is one of the Government's key 2007 election commitments and has been designed to increase the supply of affordable rental homes, help people save for their first home, lower housing infrastructure costs, and build new homes for homeless people.

There are now 1.1 million Australian households suffering housing stress. Almost 700,000 of these households rent their homes, and many of those have a low or moderate income. In the private rental market, rent increases are outstripping wages growth and inflation with detrimental impact on our communities. Affordable housing is a building block for strong communities. It provides a stable environment to raise families and enables access to services, employment, education and safety.

The fundamental cause of declining housing affordability is that housing supply has not kept pace with demand. Unmet demand in the construction of housing is currently running at around 30,000 houses per annum (Reserve Bank of Australia 2008; industry sources; and Treasury). The Australian housing market is being affected by a combination of longer-term influences and the more recent effects of tighter monetary policy and the global credit crunch.

Since the mid 1990's strong growth in demand for housing – driven by growth in incomes and employment, lower interest rates and increased access to credit – has caused house prices to grow faster than incomes. Large increases in net migration have also increased 'underlying' demand for housing since 2003-04.

New housing construction has been weak for some time and the immediate outlook is for housing construction and prices to remain weak, with the duration and severity of this weakness dependent on the future course of interest rates and the extent to which the economy slows.

Rents are rising rapidly – driven by low vacancy rates – and this is likely to continue.

The most recent inflation figures show that rents in our capital cities have increased by 8.2% in the twelve months to September 2008.

The National Rental Affordability Scheme is intended to address the inadequate supply of affordable rental properties. The Scheme aims to make rental properties more affordable by encouraging large-scale investment in rental housing for low and moderate income earners.

Under the Scheme, 50,000 incentives will be made available at a cost of \$623 million for 50,000 new rental properties to be constructed across Australia in the first four years. If market demand remains strong, another 50,000 incentives will be made available over five years from July 2012.

To achieve this, the Scheme will offer institutional investors and other eligible entities annual rental incentives for 10 years, provided the conditions of the Scheme continue to be met. The incentive will be provided through:

- a Commonwealth contribution of \$6,000 per dwelling per year; and
- a State or Territory contribution in the form of direct financial support or in-kind contribution to the value of \$2,000 or more per dwelling per year.

To maintain their value, incentives will be indexed to the rental component of the Consumer Price Index.

The Scheme is specifically targeted to low and moderate income households. To receive the incentives, providers will have to rent the dwellings to low and moderate income households, and charge rents that are at least 20 per cent below market rates.

More than 1.5 million households will be eligible for tenancies under the Scheme including key workers and their families, entry level police officers and teachers, carers, apprentices, cleaners, hospitality staff and child care workers.

The National Rental Affordability Scheme gives all levels of government, the business sector and not-for-profit organisations – including institutional investors, developers and community housing providers – a new opportunity to work together to increase the supply of affordable rental housing.

For investors, the Scheme presents a new investment opportunity, creating a new asset class of investment in residential property. Incentives under the Scheme will usually be made available through a refundable tax offset. However, charities can participate as tenancy managers, as developers or owners of Scheme dwellings, or as members of joint ventures, and receive their contribution as a cash payment instead of a refundable tax offset.

If problems arise as a result of the involvement of the not-for-profit sector in the National Rental Affordability Scheme, the government will consider what steps are required to better assist them to participate in this Scheme.

Much of the detail of the National Rental Affordability Scheme will be set out in regulations. An exposure draft of the National Rental Affordability Scheme Regulations 2008 was provided to the Committee and publicly released on 14 October 2008, to assist with understanding the scope and operation of the Scheme. Providing for the Scheme's operation through regulations allows the Government to respond quickly and flexibly to changing circumstances.

The regulations will deal with administrative matters such as the process for determining market rent, tenant eligibility criteria and acceptable periods of vacancy, and the reporting requirements for the Scheme. The regulations will also address the approval of participants and rental dwellings, and how incentives will be provided to an approved participant who satisfies the conditions of the Scheme.

The flexibility provided by regulation will allow the Schemes settings to best target the outcome of affordable rental housing. For example, Incentive treatment of boarding houses, responses to shared single dwelling accommodation arrangements and expansion of eligible household types have been identified as requiring further consideration following the Round One Application process. Responses to these matters are likely to be incorporated into the Schemes settings prior to the closing of the Round Two Call for Applications.

The Regulations also set out the allocation process for incentives under the Scheme. Under this process, the Secretary may make an allocation for a 10-year incentive period for a rental dwelling on certain conditions. Some of these conditions are mandatory and are set out in whole or in part in the primary legislation. Some conditions may be specially tailored to reflect the desirable aspects of an application such as housing that is designed for the elderly or those living with disabilities, or housing that has identified sustainability advantages.

There is a preference for large-scale projects with a minimum of 100 dwellings under the Scheme. A proposal may include one or more projects in a range of locations (city and/or town) including across jurisdictions and regions, and may also span different years within the 10-year period.

While there is a preference for large scale proposals, National Rental Incentives are also available in the Establishment Phase for proposals involving not less than 20 dwellings. This accommodates projects in regional areas that may comprise more than one location where locations include small pockets of dwellings. It also accommodates projects that are focussed on delivering housing options for a limited class of eligible tenant, such as those living with disabilities.

An incentive may be offset or recouped in specified circumstances and there will be provision for variation, transfer and revocation of allocations. These arrangements protect the integrity of the Scheme, and allow flexible participation in the Scheme to discourage withdrawal of housing from the Scheme.

The tax law is also amended by this package of bills. The amendments will enable entities participating in the National Rental Affordability Scheme, including companies, superannuation funds and unit trusts, to claim a refundable tax offset in their annual tax return.

The tax amendments also make sure that State and Territory contributions to entities participating in the Scheme, whether in cash or in-kind, are non-assessable and non-exempt income for taxation purposes, and ensure that there are no capital gains tax consequences from the receipt of incentives under the Scheme.

Importantly, the bills and the regulations will allow for eligibility under the Scheme to be recognised from as early as 1 July 2008. The decision to make dwellings already under construction eligible for allocation of an incentive acknowledges the very low vacancy rates being experienced in all capital cities and will immediately start addressing the needs of Australians currently living in rental stress.

The National Rental Affordability Scheme is a new concept for Australia, providing an innovative approach to reducing the number of Australians living in rental stress.

There is a commitment to reviewing the Scheme in its early years to identify any scope for simplifying the Scheme, reducing the administrative burden on providers, or addressing any evolving issues to ensure that it continues to meet its objectives in the most efficient way.

Subjects to these reviews adjustments or revised settings may be necessary in the first few years of the Scheme and is an important consideration because of the Government's announcement that a further 50,000 incentives may be offered over the following five years if demand remains high.

The level of interest in the Scheme in its early stages is encouraging, with 69 proposals for around 13,000 incentives being received in Round One of the Establishment Phase.

3. National Rental Affordability Scheme – Consultation

The Prime Minister released the National Rental Affordability Scheme technical discussion paper on 2 May 2008. The paper outlined the main features of the Scheme and how it would operate and sought comments and suggestions about the Scheme's design to help settle the final policy framework and administrative arrangements.

In particular, the technical discussion paper sought responses to the following six questions:

Question 1 - The aim of this Scheme is to stimulate institutional investment in affordable rental housing. Do these provisions strike the right balance between flexibility for investors and achieving long term supply of affordable rental housing?

Question 2 - Do these timelines provide the right amount of time for proposals to be developed?

Question 3 - Will this process allow for expressions of interest to be made without excessive costs to business?

Question 4 - The aim of this Scheme is to increase the supply of affordable rental housing to singles and families on low and moderate incomes. Do the current eligibility criteria sufficiently allow access for this group?

Question 5 - The aim of the Scheme is to improve housing outcomes for tenants. How should tenancy managers be regulated to ensure quality outcomes for tenants in the Scheme?

Question 6 - The aim of the Scheme is to provide affordable rental accommodation at 20% below market rents. Do these provisions strike a balance between the need for administrative simplicity and the need to ensure benefits of the Scheme are passed on to tenants?

One hundred and twenty-seven submissions were received in response, with the majority positive about the Scheme and providing useful feedback on key policy matters.

As a result of feedback from key housing stakeholders, consultation with States and Territories and further consideration by Treasury and FaHCSIA, the Government broadened the proposed tenant eligibility criteria to allow greater access to the Scheme by moderate income tenants.

The Scheme's design was also adjusted to facilitate smaller scale proposals which will support local solutions, innovative design approaches and targeting to specifically identified groups.

4. Issues for consideration

4.1 Does the legislation target delivery of affordable housing to people in greatest need?

The Scheme is not intended to add to the supply of crisis accommodation or public housing. For this reason the Scheme does not require that dwellings are targeted to people in *greatest* need, although this group will be eligible tenants under the Scheme.

The tenant income eligibility levels under the Scheme ensure that income support recipients would be eligible tenants but also provide for moderate income families and entry-level key workers to benefit from the new supply of affordable housing. Tenants with lower incomes, in addition to benefiting from market rent set at least 20 per cent below market rate, will also benefit from continuing eligibility to receive Commonwealth rent assistance.

The income levels for tenants wishing to rent NRAS Dwellings (as at July 2008) are as follows:

Household Types	Annual income limit for initial tenant eligibility	Upper income limit for maintaining eligibility
Single person	\$39,351	\$49,189

Couples or sole parents with up to 1 child	\$55,991	\$69,989
Couple or sole parent with 2 children	\$69,423	\$86,779
Couple or sole parent with 3 or more children	\$82,855	\$103,569

Upper income limits for maintaining eligibility are set at 25 per cent above initial eligible income.

Key Workers

When key workers annual wages data (based on Federal or State Awards) is compared to the above income eligibility levels, workers in the following occupations will be eligible for NRAS dwellings as single tenants:

Occupation	Annual Wage \$ *
Childcare worker (Cert 3)	34,896
Retail worker	31,537
Clerical (Grade 1)	29,976
Transport (Grade 1)	31,201
Hairdresser (Tradesperson)	35,034
Mechanic (Tradesperson Level 1)	32,031

* Where State Awards have been used the highest State Award has been applied. Wage rates listed under “trades” occupations are from taken from various Australian Pay and Classification Scale (Pay Scale) summaries, effective 1 October 2007, available from the Workplace Authority .

Essential Service Workers

When annual wages data (based on Federal or State Awards) for Essential Service Workers is compared to the above income eligibility levels, workers in the following occupations may be eligible for NRAS dwellings provided they are a member of a couple or have children.

Occupation	Annual Wage \$ *
Police Officer (Constable) Minimum	51,401
Paramedic	47,925
Firefighter (base grade)	51,983
Teachers (Graduate with teacher training)	50,522
Nurse (Enrolled)	41,540
Nurse (Registered)	48,493

* Where State Awards have been used the highest State Award has been applied. Wage rates listed under “trades” occupations are from taken from various Australian Pay and Classification Scale (Pay Scale) summaries, effective 1 October 2007, available from the Workplace Authority .

As the above figures indicate, tenant income eligibility levels have been set to generally ensure that key workers and essential service workers will be eligible for affordable housing under the NRAS.

The mandatory criteria underpinning the assessment of applications for National Rental Incentives require applicants to demonstrate the need for the proposal in the identified location.

For example, proposals may point to high levels of unmet rental demand in project areas, lower than average rental vacancy rates, the proportion of households in rental stress or the types of households in rental stress.

Ideally dwellings would also be well located close to transport, education and employment options. The Scheme is designed to encourage tenants of workforce age to take full advantage of their location by providing for continuing eligibility where their income increases by to up to 25 per cent above the initial eligible income.

Tenant eligibility will be reviewed annually, and where tenants exceed their eligible income range they will have a transition period of 12 months from the completed date of the review. At the end of this period if the tenant has not moved out of the property the incentive may be transferred to a substitute property. This provides scope for managing continuing eligibility, minimising work disincentives for tenants.

The tenant eligibility criteria allow NRAS to better target those households which are experiencing rental stress including working families and single low income workers to be eligible to rent an NRAS dwelling.

Approximately 1.5 million tenants may be eligible for dwellings and the increased pool of eligible tenants will also make the Scheme more attractive to investors. The large pool of prospective tenants provides more options and flexibility to tenancy managers and provides more comfort to investors on availability and security of tenure of tenants.

4.2 Does the legislation provide an efficient and effective way to deliver increased affordable housing?

By providing incentives to encourage investment in affordable housing, the Government is seeking to encourage large scale investment by financial institutions for whom provision of incentives as refundable tax offsets is most appropriate. The Government expects that, over time, most incentives will be provided as tax offsets. However, in recognition that the build-up of incentives is governed by the considerable time taken for construction of new affordable rental dwellings, the Government has provided for a number of smaller scale proposals to be included in the Scheme during its establishment phase (July 2008 – June 2010), and is encouraging the participation of the not for profit community housing providers through making direct cash payment to them.

The adoption of the “NRAS year”, which ends on 30 April facilitates delivery of Incentives, whether as certificates for refundable tax offsets or payments, before the end of the financial year, to ensure the needs of property trusts are met in this regard and to maximise cash-flows to community housing providers.

The Government has committed to a review of the Scheme in its first few years of operation. The review will identify any available avenues for improving efficient and effective delivery of affordable rental housing.

4.3 Does the legislation facilitate investment in social housing by not for profit community housing organisations as well as private investors?

The Scheme intends to facilitate investment in affordable rental housing by not for profit community housing providers who will make an important contribution to the Scheme.

While incentives under the Scheme will usually be made available through a refundable tax offset, the legislation also provides for a direct payment to be made wherever a participant is an endorsed charitable institution. The Scheme was adjusted to provide an ability to make direct payments to endorsed charities because of the potential of these organisations to assist with the successful implementation of NRAS. The Scheme has been structured to enable FaHCSIA to make payments to participants by 30 June each year, where participants submit their compliance reports by 13 May of the year.

Community and affordable housing organisations with endorsed charitable status will need to manage their participation in the Scheme and their continuing charitable status, consistent with their charitable purpose. Those charitable organisations that are currently providing social housing services to low income families might participate in NRAS.

The Department is working with Treasury and the ATO to deliver confidence to those charities seeking to participate in the Scheme. FaHCSIA will also work closely with the ATO and applicants to identify the risk exposure for charities seeking to participate in the Scheme.

If problems arise as a result of the genuine involvement of the not-for-profit sector in the National Rental Affordability Scheme, the Government has indicated that it will consider what steps are required to better assist them to participate.

**APPENDIX 1 – NATIONAL RENTAL
AFFORDABILITY SCHEME REGULATIONS
2008**



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

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.frl.gov.au>.

