



National Rental Affordability Scheme Regulations 2008

Select Legislative Instrument 2008 No. 232 as amended

made under the

National Rental Affordability Scheme Act 2008

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Regulation 1

Part 1 Preliminary**1 Name of Regulations** [see Note 1]

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 14 or 21.

approved rental dwelling means a rental dwelling approved under regulation 14 or 20.

call for applications means a call for applications under regulation 7.

eligible tenant has the meaning given by regulation 19.

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 18.

NRAS incentive index means the Rents component of the Housing Group of the Consumer Price Index for the year, December quarter to December quarter as at 1 March of the immediately preceding NRAS year, using the Summary Table

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weighted average rate of eight capital cities housing component, as published in the Australian Bureau of Statistics publication Cat. no. 6401.0 — Consumer Price Index, Australia, CPI: Group, Sub-group and Expenditure Class, rounded to the nearest single decimal point.

NRAS market index means the Rents component of the Housing Group of the Consumer Price Index for the year, December quarter to December quarter as at 1 March of the immediately preceding NRAS 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.

NRAS tenant income index means the All Groups component of the Consumer Price Index, Percentage Change from Corresponding Quarter of Previous Year, March quarter, using the all groups weighted average of eight capital cities, as published in the Australian Bureau of Statistics publication Cat. no. 6401.0 — Consumer Price Index, Australia, CPI: Groups, Weighted Average of Eight Capital Cities, Index Numbers and Percentage Changes, 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 13.

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

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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) 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.

5 **Meaning of rental dwelling**

For the definition of **rental dwelling** in section 4 of the Act, a dwelling is not a rental dwelling if landlord, tenancy, building, and health and safety laws of the State or Territory and local government area in which the dwelling is located do not apply to it.

Part 2 Application

6 Purpose

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

7 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 the set of assessment criteria in Schedule 1 that will apply to applications in response to the call.

8 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 1 or more projects of rental dwellings to be approved for the Scheme; and
 - (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.

Regulation 9

- (4) A submission for an allocation received on or before 4 September 2008, and any associated information received after that date, is taken to be an application under the Scheme.

9 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 date applications are received; and
- (b) in any case, notify each applicant of the status of the application by that time.

Part 3 Allocation

10 Purpose

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

11 Assessment criteria for allocations

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

12 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.
- (1A) If a set of assessment criteria specified for a call for applications is divided into subsets, the Secretary:
 - (a) must assess applications in accordance with the criteria in subset 1; and
 - (b) if an application does not meet 1 or more of the criteria in subset 1, either:
 - (i) decide not to make an offer of allocation for the application; or
 - (ii) assess the application against the criteria in subset 2, before making a decision whether to make an offer of allocation; and
 - (c) if the application meets the criteria in subset 1, assess the application against the criteria in subset 2, before making a decision whether to make an offer of allocation.
- (2) The Secretary may seek additional information from an applicant, or any other person, and may invite an applicant to vary an application.

Regulation 13

- (3) The Secretary may choose any combination of dwellings from an application.

13 Offers of allocation

- (1) The Secretary may make offers to applicants in accordance with an assessment made under regulation 12.
- (2) An offer must:
- (a) identify:
 - (i) for an allocation — the location of each dwelling by title reference or street address; and
 - (ii) for a reservation of allocation — the location of each dwelling by postcode or other regional reference; and
 - (iii) the number of dwellings in each postcode or region; and
 - (iv) the style, size and special attributes (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; 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) If the Secretary does not make an offer to an applicant, or does not make an offer to an applicant that relates to a particular dwelling, the applicant may, apply in writing for the reasons for the Secretary's decision.

Regulation 14

- (6) The Secretary must, within 28 days after receiving the request for the reasons mentioned in subregulation (5), provide reasons for the decision.
- (7) If the applicant does not agree with the reasons for the Secretary's decision, or does not receive the reasons within the required time mentioned in subregulation (6), the applicant may apply for internal review of the Secretary's decision (the *original decision*).
- (8) If the original decision was made by a delegate of the Secretary, the internal review must be conducted by the Secretary, or another delegate of the Secretary.
- (9) If the original decision was made by the Secretary, the internal review must be conducted by the Secretary.
- (10) The decision which is reached after the internal review is a new decision.

14 Allocations

- (1) When an offer is accepted by an applicant in relation to a dwelling, the Secretary must:
 - (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) The Secretary may withdraw a reservation of an allocation in relation to a dwelling if any of the following events occur:
 - (a) the dwelling is not available for rent by the required date, or an agreed alternate date;
 - (b) the Secretary is satisfied that the dwelling will not be available for rent by the required date, or an agreed alternate date;
 - (c) the applicant fails to comply with any condition of the reservation;
 - (d) any advertisement relating to the reservation:
 - (i) is likely to mislead; or

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- (ii) misrepresents the Scheme; or
 - (iii) exaggerates or overstates the tax or other financial advantages resulting from involvement in the Scheme; or
 - (iv) presents the government as underwriting or endorsing the applicant, the dwelling or a proposed investment; or
 - (v) presents the government as dealing directly with investors; or
 - (vi) presents the government as being in partnership with any applicant, person or entity publishing details in association with the Scheme.
- (3) On making an allocation, or deciding to withdraw a reservation of an allocation, 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.

15 Notification to approved participants

A notification of allocation must include the following:

- (a) particulars of the allocation, including those identifying the approved rental dwelling; and
- (b) the conditions that apply to the allocation; and
- (c) for subsidiary dwellings — the incentive amount for each dwelling under regulation 27.

16 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

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- (b) to the extent that the rental dwelling is rented during an NRAS year that falls within the incentive period — both:
 - (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 must lodge Statements of Compliance for the dwelling with the Department in accordance with regulation 17.
 - (2) The approved participant must ensure that each approved rental dwelling, and the management of it, complies at all times with the landlord, tenancy, building, and 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 arrange market rent valuations of the dwelling in accordance with regulation 18:
 - (a) when the dwelling is first allocated, or first available for rent under the Scheme, whichever is the later; and
 - (b) at the end of the fourth and seventh years of the incentive period for the dwelling.
 - (5) A market rent valuation:
 - (a) obtained under paragraph (4) (a) — must relate to the market value rent of the dwelling on the date that the dwelling is first available for rent under the Scheme; and
 - (b) obtained under paragraph (4) (b) — must relate to the market value rent of the dwelling at the end of the fourth and seventh years of the incentive period for the dwelling.

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- (6) The approved participant must lodge the market rent valuations with the Department within 30 days of the valuations being due under subregulation (4).
- (7) 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.
- (8) Any increase in rent as a result of a review in subregulation (7) must be:
 - (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 associated with the approved participant.
- (9) Any increase in rent as a result of a review in subregulation (7) must not exceed the percentage change of the NRAS market index.
- (10) The approved participant may increase the rent in accordance with subregulations (7) and (9) if no information or data in subregulation (8) is available.
- (11) If a Statement of Compliance is not lodged in accordance with regulation 17, the Secretary cannot guarantee the incentive for that NRAS year.
- (12) The approved participant must answer any queries from the Secretary on matters covered in this regulation.

17 Statement of Compliance

- (1) A Statement of Compliance for an approved rental dwelling for an NRAS year must be lodged by the person or entity who, at the end of the NRAS year, is the approved participant.

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- (2) The Statement must be lodged by the following 13 May after each NRAS year in the incentive period. If this is not practicable because the allocation has retrospective effect, the Statement must be lodged as soon as practicable after the allocation is made.
- (3) The Statement must include:
- (a) a statement that at all times during the year, any tenant or tenants of the dwelling were eligible tenants, or details of any way in which this requirement was not met; and
 - (b) details of the rental charged over the year; and
 - (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; and
 - (e) details of the tenancy manager of the rental dwelling; and
 - (f) a statement that the approved participant complied at all times during the year with landlord, tenancy, building, and health and safety laws 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; and
 - (g) a statement that all special conditions have been complied with or details of any way in which this requirement was not met; and
 - (h) if applicable, the names of each natural person or legal entity participating in a joint venture at the end of the NRAS year.

18 Determining market value rent

- (1) For these 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

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- (ii) with a professional organisation that 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.

19 Eligible tenants

- (1) In this regulation:
- (a) a reference to the *tenants* of an approved rental dwelling is a reference to a particular person or persons who are tenants of the dwelling; and
 - (b) the day on which those tenants become tenants of the dwelling is their *start day*; and
 - (c) the 12 month period beginning on their start day or an anniversary of their start day is an *eligibility year* for those tenants; and
 - (d) *adult* means:
 - (i) a person 18 years of age or older; or
 - (ii) a person under 18 years of age living independently outside of the family home and who is not financially dependant on an eligible tenant; and
 - (e) *child* means a person under 18 years of age who is financially dependant on an eligible tenant.
- (2) For these Regulations, the tenants of an approved rental dwelling become *eligible tenants* on their start date if their combined gross income for the 12 months ending on the day before the start date does not exceed the income limit for their household as set out in this regulation.

Regulation 20

- (3) Eligible tenants cease to be eligible tenants if:
 - (a) they cease to be tenants of an approved rental dwelling; or
 - (b) their combined gross income exceeds the income limit for their household by 25% or more in 2 consecutive eligibility years.
- (4) The income limits for a household are:
 - (a) if a household does not include a sole parent:
 - (i) \$40 501 for the first adult; and
 - (ii) \$15 490 for each additional adult; and
 - (iii) \$13 432 for each child; or
 - (b) if a household includes a sole parent:
 - (i) \$42 599 for the first sole parent; and
 - (ii) \$15 490 for each additional adult; and
 - (iii) \$13 432 for each child.
- (4A) For this regulation:
 - (a) each subsidiary dwelling that forms part of an approved rental dwelling may only include 1 household; and
 - (b) an approved rental dwelling, other than an approved rental dwelling mentioned in paragraph (a), may only include 1 household; and
 - (c) the combined gross incomes of the tenants in a subsidiary dwelling must be considered in assessing the household income for that subsidiary dwelling.
- (5) The income limits mentioned in subregulation (4), for a household for each subsequent year beginning 1 May, are the amounts for the previous year indexed in accordance with the NRAS tenant income index, rounded to the next whole dollar.
- (6) The Secretary may, by legislative instrument, change from time to time, any or all of the income limits mentioned in subregulation (4).

20 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.

Regulation 21

- (2) A dwelling that is substituted becomes an *approved rental dwelling*.

21 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 approved rental dwelling.

21A Transfer of reservation of allocation

- (1) An applicant, who has accepted an offer of reservation of allocation, may apply for change to the location, style, size or special attributes (if any) of a dwelling.
- (2) On receipt of an application under subregulation (1), the Secretary may:
- (a) reassess the application using the same criteria as applied to the original application; and
 - (b) either:
 - (a) refuse to make the change, in whole or in part; or
 - (b) agree to make the change, in whole or in part.

22 Revocation of allocation

- (1) The Secretary may revoke an allocation if any 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.

Regulation 23

23 Variation of special conditions

The Secretary may, with the agreement of the approved participant, vary the special conditions in relation to an approved rental dwelling.

Regulation 24

Part 4 Receiving incentives**24 Purpose**

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

25 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.

25A Additional eligibility in 2012–13 and 2013–14 NRAS years

- (1) For the NRAS year beginning on 1 May 2012 (the *2012–13 NRAS year*), an approved participant for an approved rental dwelling is also entitled to receive an incentive if:
 - (a) the tenants of the dwelling were not eligible tenants or ceased to be eligible tenants because of their combined gross income; and
 - (b) the combined gross income of the tenants exceeded the income limit for their household in the 2012–13 NRAS year by:
 - (i) for new tenants of the dwelling—less than 1.5%; and
 - (ii) for existing tenants of the dwelling—less than 26.875%; and
 - (c) all other conditions of the allocation have been satisfied.
- (2) For the NRAS year beginning on 1 May 2013 (the *2013–14 NRAS year*), an approved participant for an approved rental dwelling is also entitled to receive an incentive if:
 - (a) the tenants of the dwelling ceased to be eligible tenants during the 2013–14 NRAS year because of their combined gross income; and

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- (b) the combined gross income of the tenants exceeded the income limit for their household in the 2012–13 NRAS year by less than 26.875%; and
- (c) all other conditions of the allocation have been satisfied.

26 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 — \$6 000.
- (2) For each subsequent year beginning 1 May, the amount of the incentive is the amount for the previous year indexed in accordance with the NRAS incentive index.

27 Full incentive amount for subsidiary dwelling

- (1) The Secretary must determine an incentive for a subsidiary dwelling proportionate 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 — \$6 000.

Example for paragraph (b)

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

- (2) For each subsequent year beginning 1 May, the amount of the incentive is the amount for the previous year indexed in accordance with the NRAS incentive index.
- (3) Other than for subregulation (1), these Regulations apply to subsidiary dwellings in the same way as they apply to other approved rental dwellings.

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28 Reductions from full incentive amount

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

Regulation 28A

28A Elections

- (1) The Secretary must give an applicant or an approved participant the option to elect, in accordance with subregulation (3) or (4), to receive the incentive as a tax offset certificate rather than a payment, if the applicant or approved participant is:
 - (a) an endorsed charitable institution; or
 - (b) an approved participant other than an endorsed charitable institution, whose status changes to an endorsed charitable institution for part of the NRAS year.
- (2) The Secretary must give an endorsed charitable institution the option to elect, in accordance with subregulation (5), to receive the incentive as a tax offset certificate rather than a payment, if the endorsed charitable institution is:
 - (a) an existing applicant who has accepted an offer of a reserved allocation; or
 - (b) an existing approved participant who has been made an allocation.
- (3) For paragraph (1) (a), the election:
 - (a) must be made in writing to the Secretary; and
 - (b) must be made at the time that an offer of allocation or reserved allocation is accepted by the applicant; and
 - (c) is binding for the whole of the incentive period, or for as long as the approved participant remains an endorsed charitable institution.
- (4) For paragraph (1) (b), the election:
 - (a) must be made in writing to the Secretary; and
 - (b) must be made by 13 May, in the year after the NRAS year in which the change in status occurred; and
 - (c) is binding for the part of the incentive period that remains after the change in status occurred, and for which payment has not been made, and for as long as the approved participant remains an endorsed charitable institution.
- (5) For subregulation (2), the election:
 - (a) must be made in writing to the Secretary; and

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- (b) must be made before 13 May 2011; and
- (c) is binding:
 - (i) for a reservation of allocation — for the whole of the incentive period, or for as long as the approved participant remains an endorsed charitable institution; or
 - (ii) for an allocation — for the part of the incentive period for which a payment has not been made, and for as long as the approved participant remains an endorsed charitable institution.
- (6) However, an election that is made after 30 May 2010 may not be effective for the NRAS year commencing on 1 May 2009.

29 Receipt of incentives

- (1) The Secretary must:
 - (a) either:
 - (i) if an approved participant is an endorsed charitable institution that has elected to receive a tax offset certificate — issue a tax offset certificate as set out in subregulation (2); or
 - (ii) if an approved participant is an endorsed charitable institution that has not elected to receive a tax offset certificate — pay the incentive for each allocation; or
 - (b) for other approved participants — issue a tax offset certificate as set out in subregulation (2); or
 - (c) pay the amount of incentive the approved participant is eligible to receive, or issue a tax offset certificate for the amount that the approved participant is eligible to receive, in accordance with the following table, if the approved participant is:
 - (i) an endorsed charitable institution for part of an NRAS year; and
 - (ii) an otherwise eligible approved participant for part of the same NRAS year.

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Item	If an approved participant ...	the Secretary must ...
1	<p>(a) changes from an endorsed charitable institution to an otherwise eligible approved participant; and</p> <p>(b) as an endorsed charitable institution, elects to receive a tax offset certificate</p>	issue a tax offset certificate for the NRAS year
2	<p>(a) changes from an endorsed charitable institution to an otherwise eligible approved participant; and</p> <p>(b) as an endorsed charitable institution, does not elect to receive a tax offset certificate</p>	<p>(a) for the period that the approved participant was an endorsed charitable institution — pay the incentive apportioned for that period; and</p> <p>(b) for the period that the approved participant was an otherwise eligible approved participant — issue a tax offset certificate apportioned for that period</p>
3	<p>(a) changes from an otherwise eligible approved participant to an endorsed charitable institution; and</p> <p>(b) as an endorsed charitable institution, elects to receive a tax offset certificate</p>	issue a tax offset certificate for the NRAS year

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Item	If an approved participant ...	the Secretary must ...
4	<p>(a) changes from an otherwise eligible approved participant to an endorsed charitable institution; and</p> <p>(b) as an endorsed charitable institution, does not elect to receive a tax offset certificate</p>	<p>(a) for the period that the approved participant was an otherwise eligible approved participant — issue a tax offset certificate apportioned for that period; and</p> <p>(b) for the period that the approved participant was an endorsed charitable institution — pay the incentive apportioned for that period</p>

(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) the name and any applicable Australian Business Number or Australian Company Number of the approved participant;
- (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, variation or apportionment made to the Tax Offset and the NRAS year to which it relates.

Note 1 Regulations 28 and 30 also contain information about apportionment, variation and offset of incentive.

Note 2 References to an amount may include zero.

Regulation 30

Note 3 One certificate may relate to multiple approved rental dwellings and those dwellings may be associated with different joint ventures to which the approved participant is a party.

30 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.
- (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 by debt recovery action; or
 - (b) for other approved participants:
 - (i) issue an amended certificate; or
 - (ii) deduct the overpayment from a certificate for a current or future NRAS year.

Regulation 31

Part 5 Ancillary matters**31 Record keeping**

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

32 Sharing and use of information

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

- (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.

33 Review by AAT of decisions by Secretary

- (1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary:
 - (a) under regulation 22 to revoke an allocation; or
 - (b) under regulation 28 to determine reductions to be made from the amount of an incentive; or
 - (c) under regulation 30 to determine that an error arose making an incentive for a particular allocation, to vary the incentive to correct the error, and where appropriate, recoup any overpayment.
- (2) An application for review under paragraph (1) (b) may only be made:
 - (a) after an internal review of the decision under subregulation 28 (3) has been requested and completed; or
 - (b) if the internal review under subregulation 28 (3) has not been completed — 2 months after requesting the review.

Schedule 1 Sets of assessment criteria

(regulation 11)

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 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;
 - (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.

Set 2

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;
 - (f) the proposal details or forecasts, for each dwelling:
 - (i) the energy rating of the dwelling; and
 - (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.

Note For paragraph (f), proposals that include high energy ratings for each dwelling, or demonstrate that each dwelling incorporates some or all of the matters mentioned in subparagraph (1) (f) (ii), may be given priority.

-
- (2) The priority areas of interest are the following:
- (a) proposals involving 100 or more rental dwellings;
 - (b) 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;
 - (c) proposals consisting of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located;
 - (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 For paragraph (c), proposals that include sound proofing that exceeds the State, Territory or local government requirements, and demonstrate how those requirements are exceeded, may be given priority.

Set 3

1 Criteria

- (1) The assessment criteria are the following:
- (a) the proposal addresses the priority areas of interest in subitem (2);
 - (b) the proposal delivers accessibility and sustainability outcomes, including the following:
 - (i) types of dwellings and proposed household compositions that facilitate a balanced social mix;
 - (ii) use of universal design principles or other measures that make properties more accessible to people who are ageing or live with disabilities;
 - (c) the proposal is financially viable;
 - (d) the proposal details or forecasts, for each dwelling:
 - (i) the energy rating of the dwelling; and

- (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks;

Note For paragraph (1) (d), proposals that include high energy ratings for each dwelling, or demonstrate that each dwelling incorporates some or all of the matters mentioned in subparagraph (1) (d) (ii), may be given priority.

- (e) the Commonwealth has agreed with the State or Territory in which the land is located, that the land on which the dwellings are being built or will be built is suitable for mixed residential development, and either:
 - (i) was previously owned by the State or Territory and released on or after 1 July 2008 for mixed residential development by the private sector; or
 - (ii) is currently owned by the State or Territory and is in the process of being released for mixed residential development by the private sector.

- (2) The priority areas of interest are the following:

- (a) proposals involving 100 or more rental dwellings;
- (b) 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;
- (c) proposals that include rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
- (d) proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants;
- (e) proposals consisting of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located.

Note For paragraph (2) (e), proposals that include sound proofing that exceeds the State, Territory or local government requirements, and demonstrate how those requirements are exceeded, may be given priority.

Set 4**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;
 - (f) the proposal details or forecasts, for each dwelling:
 - (i) the energy rating of the dwelling; and
 - (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.
- Note* For paragraph (1) (f), proposals that include high energy ratings for each dwelling, or demonstrate that each dwelling incorporates some or all of the matters mentioned in subparagraph (1) (f) (ii), may be given priority.
- (2) The priority areas of interest are the following:
- (a) proposals involving 1 000 or more rental dwellings;
 - (b) proposals that are consistent with State, Territory or local government affordable housing priorities;
 - (c) proposals that include rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
 - (d) proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants;

- (e) proposals consisting of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located.

Note For paragraph (2) (e), proposals that include sound proofing that exceeds the State, Territory or local government requirements, and demonstrate how those requirements are exceeded, may be given priority.

Set 5

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;
 - (f) the proposal details or forecasts, for each dwelling:
 - (i) the energy rating of the dwelling; and
 - (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.

Note For paragraph (1) (f), proposals that include high energy ratings for each dwelling, or demonstrate that each dwelling incorporates some or all of the matters mentioned in subparagraph (1) (f) (ii), may be given priority.

- (2) The priority areas of interest are the following:
 - (a) proposals for which an application for funding under the Social Housing Initiative has been made by 30 June 2009;

- (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;
- (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;
- (g) proposals consisting of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located.

Note For paragraph (2) (g), proposals that include sound proofing that exceeds the State, Territory or local government requirements, and demonstrate how those requirements are exceeded, may be given priority.

Set 6

1 Criteria — subset 1

The assessment criteria for subset 1 are the following:

- (a) the proposal involves 20 or more rental dwellings;
- (b) there is a demonstrated need for the proposal;
- (c) the relevant State or Territory supports the proposal;
- (d) the applicant has demonstrated capacity and experience to comply with the Scheme requirements, or capacity to comply with the Scheme requirements into the future;
- (e) the applicant's proposal demonstrates compliance or prospective compliance with the Scheme requirements and appears reasonable and viable.

2 Criteria — subset 2

The criteria for subset 2 are the following:

- (a) proposals involving 100 or more rental dwellings are preferred;
- (b) the proposal consists of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located;
- (c) the proposal includes rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
- (d) the proposal maximizes affordable housing outcomes for tenants, including building and design features that reduce the overall costs for tenants;
- (e) 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 older Australians or people who live with disabilities;
- (f) the proposal details or forecasts, for each dwelling:
 - (i) the energy rating of the dwelling; and
 - (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.

Note for paragraph (b) Proposals that include sound proofing that exceeds the State, Territory or local government requirements, and demonstrate how those requirements are exceeded, may be given priority.

Note for paragraph (f) proposals that include high energy ratings for each dwelling, or demonstrate that each dwelling incorporates some or all of the matters mentioned in subparagraph (f) (ii), may be given priority.

Set 7**1 Criteria — subset 1**

The assessment criteria for subset 1 are the following:

- (a) the proposal involves 100 or more rental dwellings;
- (b) there is a demonstrated need for the proposal;
- (c) the relevant State or Territory supports the proposal;
- (d) the applicant has demonstrated capacity and experience to comply with the Scheme requirements, or capacity to comply with the Scheme requirements into the future;
- (e) the applicant's proposal demonstrates compliance or prospective compliance with the Scheme requirements and appears reasonable and viable.

2 Criteria — subset 2

The criteria for subset 2 are the following:

- (a) the proposal consists of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located;
- (b) the proposal includes rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
- (c) the proposal maximizes affordable housing outcomes for tenants, including building and design features that reduce the overall costs for tenants;
- (d) 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 older Australians or people who live with disabilities;

- (e) the proposal details or forecasts, for each dwelling:
 - (i) the energy rating of the dwelling; and
 - (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.

Note for paragraph (a) Proposals that include sound proofing that exceeds the State, Territory or local government requirements, and demonstrate how those requirements are exceeded, may be given priority.

Note for paragraph (e) Proposals that include high energy ratings for each dwelling, or demonstrate that each dwelling incorporates some or all of the matters mentioned in subparagraph (e) (ii), may be given priority.

Notes to the *National Rental Affordability Scheme Regulations 2008*

Note 1

The *National Rental Affordability Scheme Regulations 2008* (in force under the *National Rental Affordability Scheme Act 2008*) as shown in this compilation comprise Select Legislative Instrument 2008 No. 232 amended as indicated in the Tables below.

Table of Instruments

Year and Number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
2008 No. 232	28 Nov 2008 (see F2008L04484)	1 July 2008	
2009 No. 133	24 June 2009 (see F2009L02494)	1 July 2009	—
2010 No. 78	10 May 2010 (see F2010L01193)	11 May 2010	—
2011 No. 95	22 June 2011 (see F2011L01124)	1 May 2010	—
2012 No. 300	13 Dec 2012 (see F2012L02444)	14 Dec 2012	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
R. 4	am. 2009 No. 133
Part 3	
R. 12	am. 2010 No. 78
R. 13	am. 2010 No. 78
R. 14	am. 2010 No. 78
R. 16	rs. 2009 No. 133
R. 17	rs. 2009 No. 133 am. 2010 No. 78
R. 19	am. 2009 No. 133; 2010 No. 78; 2011 No. 95
R. 21A	ad. 2010 No. 78
R. 22	am. 2010 No. 78
Part 4	
R. 25A	ad. 2012 No. 300
R. 26	am. 2011 No. 95
R. 27	am. 2011 No. 95
R. 28	am. 2010 No. 78
R. 28A	ad. 2010 No. 78
R. 29	am. 2009 No. 133; 2010 No. 78
Note 3 to r. 29	ad. 2010 No. 78
Part 5	
R. 33	ad. 2009 No. 133
Schedule 1	
Schedule 1	am. 2009 No. 133; 2010 No. 78