



Australian Government
Department of Social Services

Internal Review Guidelines

National Rental Affordability Scheme

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Purpose

This document provides:

- guidance for applicants and approved participants in relation to the types of decisions for which internal review may be sought, as well as the processes to follow when seeking an internal review; and
- guidance, and outlines the process, for review officers to follow when conducting an internal review of a decision under the *National Rental Affordability Scheme Regulations 2008* (the Regulations).

This document constitutes guidelines issued by the Department for the purposes of subregulation 28(3) of the Regulations.

Definitions

In this document:

AAT means the Administrative Appeals Tribunal;

AAT Act means the *Administrative Appeals Tribunal Act 1975*;

Department means the Department of Social Services;

NRAS means the National Rental Affordability Scheme;

NRAS Act means the *National Rental Affordability Scheme Act 2008*;

Regulations means the *National Rental Affordability Scheme Regulations 2008*;

Review delegate means the delegate of the Secretary who is making an internal review decision;

Review officer means the Secretary or a review delegate who is making an internal review decision; and

Secretary means the Secretary of the Department of Social Services.

Internal review of NRAS decisions

Decisions that are subject to internal review

The Regulations stipulate two types of decision for which a person is entitled to request an internal review. These decisions are set out below. The Department **must** conduct an internal review of these types of decisions on request.

The Regulations do not require the Department to provide internal review of other decisions.

A decision not to make an offer of allocation or a decision not to make an offer of allocation that relates to a particular dwelling¹

Subregulation 13(1) authorises the Secretary to determine whether or not to make an offer of allocation, or an offer of allocation that relates to a particular dwelling, to an applicant.

Under **subregulation 13(5)**, if the Secretary does not make an offer under subregulation 13(1) to an applicant, the applicant may apply in writing for the reasons for the Secretary's decisions.

Subregulation 13(7) provides that if the Secretary does not respond within 28 days after receiving the request for reasons or the applicant does not agree with the Secretary's reasons, the applicant can apply for an internal review of the Secretary's original decision.

An applicant cannot apply for an internal review of the original decision unless the applicant has first made an application in writing for the reasons for the original decision under subregulation 13(5).

A determination of reductions made from an incentive amount²

Subregulation 28(1) authorises the Secretary to determine the reductions that are to be made from the amount of an incentive for each allocation under certain conditions set out in subregulation 28(2). If this occurs, subregulation 28(3) provides that the approved participant may request a review by the Secretary of the amount of the incentive, in accordance with "guidelines issued by the Department".

¹ subregulation 13(1)

² subregulations 28(1) and 28(2)

Making an internal review request

Timeframe for requesting an internal review

There is no statutory timeframe applying to when a request for internal review should be made. However, applicants and approved participants are encouraged to make requests for an internal review within the following timeframes:

- for an original decision under subregulations 13(1) –
 - within 90 days after receiving the reasons for the original decision under subregulation 13(7), or such further period as the Department allows; or
 - if the applicant has not received the reasons for the original decision within 28 days of making an application under subregulation 13(5) – within 90 days from the end of that 28 day period, or such further period as the Department allows.
- for an original decision under subregulation 28(1) - within 90 days after being notified in writing of the original decision, or such further period as the Department allows.

How to request an internal review

Requests for an internal review should be made in writing and sent to the Department by one of the following methods:

Email: the NRAS helpdesk inbox (NRAS@dss.gov.au).

Post: PO Box 7576, Canberra, ACT, 2610

The request should include:

- (a) the decision for which an internal review is sought;
- (b) the date the applicant or approved participant received written notification of the decision;
- (c) the reasons why an internal review is sought; and
- (d) any relevant information to support the applicant or approved participant's contention that a different decision should be made.

Review Officer

Internal review decisions must be made by a review officer.

The review officer can be:

- in the case of original decisions made by the Secretary under subregulation 13(1) – the Secretary³;
- in the case of original decisions made by a delegate of the Secretary under subregulation 13(1) – the Secretary or another delegate of the Secretary⁴
- in relation to original decisions made under subregulation 28(1) – either the Secretary or a delegate of the Secretary.

It is important that the review officer has the power to make decisions under the Regulations to undertake internal reviews.

Review officer other than the Secretary (review delegate)

The review delegate will:

- (a) be an SES officer in the Department;
- (b) not have been involved in the case previously;
- (c) be sufficiently independent of the original decision-maker; and
- (d) must hold the necessary delegation⁵ for the decision under review.

The review delegate for decisions under the Regulations will generally be a Branch Manager or Group Manager of the Group responsible for administering NRAS or the Deputy Secretary responsible for the Group administering NRAS. Where there is no senior officer available, the review delegate should be of at least the same level as the original decision-maker. The review delegate should be someone other than the original decision-maker.

Role of review officer

The review officer's role is to reconsider the original decision on its merits. Merits review can involve questions of fact, policy and law. The review officer "stands in the shoes" of the original decision-maker to consider the evidence afresh and independently remake the decision.

The review officer may only exercise the powers and discretions that were available to the original decision-maker. The review officer must review the original decision and make an internal review decision in accordance with the processes set out in the Regulations and these guidelines and with regard for administrative law principles, including procedural fairness.

³ subregulation 13(9)

⁴ subregulation 13(8)

⁵ See NRAS Instrument of Delegation 76/2014

Process for conducting an internal review

Acknowledgement of internal review request and further contact

The review officer should contact the applicant or approved participant to advise they are undertaking the internal review and, where appropriate, provide the applicant or approved participant with timely updates as to the progress of the review.

Reviewing relevant material

In conducting the internal review, the review officer will be given access to all of the documentation and/or information used by the original decision-maker (excluding any material determined to be irrelevant).

The applicant or approved participant is able to provide additional documentation and/or information, not made available to the original decision-maker to support their reasons for requesting a review.

The review officer must consider all of the relevant evidence when making an internal review decision. This could include more evidence than what was available to, and considered by, the original decision-maker.

In conducting the internal review, the review officer may contact the applicant or approved participant in writing, by phone or in person and seek additional information that was not available to the original decision-maker at the time of the original decision, that is relevant and will be considered as part of the internal review.

Natural justice (also referred to as ‘procedural fairness’)

In making review decisions, review officers are required to observe the requirements of natural justice. There are two rules of natural justice:

- ‘Bias rule’ – the decision-maker must be impartial, and must have no personal interest in the matter to be decided; and
- ‘Hearing rule’ – a person who will be adversely affected by a proposed decision (e.g. an applicant or approved participant) must be given the opportunity to make submissions and comment on any material that is adverse to their case.

The review officer may become aware of information or documentation relevant to the decision under review that the applicant or approved participant is not aware of, or has not previously had the opportunity to make submissions about, and is adverse to the applicant or approved participant. In this situation, the review officer is required to contact the applicant or approved participant and give them a reasonable opportunity to make submissions with respect to that information or those documents.

Making a decision

The review officer is required to make their decision based on the information, evidence and factual circumstances as at the date of the review decision, rather than when the original decision was made.

The review officer may consider the recommendations of other Department officers when undertaking the review, which could be set out in an internal minute or briefing. However, the review officer should make a new and independent decision that is not bound to the recommendations.

The review officer should either affirm the original decision or make a new decision under:

- regulation 13, that leads to an effective offer; or
- under regulation 28, that leads to a lesser reduction or not to impose any reduction at all.

Notice of decision

The review officer must notify the applicant or approved participant in writing of the internal review decision.

Recommended timeframe for conducting an internal review

Ideally the review officer should complete the internal review and make a decision within 6 weeks of receiving a request for an internal review, and certainly no later than 2 months after the request for internal review.

As noted above, the review officer is to notify the applicant or approved participant of the outcome of the internal review in writing by email within 6 weeks of receiving the request for internal review, and certainly no later than 2 months after the request for internal review.

Calculating timeframes for internal review

Timeframes are calculated from:

- the calendar day after the Department receives an application for internal review; and
- until/from the date the Department notifies the applicant or approved participant of its decision.

For example, if the Department receives an application for internal review on 1 September then 2 September is counted as day 1.

Letters from the Department to the applicant or approved participant advising the outcome of an internal review should be sent by email as a decision following internal review is not considered notified until the applicant or approved participant has received the decision in writing.

What happens if the internal review takes more than 6 weeks?

As soon as the review officer becomes aware that the internal review will not be completed within the 6 week timeframe, they should notify the Section administering NRAS which will inform the senior executive.

Outcomes of internal review and reasons for decision

A decision reached on internal review is a new decision that replaces the original decision. An internal review decision is not subject to further internal review.

When the review officer informs the applicant or approved participant of the outcome of the internal review, they should provide a statement of reasons for the decision and advise the applicant or approved participant of any further avenues of review available to them.

Further reconsideration and review rights

External merits review - AAT review

The AAT Act requires the Department to inform the approved participant of their external review rights at the time they are notified of the internal review decision. The form and content of the notification is to comply with the Code of Practice issued by the Attorney-General in this regard⁶.

An approved participant is able to make an application to the AAT⁷ for review of a decision to determine reductions to be made from the amount of the incentive, provided:

- an application has been made for an internal review under subregulation 28(3) and it has been completed; or
- if the internal review under subregulation 28(3) has not been completed, two months after requesting an internal review have elapsed.

An approved participant is also able to make an application to the AAT for review⁸, without the requirement for prior internal review, of the following decisions of the Secretary (or Secretary's delegate):

- under regulation 22 to revoke an allocation; or
- 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.

⁶ See Attachment A

⁷ subregulation 33(1)

⁸ subregulation 33(1)

Role of internal review in continuous improvement

The Section responsible for administering NRAS within the NRAS Branch in the Department is to maintain statistics of:

- the number of internal reviews conducted;
- timeliness standards; and
- outcomes of internal reviews.

The outcomes of internal reviews will assist officers in their decision-making roles and where appropriate, inform policies and processes.