

National Rental Affordability Scheme Act 2008

No. 121, 2008

**Compilation No. 1**

**Compilation date:** 5 March 2016

**Includes amendments up to:** Act No. 126, 2015

**Registered:** 8 March 2016

**About this compilation**

**This compilation**

This is a compilation of the *National Rental Affordability Scheme Act 2008* that shows the text of the law as amended and in force on 5 March 2016 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary 1

1 Short title 1

2 Commencement 1

3 Object 1

4 Definitions 1

Part 2—The National Rental Affordability Scheme 4

Division 1—Making the National Rental Affordability Scheme 4

5 Making the National Rental Affordability Scheme 4

6 Other matters that may be included in the National Rental Affordability Scheme 4

Division 2—Allocation process 5

7 Making allocations 5

8 Variations, transfers and revocations of allocations 6

Division 3—Receiving incentives 7

9 Eligibility for receiving incentives 7

Part 3—Miscellaneous 8

10 Compensation for acquisition of property 8

11 Delegation 8

12 Regulations 8

Endnotes 10

Endnote 1—About the endnotes 10

Endnote 2—Abbreviation key 12

Endnote 3—Legislation history 13

Endnote 4—Amendment history 14

An Act to provide for the establishment of the National Rental Affordability Scheme, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Rental Affordability Scheme Act 2008*.

2 Commencement

This Act is taken to have commenced on 1 July 2008.

3 Object

The object of this Act is to encourage large‑scale investment in housing by offering an incentive to participants in the National Rental Affordability Scheme so as to:

(a) increase the supply of affordable rental dwellings; and

(b) reduce rental costs for low and moderate income households.

4 Definitions

In this Act:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***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.

Note: Paragraph (a)—for provisions relating to claiming the National Rental Affordability Scheme Tax Offset, see Division 380 of the *Income Tax Assessment Act 1997*.

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

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***National Rental Affordability Scheme*** means the scheme prescribed for the purposes of section 5.

***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 a 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.

***unit*** means a unit held under a strata title system (or a similar system) established under a law of a State or Territory (however the unit is described for the purpose of that law), together with:

(a) any accompanying common property; and

(b) any permanent improvement (for example, a garage or storeroom) associated with the unit.

Part 2—The National Rental Affordability Scheme

Division 1—Making the National Rental Affordability Scheme

5 Making the National Rental Affordability Scheme

To further the objects of this Act, the regulations must prescribe a Scheme (the ***National Rental Affordability Scheme***) about the following matters:

(a) the approval of participants (***approved participants***) by the Secretary;

(b) the approval of rental dwellings by the Secretary;

(c) providing incentives to an approved participant if certain conditions are satisfied;

(d) a matter required or permitted by this Act to be included in the Scheme;

(e) ancillary or incidental matters.

6 Other matters that may be included in the National Rental Affordability Scheme

The National Rental Affordability Scheme may provide for any or all of the following matters:

(a) the application process for an allocation;

(b) the assessment criteria for an allocation (which may vary from time to time);

(c) the amount of an incentive;

(d) how the market value rent of a rental dwelling for an NRAS year is to be determined.

Division 2—Allocation process

7 Making allocations

(1) The National Rental Affordability Scheme must provide for the Secretary to make an allocation for an incentive period in respect of a rental dwelling:

(a) on the conditions set out in subsection (2); and

(b) on the condition that an incentive may be offset or recouped in the circumstances provided for by the Scheme; and

(c) on any other conditions provided for by the Scheme.

(2) 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:

(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.

(3) To avoid doubt, for the purpose of subparagraph (2)(a)(i), if a dwelling or building has been converted to create additional residences, then a part of the dwelling or building that is capable of being lived in as a separate residence must not have been lived in as a separate residence before the first day of the incentive period.

8 Variations, transfers and revocations of allocations

The National Rental Affordability Scheme may provide for and in relation to the following:

(a) the variation of an allocation in certain circumstances;

(b) the transfer of an allocation to another approved participant in certain circumstances;

(c) the revocation of an allocation in certain circumstances;

(d) how such a variation, transfer or revocation is to be made.

Division 3—Receiving incentives

9 Eligibility for receiving incentives

The National Rental Affordability Scheme must provide for the Secretary to do the following in relation to an allocation:

(a) issue a certificate to an approved participant of a kind provided for by the Scheme that states the National Rental Affordability Scheme Tax Offset that is claimable in relation to an NRAS year;

(b) make a payment to an approved participant of a kind provided for by the Scheme for an NRAS year.

Part 3—Miscellaneous

10 Compensation for acquisition of property

(1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

11 Delegation

(1) The Secretary may, by written instrument, delegate all or any of the following powers to an SES employee in the Department:

(a) the Secretary’s power to approve a participant in the National Rental Affordability Scheme;

(b) the Secretary’s power to approve a rental dwelling for the purposes of the Scheme;

(c) the Secretary’s power to decide whether to make an allocation under the Scheme.

(2) The Secretary may, by written instrument, delegate to an APS employee in the Department all or any of the Secretary’s powers or functions under this Act or the regulations (other than the powers mentioned in subsection (1)).

(3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Secretary.

12 Regulations

The Governor‑General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

**Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) |
| C[x] = Compilation No. x | /sub‑subparagraph(s) |
| Ch = Chapter(s) | pres = present |
| def = definition(s) | prev = previous |
| Dict = Dictionary | (prev…) = previously |
| disallowed = disallowed by Parliament | Pt = Part(s) |
| Div = Division(s) | r = regulation(s)/rule(s) |
| ed = editorial change | reloc = relocated |
| exp = expires/expired or ceases/ceased to have | renum = renumbered |
| effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = *Legislation Act 2003* | Sch = Schedule(s) |
| LIA = *Legislative Instruments Act 2003* | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given | SLI = Select Legislative Instrument |
| effect | SR = Statutory Rules |
| (md not incorp) = misdescribed amendment | Sub‑Ch = Sub‑Chapter(s) |
| cannot be given effect | SubPt = Subpart(s) |
| mod = modified/modification | underlining = whole or part not |
| No. = Number(s) | commenced or to be commenced |

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- | --- |
| National Rental Affordability Scheme Act 2008 | 121, 2008 | 25 Nov 2008 | 1 July 2008 (s 2) |  |
| Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (items 427, 428): 5 Mar 2016 (s 2(1) item 2) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| **Part 3** |  |
| s 12 | am No 126, 2015 |