



National Rental Affordability Scheme Act 2008

No. 121, 2008

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

Part 1—Preliminary	2
1 Short title	2
2 Commencement	2
3 Object	2
4 Definitions	2
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



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

[Assented to 25 November 2008]

The Parliament of Australia enacts:

National Rental Affordability Scheme Act 2008 No. 121, 2008 1

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.

Part 2 The National Rental Affordability Scheme

Division 2 Allocation process

Section 8

- (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

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
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Section 12

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made before 1 July 2009 for the purposes of this Act may be expressed to take effect from a date before the regulations are registered under that Act.

*[Minister's second reading speech made in—
House of Representatives on 24 September 2008
Senate on 10 November 2008]*

(190/08)
