



# **National Rental Affordability Scheme Regulations 2008**

**Select Legislative Instrument No. 232, 2008**

made under the

*National Rental Affordability Scheme Act 2008*

## **Compilation No. 9**

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## About this compilation

### This compilation

This is a compilation of the *National Rental Affordability Scheme Regulations 2008* that shows the text of the law as amended and in force on 2 June 2015 (the **compilation date**).

This compilation was prepared on 2 June 2015.

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 ComLaw ([www.comlaw.gov.au](http://www.comlaw.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 ComLaw 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.

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name of Regulations

These Regulations are the *National Rental Affordability Scheme Regulations 2008*.

### 2 Commencement

These Regulations are taken to have commenced on 1 July 2008.

### 3 The National Rental Affordability Scheme

For section 5 of the Act, these Regulations constitute the National Rental Affordability Scheme (the ***Scheme***).

### 4 Definitions

In these Regulations:

***Act*** means the *National Rental Affordability Scheme Act 2008*.

***agreed rental availability date***, for a rental dwelling to which a reservation of an allocation relates, means:

- (a) the rental availability date for the dwelling in a reporting timetable included in the conditions of the reservation of the allocation; or
- (b) if a later rental availability date in relation to the dwelling has been agreed by the Secretary under these Regulations—the most recently agreed rental availability date for the dwelling.

***applicant*** means a person or entity that:

- (a) has made an application under subregulation 8(1) in relation to a proposal for one or more projects of rental dwellings; and
- (b) is not an approved participant in relation to those dwellings.

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***approved participant***, for an approved rental dwelling, means a person or entity to which an allocation in relation to the dwelling:

- (a) has been made under regulation 14; or
- (b) has been transferred under regulation 21.

***approved rental dwelling*** means a rental dwelling in relation to which an allocation:

- (a) has been made under regulation 14; or
- (b) has been transferred under regulation 20.

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

***conditions of the allocation***, in relation to an approved rental dwelling, means the conditions set out in regulation 16.

***conditions of the reservation*** of an allocation in relation to a rental dwelling means:

- (a) the conditions relating to location, style, size and special attributes (if any) of the dwelling identified in the offer of the reservation under subparagraphs 13(2)(a)(ia) and (iii); and
- (b) the other conditions specified under subregulation 13(3).

***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 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.



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**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.

**provisional allocation** has the meaning given by subregulation 14(2C).

**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.

**tax offset certificate** means a certificate of a kind mentioned in paragraph 9(a) of the Act.

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***transitional period*** means the period of 3 months beginning on the commencement of Part 1 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Provisional Allocations and Other Measures) Regulation 2014*.

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

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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.

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- (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.

**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**

### **Division 1—General**

#### **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.
- (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
    - (ia) for a reservation of allocation—the location of each dwelling by postcode or other regional reference; and
    - (ii) the number of dwellings in each postcode or region; and
    - (iii) 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 (other than a provisional 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,

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the applicant may, apply in writing for the reasons for the Secretary's decision.

- (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.
- Note: A reservation of an allocation may be varied under Division 2.
- (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 agreed rental availability date for the dwelling;
    - (b) the Secretary is satisfied that the dwelling will not be available for rent by the agreed rental availability date for the dwelling;



- (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
  - (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;
- (e) the application for the allocation:
  - (i) includes information that is false or misleading; or
  - (ii) fails to include information that the applicant knew, or ought reasonably to have known, was relevant;
- (f) an application made under Division 2 in relation to the reservation of the allocation:
  - (i) includes information that is false or misleading; or
  - (ii) fails to include information that the applicant knew, or ought reasonably to have known, was relevant.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

- (2A) If the Secretary reserves an allocation in relation to a dwelling under paragraph (1)(b), the Secretary must make the allocation on the earlier of:
- (a) the date when the conditions of the reservation of the allocation are satisfied; and
  - (b) the agreed rental availability date for the dwelling.

Note: The agreed rental availability date for a dwelling in relation to which a reservation of an allocation applies cannot be after 30 June 2016 (see regulation 23C).

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- (2B) An allocation made under subregulation (2A) operates on the day the allocation is made.
- (2C) An allocation that is made on the agreed rental availability date for a dwelling under paragraph (2A)(b), and in relation to which the conditions of the reservation of the allocation have not been satisfied, is a *provisional allocation*.
- (3) On making an allocation, or deciding to withdraw a reservation of an allocation, the Secretary must notify the applicant.

### 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

- (1A) The Secretary must make an allocation for an incentive period in respect of a rental dwelling on the conditions set out in this regulation.

Note: See section 7 of the Act.

- (1B) The rental dwelling must:
  - (a) not have been lived in as a residence at any time before the first day of the incentive period; or
  - (b) have been unfit for anyone to live in, and since the day on which it has been made fit for living in, not have been lived in as a residence between that day and the first day of the incentive period.
- (1C) To the extent that the rental dwelling is rented during an NRAS year that falls within the incentive period:

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- (a) the rental dwelling must be rented to one or more eligible tenants; and
- (b) the rent that is charged for the rental dwelling must, at all times during the year, be at least 20% less than the market value rent for the dwelling.

Note: *Eligible tenant* is defined in regulation 19.

(1D) To the extent that the rental dwelling is not rented during an NRAS year that falls within the incentive period—the dwelling must not be vacant:

- (a) for longer than 26 weeks; and
- (b) for longer than a continuous period of 26 weeks 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 the time (the *first available rent time*) the dwelling first becomes available for rent and at all times after the first available rent time, 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 for an approved rental dwelling must obtain market rent valuations of the dwelling in accordance with regulation 18 and subregulations (5) and (5A) of this regulation:
  - (a) when the dwelling is first available for rent under the National Rental Affordability Scheme; and
  - (b) at the end of the fourth and seventh years of the incentive period in respect of the dwelling.

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- (5) A market rent valuation of an approved rental dwelling obtained under paragraph (4)(a) or (b) must:
  - (a) relate to the market value rent for the dwelling on a date within the permitted valuation period for the market rent valuation; and
  - (b) specify the date to which the market value rent relates.
- (5A) For subregulation (5):
  - (a) the permitted valuation period for a market rent valuation of an approved rental dwelling to be obtained under paragraph (4)(a) is the 26 week period:
    - (i) beginning 13 weeks before the day when the dwelling is first available for rent under the National Rental Affordability Scheme; and
    - (ii) ending at the end of 13 weeks after that day; and
  - (b) the permitted valuation period for a market rent valuation of an approved rental dwelling to be obtained under paragraph (4)(b) is the 26 week period:
    - (i) beginning 13 weeks before the last day of the fourth or seventh year (as the case may be) of the incentive period in respect of the dwelling; and
    - (ii) ending at the end of 13 weeks after that day.
- (6) The approved participant for an approved rental dwelling:
  - (a) must lodge with the Department the market rent valuation of the dwelling obtained under paragraph (4)(a):
    - (i) within 13 weeks of the day when the dwelling is first available for rent under the National Rental Affordability Scheme; or
    - (ii) if the Secretary approves an extended period under subregulation (6A)—within the extended period; and
  - (b) must lodge with the Department the market rent valuations of the dwelling obtained under paragraph (4)(b):
    - (i) within 13 weeks of the last day of the fourth or seventh year (as the case may be) of the incentive period in respect of the dwelling; or

- (ii) if the Secretary approves an extended period under subregulation (6A)—within the extended period.
- (6A) Subject to subregulation (6B), the Secretary may, on application in writing by the approved participant for an approved rental dwelling, approve an extended period within which a market rent valuation of the dwelling must be lodged under subregulation (6).
- (6B) The Secretary must not approve an extended period for lodging a market rent valuation unless the Secretary is satisfied that the applicant for the approval has a reasonable excuse for not being able to lodge the valuation within the period mentioned in subparagraph (6)(a)(i) or (b)(i) (as the case requires).
- (6C) If the Secretary approves an extended period under subregulation (6A), the Secretary must notify the applicant for the approval, in writing, of the extended period.
- (11A) If the allocation is a provisional allocation, the conditions of the reservation of the allocation (other than the condition relating to the agreed rental availability date) must be satisfied.
- (12) The approved participant for an approved rental dwelling must, within the time specified by the Secretary, answer any queries from the Secretary, and give the Secretary any information and documents requested by the Secretary, about matters covered by this regulation.

## **17 Statement of Compliance**

- (1) The approved participant for an approved rental dwelling must lodge with the Department a Statement of Compliance for the dwelling in relation to each NRAS year for which the approved participant wishes to receive an incentive.
- (2) The Statement of Compliance must be lodged:
  - (a) by 30 June after the end of the NRAS year for which the approved participant wishes to receive an incentive; or
  - (b) if the Secretary approves a later date under subregulation (2A) or (2B)—by the later date.

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- (2A) Subject to subregulation (2C), the Secretary may, on the Secretary's own initiative and if the Secretary considers it appropriate, approve a later date by which Statements of Compliance for approved rental dwellings in relation to a particular NRAS year must be lodged.
- (2B) Subject to subregulations (2C) and (2D), the Secretary may, on application in writing by the approved participant for an approved rental dwelling, approve a later date by which a Statement of Compliance for the dwelling in relation to an NRAS year must be lodged.
- (2C) The Secretary must not, under subregulation (2A) or (2B), approve a date by which a Statement of Compliance for an approved rental dwelling in relation to an NRAS year must be lodged that is later than 30 September after the end of the NRAS year.
- (2D) The Secretary must not, under subregulation (2B), approve a later date by which a Statement of Compliance for an approved rental dwelling in relation to an NRAS year must be lodged unless the Secretary is satisfied that the applicant has a reasonable excuse for not being able to lodge, or for not lodging, the Statement by 30 June after the end of the NRAS year.
- (2E) If the Secretary approves a later date under subregulation (2A), the Secretary must notify, in writing, all approved participants for approved rental dwellings of the later date.
- (2F) If the Secretary approves a later date under subregulation (2B), the Secretary must notify the applicant for the approval, in writing, of the later date.
- (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 of the

- dwelling for the year, 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**

- (1A) In these Regulations, the ***market value rent*** for an approved rental dwelling for a year of an incentive period in respect of the dwelling is:
- (a) for the period of 12 months beginning when the dwelling is first available for rent under the National Rental Affordability Scheme—the market value rent for the dwelling, assessed under subregulation (1) for the purpose of obtaining a market rent valuation of the dwelling under paragraph 16(4)(a); and
  - (b) for the fifth year of the incentive period in respect of the dwelling—the market value rent for the dwelling at the end of the fourth year of the incentive period, assessed under subregulation (1) for the purpose of obtaining a market rent valuation of the dwelling under paragraph 16(4)(b); and
  - (c) for the eighth year of the incentive period in respect of the dwelling—the market value rent for the dwelling at the end of the seventh year of the incentive period, assessed under subregulation (1) for the purpose of obtaining a market rent valuation of the dwelling under paragraph 16(4)(b); and

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- (d) for any other year (the **relevant year**) of the incentive period in respect of the dwelling—the market value rent for the dwelling for the year immediately preceding the relevant year, indexed on the first day of the relevant year in accordance with the NRAS market index, and rounded to the next whole dollar.
- (1) In these Regulations, the **market value rent** for an approved rental dwelling, for the purpose of obtaining a market rent valuation of the dwelling under paragraph 16(4)(a) or (b), is the amount assessed as the market value rent for the dwelling in a written valuation prepared by a valuer who:
  - (a) is registered as a valuer:
    - (i) in the State or Territory in which the dwelling is located; and
    - (ii) with a professional organisation 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.
- (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

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- (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 Transfer of allocation to another rental dwelling**

- (1) If the approved participant for an approved rental dwelling, or a person acting on behalf of the approved participant, requests the Secretary, in a form approved by the Secretary, to transfer the allocation to a different rental dwelling, the Secretary may transfer the allocation as requested.
- (2) However, the Secretary must not transfer a provisional allocation to a different rental dwelling.

**21 Transfer of allocation to another approved participant etc.**

- (1) If the approved participant for an approved rental dwelling, or a person acting on behalf of the approved participant, requests the Secretary, in a form approved by the Secretary, to transfer the allocation to another approved participant, or another person or entity, the Secretary may transfer the allocation as requested.
- (2) However, the Secretary must not transfer a provisional allocation to another approved participant or another person or entity.

## **22 Revocation of allocation other than provisional allocation**

- (1) The Secretary may revoke an allocation (other than a provisional allocation) in relation to an approved rental dwelling if:
- (a) any conditions of the allocation are not complied with; or
  - (b) the application for the allocation:
    - (i) includes information that is false or misleading; or
    - (ii) fails to include information that the applicant knew, or ought reasonably to have known, was relevant.
- Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.
- (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.

## **22A Revocation of provisional allocation**

The Secretary may revoke a provisional allocation in relation to a rental dwelling if:

- (a) any conditions of the allocation are not complied with; or
- (b) any advertisement relating to the allocation:
  - (i) is likely to mislead; or
  - (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 Commonwealth as underwriting or endorsing the approved participant or the dwelling; or
  - (v) presents the Commonwealth as dealing directly with investors; or
  - (vi) presents the Commonwealth as being in partnership with the approved participant or any person or entity publishing details in association with the Scheme; or
- (c) the application for the allocation:
  - (i) includes information that is false or misleading; or

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- (ii) fails to include information that the applicant knew, or ought reasonably to have known, was relevant; or
- (d) an application made under Division 2 to vary the conditions of the reservation of the allocation:
  - (i) includes information that is false or misleading; or
  - (ii) fails to include information that the applicant knew, or ought reasonably to have known, was relevant.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

**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.

## **Division 2—Variation of reservation of allocation**

### **23A Applications to vary conditions of reservation—general**

- (1) An applicant who has accepted an offer of a reservation of an allocation in relation to a rental dwelling, or a person acting on behalf of the applicant, may apply to the Secretary, in accordance with this Division, to vary the conditions of the reservation relating to any of the following:
  - (a) the dwelling's location;
  - (b) the dwelling's style;
  - (c) the dwelling's size;
  - (d) the dwelling's special attributes (if any);
  - (e) the agreed rental availability date for the dwelling.
- (2) An application must be in writing, in a form approved by the Secretary.
- (3) An application must:
  - (a) set out all commercial arrangements associated with the proposed variation, including the consideration or monetary value in respect of, arising from, or otherwise associated with the proposed variation; and
  - (b) be accompanied by any documents directly relating to the commercial arrangements; and
  - (c) if the application is for a variation of the location of a dwelling, or the agreed rental availability date for the dwelling, because of a natural disaster—include documents or information about the natural disaster that justify the application.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.
- (4) The applicant must, within the time specified by the Secretary, answer any queries from the Secretary, and give the Secretary any documents requested by the Secretary, in relation to an application.

**Regulation 23B**

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**23B Application to vary dwelling's location or style**

- (1) An application to vary a rental dwelling's location or style must not be made under regulation 23A after the transitional period.
- (2) Despite subregulation (1), an application to vary a rental dwelling's location may be made after the transitional period if, because of a natural disaster, the dwelling cannot be built:
  - (a) in the location specified in the conditions of the reservation relating to the dwelling; or
  - (b) if that location has been varied under this Division—in the varied location.

**23C Application to vary dwelling's agreed rental availability date**

- (1) An application under regulation 23A to vary the agreed rental availability date for a rental dwelling must specify the new rental availability date for the dwelling. The new date must be:
  - (a) if the application for the allocation in relation to the rental dwelling was made in response to the call for applications made on 18 April 2013—no later than 31 July 2015; or
  - (b) in any other case—no later than 30 June 2016.
- (2) After the transitional period, an applicant may make only one application under regulation 23A to vary the agreed rental availability date for a rental dwelling.
- (3) If an application is made under regulation 23A after the transitional period to vary the agreed rental availability date for a rental dwelling, the new rental availability date requested by the applicant must not be later than 3 months after the agreed rental availability date for the dwelling.
- (4) Subregulations (2) and (3) do not apply in relation to a rental dwelling if, because of a natural disaster, the dwelling is not able to be made available for rent by the agreed rental availability date for the dwelling.

- (5) To avoid doubt, subregulation (1) applies in relation to an application to vary the agreed rental availability date for a rental dwelling that is made relying on subregulation (4).

### **23D Decisions on applications**

- (1) The Secretary may assess an application under this Division to vary the conditions of the reservation of an allocation using the same criteria as applied to the application under regulation 8 for the allocation.
- (2) In assessing the application, the Secretary may also take into account:
- (a) the documents and information mentioned in subregulation 23A(3); and
  - (b) any answers or documents given under subregulation 23A(4); and
  - (c) whether the documents, information or answers, if made public, would be likely to bring the Scheme into disrepute; and
  - (d) whether the proposed variation would be consistent with the object of the Act.
- (3) After assessing the application, the Secretary may:
- (a) agree to vary the conditions of the reservation of the allocation, in whole or in part; or
  - (b) refuse to vary the conditions of the reservation of the allocation, in whole or in part.
- (4) The Secretary must not agree to vary the location of a rental dwelling, or the agreed rental availability date for a rental dwelling, because of a natural disaster unless the Secretary is satisfied the variation is necessary because of the natural disaster.

## Part 4—Receiving incentives

### 24 Purpose

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

### 25 Entitlement to receive incentives

If the conditions of an allocation in relation to an approved rental dwelling are satisfied for an NRAS year, the approved participant for the dwelling is entitled to receive an incentive, under this Part, for the dwelling for the NRAS year.

#### 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:



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- (a) the tenants of the dwelling ceased to be eligible tenants during the 2013–14 NRAS year 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 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—the amount of \$6 000, indexed in accordance with the NRAS incentive index.
- (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—the amount of \$6 000, indexed in accordance with the NRAS incentive index.

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.

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- (3) Other than for subregulation (1), these Regulations apply to subsidiary dwellings in the same way as they apply to other approved rental dwellings.

### **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 for rent under 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; or
  - (d) if the conditions of the allocation in relation to an approved rental dwelling were not satisfied during a period in an NRAS year—proportionately reduce the incentive for that period.
- (2A) However, paragraph (2)(d) does not apply in relation to an incentive for an approved rental dwelling for an NRAS year if the condition mentioned in subregulation 16(1D) is not satisfied in relation to the dwelling for that year.
- (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.

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- 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).

**28A Elections to receive incentive as tax offset certificate**

- (1) This regulation applies to an entity if the entity is:
  - (a) an applicant, or an approved participant, that is an endorsed charitable institution during an NRAS year; or
  - (b) an approved participant that becomes an endorsed charitable institution during an NRAS year.
- (2) The entity may elect to receive an incentive to which the entity is entitled under this Part for an NRAS year as a tax offset certificate rather than as a payment.
- (3) The entity may make only one election in each NRAS year.
- (4) An election must be made in writing to the Secretary before the end of 31 December in an NRAS year.
- (5) However, if an approved participant becomes an endorsed charitable institution after 31 December in an NRAS year, the approved participant may make an election when the approved participant becomes an endorsed charitable institution.

Note: An election made by an approved participant as permitted by subregulation (5) will only apply in relation to an incentive to be received by the approved participant in an NRAS year beginning after the election was made (see subregulation 29(1)).

- (6) An entity that has made an election under subregulation (2) or (5) may revoke the election before the end of 31 December in an NRAS year.

## Part 4 Receiving incentives

### Regulation 28AA

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Note: See regulation 29 in relation to the form in which an incentive is given.

#### 28AA Effect of election agreed to by Secretary

If the Secretary agrees to an election made by an entity in accordance with regulation 28A, the election has effect, subject to regulation 29, in relation to an incentive to be received by the entity for an NRAS year, unless the entity revokes the election.

#### 29 Receipt of incentives

- (1) The Secretary must give an approved participant an incentive to which the approved participant is entitled, under this Part, for an NRAS year in accordance with the following table.

Receiving incentives		
Item	If ...	the Secretary must give the approved participant the incentive ...
1	(a) the approved participant was an endorsed charitable institution during the whole of the NRAS year; and (b) an election was in effect under regulation 28AA for the endorsed charitable institution for that year	as a tax offset certificate.
2	(a) the approved participant was an endorsed charitable institution during the whole of the NRAS year; and (b) no election was in effect under regulation 28AA for the endorsed charitable institution for that year	as a payment.
3	the approved participant was an endorsed charitable institution during part only of the NRAS year	as a tax offset certificate.
4	the approved participant was not an endorsed charitable institution during any part of the NRAS year	as a tax offset certificate.

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- (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.

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

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- (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.

## **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.

**Part 6** Transitional provisions

**Division 1** Provisions relating to the National Rental Affordability Scheme  
Amendment (Provisional Allocations and Other Measures) Regulation 2014

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**Part 6—Transitional provisions**

**Division 1—Provisions relating to the National Rental  
Affordability Scheme Amendment (Provisional  
Allocations and Other Measures)  
Regulation 2014**

**34 Requests to change rental availability date not decided before  
commencement**

- (1) This regulation applies if:
- (a) before the commencement of Part 1 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Provisional Allocations and Other Measures) Regulation 2014* (the **amendment regulation**), the Secretary had received a request to agree to change the rental availability date for a rental dwelling to which a reservation of an allocation relates; and
  - (b) the Secretary had not made a decision on the request before that commencement.
- Note: See paragraphs 14(2)(a) and (b) of these Regulations, as in force immediately before the commencement of Part 1 of Schedule 1 to the amendment regulation.
- (2) Subject to subregulation (3), the Secretary must deal with the request as if the amendments made by Part 1 of Schedule 1 to the amendment regulation had not happened.
- (3) If the request relates to the rental availability date for a rental dwelling in relation to which the application for an allocation was made in response to the call for applications made on 18 April 2013, the Secretary must not agree to change the rental availability date for the dwelling to a date later than 31 July 2015.



**35 Requests to change location, style etc. of dwelling not decided before commencement**

- (1) This regulation applies if:
  - (a) an application had been made under regulation 21A (*previous regulation 21A*) of these Regulations, as in force immediately before the commencement of Part 1 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Provisional Allocations and Other Measures) Regulation 2014*; and
  - (b) the application had not been decided before that commencement.
- (2) The Secretary must decide the application in accordance with previous regulation 21A as if that regulation had not been repealed.

**36 Elections to receive incentive as a tax offset certificate in effect before commencement**

- (1) This regulation applies if an election by an applicant or an approved participant to receive an incentive as a tax offset certificate, rather than as a payment, was in effect under regulation 28A immediately before the commencement of Part 1 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Provisional Allocations and Other Measures) Regulation 2014* (the *amendment regulation*).
- (2) The election has effect, at and after the commencement of Part 1 of Schedule 1 to the amendment regulation, as if the Secretary had agreed to the election under section 28AA of these Regulations, as inserted by that Part.

**37 Repeal of this Division**

This Division is repealed on the day after the end of the period of 12 months beginning on the day this regulation commenced.

## Division 2—Provisions relating to the National Rental Affordability Scheme Amendment (Administrative Processes) Regulation 2014

### 38 Definitions

In this Division:

**2013-14 NRAS year** means the NRAS year beginning on 1 May 2013.

**commencement day** means the day on which the *National Rental Affordability Scheme Amendment (Administrative Processes) Regulation 2014* commences.

**old Regulations** means the *National Rental Affordability Scheme Regulations 2008*, as in force before the commencement of Part 1 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Provisional Allocations and Other Measures) Regulation 2014*.

**permitted valuation period** means:

- (a) for a market rent valuation of an approved rental dwelling obtained, or to be obtained, under paragraph 16(4)(a) of the old Regulations—the 26 week period:
  - (i) beginning 13 weeks before the day when the dwelling was first available for rent under the National Rental Affordability Scheme; and
  - (ii) ending at the end of 13 weeks after that day; and
- (b) for a market rent valuation of an approved rental dwelling obtained, or to be obtained, under paragraph 16(4)(b) of the old Regulations—the 26 week period:
  - (i) beginning 13 weeks before the last day of the fourth or seventh year (as the case may be) of the incentive period in respect of the dwelling; and
  - (ii) ending at the end of 13 weeks after that day.

**38A Entitlement to receive incentive for 2013-14 NRAS year—  
references to market value rent etc.**

For the purpose of determining an approved participant's entitlement to receive an incentive for an approved rental dwelling for the 2013-14 NRAS year:

- (a) a reference in this Division and in the old Regulations to the market value rent for the dwelling for a year is taken to be a reference to the market value rent for the dwelling for the year within the meaning of regulation 18 of these Regulations, as in force on or after the commencement day; and
- (b) subregulation 16(9) of the old Regulations is taken not to have applied in relation to the dwelling for the 2013-14 NRAS year; and
- (c) subregulation 16(10) of the old Regulations is taken not to have included a reference to subregulation 16(9) of those Regulations.

**39 Entitlement to receive incentive for 2013-14 NRAS year—market  
rent valuation lodged before commencement day—  
valuation related to market value rent on date within  
permitted valuation period**

- (1) Subregulation (3) applies in relation to an approved participant's entitlement to receive an incentive for an approved rental dwelling for the 2013-14 NRAS year if:
  - (a) before the end of the period mentioned in subregulation 16(6) of the old Regulations, the approved participant had lodged with the Department a market rent valuation of the dwelling obtained under paragraph 16(4)(a) or (b) of the old Regulations; and
  - (b) the market rent valuation related to the market value rent for the dwelling on a date (the *actual valuation date*) other than the date mentioned in paragraph 16(5)(a) or (b) of the old Regulations (as the case required); and

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- (c) the actual valuation date was within the permitted valuation period for the market rent valuation.
- (2) Subregulation (3) also applies in relation to an approved participant's entitlement to receive an incentive for an approved rental dwelling for the 2013-14 NRAS year if:
  - (a) after the end of the period mentioned in subregulation 16(6) of the old Regulations and before the commencement day, the approved participant had lodged with the Department a market rent valuation of the dwelling obtained under paragraph 16(4)(a) or (b) of the old Regulations; and
  - (b) the market rent valuation related to the market value rent for the dwelling on a date within the permitted valuation period for the market rent valuation.
- (3) The conditions of allocation mentioned in subregulations 16(4), (5) and (6) of the old Regulations are taken to have been satisfied in relation to the approved rental dwelling for the 2013-14 NRAS year.

**40 Entitlement to receive incentive for 2013-14 NRAS year—market rent valuation not lodged before commencement day or not related to market value rent on date within permitted valuation period**

- (1) Subregulation (3) applies in relation to an approved participant's entitlement to receive an incentive for an approved rental dwelling for the 2013-14 NRAS year if, before the commencement day:
  - (a) the approved participant was required by subregulation 16(6) of the old Regulations to lodge with the Department a market rent valuation of the dwelling obtained under paragraph 16(4)(a) or (b) of the old Regulations; and
  - (b) the approved participant had not done so.
- (2) Subregulation (3) also applies in relation to an approved participant's entitlement to receive an incentive for an approved rental dwelling for the 2013-14 NRAS year if:

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- (a) before the commencement day, the approved participant had lodged with the Department a market rent valuation of the dwelling obtained under paragraph 16(4)(a) or (b) of the old Regulations (whether or not the lodgement was within the period mentioned in subregulation 16(6) of the old Regulations); and
  - (b) the market rent valuation did not relate to the market value rent for the dwelling on a date within the permitted valuation period for the market rent valuation.
- (3) The conditions of allocation mentioned in subregulations 16(4), (5) and (6) of the old Regulations are taken to be satisfied in relation to the approved rental dwelling for the 2013-14 NRAS year if:
  - (a) the approved participant for the dwelling obtains the market rent valuation of the dwelling required by paragraph 16(4)(a) or (b) of the old Regulations (as the case requires); and
  - (b) the market rent valuation relates to the market value rent for the dwelling on a date within the permitted valuation period for the market rent valuation; and
  - (c) the approved participant lodges with the Department the market rent valuation before 30 April 2015.

**41 Entitlement to receive incentive for 2013-14 NRAS year—  
Statement of Compliance including all required details  
lodged after 13 May 2014 and before commencement day**

- (1) Subregulation (2) applies in relation to an approved participant's entitlement to receive an incentive for an approved rental dwelling for the 2013-14 NRAS year if:
  - (a) after 13 May 2014 and before the commencement day, the approved participant had lodged a Statement of Compliance for the dwelling in relation to the 2013-14 NRAS year for the purpose of regulation 17 of the old Regulations; and
  - (b) the Statement included all the statements and details mentioned in subregulation 17(3) of the old Regulations.

**Part 6** Transitional provisions

**Division 2** Provisions relating to the National Rental Affordability Scheme  
Amendment (Administrative Processes) Regulation 2014

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- (2) The condition of allocation mentioned in subregulation 16(1) of the old Regulations is taken to have been satisfied in relation to the approved rental dwelling for the 2013-14 NRAS year.

**42 Entitlement to receive incentive for 2013-14 NRAS year—  
Statement of Compliance not lodged before  
commencement day or incomplete**

- (1) Subregulation (2) applies in relation to an approved participant's entitlement to receive an incentive for an approved rental dwelling for the 2013-14 NRAS year if:
- (a) the approved participant had not, before the commencement day, lodged a Statement of Compliance for the dwelling in relation to the 2013-14 NRAS year for the purpose of regulation 17 of the old Regulations; or
  - (b) the approved participant had, before the commencement day (whether or not before 13 May 2014), lodged a Statement of Compliance for the dwelling in relation to the 2013-14 NRAS year, but the Statement did not include all the statements and details mentioned in subregulation 17(3) of the old Regulations.
- (2) The condition of allocation mentioned in subregulation 16(1) of the old Regulations is taken to be satisfied in relation to the approved rental dwelling for the 2013-14 NRAS year if:
- (a) the approved participant for the dwelling lodges with the Department a Statement of Compliance for the dwelling in relation to that year before 30 April 2015; and
  - (b) the Statement includes all the statements and details mentioned in subregulation 17(3) of the old Regulations.

**43 Application of amendments made by Part 1 of Schedule 1 to the  
*National Rental Affordability Scheme Amendment  
(Administrative Processes) Regulation 2014***

The amendments made by Part 1 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Administrative*

Regulation 44

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*Processes) Regulation 2014* apply in relation to an approved participant's entitlement to receive an incentive for an approved rental dwelling for the NRAS year beginning on 1 May 2014 or a later NRAS year.

**44 Repeal of this Division**

This Division is repealed on the day after the end of the period of 12 months beginning on the day after this regulation commences.

**Part 6** Transitional provisions

**Division 3** Provisions relating to the National Rental Affordability Scheme  
Amendment (Administrative Processes) Regulation 2015

Regulation 45

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**Division 3—Provisions relating to the National Rental  
Affordability Scheme Amendment  
(Administrative Processes) Regulation 2015**

**45 Application of amendments**

The amendments made by Schedule 1 to the *National Rental Affordability Scheme Amendment (Administrative Processes) Regulation 2015* apply in relation to an approved participant's entitlement to receive an incentive for an approved rental dwelling for the NRAS year beginning on 1 May 2014 or a later NRAS year.

**46 Repeal of this Division**

This Division is repealed on the day after the end of the period of 12 months beginning on the day after this regulation commences.



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## 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);

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- (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;

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- (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

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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;

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- (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

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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

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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;

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- (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;
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- (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

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of the matters mentioned in subparagraph (e)(ii), may be given priority.

## 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

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

### 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.

### 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 amendment is set out in the endnotes.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

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

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Number and year	FRLI registration	Commencement	Application, saving and transitional provisions
232, 2008	28 Nov 2008 (F2008L04484)	1 July 2008 (r 2)	
133, 2009	24 June 2009 (F2009L02494)	1 July 2008 (r 2)	—
78, 2010	10 May 2010 (F2010L01193)	11 May 2010 (r 2)	—
95, 2011	22 June 2011 (F2011L01124)	1 May 2010 (r 2)	—
300, 2012	13 Dec 2012 (F2012L02444)	14 Dec 2012 (s 2)	—
140, 2013	2 July 2013 (F2013L01298)	3 July 2013 (s 2)	—
137, 2014	22 Sept 2014 (F2014L01260)	Sch 1 (items 27–38): 23 Dec 2014 (s 2 item 3) Sch 1 (item 39): 1 May 2010 (s 2 item 4) Remainder: 23 Sept 2014 (s 2 items 1, 2)	—
<b>as amended by</b> 170, 2014	3 Nov 2014 (F2014L01463)	Sch 1 (item 14): 4 Nov 2014 (s 2)	—
170, 2014	3 Nov 2014 (F2014L01463)	Sch 1 (items 1–13, 15– 19): 4 Nov 2014 (s 2)	—
77, 2015	1 June 2015 (F2015L00772)	2 June 2015 (s 2)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
r. 4 .....	am. 2009 No. 133; No 137, 2014
<b>Part 2</b>	
r. 8 .....	am No 137, 2014
<b>Part 3</b>	
<b>Division 1</b>	
Division 1 heading.....	ad No 137, 2014
r. 12.....	am. 2010 No. 78
r. 13.....	am. 2010 No. 78; No. 137, 2014
r. 14.....	am. 2010 No. 78; No 137, 2014
r. 16.....	rs. 2009 No. 133 am No 137, 2014; No 170, 2014; No 77, 2015
r. 17.....	rs. 2009 No. 133 am. 2010 No. 78; No 137 and 170, 2014
r. 18 .....	am No 170, 2014
r. 19.....	am. 2009 No. 133; 2010 No. 78; 2011 No. 95
r. 20 .....	rs No 137, 2014 am No 137, 2014
r. 21 .....	rs No 137, 2014 am No 137, 2014
r. 21A.....	ad. 2010 No. 78 rep No 137, 2014
r. 22.....	am. 2010 No. 78; No 137, 2014
r. 22A.....	ad No 137, 2014
<b>Division 2</b>	
Division 2 .....	ad No 137, 2014
r. 23A.....	ad No 137, 2014
r. 23B.....	ad No 137, 2014
r. 23C.....	ad No 137, 2014

## Endnote 4—Amendment history

Provision affected	How affected
r 23D.....	ad No 137, 2014
<b>Part 4</b>	
r 25 .....	rs No 137, 2014 am No 170, 2014
r. 25A.....	ad. 2012 No. 300
r. 26.....	am. 2011 No. 95; No 137, 2014
r. 27.....	am. 2011 No. 95; No 137, 2014
r. 28.....	am. 2010 No. 78; No 137 and 170, 2014
r. 28A.....	ad. 2010 No. 78 am No 140, 2013 rs No 137, 2014
r 28AA.....	ad No 137, 2014 am No 170, 2014
r. 29.....	am. 2009 No. 133; 2010 No. 78; No 137, 2014
<b>Part 5</b>	
r. 33.....	ad. 2009 No. 133
<b>Part 6</b>	
Part 6 .....	ad No 137, 2014
<b>Division 1</b>	
Division 1 heading.....	ad No 170, 2014 rep <u>23 Sept 2015 (r 37)</u>
Division 1 .....	rep <u>23 Sept 2015 (r 37)</u>
r 34 .....	ad No 137, 2014 rep <u>23 Sept 2015 (r 37)</u>
r 35 .....	ad No 137, 2014 rep <u>23 Sept 2015 (r 37)</u>
r 36 .....	ad No 137, 2014 rep <u>23 Sept 2015 (r 37)</u>
r 37 .....	ad No 137, 2014 am No 170, 2014 rep <u>23 Sept 2015 (r 37)</u>
<b>Division 2</b>	

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
Division 2 .....	ad No 170, 2014 rep <a href="#">5 Nov 2015 (r 44)</a>
r 38 .....	ad No 170, 2014 rep <a href="#">5 Nov 2015 (r 44)</a>
r 38A.....	ad No 170, 2014 rep <a href="#">5 Nov 2015 (r 44)</a>
r 39 .....	ad No 170, 2014 rep <a href="#">5 Nov 2015 (r 44)</a>
r 40 .....	ad No 170, 2014 rep <a href="#">5 Nov 2015 (r 44)</a>
r 41 .....	ad No 170, 2014 rep <a href="#">5 Nov 2015 (r 44)</a>
r 42 .....	ad No 170, 2014 rep <a href="#">5 Nov 2015 (r 44)</a>
r 43 .....	ad No 170, 2014 rep <a href="#">5 Nov 2015 (r 44)</a>
r 44 .....	ad No 170, 2014 rep <a href="#">5 Nov 2015 (r 44)</a>
<b>Division 3</b>	
Division 3 .....	ad No 77, 2015 rep <a href="#">3 June 2016 (r 46)</a>
r 45 .....	ad No 77, 2015 rep <a href="#">3 June 2016 (r 46)</a>
r 46 .....	ad No 77, 2015 rep <a href="#">3 June 2016 (r 46)</a>
<b>Schedule 1</b>	
Schedule 1 .....	am. 2009 No. 133; 2010 No. 78

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