



# **National Rental Affordability Scheme Regulations 2008**

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

made under the

*National Rental Affordability Scheme Act 2008*

## **Compilation No. 13**

**Compilation date:** 7 November 2018

**Includes amendments up to:** F2018L01547

**Registered:** 19 November 2018

Prepared by the Office of Parliamentary Counsel, Canberra

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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 7 November 2018 (the *compilation date*).

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

### Uncommenced amendments

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

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

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

### Editorial changes

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

### Modifications

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

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name of Regulations

These Regulations are the *National Rental Affordability Scheme Regulations 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.

*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 or 21A.

*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.

*associated party*, in relation to an approved rental dwelling, means a person, other than the approved participant or a tenant of an approved rental dwelling, who:

- (a) is a party to an agreement that relates to the approved rental dwelling; and

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- (b) under the agreement, is required to pass on to another person who is not the approved participant any payment or benefit (including rent) relating to the approved rental dwelling.

**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)(iia) and (iii); and
- (b) the other conditions specified under subregulation 13(3).

**consumer protection law** has the same meaning as in the *Australian Postal Corporation Act 1989*.

**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*.

**investor**, in relation to an approved rental dwelling, means a person:

- (a) who is the legal or beneficial owner of the rental dwelling; and
- (b) who is not an approved participant in relation to the dwelling.

**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.

**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, December 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.

***pass on***, in relation to an incentive, has the meaning given by subregulation 30A(2).

***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).

***redirected***, in relation to an incentive, has the meaning given by subregulation 21D(3).

***relevant approved participant*** has the meaning given by subregulation 21A(1).

***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.

***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*.

***unfair conduct***: a person engages in ***unfair conduct*** in relation to an allocation for an approved rental dwelling if the person:

- (a) enforces, or seeks to enforce, an unfair contract in relation to the approved rental dwelling; or
- (b) fails to perform contractual obligations owed to an investor in a timely manner; or
- (c) coerces, threatens or attempts to coerce, an investor to take, or omit to take, action:
  - (i) in relation to a contract to which the investor is a party; and
  - (ii) that the investor is not required, under the contract, to take, or omit to take; or
- (d) requires an investor to enter into a contract, including with a particular person; or
- (e) requires an investor to obtain:

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- (i) particular goods or services; or
- (ii) goods or services from a particular person; or
- (f) seeks to prevent an investor from entering into a contract with a suitably qualified person; or
- (g) misrepresents contractual rights or obligations to an investor.

**unfair contract**, in relation to an approved rental dwelling, means a contract that:

- (a) relates to the approved rental dwelling; and
- (b) includes a term that:
  - (i) results in a significant imbalance in the rights and obligations of the parties to the contract; and
  - (ii) is not reasonably necessary to protect the legitimate interests of the approved participant or an associated party; and
  - (iii) if applied, or relied upon, would cause detriment (whether financial or otherwise) to an investor.

Note: Terms used in these Regulations that are defined in the Act include the following:

**allocation**, in relation to an incentive period, means an allotment to an approved participant of an entitlement to receive an incentive for an approved rental dwelling in relation to an NRAS year that falls within the incentive period if conditions are satisfied in relation to the rental dwelling.

**incentive** means:

- (a) a National Rental Affordability Scheme Tax Offset; or
- (b) an amount payable for an NRAS year.

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

**NRAS year** (short for National Rental Affordability Scheme year) means:

- (a) the period beginning on 1 July 2008 and ending on 30 April 2009; and
- (b) the year beginning on 1 May 2009 and later years beginning on 1 May.

**rental dwelling** means a dwelling for which rent is payable and includes:

- (a) a part of the dwelling or building that is capable of being lived in as a separate residence; and
- (b) a unit that is a dwelling; and
- (c) any dwelling prescribed by the regulations to be a rental dwelling for the purposes of this definition;

but does not include a caravan, houseboat, another kind of mobile dwelling or any dwelling prescribed by the regulations not to be a rental dwelling for the purposes of this definition.

**Secretary** means the Secretary of the Department.

## 5 Meaning of *rental dwelling*

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

## Part 2—Application

### 6 Purpose

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

### 7 Call for applications

- (1) The Secretary may, from time to time, make a *call for applications* for allocations under the Scheme.
- (2) The Secretary may, with a call for applications or later, issue guidelines about how a person or entity may apply for allocations in response to the call.
- (3) A call for applications must specify the set of assessment criteria in Schedule 1 that will apply to applications in response to the call.

### 8 Form of application

- (1) An application for allocations in response to a call for applications may be made by:
  - (a) a person or entity to whom Division 380 of the *Income Tax Assessment Act 1997* applies; or
  - (b) an endorsed charitable institution.
- (2) An application must:
  - (a) be in writing; and
  - (b) comply with any guidelines for the call; and
  - (c) contain a proposal for 1 or more projects of rental dwellings to be approved for the Scheme; and
  - (d) describe the style, size and special attributes (if any) of the proposed dwellings.
- (3) A project may include dwellings that will not be available for rent until a time in the future, including dwellings that have not yet been built and cannot yet be individually identified.

### 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 provides for the making, transfer and revocation of 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
    - (ii) 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, 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;

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- (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).

(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:
- (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 (the *relevant NRAS year*) that falls within the incentive period—the dwelling must not be vacant for:
- (a) a period of more than 26 weeks during the relevant NRAS year (whether or not the period is continuous); or
  - (b) a continuous period of more than 26 weeks that:
    - (i) begins no more than 26 weeks before the end of the previous NRAS year; and
    - (ii) ends in the relevant 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.
- (2A) The approved participant must not, in relation to an allocation made to the approved participant:
- (a) provide information to the Secretary or the Department that is false or misleading; or
  - (b) fail to provide information to the Secretary or the Department that the approved participant knows, or ought reasonably to know, is relevant.

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- (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.
- (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 relating to the Scheme.

## **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.
- (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

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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 be in a form approved by the Secretary and 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 each investor for the dwelling; and
  - (f) a statement that at all times during the year the approved participant, in respect of the dwelling, complied 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 such laws were not complied with; and
  - (fa) a statement that at all times during the year the approved participant complied with consumer protection laws in relation to the allocation, or details of any way in which such laws were not complied with; 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) a statement that the approved participant has complied with the approved participant's obligations under Division 2 of Part 4, or details of any way in which those obligations were not complied with; and
  - (i) such other information as is required by the form.

## 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
- (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 dependent on an eligible tenant; and

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- (e) **child** means a person under 18 years of age who is financially dependent 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
  - (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).

## **Division 1A—Transfer and revocation of allocations**

### **Subdivision A—Transfer on request**

#### **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.

### **Subdivision B—Transfer because of conduct**

#### **21A Transfer of allocation at Secretary's discretion or at request of investor**

- (1) Subject to regulations 21B and 21C, the Secretary may transfer an allocation (other than a provisional allocation) in relation to an approved rental dwelling made to an approved participant (the *relevant approved participant*) to another approved participant (the *gaining approved participant*) if the Secretary is satisfied that one or more of the grounds specified in subregulation (2) exist.
- (2) The specified grounds are as follows:
  - (a) the relevant approved participant has failed to comply with a condition of the allocation;
  - (b) the relevant approved participant has failed to comply with the relevant approved participant's obligations under Division 2 of Part 4;
  - (c) the relevant approved participant has provided false or misleading information about the Scheme to an investor for the approved rental dwelling;
  - (d) the conduct of the relevant approved participant in relation to the allocation has contravened a consumer protection law;
  - (e) if the relevant approved participant received a tax offset certificate in respect of an approved rental dwelling—the relevant approved participant has claimed a tax offset (or a part of a tax offset) in relation to the certificate to which the relevant approved participant was not entitled;

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- (f) if the relevant approved participant is a company—either:
    - (i) ASIC has published notice of the proposed deregistration of the company under paragraph 601AA(4)(d) or 601AB(3)(b) of the *Corporations Act 2001*; or
    - (ii) a court has ordered the deregistration of the company by ASIC under paragraph 413(1)(d) or 481(5)(b) or subsection 509(2) of that Act;
  - (g) the relevant approved participant has:
    - (i) become bankrupt; or
    - (ii) taken steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounded with one or more of his or her creditors; or
    - (iv) made an assignment of his or her remuneration for the benefit of one or more of his or her creditors;
  - (h) any application under the Regulations by the relevant approved participant:
    - (i) included information that is false or misleading; or
    - (ii) failed to include information that the relevant approved participant knew, or ought reasonably to have known, was relevant;
  - (i) the relevant approved participant has failed (as a gaining approved participant) to comply with paragraph 21D(7)(a) (obligation of gaining approved participants when Secretary has redirected incentive) in relation to the allocation;
  - (j) the relevant approved participant has failed to comply with regulation 22D (obligations of approved participants when allocations are transferred) in relation to another allocation;
  - (k) the relevant approved participant or an associated party:
    - (i) has engaged in unfair conduct in relation to the allocation; or
    - (ii) is likely to engage in unfair conduct in relation to the allocation.
- (3) The Secretary may transfer an allocation:
- (a) on the Secretary’s own initiative; or
  - (b) on the written request of an investor.
- (4) The request must be in a form approved by the Secretary and must include details of the ground or grounds on which the investor is seeking to have the allocation transferred. Each ground must be a ground specified in subregulation (2).

*Secretary may assume unfair conduct in certain circumstances*

- (5) Unless the relevant approved participant satisfies the Secretary otherwise, the Secretary is taken to be satisfied of the matters in paragraph (2)(k) (unfair conduct) if the Secretary is satisfied that the relevant approved participant or associated party has:
- (a) terminated, or threatened to terminate, a contract:
    - (i) that relates to the approved rental dwelling; and
    - (ii) to which an investor is a party; or

- (b) failed to pass on an incentive in relation to the approved rental dwelling to an investor; or
- (c) threatened to take action that would result in an investor not receiving a payment or benefit (including rent) relating to the approved rental dwelling.

## **21B Secretary to notify of proposed transfer**

### *Notice of proposed transfer must be given*

- (1) Before the Secretary transfers an allocation in respect of an approved rental dwelling under regulation 21A, the Secretary must give written notice of the proposed transfer to:
  - (a) the relevant approved participant; and
  - (b) if an investor has requested the transfer in accordance with paragraph 21A(3)(b)—each such investor.

### *Notice to relevant approved participant*

- (2) A notice under paragraph (1)(a) to the relevant approved participant must:
  - (a) state that the Secretary proposes to transfer the allocation and the reasons for the proposed transfer; and
  - (b) invite the relevant approved participant to make a written submission to the Secretary about the proposed transfer no later than 14 days after the day the Secretary gives the notice.

### *Notice to investor*

- (3) A notice under paragraph (1)(b) to an investor must:
  - (a) state that the Secretary proposes to transfer the allocation; and
  - (b) include a list of approved participants to whom the Secretary may decide to transfer the allocation; and
  - (c) invite the investor to nominate an approved participant to whom the allocation may be transferred from the list provided by the Secretary.

### *Secretary must have regard to submissions and nominations*

- (4) In deciding whether to transfer the allocation, the Secretary must have regard to the following:
  - (a) any submission made under paragraph (2)(b);
  - (b) any nomination made under paragraph (3)(c).
- (5) Subregulation (4) does not limit the matters to which the Secretary may have regard in deciding whether to transfer the allocation.

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**21C Requirements for transfer**

The Secretary must not, under regulation 21A, transfer an allocation in respect of an approved rental dwelling to another approved participant (the *proposed transferee*) unless:

- (a) the Secretary is satisfied that the proposed transferee:
  - (i) has the capacity to properly manage the allocation; and
  - (ii) is a suitable person or entity to whom the allocation may be transferred; and
- (b) the proposed transferee has, in writing, agreed to the proposed transfer.

**21D Secretary may redirect incentive**

*Incentive for year of transfer*

- (1) The Secretary may give an incentive to a gaining approved participant instead of a relevant approved participant if:
  - (a) the Secretary transfers an allocation from the relevant approved participant to the gaining approved participant under regulation 21A during an NRAS year; and
  - (b) apart from the operation of this regulation and any determination in force under subregulation 25(2), the relevant approved participant:
    - (i) would be entitled to receive the incentive for the approved rental dwelling for the NRAS year; and
    - (ii) would be required to pass on all or part of the incentive to an investor.

*Incentive for an earlier year*

- (2) The Secretary may give an incentive to a gaining approved participant instead of a relevant approved participant if:
  - (a) the Secretary transfers an allocation from the relevant approved participant to the gaining approved participant under regulation 21A during an NRAS year; and
  - (b) apart from the operation of this regulation and any determination in force under subregulation 25(2), the relevant approved participant:
    - (i) would be entitled to receive the incentive for the approved rental dwelling for an earlier NRAS year; and
    - (ii) would be required to pass on all or part of the incentive to an investor.

*Meaning of **redirected***

- (3) An incentive given to a gaining approved participant under this regulation is **redirected**.

*Secretary to notify of proposed redirection*

- (4) Before the Secretary redirects an incentive for an approved rental dwelling, the Secretary must give written notice of the proposed redirection to the following:



- (a) the relevant approved participant;
  - (b) the investor to whom the relevant approved participant is required to pass on the incentive.
- (5) The notice must invite the relevant approved participant or investor, as the case requires, to make a written submission to the Secretary about the proposed redirection no later than 14 days after the day the Secretary gives the notice.
- (6) The notice may be given with a notice under regulation 21B (Secretary to notify of proposed transfer).

*Redirected incentive to be given to investor*

- (7) If the Secretary redirects an incentive:
- (a) the gaining approved participant must give the incentive to the investor to whom the relevant approved participant is required to pass on the incentive; and
  - (b) to avoid doubt, and despite any agreement to the contrary, the relevant approved participant is not required to pass on all or part of the incentive to an investor.

*Incentive that has been given cannot be redirected*

- (8) To avoid doubt, this regulation does not apply to allow the Secretary to redirect an incentive that has already been given to a relevant approved participant.

## **21E Statement of compliance if incentive is redirected**

If the Secretary redirects, or proposes to redirect, an incentive for an approved rental dwelling for an NRAS year under regulation 21D, the Secretary may require the gaining approved participant to lodge a Statement of Compliance for the dwelling that includes statements and details covering the whole NRAS year.

Note: For access to information held by the relevant approved participant, see regulation 22D.

## **Subdivision C—Revocation**

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

- (1) The Secretary may revoke an allocation (other than a provisional allocation) made to an approved participant in relation to an approved rental dwelling if:
- (a) any conditions of the allocation are not complied with; or
  - (aa) the approved participant fails to comply with the approved participant's obligations under Division 2 of Part 4; or
  - (ab) the approved participant provides false or misleading information about the Scheme to an investor for the approved rental dwelling; or
  - (ac) the approved participant fails to provide information to an investor that the approved participant knows, or ought reasonably to know, is relevant; or
  - (ad) the approved participant fails to comply with a consumer protection law in relation to the allocation; or

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- (ae) if the approved participant receives a tax offset certificate in respect of the approved rental dwelling—the approved participant claims a tax offset (or a part of a tax offset) in relation to the certificate to which the approved participant is not entitled; or
- (af) if the approved participant is a company—either:
  - (i) ASIC has published notice of the proposed deregistration of the company under paragraph 601AA(4)(d) or 601AB(3)(b) of the *Corporations Act 2001*; or
  - (ii) a court has ordered the deregistration of the company by ASIC under paragraph 413(1)(d) or 481(5)(b) or subsection 509(2) of that Act; or
- (ag) the approved participant:
  - (i) becomes bankrupt; or
  - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounds with one or more of his or her creditors; or
  - (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; 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

- (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.

### **Subdivision D—General provisions**

#### **22B Matters that may be taken into account by Secretary in deciding to transfer or revoke an allocation**

In deciding whether to transfer an allocation under regulation 21A, or to revoke an allocation, made to an approved participant, the Secretary may take into account the following matters:

- (a) whether the approved participant has failed to manage an allocation in accordance with the objectives of the Scheme;
- (b) any advice provided to the Secretary by a Commonwealth, State or Territory regulatory authority about whether the conduct of the approved participant in relation to an allocation has contravened a law of the Commonwealth or of a State or Territory;
- (c) any matters notified to the Secretary about the approved participant's conduct by a State or Territory government;
- (d) any conduct by the approved participant in relation to an allocation which the Secretary considers might bring the Scheme into disrepute;
- (e) the approved participant's current financial circumstances including, but not limited to, financial circumstances that may significantly limit the approved participant's capacity to comply with the conditions of the allocation;
- (f) the nature, significance, persistence and seriousness of any contravention of:
  - (i) a condition of an allocation; or
  - (ii) an obligation under Division 2 of Part 4;
- (g) the need to ensure that:
  - (i) allocations under the Scheme are properly managed; and
  - (ii) investors maintain confidence in the Scheme;
- (h) whether the approved participant has ever:
  - (i) become bankrupt; or
  - (ii) applied to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounded with his or her creditors; or
  - (iv) assigned his or her remuneration for the benefit of creditors;
- (i) any other matter that the Secretary considers relevant.

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**22C Contracts do not prevent transfers**

A contract has no effect to the extent that the contract prohibits or prevents an investor from, or penalises an investor for:

- (a) requesting the transfer of an allocation; or
- (b) assisting with, or supporting in any way, a request for the transfer of an allocation.

**22D Obligations of approved participants when allocations are transferred**

- (1) This regulation applies if an allocation is transferred from an approved participant (the *previous approved participant*) to another approved participant (the *gaining approved participant*).
- (2) The previous approved participant must give to the gaining approved participant any information that is:
  - (a) requested by the Secretary; and
  - (b) relevant to the administration of the Scheme.
- (3) The information must be given within 21 days after the request is made.

## **Division 1B—Variation of certain conditions**

### **23 Variation of certain conditions**

- (1) The Secretary may, with the agreement of the approved participant, vary the special conditions in relation to an approved rental dwelling.
- (2) The Secretary may, with the agreement of an approved participant for an approved rental dwelling, vary a condition of the reservation of the allocation in relation to the dwelling that relates to the size of the 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.

### **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—Incentives

### Division 1—Receiving incentives

#### 24 Purpose

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

#### 25 Entitlement to receive incentives

- (1) An approved participant for an approved rental dwelling is entitled to receive an incentive, under this Division, for the dwelling for the NRAS year, if:
  - (a) the conditions of an allocation in relation to the approved rental dwelling are satisfied for the NRAS year; and
  - (b) a determination under subregulation (2) is not in force in relation to the allocation.
- (2) The Secretary may, in accordance with this regulation, make a written determination that subregulation (1) does not apply in relation to a particular allocation if:
  - (a) an investor has requested the transfer of the particular allocation under regulation 21A and the request has not been finally determined; or
  - (b) the Secretary believes on reasonable grounds that such a request will be made; or
  - (c) less than 90 days have passed since a request to transfer the particular allocation under regulation 21A was finally determined; or
  - (d) a redirection of the incentive is made within the 90 days mentioned in paragraph (c) and less than 30 days have passed since the redirection of the incentive; or
  - (e) an application relating to redirection of the incentive made to the Administrative Appeals Tribunal under paragraph 33(1)(ab) has not been finally determined.
- (3) The Secretary must revoke the determination if the Secretary is satisfied that the grounds on which the determination was made no longer apply and none of the other grounds for making a determination apply.
- (4) For the purposes of this regulation, a request or a decision is finally determined when either:
  - (a) the decision made in respect of the request or the decision is not subject to any form of appeal or review; or
  - (b) the period within which such an appeal or review could be instituted has ended without an appeal or review having been instituted.
- (5) A determination made under subregulation (2) is not a legislative instrument.



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

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

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

#### **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.

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

**Regulation 28AA**

- (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 Division 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.

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 Division, for an NRAS year in accordance with the following table.

<b>Receiving incentives</b>		
<b>Item</b>	<b>If ...</b>	<b>the Secretary must give the approved participant the incentive ...</b>
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	as a payment.

## Regulation 30

### Receiving incentives

Item	If ...	the Secretary must give the approved participant the incentive ...
	(b) no election was in effect under regulation 28AA for the endorsed charitable institution for that year	
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.

- (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
  - (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.

## **Division 2—Obligations in relation to incentives**

### **30A Approved participant's obligations to investors**

- (1) This Division sets out an approved participant's obligations to an investor for an approved rental dwelling in respect of which the approved participant receives an incentive.
- (2) An approved participant is required to **pass on** an incentive to an investor if, under a contractual arrangement, the approved participant or an associated party is required:
  - (a) to pass on to the investor any payment or benefit (including rent) relating to the approved rental dwelling; or
  - (b) to take steps to enable the investor to claim a tax offset to which the investor is entitled under Division 380 of the *Income Tax Assessment Act 1997* in relation to the incentive; or
  - (c) to make an election under section 380-11 or 380-16 of the *Income Tax Assessment Act 1997* in relation to the incentive.

### **30B Obligation to pass on incentives in timely manner**

- (1) This regulation applies if:
  - (a) an approved participant receives an incentive under regulation 29 for an approved rental dwelling; and
  - (b) the approved participant is required to pass on all or part of the incentive to an investor for the dwelling.
- (1A) This regulation also applies if an approved participant is required, under regulation 21D, to give an investor all or part of a redirected incentive.
- (2) The approved participant must comply with the requirement within a reasonable time after receiving the incentive.
- (3) If the approved participant does not comply with the requirement within 90 days after the approved participant receives the incentive, the approved participant is taken not to have complied with the requirement within a reasonable time.
- (4) Subregulation (3) does not limit subregulation (2).

### **30C Incentives not to be withheld or refused if investor fails or refuses to accept other services provided by approved participant**

- (1) This regulation applies if:
  - (a) an approved participant is required to pass on an incentive to an investor; and
  - (b) the contractual arrangement concerned is expressed to be subject to a term that the investor must use a tenancy management service (or any similar, or

- other, service) that is provided by the approved participant or another person specified by the approved participant; and
- (c) the investor fails, or refuses, to use the service.

- (2) The approved participant:
- (a) must comply with the requirement mentioned in paragraph (1)(a) as if the term were not included in the contractual arrangement; and
- (b) must not terminate the contractual arrangement only because the investor fails, or refuses, to use the service.

### **30D Incentives not to be withheld or refused if bond not paid**

- (1) This regulation applies if:
- (a) an approved participant is required to pass on an incentive to an investor; and
- (b) the contractual arrangement concerned is expressed to be subject to a term that the investor or another person must pay to the approved participant a monetary bond (however described) if:
- (i) the investor uses a service (the *alternative service*) of a kind mentioned in paragraph 30C(1)(b); and
- (ii) the alternative service is not provided by the approved participant or a person specified by the approved participant; and
- (c) the investor uses the alternative service and the bond is not paid to the approved participant.
- (2) The approved participant:
- (a) must comply with the requirement mentioned in paragraph (1)(a) as if the term were not included in the contractual arrangement; and
- (b) must not terminate the contractual arrangement only because the investor uses the alternative service and the bond is not paid to the approved participant.

## **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:
  - (aa) under regulation 21A to transfer an allocation; or
  - (ab) under regulation 21D to redirect an incentive; or
  - (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—Amendments made by the National Rental Affordability Scheme Amendment (Administrative Processes) Regulations 2017**

#### **34 Application—vacancy periods**

Subregulation 16(1D) of the *National Rental Affordability Scheme Regulations 2008*, as inserted by item 1 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Administrative Processes) Regulations 2017*, applies in relation to the NRAS year beginning on 1 May 2016 and each later NRAS year.

#### **35 Application—variation of conditions of the reservation of an allocation**

Subregulation 23(2) of the *National Rental Affordability Scheme Regulations 2008*, as inserted by item 4 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Administrative Processes) Regulations 2017*, applies in relation to a reservation of an allocation made before the commencement of this regulation if, immediately before that commencement, the allocation has not been revoked.

Regulation 36

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**Division 2—Amendments made by the National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017**

**36 Application**

- (1) The amendments made by items 7, 8 and 9 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017* apply in relation to a Statement of Compliance lodged with the Secretary on or after the commencement of those items.
- (2) Paragraphs 21A(2)(a), (b), (c), (d), (e) and (h), as inserted by item 11 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017*, apply regardless of whether the conduct giving rise to the grounds mentioned in those paragraphs occurred before, on or after the commencement of that item.
- (3) Paragraphs 22(1)(aa), (ab), (ac), (ad) and (ae), as inserted by item 13 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017*, apply regardless of whether the conduct giving rise to the grounds mentioned in those paragraphs occurred before, on or after the commencement of that item.
- (4) Regulation 22B, as inserted by item 14 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017*, applies in relation to a transfer or revocation of an allocation, whether the allocation was made before, on or after the commencement of that regulation.
- (5) Division 2 of Part 4, as inserted by item 17 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017*, applies in relation to an approved participant who receives an incentive before, on or after the commencement of that Division.

**Division 3—Amendments made by the National Rental Affordability  
Scheme Amendment (Approved Participant Obligations)  
Regulations 2017**

**37 Application**

Regulations 30C and 30D, as inserted by item 6 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Approved Participant Obligations) Regulations 2017*, apply in relation to an approved participant who enters into a contractual arrangement with an investor on or after the commencement of that item.

Regulation 38

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**Division 4—Amendments made by the National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2018**

**38 Application**

- (1) Paragraph 21A(2)(k) and subregulation 21A(5), as inserted by items 8 and 10 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2018*, apply:
  - (a) in relation to a decision to transfer an allocation under regulation 21A made after the commencement of those provisions, including on a request made before that commencement; and
  - (b) in relation to conduct engaged in before, on or after that commencement.
- (2) Paragraphs 21D(1)(a) and (2)(a), as inserted by item 11 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2018*, apply in relation to transfers that occur in an NRAS year beginning on or after 1 May 2018, including transfers that occurred before the commencement of those paragraphs.
- (3) Regulation 22C, as inserted by item 14 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2018*:
  - (a) has effect from the commencement of that regulation; but
  - (b) applies in relation to a contract entered into before, on or after that commencement.
- (4) Regulation 22D, as inserted by item 14 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2018* applies in relation to allocations transferred before, on or after the commencement of that regulation.

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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);
  - (f) proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants.

### Set 2

#### 1 Criteria

- (1) The assessment criteria are the following:
    - (a) there is a demonstrated need for the proposal;
-

- (b) the proposal addresses the priority areas of interest in subitem (2);
- (c) the proposal delivers accessibility and sustainability outcomes, including the following:
  - (i) proximity of dwellings to transport, schools, shops, health services and employment opportunities;
  - (ii) types of dwellings and proposed household compositions that facilitate a balanced social mix;
  - (iii) use of universal design principles or other measures that make properties more accessible to people who are ageing or live with disabilities;
- (d) the applicant has demonstrated capacity and experience;
- (e) the proposal is financially viable;
- (f) the proposal details or forecasts, for each dwelling:
  - (i) the energy rating of the dwelling; and
  - (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.

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

- (2) The priority areas of interest are the following:
  - (a) proposals involving 100 or more rental dwellings;
  - (b) smaller proposals of not less than 20 rental dwellings where those proposals deliver dwellings in areas of especially high rental stress or deliver innovative and affordable rental housing solutions;
  - (c) proposals consisting of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located;
  - (d) proposals that are consistent with State, Territory or local government affordable housing priorities;
  - (e) proposals that include rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
  - (f) proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants.

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

## Set 3

### 1 Criteria

- (1) The assessment criteria are the following:
    - (a) the proposal addresses the priority areas of interest in subitem (2);
-

- 
- (b) the proposal delivers accessibility and sustainability outcomes, including the following:
    - (i) types of dwellings and proposed household compositions that facilitate a balanced social mix;
    - (ii) use of universal design principles or other measures that make properties more accessible to people who are ageing or live with disabilities;
  - (c) the proposal is financially viable;
  - (d) the proposal details or forecasts, for each dwelling:
    - (i) the energy rating of the dwelling; and
    - (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks;

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

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

- (2) The priority areas of interest are the following:
  - (a) proposals involving 100 or more rental dwellings;
  - (b) smaller proposals of not less than 20 rental dwellings where those proposals deliver dwellings in areas of especially high rental stress or deliver innovative and affordable rental housing solutions;
  - (c) proposals that include rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
  - (d) proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants;
  - (e) proposals consisting of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located.

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

## Set 4

### 1 Criteria

- (1) The assessment criteria are the following:
- (a) there is a demonstrated need for the proposal;
  - (b) the proposal addresses the priority areas of interest in subitem (2);
  - (c) the proposal delivers accessibility and sustainability outcomes, including the following:
    - (i) proximity of dwellings to transport, schools, shops, health services and employment opportunities;
    - (ii) types of dwellings and proposed household compositions that facilitate a balanced social mix;
    - (iii) use of universal design principles or other measures that make properties more accessible to people who are ageing or live with disabilities;
  - (d) the applicant has demonstrated capacity and experience;
  - (e) the proposal is financially viable;
  - (f) the proposal details or forecasts, for each dwelling:
    - (i) the energy rating of the dwelling; and
    - (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.

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

- (2) The priority areas of interest are the following:
- (a) proposals involving 1 000 or more rental dwellings;
  - (b) proposals that are consistent with State, Territory or local government affordable housing priorities;
  - (c) proposals that include rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
  - (d) proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants;
  - (e) proposals consisting of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located.

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



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## Set 5

### 1 Criteria

- (1) The assessment criteria are the following:
- (a) there is a demonstrated need for the proposal;
  - (b) the proposal addresses the priority areas of interest in subitem (2);
  - (c) the proposal delivers accessibility and sustainability outcomes, including the following:
    - (i) proximity of dwellings to transport, schools, shops, health services and employment opportunities;
    - (ii) types of dwellings and proposed household compositions that facilitate a balanced social mix;
    - (iii) use of universal design principles or other measures that make properties more accessible to people who are ageing or live with disabilities;
  - (d) the applicant has demonstrated capacity and experience;
  - (e) the proposal is financially viable;
  - (f) the proposal details or forecasts, for each dwelling:
    - (i) the energy rating of the dwelling; and
    - (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.

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

- (2) The priority areas of interest are the following:
- (a) proposals for which an application for funding under the Social Housing Initiative has been made by 30 June 2009;
  - (b) proposals involving 100 or more rental dwellings;
  - (c) smaller proposals of not less than 20 rental dwellings where those proposals deliver dwellings in areas of especially high rental stress or deliver innovative and affordable rental housing solutions;
  - (d) proposals that are consistent with State, Territory or local government affordable housing priorities;
  - (e) proposals that include rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
  - (f) proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants;
  - (g) proposals consisting of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located.

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

## Set 6

### 1 Criteria—subset 1

The assessment criteria for subset 1 are the following:

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

### 2 Criteria—subset 2

The criteria for subset 2 are the following:

- (a) proposals involving 100 or more rental dwellings are preferred;
- (b) the proposal consists of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located;
- (c) the proposal includes rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
- (d) the proposal maximizes affordable housing outcomes for tenants, including building and design features that reduce the overall costs for tenants;
- (e) the proposal delivers accessibility and sustainability outcomes, including the following:
  - (i) proximity of dwellings to transport, schools, shops, health services and employment opportunities;
  - (ii) types of dwellings and proposed household compositions that facilitate a balanced social mix;
  - (iii) use of universal design principles or other measures that make properties more accessible to older Australians or people who live with disabilities;
- (f) the proposal details or forecasts, for each dwelling:
  - (i) the energy rating of the dwelling; and
  - (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.

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

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

## **Set 7**

### **1 Criteria—subset 1**

The assessment criteria for subset 1 are the following:

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

### **2 Criteria—subset 2**

The criteria for subset 2 are the following:

- (a) the proposal consists of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located;
- (b) the proposal includes rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
- (c) the proposal maximizes affordable housing outcomes for tenants, including building and design features that reduce the overall costs for tenants;
- (d) the proposal delivers accessibility and sustainability outcomes, including the following:
  - (i) proximity of dwellings to transport, schools, shops, health services and employment opportunities;
  - (ii) types of dwellings and proposed household compositions that facilitate a balanced social mix;
  - (iii) use of universal design principles or other measures that make properties more accessible to older Australians or people who live with disabilities;
- (e) the proposal details or forecasts, for each dwelling:
  - (i) the energy rating of the dwelling; and
  - (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.

## Schedule 1 Sets of assessment criteria

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

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

## Endnotes

### Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

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

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

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

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

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

### Editorial changes

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

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

### Misdescribed amendments

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

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

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

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

## 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)	—

Name	Registration	Commencement	Application, saving and transitional provisions
National Rental Affordability Scheme Amendment (Administrative Processes) Regulations 2017	14 July 2017 (F2017L00921)	15 July 2017 (s 2(1) item 1)	—
National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017	17 Nov 2017 (F2017L01488)	18 Nov 2017 (s 2(1) item 1)	—
National Rental Affordability Scheme Amendment (Approved Participant Obligations) Regulations 2017	20 Dec 2017 (F2017L01677)	21 Dec 2017 (s 2(1) item 1)	—
National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2018	6 Nov 2018 (F2018L01547)	7 Nov 2018 (s 2(1) item 1)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
r 2 .....	rep LA s 48D
r 4 .....	am No 133, 2009; No 137, 2014; F2017L01488; F2018L01547
<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 10 .....	rs F2017L01488
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 No 133, 2009 am No 137, 2014; No 170, 2014; No 77, 2015; F2017L00921; F2017L01488; F2018L01547
r 17 .....	rs No 133, 2009 am No 78, 2010; No 137, 2014; No 170, 2014; F2017L01488; F2017L01677
r 18 .....	am No 170, 2014
r 19 .....	am 2009 No. 133; 2010 No. 78; 2011 No. 95 ed C13
<b>Division 1A</b>	
Division 1A heading.....	ad F2017L01488
<b>Subdivision A</b>	
Subdivision A heading.....	ad F2018L01547
r 20 .....	rs No 137, 2014 am No 137, 2014
r 21 .....	rs No 137, 2014 am No 137, 2014
<b>Subdivision B</b>	
Subdivision B heading.....	ad F2018L01547
r 21A .....	ad No 78, 2010 rep No 137, 2014 ad F2017L01488 am F2017L01677; F2018L01547
r 21B.....	ad F2017L01488
r 21C.....	ad F2017L01488
r 21D .....	ad F2018L01547
r 21E.....	ad F2018L01547



## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision C</b>	
Subdivision C heading.....	ad F2018L01547
r 22 .....	am No 78, 2010; No 137, 2014; F2017L01488; F2017L01677
r 22A .....	ad No 137, 2014
<b>Subdivision D</b>	
Subdivision D heading.....	ad F2018L01547
r 22B.....	ad F2017L01488
r 22C.....	ad F2018L01547
r 22D .....	ad F2018L01547
<b>Division 1B</b>	
Division 1B heading.....	ad F2017L01488
r 23 .....	am F2017L00921
<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
r 23D .....	ad No 137, 2014
<b>Part 4</b>	
Part 4 heading.....	rs F2017L01488
<b>Division 1</b>	
Division 1 heading.....	ad F2017L01488
r 24 .....	am F2017L01488
r 25 .....	rs No 137, 2014
	am No 170, 2014; F2017L01488
	rs F2018L01547
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 No 78, 2010
	am No 140, 2013
	rs No 137, 2014
	am F2017L01488
r 28AA.....	ad No 137, 2014
	am No 170, 2014
r 29 .....	am No 133, 2009; No 78, 2010; No 137, 2014; F2017L01488
<b>Division 2</b>	
Division 2 heading.....	am F2017L01677
Division 2.....	ad F2017L01488

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
r 30A .....	ad F2017L01488 am F2017L01677; F2018L01547
r 30B.....	ad F2017L01488 am F2018L01547
r 30C.....	ad F2017L01677 am F2018L01547
r 30D .....	ad F2017L01677 am F2018L01547
<b>Part 5</b>	
r 33 .....	ad No 133, 2009 am F2017L01488; F2018L01547
<b>Part 6</b>	
Part 6 .....	ad No 137, 2014
<b>Division 1</b>	
Division 1 heading.....	ad No 170, 2014 rep 23 Sept 2015 (r 37) ad F2017L00921
Division 1 .....	rep 23 Sept 2015 (r 37) ad F2017L00921
r 34 .....	ad No 137, 2014 rep 23 Sept 2015 (r 37) ad F2017L00921
r 35 .....	ad No 137, 2014 rep 23 Sept 2015 (r 37) ad F2017L00921
<b>Division 2</b>	
Division 2 .....	ad No 170, 2014 rep 5 Nov 2015 (r 44) ad F2017L01488
r 36 .....	ad No 137, 2014 rep 23 Sept 2015 (r 37) ad F2017L01488
<b>Division 3</b>	
Division 3 .....	ad F2017L01677
r 37 .....	ad No 137, 2014 am No 170, 2014 rep 23 Sept 2015 (r 37) ad F2017L01677
<b>Division 4</b>	
Division 4 .....	ad F2018L01547

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
r 38 .....	ad No 170, 2014 rep 5 Nov 2015 (r 44) ad F2018L01547
r 38A .....	ad No 170, 2014 rep 5 Nov 2015 (r 44)
r 39 .....	ad No 170, 2014 rep 5 Nov 2015 (r 44)
r 40 .....	ad No 170, 2014 rep 5 Nov 2015 (r 44)
r 41 .....	ad No 170, 2014 rep 5 Nov 2015 (r 44)
r 42 .....	ad No 170, 2014 rep 5 Nov 2015 (r 44)
r 43 .....	ad No 170, 2014 rep 5 Nov 2015 (r 44)
r 44 .....	ad No 170, 2014 rep 5 Nov 2015 (r 44)
Division 3 .....	ad No 77, 2015 rep 3 June 2016 (r 46)
r 45 .....	ad No 77, 2015 rep 3 June 2016 (r 46)
r 46 .....	ad No 77, 2015 rep 3 June 2016 (r 46)
<b>Schedule 1</b>	
Schedule 1 .....	am 2009 No. 133; 2010 No. 78

## Endnotes

### Endnote 5—Editorial changes

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#### **Endnote 5—Editorial changes**

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

#### **Subparagraph 19(1)(d)(ii) and paragraph 19(1)(e)**

##### **Kind of editorial change**

Changes to spelling

##### **Details of editorial change**

Subparagraph 19(1)(d)(ii) and paragraph 19(1)(e) refer to “dependant” rather than “dependent”.

This compilation was editorially changed to omit both instances of “dependant” and substitute “dependent” to correct the spelling.