**EXPLANATORY STATEMENT**

**SELECT LEGISLATIVE INSTRUMENT NO. 170, 2014**

Issued by the authority of the Minister for Social Services

*National Rental Affordability Scheme Act 2008*

*National Rental Affordability Scheme (Administrative Processes) Regulation 2014*

**General outline**

The purpose of the *National Rental Affordability Scheme (Administrative Processes) Regulation 2014* (“the Regulation”) is to:

1. Improve the alignment between the *National Rental Affordability Scheme Regulations 2008* (“the Principal Regulations”) and long standing administrative practice and policy by providing greater flexibility as well as reducing burdensome and ineffective compliance requirements imposed upon Approved Participants.
2. Regularise and facilitate processing of 2013-14 NRAS incentives to Approved Participants for eligible dwellings.

**Background**

The current law

Section 12 of the *National Rental Affordability Scheme Act 2008* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 5 of the Act provides that “the regulations must prescribe a Scheme” to deal with certain matters listed in the Act.

For this purpose, the Principal Regulations establish the Scheme, providing for applications, assessment, allocation and eligibility for payment of incentives to certain entities (referred to in the Act and the Principal Regulations as “Approved Participants”) to provide new rental dwellings to low and moderate income households. Approved Participants hold an “allocation” (an allotment of entitlement to receive incentives) in respect of a dwelling.

The Scheme is intended to increase the supply of affordable rental dwellings, and reduce rental costs for low and moderate income households, by offering incentives to invest in the dwellings. The Scheme provides that an Approved Participant is entitled to an annual incentive in respect of a dwelling when the conditions of the allocation for that dwelling are satisfied. The key conditions of allocation require that a dwelling is rented to tenants whose household income is below certain thresholds, and that the rent charged for the dwelling is at least 20 per cent less than market value rent. Other conditions of allocation include requirements to lodge market rent valuations and Statements of Compliance with the Department within specified timeframes and to also obtain market rent valuations from a registered valuer that relate to a particular date.

*“Administrative processes amendments”*

The Regulation addresses the fact that to date, Approved Participants have faced challenges in meeting the compliance requirements of the Scheme. This includes cases where an Approved Participant:

* has not lodged a Statement of Compliance for the approved rental dwelling in accordance with subregulation 16(1) and regulation 17 of the Principal Regulations – the Statement of Compliance has not been lodged within the relevant period;
* has not lodged a market rent valuation obtained from a valuer within the period required by subregulation 16(6);
* has lodged a market rent valuation obtained from a valuer that does not relate to the relevant date specified in subregulation 16(5); and
* has lodged a Statement of Compliance that is not in accordance with subregulation 16(1) and regulation 17 of the Principal Regulations because it does not include all the matters specified in subregulation 17(3).

The Principal Regulations offer little flexibility to the Secretary to address these issues to produce the appropriate outcome. The Regulation addresses this by providing the Secretary with greater flexibility such as discretion to extend certain timeframes, or to request new documentation where a market rent valuation or a Statement of Compliance lodged with the Department is non-compliant.

The Regulation also seeks to better align the Principal Regulations with policy and long standing administrative practices such as the automatic indexation of market value rents obtained by Approved Participants.

Finally, the Regulation also contains transitional provisions to regularise and facilitate processing of 2013-14 NRAS incentives to Approved Participants for eligible dwellings.

The Regulation is intended to:

* allow Approved Participants to obtain market rent valuations in respect of a date within the permitted valuation period (the period of 26 weeks beginning 13 weeks before the specified date and ending at the end of 13 weeks after that date);
* allow the Secretary discretion to extend the period within which a market rent valuation obtained by an approved participant must be lodged with the Department;
* allow the Secretary discretion to extend the period by which a Statement of Compliance must be lodged with the Department to 30 September after the end of the NRAS year;
* remove the unnecessary restriction that any increase in rent as a result of a rent review must not exceed the percentage change of the NRAS market index;
* allow for the indexing of the market value rent, capped by the NRAS market index, no more than once a year, and not in the years a new valuation must be obtained and lodged with the Department; and
* regularise specific instances of non-compliance with conditions of allocation applying for the 2103-14 NRAS year through appropriate transitional provisions.

**Commencement**

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Consultation**

The Regulation is unlikely to have a direct, or a substantial indirect, effect on business, or restrict competition. Accordingly, no consultation of the kind required under section 17 of the *Legislative Instruments Act 2003* has occurred.

**Regulation Impact Statement**

Following consultation in relation to the Regulation, the Office of Best Practice Regulation (“OBPR”) has advised the Department of Social Services that a Regulation Impact Statement is not required (OBPR reference number 17595).

**Explanation of the provisions**

Section 1 – Name of Regulation

Section 1 provides that the title of the Regulation is the *National Rental Affordability Scheme Amendment (Administrative Processes) Regulation 2014.*

Section 2 – Commencement

Section 2 provides that the Regulation commences on the day after it is registered.

Section 3 – Authority

This section states that the principal legislation enabling the Regulation is the *National Rental Affordability Scheme Act 2008*.

Section 4 – Schedules

This provision clarifies that the items in Schedule 1 amend the *National Rental Affordability Scheme Regulations 2008* (the Principal Regulations), and otherwise have effect according to their terms.

Schedule 1 – Part 1 – Main amendments

**Item 1** repeals subregulations 16(4), (5) and (6) of the Principal Regulations and substitutes new subregulations 16(4), (5), (5A), (6), (6A), (6B) and (6C).

New subregulation 16(4) is similar to repealed subregulation 16(4). As a condition of allocation, under subregulation 16(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 when the dwelling is first available for rent under the Scheme; and at the end of the fourth and seventh years of the incentive period.

New subregulation 16(5) and (5A) provide greater flexibility compared to the current rules around the date that a market rent valuation (valuation) for an approved rental dwelling can relate to. New subregulation 16(5) provides that a valuation for the dwelling obtained must relate to the market value rent of the dwelling on a date within the permitted valuation period; and specify the date to which the market value rent relates. New subregulation 16(5A) defines the permitted valuation period. For a valuation obtained under paragraph (4)(a), the permitted valuation period is the 26 week period beginning 13 weeks before the day when the dwelling is first available for rent; and ending 13 weeks after that day. The permitted valuation period for a valuation obtained under paragraph (4)(b) is the 26 week period beginning 13 weeks before the last day of the fourth or seventh year; and ending 13 weeks after that day.

Under new subregulation 16(6), as a condition of allocation, the Approved Participant must lodge with the Department the market rent valuation of the dwelling obtained under paragraph (4)(a) or (b) within 13 weeks of the relevant day. However, new subegulation 16(6A) gives the Secretary discretion to approve an extended period for lodgement on written application from the Approved Participant. New subregulation 16(6B) provides that the Secretary must be satisfied that the Approved Participant for the dwelling has a reasonable excuse for not being able to lodge, or for not lodging, the valuation.

If the Secretary approves an extended period within which a market rent valuation must be lodged, the Secretary must notify the Approved Participant, in writing of the extended period within which the valuation must be lodged (new subregulation 16(6C)).

**Item 2** repeals subregulation 16(9) which limits any rent increase following a rent review under subregulation 16(7) to no more than the percentage change of the NRAS market index. This rule is redundant because of the new system of indexing that will occur under new paragraph 18(1A)(d) - see **item 9**.

**Item 3** is consequential to **item 2**.

**Item 4** repeals subregulation 16(11) which is unclear in intent and is therefore considered redundant.

**Item 5** makes a minor technical amendment to subregulation 16(12) to clarify that the Secretary may require an Approved Participant to provide any information and documents requested by the Secretary.

**Item 6** makes a minor technical amendment to subregulation 17(1) to clarify that Approved Participant must lodge a Statement of Compliance with the Department.

**Item 7** repeals subregulation 17(2) of the Principal Regulations.

Under new subregulation 17(2), a Statement of Compliance must be lodged by 30 June after the end of the NRAS year for which the Approved Participant wishes to receive an incentive, or such later date if the Secretary approves an extension. New subregulations 17(2A) and (2B), subject to new subregulation 17(2C), clarify that the Secretary will be able to extend the time for lodgement of the Statement of Compliance on the Secretary’s own initiative - if the Secretary considers it appropriate, or in response to an application in writing from the Approved Participant if satisfied that the Approved Participant had a reasonable excuse for not lodging the Statement within time.

New subregulation 17(2C) imposes limits on the Secretary’s capacity to extend time to lodge a Statement of Compliance. The Secretary must not extend the period to a date that is later than 30 September after the end of that NRAS year.

If the Secretary extends the period within which a Statement must be lodged, the Secretary must notify the Approved Participant in writing, of the extended period within which the valuation must be lodged (new subregulations 17(2E) or (2F)).

**Item 8** is consequential to **item 9** which inserts new subregulation 18(1A) which defines market value rent. This minor and technical amendment is intended to ensure that references to the market value rent of a dwelling in paragraph 17(3)(c) of the Principal Regulations are consistent with the new definition of market value rent.

**Item 9** inserts new subregulation 18(1A) which defines market value rent. For the 12 months beginning on the day the dwelling is first available for rent under the Scheme or for the fifth or eighth year of the incentive period the market value rent is the market value rent obtained by the Approved Participant from a written valuation prepared by a registered valuer (see new paragraphs 18(1A)(a), (b) and (c)).

New paragraph 18(1A)(d) is an important change. For any other year, the market value rent will be 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 nearest dollar.

**Item 10** amends subregulation 18(1) and clarifies that the market value rent for an approved dwelling, for the purposes of a valuation obtained under paragraph 16(4)(a) or (b) is the amount assessed as the market value rent by the valuer.

**Item 11** makes a minor technical amendment to regulation 25 of the Principal Regulations to ensure that the regulation is expressed consistently with other provisions in Part 4 of the Principal Regulations.

**Item 12** amends subregulation 28(2) of the Principal Regulations to clarify that an incentive for an approved rental dwelling is not to be proportionately reduced if the condition in subregulation 16(1D) of the Principal Regulations is not satisfied in relation to the dwelling for that year. Subregulation 16(1D) applies if the dwelling is vacant for longer than 26 weeks (whether within an NRAS year or across consecutive years). Failure to meet this condition will result in an Approved Participant not being able to receive any incentive.

**Item 13** makes a minor technical amendment to regulation 28AA of the Principal Regulations to ensure that this regulation is expressed consistently with other provisions in Part 4 of the Principal Regulations.

Schedule 1 – Part 2 – Consequential amendments

**Item 14** makes consequential amendments to **item 31** of Schedule 1 to the *National Rental Affordability Scheme Amendment (Provisional Allocations and Other Measures) Regulation 2014* which is scheduled to commence on 23 December 2014. Currently, item 31 depends on there being a subregulation 16(11) to insert the new subregulation 16(11A) after. However, **item 4** proposes the repeal of subregulation 16(11). As a consequence, this itemrepeals **item 31** and replaces it with a similar provision that will operate to insert new subregulation 16(11A) before subregulation 16(12).

Schedule 1 – Part 3 – Transitional provisions

**Item 15** inserts a new heading to Division 1 before regulation 34 of the Principal Regulations. This Division will contain provisions relating to the *National Rental Affordability Scheme Amendment (Provisional Allocations and Other Measures) Regulation 2014*.

**Items 16** and **17** are consequential to **item 15**.

**Item 18** makes a technical amendment to regulation 37 of the Principal Regulations to clarify that this Division is repealed on the day after the period of 12 months beginning on the day after this regulation commenced.

**Item 19** adds a new Division 2 at the end of Part 6 of the Principal Regulations. Division 2 contains the transitional and application provisions relating to the *National Rental Affordability Scheme Amendment (Administrative Processes) Regulation*2014. This Division inserts new regulation 38, 38A, 39, 40, 41, 42, 43 and 44 into the Principal Regulations.

Regulation 38 inserts definitions that apply for the purposes of Division 2.

* “***2013-14 NRAS year***” means the NRAS year beginning on 1 May 2013.
* “***commencement day***” means the day on which the *National Rental Affordability Scheme Amendment (Administrative Processes) Regulation* 2014 commences.
* “***old Regulations***” means the Principal Regulations as in force before the commencement of Part 1 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Provisional Allocations and Other Measures) Regulation 2014*.
* “***permitted valuation period***” means:
1. for a valuation of an approved rental dwelling obtained under paragraph 16(4)(a) of the old Regulations—the 26 week period beginning 13 weeks before the day when the dwelling was first available for rent under the Scheme; and ending at the end of 13 weeks after that day; and
2. for a valuation of an approved rental dwelling obtained under paragraph 16(4)(b) of the old Regulations—the 26 week period beginning 13 weeks before the last day of the fourth or seventh year of the incentive period in respect of the dwelling; and ending at the end of 13 weeks after that day.

Regulations 38A, 39, 40, 41 and 42 are intended to facilitate processing of 2013-14 NRAS incentives for eligible dwellings through regularising particular instances of non-compliance with the old Regulations. These transitional provisions apply in relation to an Approved Participant’s entitlement to receive an incentive for an approved rental dwelling for the 2013-14 NRAS year.

Regulation 38A identifies specific rules that apply for determining the eligibility of Approved Participants to receive incentives for the 2013-14 NRAS year. Paragraph 38A(a) applies the new rules for working out market value rent to determining an Approved Participant’s entitlement to receive an incentive for an approved rental dwelling for that NRAS year. This includes the capacity to index market value rents in accordance with the NRAS market index for years of the incentive period where written valuations do not need to be obtained (see new subregulation 18(1A), **item 9**). Paragraph 38A(b) has the effect that the limit on rent increases imposed by subregulation 16(9) does not apply in determining an Approved Participant’s eligibility to receive an incentive for the 2013-14 NRAS year and paragraph 38A(c) reflects the consequential amendment of subregulation 16(10) in **item 3**.

Regulation 39 applies where a valuation is lodged before the commencement date. Subregulation 39(3) deems the conditions of allocation in subregulation 16(4), (5) and (6) of the old Regulations to have been satisfied in relation to the approved rental dwelling for the 2013-14 NRAS year in two circumstances. The first circumstance is where the valuation is lodged with the Department within the required timeframe but does not comply with the old Regulations because it does not relate to the date mentioned in paragraph 16(5)(a) or (b). Provided that the actual valuation date falls within the permitted valuation period subregulation 39(3) will apply. The second circumstance is similar but involves the situation where the valuation was not lodged within the required timeframe with the Department.

Regulation 40 addresses two circumstances. The first circumstance is if the Approved Participant was required by subregulation 16(6) of the old Regulations to lodge a valuation but had not done so before the commencement day. The second circumstance is if before the commencement day, the Approved Participant had lodged a valuation (whether lodged with the Department within the required timeframe or not) and the valuation did not relate to the market value rent of the dwelling with the permitted valuation period. In either circumstance, provided that the Approved Participant obtains the relevant valuation which relates to a date within the permitted valuation period and lodges it with the Department before 30 April 2015, subregulation 40(3) will operate to deem the conditions of allocation in subregulations 16(4), (5) and (6) of the old Regulations to have been satisfied in relation to the approved rental dwelling for the 2013-14 NRAS year.

Regulation 41 applies if after 13 May 2014 and before the commencement day, the Approved Participant had lodged a Statement of Compliance (Statement) including all required details with the Department. Despite non-compliance with the condition of allocation referred to in subregulation 16(1) of the old Regulations, subregulation 41(2) deems the condition of allocation mentioned in subregulation 16(1) of the old Regulations to have been satisfied for the 2013-14 NRAS year.

Regulation 42 applies if the Approved Participant had not lodged a Statement in relation to the 2013-14 NRAS year before commencement or if the Approved Participant had lodged an incomplete Statement in relation to the 2013-14 NRAS year (whether lodged with the Department within time or not). Despite non‑compliance with the condition of allocation referred to in subregulation 16(1) of the old Regulations relevant deadline for compliance, subregulation 42(2) deems the condition of allocation mentioned in subregulation 16(1) of the old Regulations to have been satisfied for the 2013-14 NRAS year.

Regulation 43 provides that the amendments made by Part 1 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Administrative Processes) Regulation 2014* apply in relation to an Approved Participant’s entitlement to receive an incentive for an approved rental dwelling for the NRAS year beginning on 1 May 2014 or a later NRAS year.

Regulation 44 provides that Division 2 is repealed on the day after the end of the period of 12 months beginning on the day after this Regulation commences.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***National Rental Affordability Scheme Amendment (Administrative Processes) Regulation 2014***

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Bill/Legislative Instrument**

The purpose of this Regulation is to regularise and streamline the administration of the National Rental Affordability Scheme (NRAS) in line with the *National Rental Affordability Scheme Regulations 2008* (Principal Regulations), with a focus on effecting NRAS incentive payments for eligible dwellings for the 2013-14 NRAS year.

**Human rights implications**

Of the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*,this legislative instrument engages the right to an adequate standard of living, including housing, as referred to in Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (done at New York on 16 December 1966 ([1976] ATS 5)).

This legislative instrument is consistent with furthering the right to an adequate standard of living, including housing, as it aims to enhance administration of the Scheme, thereby supporting efficient delivery of affordable rental dwellings available to rent for low and moderate income households.

**Kevin Andrews**

**Minister for Social Services**