

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 77, 2015**

Issued by the authority of the Minister for Social Services

*National Rental Affordability Scheme Act 2008*

*National Rental Affordability Scheme Amendment (Administrative Processes)  
Regulation 2015*

#### **General outline**

The purpose of the *National Rental Affordability Scheme Amendment (Administrative Processes) Regulation 2015* ('the Regulation') is to repeal conditions of allocation in the *National Rental Affordability Scheme Regulations 2008* ('the Principal Regulations') about rent reviews to ensure that there are no longer any restrictions imposed by the Principal Regulations on the frequency with which the rent charged for an approved rental dwelling can be reviewed and increased. The repeal of these conditions will mean that an approved participant can remain entitled to an incentive under the National Rental Affordability Scheme ('the Scheme') irrespective of any rent reviews, so long as:

- (a) rent remains at all times 20% or more below market value rent; and
- (b) applicable State and Territory residential tenancy law is complied with in relation to rent reviews.

#### **Background**

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 all times, 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, to obtain market rent valuations from a registered valuer that relate to a particular date and to allow Approved Participants to review the rent that applies to an approved rental dwelling upon entering a new lease, or no more than at 12-monthly intervals for an existing lease.

### *The current law*

Under subregulation 16(7) of the Principal Regulations, Approved Participants are able to review the rent that applies to an approved rental dwelling upon entering a new lease, or no more often than at 12-monthly intervals for an existing lease. Under subregulation 16(8) of the Principal Regulations, any increase in rent must be based on information about the location, type and amenity of the rental dwelling and supported by publicly available data about comparative rental rates in the locale of the dwelling, other than data relating to other dwellings owned or associated with the Approved Participant. However, if there is no information or data available, as set out in subregulation 16(8), subregulation 16(10) provides that the Approved Participant is able to increase the rent, provided it is in accordance with subregulation 16(7) of the Principal Regulations.

### *Administrative Processes amendments*

The Regulation addresses the fact that, to date, application of subregulations 16(7), 16(8) and 16(10) of the Principal Regulations in practice has resulted in confusion about the number of times and specific dates Approved Participants are able to review rent increases. In some instances, errors in timing of rent increases for approved rental dwellings under the Scheme have resulted in Approved Participants unable to receive an incentive, which in turn has a negative effect on Scheme investors.

State and Territory residential tenancy legislation also regulates rent increases, including in relation to tenants of NRAS dwellings. In this context, the rent review conditions in subregulations 16(7), 16(8) and 16(10) of the Principal Regulations add an additional and unnecessary layer of regulation for Approved Participants and their tenancy managers in relation to review of rents for approved rental dwellings in the Scheme, while not clearly providing meaningful additional protection for tenants of these dwellings.

Notwithstanding the repeal of the specific rent review conditions proposed by these amendments, the condition of allocation that rent must be at least 20% less than market value rent will remain (paragraph 16(1C)(b) of the Principal Regulations). Further, the condition of allocation at subregulation 16(2) of the Principal Regulations will also remain in place which already effectively incorporates State and Territory laws with respect to residential tenancy obligations of landlords, including in relation to rent increases.

Finally, the Regulation contains an application provision to clarify that the repeal of the conditions of allocation relevant to rent reviews applies in relation to an approved participant's entitlement to receive an incentive for the 2014-15 NRAS year or later NRAS years.

## **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. Consultation has been undertaken around the proposed amendments with NRAS Providers Limited, which is the representative body of NRAS Approved Participants. There were no concerns raised by this group, and they agreed that these proposed amendments would be welcome by Approved Participants.

## **Regulation Impact Statement (RIS)**

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 18826).

## **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 2015*.

### Section 2

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

### Section 3 – Authority

Section 3 states that the principal legislation enabling the Regulation is the *National Rental Affordability Scheme Act 2008*.

### Section 4 - Schedules

Section 4 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 - Amendments

**Item 1** repeals subregulations 16(7), (8) and (10) of the Principal Regulations.

These subregulations had contained conditions of allocation relevant to frequency at which rent could be reviewed. The repeal of these conditions acknowledge that the Principal Regulations will still contain paragraph (1C)(b), which will still require rent to remain, at all times, at least 20% below market value rent and will still require State and Territory residential tenancy law to be complied with because of subregulation 16(2).

**Item 2** adds a new Division 3 at the end of Part 6 of the Principal Regulations. Division 3 contains an application provision at regulation 45 which provides that the amendments made by Schedule 1 to the *National Rental Affordability Scheme Amendment (Administrative Processes) Regulation 2015* apply in relation to an Approved Participant's entitlement to receive an incentive for an approved rental dwelling for the NRAS year beginning on 1 May 2014 or a later NRAS year.

Regulation 46 provides that Division 3 is repealed on the day after the end of the period of 12 months beginning on the day after this regulation commences. This provision reflects that the application provision in regulation 45 will be spent by the time that is 12 months after its commencement. As such, it can be repealed at that time to simplify the presentation of the Principal Regulations.

## **Statement of Compatibility with Human Rights**

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

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

### **Overview of the legislative instrument**

The purpose of this Regulation is to streamline the administration of the National Rental Affordability Scheme ('the Scheme') in line with the *National Rental Affordability Scheme Regulations 2008*, with a focus on effecting NRAS incentive payments for eligible dwellings for the 2014-15 NRAS year. This regulation aims to simplify the rent review process for approved participants as laws already exist in relation to rent reviews in each State and Territory and because the NRAS Regulations will still require rent to remain, at all times, at a level that is 20% or more below market value rent.

### **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 simplify and the administration of the Scheme, thereby supporting efficient delivery of affordable rental dwellings available to rent for low and moderate income households.

### **Conclusion**

The Regulation is compatible with human rights as they do not raise any human rights issues.

**Scott Morrison**  
**Minister for Social Services**