

2008

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**National Rental Affordability Scheme
(Consequential Amendments) Bill 2008**

No. , 2008

(Treasury)

**A Bill for an Act to amend the *Income Tax
Assessment Act 1997* in relation to the National
Rental Affordability Scheme, and for related
purposes**

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1 **A Bill for an Act to amend the *Income Tax***
2 ***Assessment Act 1997* in relation to the National**
3 **Rental Affordability Scheme, and for related**
4 **purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act may be cited as the *National Rental Affordability Scheme*
8 (*Consequential Amendments*) Act 2008.

9 **2 Commencement**

10 This Act is taken to have commenced on 1 July 2008.

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3 Schedule(s)

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Each Act that is specified in a Schedule to this Act is amended or

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repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect

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according to its terms.

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Schedule 1—Amendment of the Income Tax Assessment Act 1997

1 Section 11-55 (after table item headed “mutual receipts”)

Insert:

National Rental Affordability Scheme

payments made, and non-cash benefits provided, by a State or Territory governmental body in relation to participation in the National Rental Affordability Scheme..... 380-35

2 Section 13-1 (after table item headed “housekeeper”)

Insert:

housing

National Rental Affordability Scheme..... Division 380

3 Section 13-1 (table item headed “partnerships”)

After “*dividends*”, insert “, *housing*”.

4 Section 13-1 (table item headed “trusts”)

After “*dividends*”, insert “, *housing*”.

5 After subsection 67-25(2A)

Insert:

National Rental Affordability Scheme

(2B) The *tax offsets available under Division 380 are subject to the refundable tax offset rules.

6 At the end of subsection 118-37(1)

Add:

- ; (h) an incentive (within the meaning of the *National Rental Affordability Scheme Act 2008*) you claim under this Act;
- (i) a variation, transfer or revocation of an allocation (within the meaning of the *National Rental Affordability Scheme Act 2008*);
- (j) anything of economic value provided to you by:

- 1 (i) a Department of a State or Territory; or
2 (ii) a body (whether incorporated or not) established for a
3 public purpose by or under a law of a State or Territory;
4 in relation to your participation in the National Rental
5 Affordability Scheme.

6 **7 After Division 376 of Part 3-45**

7 Insert:

8 **Division 380—National Rental Affordability Scheme**

9 **Table of Subdivisions**

10 Guide to Division 380

11	380-A	National Rental Affordability Scheme Tax Offset
12	380-B	Payments made in relation to the National Rental
13		Affordability Scheme etc.

14 **Guide to Division 380**

15 **380-1 What this Division is about**

16 This Division provides a tax offset to certain entities as a result of
17 certificates issued under the *National Rental Affordability Scheme*
18 *Act 2008*.

19 It also ensures that payments made, and non-cash benefits
20 provided, by a State or Territory governmental body in relation to
21 the National Rental Affordability Scheme are not assessable
22 income and not exempt income.

23 **Subdivision 380-A—National Rental Affordability Scheme Tax**
24 **Offset**

25 **Table of sections**

26	380-5	Claims by individuals, corporate tax entities and superannuation funds
27	380-10	Claims by a party to a non-entity joint venture
28	380-15	Claims by certain entities to whom NRAS rent flows indirectly

- 1 380-20 Claims by a trustee of a trust that does not have net income for an income
- 2 year
- 3 380-25 When NRAS rent flows indirectly to or through an entity
- 4 380-30 Share of NRAS rent

5 **380-5 Claims by individuals, corporate tax entities and**
6 **superannuation funds**

7 *Entitlement*

- 8 (1) An entity is entitled to a *tax offset for an income year if:
 - 9 (a) the entity is an individual, a *corporate tax entity or
 - 10 *superannuation fund; and
 - 11 (b) the *Housing Secretary has issued the entity with a certificate
 - 12 under the *National Rental Affordability Scheme Act 2008*;
 - 13 and
 - 14 (c) the income year begins in the *NRAS year to which the
 - 15 certificate relates.

16 *Amount*

- 17 (2) The amount of the entity's *tax offset is the amount stated in the
- 18 certificate.
- 19 (3) However, if the *Housing Secretary issues the entity with an
- 20 amended certificate under the *National Rental Affordability*
- 21 *Scheme Act 2008*, the amount of the entity's *tax offset is the
- 22 amount stated in the amended certificate.

23 **380-10 Claims by a party to a non-entity joint venture**

- 24 (1) An entity is entitled to a *tax offset for an income year if:
 - 25 (a) the entity has *NRAS rent for a rental dwelling covered by
 - 26 subsection (3) for the income year; and
 - 27 (b) the entity is:
 - 28 (i) a party to a *non-entity joint venture; and
 - 29 (ii) an individual, a *corporate tax entity or *superannuation
 - 30 fund.
- 31 (2) The amount of the entity's *tax offset for an income year is the sum
- 32 of all amounts worked out under subsection (4) for the income
- 33 year.

- 1 (3) *NRAS rent for a rental dwelling is covered by this subsection if:
2 (a) NRAS rent is derived by a party to a *non-entity joint venture
3 in relation to the rental dwelling for an income year; and
4 (b) the *Housing Secretary has issued the non-entity joint venture
5 with a certificate under the *National Rental Affordability*
6 *Scheme Act 2008* in relation to the rental dwelling; and
7 (c) the income year begins in the *NRAS year to which the
8 certificate relates.

- 9 (4) If an entity has *NRAS rent for a rental dwelling covered by
10 subsection (3), work out an amount for the income year under this
11 subsection using the following formula:

12 Amount stated in certificate for the rental dwelling \times $\frac{\text{*NRAS rent *derived by the entity from the rental dwelling for the income year}}{\text{Total *NRAS rent *derived from the rental dwelling for the income year}}$

- 13 (5) If a partnership or a trustee of a trust has *NRAS rent covered by
14 subsection (3), for the purpose of applying sections 380-15 and
15 380-20, assume:
16 (a) a certificate was issued by the *Housing Secretary to the
17 partnership or the trustee of the trust for the *NRAS year
18 mentioned in paragraph (3)(c) of this section; and
19 (b) the rental dwellings covered by the certificate are those for
20 which the partnership or the trustee has NRAS rent covered
21 by subsection (3) of this section; and
22 (c) the amount stated in the certificate was the total of all
23 amounts worked out under subsection (4) of this section in
24 relation to those rental dwellings.
25 (6) However, if the *Housing Secretary issues an amended certificate
26 under the *National Rental Affordability Scheme Act 2008* in
27 relation to the rental dwelling, the amounts under subsection (4)
28 are to be worked out using the amount or amounts, as the case may
29 be, stated in the amended certificate.

30 **380-15 Claims by certain entities to whom NRAS rent flows**
31 **indirectly**

- 32 (1) An entity to whom *NRAS rent for a rental dwelling *flows
33 indirectly in an income year is entitled to a *tax offset for that
-

1 income year that is equal to the amount worked out under
2 subsection (2), if:

3 (a) the entity is:

4 (i) an individual; or

5 (ii) a *corporate tax entity when the NRAS rent flows
6 indirectly to it; or

7 (iii) the trustee of a trust that is liable to be assessed on a
8 share of, or all or a part of, the trust's *net income under
9 section 98, 99 or 99A of the *Income Tax Assessment Act*
10 *1936* for that income year; or

11 (iv) the trustee of an *FHSA; or

12 (v) a *superannuation fund, an *approved deposit fund or a
13 *pooled superannuation trust; and

14 (b) the *Housing Secretary has issued a certificate under the
15 *National Rental Affordability Scheme Act 2008* to a
16 partnership or a trustee of a trust in relation to the rental
17 dwelling; and

18 (c) the income year of the partnership or the trustee of the trust
19 begins in the *NRAS year to which the certificate relates.

20 Note: The entities covered by this section are the ultimate recipients of the
21 NRAS rent because the NRAS rent does not flow indirectly through
22 them to other entities.

23 (2) Work out the amount using the following formula:

24 Amount stated in certificate \times $\frac{\text{The entity's *share of *NRAS rent for the rental dwelling}}{\text{Total *NRAS rent *derived from rental dwellings covered by the certificate for the income year mentioned in paragraph (1)(c)}}$

25 (3) However, if the *Housing Secretary issues an amended certificate
26 under the *National Rental Affordability Scheme Act 2008* in
27 relation to the rental dwelling, work out the amount under
28 subsection (2) using the amount stated in the amended certificate.

29 **380-20 Claims by a trustee of a trust that does not have net income**
30 **for an income year**

31 (1) An entity is entitled to a *tax offset for an income year if:

32 (a) the entity is a trustee of a trust; and

- 1 (b) the trust does not have a *net income for the income year; and
2 (c) *NRAS rent for a rental dwelling would otherwise *flow
3 indirectly to the entity in the income year as if:
4 (i) the trust did have a net income for the income year; and
5 (ii) for the purposes of paragraph 380-25(4)(b), the entity
6 has a share amount, being the net income referred to in
7 subparagraph (i) of this paragraph; and
8 (iii) the entity's *share of the NRAS rent under
9 section 380-30 was a positive amount; and
10 (d) the *Housing Secretary has issued a certificate under the
11 *National Rental Affordability Scheme Act 2008* to a
12 partnership or a trustee of a trust in relation to the rental
13 dwelling; and
14 (e) the income year of the partnership or the trustee of the trust
15 begins in the *NRAS year to which the certificate relates.
- 16 (2) The amount of the *tax offset is the amount worked out in
17 accordance with subsection 380-15(2), as if the reference in the
18 formula to paragraph (1)(c) were a reference to paragraph (1)(e) of
19 this section. For the purposes of working out the entity's *share of
20 *NRAS rent for the rental dwelling, assume
21 subparagraphs (1)(c)(i), (ii) and (iii) of this section apply.
- 22 (3) However, if the *Housing Secretary issues an amended certificate
23 under the *National Rental Affordability Scheme Act 2008* in
24 relation to the rental dwelling, the amount of the entity's *tax offset
25 is worked out in accordance with subsection 380-15(2) using the
26 amount stated in the amended certificate.
- 27 (4) If the trustee of a trust is entitled to a *tax offset under this section:
28 (a) a beneficiary of the trust; or
29 (b) a subsequent entity to whom *NRAS rent for the rental
30 dwelling *flows indirectly;
31 is not entitled to a tax offset under this Subdivision in relation to
32 the NRAS rent for the rental dwelling.

33 **380-25 When NRAS rent flows indirectly to or through an entity**

- 34 (1) This section sets out the circumstances in which *NRAS rent:
35 (a) *flows indirectly* to an entity (subsection (2), (3) or (4)); or
36 (b) *flows indirectly* through an entity (subsection (5)).
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Partners

- (2) *NRAS rent **flows indirectly** to a partner in a partnership in an income year if, and only if:
 - (a) during that income year, the NRAS rent is *derived by the partnership, or *flows indirectly to the partnership as a beneficiary because of a previous application of subsection (3); and
 - (b) the partner has an individual interest:
 - (i) in the partnership's *net income for that income year that is covered by paragraph 92(1)(a) or (b) of the *Income Tax Assessment Act 1936*; or
 - (ii) in a *partnership loss of the partnership for that income year that is covered by paragraph 92(2)(a) or (b) of that Act;(whether or not that individual interest becomes assessable income in the hands of the partner); and
- (c) the partner's *share of the NRAS rent under section 380-30 is a positive amount (whether or not the partner actually receives any of that share).

Beneficiaries

- (3) *NRAS rent **flows indirectly** to a beneficiary of a trust in an income year if, and only if:
 - (a) during that income year, the NRAS rent is *derived by the trustee of the trust, or *flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or this subsection; and
 - (b) the beneficiary has this amount for that income year (the **share amount**):
 - (i) a share of the trust's *net income for that income year that is covered by paragraph 97(1)(a) of the *Income Tax Assessment Act 1936*; or
 - (ii) an individual interest in the trust's net income for that income year that is covered by section 98A or 100 of that Act;(whether or not the share amount becomes assessable income in the hands of the beneficiary); and

- 1 (c) the beneficiary's *share of the NRAS rent under
2 section 380-30 is a positive amount (whether or not the
3 beneficiary actually receives any of that share).

4 *Trustees*

- 5 (4) *NRAS rent *flows indirectly* to the trustee of a trust in an income
6 year if, and only if:
7 (a) during that income year, the NRAS rent is *derived by the
8 trustee, or *flows indirectly to the trustee as a partner or
9 beneficiary because of a previous application of
10 subsection (2) or (3); and
11 (b) the trustee is liable or, but for another provision in this Act,
12 would be liable, to be assessed in respect of an amount (the
13 *share amount*) that is:
14 (i) a share of the trust's *net income for that income year
15 under section 98 of the *Income Tax Assessment Act*
16 *1936*; or
17 (ii) all or a part of the trust's net income for that income
18 year under section 99 or 99A of that Act;
19 (whether or not the share amount becomes assessable income
20 in the hands of the trustee); and
21 (c) the trustee's *share of the NRAS rent under section 380-30 is
22 a positive amount (whether or not the trustee actually
23 receives any of that share).

24 Note: A trustee to whom NRAS rent flows indirectly under this subsection is
25 entitled to a tax offset under section 380-15 and the NRAS rent does
26 not flow indirectly through the trustee to another entity.

- 27 (5) *NRAS rent *flows indirectly* through an entity (the *first entity*) to
28 another entity if, and only if:
29 (a) the other entity is the focal entity in an item of the table in
30 section 380-30 in relation to the NRAS rent; and
31 (b) that focal entity's *share of the NRAS rent is based on the
32 first entity's share of the NRAS rent as an intermediary entity
33 in that or another item of the table.

1 **380-30 Share of NRAS rent**

2 *Object of section*

- 3 (1) The object of this section is to ensure that:
- 4 (a) *NRAS rent derived by a partnership or the trustee of a trust
5 is allocated notionally amongst entities who *derive benefits
6 from that NRAS rent; and
- 7 (b) that allocation corresponds with the way in which those
8 benefits were derived.
- 9 (2) An entity's *share* of *NRAS rent is an amount notionally allocated
10 to the entity as its share of the NRAS rent, whether or not the entity
11 actually receives any of that NRAS rent.
- 12 (3) That amount is equal to the entity's *share* of the *NRAS rent as the
13 focal entity in column 3 of an item of the table.

14 Note: An entity's share of the NRAS rent is based on the share of the NRAS
15 rent of each preceding intermediary entity through which the NRAS
16 rent flows, starting from the intermediary entity to whom the NRAS
17 rent is paid.

18 This means that in some cases (see items 2 and 4 of the table), more
19 than one item of the table will need to be applied to work out the share
20 of the NRAS rent of an ultimate recipient of the NRAS rent.

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Share of NRAS rent			
Item	Column 1 For this intermediary entity and this focal entity:	Column 2 The intermediary entity's share of the NRAS rent is:	Column 3 The focal entity's share of the NRAS rent is:
1	a partnership is the <i>intermediary entity</i> and a partner in that partnership is the <i>focal entity</i> if: (a) *NRAS rent is *derived by the partnership; and (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 380-25(2)	the NRAS rent	so much of the NRAS rent as is taken into account in working out the amount of that individual interest
2	a partnership is the <i>intermediary entity</i> and a partner in that partnership is the <i>focal entity</i> if: (a) *NRAS rent *flows indirectly to the partnership as a beneficiary of a trust; and (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 380-25(2)	the amount worked out under column 3 of item 3 or 4 of this table where the partnership, as a beneficiary, is the focal entity in that item	so much of the amount worked out under column 2 of this item as is attributable to the partner, having regard to the partnership agreement and any other relevant circumstances

Share of NRAS rent

Item	Column 1 For this intermediary entity and this focal entity:	Column 2 The intermediary entity's share of the NRAS rent is:	Column 3 The focal entity's share of the NRAS rent is:
3	<p>the trustee of a trust is the <i>intermediary entity</i> and the trustee or a beneficiary of the trust is the <i>focal entity</i> if:</p> <p>(a) *NRAS rent is *derived by the trustee; and</p> <p>(b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 380-25(3) or (4)</p>	<p>(a) if the trust has a positive amount of *net income for that year—the NRAS rent; or</p> <p>(b) otherwise—nil</p>	<p>so much of the amount worked out under column 2 of this item as is taken into account in working out that share amount</p>
4	<p>the trustee of a trust is the <i>intermediary entity</i> and the trustee or a beneficiary of the trust is the <i>focal entity</i> if:</p> <p>(a) *NRAS rent *flows indirectly to the trustee as a partner in a partnership or as a beneficiary of another trust; and</p> <p>(b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 380-25(3) or (4)</p>	<p>the amount worked out under column 3 of:</p> <p>(a) item 1 or 2 of this table where the trustee, as a partner, is the focal entity in that item; or</p> <p>(b) item 3 or a previous application of this item where the trustee, as a beneficiary, is the focal entity in that item</p>	<p>so much of the amount worked out under column 2 of this item as is attributable to the focal entity in this item, having regard to the trust deed and any other relevant circumstances</p>

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Note: In item 3 or 4 of the table, the trustee of a trust can be both the intermediary entity and the focal entity in the same item.

1 **Subdivision 380-B—Payments made in relation to the National**
2 **Rental Affordability Scheme etc.**

3 **Table of sections**

4 380-35 Payments made and non-cash benefits provided in relation to the National
5 Rental Affordability Scheme

6 **380-35 Payments made and non-cash benefits provided in relation to**
7 **the National Rental Affordability Scheme**

8 A payment made to you or a *non-cash benefit provided to you by:

9 (a) a Department of a State or Territory; or

10 (b) a body (whether incorporated or not) established for a public
11 purpose by or under a law of a State or Territory;

12 in relation to your participation in the National Rental
13 Affordability Scheme is not assessable income and is not *exempt
14 income.

15 **8 Subsection 995-1(1) (at the end of the definition of *flows***
16 ***indirectly*)**

17 Add:

18 ; and (e) subsections 380-25(2), (3) and (4) set out the circumstances
19 in which *NRAS rent flows indirectly to an entity; and

20 (f) subsection 380-25(5) sets out the circumstances in which
21 NRAS rent flows indirectly through an entity.

22 **9 Subsection 995-1(1)**

23 Insert:

24 *Housing Secretary* means the Secretary of the Department that
25 administers the *National Rental Affordability Scheme Act 2008*.

26 **10 Subsection 995-1(1)**

27 Insert:

28 *National Rental Affordability Scheme* has the same meaning as in
29 the *National Rental Affordability Scheme Act 2008*.

30 **11 Subsection 995-1(1)**

31 Insert:

1 **NRAS rent** (short for National Rental Affordability Scheme rent)
2 means rent *derived from a rental dwelling under the National
3 Rental Affordability Scheme for an income year.

4 **12 Subsection 995-1(1)**

5 Insert:

6 *NRAS year* has the same meaning as in the *National Rental*
7 *Affordability Scheme Act 2008*.

8 **13 Subsection 995-1(1) (at the end of the definition of share)**

9 Add:

10 ; and (e) of *NRAS rent has the meaning given by section 380-30.

11 **14 Application**

12 The amendments made by this Schedule apply to assessments for the
13 2008-09 income year and later income years.