



National Rental Affordability Scheme Act 2008

No. 121, 2008

Compilation No. 3

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About this compilation

This compilation

This is a compilation of the *National Rental Affordability Scheme Act 2008* that shows the text of the law as amended and in force on 1 April 2020 (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). 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for the establishment of the National Rental Affordability Scheme, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Rental Affordability Scheme Act 2008*.

2 Commencement

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

3 Object

- (1) The object of this Act is to encourage large-scale investment in housing by offering an incentive to participants in the National Rental Affordability Scheme so as to:
 - (a) increase the supply of affordable rental dwellings; and
 - (b) reduce rental costs for low and moderate income households.
- (2) The object of this Act is to be achieved in ways that include:
 - (a) protecting tenants of rental dwellings covered by allocations; and
 - (b) protecting investors; and
 - (c) providing rights to investors; and
 - (d) recognising the contributions, in cash or in kind, made by States and Territories to participants in the Scheme.

Section 3A

3A Severability

Additional and severable operation of Act and tax law provisions

- (1) Without limiting the effect of this Act or the tax law provisions apart from this section, this Act and the tax law provisions also have effect as provided by this section.
- (2) To avoid doubt, none of the following subsections of this section limit the operation of any other subsection of this section.

External affairs

- (3) This Act and the tax law provisions have the effect they would have if their operation were expressly confined to give effect to Australia's rights and obligations under paragraph 1 of Article 2 and Article 11 of the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966, as in force for Australia from time to time.

Note: The International Covenant on Economic, Social and Cultural Rights is in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Corporations

- (4) This Act and the tax law provisions have the effect they would have if their operation were expressly confined to the following:
 - (a) the regulation of activities, functions, relationships or business of an investor or approved participant that is a constitutional corporation;
 - (b) the creation of rights or privileges belonging to an investor or approved participant that is a constitutional corporation;
 - (c) the imposition of obligations on an investor or approved participant that is a constitutional corporation;
 - (d) in respect of the matters mentioned in paragraphs (a) to (c), the regulation of the conduct of persons or entities through which the constitutional corporation acts;

- (e) the regulation of persons or entities whose conduct affects or is capable of affecting the activities, functions, relationships or business of an investor or an approved participant that is a constitutional corporation.

Taxation

- (5) This Act and the tax law provisions have the effect they would have if their operation were expressly confined to determining the tax liability of a person.

Territories

- (6) This Act and the tax law provisions have the effect they would have if their operation were expressly confined to apply in relation to the following:
 - (a) a rental dwelling that is located in a Territory;
 - (b) an approved participant or investor who is a resident of a Territory;
 - (c) an approved participant or investor that is:
 - (i) a body corporate that is incorporated in a Territory; or
 - (ii) a body corporate that is taken to be registered in a Territory under section 119A of the *Corporations Act 2001*; or
 - (iii) a trust, if the proper law of the trust and the law of the trust's administration are the law of a Territory; or
 - (iv) an entity, the core or routine activities of which are carried out in or in connection with a Territory.

4 Definitions

In this Act:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

allocation, in relation to an incentive period, means an allotment to an approved participant of an entitlement to receive an incentive

Section 4

for a rental dwelling in relation to an NRAS year that falls within the incentive period if conditions are satisfied in relation to the rental dwelling.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

incentive means:

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

Note: Paragraph (a)—for provisions relating to claiming the National Rental Affordability Scheme Tax Offset, see Division 380 of the *Income Tax Assessment Act 1997*.

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

investor, in relation to a rental dwelling covered by an allocation, 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 rental dwelling.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

National Rental Affordability Scheme means the scheme prescribed for the purposes of section 5.

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 a 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.

tax law provisions means the following provisions of the *Income Tax Assessment Act 1997*:

- (a) item 23 of the table in section 67-23;
- (b) Division 380.

unit means a unit held under a strata title system (or a similar system) established under a law of a State or Territory (however the unit is described for the purpose of that law), together with:

- (a) any accompanying common property; and
- (b) any permanent improvement (for example, a garage or storeroom) associated with the unit.

Part 2—The National Rental Affordability Scheme

Division 1—Making the National Rental Affordability Scheme

5 Making the National Rental Affordability Scheme

To further the objects of this Act, the regulations must prescribe a Scheme (the *National Rental Affordability Scheme*) about the following matters:

- (a) the approval of participants (*approved participants*) by the Secretary;
- (b) the approval of rental dwellings by the Secretary;
- (c) providing incentives to an approved participant if certain conditions are satisfied;
- (d) a matter required or permitted by this Act to be included in the Scheme;
- (e) ancillary or incidental matters.

6 Other matters that may be included in the National Rental Affordability Scheme

The National Rental Affordability Scheme may provide for any or all of the following matters:

- (a) the application process for an allocation;
- (b) the assessment criteria for an allocation (which may vary from time to time);
- (c) the amount of an incentive;
- (ca) the adjustment, in certain circumstances, of the amount of an incentive that:
 - (i) is to be provided to an approved participant; or
 - (ii) has previously been provided to an approved participant;

- (cb) the passing on of contributions made by States and Territories, or their monetary equivalent, by approved participants in certain circumstances;
- (d) how the market value rent of a rental dwelling covered by an allocation for an NRAS year is to be determined;
- (e) the protection of tenants of rental dwellings covered by allocations;
- (f) the protection of investors;
- (g) the rights of investors.

Division 2—Allocation process

7 Making allocations

- (1) The National Rental Affordability Scheme must provide for the Secretary to make an allocation for an incentive period in respect of a rental dwelling:
 - (a) on the conditions set out in subsection (2); and
 - (b) on the condition that an incentive may be offset or recouped in the circumstances provided for by the Scheme; and
 - (c) on any other conditions provided for by the Scheme.

Conditions imposed by Secretary under the Scheme

- (2) The conditions are that:
 - (a) either:
 - (i) the rental dwelling has not been lived in as a residence at any time before the first day of the incentive period; or
 - (ii) the rental dwelling was unfit for anyone to live in, and since the day on which it has been made fit for living in, it has not been lived in as a residence between that day and the first day of the incentive period; and
 - (b) to the extent that the rental dwelling is rented during an NRAS year that falls within the incentive period—both:
 - (i) the rental dwelling is rented to a tenant or tenants of a kind prescribed by the regulations; and
 - (ii) each charge of rent for the rental dwelling during the year is at least 20% less than the market value rent for the dwelling; and
 - (c) to the extent that the rental dwelling is not rented during an NRAS year that falls within the incentive period—the dwelling is not vacant for longer than a period prescribed by the regulations.

- (3) To avoid doubt, for the purpose of subparagraph (2)(a)(i), if a dwelling or building has been converted to create additional residences, then a part of the dwelling or building that is capable of being lived in as a separate residence must not have been lived in as a separate residence before the first day of the incentive period.
- (4) Regulations made for the purposes of subparagraph (2)(b)(i) may provide for the Secretary to make a legislative instrument prescribing matters relating to the income of a tenant or tenants.

Condition disapplied by Secretary under the Scheme

- (5) The National Rental Affordability Scheme may provide that, in certain circumstances, the Secretary may decide that the condition mentioned in subparagraph (2)(b)(ii) does not apply if the Secretary is satisfied that the Secretary's decision will not result in an increase in rental costs for low and moderate income households.

Conditions varied or imposed directly by the Scheme

- (6) Without limiting paragraph 8(a), the National Rental Affordability Scheme may:
 - (a) vary a condition of an allocation (other than a condition mentioned in paragraph (2)(a) or subparagraph (2)(b)(ii)) or impose a condition of an allocation; and
 - (b) set out the circumstances (if any) in which the condition is varied or imposed.

The condition is varied or imposed accordingly by force of this subsection.

- (7) Subsection (6) has effect despite anything in this Act or the National Rental Affordability Scheme.

8 Variations, transfers and revocations of allocations

The National Rental Affordability Scheme may provide for and in relation to the following:

- (a) the variation of an allocation in certain circumstances;

Part 2 The National Rental Affordability Scheme

Division 2 Allocation process

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- (b) the transfer of an allocation to another approved participant in certain circumstances;
- (ba) the transfer of all allocations made to an approved participant to another approved participant or other approved participants in certain circumstances;
- (bb) the transfer of an allocation to another rental dwelling in certain circumstances;
- (c) the revocation of an allocation in certain circumstances;
- (d) how such a variation, transfer or revocation is to be made.

Division 3—Receiving incentives

9 Eligibility for receiving incentives

The National Rental Affordability Scheme must provide for the Secretary to do the following in relation to an allocation:

- (a) issue a certificate to an approved participant of a kind provided for by the Scheme that states the National Rental Affordability Scheme Tax Offset that is claimable in relation to an NRAS year;
- (b) make a payment to an approved participant of a kind provided for by the Scheme for an NRAS year.

Part 3—Miscellaneous

10 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

10A Acceptance of undertakings

- (1) The Secretary may accept a written undertaking given by an approved participant in relation to the National Rental Affordability Scheme.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The approved participant may withdraw or vary the undertaking at any time, but only with the written consent of the Secretary.
- (4) The consent of the Secretary is not a legislative instrument.
- (5) The Secretary may, by written notice given to the approved participant, cancel the undertaking.

10B Enforcement of undertakings

- (1) The Secretary may apply to the Federal Court of Australia for an order under subsection (2) if:

- (a) an approved participant has given an undertaking under section 10A; and
 - (b) the undertaking has not been withdrawn or cancelled; and
 - (c) the Secretary considers that the approved participant has breached the undertaking.
- (2) If the Federal Court of Australia is satisfied that the approved participant has breached the undertaking, the Court may make any or all of the following orders:
- (a) an order directing the approved participant to comply with the undertaking;
 - (b) an order directing the approved participant to pay to the Commonwealth an amount up to the amount of any financial benefit that the approved participant has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the Court considers appropriate directing the approved participant to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Court considers appropriate.

11 Delegation

- (1) The Secretary may, by written instrument, delegate all or any of the following powers to an SES employee in the Department:
- (a) the Secretary's power to approve a participant in the National Rental Affordability Scheme;
 - (b) the Secretary's power to approve a rental dwelling for the purposes of the Scheme;
 - (c) the Secretary's power to decide whether to make an allocation under the Scheme.
- (2) The Secretary may, by written instrument, delegate to an APS employee in the Department all or any of the Secretary's powers or functions under this Act or the regulations (other than the powers mentioned in subsection (1)).
- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Secretary.

Section 12

12 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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

Endnotes

Endnote 1—About the endnotes

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.

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

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Rental Affordability Scheme Act 2008	121, 2008	25 Nov 2008	1 July 2008 (s 2)	
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 427, 428): 5 Mar 2016 (s 2(1) item 2)	—
National Rental Affordability Scheme Amendment Act 2019	97, 2019	30 Oct 2019	Sch 1 (items 1–5, 7–11, 13–16, 18–20): 31 Oct 2019 (s 2(1) items 2, 4, 6, 8) Sch 1 (item 12): 1 Apr 2020 (s 2(1) item 5)	Sch 1 (items 18–20)

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 97, 2019
s 3A	ad No 97, 2019
s 4	am No 97, 2019
Part 2	
Division 1	
s 6	am No 97, 2019
Division 2	
s 7	am No 97, 2019
s 8	am No 97, 2019
Part 3	
s 10A	ad No 97, 2019
s 10B.....	ad No 97, 2019
s 12	am No 126, 2015