

2019

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**National Rental Affordability Scheme
Amendment Bill 2019**

No. , 2019

(Families and Social Services)

**A Bill for an Act to amend the law relating to rental
affordability, and for related purposes**

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A Bill for an Act to amend the law relating to rental affordability, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *National Rental Affordability Scheme Amendment Act 2019*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, items 1 to 5	The day after this Act receives the Royal Assent.	
3. Schedule 1, item 6	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4. Schedule 1, items 7 to 11	The day after this Act receives the Royal Assent.	
5. Schedule 1, item 12	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
6. Schedule 1, items 13 to 16	The day after this Act receives the Royal Assent.	
7. Schedule 1, item 17	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
8. Schedule 1, items 18 to 20	The day after this Act receives the Royal Assent.	
9. Schedule 1, item 21	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of	

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

National Rental Affordability Scheme Act 2008

1 Section 3

Before “The”, insert “(1)”.

2 At the end of section 3

Add:

- (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.

3 After section 3

Insert:

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 Section 4 (definition of *allocation*)

Omit "an approved rental", substitute "a rental".

5 Section 4

Insert:

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

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.

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.

6 Paragraph 5(a)

Repeal the paragraph, substitute:

- (a) the obligations of participants that have been approved by the Secretary (*approved participants*);

7 After paragraph 6(c)

Insert:

- (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;

8 Before paragraph 6(d)

Insert:

- (cb) the passing on of contributions made by States and Territories, or their monetary equivalent, by approved participants in certain circumstances;

9 Paragraph 6(d)

After “dwelling”, insert “covered by an allocation”.

10 At the end of section 6

Add:

- ; (e) the protection of tenants of rental dwellings covered by allocations;
- (f) the protection of investors;
- (g) the rights of investors.

11 Before subsection 7(2)

Insert:

Conditions imposed by Secretary under the Scheme

12 Subparagraph 7(2)(b)(ii)

Repeal the subparagraph, substitute:

- (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

13 Paragraph 7(2)(c)

Repeal the paragraph, substitute:

- (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.

14 At the end of section 7

Add:

- (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.

15 After paragraph 8(b)

Insert:

- (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;

16 After section 10

Insert:

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.

17 Subsection 11(1)

Repeal the subsection, substitute:

- (1) The Secretary may, by written instrument, delegate the Secretary's power to approve a rental dwelling for the purposes of the National Rental Affordability Scheme to an SES employee in the Department.

18 Application

- (1) Paragraph 5(a) of the *National Rental Affordability Scheme Act 2008*, as substituted by item 6 of this Schedule, applies to an obligation that arose before, or arises on or after, the day this item commences.
- (2) Paragraph 6(ca) of the *National Rental Affordability Scheme Act 2008*, as inserted by item 7 of this Schedule, applies to an incentive provided before, on or after the day this item commences.
- (3) Paragraph 6(cb) of the *National Rental Affordability Scheme Act 2008*, as inserted by item 8 of this Schedule, applies to a contribution made by a State or Territory before, on or after the day this item commences.
- (4) Paragraphs 6(f) and (g) of the *National Rental Affordability Scheme Act 2008*, as inserted by item 10 of this Schedule, apply in relation to an investor, whether the person becomes an investor before, on or after the day this item commences.
- (5) Subsections 7(4), (5), (6) and (7) of the *National Rental Affordability Scheme Act 2008*, as inserted by item 14 of this Schedule, apply in relation to an allocation that exists on the day this item commences.
- (6) Paragraphs 8(ba) and (bb) of the *National Rental Affordability Scheme Act 2008*, as inserted by item 15 of this Schedule, apply in relation to an allocation that exists on the day this item commences.

19 Making allocations—continuity of conditions prescribed by the regulations

The amendment made by item 13 of this Schedule does not affect the continuity of any regulations made for the purposes of paragraph 7(2)(c) of the *National Rental Affordability Scheme Act 2008* that are in force immediately before this item commences.

20 Transitional—variation of condition relating to charges of rent

- (1) This item applies in relation to an allocation that exists on the day this item commences.
- (2) Despite paragraph 7(6)(a) of the *National Rental Affordability Scheme Act 2008*, the National Rental Affordability Scheme may vary the condition of the allocation mentioned in subparagraph 7(2)(b)(ii) of that Act for the purposes of the amendment made by item 12 of this Schedule. The condition is varied accordingly by force of this item.

21 Transitional—delegation

An instrument made under subsection 11(1) of the *National Rental Affordability Scheme Act 2008* that is in force immediately before the day this item commences continues in force (and may be dealt with) as if it had been made under subsection 11(1) of that Act as amended by this Act.