National Rental Affordability Scheme Amendment Regulations 2009 (No. 1)

Select Legislative Instrument 2009 No. 133

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the National Rental Affordability Scheme Act 2008.

Dated 24 June 2009

QUENTIN BRYCE
Governor-General

By Her Excellency’s Command

TANYA PLIBERSEK
Minister for Housing
1 Name of Regulations
These Regulations are the National Rental Affordability Scheme Amendment Regulations 2009 (No. 1).

2 Commencement
These Regulations are taken to have commenced on 1 July 2008.

3 Amendment of National Rental Affordability Scheme Regulations 2008
Schedule 1 amends the National Rental Affordability Scheme Regulations 2008.

4 Revocation of Instrument
The National Rental Affordability Scheme (Household Types) Determination 2009 (F2009L01805) is revoked.

Schedule 1 Amendments taken to have commenced on 1 July 2008
(regulation 3)

[1] Regulation 4, definition of NRAS incentive index
omit
  financial year
insert
  NRAS year
[2] Regulation 4, definition of **NRAS market index**

*omit*

financial year

*insert*

NRAS year

[3] Regulation 4, after definition of **NRAS market index**

*insert*

**NRAS tenant income index** means the All Groups component of the Consumer Price Index, Percentage Change from Corresponding Quarter of Previous Year, March quarter, using the all groups weighted average of eight capital cities, as published in the Australian Bureau of Statistics publication Cat. no. 6401.0 — Consumer Price Index, Australia, CPI: Groups, Weighted Average of Eight Capital Cities, Index Numbers and Percentage Changes, rounded to the nearest single decimal point.

[4] Regulations 16 and 17

*substitute*

16 **Conditions of allocation**

*Note* Subsection 7 (2) of the Act provides:

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) the rent that is charged for the rental dwelling is, at all times during the year, 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:

(i) for longer than the period prescribed by the regulations; and

(ii) for longer than a continuous period prescribed by the regulations that begins in the previous NRAS year and ends in the first-mentioned NRAS year.

(1) The approved participant for an approved rental dwelling must lodge Statements of Compliance for the dwelling with the Department in accordance with regulation 17.

(2) The approved participant must ensure that each approved rental dwelling, and the management of it, complies at all times with the landlord, tenancy, building, and health and safety laws of the State or Territory and local government area in which the dwelling is located.

(3) The approved participant must ensure that all special conditions are complied with.

(4) The approved participant must arrange market rent valuations of the dwelling in accordance with regulation 18:

(a) when the dwelling is first allocated, or first available for rent under the Scheme, whichever is the later; and

(b) at the end of the fourth and seventh years of the incentive period for the dwelling.

(5) A market rent valuation:

(a) obtained under paragraph (4) (a) — must relate to the market value rent of the dwelling on the date that the dwelling is first available for rent under the Scheme; and

(b) obtained under paragraph (4) (b) — must relate to the market value rent of the dwelling at the end of the fourth and seventh years of the incentive period for the dwelling.

(6) The approved participant must lodge the market rent valuations with the Department within 30 days of the valuations being due under subregulation (4).
(7) The approved participant may review the rent that applies to an approved rental dwelling:
   (a) upon entering a new lease; or
   (b) for an existing lease — no more often than at 12-monthly intervals from the date of entering into the lease.

(8) Any increase in rent as a result of a review in subregulation (7) must be:
   (a) based on information about the location, type and amenity of the approved rental dwelling; and
   (b) 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.

(9) Any increase in rent as a result of a review in subregulation (7) must not exceed the percentage change of the NRAS market index.

(10) The approved participant may increase the rent in accordance with subregulations (7) and (9) if no information or data in subregulation (8) is available.

(11) If a Statement of Compliance is not lodged in accordance with regulation 17, the Secretary cannot guarantee the incentive for that NRAS year.

(12) The approved participant must answer any queries from the Secretary on matters covered in this regulation.

17 Statement of Compliance

(1) A Statement of Compliance for an approved rental dwelling for an NRAS year must be lodged by the person who, at the end of the NRAS year, is the approved participant.

(2) The Statement must be lodged by the following 13 May after each NRAS year in the incentive period. If this is not practicable because the allocation has retrospective effect, the Statement must be lodged as soon as practicable after the allocation is made.
(3) The Statement must include:

(a) a statement that at all times during the year, any tenant or tenants of the dwelling were eligible tenants, or details of any way in which this requirement was not met; and

(b) details of the rental charged over the year; and

(c) a statement that the rental charged during the year was at all times at least 20% less than the market value rent for the dwelling, or details of any way in which this requirement was not met; and

(d) details of any period during which the dwelling was vacant; and

(e) details of the tenancy manager of the rental dwelling; and

(f) a statement that the approved participant complied at all times during the year with landlord, tenancy, building, and health and safety laws of the State or Territory and local government area in which the dwelling is located, or details of any way in which this requirement was not met; and

(g) a statement that all special conditions have been complied with or details of any way in which this requirement was not met; and

(h) if applicable:

   (i) the name of the joint venture to appear on any tax offset certificate; and

   (ii) the names of each natural person or legal entity participating in the joint venture as at the end of the NRAS year.

[5] **Paragraph 19 (1) (a)**

*omitted*

individual or couple

*inserted*

person or persons
[6] **Paragraphs 19 (1) (d) and (e)**

`substitute`

(d) **adult** means:

(i) a person 18 years of age or older; or

(ii) a person under 18 years of age living independently outside of the family home and who is not financially dependant on an eligible tenant; and

(e) **child** means a person under 18 years of age who is financially dependant on an eligible tenant.

[7] **Subregulations 19 (2) to (5)**

`substitute`

(2) For these Regulations, the tenants of an approved rental dwelling become **eligible tenants** on their start date if their gross income for the 12 months ending on the day before the start date does not exceed the income limit for their household as set out in this regulation.

(3) Eligible tenants cease to be eligible tenants if:

(a) they cease to be tenants of an approved rental dwelling; or

(b) their gross income exceeds the income limit for their household by 25% or more in 2 consecutive eligibility years.

(4) The income limits for a household are:

(a) if a household does not include a sole parent:

(i) $40 501 for the first adult; and

(ii) $15 490 for each additional adult; and

(iii) $13 432 for each child; or

(b) if a household includes a sole parent:

(i) $42 599 for the first sole parent; and

(ii) $15 490 for each additional adult; and

(iii) $13 432 for each child.

(5) The amounts mentioned in subregulation (4) are indexed in accordance with the NRAS tenant income index on 1 May each year, rounded to the next whole dollar.
(6) The Secretary may, by legislative instrument, change from time to time, any or all of the income limits mentioned in subregulation (4).

[8] Subparagraph 29 (2) (c) (ii)

*omit*

Number;

*insert*

Number; or

[9] After subparagraph 29 (2) (c) (ii)

*insert*

(iii) if applicable — the name of a joint venture notified by the approved participant to the Department to appear on a tax offset certificate.

[10] Subregulation 29 (2), after note 2

*insert*

(3) An approved participant may request the Secretary, in writing, to issue a replacement tax offset certificate, in the name of the approved participant, if a certificate issued in the name of a joint venture is ineffective for claiming a refundable tax offset.


*insert*

33 Review by AAT of decisions by Secretary

(1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary:

(a) under regulation 22 to revoke an allocation; or

(b) under regulation 28 to determine reductions to be made from the amount of an incentive; or

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(c) under regulation 30 to determine that an error arose making an incentive for a particular allocation, to vary the incentive to correct the error, and where appropriate, recoup any overpayment.

(2) An application for review under paragraph (1) (b) may only be made:
   (a) after an internal review of the decision under subregulation 28 (3) has been requested and completed; or
   (b) if the internal review under subregulation 28 (3) has not been completed — 2 months after requesting the review.

[12] Schedule 1, Set 1, paragraph (2) (e)
   omit
   indigenous Australians;
   insert
   indigenous Australians);

[13] Schedule 1, after Set 1
   insert

Set 2

1. Criteria
   (1) The assessment criteria are the following:
   (a) there is a demonstrated need for the proposal;
   (b) the proposal addresses the priority areas of interest in subitem (2);
   (c) the proposal delivers accessibility and sustainability outcomes, including the following:
      (i) proximity of dwellings to transport, schools, shops, health services and employment opportunities;
      (ii) types of dwellings and proposed household compositions that facilitate a balanced social mix;
(iii) use of universal design principles or other measures that make properties more accessible to people who are ageing or live with disabilities;

(d) the applicant has demonstrated capacity and experience;

(e) the proposal is financially viable;

(f) the proposal details or forecasts, for each dwelling:
   (i) the energy rating of the dwelling; and
   (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.

Note For paragraph (f), proposals that include high energy ratings for each dwelling, or demonstrate that each dwelling incorporates some or all of the matters mentioned in subparagraph (1) (f) (ii), may be given priority.

(2) The priority areas of interest are the following:

(a) proposals involving 100 or more rental dwellings;

(b) smaller proposals of not less than 20 rental dwellings where those proposals deliver dwellings in areas of especially high rental stress or deliver innovative and affordable rental housing solutions;

(c) proposals consisting of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located;

(d) proposals that are consistent with State, Territory or local government affordable housing priorities;

(e) proposals that include rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);

(f) proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants.

Note For paragraph (c), proposals that include sound proofing that exceeds the State, Territory or local government requirements, and demonstrate how those requirements are exceeded, may be given priority.
Set 3

1 Criteria

(1) The assessment criteria are the following:

(a) the proposal addresses the priority areas of interest in subitem (2);

(b) the proposal delivers accessibility and sustainability outcomes, including the following:
   (i) types of dwellings and proposed household compositions that facilitate a balanced social mix;
   (ii) use of universal design principles or other measures that make properties more accessible to people who are ageing or live with disabilities;

(c) the proposal is financially viable;

(d) the proposal details or forecasts, for each dwelling:
   (i) the energy rating of the dwelling; and
   (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks;

Note For paragraph (1) (d), proposals that include high energy ratings for each dwelling, or demonstrate that each dwelling incorporates some or all of the matters mentioned in subparagraph (1) (d) (ii), may be given priority.

(e) the Commonwealth has agreed with the State or Territory in which the land is located, that the land on which the dwellings are being built or will be built is suitable for mixed residential development, and either:

   (i) was previously owned by the State or Territory and released on or after 1 July 2008 for mixed residential development by the private sector; or

   (ii) is currently owned by the State or Territory and is in the process of being released for mixed residential development by the private sector.
(2) The priority areas of interest are the following:

(a) proposals involving 100 or more rental dwellings;
(b) smaller proposals of not less than 20 rental dwellings where those proposals deliver dwellings in areas of especially high rental stress or deliver innovative and affordable rental housing solutions;
(c) proposals that include rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
(d) proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants;
(e) proposals consisting of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located.

Note For paragraph (2) (e), proposals that include sound proofing that exceeds the State, Territory or local government requirements, and demonstrate how those requirements are exceeded, may be given priority.

Set 4

1 Criteria

(1) The assessment criteria are the following:

(a) there is a demonstrated need for the proposal;
(b) the proposal addresses the priority areas of interest in subitem (2);
(c) the proposal delivers accessibility and sustainability outcomes, including the following:
   (i) proximity of dwellings to transport, schools, shops, health services and employment opportunities;
   (ii) types of dwellings and proposed household compositions that facilitate a balanced social mix;
   (iii) use of universal design principles or other measures that make properties more accessible to people who are ageing or live with disabilities;
(d) the applicant has demonstrated capacity and experience;
(e) the proposal is financially viable;
(f) the proposal details or forecasts, for each dwelling:
   (i) the energy rating of the dwelling; and
   (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.

Note For paragraph (1) (f), proposals that include high energy ratings for each dwelling, or demonstrate that each dwelling incorporates some or all of the matters mentioned in subparagraph (1) (f) (ii), may be given priority.

(2) The priority areas of interest are the following:
   (a) proposals involving 1 000 or more rental dwellings;
   (b) proposals that are consistent with State, Territory or local government affordable housing priorities;
   (c) proposals that include rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
   (d) proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants;
   (e) proposals consisting of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located.

Note For paragraph (2) (e), proposals that include sound proofing that exceeds the State, Territory or local government requirements, and demonstrate how those requirements are exceeded, may be given priority.

Set 5

1 Criteria

(1) The assessment criteria are the following:
   (a) there is a demonstrated need for the proposal;
   (b) the proposal addresses the priority areas of interest in subitem (2);
   (c) the proposal delivers accessibility and sustainability outcomes, including the following:
      (i) proximity of dwellings to transport, schools, shops, health services and employment opportunities;

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(ii) types of dwellings and proposed household compositions that facilitate a balanced social mix;

(iii) use of universal design principles or other measures that make properties more accessible to people who are ageing or live with disabilities;

(d) the applicant has demonstrated capacity and experience;

(e) the proposal is financially viable;

(f) the proposal details or forecasts, for each dwelling:
   (i) the energy rating of the dwelling; and
   (ii) the extent to which the dwelling incorporates efficient lighting, environmentally friendly hot water systems, ventilation and water tanks.

Note: For paragraph (1)(f), proposals that include high energy ratings for each dwelling, or demonstrate that each dwelling incorporates some or all of the matters mentioned in subparagraph (1)(f)(ii), may be given priority.

(2) The priority areas of interest are the following:

(a) proposals for which an application for funding under the Social Housing Initiative has been made by 30 June 2009;

(b) proposals involving 100 or more rental dwellings;

(c) smaller proposals of not less than 20 rental dwellings where those proposals deliver dwellings in areas of especially high rental stress or deliver innovative and affordable rental housing solutions;

(d) proposals that are consistent with State, Territory or local government affordable housing priorities;

(e) proposals that include rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);

(f) proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants;

(g) proposals consisting of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located.

Note: For paragraph (2)(g), proposals that include sound proofing that exceeds the State, Territory or local government requirements, and demonstrate how those requirements are exceeded, may be given priority.
Note