National Rental Affordability Scheme Amendment Regulations 2010 (No. 1)”

Select Legislative Instrument 2010 No. 78

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 6 May 2010

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 2010 (No. 1)*.

2 Commencement
These Regulations commence on the day after they are registered.

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

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Schedule 1 Amendments
(regulation 3)

[1] After subregulation 12 (1)

*insert*

(1A) If a set of assessment criteria specified for a call for applications is divided into subsets, the Secretary:
(a) must assess applications in accordance with the criteria in subset 1; and
(b) if an application does not meet 1 or more of the criteria in subset 1, either:
   (i) decide not to make an offer of allocation for the application; or
   (ii) assess the application against the criteria in subset 2, before making a decision whether to make an offer of allocation; and
(c) if the application meets the criteria in subset 1, assess the application against the criteria in subset 2, before making a decision whether to make an offer of allocation.
[2] **Subparagraph 13 (2) (a) (i)**

*substitute*

(i) for an allocation — the location of each dwelling by title reference or street address; and

(iia) for a reservation of allocation — the location of each dwelling by postcode or other regional reference; and

[3] **Subregulation 13 (5)**

*substitute*

(5) If the Secretary does not make an offer to an applicant, or does not make an offer to an applicant that relates to a particular dwelling, the applicant may, apply in writing for the reasons for the Secretary’s decision.

(6) The Secretary must, within 28 days after receiving the request for the reasons mentioned in subregulation (5), provide reasons for the decision.

(7) If the applicant does not agree with the reasons for the Secretary’s decision, or does not receive the reasons within the required time mentioned in subregulation (6), the applicant may apply for internal review of the Secretary’s decision (the *original decision*).

(8) If the original decision was made by a delegate of the Secretary, the internal review must be conducted by the Secretary, or another delegate of the Secretary.

(9) If the original decision was made by the Secretary, the internal review must be conducted by the Secretary.

(10) The decision which is reached after the internal review is a new decision.
[4] Subregulation 14 (2)

substitute

(2) The Secretary may withdraw a reservation of an allocation in relation to a dwelling if any of the following events occur:

(a) the dwelling is not available for rent by the required date, or an agreed alternate date;

(b) the Secretary is satisfied that the dwelling will not be available for rent by the required date, or an agreed alternate date;

(c) the applicant fails to comply with any condition of the reservation;

(d) any advertisement relating to the reservation:

(i) is likely to mislead; or

(ii) misrepresents the Scheme; or

(iii) exaggerates or overstates the tax or other financial advantages resulting from involvement in the Scheme; or

(iv) presents the government as underwriting or endorsing the applicant, the dwelling or a proposed investment; or

(v) presents the government as dealing directly with investors; or

(vi) presents the government as being in partnership with any applicant, person or entity publishing details in association with the Scheme.

[5] Subregulation 17 (1)

after

person

insert

or entity
[6] **Paragraph 17 (3) (h)**

*substitute*

(h) if applicable, the names of each natural person or legal entity participating in a joint venture at the end of the NRAS year.

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

*omit*

reference a

*insert*

reference to a

[8] **Subregulation 19 (2)**

*before*

gross

*insert*

combined

[9] **Paragraph 19 (3) (b)**

*before*

gross

*insert*

combined

[10] **After subregulation 19 (4)**

*insert*

(4A) For this regulation:

(a) each subsidiary dwelling that forms part of an approved rental dwelling may only include 1 household; and
(b) an approved rental dwelling, other than an approved rental dwelling mentioned in paragraph (a), may only include 1 household; and

(c) the combined gross incomes of the tenants in a subsidiary dwelling must be considered in assessing the household income for that subsidiary dwelling.


insert

21A Transfer of reservation of allocation

(1) An applicant, who has accepted an offer of reservation of allocation, may apply for change to the location, style, size or special attributes (if any) of a dwelling.

(2) On receipt of an application under subregulation (1), the Secretary may:

(a) reassess the application using the same criteria as applied to the original application; and

(b) either:

(a) refuse to make the change, in whole or in part; or

(b) agree to make the change, in whole or in part.

[12] Subregulation 22 (1)

omit

the conditions

insert

any conditions

[13] Regulation 28, example 2

omit

for a 3

insert

for 3
After regulation 28
insert

28A Elections
(1) The Secretary must give an applicant or an approved participant the option to elect, in accordance with subregulation (3) or (4), to receive the incentive as a tax offset certificate rather than a payment, if the applicant or approved participant is:
   (a) an endorsed charitable institution; or
   (b) an approved participant other than an endorsed charitable institution, whose status changes to an endorsed charitable institution for part of the NRAS year.

(2) The Secretary must give an endorsed charitable institution the option to elect, in accordance with subregulation (5), to receive the incentive as a tax offset certificate rather than a payment, if the endorsed charitable institution is:
   (a) an existing applicant who has accepted an offer of a reserved allocation; or
   (b) an existing approved participant who has been made an allocation.

(3) For paragraph (1) (a), the election:
   (a) must be made in writing to the Secretary; and
   (b) must be made at the time that an offer of allocation or reserved allocation is accepted by the applicant; and
   (c) is binding for the whole of the incentive period, or for as long as the approved participant remains an endorsed charitable institution.

(4) For paragraph (1) (b), the election:
   (a) must be made in writing to the Secretary; and
   (b) must be made by 13 May, in the year after the NRAS year in which the change in status occurred; and
   (c) is binding for the part of the incentive period that remains after the change in status occurred, and for which payment has not been made, and for as long as the approved participant remains an endorsed charitable institution.
(5) For subregulation (2), the election:
   (a) must be made in writing to the Secretary; and
   (b) must be made before 13 May 2011; and
   (c) is binding:
       (i) for a reservation of allocation — for the whole of the incentive period, or for as long as the approved participant remains an endorsed charitable institution; or
       (ii) for an allocation — for the part of the incentive period for which a payment has not been made, and for as long as the approved participant remains an endorsed charitable institution.

(6) However, an election that is made after 30 May 2010 may not be effective for the NRAS year commencing on 1 May 2009.

[15] Subregulation 29 (1)

substitute

(1) The Secretary must:
   (a) either:
       (i) if an approved participant is an endorsed charitable institution that has elected to receive a tax offset certificate — issue a tax offset certificate as set out in subregulation (2); or
       (ii) if an approved participant is an endorsed charitable institution that has not elected to receive a tax offset certificate — pay the incentive for each allocation; or
   (b) for other approved participants — issue a tax offset certificate as set out in subregulation (2); or
   (c) pay the amount of incentive the approved participant is eligible to receive, or issue a tax offset certificate for the amount that the approved participant is eligible to receive, in accordance with the following table, if the approved participant is:
       (i) an endorsed charitable institution for part of an NRAS year; and
(ii) an otherwise eligible approved participant for part of the same NRAS year.

<table>
<thead>
<tr>
<th>Item</th>
<th>If an approved participant ...</th>
<th>the Secretary must ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(a) changes from an endorsed charitable institution to an otherwise eligible approved participant; and (b) as an endorsed charitable institution, elects to receive a tax offset certificate</td>
<td>issue a tax offset certificate for the NRAS year</td>
</tr>
<tr>
<td>2</td>
<td>(a) changes from an endorsed charitable institution to an otherwise eligible approved participant; and (b) as an endorsed charitable institution, does not elect to receive a tax offset certificate</td>
<td>(a) for the period that the approved participant was an endorsed charitable institution — pay the incentive apportioned for that period; and (b) for the period that the approved participant was an otherwise eligible approved participant — issue a tax offset certificate apportioned for that period</td>
</tr>
<tr>
<td>3</td>
<td>(a) changes from an otherwise eligible approved participant to an endorsed charitable institution; and (b) as an endorsed charitable institution, elects to receive a tax offset certificate</td>
<td>issue a tax offset certificate for the NRAS year</td>
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<td>Item</td>
<td>If an approved participant ...</td>
<td>the Secretary must ...</td>
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<tr>
<td>4</td>
<td>(a) changes from an otherwise eligible approved participant to an endorsed charitable institution; and (b) as an endorsed charitable institution, does not elect to receive a tax offset certificate</td>
<td>(a) for the period that the approved participant was an otherwise eligible approved participant — issue a tax offset certificate apportioned for that period; and (b) for the period that the approved participant was an endorsed charitable institution — pay the incentive apportioned for that period</td>
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</table>

[16] **Paragraph 29 (2) (c)**

*substitute*

(c) the name and any applicable Australian Business Number or Australian Company Number of the approved participant;

[17] **Regulation 29, after note 2**

*insert*

*Note 3* One certificate may relate to multiple approved rental dwellings and those dwellings may be associated with different joint ventures to which the approved participant is a party.

[18] **Subregulation 29 (3)**

*omit*
[19] Schedule 1, after Set 5

insert

Set 6

1 Criteria — subset 1

The assessment criteria for subset 1 are the following:
(a) the proposal involves 20 or more rental dwellings;
(b) there is a demonstrated need for the proposal;
(c) the relevant State or Territory supports the proposal;
(d) the applicant has demonstrated capacity and experience to comply with the Scheme requirements, or capacity to comply with the Scheme requirements into the future;
(e) the applicant’s proposal demonstrates compliance or prospective compliance with the Scheme requirements and appears reasonable and viable.

2 Criteria — subset 2

The criteria for subset 2 are the following:
(a) proposals involving 100 or more rental dwellings are preferred;
(b) the proposal consists of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located;
(c) the proposal includes rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);
(d) the proposal maximizes affordable housing outcomes for tenants, including building and design features that reduce the overall costs for tenants;
(e) 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 older Australians or people who live with disabilities;

(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 (b) 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 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 (f) (ii), may be given priority.

Set 7

1 Criteria — subset 1

The assessment criteria for subset 1 are the following:
(a) the proposal involves 100 or more rental dwellings;
(b) there is a demonstrated need for the proposal;
(c) the relevant State or Territory supports the proposal;
(d) the applicant has demonstrated capacity and experience to comply with the Scheme requirements, or capacity to comply with the Scheme requirements into the future;
(e) the applicant’s proposal demonstrates compliance or prospective compliance with the Scheme requirements and appears reasonable and viable.

2 Criteria — subset 2

The criteria for subset 2 are the following:
(a) the proposal consists of dwellings that comply with the sound proofing requirements of the State, Territory or local government area in which the dwelling is located;
(b) the proposal includes rental dwellings for tenants with special needs (including people with mental and physical disabilities, older Australians and indigenous Australians);

(c) the proposal maximizes affordable housing outcomes for tenants, including building and design features that reduce the overall costs for tenants;

(d) 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 older Australians or people who live with disabilities;

(e) 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 (a) 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 for paragraph (e) Proposals that include high energy ratings for each dwelling, or demonstrate that each dwelling incorporates some or all of the matters mentioned in subparagraph (e) (ii), may be given priority.

Note
1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the Legislative Instruments Act 2003. See http://www.frlj.gov.au.