EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 95

Issued by the authority of the Minister for Sustainability, Environment, Water, Population and Communities

National Rental Affordability Scheme Act 2008
National Rental Affordability Scheme Amendment Regulations 2011 (No. 1)

Section 12 of the National Rental Affordability Scheme Act 2008 (the Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act establishes the National Rental Affordability Scheme (the Scheme). The Scheme is intended to encourage the development of affordable rental housing by offering conditional incentives to individuals and entities providing new rental housing to low and moderate income households. The Scheme commenced operation on 1 July 2008.

Section 5 of the Act provides that the regulations must prescribe a Scheme which includes the following matters:
(c) providing incentives to an approved participant if certain conditions are satisfied; and
(d) a matter required or permitted by the Act to be included in the Scheme.

Section 6 of the Act further prescribes that the Scheme may provide for, including amongst other things, the amount of an incentive (paragraph 6(c)).

Purpose
The purpose of these Regulations is to amend the National Rental Affordability Scheme Regulations 2008 (the Principal Regulations), to clarify the operation of two annual indexation arrangements.

The Scheme has been administered on the basis that the amounts in the various income limits and the full incentive amounts were to be indexed cumulatively. Both the cumulatively indexed income limits and the incentive values have been communicated to participants and stakeholders of the Scheme.

It is possible that participants in the Scheme (Approved Participants) have already provided Statements of Compliance for the 2010-11 incentive year (1 May 2010 to 30 April 2011) which state that the tenants of the relevant dwellings were eligible, as they have relied on the higher thresholds which have been published.
If these amendments are not made to the Principal Regulations, then there could be some tenants whose income is above the limits provided for in the Principal Regulations. Also, failing to apply cumulative annual indexation would see the tenant income thresholds largely unchanged for the full period of operation of the Scheme. This would soon see the Scheme limited to low income rather than low and moderate income households.

The full incentive amounts for a standard dwelling and subsidiary dwellings are set in the Principal Regulations. Currently, the Principal Regulations only provide for the base amounts to be indexed. This could mean that instead of these amounts increasing each year cumulatively, they could in fact decrease between years if the percentage changes in the index decreases. The Regulation will ensure that the Approved Participants will be entitled to the incentive payments indexed cumulatively for the period after 1 May 2010 and in preceding years.

Failing to apply a cumulative annual indexation to the full incentive amount would see the value of the incentive vary little over the full period of operation of the Scheme, and see the real value of the incentive fail to keep pace with inflation. As the original intent was to cumulative index the incentive value, participants have factored the growing value of the incentive into financial assumptions of their models.

**Commencement**

The amendments to the Principal Regulations are taken to have commenced on 1 May 2010. Commencing these amendments retrospectively will clarify the calculation of the higher income limits and incentive amounts as being applicable from 1 May 2010.

Consistent with section 12 of the *Legislative Instruments Act 2003*, the retrospective commencement of the amendments will not affect any person’s rights (other than the Commonwealth) to their detriment nor will it impose any liability on a person other than the Commonwealth in respect of anything done or omitted to be done before the date of registration.

**Consultation**

No formal consultation has occurred on these amendments as it was considered that consultation was unnecessary or inappropriate. There is longstanding and widespread understanding that both the income limits and incentive amounts are to be cumulatively indexed annually. Therefore, these amendments are of a minor or machinery nature and do not substantially alter the arrangements as they are currently perceived to exist. The amendments to the Principal Regulations will not have a direct or indirect effect on business or restrict competition.

Details of the Regulations are outlined in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. 

Explanatory Statement to F2011L01124
National Rental Affordability Scheme Amendment Regulations 2011 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of these Regulations is the National Rental Affordability Scheme Amendment Regulations 2011 (No. 1).

Regulation 2 – Commencement

This regulation provides for the Regulations to be taken to have commenced on 1 May 2010. This is the date that the indexation of the tenant income thresholds and incentive value needs to be applied cumulatively.

The retrospective commencement of the Regulations will not cause, and in fact ensures that there is no detriment to any person or entity.

Regulation 3 – Amendment of National Rental Affordability Scheme Regulations 2008

This regulation provides that Schedule 1 amends the National Rental Affordability Scheme Regulations 2008 (the Principal Regulations).

Schedule 1 – Amendments

Item 1 – Subregulation 19 (5)

This item amends regulation 19 by substituting subregulation 19(5). This subregulation provides that each year beginning 1 May, the income limits in subregulation 19(4) are set as the amount for the previous year which is then indexed in accordance with the NRAS tenant income index.

This amendment has been made to facilitate the cumulative annual indexation of the income limits for a household. This means that indexation to the limits apply to the amount set for the previous year.

The tenants of an approved rental dwellings become eligible under the Scheme if their combined gross income for the previous 12 months does not exceed the income limit for their household as set out in the Principal Regulations. Subregulation 19(5) currently provides for the thresholds to be indexed in accordance with the NRAS tenant income index on 1 May each year.
The *NRAS tenant income index* is defined in regulation 4 as meaning ‘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.’

As currently drafted, this regulation has the unintended consequence of applying the *NRAS tenant income index* to the base [or year one (2008-09)] rates as set out in subregulation 19(4) each year, rather than applying the *NRAS tenant income index* on a cumulative basis.

**Item 2 – Paragraph 26 (1)(b)**

This item deletes the words ‘and later years beginning on 1 May’ from paragraph 26(1)(b). This is a consequential change as a result of the amendment made in item 3 below.

**Item 3 – Subregulation 26 (2)**

This item amends regulation 26 by substituting subregulation 26(2). This subregulation provides that each year beginning 1 May, the amount of the incentive for a standard dwelling is set by the amount for the previous year which is then indexed in accordance with the NRAS tenant income index.

This amendment has been made to facilitate the *cumulative* annual indexation of the full incentive amount for a standard dwelling. This means that indexation to the incentive amount applies to the amount set for the previous year. The incentive is the amount provided to a participant in the Scheme for providing an eligible dwelling for the National Rental Affordability Scheme year, or part thereof. The incentive is either provided as a refundable tax offset or a ‘cash’ payment amount.

For example, the *NRAS incentive index* in 2009-10 was 8.4% and in 2010-11 was 5.4%. In applying this calculation, the 2009-10 incentive was calculated at $6,504 ($6,000 + 8.4%), and the 2010-11 incentive amount will be calculated as $6,855 ($6,504 + 5.4%).

Subregulation 26(2) currently provides for the incentive to be indexed to the percentage change of the *NRAS incentive index*. The *NRAS incentive index* is defined in regulation 4 as ‘the Rents component of the Housing Group of the Consumer Price Index for the year, December quarter to December quarter as at 1 March of the immediately preceding NRAS year, using the Summary Table weighted average rate of eight capital cities housing component, as published in the Australian Bureau of Statistics publication Cat. no. 6401.0 — Consumer Price Index, Australia, CPI: Group, Sub-group and Expenditure Class, rounded to the nearest single decimal point’.
As currently drafted, this regulation has the unintended consequence of applying the annual indexation to the base 2008-09 rate as set out in subregulation 26(1), rather than applying the **NRAS incentive index** on a cumulative basis.

For example, as currently drafted the amount of the incentive would start at a base of $6,000 (subregulation 26(1)(b)) with this amount indexed each year. The base of $6,000 does not in itself change. The **NRAS incentive index** in 2009-10 was 8.4% and in 2010-11 was 5.4%. In applying this calculation, while the 2009-10 incentive was calculated at $6,504 ($6,000 + 8.4%), the 2010-11 incentive amount would have been calculated as $6,324 ($6,000 + 5.4%). This way of calculating the incentive amount does not reflect the intention of the amount of the incentive to be provided under the Scheme.

**Item 4 – Paragraph 27 (1) (b)**

This item deletes the words ‘and later years beginning on 1 May’ from paragraph 27(1)(b). This is a consequential change as a result of the amendment made in item 5 below.

**Item 5 – Subregulation 27 (2)**

This item amends regulation 27 by substituting subregulation 27(2). This subregulation provides that each year beginning 1 May, the amount of the incentive for a subsidiary dwelling is set by the amount for the previous year which is then indexed in accordance with the NRAS tenant income index.

This amendment has been made to facilitate the **cumulative** annual indexation of the full incentive amount for a standard dwelling. This means that indexation to the incentive amount applies to the amount set for the previous year. The incentive is the amount provided to a participant in the Scheme for providing an eligible dwelling for the National Rental Affordability Scheme year, or part thereof. The incentive is either provided as a refundable tax offset or a ‘cash’ payment amount.

For example, the **NRAS incentive index** in 2009-10 was 8.4% and in 2010-11 was 5.4%. In applying this calculation, the 2009-10 incentive was calculated at $6,504 ($6,000 + 8.4%), and the 2010-11 incentive amount will be calculated as $6,855 ($6,504 + 5.4%).

Subregulation 26(2) currently provides for the incentive to be indexed to the percentage change of the **NRAS incentive index**. The **NRAS incentive index** is defined in regulation 4 as ‘the Rents component of the Housing Group of the Consumer Price Index for the year, December quarter to December quarter as at 1 March of the immediately preceding NRAS year, using the Summary Table weighted average rate of eight capital cities housing component, as published in the Australian Bureau of Statistics publication Cat. no. 6401.0 — Consumer Price Index, Australia, CPI: Group, Sub-group and Expenditure Class, rounded to the nearest single decimal point’.
As currently drafted, this regulation has the unintended consequence of applying the annual indexation to the base 2008-09 rate as set out in subregulation 27(1), rather than applying the NRAS incentive index on a cumulative basis.

For example, as currently provided in the Principal Regulations, the amount of the incentive would start at a base of $6,000 (subregulation 27(1)(b)) with this amount indexed each year. The base of $6,000 does not in itself change. The NRAS incentive index in 2009-10 was 8.4% and in 2010-11 was 5.4%. In applying this calculation, while the 2009-10 incentive was calculated at $6,504 ($6,000 + 8.4%), the 2010-11 incentive amount would have been calculated as $6,324 ($6,000 + 5.4%). This way of calculating the incentive amount does not reflect the intention of the amount of the incentive to be provided under the Scheme.