



# **National Rental Affordability Scheme Regulations 2020**

made under the

*National Rental Affordability Scheme Act 2008*

## **Compilation No. 1**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *National Rental Affordability Scheme Regulations 2020* that shows the text of the law as amended and in force on 14 October 2024 (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 Register ([www.legislation.gov.au](http://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 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 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name

This instrument is the *National Rental Affordability Scheme Regulations 2020*.

### 3 Authority

This instrument:

- (a) is made under the *National Rental Affordability Scheme Act 2008*; and
- (b) for the purposes of section 5 of the Act, prescribes the National Rental Affordability Scheme.

### 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) allocation;
- (b) incentive;
- (c) incentive period;
- (d) investor;
- (e) NRAS year;
- (f) rental dwelling.

In this instrument:

**Act** means the *National Rental Affordability Scheme Act 2008*.

**adult** has the meaning given by paragraph 41(1)(d).

**approved form** means a form:

- (a) approved by the Secretary under section 68; and
- (b) given in accordance with any manner specified by the Secretary under that section.

**approved participant**, for a rental dwelling covered by an allocation, means the holder of the allocation for the dwelling.

**approved participants code of conduct** has the meaning given by subsection 27(1).

**arrangement** includes any agreement, arrangement, understanding, promise or undertaking, whether express or implied that is enforceable, or intended to be enforceable, by legal proceedings.

**ASIC** means the Australian Securities and Investments Commission.

**associated party**, for a rental dwelling covered by an allocation, means a person, other than the approved participant or a tenant, who:

- (a) is a party to an arrangement that relates to the dwelling; and

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- (b) under the arrangement, is required to pass on to another person who is not the approved participant any payment or benefit (including rent) relating to the dwelling.

**certificate of occupancy**, for a dwelling, means a certificate (however described) that:

- (a) is issued or recognised by:
  - (i) the State or Territory, or an authority of the State or Territory, in which the dwelling is located; or
  - (ii) the local governing body that governs the area in which the dwelling is located; and
- (b) states that the dwelling is suitable for residential purposes; and
- (c) does not state that the dwelling is suitable for any other purpose.

**child** has the meaning given by paragraph 41(1)(e).

**compliance breach** has the meaning given by subsection 24(3).

**conditions**, of an allocation, means:

- (a) the general conditions of the allocation; or
- (b) any special conditions of the allocation.

**conditions of the reservation**, of a provisional allocation, means:

- (a) the conditions of the reservation (within the meaning of the previous regulations) of the provisional allocation; but
- (b) as varied under paragraph 18(1)(b) of this instrument.

**consumer protection law** has the same meaning as in the *Australian Postal Corporation Act 1989*.

**contravenes**: the approved participant for a rental dwelling covered by an allocation **contravenes** a condition of the allocation if:

- (a) no incentive is available for a period for the dwelling because of circumstances specified in the condition of the allocation; and
- (b) those circumstances are within the control of the approved participant.

**disqualified person**: a person is a **disqualified person** if section 32 applies for a determination under section 26 that the person has committed a disqualifying breach.

Note: Subsection 32(1) explains when section 32 applies.

**disqualifying breach** has the meaning given by section 26.

**eligibility year** has the meaning given by paragraph 41(1)(c).

**eligible tenant** has the meaning given by subsections 41(2) and (3).

**endorsed charitable institution** means an entity that is endorsed as exempt from income tax by the Commissioner of Taxation under section 50-105 of the *Income Tax Assessment Act 1997*.



***gaining approved participant***, for the transfer of an allocation, means the person to whom an allocation is transferred.

***general conditions***, of an allocation, means the conditions set out in Division 2 of Part 2.

***incentive year*** has the meaning given by subsection 36(2).

***individual breach*** has the meaning given by subsection 24(1).

***initial rental period*** has the meaning given by subsection 36(3).

***insolvency event***: an approved participant is the subject of an ***insolvency event*** if the approved participant:

- (a) dies or ceases to exist; or
- (b) becomes an insolvent under administration; or
- (c) becomes a Chapter 5 body corporate (within the meaning of the *Corporations Act 2001*).

***market value rent*** has the meaning given by subsection 36(1).

***National Rental Affordability Scheme Tax Offset*** means the tax offset mentioned in Division 380 of the *Income Tax Assessment Act 1997*.

***NRAS incentive index***, for an NRAS year, means the Rents component of the Housing Group of the Consumer Price Index (being the weighted average of the 8 capital cities) December quarter to December quarter published by the Australian Statistician as at 1 March of the immediately preceding NRAS year, rounded to the nearest single decimal point.

***NRAS market index***, for a rental dwelling for an NRAS year, means the capital city index for the State or Territory in which the dwelling is located used in the Rents component of the Housing Group of the Consumer Price Index December quarter to December quarter published by the Australian Statistician as at 1 March of the immediately preceding NRAS year, rounded to the nearest single decimal point.

***NRAS tenant income index***, for an NRAS year, means the All Groups component of the Consumer Price Index (being the weighted average of the 8 capital cities) December quarter to December quarter published by the Australian Statistician as at 1 March of the immediately preceding NRAS year, rounded to the nearest single decimal point.

***obligations to investors*** means the obligations set out in Part 7.

***original approved participant***, for the transfer of an allocation, means the approved participant from whom the allocation is transferred.

***outstanding***, for a document or information required by the Secretary for the purposes of the Scheme, has the meaning given by subsection 13(3).

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**pass on**, for an incentive or State or Territory contribution, has the meaning given by section 63.

**person** includes an entity (within the meaning of the *Income Tax Assessment Act 1997*).

**personal information** has the same meaning as in the *Privacy Act 1988*.

**previous regulations** means the *National Rental Affordability Scheme Regulations 2008* as in force immediately before 1 April 2020.

**provisional allocation** means an allocation that, immediately before 1 April 2020, was a provisional allocation (within the meaning of the previous regulations).

**redirects**, for an incentive, or an increase in an incentive, has the meaning given by section 60.

**remains uncorrected**, for a false or misleading document or information, has the meaning given by subsection 13(6).

**Scheme:**

- (a) means the National Rental Affordability Scheme prescribed by the previous regulations and continued by this instrument; and
- (b) includes a reference to things done by the States and Territories for the purposes of that Scheme.

**serious breach** has the meaning given by section 25.

**special condition**, of an allocation, means a condition that:

- (a) is imposed on the allocation under any of the following provisions:
  - (i) paragraph 13(2)(b) of the previous regulations;
  - (ii) paragraph 19(1)(c), 20(4)(c), 21(4)(c), 22(3)(c), 23(6)(c) or 32(8)(c) of this instrument; and
- (b) is still in force, subject to any variations under Division 3 of Part 2.

Note: The condition will cease to be in force if it is removed under Division 3 of Part 2.

**start day** has the meaning given by paragraph 41(1)(b).

**statement of compliance** means a statement of compliance under Part 5.

**State or Territory contribution** means a contribution (or its monetary equivalent) made by a State or Territory in relation to the Scheme.

**tax offset certificate** means a certificate issued by the Secretary for the purposes of Division 380 of the *Income Tax Assessment Act 1997*.

**tenants** has the meaning given by paragraph 41(1)(a).

**transfer request** has the meaning given by subsection 29(1).

**unfair arrangement**, for a rental dwelling, means an arrangement that:

- (a) relates to the dwelling; and
- (b) includes a term that:
  - (i) results in a significant imbalance in the rights and obligations of the parties to the arrangement; and
  - (ii) is not reasonably necessary to protect the legitimate interests of a person other than an investor; and
  - (iii) if applied, or relied upon, would cause detriment (whether financial or otherwise) to an investor.

***vacant***: a rental dwelling covered by an allocation is ***vacant*** if the dwelling is not occupied for any reason, including a reason beyond the control of the approved participant.

**Part 2** Allocations

**Division 1** No new allocations

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**Part 2—Allocations**

**Division 1—No new allocations**

**6 No new allocations**

- (1) No further allocations are available under the Scheme on or after 1 April 2020.
- (2) For the purposes of subsection 7(1) of the Act, an allocation:
  - (a) made under the previous regulations; and
  - (b) in force immediately before 1 April 2020;has effect for the purposes of this instrument (and may be dealt with) as if it had been made under this instrument.

## **Division 2—General conditions**

### **7 General conditions**

This Division sets out the general conditions of an allocation for a rental dwelling.

### **8 Initial status of dwelling**

No incentive is available unless:

- (a) one of the following applies:
  - (i) the dwelling was not lived in as a residence before the incentive period for the allocation begins;
  - (ii) the dwelling was unfit for living in and after being made fit for living in was not lived in as a residence before the incentive period for the allocation begins; and
- (b) before the dwelling is first rented under the Scheme, there was a certificate of occupancy for the dwelling.

### **9 Initial vacancy**

No incentive is available for any period before the dwelling is first rented under the Scheme.

### **10 Other vacancies**

#### *Vacancies exceeding 26 weeks*

- (1) No incentive is available for an NRAS year (the **current NRAS year**) if the dwelling is vacant for:
  - (a) a period of more than 26 weeks during the current NRAS year, whether or not the period is continuous; or
  - (b) a continuous period of more than 26 weeks that begins no more than 26 weeks before the end of the previous NRAS year.
- (2) However, subsection (1) does not apply in relation to a dwelling to which an allocation has been transferred, during the current NRAS year, under section 20.

#### *Vacancies of at least 13 weeks but less than 26 weeks*

- (3) If:
  - (a) the dwelling is vacant for:
    - (i) a period of 13 weeks or more during an NRAS year, whether or not the period is continuous; or
    - (ii) a continuous period of more than 13 weeks that begins no more than 13 weeks before the end of the previous NRAS year; and
  - (b) the period is less than those described in subsection (1);

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no incentive is available for so much of the period as exceeds 13 weeks.

Note: Subsection (1) will generally cover a period of vacancy that exceeds 26 weeks.

### *Application of this section*

- (4) This section applies whether or not a vacancy is beyond the control of the approved participant.
- (5) However, this section does not apply in relation to any vacancy before the dwelling is first rented under the Scheme.

## 11 Eligible tenants

No incentive is available for any period during which the dwelling is rented to a tenant who is not an eligible tenant.

Note: For *eligible tenant*, see section 41.

## 12 Maximum rent

- (1) No incentive is available for any period during which the rent charged for the dwelling is not at least 20% less than the market value rent for the dwelling.  
Note: For *market value rent*, see section 36.
- (2) However, the Secretary may in writing determine that subsection (1) does not apply in relation to a particular charge of rent if the Secretary is satisfied that:
  - (a) the charge was not at least 20% less than the market value rent for the dwelling because of inadvertence or error on the part of one or more of the following:
    - (i) the approved participant;
    - (ii) an investor;
    - (iii) an agent of the approved participant or an investor; and
  - (b) the tenant concerned has been compensated for being overcharged; and
  - (c) reasonable processes are in place to ensure that the tenant is charged rent that is at least 20% less than the market value rent for the dwelling; and
  - (d) reasonable steps have been taken to ensure that inadvertence or error of the kind mentioned in paragraph (a) will not happen in relation to future charges of rent for the dwelling.

Note: A decision not to make a determination is reviewable by the Administrative Review Tribunal (see section 71).

- (3) The approved participant may apply for a determination under subsection (2). The application must be in the approved form.

### 13 Documents and information

#### *Statements of compliance*

- (1) No incentive is available for a period unless the approved participant has given the Secretary a statement of compliance for the dwelling for the period.

Note: For statements of compliance, see Part 5.

#### *Outstanding documents and information*

- (2) No incentive is available for any period during which a document or information relating to the allocation, and required for the purposes of the Scheme, is outstanding.
- (3) A document or information is **outstanding** if:
- (a) the period for giving the document or information has ended; and
  - (b) the document or information has not been given to the Secretary in the approved form (if any).
- (4) Subsection (2) has effect subject to any determination in force under:
- (a) subsection (9); or
  - (b) subsection 39(3) (extension of time for giving valuations); or
  - (c) subsection 42(6) (extension of time for giving statements of compliance).

#### *False or misleading documents and information*

- (5) No incentive is available for any period during which a false or misleading document or information relating to the allocation remains uncorrected if the document or information:
- (a) has been given to the Secretary; and
  - (b) is required for the purposes of the Scheme.

This subsection has effect subject to any determination in force under subsection (9).

- (6) A document or information **remains uncorrected** if the approved participant has not:
- (a) notified the Secretary in writing that the document or information is false or misleading; or
  - (b) corrected the document or information as required by the Secretary.

#### *Examples of documents and information relating to the allocation*

- (7) Documents and information relating to the allocation include the following:
- (a) a statement of compliance;
  - (b) a valuation;
  - (c) a response to a request from the Secretary for information or documents;
  - (d) a tenant demographic assessment or tenant consent form;
  - (e) a lease agreement;

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- (f) a certificate of occupancy;
- (g) a building plan or floor plan.

### *Record keeping*

- (8) No incentive is available for any period during which the approved participant fails to comply with section 49 (record keeping). This subsection has effect subject to any determination in force under subsection (9).

### *Exception if the approved participant has a reasonable excuse*

- (9) The Secretary may, in writing, determine that:
- (a) subsection (2) does not apply to a requirement to give a document or information relating to an allocation; or
  - (b) subsection (5) does not apply to a requirement to correct a document or information relating to an allocation; or
  - (c) subsection (8) does not apply to a requirement to maintain information, a document or a record in accordance with section 49;
- if the Secretary is satisfied that the approved participant has a reasonable excuse for not complying with the requirement.

Note: A decision not to make a determination is reviewable by the Administrative Review Tribunal (see section 71).

- (10) The approved participant may apply for a determination under subsection (9). The application must be in the approved form.

## **14 Compliance with relevant laws**

- (1) No incentive is available for any period during which the dwelling fails to comply with the landlord-tenant, building, or health and safety laws of the State or Territory and local government area in which the dwelling is located.
- (2) No incentive is available for any period during which the approved participant, an associated party or the manager of the dwelling fails to comply, in relation to the dwelling, with the landlord-tenant, building, or health and safety laws of the State or Territory and local government area in which the dwelling is located.

## **15 Compliance with special conditions**

- (1) No incentive is available for any period during which a special condition of the allocation is not met. This subsection has effect subject to any determination in force under subsection (2).
- (2) The Secretary may, in writing, determine that subsection (1) does not apply to meeting a special condition of an allocation if the Secretary is satisfied that the approved participant has a reasonable excuse for not meeting the special condition.

Note: A decision not to make a determination is reviewable by the Administrative Review Tribunal (see section 71).



- (3) The approved participant may apply for a determination under subsection (2). The application must be in the approved form.

### **16 If allocation is revoked**

If the allocation is revoked during an NRAS year, no incentive is available for the dwelling for:

- (a) so much of the NRAS year as is after the day the revocation takes effect;  
and
- (b) any subsequent NRAS year.

Note: An allocation can be revoked under section 23 or 32.

### **17 Conditions of the reservation of existing provisional allocations**

- (1) For a provisional allocation, no incentive is available for any period for which a condition of the reservation of the provisional allocation is not met.
- (2) For the purposes of subsection (1), disregard the condition relating to the agreed rental availability date (within the meaning of the previous regulations).

## **Division 3—Varying, removing or imposing special conditions**

### **18 Varying or removing special conditions etc. by agreement**

- (1) The Secretary may, at any time with the agreement of the approved participant:
  - (a) vary or remove a special condition of an allocation; or
  - (b) vary or remove a condition of the reservation of a provisional allocation for a dwelling that relates to the size of the dwelling.
- (2) The approved participant may apply to the Secretary for a variation or removal under subsection (1). The application must be made in the approved form.

### **19 Secretary may vary, remove or impose special conditions**

- (1) The Secretary may, at any time, decide to do one or more of the following if the Secretary is satisfied that to do so would assist in meeting the object of the Act:
  - (a) vary or remove a special condition of an allocation for a rental dwelling;
  - (b) not to vary, or not to remove, a special condition of an allocation for a rental dwelling;
  - (c) impose an additional special condition on an allocation for a rental dwelling.

Note: A decision under this subsection is reviewable by the Administrative Review Tribunal (see section 71).

- (2) Before the Secretary varies or imposes a special condition under this section, the Secretary must:
  - (a) notify the approved participant of the proposed variation or imposition; and
  - (b) invite the approved participant to make a written submission to the Secretary about the proposed variation or imposition no later than 14 days after the day the Secretary gives the notice; and
  - (c) take into account any submission so provided.
- (3) If the Secretary gives notice under subsection (2) to an approved participant of a proposed variation or imposition, the Secretary must, after having decided whether or not to make the variation or imposition, give written notice to the approved participant of that decision.
- (4) This section has effect in addition to, and is not limited by, any other provision of this instrument under which a condition may be imposed on an allocation.

## **Division 4—Transfer or revocation not because of breach**

### **20 Transfer to another rental dwelling**

- (1) The Secretary may, on the application of the approved participant, transfer an allocation from one rental dwelling (the *original rental dwelling*) to another rental dwelling (the *new rental dwelling*), so long as the new rental dwelling was not lived in as a residence before the incentive period for the allocation began.
- (2) The application must be in the approved form.
- (3) In deciding whether to transfer the allocation, the Secretary must have regard to the following:
  - (a) the views of the State or Territory in which the new rental dwelling is located, including in relation to the following:
    - (i) whether the new rental dwelling is in an area of need (that is, an area in which more affordable housing is required or would be of particular benefit);
    - (ii) the characteristics of the new rental dwelling, including its size and style;
  - (b) whether any investors in either rental dwelling have agreed to the transfer;
  - (c) whether the approved participant has complied with the approved participant's obligations to investors.
- (4) If the Secretary transfers the allocation:
  - (a) the Secretary must give the approved participant written notice of the transfer; and
  - (b) the notice must state the day on which the transfer has effect, which must be the day the approved participant applied for the transfer or a later day; and
  - (c) the Secretary may impose additional special conditions on the allocation, so long as the approved participant agrees to the imposition of those conditions before the allocation is transferred.

### **21 Transfer to another person on application by approved participant**

- (1) The Secretary may, on the application of the approved participant, transfer the allocation for a rental dwelling to another person.
- (2) The application must be in the approved form.
- (3) The Secretary must not transfer the allocation unless the Secretary is satisfied that the other person:
  - (a) is not a disqualified person; and
  - (b) has the capacity to properly manage the allocation; and
  - (c) is a suitable person to hold the allocation; and
  - (c) has agreed, in writing, to the transfer.

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- (4) If the Secretary transfers the allocation:
- (a) the Secretary must give written notice of the transfer to:
    - (i) the original approved participant; and
    - (ii) the gaining approved participant; and
  - (b) the notice must state the day on which the transfer has effect, which must be the day the original approved participant applied for the transfer or a later day; and
  - (c) the Secretary may impose additional special conditions on the allocation, so long as the gaining approved participant agrees to the imposition of those conditions before the allocation is transferred; and
  - (d) the Secretary may give to the gaining approved participant an incentive that otherwise would have been given to the original approved participant, so long as the Secretary does so:
    - (i) at the request of the original approved participant or the gaining approved participant; and
    - (ii) with the agreement of the original approved participant and the gaining approved participant.

Note 1: Paragraph (b) means the gaining approved participant, and not the original approved participant, will be entitled to the portion of the incentive that relates to the part of the NRAS year that includes, and is after, the day the transfer takes effect (see subsections 50(1) and 53(2)).

Note 2: Paragraph (d) relates to the portion of the incentive that relates to the part of the NRAS year that is before the day the transfer takes effect.

- (5) If the Secretary acts under paragraph (4)(d) to give an incentive (the ***agreed incentive***) to the gaining approved participant:
- (a) section 63 (about passing on incentives) applies to the gaining approved participant for the agreed incentive and an investor; and
  - (b) the original approved participant:
    - (i) despite subsection 50(1), is not entitled to receive the agreed incentive; and
    - (ii) despite an arrangement to the contrary, is not required to pass on the agreed incentive to the investor.

## 22 Transfer of provisional allocation on Secretary's own initiative

- (1) The Secretary may, on the Secretary's own initiative, transfer a provisional allocation for a rental dwelling to another person.

Note: A decision under this subsection is reviewable by the Administrative Review Tribunal (see section 71).

- (2) However, the Secretary must not transfer the allocation unless the Secretary:
- (a) is satisfied that the dwelling is not actively rented under the Scheme; and
  - (b) has notified the approved participant that holds the allocation of the Secretary's intention to transfer the allocation under this section; and

- (c) has invited the approved participant that holds the allocation to give the Secretary a written submission in relation to the proposed transfer within 28 days; and
  - (d) has taken into account any such submission given by the approved participant that holds the allocation; and
  - (e) is satisfied that the other person:
    - (i) is not a disqualified person; and
    - (ii) has the capacity to properly manage the allocation; and
    - (iii) is a suitable approved participant to hold the allocation; and
    - (iv) has agreed, in writing, to the transfer.
- (3) If the Secretary transfers the allocation:
- (a) the Secretary must give written notice of the transfer to:
    - (i) the original approved participant; and
    - (ii) the gaining approved participant; and
  - (b) the notice must state the day on which the transfer has effect, which must be the day the notice is prepared or a later day; and
  - (c) the Secretary may impose additional special conditions on the allocation, so long as the gaining approved participant agrees to the imposition of those conditions before the allocation is transferred.

### **23 Revocation on application by approved participant etc.**

- (1) This section applies if the approved participant, for a rental dwelling covered by an allocation, applies in the approved form for the Secretary to revoke the allocation.

#### *Revoking the allocation*

- (2) The Secretary may revoke the allocation.
- (3) If the Secretary revokes the allocation:
- (a) the Secretary must give the approved participant written notice of the revocation; and
  - (b) the notice must state the day on which the revocation has effect, which must be the day the notice is prepared or a later day.

Note: No incentive is available for the part of the NRAS year that is after the day the revocation takes effect (see section 16 and subsection 51(2)).

#### *Transferring the allocation instead of revoking it*

- (4) Instead of revoking the allocation, the Secretary may transfer the allocation to another person.
- (5) However, the Secretary must not transfer the allocation unless the Secretary is satisfied that the other person:
- (a) is not a disqualified person; and
  - (b) has the capacity to properly manage the allocation; and

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- (c) is a suitable approved participant to hold the allocation; and
  - (d) has agreed, in writing, to the transfer.
- (6) If the Secretary transfers the allocation:
- (a) the Secretary must give written notice of the transfer to:
    - (i) the original approved participant; and
    - (ii) the gaining approved participant; and
  - (b) the notice must state the day on which the transfer has effect, which must be the day the notice is prepared or a later day; and
  - (c) the Secretary may impose additional special conditions on the allocation, so long as the gaining approved participant agrees to the imposition of those conditions before the allocation is transferred.

## **Division 5—Transfer or revocation because of breach**

### **Subdivision A—Determinations of breaches**

#### **24 Individual breach**

- (1) The Secretary may, in writing, determine that the approved participant for a rental dwelling covered by an allocation has committed an *individual breach* if the Secretary is satisfied that the approved participant:
  - (a) is the subject of an insolvency event; or
  - (b) has breached the approved participants code of conduct in relation to the dwelling; or
  - (c) has committed a compliance breach in relation to the dwelling.

Note: A decision under this subsection is reviewable by the Administrative Review Tribunal (see section 71).

- (2) The approved participant breaches the approved participants code of conduct if the approved participant fails to comply with the code.
- (3) The approved participant commits a *compliance breach* if:
  - (a) the approved participant fails to comply with the Act or this instrument (other than the approved participants code of conduct); or
  - (b) the approved participant contravenes a condition of the allocation.

#### **25 Serious breach**

The Secretary may, in writing, determine that the approved participant for a rental dwelling covered by an allocation has committed a *serious breach* if the Secretary is satisfied that:

- (a) the approved participant has breached the approved participants code of conduct in relation to 3 or more investors within a period of 6 months, resulting in material financial detriment to those investors; or
- (b) has committed a compliance breach that involves one or more of the following:
  - (i) providing false or misleading information to the Secretary or the Department in relation to the Scheme;
  - (ii) failing to comply with the law of the Commonwealth or a State or Territory in relation to the dwelling or any other aspect of the Scheme;
  - (iii) claiming a tax offset that the approved participant is not entitled to claim;
  - (iv) passing on a tax offset to a person who is not entitled to claim the tax offset; or
- (c) all of the following apply:
  - (i) the approved participant has breached the approved participants code of conduct or committed a compliance breach;

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- (ii) the Secretary has, in writing, required the approved participant to take remedial action in relation to the breach;
- (iii) the remedial action is not taken within 28 days after the requirement is given to the approved participant; or
- (d) all of the following apply:
  - (i) the approved participant has breached the approved participants code of conduct or committed a compliance breach;
  - (ii) the Secretary has given the approved participant a written warning in relation to the breach;
  - (iii) within 12 months after being given the warning, the approved participant commits a similar breach (whether in relation to the same or another allocation).

Note: A decision under this section is reviewable by the Administrative Review Tribunal (see section 71).

## 26 Disqualifying breach

The Secretary may, in writing, determine that an approved participant has committed a **disqualifying breach** if:

- (a) the Secretary is satisfied that the approved participant is the subject of an insolvency event; or
- (b) the Secretary:
  - (i) has determined under section 25 that the approved participant has committed a serious breach; and
  - (ii) is satisfied that, within 12 months after making that determination, the Secretary will likely be able to determine under section 25 that the approved participant has committed another serious breach; or
- (c) the approved participant, or a director of the approved participant, has been convicted of an offence against a law of the Commonwealth, or of a State or Territory, involving fraud, dishonesty, bribery or corruption.

Note 1: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

Note 2: Paragraph (c) covers the approved participant, and the individuals who are currently its directors, regardless of when the conviction happened.

Note 3: A decision under this section is reviewable by the Administrative Review Tribunal (see section 71).

## 27 Approved participants code of conduct

- (1) The **approved participants code of conduct** is set out in subsection (2).
- (2) The approved participant for a rental dwelling:
  - (a) must comply with legal obligations relating to investors in a timely manner; and



- (b) must comply with the Scheme, and with any other law of the Commonwealth or of a State or Territory that relates to dealings with investors and tenants; and
- (c) must lodge an annual Statement of Compliance in relation to the dwelling; and
- (d) must respond to a communication from an investor within 30 days, unless the approved participant has a reasonable excuse; and
- (e) must have an internal or external dispute resolution mechanism for use by investors; and
- (f) must not enforce, seek to enforce, or threaten to enforce, an unfair arrangement; and
- (g) must not make a misrepresentation to an investor; and
- (h) must not engage in misleading or deceptive conduct in relation to an investor; and
- (i) must not threaten or coerce an investor to take an action the investor is not required to take under an arrangement; and
- (j) must not prevent an investor from entering into an arrangement with a suitably qualified and experienced person in relation to the dwelling; and
- (k) must not threaten to take action that would result in an investor not receiving incentive to which the investor is entitled under law; and
- (l) must not require an investor to enter into an arrangement with another person in relation to the dwelling, unless the arrangement relates to a property management service provider and the approved participant is able to ensure that the provider:
  - (i) complies with the arrangement between the provider and the investor; and
  - (ii) complies with legal obligations relating to the investor in a timely manner; and
  - (iii) complies with the laws of the Commonwealth and the States and Territories in relation to dealings with investors and tenants; and
  - (iv) does not enforce, seek to enforce, or threaten to enforce, an unfair arrangement with an investor; and
  - (v) does not make a misrepresentation to an investor; and
  - (vi) does not engage in misleading or deceptive conduct in relation to an investor; and
  - (vii) does not threaten or coerce an investor to take action the investor is not required to take under an arrangement; and
- (m) if the approved participant requires the investor to enter into an arrangement as mentioned in paragraph (l)—must ensure that the property management service provider acts in accordance with subparagraphs (l)(i) to (vii).

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## Subdivision B—Procedures for making determinations of breaches

### 28 Secretary may determine breach on own initiative or on request by an investor

The Secretary may determine under Subdivision A that the approved participant for a rental dwelling covered by an allocation has committed an individual breach, a serious breach or a disqualifying breach:

- (a) on the Secretary's own initiative; or
- (b) on a transfer request (by an investor for the dwelling) for the allocation to be transferred because of that breach.

### 29 Transfer requests

*Investor may request allocations to be transferred because of breach*

- (1) An investor for a dwelling covered by an allocation may make a written request (a **transfer request**) for the allocation to be transferred because the approved participant has committed, or allegedly committed, any of the following:
  - (a) an individual breach;
  - (b) a serious breach;
  - (c) a disqualifying breach.

The transfer request may be made before or after any determination of the breach is made under Subdivision A.

*Requirements for certain transfer requests*

- (2) A transfer request:
  - (a) must:
    - (i) be in a form approved by the Secretary; and
    - (ii) include details of the breach alleged by the investor; but
  - (b) does not need to specify whether the alleged breach is an individual breach, a serious breach or a disqualifying breach.
- (3) However, an investor must not make a transfer request unless:
  - (a) the investor has given the approved participant written notice of the alleged breach; and
  - (b) 90 days have passed since the notice was given; and
  - (c) the investor is satisfied that the approved participant has not taken appropriate action in relation to the alleged breach.
- (4) Paragraph (2)(a) and subsection (3) do not apply if:
  - (a) the approved participant is allegedly the subject of an insolvency event; or
  - (b) a determination of the breach has already been made under Subdivision A.

*Withdrawing transfer requests*

- (5) An investor may withdraw a transfer request by giving written notice to the Secretary.

Note: For this to be effective, this notice will need to be given before the Secretary transfers the allocation under section 32 in response to the transfer request.

### **30 Requirements for determinations of breach**

*Secretary must give notice of proposed determination*

- (1) Before determining under Subdivision A that an approved participant committed an individual breach, a serious breach or a disqualifying breach, the Secretary must give written notice of the proposed determination to:
- (a) the approved participant; and
  - (b) if the Secretary proposes to make the determination because an investor made a transfer request—the investor.
- (2) The notice must:
- (a) state that the Secretary proposes to determine that the approved participant has committed the breach; and
  - (b) invite the approved participant or investor, as the case requires, to make a written submission to the Secretary about the proposed determination no later than 14 days after the day the Secretary gives the notice.

*Secretary must have regard to certain matters*

- (3) In deciding whether to make the determination, the Secretary must have regard to:
- (a) any submission made in accordance with paragraph (2)(b); and
  - (b) the interests of investors, including the need to ensure that investors maintain confidence in the Scheme.
- (4) Subsection (3) does not limit the matters to which the Secretary may have regard in deciding whether to make the determination.

*Secretary must give notice of decision*

- (5) If the Secretary gives notice under subsection (1) to an approved participant or investor of a proposed determination, the Secretary must, after having decided whether or not to make the determination, give written notice to the approved participant or investor of that decision.

### **31 Publishing notice of certain breaches**

If the Secretary determines under Subdivision A that the approved participant has committed a serious breach or a disqualifying breach, the Secretary may publish notice of the breach on the Department's website.

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Note: An investor for a dwelling for which an allocation is held by the approved participant may request the Secretary to transfer the allocation (see section 29).

### Subdivision C—Transfer or revocation because of breach

#### 32 Transfer or revocation because of breach

- (1) This section applies if:
  - (a) the Secretary has determined under Subdivision A that the approved participant for a rental dwelling covered by an allocation has committed an individual breach, a serious breach or a disqualifying breach (whether the breach related to the dwelling or not); and
  - (b) either:
    - (i) the Administrative Review Tribunal has confirmed the Secretary's decision to make the determination; or
    - (ii) the period for making an application to the Administrative Review Tribunal for review of the Secretary's decision to make the determination has expired.

##### *Individual breach—investor requested transfer*

- (2) The Secretary must transfer the allocation covering the dwelling to another person if:
  - (a) the determination of the breach was that the approved participant committed an individual breach; and
  - (b) the individual breach:
    - (i) related to the dwelling; or
    - (ii) arose because the Secretary was satisfied that the approved participant was the subject of an insolvency event; and
  - (c) an investor has requested the transfer, and that request has not been withdrawn.

##### *Individual breach—determined on the Secretary's own initiative etc.*

- (3) The Secretary may transfer the allocation covering the dwelling to another person if:
  - (a) the determination of the breach was that the approved participant committed an individual breach; and
  - (b) the individual breach:
    - (i) related to the dwelling; or
    - (ii) arose because the Secretary was satisfied that the approved participant was the subject of an insolvency event; and
  - (c) the determination was made on the Secretary's own initiative (see paragraph 28(a)), or on a transfer request that was withdrawn.

*Serious breach—investor requested transfer*

- (4) The Secretary must transfer the allocation covering the dwelling to another person if:
- (a) the determination of the breach was that the approved participant committed a serious breach (whether the breach related to the dwelling or not); and
  - (b) an investor has requested the transfer, and that request has not been withdrawn.

*Serious breach—determined on the Secretary’s own initiative etc.*

- (5) The Secretary may transfer the allocation covering the dwelling to another person, or revoke the allocation, if:
- (a) the determination of the breach was that the approved participant committed a serious breach (whether the breach related to the dwelling or not); and
  - (b) the determination was made on the Secretary’s own initiative (see paragraph 28(a)), or on a transfer request that was withdrawn.

*Disqualifying breach*

- (6) If this section starts to apply (see subsection (1)) to the approved participant in relation to a determination of a disqualifying breach:
- (a) the Secretary must, during the next 6 months, endeavour to transfer to other persons all of the approved participant’s allocations for rental dwellings; and
  - (b) at the end of those 6 months, any of those allocations that were not so transferred is revoked by force of this subsection.

*Requirements for transfer*

- (7) The Secretary must not transfer an allocation to a person under this section unless the Secretary is satisfied that the person:
- (a) is not a disqualified person; and
  - (b) has the capacity to properly manage the allocation; and
  - (c) is a suitable person to hold the allocation; and
  - (d) has agreed, in writing, to the transfer.

*Notice of transfer and imposition of conditions*

- (8) If the Secretary transfers an allocation under this section:
- (a) the Secretary must give written notice of the transfer to:
    - (i) the original approved participant; and
    - (ii) the gaining approved participant; and
    - (iii) each investor for a rental dwelling covered by the allocation about whom the Secretary has been notified under section 48; and

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- (b) the notice must state the day on which the transfer has effect, which must be the earliest of the following days or a later day:
  - (i) the day the notice is prepared;
  - (ii) if an investor has requested the transfer—the day the request was made;
  - (iii) if an application for an identical transfer was made under section 21 before the breach referred to in paragraph (1)(a) of this section happens—the day that application was made; and
- (c) the Secretary may impose additional special conditions on the allocation, so long as the gaining approved participant agrees to the imposition of those conditions before the allocation is transferred.

Note: Paragraph (b) means the gaining approved participant, and not the original approved participant, will be entitled to the portion of the incentive that relates to the part of the NRAS year that includes, and is after, the day the transfer takes effect (see subsections 50(1) and 53(2)).

*Notice of revocation*

- (9) If an allocation is revoked under or by this section:
  - (a) the Secretary must give the approved participant written notice of the revocation; and
  - (b) the notice must state the day on which the revocation has effect, which must be the day the notice is prepared or a later day.

Note: No incentive is available for the part of the NRAS year that is after the day the revocation takes effect (see section 16 and subsection 51(2)).

## **Division 6—General rules for transfers**

### **33 Legal arrangements do not prevent transfers**

An arrangement has no effect to the extent that the arrangement prohibits or prevents an investor from, or penalises an investor for:

- (a) making a transfer request; or
- (b) assisting with, or supporting in any way, a transfer request.

### **34 Obligations of approved participants when allocations are transferred**

- (1) This section applies if an allocation is transferred from one approved participant to another person.
- (2) The original approved participant must give to the gaining approved participant any information that is:
  - (a) requested by the Secretary; and
  - (b) relevant to the administration of the Scheme.
- (3) The information must be given within 21 days after the request is made.
- (4) Within 49 days after the request is made, the original approved participant must, in writing, advise the Secretary whether the original approved participant has complied with subsections (2) and (3).

### **35 Statement of compliance if allocation is transferred**

If the Secretary transfers an allocation for a rental dwelling from an approved participant to another person during an NRAS year, the Secretary may require the other person to lodge a statement of compliance for the dwelling that includes statements and details for either or both of the following:

- (a) the NRAS year;
- (b) the previous NRAS year.

Note: For access to information held by an original approved participant, see section 34.

## Part 3—Market value rent

### 36 Meaning of *market value rent*

- (1) The *market value rent* for a rental dwelling covered by an allocation is:
  - (a) for:
    - (i) the initial rental period for the dwelling; or
    - (ii) the fifth or eighth incentive year for the allocation (so long as that incentive year is after that initial rental period);the market value rent assessed by a valuer under section 37; or
  - (b) for any other incentive year (the *indexed year*) for the allocation that is after that initial rental period—the market value rent for the dwelling for:
    - (i) the previous incentive year for the allocation; or
    - (ii) if that initial rental period ends just before the indexed year—that initial rental period;indexed in accordance with the NRAS market index for the dwelling for the NRAS year in which the indexed year begins, and rounded to the next whole dollar.
- (2) An *incentive year*, for an allocation, is a 12-month period that:
  - (a) is in the incentive period for the allocation; and
  - (b) begins on the first day of that incentive period, or on a 12-month anniversary of that first day.
- (3) The *initial rental period*, for a rental dwelling covered by an allocation, is the period that:
  - (a) begins on the day the dwelling is first available for rent under the Scheme; and
  - (b) ends at the end of the incentive year for the allocation that includes that day.

### 37 Valuations

- (1) The market value rent for a period or incentive year referred to in paragraph 36(1)(a), is the market rent for the dwelling as assessed by a valuer for a day during the 13 weeks immediately before the beginning of the period or year.
- (2) The valuation must be in the approved form and prepared by a valuer who:
  - (a) if the State or Territory in which the dwelling is located requires valuers to be registered—is registered in that State or Territory; and
  - (b) is a member, and at least an Associate Member, of the Australian Property Institute or the Australian Valuers Institute; and
  - (c) has no commercial relationship with, or interest in, a person who is:
    - (i) an investor in relation to the dwelling; or



- (ii) the manager of the dwelling; or
  - (iii) a recipient of a Commonwealth, State or Territory government benefit in relation to the dwelling; and
  - (d) has no interest in the approved participant in relation to the dwelling; and
  - (e) if the valuer has a commercial relationship with the approved participant in relation to the dwelling—is dealing with the approved participant at arm’s length.
- (3) The valuer:
- (a) must assess the market rent of the dwelling on the basis of the condition in which the dwelling is to be rented, including:
    - (i) whether the dwelling will be rented furnished or unfurnished; and
    - (ii) whether any car parking spaces are included with the dwelling; but
  - (b) must not take into account:
    - (i) any optional car spaces; or
    - (ii) any amenities, utilities, inclusions, allowances or services (however described) provided in connection with the dwelling.
- (4) In preparing the valuation for the initial rental period, the valuer must attend and inspect the dwelling.

Note: Later valuations may be “desktop” valuations.

*Overlapping valuation periods*

- (5) If the fifth or eighth incentive year for the allocation begins within 13 weeks after the beginning of the initial rental period for the dwelling, the market value rent for the initial rental period is also the market value rent for that fifth or eighth incentive year.

### **38 Giving valuations**

- (1) A valuation of market value rent for an initial rental period or the fifth or eighth year of an incentive period must be given to the Secretary before the beginning of that period or year.
- (2) The Secretary may require the approved participant:
- (a) to give the Secretary further evidence in relation to matters in the valuation; and
  - (b) to do so within the period and in the manner specified by the Secretary.
- (3) An approved participant must not submit further valuations for a period or year for a dwelling if the Secretary has:
- (a) accepted a valuation for the period or year for the dwelling; or
  - (b) accepted a valuation for the period or year for the dwelling subject to an error being corrected.

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### 39 Secretary may extend time for giving valuations

- (1) The Secretary may, on the application of the approved participant, agree to a valuation being given to the Secretary after the time specified in subsection 38(1) if:
  - (a) the Secretary is satisfied that the approved participant has a reasonable excuse for not being able to give the valuation to the Secretary before that time; or
  - (b) both of the following apply:
    - (i) the allocation concerned has been transferred to another dwelling or to a gaining approved participant;
    - (ii) the Secretary is satisfied that, because of the transfer, it is reasonable to extend the period for giving the valuation.
- (2) The application must be in the approved form.
- (3) If the Secretary agrees to the valuation being given to the Secretary after the time specified in subsection 38(1), the Secretary may, by writing given to the approved participant, determine that subsection 13(2) (outstanding documents or information) does not apply in relation to the valuation for the period specified in the determination.
- (4) However, the Secretary must not make a determination under subsection 12(2) in relation to a particular charge of rent for the dwelling if the charge was more than 20% of the market value rent for the dwelling because a valuation was not available by a particular time.

### 40 Valuations—other matters

#### *Secretary may require valuation from a different valuer*

- (1) If the Secretary reasonably believes that a valuation (the **first valuation**) is not accurate, the Secretary may require the approved participant:
  - (a) to give the Secretary a valuation prepared by a different valuer in replacement of the first valuation; and
  - (b) to do so within the period specified by the Secretary.
- (2) Subsection (1) applies whether or not the Secretary accepted the first valuation.

#### *Valuations to be obtained at approved participant's expense*

- (3) A valuation under this Part of a rental dwelling covered by an allocation is to be obtained at the approved participant's expense.

## Part 4—Eligible tenants

### 41 Eligible tenants

- (1) In this instrument:
- (a) a reference to the *tenants* of a rental dwelling is a reference to the particular person or persons who are tenants of the dwelling; and
  - (b) the day on which those tenants become tenants of the dwelling is their *start day*; and
  - (c) the 12-month period beginning on their start day or an anniversary of their start day is an *eligibility year* for those tenants; and
  - (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 dependent on an eligible tenant; and
  - (e) *child* means a person under 18 years of age who is financially dependent on an eligible tenant.

- (2) The tenants of a rental dwelling covered by an allocation become *eligible tenants* on their start day if their combined gross income for the 12 months ending on the day before the start day does not exceed the income limit for their household as set out in this section.

Note: For working out the income limit, see subsections (5) to (8).

- (3) Eligible tenants cease to be *eligible tenants* if:
- (a) they cease to be tenants of a rental dwelling covered by an allocation; or
  - (b) their combined gross income exceeds the income limit for their household by 25% or more in 2 consecutive eligibility years; or
  - (c) a person (other than an eligible tenant) joins their household and the person's income for the previous 12 months exceeds the income limit for a first adult for the year in which the person joins the household.

Note: See subparagraph (5)(a)(i) for the income limit for a first adult for a year beginning in the NRAS year beginning on 1 May 2019.

- (4) For the purposes of paragraph (3)(a), a person does not cease to be an eligible tenant only because of a move if the move:
- (a) is from one rental dwelling covered by an allocation to another rental dwelling covered by an allocation; and
  - (b) happens because of unexpected or exceptional circumstances.
- (5) The income limit for a household for a 12-month period beginning in the NRAS year beginning on 1 May 2019 is:
- (a) if the household does not include a sole parent:
    - (i) \$51,398 for the first adult; and

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- (ii) \$19,663 for each additional adult; and
  - (iii) \$17,050 for each child; and
- (b) if the household includes a sole parent:
  - (i) \$54,060 for the first sole parent; and
  - (ii) \$19,663 for each additional adult; and
  - (iii) \$17,050 for each child.
- (6) For the purposes of this section a rental dwelling may only include one household.
- (7) The income limits mentioned in subsection (5), for a household for each subsequent NRAS year, are the amounts for the previous NRAS year indexed in accordance with the NRAS tenant income index for that subsequent NRAS year, rounded to the next whole dollar.
- (8) The Secretary may, by legislative instrument, change from time to time, any or all of the income limits mentioned in subsection (5).

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## Part 5—Demonstrating compliance

### 42 Statement of compliance required for each NRAS year

- (1) The approved participant for a rental dwelling covered by an allocation must give the Secretary a statement of compliance for the dwelling for each NRAS year.
- (2) A statement of compliance must:
  - (a) be in the approved form; and
  - (b) include the information required by the form for the purposes of the Scheme.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

- (3) The statement of compliance must be given to the Secretary before:
  - (a) 30 June after the end of the NRAS year; or
  - (b) a later date approved by the Secretary, which must not be later than 30 September after the end of the NRAS year.

Note: No incentive is available for any period during which the approved participant fails to comply with this subsection (see subsections 13(2) to (4)).

- (4) The Secretary may approve a later date:
  - (a) on the Secretary's own initiative, if the Secretary considers it appropriate; or
  - (b) on the application of the approved participant, if:
    - (i) the application is in the approved form; and
    - (ii) the application is made before 30 September after the end of the NRAS year; and
    - (iii) the Secretary is satisfied that the approved participant has a reasonable excuse for not being able to lodge the statement by 30 June.
- (5) The Secretary must give the approved participant notice in writing of a later date approved by the Secretary.
- (6) If the Secretary approves a later date, the Secretary may, by writing given to the approved participant, determine that subsection 13(2) (outstanding documents or information) does not apply in relation to the statement of compliance for the period specified in the determination.

#### *Transferred allocations*

- (7) If, because an allocation for a rental dwelling is transferred, there is more than one approved participant for the dwelling for an NRAS year, each approved participant must give the Secretary a statement of compliance for the period for which the approved participant held the allocation.

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- (8) Subsection (7) has effect subject to section 35 (about transferred allocations).

### 43 Contents of statement of compliance

- (1) The statement of compliance must include the following for the NRAS year:
- (a) a statement that at all times during the year, any tenant or tenants were eligible tenants, or details of any way in which this requirement was not met;
  - (b) details of the rent charged during the year;
  - (c) a statement that each charge of rent for the rental dwelling during the year was at least 20% less than the market value rent for the dwelling, or details of any way in which this requirement was not met;
  - (d) details of any period during the year in which the dwelling was vacant;
  - (e) whether or not there is an investor for the dwelling and, if there is an investor, the contact and other details of the investor required by the approved form;
  - (f) a statement that at all times during the year the approved participant complied with landlord-tenant, 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 such laws were not complied with;
  - (g) a statement that at all times during the year the approved participant complied with consumer protection laws in relation to the dwelling, or details of any way in which such laws were not complied with;
  - (h) a statement that at all times during the year the approved participant complied with the approved participants code of conduct, or details of any way in which this requirement was not met;
  - (i) a statement that all special conditions of the allocation for the dwelling have been complied with during the year, or details of any way in which this requirement was not met;
  - (j) a statement that none of the circumstances covered by the general conditions of the allocation happened during the year, or details of any happenings of those circumstances.
- (2) A statement of compliance may require any other information relevant to the operation of the Scheme.

### 44 Tenant consent form

- (1) The approved participant for a rental dwelling covered by an allocation must give the Secretary a tenant consent form for each tenant of the dwelling.
- (2) The form must:
- (a) be in the approved form; and
  - (b) include the information about the tenant required by the form for the purposes of the Scheme; and
  - (c) be signed by the tenant.

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- (3) The form must be given to the Secretary before the next statement of compliance for the dwelling is given to the Secretary.

Note: No incentive is available for any period during which the approved participant fails to comply with this subsection (see subsections 13(2) to (4)).

#### **45 Lease agreement**

- (1) The approved participant for a rental dwelling covered by an allocation must give the Secretary a copy of each current lease agreement for the dwelling.
- (2) The copy must be given to the Secretary before the next statement of compliance for the dwelling is given to the Secretary.

Note: No incentive is available for any period during which the approved participant fails to comply with this subsection (see subsections 13(2) to (4)).

#### **46 Secretary may request other documents and information**

- (1) An approved participant must give the Secretary any other information or document requested by the Secretary for the purposes of the operation of the Scheme.
- (2) The information or document must be given to the Secretary within the period specified by the Secretary, which must be a reasonable period.

Note: No incentive is available for any period during which the approved participant fails to comply with this subsection (see subsections 13(2) to (4)).

#### **47 Changes to approved participant's details**

- (1) This section applies if an approved participant has notified the Secretary of any of the following details:
- (a) contact details of the approved participant, including the address for service;
  - (b) the address of the approved participant's principal place of business, if different from the address for service;
  - (c) details of any officers of the approved participant;
  - (d) details of any person authorised to act on the approved participant's behalf.

Note: The details may have been notified under subsection 79(1) in April 2020.

- (2) If the details notified to the Secretary change, the approved participant must, within 28 days, notify the Secretary of the change.

Note 1: No incentive is available for any period during which the approved participant fails to comply with this subsection (see subsections 13(2) to (4)).

Note 2: There is a similar obligation if the approved participant ceases to be an endorsed charitable institution (see subsection 55(5)).

- (3) For the purposes of this instrument, the Secretary is taken to have given the approved participant a notice or other document if the Secretary gives the notice or document using the most recent details notified as described in subsections (1) and (2).
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- Note 1: The Secretary can rely on these contact details even where they have changed if the approved participant is yet to notify the Secretary of the change.
- Note 2: A notice could be given using an email address notified as described in subsections (1) and (2).

### 48 Changes relating to investors

- (1) The approved participant for a rental dwelling covered by an allocation must, within 28 days after becoming aware of a person becoming an investor for the dwelling, notify the Secretary of the following details:
- (a) the person's name and contact details;
  - (b) the day on which the person became an investor.

Note: There is a similar transitional requirement in subsection 79(1).

- (2) The approved participant must, within 28 days after becoming aware of any change to details notified under subsection (1), notify the Secretary of the change.

Note: No incentive is available for any period during which the approved participant fails to comply with this section (see subsections 13(2) to (4)).

### 49 Record keeping

- (1) An approved participant must maintain the following for 5 years:
- (a) information or documents required by the Secretary under section 46;
  - (b) the approved participant's records in relation to all of the following that relate to the approved participant:
    - (i) an application under the Scheme;
    - (ii) an allocation;
    - (iii) an incentive given (to the approved participant);
    - (iv) an incentive, or State or Territory contribution, required to be passed on under Part 7;
    - (v) a summary required to be given under section 67;
    - (vi) a notice of end of allocation required to be given under section 70.

Note: No incentive is available for any period during which the approved participant fails to comply with this section (see subsections 13(8) and (9)).

- (2) Records relating to a requirement in subparagraph (1)(b)(iv), (v) or (vi) must be sufficient to show how and when the approved participant satisfied the requirement.



## Part 6—Incentives

### Division 1—Entitlement to incentives

#### 50 Entitlement to incentives

- (1) The approved participant for a rental dwelling covered by an allocation is entitled to receive an incentive for the dwelling for each NRAS year, or part of an NRAS year, within the incentive period for the allocation, unless a determination under subsection (2) or (4) is in force for the allocation.

Note 1: While a determination under subsection (2) or (4) is in force, the entitlement is effectively paused for the entire part of the NRAS year for which the allocation is held by the approved participant.

Note 2: The approved participant's entitlement will cease completely:

- (a) in the event of a redirection arising from a breach (see Division 3); or
- (b) if requested as part of an agreed transfer (see paragraph 21(4)(d)).

*No entitlement if a breach is reasonably believed to have been committed*

- (2) The Secretary may, in writing, determine that subsection (1) does not apply in relation to an allocation if the Secretary reasonably believes that the approved participant has committed an individual breach, a serious breach or a disqualifying breach.
- (3) A determination under subsection (2) ceases to be in force if:
- (a) during the next 180 days, the Secretary fails to give notice under subsection 30(1) of a proposed determination (a **breach determination**) under section 24, 25 or 26 relating to the breach; or
  - (b) such a notice is so given, but the Secretary fails to make the breach determination during the next 120 days; or
  - (c) the breach determination is so made, but the breach determination ceases to be in force.

Note: For paragraph (c), the breach determination could cease to be in force following review by the Administrative Review Tribunal (see paragraph 71(e)).

*No entitlement if incentive may be redirected*

- (4) The Secretary may, in writing, determine that subsection (1) does not apply in relation to an allocation if the Secretary has given notice under section 61 of a proposed redirection of an incentive for a rental dwelling covered by the allocation.
- (5) A determination under subsection (4) ceases to be in force if:
- (a) the Secretary fails to redirect the incentive during the next 120 days; or
  - (b) if the Secretary so redirects the incentive, the redirection ceases to have effect.

## Part 6 Incentives

### Division 1 Entitlement to incentives

#### Section 51

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Note: For paragraph (b), the redirection could cease to have effect if the Secretary's decision to redirect the incentives is set aside by the Administrative Review Tribunal (see paragraph 71(h)).

#### 51 Amount of incentive and reductions by Secretary

- (1) The amount of an incentive for an NRAS year, for a rental dwelling covered by an allocation, is the full amount of incentive for the dwelling for the year reduced (as necessary) by the Secretary in accordance with this section.

Note: This amount of incentive may sometimes be apportioned between 2 or more approved participants (see section 53).

##### *Reducing incentives*

- (2) The Secretary must reduce the full amount of the incentive if the Secretary is satisfied that, for one or more days during the NRAS year:
- (a) the incentive was not available; or
  - (b) circumstances specified in a condition of the allocation have not happened.

Note: Division 2 of Part 2 sets out some of the circumstances when the incentive will not be available.

- (3) The reduced amount of the incentive must be worked out by apportioning the full amount by reference to the number of days in the NRAS year not covered by subsection (2).
- (4) To avoid doubt, one or more reductions made by the Secretary under this section may reduce the amount of the incentive to nil.

##### *Internal review*

- (5) If, under this section, the Secretary makes a decision to reduce the amount of an incentive, the Secretary must give the approved participant for the allocation concerned written notice of the decision.
- (6) The following may apply to the Secretary for review of the decision:
- (a) the approved participant to whom the notice was given;
  - (b) if the allocation is transferred to another person within the period that applies under paragraph (7)(b)—the gaining approved participant.
- (7) The application must be made:
- (a) in the form approved by the Secretary; and
  - (b) within 60 days after notice of the decision is given under subsection (5), or within such further period as the Secretary allows.
- (8) If an application for review of the decision is made in accordance with this section, the Secretary must:
- (a) review the decision; and
  - (b) confirm, revoke or vary the decision; and
  - (c) give the applicant notice in writing of the confirmation, revocation or variation (the **review notice**).

Note: A decision under this subsection is reviewable by the Administrative Review Tribunal (see section 71).

- (9) If the Secretary has not given the applicant a review notice within 2 months after the applicant applied for the review, the Secretary is taken to have given the applicant a review notice confirming the decision.

## 52 Full amount of incentive

The full amount of an incentive for an NRAS year for a rental dwelling is:

- (a) for the year beginning on 1 May 2019—\$8,436.07; and
- (b) for each later NRAS year, the amount for the previous NRAS year indexed in accordance with the NRAS incentive index for that later NRAS year.

## 53 Incentive amounts when approved participant changes

- (1) This section applies if:
- (a) an allocation for a rental dwelling has been held by different approved participants during a particular period; and
  - (b) each of those approved participants is entitled to receive an incentive for the rental dwelling for a part of the period.

Note 1: For when an entitlement arises, see subsection 50(1).

Note 2: This section will not apply to an approved participant if the portion of the incentive to which the approved participant was initially entitled is moved:

- (a) because of a redirection arising from a breach (see Division 3); or
- (b) on request as part of an agreed transfer (see paragraph 21(4)(d)).

- (2) The amount of each approved participant's entitlement is worked out by:
- (a) identifying under subsection 51(1) the full amount of incentive for the dwelling for the period; and
  - (b) apportioning that full amount by reference to the number of days in the period during which the approved participant held the allocation (and was entitled to incentive); and
  - (c) applying subsections 51(2) to (9) to that apportioned amount.

Note: Paragraph (c) may result in the reduction of the apportioned amount if, on some days while the approved participant held the allocation, the incentive was not available or circumstances in a condition of the allocation did not happen.

## Division 2—Form and giving of incentives

### 54 Form of incentive

- (1) The Secretary must give an approved participant an incentive to which the approved participant is entitled for an NRAS year in accordance with the following table.

<b>Form of incentive</b>		
<b>Item</b>	<b>If ...</b>	<b>the Secretary must give the approved participant the incentive ...</b>
1	the approved participant was not an endorsed charitable institution for the whole of the NRAS year	as a tax offset certificate.
2	(a) the approved participant was an endorsed charitable institution during the whole of the NRAS year; and (b) the approved participant has made an election under section 55 for the year	as a tax offset certificate.
3	(a) the approved participant was an endorsed charitable institution during the whole of the NRAS year; and (b) the approved participant has not made an election under section 55 for the year	as a payment.

- (2) A tax offset certificate must contain the following:
- an identifying number;
  - if applicable—identification as “an amended, replacement certificate”;
  - the name and any applicable Australian Business Number or Australian Company Number of the approved participant;
  - the date of issue of the certificate (being the date the Secretary approves the certificate showing the amount of tax offset);
  - the NRAS year to which the certificate relates;
  - the total National Rental Affordability Scheme Tax Offset covered by the certificate;
  - a listing of each rental dwelling covered by the certificate and the incentive amount determined for each of those dwellings for the NRAS year;
  - any offset, variation or apportionment made to the National Rental Affordability Scheme Tax Offset and the NRAS year to which it relates.

Note 1: Sections 51, 53, 55 and 56 also contain information about apportionment, variation and offset of incentive.

Note 2: One certificate may relate to multiple rental dwellings and those dwellings may be associated with different joint ventures to which the approved participant is a party.

## **55 Elections by endorsed charitable institutions**

- (1) This section applies if an approved participant is an endorsed charitable institution.
- (2) The approved participant may elect to receive the incentive to which the approved participant is entitled for NRAS years as a tax offset certificate rather than as a payment.
- (3) Unless it is withdrawn, an election applies for the purposes of all following NRAS years.
- (4) However, an election has no effect in relation to a particular NRAS year unless it is made before the end of 31 December in that NRAS year.

### *Notice if ceases to be an endorsed charitable institution*

- (5) If the approved participant ceases to be an endorsed charitable institution, the approved participant must, within 28 days, notify the Secretary of the cessation.

## **56 Variation of incentive amount**

- (1) The Secretary may determine that the amount of an incentive for an NRAS year is incorrect if the Secretary is satisfied that:
  - (a) an error has been made in calculating or providing the amount; or
  - (b) the amount was calculated based on information that was false or misleading.

Note: A decision under this subsection is reviewable by the Administrative Review Tribunal (see section 71).
- (2) If the Secretary does so, the Secretary may correct the amount by increasing or decreasing it.
- (3) If the Secretary increases the incentive by an amount, the Secretary must give effect to the increase by:
  - (a) issuing an amended tax offset certificate for the NRAS year; or
  - (b) if the approved participant agrees—adding the amount to an incentive for a future NRAS year; or
  - (c) if the incentive was given as a payment—paying the amount.
- (4) If the Secretary decreases the incentive by an amount, the Secretary may recover the amount:
  - (a) by issuing an amended tax offset certificate for the NRAS year; or
  - (b) by offsetting the amount against an amount of incentive for a future NRAS year; or
  - (c) if the incentive was given as a payment or has been claimed as a tax offset—as a debt due to the Commonwealth.

## Division 3—Redirecting incentives

### 57 Application of this Division

This Division applies if:

- (a) an allocation for a rental dwelling is transferred under Division 5 of Part 2 (about transfers because of breach) during an NRAS year; and
- (b) the original approved participant has, or had, obligations to pass on an incentive for the dwelling for an NRAS year to an investor.

Note: This Division relates to:

- (a) the portion of the incentive that relates to the part of the NRAS year that is before the day the transfer takes effect; or
- (b) an earlier NRAS year.

### 58 Incentive for year of transfer

- (1) The Secretary may decide to give to the gaining approved participant an incentive for the NRAS year that would otherwise have been given to the original approved participant for the dwelling, and if the Secretary does so:
  - (a) section 63 (about passing on incentives) applies to the gaining approved participant for the incentive and an investor; and
  - (b) the original approved participant:
    - (i) despite subsection 50(1), is not entitled to receive the incentive for the dwelling for the NRAS year; and
    - (ii) despite an arrangement to the contrary, is not required to pass on the incentive for the dwelling for the NRAS year to the investor.

Note 1: This section relates to the portion of the incentive that relates to the part of the NRAS year that is before the day the transfer takes effect.

Note 2: A decision under this subsection is reviewable by the Administrative Review Tribunal (see section 71).

- (2) This section does not apply if the incentive has already been given to the original approved participant.

### 59 Incentive for an earlier year

- (1) The Secretary may decide to give to the gaining approved participant an incentive for an earlier NRAS year that would otherwise have been given to the original approved participant for the dwelling, and if the Secretary does so:
  - (a) section 63 (about passing on incentives) applies to the gaining approved participant for the incentive and an investor; and
  - (b) the original approved participant:
    - (i) despite subsection 50(1), is not entitled to receive the incentive for the earlier NRAS year; and
    - (ii) despite an arrangement to the contrary, is not required to pass on the incentive for the earlier NRAS year to the investor.

Note: A decision under this subsection is reviewable by the Administrative Review Tribunal (see section 71).

- (2) This section does not apply if the incentive has already been given to the original approved participant.

## **60 Meaning of *redirects***

If the Secretary decides under subsection 58(1) or 59(1) to give an incentive to a gaining approved participant, the Secretary *redirects* the incentive.

## **61 Secretary must notify proposed redirection**

- (1) Before the Secretary redirects an incentive, the Secretary must give written notice of the proposed redirection to:
  - (a) the original approved participant; and
  - (b) the investor.
- (2) The notice must invite the original approved participant or investor, as the case requires, to make a written submission to the Secretary about the proposed redirection no later than 14 days after the day the Secretary gives the notice.
- (3) The notice may be given with a notice under subsection 32(8) (which deals with notice of transfer because of breach).
- (4) If the Secretary gives notice under subsection (1) of a proposed redirection, the Secretary must, after having decided whether or not to make the redirection, give to the original approved participant and the investor written notice of that decision.

## **62 Secretary must take interests of investors into account**

In deciding whether to redirect an incentive, the Secretary must take into account the interests of investors, including the need to ensure that investors maintain confidence in the Scheme.

## Part 7—Obligations to investors

### 63 Approved participant's obligations to investors

The approved participant for a rental dwelling is required to *pass on* an incentive or State or Territory contribution to an investor if, at the time when the incentive or contribution is given to the approved participant, the approved participant or an associated party has a legal obligation:

- (a) to pass on to the investor any payment or benefit (including rent) relating to the dwelling; or
- (b) to take steps to enable the investor to claim a tax offset to which the investor is entitled under Division 380 of the *Income Tax Assessment Act 1997* in relation to the incentive; or
- (c) to make an election under section 380-11 or 380-16 of the *Income Tax Assessment Act 1997* in relation to the incentive.

### 64 Obligation to pass on incentives or State or Territory contributions in a timely manner

- (1) This section applies if:
  - (a) an approved participant:
    - (i) is given an incentive or State or Territory contribution; and
    - (ii) is required to pass on all or part of the incentive or contribution to an investor (whether under an arrangement or otherwise); or
  - (b) a gaining approved participant is required to give an investor an incentive that has been redirected under Division 3 of Part 6.
- (2) The approved participant or gaining approved participant must comply with the requirement before the earliest of the following:
  - (a) if a legal obligation requires the incentive or contribution to be passed on within a particular period (however described)—the end of that period;
  - (b) 90 days after the approved participant is given the incentive or contribution.

### 65 Incentives or State or Territory contributions not to be withheld or refused if investor fails or refuses to accept other services

- (1) This section applies if:
  - (a) an approved participant is required to pass on all or part of an incentive or State or Territory contribution to an investor under an arrangement; and
  - (b) the arrangement is expressed to be subject to a term that the investor must use a tenancy management service (or any similar, or other, service) that is provided by the approved participant or another person specified by the approved participant; and
  - (c) the investor fails, or refuses, to use the service.



- (2) The approved participant:
  - (a) must comply with the requirement to pass on the incentive or contribution as if the term were not included in the arrangement; and
  - (b) must not terminate the arrangement only because the investor fails, or refuses, to use the service.

## **66 Incentives or State or Territory contributions not to be withheld or refused if bond not paid**

- (1) This section applies if:
  - (a) an approved participant is required to pass on all or part of an incentive or State or Territory contribution to an investor under an arrangement; and
  - (b) the arrangement concerned is expressed to be subject to a term that the investor or another person must pay to the approved participant a monetary bond (however described) if the investor does not use a service other than a service provided by the approved participant or another person specified by the approved participant; and
  - (c) the investor uses another service and the bond is not paid to the approved participant.
- (2) The approved participant:
  - (a) must comply with the requirement to pass on the incentive or contribution as if the term were not included in the arrangement; and
  - (b) must not terminate the arrangement only because the investor uses the alternative service and the bond is not paid to the approved participant.

## **67 Approved participant must give summary of code of conduct to investors**

The approved participant for a rental dwelling must give an investor for the dwelling a summary of the approved participants code of conduct on or before the day that is 28 days after the investor becomes an investor for the dwelling.

## Part 8—Other matters

### 68 Secretary may approve forms

- (1) The Secretary may do the following:
  - (a) approve a form in which a document, information or response must be given to the Secretary for the purposes of the Scheme;
  - (b) specify the manner in which the form is to be given.
- (2) If the Secretary approves a form, the Secretary must:
  - (a) publish the form on a website that is accessible to the public; and
  - (b) include any specified manner for giving the form; and
  - (c) take reasonable steps to direct approved participants and investors to the website.

### 69 Sharing and use of information

- (1) Information (including personal information) obtained by the Secretary for the purposes of the Scheme may be used or disclosed by the Secretary for:
  - (a) the purposes of the Scheme; or
  - (b) the purposes of programs to:
    - (i) increase the supply of affordable rental dwellings; or
    - (ii) reduce rental costs for low and moderate income households.
- (2) Without limiting subsection (1), the information may be:
  - (a) disclosed to another agency of the Commonwealth or of a State or Territory:
    - (i) for the purposes of the operation of the Scheme; or
    - (ii) for the purposes of developing policy in relation to the Scheme; or
    - (iii) for the purposes of ensuring compliance with a law of the Commonwealth or a State or Territory; or
  - (b) disclosed by the Secretary to approved participants, investors or tenants for the purposes of administering the Scheme; or
  - (c) given by the Secretary to a person if the Secretary is satisfied that:
    - (i) the person is a gaining approved participant or an investor; and
    - (ii) the information is relevant to the person's interest in an allocation or a rental dwelling covered by an allocation.

### 70 Notice of end of allocation

- (1) The approved participant for a rental dwelling must give tenants of the dwelling written notice of the end of the allocation for the dwelling.
- (2) The notice must be given:
  - (a) in the form approved by the Secretary; and

- (b) within the time specified in the form.

## **71 Review of decisions by the Administrative Review Tribunal**

Applications may be made to the Administrative Review Tribunal for review of the following decisions of the Secretary:

- (a) a decision under subsection 12(2), 13(9) or 15(2) not to make a determination;
- (b) a decision under paragraph 19(1)(a) or (b) about a special condition;
- (c) a decision under paragraph 19(1)(c) to impose a special condition;
- (d) a decision under subsection 22(1) to transfer a provisional allocation;
- (e) a decision under section 24, 25 or 26 to determine that an approved participant has committed an individual breach, a serious breach or a disqualifying breach;
- (f) a decision under subsection 51(8) that:
  - (i) confirms or varies a decision under subsection 51(2); or
  - (ii) is taken to have been made because of subsection 51(9);
- (g) a decision under subsection 56(1) about the amount of an incentive;
- (h) a decision under subsection 58(1), 59(1) or 78(3) to redirect an incentive.

## **72 When incentive cannot be redirected**

Division 3 of Part 6, and section 78, (both about redirecting incentives) have no effect to the extent that their operation would result in the acquisition of property other than on just terms.

## Part 9—Application and transitional provisions

### 73 Things done under the previous regulations

- (1) If:
- (a) a thing was done, or arose, for a particular purpose under the previous regulations; and
  - (b) the thing could be done, or could arise, for that purpose under this instrument;
- the thing has effect for the purposes of this instrument (and may be dealt with) as if it had been done, or had arisen, for that purpose under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done, or arising, includes a reference to each of the following:
- (a) an entitlement to incentive arising under the previous regulations;
  - (b) a request made under the previous regulations by an investor for an allocation to be transferred;
  - (c) a determination of breach under the previous regulations;
  - (d) a decision, payment, incentive, notice, application or other instrument being given or made.

Note 1: An allocation made under the previous regulations may have additional special conditions imposed on it, or be transferred, revoked or otherwise dealt with, under this instrument (see subsection 6(2)).

Note 2: Subsections (1) and (2) confirm that things can be done under this instrument in reliance on things done under the previous regulations. For example:

- (a) if an amount of incentive is still to be given on 1 April 2020, the entitlement to the incentive is treated as if it arose under this instrument and could result in a reduction of the amount before it is given under this instrument; or
- (b) if an investor request for transfer is still to be dealt with on 1 April 2020, the request is treated as if it had been made under this instrument and could result in a transfer under this instrument; or
- (c) if, on 1 April 2020, a decision about redirecting an incentive is still to be made following a determination of breach that has been made, the determination of breach is treated as if it had been made under this instrument and could result in a redirection under this instrument.

Note 3: Other examples of the effect of subsection (1) are as follows:

- (a) a variation under subsection 23(1) of the previous regulations of a special condition is treated as if it had been done under section 19 of this instrument;
- (b) subsection 10(2) of this instrument also covers a transfer under the previous regulations that corresponds to a transfer under section 20 of this instrument.

- (3) A special condition imposed on an allocation under paragraph 13(2)(b) of the previous regulations has effect for the purposes of this instrument (and may be dealt with) as if it had been imposed under this instrument.

Note: This subsection allows a special condition that was imposed when the allocation was made to have effect, and to be varied or removed, under this instrument. Subsection (1) does not already provide for this because this instrument does not provide for the making of new allocations.

- (4) An incentive period arising for an allocation under the previous regulations has effect for the purposes of this instrument (and may be dealt with) as if it had arisen under this instrument.

Note: This subsection confirms that the incentive period under the previous regulations for an allocation will continue under this instrument. Subsection (1) may not already provide for this because this instrument does not provide for the making of new allocations.

#### **74 General conditions of allocations existing immediately before 1 April 2020**

Despite subsection 73(1), a condition that:

- (a) was on an allocation as a general condition under the previous regulations (the *old general condition*); and
- (b) was in force immediately before 1 April 2020;

ceases to be in force on 1 April 2020.

Note 1: This section confirms that, on 1 April 2020, the old general conditions of an allocation are replaced by the conditions set out in Division 2 of Part 2.

Note 2: In contrast, special conditions imposed before 1 April 2020 will continue (see subsections 73(2) and (3)).

Note 3: This instrument can apply to a contravention of an old general condition before 1 April 2020 (see section 77). For example, an approved participant will have committed a compliance breach if it contravened the old condition before 1 April 2020 (see paragraph 24(3)(b)).

#### **75 Determination relating to maximum rent**

Subsections 12(2) and (3) (which deal with a determination by the Secretary relating to maximum rent) apply in relation to a particular charge of rent for a period during an NRAS year beginning on or after 1 May 2017.

#### **76 Eligible tenants moving rental dwellings**

Subsection 41(4) applies in relation to a move by an eligible tenant from one rental dwelling to another rental dwelling on or after 1 April 2020.

#### **77 References to breaches etc.**

To avoid doubt, a reference in this instrument to:

- (a) a breach, or suspected breach, (however described); or
- (b) circumstances giving rise to such a breach or suspected breach (however described);

applies to such a breach, suspected breach or circumstances whether happening before, on or after 1 April 2020.

#### **78 Redirecting incentives for certain earlier transfers**

- (1) This section applies if:

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- (a) the Secretary transferred an allocation to an approved participant under subregulation 21A(1) of the previous regulations as in force immediately before 9 March 2019; and
- (b) incentive relating to the allocation for an NRAS year was not redirected as described in subregulation 41(3) of the previous regulations because neither subparagraph 21D(1)(b)(ii) nor 22BH(2)(b)(ii) of the previous regulations could be satisfied; and
- (c) the Secretary has not received a written request from the original approved participant for the incentive to be given to it.

Note: Regulations 21A and 21D of the previous regulations continued to apply on and after 9 March 2019 under regulation 41 of the previous regulations.

- (2) The Secretary may give the gaining approved participant written notice inviting the gaining approved participant to, within 3 months after the notice is given, lodge a statement of compliance:
  - (a) for a rental dwelling covered by the allocation; and
  - (b) that includes statements and details for the NRAS year beginning on 1 May 2018.

Subsections 42(3) to (5) (about timeframes) do not apply to the statement of compliance.

- (3) If the gaining approved participant lodges a statement of compliance complying with subsection (2), the Secretary may give to the gaining approved participant the incentive referred to in paragraph (1)(b), and if the Secretary does so:
  - (a) section 63 (about passing on incentives) applies to the gaining approved participant for the incentive and an investor; and
  - (b) the original approved participant:
    - (i) despite subsection 50(1), is not entitled to receive the incentive; and
    - (ii) despite an arrangement to the contrary, is not required to pass on the incentive to the investor.
- (4) Sections 61 (about notice) and 62 (about interests of investors) also apply in relation to a proposed redirection under subsection (3) of this section.

Note: A decision under subsection (3) is reviewable by the Administrative Review Tribunal (see section 71).

## 79 Details of approved participants and investors

- (1) The approved participant for a rental dwelling covered by an allocation must, by the end of 28 April 2020, have notified the Secretary of the following details:
  - (a) the details listed in subsection 47(1) (about the approved participant);
  - (b) the details listed in subsection 48(1) for each person who the approved participant believes is an investor for the dwelling.

Note: No incentive is available for any period during which the approved participant fails to comply with this subsection (see subsections 13(2) to (4)).

- (2) Subsection 48(2) also applies in relation to details described in paragraph (1)(b) of this section that are notified under this section.

## 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 how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### 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



## Endnote 3—Legislation history

## Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
National Rental Affordability Scheme Regulations 2020	20 Mar 2020 (F2020L00282)	s 75: 1 May 2017 (s 2(1) item 2) s 78: 1 May 2018 (s 2(1) item 4) Remainder: 1 Apr 2020 (s 2(1) items 1, 3, 5, 6)	
Administrative Review Tribunal Legislation Consequential Amendments (2024 Measures No. 1) Regulations 2024	11 Oct 2024 (F2024L01299)	Sch 12 (items 7–24): 14 Oct 2024 (s 2(1) item 1)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 2.....	rep LA s 48D
s 4.....	rep LA s 48C
<b>Part 2</b>	
<b>Division 2</b>	
r 12.....	am F2024L01299
r 13.....	am F2024L01299
r 15.....	am F2024L01299
<b>Division 3</b>	
r 19.....	am F2024L01299
<b>Division 4</b>	
r 22.....	am F2024L01299
<b>Division 5</b>	
<b>Subdivision A</b>	
r 24.....	am F2024L01299
r 25.....	am F2024L01299
r 26.....	am F2024L01299
<b>Subdivision C</b>	
r 32.....	am F2024L01299
<b>Part 6</b>	
<b>Division 1</b>	
r 50.....	am F2024L01299
r 51.....	am F2024L01299
<b>Division 2</b>	
r 56.....	am F2024L01299
<b>Division 3</b>	
r 58.....	am F2024L01299
r 59.....	am F2024L01299
<b>Part 8</b>	
r 71.....	am F2024L01299
<b>Part 9</b>	
r 78.....	am F2024L01299
Schedule 1.....	rep LA s 48C