



National Rental Affordability Scheme

Amendments to the NRAS Regulations made in March 2019

Further amendments have been made to the National Rental Affordability Scheme Regulations 2008 (the Regulations) to make approved participants more accountable for their behaviour towards investors. The amendments were made by the National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2019 (Amending Regulations), which came into effect on 9 March 2019.

The amendments introduce the approved participants code of conduct (code of conduct) and compliance framework. There is a separate information sheet on the [code of conduct](#). A summary of the other main changes made by the Amending Regulations follows below.

Market rent valuation extensions

Where an allocation has been transferred, the gaining approved participant may apply to the Secretary of the Department to extend the time for obtaining and lodging a market rent valuation, even if the outgoing approved participant failed to obtain the market rent valuation as required by the Regulations.

Provisional allocations

Previously, Regulation 21(2) prevented the Secretary from transferring a provisional allocation. This restriction has been removed.

Incentives where allocations are transferred under Regulation 21

Where an allocation is transferred at the request of an approved participant under Regulation 21, with the agreement of both the outgoing and gaining approved participants, the Secretary of the Department may give the gaining approved participant any unissued incentives for the allocation that would otherwise be issued to the outgoing approved participant. For example, with the agreement of both the outgoing and gaining approved participants, the Secretary could issue incentives for the current NRAS year up to the date of transfer to the gaining approved participant.

Consequences of a transfer following a breach

Where the Secretary of the Department transfers an allocation because of an individual breach, a serious breach or a disqualifying breach, the Secretary may decide to redirect any unissued incentives for the allocation from the outgoing approved participant to the incoming approved participant. The redirection provisions in Regulation 22BH largely reflect the previous redirection provisions in the former Regulation 21D. The redirection provisions were relocated within the Regulations for ease of use.

Where the Secretary has transferred an allocation, under Regulation 22BJ the Secretary may require the gaining approved participant to lodge a statement of compliance for the allocation for the full current NRAS year and the previous NRAS year. Under the former Regulations, the Secretary could only

require the gaining approved participant to lodge a statement of compliance for the allocation for the current NRAS year and only if the Secretary redirected, or proposed to redirect, the incentive.

Internal review

The internal review provisions in Regulation 28 have been clarified. Approved participants must now seek an internal review within 60 days of the date of the Department's original decision to reduce an incentive for an allocation. The Secretary can extend the period for lodging an internal review in appropriate cases.

Obligation to pass on incentives

The obligation on approved participants in Regulation 30B of the Regulations has been expanded to cover situations where the approved participant has a legal obligation to pass on the incentive but that legal obligation is not contractual in nature (for example, where the obligation arises under a deed).

Where a legal obligation on an approved participant requires the approved participant to pass on an incentive within a particular period that is less than 90 days of receipt (for example, the approved participant may be required by a contract to pass on the incentive to the investor within 30 days of receipt), the approved participant will now breach Regulation 30B if it fails to meet the contractual timeframe.

Summary of the approved participants code of conduct

Approved participants who have investors must give those investors a summary of the code of conduct. While there is no form for this summary specified in the Regulations, the Department has drafted a [form](#) that could be used by approved participants for this purpose.

For current investors, the notice must be given by 6 April 2019. For new investors, the notice must be given within 28 days of the day the investor became an investor.

Use and disclosure of information

Amendments have been made to Regulation 32 to clarify the circumstances where the Department may use and disclose information collected for the purpose of NRAS.

Provision of information to the Department

The Secretary of the Department may request an approved participant under Regulation 32A of the Regulations provide any information or documents for the purposes of the operation of NRAS. The new obligation in Regulation 32A is in addition to the condition of allocation in subregulation 16(12).

Notice of end of allocation

NRAS allocations have a ten year lifespan. When an allocation ends, no further incentives are payable. This may well lead to the owner of the dwelling covered by the allocation raising rents to the market rent, subject to the current tenancy agreement and applicable landlord and tenancy laws.

Approved participants who have allocations that will soon expire are required by Regulation 32B to advise tenants that the allocation will expire. The notice has to be in the approved form.

For allocations expiring up to and including 31 July 2019, the notice must be given by 22 April 2019. For allocations expiring after 31 July 2019, the notice must be sent at least 90 days before the expiry of the allocation.

Further information

Questions about the Amending Regulations may be sent to nras@dss.gov.au.