Australian Government
Department of Social Services

April 2020

National Rental Affordability Scheme

National Rental Affordability Scheme Regulations 2020 Summary of Changes

On 1 April 2020 the National Rental Affordability Scheme Regulations 2020 (2020 Regulations) came into effect and replaced the National Rental Affordability Scheme Regulations 2008 (2008 Regulations) that ceased operation under the sunsetting provisions in the *Legislation Act 2003*.

As part of the 2020 Regulations, there are a number of new and changed provisions (now known as sections/subsections).

The **attached** table captures the changes that have been made under each of the following categories:

- Allocations/Transfer/Redirections
- Breaches
- Rent/valuations
- Tenants
- Statement of Compliance
- Incentives
- Obligations to investors
- Other

In addition to these changes, as part of the standard process of drafting new regulations, the text and layout of the 2020 Regulations has been reworked and reordered compared to the 2008 Regulations.

Commencement

The majority of the 2020 Regulations commenced on 1 April 2020 (sections 1 to 74, 76, 77 and 79 and Schedule 1). There are, however, two sections with alternative commencement dates. Section 78 commences on 1 May 2018 and section 75 commences on 1 May 2017. These two sections with retrospective commencement dates have a beneficial impact on approved participants (and any associated investors) who may otherwise receive no incentive.

Allocations/Transfers/Redirections

Subject	2008 regulations	2020 regulations	What's changed?
Transfer of an allocation to another rental dwelling	Section 20	Section 20	An allocation may be transferred between two rental dwellings with approval from the Secretary. The Secretary must consider the views of the relevant state or territory government in relation to the level of need for affordable housing in the new location. The Secretary must provide written notice of the transfer and state the date of effect. The date of effect can now be backdated to the date of application in certain circumstances.
Transfer of allocations between approved participants	Section 21	Section 21	Allocations may be transferred between approved participants at the request of the original approved participant. In order to receive a transferred allocation, the Secretary must be satisfied that the gaining approved participant: • has not previously had a disqualifying breach made against them; • has the capacity to properly manage the allocation; • is a suitable approved participant to hold an allocation; and • has agreed in writing to the transfer. The Secretary must provide written notice of the transfer and state the date of effect. The date of effect can now be backdated to the date of application in certain circumstances. This ensures the gaining approved participant is willing and able to take on the transferred allocation to protect the interests of investors.
Transfer of provisional allocation on Secretary's own initiative	New section	Section 22	This is a new section which provides the Secretary the power to transfer a provisional allocation on their own initiative. The Secretary must be satisfied the dwelling is not actively tenanted and give the approved participant notice of the proposed transfer. They are also required to take into account any submissions by the approved participant.
Revocation on application by approved participant	Section 22	Section 23	An approved participant may now request the Secretary revoke an allocation for a dwelling where the approved participant is no longer willing or able to manage the application. The Secretary is also able to transfer the allocation instead of revoking if they are satisfied that the gaining approved participant is not a disqualified person.

Obligations of approved participants when allocations are transferred	Section 22D	Section 34	Within 49 days after the request is made by the Secretary to provide information to the gaining approved participant, the original approved participant must advise the Secretary whether the approved participant has complied with the section.
Legal arrangements do not prevent transfers	Section 22C	Section 33	This section expands the definition of 'contract' to 'arrangement'. The term 'arrangement' may now include any agreement, arrangement, understanding, promise or undertaking, whether express or implied that is enforceable, or intended to be enforceable, by legal proceedings. Section 33 provides an arrangement has no effect to the extent that the arrangement aims to prevent an investor from applying for a transfer or penalise an investor for assisting with, or supporting in any way the application for the transfer of an allocation. This section is designed to protect the rights of investors to seek a transfer of an allocation for their rental dwelling regardless of any legal arrangement the investor has entered into with the approved participant.
Application – redirection	Section 22BH	Section 57	Section 57 applies where an allocation has been transferred, because of a breach and the original approved participant had obligations to pass on an incentive to an investor for a National Rental Affordability Scheme (NRAS) year. The Secretary is able to redirect an incentive for an allocation following the transfer to a gaining approved participant.
Secretary must notify proposed redirection	Subsection 22BH(6)	Section 61	Before the Secretary redirects an incentive, the Secretary must give written notice of the proposed redirection and the decision to redirect to the original approved participant and to the relevant investor. The original approved participant has 14 days after the day the Secretary gives notice to provide a response.
Must take into account investor interests for redirections	New section	Section 62	The Secretary must take into account the interests of investors in deciding whether to redirect an incentive. This ensures the interests of any investors who may be affected by a redirection decision are considered prior to the Secretary conducting the redirection.

Redirection for certain earlier transfers	New section	Section 78	This section allows the Secretary to redirect incentives when investors are not able to access them from their original or gaining approved participant. This applies to transfers under the previous subregulation 21A(1) of the previous regulations that were in force prior to 9 March 2019. This enables the Secretary to provide the incentives for the NRAS year beginning 1 May 2018 to the gaining approved participant who is required to pass on the incentives to the relevant investors.

Breaches

Subject	2008 regulations	2020 regulations	What changed?
Disqualifying breach	Section 22BC	Section 26	This section has been expanded to allow a disqualifying breach determination to be made where an 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.
Requirements for determination of breach	Section 22BF	Section 30	The Secretary must give written notice to the approved participant or investor of the decision whether or not to make the determination.
Can publish serious and disqualifying breach	Subsection 22BB(2)	Section 31	If the Secretary makes a determination that an approved participant has committed a serious breach or a disqualifying breach, the Secretary may publish a notice of the determination on the department's website. This section expands the Secretary's discretion to publish notices regarding disqualifying breach determinations as well as serious breach determinations. This allows investors to consider whether, in light of the determination, they would like to make a transfer request.
Transfer or revocation because of breach	Subsection 22BG(6)	Subsection 32(7) Subsection 32(8)	These sections set out that the Secretary must not transfer the allocation unless satisfied the gaining approved participant is not a disqualified person, in addition to being satisfied they are suitable to hold the allocation and have the capacity to properly manage the allocation, and has agreed in writing to the transfer. The date of effect can now be backdated to the date of application in certain circumstances. This ensures disqualified approved participants are not able to receive transferred allocations, that all affected parties are notified, and the date of effect can be from the date of application in certain circumstances.

Rent/valuations

Subject	2008 regulations	2020 regulations	What changed?
Vacancy period	Subsection 16(1D)	Section 10	The rule that no incentive is available if the dwelling is vacant for more than 26 weeks during the current NRAS year does not apply if the allocation was transferred between dwellings. This ensures that the owner is not disadvantaged by nil incentive where a vacancy occurred prior to the dwelling entering the scheme.
Maximum rent	New Relevant to Subsection 16(1C)	Section 12	This section provides the Secretary with discretion to waive a reduction in incentive as a result of rent being overcharged. This ensures that reductions in incentive are proportionate to the detriment caused by the action they are aiming to correct. In addition, section 75 provides that this discretion applies retrospectively from 1 May 2017.
Market Rent Valuations	Section 18	Subsection 37(1) Subsection 37(2) Subsection 37(3) Subsection 37(4) Subsection 37(5)	Subsection 37(1) requires a market rent valuation (MRV) to only be submitted up to 13 weeks prior to the first day of the incentive period of the anniversary of the fifth or eighth year. Subsection 37(2) now requires the MRV to be submitted on an approved form. The addition of the form in subsection 37(2) is to ensure the market rent valuation is prepared in accordance with regulations and provided by an authorised valuer. Together, these aim to ensure the independence and impartiality of a valuation when undertaking a market rent valuation, and to ensure valuations are accurate and of a reasonable standard. Subsection 37(3) requires the valuer to include the condition of dwelling being valued and not take into account optional amenities. Subsection 37(4) requires the valuer to physically inspect the dwelling for the initial rental period, whilst allowing a desktop valuation for years five and eight. Subsection 37(5) provides that if the fifth or eighth incentive year for the allocation begins within 13 weeks after the beginning of the initial rental period, the same MRV can be accepted.
Market Rent Valuations	New Relevant to: Section 18	Section 38	Section 38 provides that an approved participant must not submit further valuations for a period or year where the Secretary has accepted a valuation for that dwelling or accepted a valuation subject to an error being corrected. The Secretary may also request further evidence in relation to the valuation.

Market Rent Valuations	Subsection 16(6A) Subsection 16(6B) Subsection 16(6C)	Section 39	A request for an extension of time for a valuation must now be in the approved form, not just in writing.
Market Rent Valuations	New	Section 40	Section 40 provides the Secretary with the ability to request that an approved participant provide another valuation from a different valuer (at the expense of the approved participant), where they reasonably believe that the first valuation is not accurate. This section has been included to create stronger protections against the risk to the Scheme of collusion between approved participants and valuers.
Lease agreements	New	Section 45	Approved participants must give the Secretary a copy of the current lease agreement for each allocation before the next statement of compliance is submitted.

Tenants

Subject	2008 regulations	2020 regulations	What changed?
Eligible tenants	Section 19	Subsection 41(4)	This section provides that a tenant does not cease to be an eligible tenant only because the person moves from one rental dwelling to another rental dwelling in the Scheme where the circumstances are beyond their control.

Statement of Compliance

Subject	2008 regulations	2020 regulations	What changed?
Tenant consent form	New section	Section 44	Approved participants must give the Secretary a tenant consent form for each tenant of the rental dwelling.

Incentives

Subject	2008 regulations	2020 regulations	What changed?
Payment of incentive in case of revocation	Subsection 22(2)	Section 16	Approved participants are able to claim incentives for compliant periods during an NRAS year before the allocation is revoked. No incentive will be available for the dwelling for the remainder of the NRAS year and any subsequent NRAS years. Approved participants were not previously entitled to an incentive for the NRAS year if the allocation was revoked. This section allows an approved participant to still claim incentives for compliant periods up to the point of revocation.
Entitlement to receive incentive	Section 25	Section 50	Section 50 expands the Secretary's existing powers to place a temporary hold on an approved participant's entitlement to an incentive. This covers situations where: • a breach is reasonably believed to have been committed; and • a redirection of incentive has been proposed. Each of the situations that would allow the Secretary to place a temporary hold on an approved participant's entitlement to receive an incentive is strictly limited in the timeframe for which it can have effect.
Full amount of incentive	Section 26	Section 52	This section states the base maximum incentive amount as it relates to the year beginning on 1 May 2019 (which is $8,436.07) and for each later year the relevant NRAS incentive index is applied.
Incentive when approved participant changes	New section	Section 53	This section allows the Secretary to divide the full value for an incentive on a pro-rata basis for an allocation between different approved participants when the allocation has been held by more than one approved participant during a particular period of an NRAS year and each of those approved participants is entitled to an incentive. The amount is divided according to how many days in the period each approved participant held the allocation and was entitled to the incentive This section formalises existing policy practice where an allocation has been transferred between approved participants but the incentive has not been redirected.

Elections by endorsed charitable institutions	Section 28A	Section 55	This section allows endorsed charitable institutions to make an election to receive the incentive for an allocation as a payment rather than as a refundable tax offset certificate. This section now removes the limit on the number of times an approved participant may make an election (previously limited to once per year). This section also includes a new requirement that an approved participant must notify the Secretary within 28 days if it ceases to be an endorsed charitable institution.

Obligations to investors

Subject	2008 regulations	2020 regulations	What changed?
Approved participants must pass on State and Territory contributions	Section 30A	Section 63	This section has been expanded to require that approved participants pass on state and territory contributions, not just Commonwealth incentives.
Approved participant's obligation to pass on incentives in a timely manner	Section 30B	Section 64	This section has been expanded to require that approved participants pass on State and Territory contributions, not just Commonwealth incentives. Approved participants or gaining approved participants must comply with the requirement to pass on incentives or state or territory contributions within a timely manner. This is required specifically before the end of any period attaching to a legal obligation that requires the incentive or State or Territory contribution to be passed on, or within 90 days after being given the incentive or state or territory contribution, whichever is earlier.
Must pass on State and Territory contributions even if an investor refuses to accept other services.	Section 30C	Section 65	This section has been expanded to require that approved participants pass on State and Territory contributions, not just Commonwealth incentives, regardless of whether they refuse to accept other services from the approved participant.
Must pass on state and territory contributions even if bond is not paid.	Section 30D	Section 66	This section has been expanded to require that approved participants pass on state and territory contributions, not just Commonwealth incentives, regardless of whether the bond is paid to the approved participant.

Other

Subject	2008 regulations	2020 regulations	What changed?
Documentation and information required	Section 32A Subsection 16(2A) Section 17	Section 13	This section provides that an approved participant is not eligible to receive an incentive for any period during which, there are outstanding, incomplete or uncorrected documents or information in relation to the allocation. An exception allows the Secretary to determine that an incentive is available if they are satisfied that the approved participant has a reasonable excuse for failing to provide documents or information This section formalises existing policy practice regarding the required documents and information. This ensures that the Secretary has up-to-date information in relation to each allocation required for NRAS compliance.
Notification of change of details – approved participants information	New	Section 47	Approved participants must notify the Secretary within 28 days of changes to any of the following details: • contact details of the approved participant, including the address for service; • the address of the approved participant's principal place of business, if different from the address for service; • details of any officers of the approved participant; and • details of any person authorised to act on the approved participant's behalf. This section ensures the Secretary has the approved participant's most up-to-date contact details, which is important to ensure authorised individuals are making decisions on behalf of the approved participant and the correct address is used for giving of notices for the purposes of the Scheme.
Notification of change of details – investor information	New	Section 48	Approved participants must notify the Secretary within 28 days of being notified of changes to any of the following details: • the name and contact details of any investor for a rental dwelling covered by an allocation; • the day on which the person became an investor. This section aims to ensure the interests of investors are protected, and that the Secretary is aware of situations where there are multiple changes in investor details over the course of a single NRAS year.

Record keeping	Section 31	Section 49	This section specifies which documents and records should be retained by approved participants for five years.
Details of approved participants and investors	New	Section 79	Approved participants must provide the Secretary with details of any changes to approved participants and investor's details by the 28 April 2020. This section ensures approved participants have reasonable time after the commencement of the 2020 Regulations to provide the Secretary with current information relating to their contact details and relating to investors. Any subsequent changes to the details provided on 28 April 2020 must be notified within 28 days of the change.