



June 2022

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 sunset 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? |
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| Transfer of an allocation to another rental dwelling | Section 20 | Section 20 | <p>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.</p> <p>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.</p> |
| Transfer of allocations between approved participants | Section 21 | Section 21 | <p>Allocations may be transferred between approved participants at the request of the original approved participant.</p> <p>In order to receive a transferred allocation, the Secretary must be satisfied the gaining approved participant:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>This ensures the gaining approved participant is willing and able to take on the transferred allocation to protect the interests of investors.</p> |
| Transfer of provisional allocation on Secretary's own initiative | New section | Section 22 | <p>This is a new section, which provides the Secretary the power to transfer a provisional allocation on their own initiative.</p> <p>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.</p> |
| Revocation on application by approved participant | Section 22 | Section 23 | <p>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.</p> |

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| 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 | <p>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.</p> <p>Section 33 provides an arrangement has no effect to the extent 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.</p> <p>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.</p> |
| Application – redirection | Section 22BH | Section 57 | <p>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, the Scheme) year.</p> <p>The Secretary is able to redirect an incentive for an allocation following the transfer to a gaining approved participant.</p> |
| Secretary must notify proposed redirection | Subsection 22BH(6) | Section 61 | <p>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.</p> <p>The original approved participant or investor have 14 days after the day the Secretary gives notice to provide a response.</p> |
| 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. |

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| Redirection for certain earlier transfers | New section | Section 78 | <p>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.</p> <p>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.</p> |
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Breaches

| Subject | 2008 regulations | 2020 regulations | What changed? |
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| 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 | <p>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.</p> <p>This section expands the Secretary's discretion to publish notices regarding disqualifying breach determinations as well as serious breach determinations.</p> <p>This allows investors to consider whether, in light of the determination, they would like to make a transfer request.</p> |
| Transfer or revocation because of breach | Subsection 22BG(6) | Subsection 32(7) Subsection 32(8) | <p>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.</p> <p>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.</p> |

Rent/valuations

| Subject | 2008 regulations | 2020 regulations | What changed? |
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| 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 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 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. |

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| 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 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? |
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| Eligible tenants | Section 19 | Subsection 41(4) | This section provides 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? |
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| 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? |
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| Payment of incentive in case of revocation | Subsection 22(2) | Section 16 | <p>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.</p> <p>Approved participants were not previously entitled to an incentive for the NRAS year if the allocation was revoked.</p> <p>This section allows an approved participant to still claim incentives for compliant periods up to the point of revocation.</p> |
| Entitlement to receive incentive | Section 25 | Section 50 | <p>Section 50 expands the Secretary's existing powers to place a temporary hold on an approved participant's entitlement to an incentive.</p> <p>This covers situations where:</p> <ul style="list-style-type: none"> • a breach is reasonably believed to have been committed; and • a redirection of incentive has been proposed. <p>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.</p> |
| Full amount of incentive | Section 26 | Section 52 | <p>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.</p> |
| Incentive when approved participant changes | New section | Section 53 | <p>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</p> <p>This section formalises existing policy practice where an allocation has been transferred between approved participants but the incentive has not been redirected.</p> |

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| Elections by endorsed charitable institutions | Section 28A | Section 55 | <p>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.</p> <p>This section now removes the limit on the number of times an approved participant may make an election (previously limited to once per year).</p> <p>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.</p> |
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Obligations to investors

| Subject | 2008 regulations | 2020 regulations | What changed? |
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| 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 | <p>This section has been expanded to require that approved participants pass on State and Territory contributions, not just Commonwealth incentives.</p> <p>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.</p> |
| 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? |
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| Documentation and information required | Section 32A Subsection 16(2A) Section 17 | Section 13 | <p>This section provides 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.</p> <p>An exception allows the Secretary to determine an incentive is available if they are satisfied that the approved participant has a reasonable excuse for failing to provide documents or information</p> <p>This section formalises existing policy practice regarding the required documents and information.</p> <p>This ensures the Secretary has up-to-date information in relation to each allocation required for NRAS compliance.</p> |
| Notification of change of details – approved participants information | New | Section 47 | <p>Approved participants must notify the Secretary within 28 days of changes to any of the following details:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> |
| Notification of change of details – investor information | New | Section 48 | <p>Approved participants must notify the Secretary within 28 days of being notified of changes to any of the following details:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> |

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| 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 | <p>Approved participants must provide the Secretary with details of any changes to approved participants and investor's details by the 28 April 2020.</p> <p>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.</p> <p>Any subsequent changes to the details provided on 28 April 2020 must be notified within 28 days of the change.</p> |