



November 2017

NRAS Information Sheet

Investor Protection Regulatory Amendments

Important amendments have been made to the *National Rental Affordability Scheme Regulations 2008* (the Regulations) to create protections for investors of rental dwellings in the National Rental Affordability Scheme (NRAS or Scheme).

The amendments introduce a power for the Secretary of the Department of Social Services (or her Delegate) to transfer an allocation attached to an approved rental dwelling from one approved participant to another, if certain grounds exist. The transfer can be initiated by the Secretary or at the request of an investor.

The amendments also introduce obligations on approved participants to comply with any contractual requirements to pass on the NRAS incentive to NRAS investors.

Some minor technical amendments have also been made to improve the operation and administration of the Scheme.

This information sheet describes the new amendments in detail and sets out how the amendments will operate.

Recognition of investors

The Regulations have been amended to recognise NRAS investors for the first time. The amendments enable investors to request that the Secretary transfer the allocation attached to their approved rental dwelling to another approved participant if they believe grounds for transfer exist.

For NRAS purposes, the definition of an investor is a person who is the owner of an approved rental dwelling, provided that person is not an approved participant.

This definition acknowledges the fact that some approved participants own approved rental dwellings; however, for NRAS purposes, an investor is not the approved participant who owns the rental dwelling but the third party who is the legal or beneficial owner of the rental dwelling.

Power to compulsorily transfer an allocation

The amended regulations establish the process for compulsorily transferring an allocation from one approved participant to another.

The grounds under which the Secretary may transfer an allocation include where:

- (a) the approved participant fails to comply with a condition of the allocation, which includes a new condition of allocation which prohibits an approved participant from providing false or misleading

information to the Department, or failing to provide information to the Department it knows or ought reasonably to know is relevant

- (b) the approved participant fails to comply with its obligations in relation to incentives, including a requirement to pass on the incentive to the investor where there is a contractual arrangement to do so (refer page 3 for full details of approved participants' obligations in relation to incentives)
- (c) the approved participant provides false or misleading information about the Scheme to an investor in relation to the investor's approved rental dwelling
- (d) the conduct of the approved participant in relation to the allocation has contravened a consumer protection law
- (e) the approved participant claims the tax offset in respect of an approved rental dwelling to which it was not entitled
- (f) the approved participant is likely to be de-registered as a company by the Australian Securities and Investments Commission or a court has ordered the de-registration
- (g) the approved participant becomes bankrupt
- (h) any application under the Regulations by the approved participant includes false or misleading information or fails to include information the approved participant knew or ought reasonably to have known was relevant.

The grounds for transfer (excluding (f) and (g)) will apply regardless of whether the conduct giving rise to the grounds occurred before, on or after the date the amendments commence.

The grounds for transferring an allocation to another approved participant are also grounds for the revocation of an allocation.

The grounds for revocation (excluding (f) and (g)) will apply regardless of whether the conduct giving rise to the grounds mentioned in these paragraphs occurred before, on or after the date the amendments commence.

Notification of a proposed transfer – initiated by the Secretary

If the **Secretary** determines at her own initiative there are grounds to transfer an allocation, the Department will:

- write to the approved participant the allocation is made to, stating the Secretary proposes to transfer the allocation and the reasons for the proposed transfer.
- invite the approved participant to make a written submission to the Department to respond to the grounds for the proposed transfer no later than 14 days after the day the Department gives notice. Where applicable, the submission should include evidence to support the approved participant's response.

Notification of a proposed transfer – investor requested

If the **investor** has requested the transfer and the Secretary determines the grounds for transfer appear to be met, the Department will:

- Provide written notice to the investor to inform of the proposed transfer, the notice will:
 - state the Secretary proposes to transfer the allocation; and
 - include a list of approved participants to whom the Secretary may decide to transfer the allocation; and

- invite the investor to nominate an approved participant (from the list provided) to whom the allocation may be transferred, if the transfer is approved.
- Write to the approved participant the allocation is currently made to, stating the Secretary proposes to transfer the allocation and the reasons for the proposed transfer.
- Invite the approved participant to make a written submission to the Secretary to respond to the grounds for the proposed transfer, no later than 14 days after the day the Department gives notice. Where applicable, the submission should include evidence to support the approved participant's response.

The Secretary will consider the submission from the approved participant and the nomination from the investor (only where the investor requests the transfer) when deciding whether to transfer an allocation. The Secretary can consider other factors when deciding whether to transfer an allocation. The other factors the Secretary can consider are set out in Regulation 22B.

Requirements for transfer

If, after considering the response from the approved participant and the nomination from the investor (if the investor requested the transfer), the Secretary decides to transfer an allocation to another approved participant (proposed transferee), the Regulations require the Secretary to **only** transfer the allocation if:

- the Secretary is satisfied that the proposed transferee has the capacity to properly manage the allocation; and
- the Secretary is satisfied the proposed transferee is a suitable person or entity to manage allocations pursuant to all of the requirements of the Scheme; and
- the proposed transferee has agreed to the proposed transfer in writing.

Note:

- The approved participant to whom the allocation has been transferred will be eligible to claim the incentive for the year in which the transfer occurs. For example, if an allocation is compulsorily transferred from approved participant 'A' to approved participant 'B' in December 2017, only approved participant 'B' will be eligible to claim the incentive for that allocation for the 2017-18 NRAS year.

Approved participant's obligation to NRAS investors

New requirements have been added to the Regulations that establish obligations approved participants have to NRAS investors.

Approved participant's obligation to pass on an NRAS incentive to an investor

If an approved participant has a contractual arrangement with an investor that requires the approved participant to:

- make a payment to the investor in relation to the incentive; or
- take the necessary steps to enable the investor to claim the tax offset in relation to the incentive; or
- make an election to claim the tax offset in relation to the incentive

the Regulations place obligations on the approved participant to comply with these contractual arrangements.

Obligation to pass on incentives in timely manner

If an approved participant receives an incentive for an approved rental dwelling and there is a contractual arrangement requiring the approved participant to pass on part or all of the incentive to an investor, the Regulations place an obligation on the approved participant to pass on the incentive to the investor within a reasonable time after receiving the incentive.

The Secretary will consider what is a reasonable time having regard to all the circumstances of the matter.

Note:

- These obligations apply in relation to an approved participant who receives an incentive before, on or after the date the amendments commence.

Review rights

Decisions to compulsorily transfer an allocation are reviewable by the Administrative Appeals Tribunal (AAT). Information about the process for requesting a review by the AAT is available on the AAT's website: www.aat.gov.au.

Minor technical changes

NRAS tenant income index

The definition of the NRAS tenant income index has changed. Previously the indexation of household income limits for eligible tenants used the March quarter Consumer Price Index figures. The indexation of household income limits will now use the **December quarter Consumer Price Index figures**.

This technical change will allow more time before the end of an NRAS year for approved participants to update their systems to reflect the new household income limits each year. The Regulations will still require household income limits to be indexed annually on 1 May each year in accordance with the NRAS tenant income index.

Statement of Compliance

Some minor changes have been made to the form and content of the annual Statement of Compliance (SOC). The SOC requires the approved participant to:

- provide the details of each investor for each rental dwelling
- confirm that, at all times during the year, it complied with consumer protection laws in relation to the allocation
- confirm that it complied with the approved participant's obligations as set out in Division 2 of Part 4 of the Regulations
- provide any other information as is required on the SOC form.

Note:

- The NRAS Portal and the Tenant Demographic Assessment form will be updated to enable approved participants to provide this additional information.
- These new requirements for the SOC will apply in relation to statements of compliance lodged with the Department on or after the date the amendments commence.

Further information

The *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017* are available on the Federal Register of Legislation at: <https://www.legislation.gov.au/Details/F2017L01488>

Further enquiries on these amendments or any other aspect of the Scheme can be sent to nras@dss.gov.au