



Australian Government
Department of Social Services

Improving the National Rental Affordability Scheme

Consultation Paper



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Consultation

The National Rental Affordability Scheme ('NRAS') is an Australian Government initiative, delivered in partnership with state and territory governments. NRAS is administered under a framework comprising the *National Rental Affordability Scheme Act 2008* and the *National Rental Affordability Scheme Regulations 2008* as well as the administrative practices of the Department of Social Services.

The object of the NRAS Act is to encourage large-scale investment in housing by offering an incentive to participants in the Scheme so as to:

- a) increase the supply of affordable rental dwellings; and
- b) reduce rental costs for low and moderate income households.

NRAS seeks to address the shortage of affordable rental housing across the nation by offering financial incentives to the business sector and community organisations, to build and rent dwellings to low and moderate income households, at a rate that is at least 20 per cent below market value rent.

The Australian Government is committed to improving the framework in which the NRAS operates. The Department of Social Services is seeking submissions from interested parties on ways to improve the administration of NRAS and simplify its processes. While the Department remains open to receiving feedback on NRAS more broadly, it is particularly seeking submissions focusing on the areas highlighted by this consultation paper.

The information obtained through this process will be used to inform amendments to the NRAS Regulations and will assist with implementing a stronger framework for managing the Scheme in the future.

While submissions may be lodged by post, electronic lodgement via engage.dss.gov.au is preferred.

To provide some assistance to interested parties, the Department has identified a range of issues based on ongoing dialogue with stakeholders. A submission template is available for download from engage.dss.gov.au. Interested parties may suggest other areas of improvement to the NRAS and the Department's administration practices.

Closing date for submissions: 21 December 2016, 5pm AEST.

Email: Any enquiries on this consultation paper should be directed to nras@dss.gov.au

Mail: Department of Social Services
National Rental Affordability Scheme
Sirius Building, Furzer Street,
Woden, ACT 2606

Confidentiality

All information contained in submissions may be made available to the public on engage.dss.gov.au unless you indicate that you would like all or part of your submission to remain in-confidence.

Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in-confidence should provide this information marked as such in a separate attachment. Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission. The Department of Social Services reserves the right not to publish submissions at its discretion.

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1. Purpose of this consultation paper

To deliver on the Australian Government's commitment to improve the NRAS and reduce red tape, the Department is seeking written submissions from a wide range of interested parties associated with the Scheme. Interested parties may include approved participants, tenancy managers, investors, tenants or other parties with an interest in housing policy matters.

The NRAS Regulations specify how the Department and NRAS approved participants must operate within the Scheme, by transferring affordable housing policy objectives into legally enforceable compliance requirements.

This consultation paper provides the background to enable interested parties to focus their submissions on the Department's key areas of interest. Interested parties are encouraged to explore how the NRAS Regulations and administrative practices could be further improved while continuing to promote rental affordability policy outcomes.

The Department aims to have any proposed amendments to the NRAS Regulations from this consultation process in force by the commencement of the 2017-18 NRAS year (1 May 2017). This timeframe is subject to the legislative drafting and the Executive Council process. The Governor-General must make any amendments to the NRAS Regulations.

2. Scope of this consultation process

The Department is seeking submissions on improvements to the administration of the Scheme and the NRAS Regulations. To provide some assistance to interested parties, the Department has identified a range of issues based on ongoing dialogue with stakeholders. These areas are identified in Section 4 of this consultation paper. Interested parties may also suggest other areas of improvement to the NRAS and the Department's administration practices.

In considering any amendments to the NRAS Regulations or to the administrative practices, the Department will work to ensure the policy outcomes for the Scheme are maintained and improved where possible. The Department will consider a range of factors before progressing any identified improvements from this process. Including administrative impacts, cost burdens, availability of Departmental resources, as well as complexity and practicality. We will also work to ensure that improvements provide certainty and stability for approved participants and tenants in the Scheme.

3. The National Rental Affordability Scheme

NRAS is a partnership between the Commonwealth and the state and territory governments to invest in affordable rental housing. The Scheme, which commenced in 2008, sought to address the shortage of affordable rental housing by offering financial incentives to build and rent dwellings for low and moderate income households at 80 per cent of the market value rent or less.

The object of the NRAS Act is to encourage large-scale investment in housing by offering an incentive to participants in the Scheme so as to:

- increase the supply of affordable rental dwellings; and
- reduce rental costs for low and moderate income households.

Organisations participating in NRAS are known under the NRAS Act as *approved participants* and the Department knows owners of individual NRAS dwellings as *investors*. Approved participants are responsible for developing rental dwellings, reporting to the Department regularly, and ensuring ongoing compliance with the requirements of the Scheme. The Department has a direct working and legal relationship only with approved participants in the Scheme and these legal arrangements do not extend to dealings that approved participants may enter into with third parties, such as individual investors, tenancy managers or business partners.

NRAS requires approved participants to satisfy all conditions of allocation (as set out in regulation 16 of the NRAS Regulations) in order to be entitled to receive an incentive for each NRAS year for a period of ten consecutive years per dwelling (the incentive period). Generally, the incentive is provided in the form of a refundable tax offset. However, a cash payment can be made if the entity receiving the incentive is an endorsed charitable institution.

The incentive is indexed annually in accordance with the rental component of the Consumer Price Index (CPI). The Commonwealth contribution of the incentive for the 2016-2017 NRAS year is \$8,286.03.

The Secretary of the Department of Social Services is responsible for the administration of the Scheme. The Secretary, or its delegate, makes all administrative decisions with respect to entitlement for incentives in the Scheme. In some circumstances, the Secretary is also authorised to proportionately adjust the incentive amount due to an approved participant where some, but not all, of the eligibility requirements and conditions of allocation have been met.

In the 2014-15 Budget, the Government announced it would not proceed with the final planned application process for NRAS and the Scheme would be capped at 38,000 dwellings. Despite ongoing Government funding, the Scheme has been slow in delivering affordable homes and has not achieved its delivery targets. However, the Government remains committed to improving the administration of the Scheme for incentives already allocated as the Scheme will not conclude until 30 June 2026 (with no dwellings eligible to receive an incentive beyond this date).

Under the current arrangements, dwellings are to be delivered by 30 June 2016, with an

approximate total cost to the Australian Government of about \$3.4 billion. Incentives will continue to be available to those dwellings already allocated into the Scheme. There will be no further funding rounds or new allocations of NRAS incentives beyond those currently allocated in the Scheme and held by approved participants. The last possible day for the incentive to commence for dwellings not yet delivered is 30 June 2016.

How NRAS works

The NRAS Act and the NRAS Regulations include, among other things, provision of incentives to approved participants provided certain conditions are satisfied. The NRAS Act and the NRAS Regulations set out a number of conditions for eligibility for an incentive. These include the requirements that the NRAS dwelling:

- is rented to an eligible tenant if it is rented during the NRAS year;
- charges rent at least 20 per cent less than the market value rent for the dwelling at all times during the NRAS year (1 May to 30 April); and
- is not vacant for periods exceeding the limits set out in the NRAS Regulations, no longer than 26 weeks or a continuous period of 26 weeks across two NRAS years.

The approved participant is also required to comply with any other conditions of allocation or special conditions imposed.

State or territory governments also offer approved participants a co-contribution in the form of a payment or other in-kind support to match the Australian Government's rate of indexation. To be eligible to receive the relevant state or territory government's contribution, approved participants may also be required to comply with other conditions imposed by the state or territory governments.

MARKET VALUE RENT AND RENT CHARGED

NRAS has two rent components: market value rent and rent charged. *Market value rent* represents the full market value that is expected to be paid to reside in a dwelling, for a particular time period. *Rent charged* is the amount of rent that an NRAS eligible tenant must pay to reside in a dwelling under the Scheme, which must not at any time during an NRAS year exceed 80 per cent of the market value rent.

Market rent valuations are required to be provided to the Department for Year 1, Year 5 and Year 8 of the dwelling. These valuations set a baseline market rent value for the dwelling. The Department assesses market rental valuations provided for each dwelling in order to confirm that the valuation is correct and valid, and in order to establish the maximum rent charged for the dwelling, which must be 80 percent below the market value rent.

For all other years (years 2, 3, 4, 6, 7, 9 and 10), the market value rent can be increased or decreased by the NRAS market index. The NRAS market index is an average CPI value for the state or territory where the dwelling is located.

The approved participant for the dwelling is able to increase or decrease the rent charged for a dwelling provided they meet the following requirements:

- (a) rent remains at all times 20 per cent or more below market value rent; and
- (b) applicable state or territory residential tenancy laws are complied with in relation to rent reviews.

ELIGIBLE TENANTS

NRAS dwellings are available to low and moderate income Australians. To be eligible to rent an NRAS property, potential tenants:

- need to provide the tenancy manager with written evidence of their gross income, both with their initial application and every year afterwards;
- must not exceed the income limits for their household type by more than 25 per cent over two consecutive years.

The total income of all tenants of an NRAS rental property is used to calculate the overall household income for that property. Approved participants are required to assess initial and continuing eligibility of the tenant and to hold appropriate documentary evidence of those assessments.

Approved participants are not required to provide tenants with longer term leases and/or additional rights beyond those required by relevant state or territory landlord and tenant legislation. Approved participants may benefit from longer leases being offered, for example, through reduced vacancy rates and minimising costs associated with end of lease and re-tenanting.

REFUNDABLE TAX OFFSET

All approved participants receive the Commonwealth contribution as a refundable tax offset, except for endorsed charitable institutions which receive the Commonwealth contribution as cash but can elect to receive the incentive as a tax offset. A tax offset reduces the amount of tax that a recipient is liable to pay for a financial year. The tax offset is refundable, so that where the amount of offset available to the approved participant exceeds the approved participant's tax payable in the financial year, then a monetary refund is paid by the Australian Taxation Office. Refunds are treated as non-assessable, non-exempt income for tax purposes.

As part of this process, approved participants are required to provide annual Statements of Compliance to the Department by 30 June each year. For participants who are entitled to receive an incentive as a tax offset, the Secretary issues a certificate. This enables the refundable tax offset to be claimed by approved participants when submitting their annual tax return for the relevant income tax year.

4. Possible areas of improvement

There are a range of NRAS areas that could potentially benefit from further improvement. You may wish to provide suggestions, comments or ideas on these in your submission:

- general reforms to the NRAS process: simplifying the administration of NRAS and clarifying definitions in the NRAS Regulations;
- strengthening documentary requirements: regulating the requirement for approved participants to lodge supporting information with Statements of Compliance;
- introducing discretion to correct errors: flexibility to allow for incentives to be issued where it is in the interest of the Scheme;
- improved transparency for investors: considering possible avenues to keep private investors informed;
- major non-compliance: expanding the circumstances in which a revocation of allocation can occur; and
- substitution of dwellings: inserting substitution rules in the NRAS Regulations to provide a clearer understanding of how to effectively substitute NRAS dwellings.

Under each of these sub-headings there are questions provided for your consideration. You may wish to respond to these questions in your submission.

General reforms to the NRAS process

The NRAS Regulations specify how the measures under the NRAS Act are implemented. Approved participants have advised the Department that some provisions in the NRAS Regulations appear unclear and require clarification and/or could be simplified.

Some of the areas where improvements could be considered as part of any amendments to provide clarity and reduce red tape include:

- relaxing eligibility requirements for NRAS tenant(s), for example allowing an NRAS tenant to switch between other NRAS dwellings without having to meet the initial gross household income limit again;
- correcting irregularities in the NRAS Regulations, for example the requirement that all valuers need to be registered as a valuer in the state or territory in which the dwelling is located (acknowledging that not all states and territories require a valuer to be registered); and
- clarifying definitions in the NRAS Regulations and legislative requirements, for example to incorporate definitions regarding “vacant” dwellings and “unavailable” dwellings and the difference in treatment between the two situations. For example, a vacant dwelling may be one which the approved participant is not able to find an eligible tenant to rent whilst, an “unavailable” dwelling may be one which has incurred fire damage and not able to be tenanted.

Discussion questions – General reforms to the NRAS process

Question 1: What provisions in the NRAS Regulations could be changed/simplified in order to provide further clarity, reduce red tape and improve the overall efficiency of the Scheme?

Strengthening documentary requirements

After the end of each NRAS year, approved participants lodge an incentive claim for each dwelling with an active allocation. This involves submitting a Statement of Compliance and supporting information. The Statement of Compliance is a declaration that the dwelling has at all times complied with the regulatory requirements of the Scheme and details of any way in which the requirements were not met. Approved participants provide documents in support of their Statement of Compliance, including occupancy records for each dwelling and tenant demographic data.

The Department assesses the information submitted by approved participants to determine eligibility to receive the NRAS incentive. The Department processes incentive claims in accordance with the requirements of the NRAS Regulations and makes payments based on the information provided by approved participants.

The information provided by approved participants in support of their Statement of Compliance varies and in some cases, the information is inconsistent with other documentation that is provided and unable to be verified.

Discussion question – Strengthening documentary requirements

Question 2: What documentation should approved participants be required to provide to the Department to support the information obtained in relation to:

- an allocation (such as market rent valuations); and
- lodgement of the annual Statement of Compliance (such as rents charged, household income and occupancy records)?

Introducing discretion to correct errors

The NRAS Regulations do not provide discretion to allocate dwellings when an applicant has not met all of the conditions of the reservation, for example the size of the dwelling delivered does not match the bedroom size as specified in the conditions.

Additionally, the NRAS Regulations do not provide discretion to issue an incentive in circumstances where a minor administrative/system error has occurred or the change is technical in nature.

When considering whether to issue an incentive when an approved participant has not met all of the conditions of allocation the only options currently available to the Department are:

- not paying the NRAS incentive;
- proportionally reducing the incentive; or
- revoking the allocation.

Introducing scope for the delegate to exercise discretion when allocating dwellings or issuing incentives may avoid approved participants losing their allocations and incentives, for example allocating a dwelling into the Scheme even the approved participant has not met all of the conditions.

Discussion question – Introducing discretion to correct errors

Question 3: Are there circumstances under which the Department should consider allocating a dwelling even when the applicant has not met all of the conditions of reservation?

Question 4: Under which circumstances should the Department consider issuing an incentive even when the approved participant has not met all of the conditions of allocation but issuing an incentive is still in the best interests of the Scheme?

Improved transparency for investors

When the Scheme was introduced in 2008, it was premised on investment in affordable housing by institutional investors, developers and the not-for-profit housing sector. Interest in the Scheme was not as expected, with a larger number of smaller entities securing allocations. Many of the dwellings to which allocations relate have been on-sold to private investors who enter into arrangements with approved participants to be the end recipient of the NRAS incentive.

The Department does not have any role to play in negotiations between investors and approved participants as the NRAS Act does not refer to investors and the NRAS Regulations contain specific provisions which emphasise that the Commonwealth does not deal directly with investors.

Approved participants have responsibility for meeting the regulatory requirements for entitlement to receive an incentive. Where an approved participant does not comply with the NRAS Regulations, it affects their entitlement to receive an incentive for the year of non-compliance. This in turn impacts the individual private investor.

The Department is concerned that approved participants may not be dealing fairly or transparently with investors in all cases. For example, the Department receives a range of queries from investors, predominately complaints regarding the issuing of NRAS incentives and enquiries about the submission of Statements of Compliance.

Discussion question – Improved transparency for investors

Question 5: While there is no legal relationship between the Department and NRAS investors, how might the Department keep investors informed of the status of their dwelling and related incentive?

Major non-compliance

The NRAS Regulations provide limited scope to the delegate to address major non-compliance with the Scheme. The Department is considering expanding the circumstances in which a revocation of allocation can occur.

The Department is also considering allowing the Secretary (in instances of revocation and/or withdrawal of allocations) to offer those allocations to other existing approved participants. This would be restricted to certain circumstances, for example, instances of misconduct that bring the Commonwealth and/or the Scheme into disrepute and/or insolvency amongst approved participants. It may extend to circumstances where the approved participant has voluntarily withdrawn a dwelling from the Scheme.

Discussion question – Major non-compliance

Question 6: Under what circumstances should the Secretary consider revoking an NRAS allocation?

Question 7: Under what circumstances should the Secretary consider offering withdrawn/revoked allocations to other existing approved participants?

Substitution of dwellings

A dwelling, once delivered into the Scheme, may be substituted with another dwelling. The substitution rules (see regulation 20) enable the incentive to continue to be claimed for the balance of the incentive period. Currently, the NRAS Regulations do not provide any criteria for the Secretary to take into consideration in determining whether to approve a request for substitution.

The NRAS Regulations do not explicitly place a restriction on the amount of time it will take an approved participant to substitute a dwelling back into the scheme.

The Department is seeking to insert substitution rules in the NRAS Regulations to provide a clearer understanding of how to effectively substitute NRAS dwellings. The Department's intention is that dwellings substituted are 'like for like'. For example, a key issue is the similarity of the substituted dwelling to the one it replaces, in particular the age of the dwelling, the geographical location, the physical features (such as size/number of bedrooms and amenity), whether it was previously used as a residence and the overall integrity of the scheme.

Discussion question – Role of substituted dwellings

Question 8: What are the issues the Department should consider when determining if one dwelling can be substituted for another?

5. Glossary

Allocation	In relation to an incentive period, means an allotment to an approved participant of an entitlement to receive an incentive for an approved rental dwelling in relation to an NRAS year that falls within the incentive period if conditions are satisfied in relation to the rental dwelling.
Approved participant	This term has the same meaning as in the <i>National Rental Affordability Scheme Regulations 2008</i> .
Approved rental dwelling	This term has the same meaning as in the <i>National Rental Affordability Scheme Regulations 2008</i> .
Conditions of allocation	The conditions approved participants are to comply with in order to be eligible to receive an incentive under the Scheme.
Department	The Department of Social Services.
Endorsed charitable institution	An entity that is endorsed as exempt from income tax by the Commissioner of Taxation under section 50-105 of the <i>Income Tax Assessment Act 1997</i> .
Incentive	An incentive that is paid or issued as a tax offset under the <i>National Rental Affordability Scheme Regulations 2008</i> .
Incentive period	Means a ten year period that starts on or after 1 July 2008.
NRAS or the Scheme	National Rental Affordability Scheme.
NRAS year	Short for National Rental Affordability Scheme year, the period beginning on 1 May and ending on 30 April.
NRAS incentive index	This term has the same meaning as in the <i>National Rental Affordability Scheme Regulations 2008</i> .
NRAS market index	This term has the same meaning as in the <i>National Rental Affordability Scheme Regulations 2008</i> .
The NRAS Act	<i>National Rental Affordability Scheme Act 2008</i> .
The NRAS Regulations	<i>National Rental Affordability Scheme Regulations 2008</i>

