



National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 16 November 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Christian Porter
Minister for Social Services

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1 Name

This instrument is the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	18 November 2017

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *National Rental Affordability Scheme Act 2008*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

National Rental Affordability Scheme Regulations 2008

1 Regulation 4 (at the end of paragraph (b) of the definition of *approved participant*)

Add “or 21A”.

2 Regulation 4

Insert:

consumer protection law has the same meaning as in the *Australian Postal Corporation Act 1989*.

investor, in relation to an approved rental dwelling, means a person:

- (a) who is the legal or beneficial owner of the rental dwelling; and
- (b) who is not an approved participant in relation to the dwelling.

3 Regulation 4 (definition of *NRAS tenant income index*)

Omit “March”, substitute “December”.

4 Regulation 4

Insert:

pass on has the meaning given by subregulation 30A(2).

relevant approved participant has the meaning given by subregulation 21A(1).

5 Regulation 10

Repeal the regulation, substitute:

10 Purpose

This Part provides for the making, transfer and revocation of allocations under the Scheme.

6 After subregulation 16(2)

Insert:

- (2A) The approved participant must not, in relation to an allocation made to the approved participant:
 - (a) provide information to the Secretary or the Department that is false or misleading; or
 - (b) fail to provide information to the Secretary or the Department that the approved participant knows, or ought reasonably to know, is relevant.

7 Subregulation 17(3)

After “Statement”, insert “must be in a form approved by the Secretary and”.

8 Paragraphs 17(3)(e) and (f)

Repeal the paragraphs, substitute:

- (e) details of each investor for the dwelling; and
- (f) a statement that at all times during the year the approved participant, in respect of the dwelling, complied with landlord, tenancy, building, and health and safety laws of the State or Territory and local government area in which the dwelling is located, or details of any way in which such laws were not complied with; and
- (fa) a statement that at all times during the year the approved participant complied with consumer protection laws in relation to the allocation, or details of any way in which such laws were not complied with; and

9 Paragraph 17(3)(h)

Repeal the paragraph, substitute:

- (h) a statement that the approved participant has complied with the approved participant's obligation under Division 2 of Part 4, or details of any way in which that obligation was not complied with; and
- (i) such other information as is required by the form.

10 After regulation 19

Insert:

Division 1A—Transfer and revocation of allocations**11 After regulation 21**

Insert:

21A Transfer of allocation at Secretary's discretion or at request of investor

- (1) Subject to regulations 21B and 21C, the Secretary may transfer an allocation (other than a provisional allocation) in relation to an approved rental dwelling made to an approved participant (the *relevant approved participant*) to another approved participant if the Secretary is satisfied that one or more of the grounds specified in subregulation (2) exist.
- (2) The specified grounds are as follows:
 - (a) the relevant approved participant has failed to comply with a condition of the allocation;
 - (b) the relevant approved participant has failed to comply with the relevant approved participant's obligation under Division 2 of Part 4;
 - (c) the relevant approved participant has provided false or misleading information about the Scheme to an investor for the approved rental dwelling;
 - (d) the conduct of the relevant approved participant in relation to the allocation has contravened a consumer protection law;
 - (e) if the relevant approved participant received a tax offset certificate in respect of an approved rental dwelling—the relevant approved participant has claimed a tax offset (or a part of a tax offset) in relation to the certificate to which the relevant approved participant was not entitled;
 - (f) if the relevant approved participant is a company—either:

- (i) ASIC has published notice of the proposed deregistration of the company under paragraph 601AA(4)(d) or 601AB(3)(b) of the *Corporations Act 2001*; or
 - (ii) a court has ordered the deregistration of the company by ASIC under paragraph 413(1)(d) or 481(5)(b) or subsection 509(2) of that Act;
 - (g) the relevant approved participant has:
 - (i) become bankrupt; or
 - (ii) taken steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounded with one or more of his or her creditors; or
 - (iv) made an assignment of his or her remuneration for the benefit of one or more of his or her creditors;
 - (h) any application under the Regulations by the relevant approved participant:
 - (i) included information that is false or misleading; or
 - (ii) failed to include information that the relevant approved participant knew, or ought reasonably to have known, was relevant.
- (3) The Secretary may transfer an allocation:
 - (a) on the Secretary's own initiative; or
 - (b) on the written request of each investor.
- (4) The request must be in a form approved by the Secretary and must include details of the ground or grounds on which the investor is seeking to have the allocation transferred. Each ground must be a ground specified in subregulation (2).

21B Secretary to notify of proposed transfer

Notice of proposed transfer must be given

- (1) Before the Secretary transfers an allocation in respect of an approved rental dwelling under regulation 21A, the Secretary must give written notice of the proposed transfer to:
- (a) the relevant approved participant; and
 - (b) if an investor has requested the transfer in accordance with paragraph 21A(3)(b)—each such investor.

Notice to relevant approved participant

- (2) A notice under paragraph (1)(a) to the relevant approved participant must:
- (a) state that the Secretary proposes to transfer the allocation and the reasons for the proposed transfer; and
 - (b) invite the relevant approved participant to make a written submission to the Secretary about the proposed transfer no later than 14 days after the day the Secretary gives the notice.

Notice to investor

- (3) A notice under paragraph (1)(b) to an investor must:
- (a) state that the Secretary proposes to transfer the allocation; and

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- (b) include a list of approved participants to whom the Secretary may decide to transfer the allocation; and
 - (c) invite the investor to nominate an approved participant to whom the allocation may be transferred from the list provided by the Secretary.

Secretary must have regard to submissions and nominations

- (4) In deciding whether to transfer the allocation, the Secretary must have regard to the following:
 - (a) any submission made under paragraph (2)(b);
 - (b) any nomination made under paragraph (3)(c).
- (5) Subregulation (4) does not limit the matters to which the Secretary may have regard in deciding whether to transfer the allocation.

21C Requirements for transfer

The Secretary must not, under regulation 21A, transfer an allocation in respect of an approved rental dwelling to another approved participant (the *proposed transferee*) unless:

- (a) the Secretary is satisfied that the proposed transferee:
 - (i) has the capacity to properly manage the allocation; and
 - (ii) is a suitable person or entity to whom the allocation may be transferred; and
- (b) the proposed transferee has, in writing, agreed to the proposed transfer.

12 Subregulation 22(1)

Before “in relation to”, insert “made to an approved participant”.

13 After paragraph 22(1)(a)

Insert:

- (aa) the approved participant fails to comply with the approved participant’s obligation under Division 2 of Part 4; or
- (ab) the approved participant provides false or misleading information about the Scheme to an investor for the approved rental dwelling; or
- (ac) the approved participant fails to provide information to an investor that the approved participant knows, or ought reasonably to know, is relevant; or
- (ad) the approved participant fails to comply with a consumer protection law in relation to the allocation; or
- (ae) if the approved participant receives a tax offset certificate in respect of the approved rental dwelling—the approved participant claims a tax offset (or a part of a tax offset) in relation to the certificate to which the approved participant is not entitled; or
- (af) if the approved participant is a company—either:
 - (i) ASIC has published notice of the proposed deregistration of the company under paragraph 601AA(4)(d) or 601AB(3)(b) of the *Corporations Act 2001*; or
 - (ii) a court has ordered the deregistration of the company by ASIC under paragraph 413(1)(d) or 481(5)(b) or subsection 509(2) of that Act; or
- (ag) the approved participant:

- (i) becomes bankrupt; or
- (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (iii) compounds with one or more of his or her creditors; or
- (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or

14 After regulation 22A

Insert:

22B Matters that may be taken into account by Secretary in deciding to transfer or revoke an allocation

In deciding whether to transfer an allocation under regulation 21A, or to revoke an allocation, made to an approved participant, the Secretary may take into account the following matters:

- (a) whether the approved participant has failed to manage an allocation in accordance with the objectives of the Scheme;
- (b) any advice provided to the Secretary by a Commonwealth, State or Territory regulatory authority about whether the conduct of the approved participant in relation to an allocation has contravened a law of the Commonwealth or of a State or Territory;
- (c) any matters notified to the Secretary about the approved participant's conduct by a State or Territory government;
- (d) any conduct by the approved participant in relation to an allocation which the Secretary considers might bring the Scheme into disrepute;
- (e) the approved participant's current financial circumstances including, but not limited to, financial circumstances that may significantly limit the approved participant's capacity to comply with the conditions of the allocation;
- (f) the nature, significance, persistence and seriousness of any contravention of:
 - (i) a condition of an allocation; or
 - (ii) an obligation under Division 2 of Part 4;
- (g) the need to ensure that:
 - (i) allocations under the Scheme are properly managed; and
 - (ii) investors maintain confidence in the Scheme;
- (h) whether the approved participant has ever:
 - (i) become bankrupt; or
 - (ii) applied to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounded with his or her creditors; or
 - (iv) assigned his or her remuneration for the benefit of creditors;
- (i) any other matter that the Secretary considers relevant.

Division 1B—Variation of certain conditions

15 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Incentives

Division 1—Receiving incentives

16 Regulations 24 and 25 and subregulations 28A(2) and 29(1)

Omit “Part”, substitute “Division”.

17 At the end of Part 4

Add:

Division 2—Obligation in relation to incentives

30A Approved participant’s obligation to investors

- (1) This Division sets out an approved participant’s obligation to an investor for an approved rental dwelling in respect of which the approved participant receives an incentive.
- (2) For the purposes of this Division, an approved participant is required to *pass on* an incentive to an investor if, under a contractual arrangement with the investor, the approved participant is required:
 - (a) to make a payment to the investor in relation to the incentive; or
 - (b) to take steps to enable the investor to claim a tax offset to which the investor is entitled under Division 380 of the *Income Tax Assessment Act 1997* in relation to the incentive; or
 - (c) to make an election under section 380-11 or 380-16 of the *Income Tax Assessment Act 1997* in relation to the incentive.

30B Obligation to pass on incentives in timely manner

- (1) This regulation applies if:
 - (a) an approved participant receives an incentive under regulation 29 for an approved rental dwelling; and
 - (b) the approved participant is required to pass on all or part of the incentive to an investor for the dwelling.
- (2) The approved participant must comply with the requirement within a reasonable time after receiving the incentive.

18 Before paragraph 33(1)(a)

Insert:

- (aa) under regulation 21A to transfer an allocation; or

19 At the end of Part 6

Add:

Division 2—Amendments made by the National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017

36 Application

- (1) The amendments made by items 7, 8 and 9 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017* apply in relation to a Statement of Compliance lodged with the Secretary on or after the commencement of those items.
- (2) Paragraphs 21A(2)(a), (b), (c), (d), (e) and (h), as inserted by item 11 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017*, apply regardless of whether the conduct giving rise to the grounds mentioned in those paragraphs occurred before, on or after the commencement of that item.
- (3) Paragraphs 22(1)(aa), (ab), (ac), (ad) and (ae), as inserted by item 13 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017*, apply regardless of whether the conduct giving rise to the grounds mentioned in those paragraphs occurred before, on or after the commencement of that item.
- (4) Regulation 22B, as inserted by item 14 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017*, applies in relation to a transfer or revocation of an allocation, whether the allocation was made before, on or after the commencement of that regulation.
- (5) Division 2 of Part 4, as inserted by item 17 of Schedule 1 to the *National Rental Affordability Scheme Amendment (Investor Protection) Regulations 2017*, applies in relation to an approved participant who receives an incentive before, on or after the commencement of that Division.