

National Rental Affordability Scheme (Consequential Amendments) Act 2008

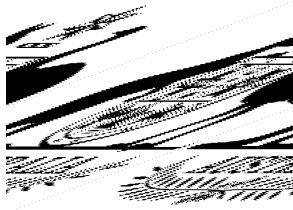
No. 130, 2008

An Act to amend the *Extension of Charitable Purpose Act 2004* and the *Income Tax Assessment Act 1997* in relation to the National Rental Affordability Scheme, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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National Rental Affordability Scheme (Consequential Amendments) Act 2008

No. 130, 2008

An Act to amend the *Extension of Charitable Purpose Act 2004* and the *Income Tax Assessment Act 1997* in relation to the National Rental Affordability Scheme, and for related purposes

[Assented to 28 November 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *National Rental Affordability Scheme (Consequential Amendments) Act 2008*.

2 Commencement

This Act is taken to have commenced on 1 July 2008.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Income Tax Assessment Act 1997

1 Section 11-55 (after table item headed “mutual receipts”)

Insert:

National Rental Affordability Scheme

payments made, and non-cash benefits provided, by a State or Territory governmental body in relation to participation in the National Rental Affordability Scheme.....

380-35

2 Section 13-1 (after table item headed “housekeeper”)

Insert:

housing

National Rental Affordability Scheme..... Division 380

3 Section 13-1 (table item headed “partnerships”)

After “*dividends*”, insert “, *housing*”.

4 Section 13-1 (table item headed “trusts”)

After “*dividends*”, insert “, *housing*”.

5 After subsection 67-25(2A)

Insert:

National Rental Affordability Scheme

(2B) The *tax offsets available under Division 380 are subject to the refundable tax offset rules.

6 At the end of subsection 118-37(1)

Add:

- ; (h) an incentive (within the meaning of the *National Rental Affordability Scheme Act 2008*) you claim under this Act;
 - (i) a variation, transfer or revocation of an allocation (within the meaning of the *National Rental Affordability Scheme Act 2008*);
 - (j) anything of economic value provided to you by:
-

- (i) a Department of a State or Territory; or
- (ii) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory; in relation to your participation in the National Rental Affordability Scheme.

7 After Division 376 of Part 3-45

Insert:

Division 380—National Rental Affordability Scheme

Table of Subdivisions

	Guide to Division 380
380-A	National Rental Affordability Scheme Tax Offset
380-B	Payments made in relation to the National Rental Affordability Scheme etc.

Guide to Division 380

380-1 What this Division is about

This Division provides a tax offset to certain entities as a result of certificates issued under the *National Rental Affordability Scheme Act 2008*.

It also ensures that payments made, and non-cash benefits provided, by a State or Territory governmental body in relation to the National Rental Affordability Scheme are not assessable income and not exempt income.

Subdivision 380-A—National Rental Affordability Scheme Tax Offset

Table of sections

380-5	Claims by individuals, corporate tax entities and superannuation funds
380-10	Claims by a party to a non-entity joint venture
380-15	Claims by certain entities to whom NRAS rent flows indirectly

- 380-20 Claims by a trustee of a trust that does not have net income for an income year
- 380-25 When NRAS rent flows indirectly to or through an entity
- 380-30 Share of NRAS rent

380-5 Claims by individuals, corporate tax entities and superannuation funds

Entitlement

- (1) An entity is entitled to a *tax offset for an income year if:
 - (a) the entity is an individual, a *corporate tax entity or *superannuation fund; and
 - (b) the *Housing Secretary has issued the entity with a certificate under the *National Rental Affordability Scheme Act 2008*; and
 - (c) the income year begins in the *NRAS year to which the certificate relates.

Amount

- (2) The amount of the entity's *tax offset is the amount stated in the certificate.
- (3) However, if the *Housing Secretary issues the entity with an amended certificate under the *National Rental Affordability Scheme Act 2008*, the amount of the entity's *tax offset is the amount stated in the amended certificate.

380-10 Claims by a party to a non-entity joint venture

- (1) An entity is entitled to a *tax offset for an income year if:
 - (a) the entity has *NRAS rent for a rental dwelling covered by subsection (3) for the income year; and
 - (b) the entity is:
 - (i) a party to a *non-entity joint venture; and
 - (ii) an individual, a *corporate tax entity or *superannuation fund.
- (2) The amount of the entity's *tax offset for an income year is the sum of all amounts worked out under subsection (4) for the income year.

- (3) *NRAS rent for a rental dwelling is covered by this subsection if:
- (a) NRAS rent is derived by a party to a *non-entity joint venture in relation to the rental dwelling for an income year; and
 - (b) the *Housing Secretary has issued the non-entity joint venture with a certificate under the *National Rental Affordability Scheme Act 2008* in relation to the rental dwelling; and
 - (c) the income year begins in the *NRAS year to which the certificate relates.
- (4) If an entity has *NRAS rent for a rental dwelling covered by subsection (3), work out an amount for the income year under this subsection using the following formula:

$$\text{Amount stated in certificate for the rental dwelling} \times \frac{\text{*NRAS rent *derived by the entity from the rental dwelling for the income year}}{\text{Total *NRAS rent *derived from the rental dwelling for the income year}}$$

- (5) If a partnership or a trustee of a trust has *NRAS rent covered by subsection (3), for the purpose of applying sections 380-15 and 380-20, assume:
- (a) a certificate was issued by the *Housing Secretary to the partnership or the trustee of the trust for the *NRAS year mentioned in paragraph (3)(c) of this section; and
 - (b) the rental dwellings covered by the certificate are those for which the partnership or the trustee has NRAS rent covered by subsection (3) of this section; and
 - (c) the amount stated in the certificate was the total of all amounts worked out under subsection (4) of this section in relation to those rental dwellings.
- (6) However, if the *Housing Secretary issues an amended certificate under the *National Rental Affordability Scheme Act 2008* in relation to the rental dwelling, the amounts under subsection (4) are to be worked out using the amount or amounts, as the case may be, stated in the amended certificate.

380-15 Claims by certain entities to whom NRAS rent flows indirectly

- (1) An entity to whom *NRAS rent for a rental dwelling *flows indirectly in an income year is entitled to a *tax offset for that
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income year that is equal to the amount worked out under subsection (2), if:

- (a) the entity is:
 - (i) an individual; or
 - (ii) a *corporate tax entity when the NRAS rent flows indirectly to it; or
 - (iii) the trustee of a trust that is liable to be assessed on a share of, or all or a part of, the trust's *net income under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* for that income year; or
 - (iv) the trustee of an *FHSA; or
 - (v) a *superannuation fund, an *approved deposit fund or a *pooled superannuation trust; and
- (b) the *Housing Secretary has issued a certificate under the *National Rental Affordability Scheme Act 2008* to a partnership or a trustee of a trust in relation to the rental dwelling; and
- (c) the income year of the partnership or the trustee of the trust begins in the *NRAS year to which the certificate relates.

Note: The entities covered by this section are the ultimate recipients of the NRAS rent because the NRAS rent does not flow indirectly through them to other entities.

- (2) Work out the amount using the following formula:

$$\text{Amount stated in certificate} \times \frac{\text{The entity's *share of *NRAS rent for the rental dwelling}}{\text{Total *NRAS rent *derived from rental dwellings covered by the certificate for the income year mentioned in paragraph (1)(c)}}$$

- (3) However, if the *Housing Secretary issues an amended certificate under the *National Rental Affordability Scheme Act 2008* in relation to the rental dwelling, work out the amount under subsection (2) using the amount stated in the amended certificate.

380-20 Claims by a trustee of a trust that does not have net income for an income year

- (1) An entity is entitled to a *tax offset for an income year if:
 - (a) the entity is a trustee of a trust; and

- (b) the trust does not have a *net income for the income year; and
 - (c) *NRAS rent for a rental dwelling would otherwise *flow indirectly to the entity in the income year as if:
 - (i) the trust did have a net income for the income year; and
 - (ii) for the purposes of paragraph 380-25(4)(b), the entity has a share amount, being the net income referred to in subparagraph (i) of this paragraph; and
 - (iii) the entity's *share of the NRAS rent under section 380-30 was a positive amount; and
 - (d) the *Housing Secretary has issued a certificate under the *National Rental Affordability Scheme Act 2008* to a partnership or a trustee of a trust in relation to the rental dwelling; and
 - (e) the income year of the partnership or the trustee of the trust begins in the *NRAS year to which the certificate relates.
- (2) The amount of the *tax offset is the amount worked out in accordance with subsection 380-15(2), as if the reference in the formula to paragraph (1)(c) were a reference to paragraph (1)(e) of this section. For the purposes of working out the entity's *share of *NRAS rent for the rental dwelling, assume subparagraphs (1)(c)(i), (ii) and (iii) of this section apply.
- (3) However, if the *Housing Secretary issues an amended certificate under the *National Rental Affordability Scheme Act 2008* in relation to the rental dwelling, the amount of the entity's *tax offset is worked out in accordance with subsection 380-15(2) using the amount stated in the amended certificate.
- (4) If the trustee of a trust is entitled to a *tax offset under this section:
- (a) a beneficiary of the trust; or
 - (b) a subsequent entity to whom *NRAS rent for the rental dwelling *flows indirectly;
- is not entitled to a tax offset under this Subdivision in relation to the NRAS rent for the rental dwelling.

380-25 When NRAS rent flows indirectly to or through an entity

- (1) This section sets out the circumstances in which *NRAS rent:
- (a) ***flows indirectly*** to an entity (subsection (2), (3) or (4)); or
 - (b) ***flows indirectly*** through an entity (subsection (5)).
-

Partners

- (2) *NRAS rent **flows indirectly** to a partner in a partnership in an income year if, and only if:
- (a) during that income year, the NRAS rent is *derived by the partnership, or *flows indirectly to the partnership as a beneficiary because of a previous application of subsection (3); and
 - (b) the partner has an individual interest:
 - (i) in the partnership's *net income for that income year that is covered by paragraph 92(1)(a) or (b) of the *Income Tax Assessment Act 1936*; or
 - (ii) in a *partnership loss of the partnership for that income year that is covered by paragraph 92(2)(a) or (b) of that Act;(whether or not that individual interest becomes assessable income in the hands of the partner); and
 - (c) the partner's *share of the NRAS rent under section 380-30 is a positive amount (whether or not the partner actually receives any of that share).

Beneficiaries

- (3) *NRAS rent **flows indirectly** to a beneficiary of a trust in an income year if, and only if:
- (a) during that income year, the NRAS rent is *derived by the trustee of the trust, or *flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or this subsection; and
 - (b) the beneficiary has this amount for that income year (the **share amount**):
 - (i) a share of the trust's *net income for that income year that is covered by paragraph 97(1)(a) of the *Income Tax Assessment Act 1936*; or
 - (ii) an individual interest in the trust's net income for that income year that is covered by section 98A or 100 of that Act;(whether or not the share amount becomes assessable income in the hands of the beneficiary); and

- (c) the beneficiary's *share of the NRAS rent under section 380-30 is a positive amount (whether or not the beneficiary actually receives any of that share).

Trustees

- (4) *NRAS rent **flows indirectly** to the trustee of a trust in an income year if, and only if:
 - (a) during that income year, the NRAS rent is *derived by the trustee, or *flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or (3); and
 - (b) the trustee is liable or, but for another provision in this Act, would be liable, to be assessed in respect of an amount (the **share amount**) that is:
 - (i) a share of the trust's *net income for that income year under section 98 of the *Income Tax Assessment Act 1936*; or
 - (ii) all or a part of the trust's net income for that income year under section 99 or 99A of that Act;(whether or not the share amount becomes assessable income in the hands of the trustee); and
 - (c) the trustee's *share of the NRAS rent under section 380-30 is a positive amount (whether or not the trustee actually receives any of that share).

Note: A trustee to whom NRAS rent flows indirectly under this subsection is entitled to a tax offset under section 380-15 and the NRAS rent does not flow indirectly through the trustee to another entity.

- (5) *NRAS rent **flows indirectly** through an entity (the **first entity**) to another entity if, and only if:
 - (a) the other entity is the focal entity in an item of the table in section 380-30 in relation to the NRAS rent; and
 - (b) that focal entity's *share of the NRAS rent is based on the first entity's share of the NRAS rent as an intermediary entity in that or another item of the table.

380-30 Share of NRAS rent

Object of section

- (1) The object of this section is to ensure that:
 - (a) *NRAS rent derived by a partnership or the trustee of a trust is allocated notionally amongst entities who *derive benefits from that NRAS rent; and
 - (b) that allocation corresponds with the way in which those benefits were derived.
- (2) An entity's *share* of *NRAS rent is an amount notionally allocated to the entity as its share of the NRAS rent, whether or not the entity actually receives any of that NRAS rent.
- (3) That amount is equal to the entity's *share* of the *NRAS rent as the focal entity in column 3 of an item of the table.

Note: An entity's share of the NRAS rent is based on the share of the NRAS rent of each preceding intermediary entity through which the NRAS rent flows, starting from the intermediary entity to whom the NRAS rent is paid.

This means that in some cases (see items 2 and 4 of the table), more than one item of the table will need to be applied to work out the share of the NRAS rent of an ultimate recipient of the NRAS rent.

Share of NRAS rent			
Item	Column 1 For this intermediary entity and this focal entity:	Column 2 The intermediary entity's share of the NRAS rent is:	Column 3 The focal entity's share of the NRAS rent is:
1	a partnership is the <i>intermediary entity</i> and a partner in that partnership is the <i>focal entity</i> if: (a) *NRAS rent is *derived by the partnership; and (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 380-25(2)	the NRAS rent	so much of the NRAS rent as is taken into account in working out the amount of that individual interest
2	a partnership is the <i>intermediary entity</i> and a partner in that partnership is the <i>focal entity</i> if: (a) *NRAS rent *flows indirectly to the partnership as a beneficiary of a trust; and (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 380-25(2)	the amount worked out under column 3 of item 3 or 4 of this table where the partnership, as a beneficiary, is the focal entity in that item	so much of the amount worked out under column 2 of this item as is attributable to the partner, having regard to the partnership agreement and any other relevant circumstances

Share of NRAS rent

Item	Column 1 For this intermediary entity and this focal entity:	Column 2 The intermediary entity's share of the NRAS rent is:	Column 3 The focal entity's share of the NRAS rent is:
3	<p>the trustee of a trust is the <i>intermediary entity</i> and the trustee or a beneficiary of the trust is the <i>focal entity</i> if:</p> <p>(a) *NRAS rent is *derived by the trustee; and</p> <p>(b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 380-25(3) or (4)</p>	<p>(a) if the trust has a positive amount of *net income for that year—the NRAS rent; or</p> <p>(b) otherwise—nil</p>	<p>so much of the amount worked out under column 2 of this item as is taken into account in working out that share amount</p>
4	<p>the trustee of a trust is the <i>intermediary entity</i> and the trustee or a beneficiary of the trust is the <i>focal entity</i> if:</p> <p>(a) *NRAS rent *flows indirectly to the trustee as a partner in a partnership or as a beneficiary of another trust; and</p> <p>(b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 380-25(3) or (4)</p>	<p>the amount worked out under column 3 of:</p> <p>(a) item 1 or 2 of this table where the trustee, as a partner, is the focal entity in that item; or</p> <p>(b) item 3 or a previous application of this item where the trustee, as a beneficiary, is the focal entity in that item</p>	<p>so much of the amount worked out under column 2 of this item as is attributable to the focal entity in this item, having regard to the trust deed and any other relevant circumstances</p>

Note: In item 3 or 4 of the table, the trustee of a trust can be both the intermediary entity and the focal entity in the same item.

Subdivision 380-B—Payments made in relation to the National Rental Affordability Scheme etc.

Table of sections

380-35 Payments made and non-cash benefits provided in relation to the National Rental Affordability Scheme

380-35 Payments made and non-cash benefits provided in relation to the National Rental Affordability Scheme

A payment made to you or a *non-cash benefit provided to you by:

- (a) a Department of a State or Territory; or
- (b) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory;

in relation to your participation in the National Rental Affordability Scheme is not assessable income and is not *exempt income.

8 Subsection 995-1(1) (at the end of the definition of *flows indirectly*)

Add:

- ; and (e) subsections 380-25(2), (3) and (4) set out the circumstances in which *NRAS rent flows indirectly to an entity; and
- (f) subsection 380-25(5) sets out the circumstances in which NRAS rent flows indirectly through an entity.

9 Subsection 995-1(1)

Insert:

Housing Secretary means the Secretary of the Department that administers the *National Rental Affordability Scheme Act 2008*.

10 Subsection 995-1(1)

Insert:

National Rental Affordability Scheme has the same meaning as in the *National Rental Affordability Scheme Act 2008*.

11 Subsection 995-1(1)

Insert:

NRAS rent (short for National Rental Affordability Scheme rent) means rent *derived from a rental dwelling under the National Rental Affordability Scheme for an income year.

12 Subsection 995-1(1)

Insert:

NRAS year has the same meaning as in the *National Rental Affordability Scheme Act 2008*.

13 Subsection 995-1(1) (at the end of the definition of *share*)

Add:

; and (e) of *NRAS rent has the meaning given by section 380-30.

14 Application

The amendments made by this Schedule apply to assessments for the 2008-09 income year and later income years.

Schedule 2—Amendment of the Extension of Charitable Purpose Act 2004

1 Section 3

Insert:

allocation has the same meaning as in the *National Rental Affordability Scheme Act 2008*.

2 Section 3

Insert:

entity has the same meaning as in the *Income Tax Assessment Act 1997*.

3 Section 3

Insert:

first 2 NRAS years means:

- (a) the period referred to in paragraph (a) of the definition of *NRAS year* in the *National Rental Affordability Scheme Act 2008*; and
- (b) the year beginning on 1 May 2009.

4 Section 3

Insert:

incentive period has the same meaning as in the *National Rental Affordability Scheme Act 2008*.

5 Section 3

Insert:

National Rental Affordability Scheme has the same meaning as in the *National Rental Affordability Scheme Act 2008*.

6 Section 3

Insert:

rental dwelling has the same meaning as in the *National Rental Affordability Scheme Act 2008*.

7 Section 3

Insert:

taxation law has the same meaning as in the *Income Tax Assessment Act 1997*.

8 After section 4

Insert:

4A Provision of a rental dwelling under National Rental Affordability Scheme is a charitable purpose

- (1) Without limiting what constitutes a charitable purpose, *charitable purpose* includes the provision of a rental dwelling if:
 - (a) the rental dwelling is provided by an entity that is:
 - (i) endorsed as exempt from income tax by the Commissioner of Taxation under section 50-105 of the *Income Tax Assessment Act 1997*; and
 - (ii) an approved participant in the National Rental Affordability Scheme; and
 - (b) either:
 - (i) an allocation in relation to the rental dwelling has been made to the approved participant by the Secretary that specifies a date in the first 2 NRAS years from which the allocation will operate or is taken to have operated; or
 - (ii) an allocation in relation to the rental dwelling has been reserved and it is genuinely intended by the approved participant that the conditions on which the allocation has been reserved will be fulfilled in the first 2 NRAS years.
- (2) To avoid doubt, the provision of the rental dwelling by the entity has effect as a charitable purpose only during the incentive period for the allocation.
- (3) This section applies:

- (a) for the purposes of a provision of a taxation law or any instrument made, granted or issued under a taxation law; and
 - (b) for the purpose of determining whether an entity that has been endorsed as exempt from income tax by the Commissioner of Taxation under section 50-105 of the *Income Tax Assessment Act 1997*, remains, for the purposes of a provision of a taxation law or any instrument made, granted or issued under a taxation law, entitled to be so endorsed.
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*[Minister's second reading speech made in—
House of Representatives on 24 September 2008
Senate on 10 November 2008]*

(189/08)
