

Land (COVID-19 Emergency Response— Waiver and Deferral of Rents and Instalments) Regulation 2020

Explanatory notes for SL 2020 No. 65

made under the

Land Act 1994

General Outline

Short title

Land (COVID-19 Emergency Response—Waiver and Deferral of Rents and Instalments) Regulation 2020

Authorising law

Section 448 of the *Land Act 1994* (Land Act)
Schedule 1B of the Land Act

Policy objectives and the reasons for them

The objective of the *Land (COVID-19 Emergency Response—Waiver and Deferral of Rents and Instalments) Regulation 2020* (COVID-19 Regulation) is to implement the Queensland Government's commitment to provide rent relief for businesses who rent premises from the State government to mitigate the financial impact arising from the COVID-19 pandemic.

Section 448(2)(h) of the Land Act provides for the Governor in Council to make a regulation for the payment and collection of rent and instalments under this Act. Schedule 1B provides for matters that may be included in a regulation made under section 448(2)(h), including for the Minister to apply an alternative way of calculating the rent payable for a category of authority so that a lower rental amount may be applied in prescribed circumstances.

Achievement of policy objectives

The COVID-19 Regulation achieves the policy objective by establishing a power and framework for the Minister to provide relief (either wholly or partially) from the necessity to pay rent under the Land Act and the *Land Regulation 2009* (Land Regulation), in response to the socioeconomic impacts of the COVID-19 pandemic.

On commencement of the COVID-19 Regulation, a 6-month waiver starting from 1 April 2020 (initial waiver) will apply to leases, licences and permits to occupy (tenures) in the following rental categories that meet certain criteria,.

- Category 11 (primary production)
- Category 13 (business)
- Category 14.2 (large sporting and recreation clubs (i.e. over 2000 members))
- Category 15 (communication sites)
- Category 16 (divestment).

Leases, licences and permits held by a federal, state or local government entity, a statutory authority or a government-owned corporation are not eligible for the initial waiver.

A threshold has been established to determine the amount of waiver the tenure is eligible for. The initial waiver is calculated as a proportion of the annual rent that would be payable during the waiver period.

The Minister may decide to issue additional waivers or to extend the application of a waiver for additional periods and to other tenures that are not eligible for the initial waiver. To exercise these powers the Minister

Consistency with policy objectives of authorising law

The Land Act and the Land Regulation do not currently provide for the waiving of rents as the government's policy under ordinary circumstances is to forgive unpaid rents under the *Financial Accountability Act 2009*.

Given the exigent circumstances presented by the COVID-19 pandemic, this policy is being temporarily suspended in light of the government's commitment to provide financial support to impacted industries and businesses.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Benefits and costs of implementation

On 23 March 2020, the Queensland Government announced a \$4 billion package to support health, jobs, households and Queensland businesses that included providing “rent relief for businesses who rent premises from the state government”.

The purpose of the COVID-19 Regulation is to reduce the burden of regulation for a temporary period to provide rent relief to eligible holders of a lease, permit to occupy and licence under the Land Act, during the COVID-19 pandemic.

The initial waiver provided in the COVID-19 Regulation will result in approximately \$33.8 million in forgone revenue to the Consolidated Fund.

This forgone revenue will increase if the waiver is extended for a longer duration or to other tenures under the Land Act.

There will be minimal resource costs to the Department of Natural Resources, Mines and Energy in implementing the waiver, as the changes are likely to be accommodated within the existing financial systems and compliance frameworks.

Consistency with fundamental legislative principles

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties of individuals, or impose obligations, retrospectively.

The COVID-19 Regulation will depart from this principle as it is to apply retrospectively from 1 April 2020. This departure is considered justified as it will ensure the waiver can be given from 1 April 2020 in accordance with the government’s commitment. This has a positive application to relevant tenure holders under the Land Act.

Some powers under the COVID-19 Regulation be considered an unauthorised sub-delegation of power to the Minister. The sub-delegation of power has been limited to the duration of the regulation, which will sunset on 30 June 2022, and it can only be applied in response to the COVID-19 emergency. The Minister must clearly identify by public notice who is to receive a waiver or deferral of rent and the period and waived amount to apply.

In recognition that the economic recovery from the COVID-19 emergency will not be immediate, the COVID-19 Regulation replaces the need for the Governor in Council to publish successive gazette notices to declare the on-going adverse economic hardship to state land tenure holders. The sunset date provides sufficient time for the businesses operating on state land to return to normal operations and the ability for the Minister to provide appropriate support to facilitate full recovery.

Consultation

Due to the urgent nature of the COVID-19 Regulation consultation with stakeholders was not possible. The department has, however, received a significant increase in enquiries from tenure holders seeking financial relief.

In accordance with the *Queensland Government Guide to Better Regulation* (the guidelines), the Office of Best Practice Regulation within the Queensland Productivity Commission was consulted in relation to the regulatory proposal.

The Queensland Productivity Commission advised that the proposal is excluded from further regulatory impact analysis under category (k) of the guidelines — 'Regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts'.

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