



*Land Act 1994*

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

**Current as at 1 July 2020**

## **Reprint Note**

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Queensland

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

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title .....	3
2	Purpose .....	3
3	Interpretation .....	3
<b>Part 2</b>	<b>Waiver of rent for eligible tenures</b>	
4	Definitions for part .....	4
5	What is an eligible tenure .....	5
6	What is the threshold amount .....	5
7	Waiver of payment of waived amount of rent .....	6
8	Waived amount of rent—eligible tenure with higher annual rent .	6
9	Waived amount of rent—other eligible tenures .....	7
<b>Part 3</b>	<b>Waiver or deferral of rent or instalments by Minister</b>	
10	Notice of waiver or deferral of rent or instalments .....	8
11	Period of waiver or deferral .....	9
12	Amendment of waiver or deferral notice .....	10
<b>Part 4</b>	<b>Consequential matters</b>	
<b>Division 1</b>	<b>Adjustment for rent paid</b>	
13	Refund or credit for rent already paid for waiver period .....	11
<b>Division 2</b>	<b>Relationship with Land Regulation provisions</b>	
14	Regulation prevails over inconsistent Land Regulation provision	12
15	Overdue amount of rent not to be waived .....	12
16	Overdue amount of rent or instalment not to be deferred .....	13
17	Extension of deferral of rent under Land Regulation provision . .	14
<b>Part 5</b>	<b>Expiry</b>	

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

Contents

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18	Expiry of regulation .....	14
<b>Schedule 1</b>	<b>Dictionary</b> .....	<b>15</b>

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

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Land (COVID-19 Emergency Response—Waiver and Deferral of Rents and Instalments) Regulation 2020*.

### 2 Purpose

- (1) The purpose of this regulation is to provide for the waiver and deferral of rent and the deferral of instalments in response to the COVID-19 emergency.
- (2) The purpose is achieved by—
  - (a) providing for the waiver of the payment of rent for eligible tenures under part 2; and
  - (b) providing for the Minister to decide, under part 3, to—
    - (i) waive the payment of rent for particular tenures; and
    - (ii) defer the payment of rent or instalments for particular tenures.

### 3 Interpretation

- (1) The dictionary in schedule 1 defines particular words used in this regulation.
- (2) Subject to subsection (1), and unless this regulation provides otherwise—

- (a) terms used in this regulation in relation to a right, privilege or liability acquired, accrued or incurred under the repealed *Land Regulation 2009* have the same meaning given under that regulation; and
  - (b) terms used in this regulation, other than as mentioned in paragraph (a), have the same meaning given under the *Land Regulation 2020*.
- (3) In this regulation—
- (a) a reference to a waiver or deferral notice includes a reference to an amended notice; and
  - (b) a reference to a waived amount includes a reference to a waived amount as amended by an amended notice; and
  - (c) a reference to a waiver period includes a reference to a waiver period as amended by an amended notice; and
  - (d) a reference to a deferral period includes a reference to a deferral period as amended by an amended notice.

## Part 2                      Waiver of rent for eligible tenures

### 4                      Definitions for part

In this part—

*eligible tenure* see section 5.

*relevant rental period* means—

- (a) for an eligible tenure that is in force—the current rental period for the tenure; or
- (b) for an eligible tenure that is not in force—the last rental period for the tenure.

*threshold amount* see section 6.

***usual amount***, of rent for a period, means the amount of rent that, but for the waiver under this part, would have been, or would be, payable for the period.

***waived amount***, of rent for an eligible tenure, means the partial amount of the rent for the tenure worked out under section 8 or 9.

***waiver period***, for an eligible tenure—

- (a) means the period that—
  - (i) started on 1 April 2020; and
  - (ii) ends on 30 September 2020; but
- (b) does not include a period for which the tenure was not, or is not, in force.

## 5 What is an ***eligible tenure***

- (1) An ***eligible tenure*** is a tenure, other than a tenure held by a government leasing entity, of any of the following rental categories—
  - (a) category 11.1 or 11.2;
  - (b) category 13;
  - (c) category 14.2;
  - (d) category 15.1, 15.2, 15.3, 15.4 or 15.5;
  - (e) category 16.
- (2) An ***eligible tenure*** includes a tenure that was in force on 1 April 2020 but is not in force on the commencement.

## 6 What is the ***threshold amount***

The ***threshold amount*** for working out the waived amount of the rent for an eligible tenure, other than a category 15.1, 15.2, 15.3, 15.4 or 15.5 tenure, is the amount worked out using the following formula—

$$TA = (MR \times 4)/3$$

where—

*TA* is the threshold amount.

*MR* is the usual amount of the minimum rent for the tenure for the relevant rental period.

## 7 Waiver of payment of waived amount of rent

Payment of the waived amount of rent for an eligible tenure—

- (a) is waived under this part for the waiver period; and
- (b) is taken to have been waived from the start of the waiver period.

*Note—*

See, however, section 15.

## 8 Waived amount of rent—eligible tenure with higher annual rent

- (1) This section applies in relation to—
  - (a) an eligible tenure that is a category 15.1, 15.2, 15.3, 15.4 or 15.5 tenure; or
  - (b) another eligible tenure, if the usual amount of the rent for the tenure for the relevant rental period is equal to or more than the threshold amount.
- (2) The amount of the rent for the eligible tenure that is waived for each relevant sub-period of the waiver period is the amount worked out using the following formula—

$$W = AR/FYD \times QD$$

where—

*W* is the amount of the rent waived for the relevant sub-period.

*AR* is the usual amount of the rent for the tenure for the financial year including the relevant sub-period.



**FYD** is the number of days in the financial year including the relevant sub-period.

**QD** is the number of days in the relevant sub-period.

(3) In this section—

**relevant sub-period**, of a waiver period, means—

- (a) to the extent the waiver period consists of, or includes, a whole quarterly sub-period—the quarterly sub-period; or
- (b) to the extent the waiver period includes part of a quarterly sub-period to which paragraph (a) does not apply—the part of the quarterly sub-period.

## 9 Waived amount of rent—other eligible tenures

- (1) This section applies in relation to an eligible tenure, other than a tenure mentioned in section 8(1), if the usual amount of the rent for the relevant rental period is—
  - (a) equal to or more than the usual amount of the minimum rent for the relevant rental period; but
  - (b) less than the threshold amount.
- (2) The amount of the rent for the eligible tenure that is waived for each full rental period, or part rental period, within the waiver period is the amount worked out using the following formula—

$$W = AR - MR$$

where—

**W** is the amount of the rent waived for the full rental period or part rental period.

**AR** is the usual amount of the rent for the tenure for the financial year consisting of the full rental period or including the part rental period.

**MR** is the usual amount of the minimum rent for the tenure for the financial year consisting of the full rental period or including the part rental period.

(3) In this section—

**full rental period** means a rental period that is a financial year.

**part rental period** means a rental period other than a full rental period.

## Part 3 Waiver or deferral of rent or instalments by Minister

### 10 Notice of waiver or deferral of rent or instalments

(1) The Minister may, by notice published on the department's website (a **waiver or deferral notice**), waive the payment of rent, or defer the payment of rent or instalments, for a tenure under this part if the Minister considers it is appropriate to do so in response to the COVID-19 emergency.

*Note—*

See, however, sections 15 and 16.

(2) The waiver or deferral notice must state—

- (a) each tenure to which the notice applies; and
- (b) the rental category of each tenure to which the notice applies; and
- (c) for the waiver of rent—
  - (i) whether payment of all or only part of the rent is waived; and
  - (ii) the amount or proportion of the rent that is waived (the **waived amount**); and
  - (iii) the period for which the waiver applies, or is taken to have applied (the **waiver period**), including when the period starts, or started, and ends; and

- (d) for the deferral of rent or instalments—
    - (i) whether payment of all or only part of the rent or instalments is deferred; and
    - (ii) if payment of only part of the rent or instalments is deferred—the amount or proportion of the rent or instalments that is deferred; and
    - (iii) the period for which the deferral applies (the *deferral period*), including when the period starts and ends; and
  - (e) the day the notice is published under subsection (1) (the *publication day*); and
  - (f) if the notice is amended under section 12—the day the amended notice is published under section 12(1)(b) (the *amendment day*).
- (3) A reference in this section to a tenure includes a reference to a tenure that—
- (a) was in force for a period consisting of, or including part of, the waiver period preceding the publication day; but
  - (b) is not in force on the publication day of the waiver or deferral notice under which payment of the rent for the tenure is waived.

## 11 Period of waiver or deferral

- (1) This section applies to a waiver period or deferral period stated for the waiver or deferral of the payment of rent or instalments for a tenure under a waiver or deferral notice.
- (2) The waiver period for the tenure may be taken to have started on a stated day before the publication day of the waiver or deferral notice but not earlier than the commencement.
- (3) If the waiver period for the tenure is taken to have started before the publication day of the waiver or deferral notice, the waiver is taken to have applied from the day the waiver period starts.

- (4) The waiver period or deferral period for the tenure must end on or before the later of the following days—
  - (a) the day this regulation expires under section 18;
  - (b) the day that is 6 months after—
    - (i) the publication day of the waiver or deferral notice;  
or
    - (ii) if the waiver period or deferral period has been amended by an amended notice published under section 12—the amendment day of the notice.
- (5) Despite subsections (3) and (4), the waiver period for a tenure does not include a period for which the tenure was not, or is not, in force.

## **12 Amendment of waiver or deferral notice**

- (1) The Minister may amend a waiver or deferral notice (the *old notice*) by—
  - (a) preparing another waiver or deferral notice (an *amended notice*) that replaces the old notice; and
  - (b) publishing the amended notice on the department’s website.
- (2) However, the Minister may not amend—
  - (a) the publication day of the old notice; or
  - (b) if the old notice is an amended notice—the amendment day of the old notice.

## Part 4 Consequential matters

### Division 1 Adjustment for rent paid

#### 13 Refund or credit for rent already paid for waiver period

- (1) This section applies if—
  - (a) the payment of rent for a tenure is waived under part 2 or 3 for the waiver period; and
  - (b) before the announcement day, the holder of the tenure had paid an amount of rent for the tenure for the waiver period or part of the waiver period (each the *payment period*).
- (2) The Minister must refund or credit to the holder of the tenure the residual amount for the payment period.
- (3) In this section—

*announcement day* means—

- (a) for the waiver of rent under part 2—the commencement; or
- (b) for the waiver of rent under part 3—the publication day of the waiver or deferral notice under which payment of the rent is waived.

*residual amount*, for a payment period, means—

- (a) an amount equal to the waived amount for the waiver for the period; or
- (b) if the amount paid for the payment period is less than the waived amount for the period—an amount equal to the amount paid.

## **Division 2                      Relationship with Land Regulation provisions**

### **14            Regulation prevails over inconsistent Land Regulation provision**

- (1) If there is an inconsistency between a provision of this regulation and a Land Regulation provision, the provision of this regulation prevails to the extent of the inconsistency.
- (2) Subsection (3) applies if—
  - (a) the payment of rent for a tenure is waived under part 2 or 3 for the waiver period; or
  - (b) the payment of rent or instalments for a tenure is deferred under part 3 for the deferral period.
- (3) Without limiting subsection (1), the holder of a tenure does not incur a liability to pay rent or instalments under the repealed *Land Regulation 2009*, section 41, 42 or 43D(1)(a), or penalty interest under section 43D(1)(b) of that regulation, only because the rent or instalments have not been paid for the waiver period or during the deferral period.
- (4) Also, without limiting subsection (1), the *Land Regulation 2020*, sections 49, 50 and 65 do not apply only because the rent or instalments have not been paid for the waiver period or during the deferral period.
- (5) In this section—

***Land Regulation provision*** means—

  - (a) a provision of the repealed *Land Regulation 2009* as it applies in relation to a right, privilege or liability acquired, accrued or incurred under that regulation; or
  - (b) a provision of the *Land Regulation 2020*.

### **15            Overdue amount of rent not to be waived**

- (1) This section applies if—

- (a) the payment of rent for a tenure is waived under part 2 or 3 for the waiver period; and
  - (b) immediately before the announcement day, an amount of rent payable for the tenure under the repealed *Land Regulation 2009*, section 41 or the *Land Regulation 2020*, section 49 (each the ***overdue amount***) was owing in relation to a period before the waiver period.
- (2) The payment of the overdue amount and any penalty interest owing on that amount—
- (a) is not waived under part 2; and
  - (b) may not be waived under part 3.
- (3) In this section—
- announcement day*** means—
- (a) for the waiver of rent under part 2—the commencement; or
  - (b) for the waiver of rent under part 3—the publication day of the waiver or deferral notice under which payment of the rent is waived.

## **16 Overdue amount of rent or instalment not to be deferred**

- (1) This section applies if—
- (a) the payment of rent or instalments for a tenure is deferred under a waiver or deferral notice under part 3; and
  - (b) immediately before the publication day of the waiver or deferral notice—
    - (i) an amount of rent or an instalment payable for the tenure under the repealed *Land Regulation 2009*, section 41 or 42 or the *Land Regulation 2020*, section 49 or 50 (each the ***overdue amount***) was owing; and

- (ii) for an amount of rent owing—payment of the rent had not been waived under part 2 or 3.
- (2) The payment of the overdue amount and any penalty interest owing on that amount must not be deferred under part 3.

## **17 Extension of deferral of rent under Land Regulation provision**

- (1) This section applies if—
  - (a) the payment of rent or instalments for a tenure has been, or is, deferred for a period (the *original deferral period*) under the repealed *Land Regulation 2009*, part 4, division 2, subdivision 2 or the *Land Regulation 2020*, part 4, division 6, subdivision 1 or 2; and
  - (b) before the original deferral period has ended, the payment of the rent or instalments for the tenure is deferred under part 3 for a period including part of the original deferral period.
- (2) The original deferral period is taken to be extended until the day after the end of the deferral period for the tenure.

## **Part 5 Expiry**

### **18 Expiry of regulation**

This regulation expires on 30 June 2022.



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## Schedule 1 Dictionary

### section 3(1)

***amended notice*** see section 12(1)(a).

***amendment day***, of a waiver or deferral notice, see section 10(2)(f).

***COVID-19 emergency*** means the public health emergency declared on 29 January 2020 under the *Public Health Act 2005*, section 319(2), as extended and further extended under section 323 of that Act.

***deferral period*** see section 10(2)(d)(iii).

***eligible tenure***, for part 2, see section 5.

***holder***, of a tenure, means the following person who holds the tenure—

- (a) for a lease—the lessee;
- (b) for a licence—the licensee;
- (c) for a permit—the permittee.

***publication day***, of a waiver or deferral notice, see section 10(2)(e).

***relevant rental period***, for part 2, see section 4.

***tenure*** means a lease, licence or permit.

***threshold amount***, for part 2, see section 6.

***usual amount***, of rent for a period, for part 2, see section 4.

***waived amount***—

- (a) for the waiver of rent under part 2—see section 4; or
- (b) for the waiver of rent under part 3—see section 10(2)(c)(ii).

***waiver or deferral notice*** see section 10(1).

***waiver period***—

Schedule 1

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- (a) for the waiver of rent for an eligible tenure under part 2—see section 4; or
- (b) for the waiver of rent for a tenure under part 3—see section 10(2)(c)(iii).