

Land Regulation 2020

Explanatory notes for SL 2020 No. 106

made under the

COVID-19 Emergency Response Act 2020
Land Act 1994
Retail Shop Leases Act 1994

General Outline

Short title

Land Regulation 2020

Authorising law

Section 23 of the *COVID-19 Emergency Response Act 2020*
Section 448 of the *Land Act 1994* (Land Act)
Section 121 of the *Retail Shop Leases Act 1994*

Policy objectives and the reasons for them

The *Land Regulation 2009* expires automatically (sunsets) on 1 September 2020 under section 54(1) of the *Statutory Instruments Act 1992* (Statutory Instruments Act), unless action is taken to extend or remake the regulation.

A sunset review, conducted in accordance with the requirements of the Statutory Instruments Act, confirmed that a regulation is critical for the proper administration of many parts of the Land Act and that the *Land Regulation 2009* should be remade with amendments to improve its effectiveness and efficiency.

The *Land Regulation 2020* (Land Regulation), which remakes the *Land Regulation 2009* with amendments, is subordinate legislation to the Land Act—the primary statute for allocating and creating interests in state land (i.e. non-freehold land), and for the management of the land.

The Land Regulation sets out key arrangements for the state land framework. The arrangements include the following—

- the land rental regime for state leasehold land—including categorisation of tenures for rental purposes; associated rental rates and methodologies for calculating land rents; minimum rents; rental periods; hardship relief (deferral of rents or instalment payments); payment of rent or instalments; rent adjustments; action for non-payment of rent or instalments;
- determining the purchase price for particular state land (for example, lease land to be converted to freehold tenure);
- deciding the value of any commercial timber and quarry material on state land;
- financial arrangements for freeholding leases;
- for trust land, the requirements for trustee permits and trustee leases; the process for trustees to adopt model-by laws;
- declaring an area of seashore to be a 'declared beach area', regulating its use, infringements and penalties and closure of the area;
- other operational and administrative matters—examples include registering documents and dealings; regulated conditions for leases; the requirements for trustee permits and trustee leases; identifying islands to which the tourism rolling term lease arrangements apply; dispute resolution; fees and charges.

The objectives of the Land Regulation are to:

1. continue the key operational arrangements for the state land framework for the efficient administration of the Land Act;
2. implement the outcomes of the sunset review of the expiring *Land Regulation 2009*, including to align the model by-law provisions and competitive land ballot process with amendments to the Land Act made by the GDA2020 Act;
3. operationalise amendments made to the Land Act by the NROLA Act;
4. clarify, restructure and modernise the regulations made under the Land Act; and
5. amend the *Land (COVID-19 Emergency Response—Waiver and Deferral of Rents and Instalments) Regulation 2020* and the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* to update cross-referenced provisions.

Achievement of policy objectives

The Land Regulation continues the key operational arrangements by prescribing regulations modelled on the expiring *Land Regulation 2009*, except where changes have been made as described below to achieve other objectives.

Continuing provisions

The Land Regulation continues to provide for:

- general matters, such as the requirements for trustee permits and trustee leases, such as model by-laws and new prescribed terms for subleases and trustee leases and subleases; declared beach areas; registration requirements; regulating islands for the purposes of rolling term lease arrangements; regulated conditions; and

- financial matters relating to leases, licences and permits (e.g. categorisation of leases for calculating land rents, rental rates, purchase price, fees and charges), freeholding leases (e.g. instalment payments), and hardship relief (i.e. deferred rents and instalments).

Sunset Review

The Land Regulation implements the outcomes of the sunset review by implementing the following changes, including the amendments to the Land Act made by the GDA2020 Act:

- removing the Governor in Council-made by-laws and simplifying the process for trustees to adopt the by-laws;
- removing the requirements for how a ballot is to be conducted for the allocation of State land;
- Streamlining the hardship and deferral of rent and instalment provisions, including providing the power for the Minister to make and extend a hardship declaration;
- removing redundant, or out-of-date provisions, such as the provision that revoked the Southport cemetery reserve;
- updating cross-references to current provisions in the Land Act
- removing references to provisions which have been repealed
- providing consistency with other related legislation
- general amendments, such as removing unnecessary schedules.

These amendments described in more detail below.

Adoption of model by-laws

Section 56 of the Land Act provides for the making of model by-laws for the management and use of trust land. The framework that must be followed for a trustee (other than a local government trustee) to adopt a model by-law has been updated.

A trustee can voluntarily adopt a model by-law to apply to the trust land. Changes to the Land Regulation simplify the process for adopting a model by-law and provides greater flexibility for trustees to notify users of the trust land. The requirement for public consultation has been removed, as the model by-laws are developed by the Department of Natural Resources, Mines and Energy (DNRME) and must be adopted in-full without modification. The requirement for notification of the adoption remains.

The Land Regulation provides a transitional arrangement for existing model by-laws that have been adopted prior to commencement. Under the transitional provision, the trustee is not required to re-adopt a model by-law under the Land Regulation where the Minister has approved a model by-law that is substantially the same as the repealed Governor in Council made by-law.

Allocating state land by ballot

The Land Act provides for certain interests to be made in state land through an auction, tender process or ballot. The GDA2020 Act removes the need for the Land Regulation

to prescribe how a ballot must be conducted, replacing it with a process under the Land Act. The amendments to the Land Regulation remove these redundant provisions.

Deferral of rent or instalment due to hardship

The Land Regulation provides for rent payments or instalments to be deferred in response to a natural disaster or adverse economic impacts.

In response to the outcomes of the sunset review, the administrative responsibility of rent deferrals has been transferred from the Governor in Council to the Minister and declarations will be published on a Queensland Government website. The objective of these amendments is to make the process more efficient and responsive in times of hardship.

The hardship deferral provisions relating to declared hardship areas have also been amended to clarify their operation, namely that:

- declarations are tenure neutral (i.e. they apply to leases, licences and permits to occupy) unless the declaration indicates otherwise;
- the declaration must quantify the proportion being deferred (where only part of the rent is being deferred);
- the Minister may extend the period of deferral either by amending the hardship deferral declaration or by notice to the holder of a particular affected tenure; and
- the payment period for the deferred rent can be extended for a period of up to five years from the original deferral date.

Operationalising the NROLA Act

The Land Regulation gives effect to the prescribed terms framework in the NROLA Act. Schedules in the Land Regulation provide prescribed terms for subleases and trustee leases and trustee subleases.

These amendments make the State's requirements for subleases, trustee leases and trustee subleases more transparent and easily accessible. The schedules stipulate DNRME's requirements that are considered necessary to protect the State's interest and the public benefit in the land.

The prescribed terms are modelled from the mandatory standard terms that they replace. While the requirements have been modernised, the schedules continue to cover indemnity, public liability insurance, use and development of land, duty of care, power of attorney and other matters.

Terms that are now regulated under the Land Act or other legislation, such as liquor licencing under the *Liquor Act 1992*, have been omitted.

Miscellaneous minor or clarifying amendments

Additional opportunities to improve and modernise the Land Regulation were identified. Amendments applied standardised terminology and modernised language

to be consistent with current drafting practice and conventions. These clarifying amendments include:

Collective term for leases, licences and permits

The term 'tenure' is used throughout the Land Regulation to collectively reference leases, licences and permits to occupy, where a provision applies to all of these tenures.

Rental categories

The rental categorisation provisions have been restructured for clarity and to reflect contemporary drafting practices.

The types of rental categories and associated rental rates; notification requirements; and appeal rights against the categorisation decision have not changed. The rental liabilities of a lessee, licensee or permittee have also not changed.

The Land Regulation clarifies that Category 15 does not apply to tenure holders who are 'carriers' under the Commonwealth *Telecommunications Act 1997*.

For category 16 (divestment tenures), the reference to a 'DIP industrial estate' has been replaced with 'Economic Development Queensland industrial estate'. This amendment reflects the current legislative and management structure for industrial estates on state land.

Rental valuations

To avoid confusion with valuations made under the *Land Valuation Act 2010*, the term 'rental valuation' has been redefined to reflect how the land valuation is applied to determine the relevant rental category. These changes do not affect the application or outcome of the provisions.

Protection against undue rental increases

Changes have been made to clarify how the Minister works out the rent for a tenure, where the increase would otherwise be considered excessive. The changes do not change the operational application of the formula. The amendments clarify which rental category this applies to (rental category 11.1 and 11.2) and the terminology used to identify where there was no equivalent former tenure during the previous rental year.

Overpayment of rent or instalments

The Land Regulation now provides for the pre-payment of rent or instalments, reflected as an overpayment. The amendment allows for the overpayment to be credited to the tenure holder's account or it could be refunded.

Period for filing notice of appeal for particular decisions

The period for filing a notice of appeal has been consistently established as 42 days for decisions made under the following sections of the Land Act:

- section 118(2) – an appeal against exclusion from a ballot or tender for an interest in land made available by competition;
- section 160(2) – an appeal against a refusal to renew a lease;
- section 168(4) – an appeal against a decision to refuse an application to convert a lease to a higher form of tenure;
- section 322(7) – an appeal against a decision not to approve a transfer of a tenure; and
- section 332(4) – an appeal against a decision to refuse a sublease.

This amendment aligns the filing period for these decisions with other appeal provisions in the Land Act.

Regulated conditions

Changes to the regulated conditions make them more consistent with the style and layout of the prescribed terms schedules.

Consequential amendments

Amendments the *Land (COVID-19 Emergency Response—Waiver and Deferral of Rents and Instalments) Regulation 2020* and the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* update cross-referenced provisions to reflect the numbering in the Land Regulation.

Further amendments in the *Land (COVID-19 Emergency Response—Waiver and Deferral of Rents and Instalments) Regulation 2020* clarify the relevance of the rights and privileges acquired or accrued, and the liabilities incurred, under the repealed *Land Regulation 2009*.

Consistency with policy objectives of authorising law

The Land Regulation is consistent with the objectives of the Land Act.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

Not remaking the *Land Regulation 2009* will render the Land Act ineffective, threatening business continuity and certainty for a wide range of stakeholders across many sectors of the economy. Further, the government would be prevented from collecting rents and fees.

Remaking the *Land Regulation 2009* provides the opportunity to update and clarify the application of the provisions ensuring the regulatory framework for the Land Act remains contemporary and transparent. The amendments aim to reduce the regulatory and financial burden on the administrator, managers and users of state land.

Transparency and business certainty reduces the financial risks to landholders, trustees, the State government and the community. It also reduces other risks in the industry and the financial sector that may be associated with the erosion of public confidence in the government's administration of state land.

There are no additional costs associated with commencing the Land Regulation.

Consistency with fundamental legislative principles

The remade Land Regulation is generally consistent with fundamental legislative principles. The following instances may raise concerns about potential breaches of fundamental legislative principles.

Having sufficient regard to the institution of Parliament

The transfer of the Governor in Council's power to make a hardship declaration to the Minister could raise concerns as being a sub-delegation of the power of Parliament. Schedule 1B, section (1)(k) of the Land Act expressly provides for the delegation of the power, providing for a regulation to be made for the deferral of the payment of rent or instalments because of hardship. This power implicitly includes delegating appropriate functions to appropriate persons.

Replacing the gazettal of hardship declarations with their publication on a Queensland Government website, supports affected persons to better understand the effect on their interests. Notification on the website provides a more contemporary and accessible approach, than publishing a gazette notice. The same approach has been adopted for the publication and notification of adoption of the model by-laws for trust land. Further, online publication provides a timelier and cost effective approach. For completeness, the Land Regulation also provides the option for a notice to be issued directly to affected tenure holders when a hardship deferral declaration is extended, and/or when fixing a new payment day for hardship deferral declaration areas.

Consultation

The sunset review of the *Land Regulation 2009* was completed in accordance with the *Queensland Government Guide to Better Regulation* (the guidelines).

The outcomes of the review were released on 28 October 2019, for public consultation. Seven submissions were received that raised a range of issues, many of which were out of scope for the sunset review. Most submissions showed in-principle support for the amendments relating to model by-laws for trust land, the ballot process for land allocation, and streamlining of hardship provisions. The majority of the submissions related to the policy and provisions of the Land Act and could not be addressed through changes to the *Land Regulation 2009*. No additional amendments to the *Land Regulation 2009* were identified from the submissions or targeted consultation.

Targeted consultation with peak bodies such as AgForce, Queensland Farmer's Federation and the Local Government Association of Queensland was also undertaken. No additional amendments were identified from these discussions.

The Office of Best Practice Regulation (OBPR) in the Queensland Productivity Commission was engaged in the sunset review and advised that the process satisfied the objectives and requirements set out in the guidelines. OBPR did not consider that the proposed amendments would add to the regulatory burden of regulation and are unlikely to result in significant adverse impacts. No further regulatory impact analysis is required.

The amendments progressed are consistent with the proposals contained in the consultation paper.

The prescribed terms schedules were consulted on during the development of the NROLA Act. Further consultation was not undertaken as no substantial changes were made to these provisions.

Consultation was not undertaken on the amendments identified during the development of the Land Regulation. These changes are administrative in nature to clarify and modernise the provisions but do not change the application or effect of the provisions.