

COVID-19 (Coronavirus disease).
Helping you manage the implications.

1 October 2020

COVID-19 Update – Queensland

Queensland commercial leasing regulation amended by Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2020

Background

The *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2020* (**Amendment Regulations**) commenced on 29 September 2020 and extend the application of the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* (**Regulations**).

The Amendment Regulations extend the initial response period of the Regulations (29 March 2020 to 30 September 2020) (**Initial Response Period**) for three months, from 1 October 2020 to 31 December 2020 (**Extension Period**).

Key points

1. From 1 October 2020, in order to be an 'affected lease', the tenant under the lease must be eligible for the JobKeeper scheme during the period 28 September 2020 to 4 January 2021. This means that landlords may need to request additional information from tenants (e.g. information relating to the tenant's turnover during the Extension Period) to assess whether a lease is an 'affected lease'.
2. The Amendment Regulations recognise negotiations that have already been agreed in respect of rent reductions relating to the Extension Period. Under the Regulations (as amended), parties can enter into agreements which are inconsistent with the Regulations and Amendment Regulations. The Amendment Regulations provide that these agreements are valid and enforceable, regardless of whether entered into before or after the commencement of the Regulations or Amendment Regulations.
3. Landlords cannot give effect to any increase in rent until after the end of the Extension Period (that is, after 31 December 2020), even if the lease provides for, and/or the landlord has conducted, a rent review before 31 December 2020. The parties cannot contract out of this provision.
4. In relation to a tenant's obligation to repay deferred rent:
 - a. if the deferred rent relates to the Initial Response Period, landlords can require tenants to repay the amortised amount from the day after the Initial Response Period ends (that is, from 1 October 2020); and

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- b. if the deferred rent relates to the Extension Period, landlords cannot require tenants to repay the amortised amount until the day after the Extension Period ends (that is, from 1 January 2021).
 5. Landlords are prohibited (with limited exceptions, which are unchanged by the Amendment Regulations) from evicting tenants (and taking other 'prescribed action') until after 31 December 2020. Any proceeding or action against the tenant for a 'prescribed action' which commenced on or after 29 March 2020 but remains unresolved, incomplete or not finalised by 28 May 2020 are now taken to be stayed or suspended until 31 December 2020.
 6. As with the Initial Response Period, landlords are required to engage in negotiations (reasonably and in good faith) with tenants during the Extension Period, and to offer rent relief during the Extension Period. However, in contrast to the requirement for landlords to provide at least a 50% rent waiver during the Initial Response Period, no portion of the rent reduction relating to the Extension Period offered by the landlord is required to be in the form of a rent waiver.
 7. Tenants may seek to negotiate a further reduction in rent during the Extension Period (that is, after an initial reduction has already been granted during the Initial Response Period). However, in these circumstances, the landlord's offer can consist of (or include) any rent reduction *already offered* in relation to the Initial Response Period. Whilst there is no mechanism to allow landlords to increase rent, a landlord is able to limit the amount it offers as a further rent reduction by including in its offer reductions offered previously to the tenant during the Initial Response Period.