

South Australia

COVID-19 Emergency Response (Commercial Leases No 2) (Prescribed Period) Variation Regulations 2020

under the *COVID-19 Emergency Response Act 2020*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *COVID-19 Emergency Response (Commercial Leases No 2) (Prescribed Period) Variation Regulations 2020*.

2—Commencement

These regulations come into operation on 1 October 2020.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020

4—Variation of regulation 3—Interpretation

- (1) Regulation 3(1)—after the definition of *affected lessee* insert:

applicable prescribed period means the period of time that corresponds to all prescribed periods during which a lessee of a commercial lease is an affected lessee;

- (2) Regulation 3(1), definition of *JobKeeper payment*—after "Commonwealth" insert:

, as in force from time to time

- (3) Regulation 3(1)—after the definition of *party* insert:

period 1 means the period beginning on 30 March 2020 and ending on 30 September 2020;

period 2 means the period beginning on 1 October 2020 and ending on 3 January 2021;

- (4) Regulation 3(1), definition of *prescribed period*—delete the definition and substitute:

prescribed period means 1 or both of the following:

(a) period 1;

(b) period 2;

- (5) Regulation 3(1), definition of *relevant dispute*, paragraph (b)—before "prescribed period" insert:

applicable

5—Variation of regulation 5—Application of regulations

- (1) Regulation 5(1)—before "prescribed period" first occurring insert:

applicable

- (2) Regulation 5(1)—delete "the commencement of the prescribed period" and substitute:

30 March 2020

6—Variation of regulation 6—Obligation of parties to commercial leases to negotiate in good faith

Regulation 6—before "prescribed period" insert:

applicable

7—Variation of regulation 7—Prohibitions and restrictions relating to commercial leases

- (1) Regulation 7(1)—before "prescribed period" insert:

applicable

**COVID-19 Emergency Response (Commercial Leases No 2) (Prescribed Period) Variation
Regulations 2020**

Variation of *COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020*—Part 2

- (2) Regulation 7—after subregulation (1) insert:
- (1a) To avoid doubt, nothing in subregulation (1) prevents a lessor from taking a prescribed action against a lessee in respect of a breach of a commercial lease that occurred—
 - (a) in the case of a lessee who is an affected lessee in period 1—before the commencement of period 1; or
 - (b) in the case of a lessee who is an affected lessee in period 2 but who was not an affected lessee in period 1—before the commencement of period 2.
- (3) Regulation 7(2)—before "prescribed period" insert:
applicable
- (4) Regulation 7—after subregulation (2) insert:
- (2a) Subregulation (2) does not apply to, or in respect of, a failure to pay rent that constitutes a breach of an agreement under a mediation under regulation 8, or an order of the Court under regulation 9 (as the case requires), made before the end of period 1 in respect of that period if—
 - (a) the agreement or order relates to the payment of rent in respect of a period that occurs after, or extends beyond, the end of period 1; and
 - (b) the breach of the agreement or order of the Court occurs in relation to the operation of that agreement or order in period 2 (in so far as it applies to that period); and
 - (c) the lessee is an affected lessee in period 2.
- (5) Regulation 7(4)—delete "the prescribed period" and substitute:
a prescribed period (or periods)
- (6) Regulation 7(5)—before "prescribed period" insert:
applicable

8—Variation of regulation 8—Mediation by Commissioner

- (1) Regulation 8—after subregulation (2) insert:
- (2a) If the parties to a commercial lease entered into an agreement (the *initial agreement*) as contemplated by these regulations (whether under a mediation or otherwise) before the end of period 1 in relation to that period, and that agreement applies, or purports to apply, in respect of a period that occurs after, or extends beyond, the end of period 1, a party to a commercial lease may, despite the terms of that agreement, apply to the Commissioner under this regulation for mediation of a relevant dispute that relates to the terms of the initial agreement in so far as the terms apply in relation to period 2, provided that the lessee under the lease is, or is claiming to be, an affected lessee in period 2.

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Part 2—Variation of *COVID-19 Emergency Response (Commercial Leases No 2) Regulations 2020*

(2b) Nothing in subregulation (2a), including any agreement reached under a subsequent mediation, may affect the operation of the initial agreement in so far as it applies in respect of period 1.

(2) Regulation 8(4)—after "subregulation (1)" insert:

or (2a)

9—Variation of regulation 9—Determination of relevant dispute by Court

(1) Regulation 9(5)(e)—delete "an affected" and substitute:

a commercial

(2) Regulation 9(5)—after paragraph (e) insert:

(ea) an order varying, revoking or substituting an agreement, or the terms of an agreement, entered into by the parties to the commercial lease as contemplated by these regulations (provided that where the variation, revocation or substitution of the agreement, or the terms of the agreement, relates to deferral of payment of rent, the period for which payment is deferred does not exceed 24 months from the day on which the order is made);

(3) Regulation 9(7)—after "subregulation (5)(a)" insert:

, or (ea) where the variation, revocation or substitution of the agreement, or the terms of the agreement, relate to the granting of rent relief to an affected lessee

(4) Regulation 9(8)—after "subregulation (5)(a)" insert:

, or (ea) where the variation, revocation or substitution of the agreement, or the terms of the agreement, relate to the granting of rent relief to an affected lessee,

(5) Regulation 9(8)(b)—before "prescribed period" insert:

applicable

(6) Regulation 9(8)(c)—before "prescribed period" insert:

applicable

(7) Regulation 9(9)—after "subregulation (5)(e)" insert:

, or (ea) where the variation, revocation or substitution of the agreement, or the terms of the agreement, relates to the deferral of payment of rent

(8) Regulation 9—after subregulation (10) insert:

(10a) To avoid doubt, and without limiting the operation of subregulation (10), if a lessee under a commercial lease is, or is claiming to be, an affected lessee with respect to period 2, then a party to the lease may apply to the Court under subregulation (10) for an order to vary or revoke an order made by the Court in period 1 under this regulation if that order applies, or purports to apply, in respect of a period that occurs after, or extends beyond, the end of period 1.

**10—Variation of regulation 10—Prohibition on continuing certain action
during prescribed period**

- (1) Regulation 10(1)(b)—delete "the prescribed" and substitute:
a prescribed
- (2) Regulation 10(1)—before "prescribed period" second occurring insert:
applicable

11—Insertion of regulation 11

After regulation 10 insert:

11—Expiry of regulations

These regulations will expire on 3 January 2021.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 25 September 2020

No 282 of 2020