

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture and Water Resources and the Minister for Finance

Regional Investment Corporation Act 2018

Regional Investment Corporation (Water Infrastructure Project Agreements) Rule 2018

Legislative Authority

The *Regional Investment Corporation Act 2018* (the Act) establishes the Regional Investment Corporation (the Corporation). The Corporation's functions are set out in section 8 of the Act and include administering farm business loans and administering financial assistance, on behalf of the Commonwealth, granted to States and Territories in relation to water infrastructure projects.

The *Regional Investment Corporation (Water Infrastructure Project Agreements) Rule 2018* (the Rule) is made under Section 54 of the Act.

Section 54 of the Act provides that the responsible Ministers may, by legislative instrument, make rules prescribing matters required by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 12(3) of the Act provides that the responsible Ministers may give a written direction to the Corporation to enter into an agreement, on behalf of the Commonwealth, for the grant of financial assistance to a particular State or Territory in relation to a particular water infrastructure project. The subsection further provides that the direction may specify terms and conditions to be included in the agreement. Subsection 12(5) of the Act provides that the rules must prescribe, in relation to agreements to be entered into under subsection 12(3), the terms and conditions, or the kinds of terms and conditions, that may be included in an agreement and the matters that the Corporation must consider in specifying terms and conditions to be included in an agreement.

Purpose

The purpose of the Rule is to prescribe, the kinds of terms and conditions that the Corporation may include in an agreement entered into under subsection 12(3) of the Act, which deals with Water Infrastructure projects.

Background

The Act became fully operational through proclamation on 8 March 2018 and establishes the Corporation to administer farm business loans and to administer, on behalf of the Commonwealth, grants of financial assistance to States and Territories in relation to water infrastructure projects. The Act also provides for the Corporation to administer other programs in the future.

The Corporation provides independent advice to the Commonwealth on projects for consideration under the National Water Infrastructure Loan Facility, and administers water infrastructure loans to the States and Territories. This supports long-term regional economic growth and development by investing in economically viable water infrastructure that will provide secure and affordable water.

Impact and Effect

The Rule will allow the Corporation to negotiate loan agreements with States and Territories, pending a direction by responsible Ministers, in an efficient and effective manner.

Consultation

During the development of the Rule, the Department of Agriculture and Water Resources consulted with:

- Regional Investment Corporation Board
- Department of Infrastructure, Regional Development and Cities
- Department of Finance

Details/ Operation

Details of the Rule are at [Attachment A](#).

Other

The Rule is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in [Attachment B](#).

The Rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

Section 1 – Name

This section provides that the name of the instrument is the *Regional Investment Corporation (Water Infrastructure Project Agreements) Rule 2018*.

Section 2 – Commencement

This section provides for the instrument to commence the day after registration.

Section 3 – Authority

This section provides that the instrument is made under section 54 of the *Regional Investment Corporation Act 2018*.

Section 4 – Definitions

This section defines a number of terms in the Rule. The section provides that:

- **Act** means the *Regional Investment Corporation Act 2018*.
- **agreement** means an agreement entered into by the Corporation, on behalf of the Commonwealth, under the Act for the grant of financial assistance to a particular State or Territory in relation to a particular water infrastructure project.
- **Corporation** means the Regional Investment Corporation established by section 7 of the Act.

Section 5 – Terms and conditions that may be included in an agreement

Subsection 5(1) provides that for the purposes of paragraph 12(5)(a) of the Act, the section prescribes the kinds of terms and conditions that may be included in an agreement.

Subsection 5(2) provides that an agreement may include terms and conditions that do any of the following as set out below:

Subparagraph 5(2)(a) provides that an agreement may include terms and conditions that describe the water infrastructure project for which financial assistance is to be provided under the agreement, and the objective to be achieved by the project;

Subparagraph 5(2)(b) provides that an agreement may include terms and conditions that specify the financial assistance to be provided to the State or Territory under the agreement, including the amounts of financial assistance that will be paid, and when and in what circumstances they will be paid;

Subparagraph 5(2)(c) provides that an agreement may include terms and conditions that limit the purposes for which the financial assistance provided under the agreement may be used;

Subparagraph 5(2)(d) provides that an agreement may include terms and conditions that impose performance requirements and requirements relating to the management of the water infrastructure project, including (but not limited to) requirements relating to any of the following matters:

- i. arrangements that may be entered into with persons that have an economic interest in the project, contractors or any other persons that perform work in relation to the project;
- ii. handling confidential information;
- iii. how the agreement and the water infrastructure project may be publicised;

Subparagraph 5(2)(e) provides that an agreement may include terms and conditions that require compliance with any relevant laws;

Subparagraph 5(2)(f) provides that an agreement may include terms and conditions that specify the circumstances in which the State or Territory will be in default of the agreement, and the consequences of default;

Subparagraph 5(2)(g) provides that an agreement may include terms and conditions that specify that the financial assistance provided under the agreement must be repaid to the Commonwealth, the terms for repayment, the interest payable and how the interest will be calculated and reviewed;

Subparagraph 5(2)(h) provides that an agreement may include terms and conditions that specify any representations, warranties, indemnities or waivers to be given by the State or Territory;

Subparagraph 5(2)(i) provides that an agreement may include terms and conditions that specify reporting, notification, monitoring and audit requirements in relation to the agreement;

Subparagraph 5(2)(j) provides that an agreement may include terms and conditions that permit the Commonwealth, with or without the agreement of the State or Territory, to change the terms on which financial assistance is provided under the agreement (including the terms applying to any financial assistance already provided under the agreement) in order to reflect any relevant change in Commonwealth water infrastructure policy;

Subparagraph 5(2)(k) provides that an agreement may include terms and conditions that permit the Commonwealth and the State or Territory to agree to vary the terms of the agreement;

Subparagraph 5(2)(l) provides that an agreement may include terms and conditions that impose requirements in relation to the use and ownership of any water infrastructure built or developed using financial assistance provided under the agreement, including (but not limited to) requirements that:

- i. prevent the privatisation of the water infrastructure;
- ii. relate to the terms and conditions relating to any charges or costs associated with accessing the water infrastructure.

Subparagraph 5(3)(a) provides that an agreement may also include terms and conditions: that are required to be included in the agreement by any Commonwealth or State or Territory law

Subparagraph 5(3)(b) provides that an agreement may also include terms and conditions that are incidental to the other terms and conditions that are included in the agreement.

Section 6 – Matters to be considered by the Corporation

Subsection 6(1) provides that for the purposes of paragraph 12(5)(b) of the Act, this section prescribes the matters that the Corporation must consider in specifying terms and conditions to be included in an agreement.

Subsection 6(2) provides that the Corporation must consider the matters set out in the following subparagraphs. These include:

- As provided for in subparagraph 6(2)(a): the need to ensure the efficient use of the financial assistance to be provided under the agreement;
- As provided for in subparagraph 6(2)(b): the need to ensure appropriate oversight of the project;
- As provided for in subparagraph 6(2)(c): allowing appropriate flexibility for the State or Territory to manage the project; and
- As provided for in subparagraph 6(2)(d): whether risk is appropriately allocated;

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Regional Investment Corporation (Water Infrastructure Project Agreements) Rule 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of this Legislative Instrument is to prescribe the kinds of terms and conditions that the Corporation may include in an agreement entered into under subsection 12(3) of the Act.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. David Littleproud MP
Minister for Agriculture and Water Resources**

**Senator the Hon Mathias Cormann
Minister for Finance**