



## **Regional Investment Corporation (Agribusiness Natural Disaster Loans—2019 North Queensland Flood) Rule 2019**

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We, David Littleproud, Minister for Agriculture and Water Resources, and Mathias Cormann, Minister for Finance and the Public Service, make the following rule.

Dated 4 April 2019

The Hon David Littleproud MP  
Minister for Agriculture and Water Resources

Senator the Hon Mathias Cormann  
Minister for Finance and the Public Service

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## Part 1—Preliminary

### 1 Name

This instrument is the *Regional Investment Corporation (Agribusiness Natural Disaster Loans—2019 North Queensland Flood) Rule 2019*.

### 2 Commencement

This instrument commences the day after it is registered.

### 3 Authority

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

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Board;
- (b) Corporation;
- (c) farm business loan;
- (d) responsible Ministers.

In this instrument:

**Act** means the *Regional Investment Corporation Act 2018*.

**loan** means an Agribusiness Natural Disaster (2019 North Queensland Flood) loan under the program.

**program** means the Agribusiness Natural Disaster Loans (2019 North Queensland Flood) Program.

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## Part 2—Provision of Agribusiness Natural Disaster Loans

### 5 Prescription of program

- (1) For the purposes of subsection 8(5) of the Act, the program is prescribed.

*Purpose of program*

- (2) The purpose of the program is to provide loans to farm businesses that have suffered direct damage as a result of the North Queensland floods of January and February 2019.

*Specified constitutional basis of program*

- (3) For the purposes of paragraph 8(5)(a) of the Act, the constitutional basis for the program is the power of the Parliament to make laws with respect to measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation.

### 6 Application for Agribusiness Natural Disaster Loan

- (1) To obtain a loan, a farm business must make an application to the Corporation.
- (2) The application must:
- (a) be in writing; and
  - (b) include any information, and be accompanied by any documents, required by the Corporation; and
  - (c) be made on or before 30 June 2020.

### 7 When a business is an eligible farm business

Eligible farm businesses are those:

- (a) who are in financial need of a concessional loan; and
- (b) where at least one member of the farm business is an Australian citizen or a permanent resident as defined in the program guidelines; and
- (c) that are assessed as financially viable, or as having sound prospects of a return to financial viability within the term of the loan; and
- (d) that undertake all primary production aspects of the business wholly within Australia; and
- (e) where at least one member:
  - (i) has experience operating a farm business; and
  - (ii) has the farm business as their principal business pursuit (in terms of being where they contribute the majority of their labour and where they derive the majority of their income); and
- (f) that operate as a sole trader, partnership, trust or private company; and
- (g) that are registered for tax purposes in Australia with an Australian Business Number (ABN) and registered for GST; and
- (h) that are not under external administration or bankruptcy; and
- (i) that have capacity to repay the loan.

**8 Grant of Agribusiness Natural Disaster Loans—farm business experiencing extreme hardship***Eligibility requirements—extreme hardship*

- (1) The Corporation may grant a loan to a farm business where the Corporation is satisfied that:
  - (a) the business is an eligible farm business; and
  - (b) the business has lost all, or the majority, of its stock or crops as a result of the North and Far North Queensland Monsoon Trough (25 January to 14 February 2019); and
  - (c) the loan will assist the business to do one or more of the following:
    - (i) replace its lost stock or crops;
    - (ii) replant crops;
    - (iii) refinance its existing debt.

*Loans may be used to refinance or acquire new debt*

- (2) The grant of a loan under subsection (1) may result in the farm business holding up to 100% of its total debt in Commonwealth-funded concessional loans (including by refinancing up to 100% of its existing commercial debt).

Note: The business's total debt is the sum total of debt established on commercial terms, at commercial interest rates, plus all Commonwealth funded concessional loans provided to the farm business. 'Commonwealth funded concessional loans' includes the Commonwealth loans identified in the program guidelines published under section 14.

**9 Grant of Agribusiness Natural Disaster Loans—farm business experiencing hardship***Eligibility requirements—hardship*

- (1) Subject to subsection (2), the Corporation may grant a loan to a farm business where the Corporation is satisfied that:
  - (a) the business is an eligible farm business; and
  - (b) the business was directly affected by, and is experiencing hardship as a result of, the North and Far North Queensland Monsoon Trough (25 January to 14 February 2019); and
  - (c) the loan will assist the business to do one or more of the following:
    - (i) replace its lost stock or crops;
    - (ii) replant crops;
    - (iii) refinance its existing debt; and
  - (d) the business has existing commercial debt and the support of its commercial lender to the proposed loan.

*When a loan must not be granted—hardship*

- (2) The Corporation must not grant a loan under subsection (1) if granting the loan would result in the farm business:

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- (a) having more than 50% of its total debt in Commonwealth-funded concessional loans; or
- (b) refinancing more than 50% of its existing commercial debt.

Note: The business's total debt is the sum total of debt established on commercial terms, at commercial interest rates, plus all Commonwealth funded concessional loans provided to the farm business. 'Commonwealth funded concessional loans' includes the Commonwealth loans identified in the program guidelines published under section 14.

Example 1: A farm business has \$1 million in existing commercial debt, but does not hold any other debt in Commonwealth-funded concessional loans. If the business sought only to acquire new debt under this program, it could not obtain more than \$1 million. If it obtained more than that amount, it would hold more than 50% of its total debt in Commonwealth-funded concessional loans.

Example 2: A farm business has \$1 million in existing commercial debt, and seeks only to refinance part of that debt. The business could refinance up to \$500,000 of that existing commercial debt under this program. This would leave the business with \$500,000 in commercial debt and \$500,000 in Commonwealth-funded concessional loans. If the business refinanced a greater amount, it would hold more than half of its total debt in Commonwealth-funded concessional loans.

Example 3: A farm business has \$1 million in existing commercial debt. The business obtains a loan to refinance \$400,000 of that existing debt and obtain another \$200,000 in new debt under the program. This leaves the business with \$600,000 in commercial debt and \$600,000 in Commonwealth-funded concessional loans. This loan complies with subsection (2), as it does not result in the business refinancing more than 50% of its existing commercial debt or having more than 50% of its total debt in Commonwealth-funded concessional loans.

## 10 Terms of Agribusiness Natural Disaster Loans

- (1) Subject to the requirements in subsections (2) and (3), the Corporation may set the terms and conditions upon which a loan is made.

### *Requirements regarding terms of loan*

- (2) The requirements are that:
  - (a) the amount of the loan does not exceed \$5 million; and
  - (b) the duration of the loan is 10 years; and
  - (c) the farm business may, at any time before the amount becomes due and payable, repay the whole or part of an amount of principal or interest owing on the loan without penalty; and
  - (d) the farm business must provide sufficient security for the loan.

### *Requirements regarding principal and interest*

- (3) The requirements are that:
  - (a) for the first 2 years of the loan—no interest is payable; and
  - (b) for the remaining 8 years of the loan—interest is payable at the rate mentioned in subsection (4); and
  - (c) for the first 5 years of the loan—no principal is payable; and
  - (d) for the remaining 5 years of the loan—principal is payable.
- (4) For the purposes of paragraph (3)(b)—the Corporation must set a variable interest rate, and notify loan recipients of changes to that rate, in accordance with



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section 8 of the *Regional Investment Corporation Operating Mandate Direction 2018*.

*Types of security the Corporation must consider*

- (5) For the purposes of paragraph (2)(d), the Corporation must consider requiring security in the form of:
- (a) a registered mortgage over land; or
  - (b) a registered mortgage over livestock; or
  - (c) a registered security interest in water rights.

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### Part 3—Administrative matters

#### 11 Notice of decision to grant or refuse loan

The Corporation will ensure that loan applicants are informed of the outcome of their loan application as soon as practicable after a decision on their application has been made.

#### 12 Loan management

- (1) The Corporation must undertake all aspects of its loan management in a prudential manner to minimise the risk of default.
- (2) The Board must ensure that prudential and arrears management policies and procedures are developed and applied by the Corporation. The Board must ensure at all times that the loan management, arrears management, recovery action, foreclosure arrangements, waiver of debt, write-offs and dispute/complaints handling are undertaken in accordance with those policies and procedures.
- (3) In developing its policies and procedures in relation to loan management activities, the Corporation is expected to have regard to the concessional nature of loans and consider the impact on the farm business of any proposed action in relation to the loan. The Corporation must offer, and undertake where required, farm debt mediation.
- (4) The Corporation may take loan recovery and foreclosure action. Where possible, decisions on foreclosure should be made by the Board, and not by a delegate.
- (5) The Corporation may waive an unpaid loan debt, in accordance with its arrears management policies and procedures. Before waiving any unpaid loan debt, the Corporation must consult with, and take into account the views of, the responsible Ministers. Where possible, a decision to waive an unpaid loan debt should be made by the Board, and not by a delegate.
- (6) The Corporation will offer and promote refinancing to eligible farm businesses under the program. This may include debt from other concessional loan programs.

#### 13 Internal review

- (1) The Board must ensure that an internal review procedure for decisions to grant or refuse loans is developed and applied by the Corporation.
- (2) The internal review procedure is required to be transparent, robust and fair. Specifically, the internal review procedure:
  - (a) will require the internal review to be carried out by a person who was not the primary decision-maker in the original decision;
  - (b) will require the decision on the internal review to be made by an officer within the Corporation who was not the primary decision-maker in the original decision (who may be the same person referred to in paragraph (a)); and

- (c) must be consistent with principles of procedural fairness.

#### **14 Corporation must publish program guidelines**

- (1) The Corporation must develop and publish written guidelines relating to the program (*the program guidelines*).
- (2) Without limiting subsection (1), the program guidelines must:
  - (a) include details of the right to request an internal review of application decisions and the process for requesting such a review; and
  - (b) contain information about the types of security the Corporation will consider accepting in relation to a loan; and
  - (c) specify when the Corporation will consider a person to be an Australian citizen or permanent resident within the meaning of paragraph 7(b).

#### **15 Corporation must report to responsible Ministers**

- (1) The Corporation must provide a report to the responsible Ministers as at the end of every March, June, September and December in respect of the program. The report is to include information regarding the uptake of loans, details of the loan portfolio, financial performance information and any other matters requested by the responsible Ministers.
- (2) The Corporation is expected to proactively advise the Commonwealth on matters that will improve the operation and policy outcomes of loans.

Note: In this instrument, a reference to a loan is a reference to an Agribusiness Natural Disaster (2019 North Queensland Flood) loan under this program (see section 4).

#### **16 Responsible Ministers may give written directions**

For the purposes of subparagraph 8(5)(b)(iii) of the Act, to the extent that the responsible Ministers cannot otherwise give directions to the Corporation under section 11 of the Act, the responsible Ministers may give written directions to the Corporation in relation to the program.

## Part 4—Financial matters

### 17 Corporation may charge transaction costs

For the purposes of subparagraph 8(5)(b)(i) of the Act, the Corporation may charge a farm business for transaction costs incurred by the Corporation in relation to a loan provided to the business.

### 18 Funding arrangements

- (1) Funds for loans will be provided to the Corporation upon the Corporation's request to enable the Corporation to advance loan funds to recipients as required.
- (2) The Corporation must:
  - (a) only request funds as they are required to advance loan funds to recipients;  
and
  - (b) only use funds provided for loans for that purpose.
- (3) The Corporation is authorised to collect all loan repayments (including principal repayments and payments of interest) and transaction costs from loan recipients.
- (4) All loan repayments (including principal repayments and payments of interest) received by the Corporation from loan recipients must be paid to the Commonwealth as soon as reasonably practicable.
- (5) Any funds received by the Corporation from farm businesses under section 17 to reimburse the Corporation for transaction costs may be retained by the Corporation and do not need to be paid to the Commonwealth.