EXPLANATORY STATEMENT

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

Regional Investment Corporation Act 2018

Regional Investment Corporation (Agristarter Loans) Rule 2019

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 programs prescribed by rules.

The *Regional Investment Corporation (Agristarter Loans) Rule 2019* (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.

Paragraph 8(1)(g) of the Act provides that it is a function of the Corporation to administer programs prescribed by the rules. Subsection 8(5) of the Act provides that the rules may prescribe one or more programs to be administered by the Corporation.

Purpose

The purpose of the Rule is to provide loans to encourage and assist purchasers to acquire a farm business or a controlling stake of a farm business and to assist farm businesses effect their succession plans.

Background

Under the Corporation's Operating Mandate, issued by responsible Ministers, the Corporation is expected to proactively advise the Commonwealth on matters that will improve the operation and policy outcomes of it loans. This includes a requirement for the Corporation to keep abreast of ongoing and emerging agricultural industry issues to manage demand for finance and ensure assistance is reaching eligible farm businesses that are most in need.

The Corporation advised the Commonwealth that a loan product that would support farmers to enact their succession plans and assist new entrants to buy farm businesses would help make the agricultural sector more productive and profitable.

The Corporation will be providing Agristarter loans to allow a purchaser/farm business inheritor to acquire and establish their farm business, as a way of promoting innovation and growth in the Australian agriculture sector.

Impact and Effect

The Rule will allow the Corporation to lend to a purchaser/farm business inheritor to acquire and establish their farm business. This will encourage growth, investment and resilience in Australian farm businesses and regional and rural communities.

Consultation

The Department of Agriculture and Water Resources consulted with the Department of Finance; the Corporation; and the Australian Government Solicitors in drafting the Rule.

Details / Operation

Details of the Rule are set out in Attachment A.

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

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 statement of compatibility is set out in Attachment B.

ATTACHMENT A

Details of the *Regional Investment Corporation (Agristarter Loans) Rule 2019*

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Regional Investment Corporation (Agristarter Loans) Rule 2019*.

Section 2 – Commencement

This section provides for the Rule to commence on the day after registration.

Section 3 – Authority

This section provides that this 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*
- ***agristarter loan*** means a purchaser loan or a succession loan
- ***farm business inheritor*** means a person who has inherited or will inherit a farm business or a part of a farm business
- ***program*** means the Agristarter Loans Program
- ***program guidelines*** has the meaning set out in subsection 14(1)
- ***purchaser*** means a person who is seeking to purchase a farm business or a controlling stake in a farm business
- ***purchaser loan*** means a loan made to a purchaser under section 9
- ***succession loan*** means a loan made to a farm business or a farm business inheritor under section 8.

Part 2 – Provision of Agristarter Loans

Section 5 – Prescription of program

Subsection 5(1) provides that the Agribusiness Loans Program (the Program) is prescribed for the purposes of subsection 8(5) of the Act. The effect of this provision is to provide that it is a function of the Corporation to administer the Program.

Subsection 5(2) provides that the purpose of the Program is to provide loans to assist purchasers to acquire a farm business or a controlling stake of a farm business and to assist farm businesses to effect their succession plans.

Section 5(3) specifies that the constitutional basis for the program is the power of the Parliament to make laws with respect to trade and commerce with other countries, and among the States.

Section 6 – Application for Agristarter Loan

Subsection 6(1) provides that to obtain an Agristarter loan, a purchaser, farm business or farm business inheritor (as the case may be) must make an application to the Corporation.

Subsection 6(2) provides that applications must be in writing, include any information, and be accompanied by any documents, required by the Corporation.

Section 7 - When a business is an eligible farm business

Section 7 provides the mandatory eligibility requirements relevant to the Agristarter loans. Requiring the Corporation to deliver the loan program in accordance with the loan specifications and mandatory requirements set out in sections 7-10 will ensure that the Corporation provides a consistent loan product and service, treating clients fairly and equitably.

Section 8 – Grant of a succession loan

Subsection 8(1) provides the additional eligibility requirements for succession loans. The Corporation may grant a succession loan if it is satisfied that the business is undertaking or has undertaken succession planning and the loan is to support the activities identified in the succession planning process; the recipient will obtain or has obtained a loan on commercial terms; the recipient is in financial need of a concessional loan; the recipient has the capacity to repay the loan; and the business is an eligible farm business and will continue to be an eligible farm business after the succession arrangements take place.

Subsection 8(2) provides that this type of loan must not be granted if the Corporation is not satisfied of the matters set out in subsection 8(1).

Section 9 – Grant of a purchaser loan

Subsection 9(1) provides the additional eligibility requirements for purchaser loans. The Corporation may grant a purchaser loan if it is satisfied that the purchaser will obtain or has obtained a loan on commercial terms; the purchaser is in financial need of a concessional loan; the purchaser has the capacity to repay the loan; and the farm business to be purchased will be an eligible farm business after the purchase has been completed.

Subsection 9(2) provides that this type of loan must not be granted if the Corporation is not satisfied of the matters set out in subsection 9(1).

Section 10 – Terms of Agristarter Loans

Subsection 10(1) provides that, subject to satisfaction of subsections (2) and (3), the Corporation may set the terms and conditions upon which a loan is made.

Subsection 10(2) provides that the loan does not exceed $2 million or an amount that would result in the recipient having 50 per cent of its total debt in Commonwealth funded concessional loans.

Subsection 10(3) provides the terms and conditions upon which the loan is made.

Paragraph 1(a) outlines the initial term of the loan as 10 years, 1(b) has an initial interest-free period of five years, 1(c) outlines the interest rate, 1(d) allows for the farm business to repay the whole or part of an amount of principal or interest owing on the loan without penalty and 1(e) that sufficient security is provided for the loan.

Subsection 10(4) provides that the Corporation must set a variable interest rate, and notify loan recipients of changes to that rate, in accordance with section 8 of the *Regional Investment Corporation Operating Mandate Direction 2018*. Section 8 provides that the interest rate will be reviewed every six months in November and May and revised if necessary in line with material changes to the Commonwealth 10 year bond rate, where a material change is taken to be a movement of more than 10 basis points (0.1 per cent). Any change in the interest rate will take effect from 1 February or 1 August each year as applicable. This will ensure the Corporation treats clients fairly by providing adequate and appropriate notice of changes to loan interest rates.

Subsection 10(5) provides the forms of security that the Corporation must consider.

Subsection 10(6) defines total debt as the total debt owed by the recipient in respect of the farm business including (a) debt established on commercial terms, at commercial interest rates; and (b) debt established under Commonwealth funded concessional loans, but excluding debts which are not in respect of the farm business, such as personal, credit card and home loan debts.

Part 3 – Administrative matters

<u>Section 11 – Notice of decision to grant or refuse loan</u>

This section requires that the Corporation 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. This will ensure the Corporation treats clients fairly by providing adequate and appropriate notice of the outcome of loan applications.

<u>Section 12 – Loan management</u>

This section sets expectations with respect to loan and risk management.

Subsection 12(1) provides that the Corporation must undertake all aspects of loan management in a prudential manner to minimise the risk of default. This provision is in line with the Corporation's *Public Governance, Performance and Accountability Act 2013* responsibilities in relation to the proper use and management of public resources.

Subsection 12(2) provides that the Board must ensure prudential and arrears management policies and procedures are developed and applied by the Corporation. The subsection further provides that the Board must ensure at all times the loan management, arrears management, recovery action, foreclosure arrangements, write-offs and dispute/complaints handling are undertaken in accordance with those policies and procedures.

Subsection 12(3) provides that in developing the Corporation's policies and procedures in relation to farm business loan management activities, the Corporation is expected to have regard to the concessional nature of farm business loans and consider the impact on the farm business of any proposed action in relation to the loan.

It is intended that the Corporation would ensure it balances careful management of loans, to minimise the risk of default, with appropriate flexibility for farm businesses in need. The subsection further provides that the Corporation must offer, and undertake where required, farm debt mediation.

Subsection 12(4) provides that the Corporation may undertake farm business loan recovery and foreclosure action. Foreclosure decisions should be made by the Board and not delegated which reflects the serious nature of these decisions and the impact they may have upon both the farm business and the Commonwealth.

Subsection 12(5) provides that the Corporation may waive an unpaid farm business loan debt, in accordance with the Corporation's arrears management policies and procedures. The subsection further provides that the Corporation may only waive a debt after it has consulted with, and taken into account the views of, the responsible Ministers. Any decision to waive an unpaid farm business loan debt should be made by the Board and not delegated and this reflects the serious nature of these decisions, the financial impact they may have upon the Commonwealth and the usual role of the Finance Minister in waiving debts owed to the Commonwealth.

Subsection 12(6) provides that the Corporation will offer and promote voluntary refinancing to eligible farm businesses under the farm business concessional loan program. This may include debt from previous concessional loan programs.

Section 13 – Internal review

Subsection 13(1) provides that the Board must ensure that the Corporation develops and applies an internal review procedure for decisions to grant or refuse farm business loans. Through this process, applicants will have the ability to have decisions made by the Corporation to grant or refuse farm business loans reviewed on their merits.

Subsection 13(2) provides that the internal review procedure is required to be transparent, robust and fair. Paragraph 2(a) provides that the internal review procedure will require the internal review be carried out by a person who was not the primary decision-maker in the original decision. Paragraph 2(b) provides that the internal review procedure 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). Paragraph 2(c) provides that the internal review procedure must be consistent with the principles of procedural fairness.

These principles include giving a fair hearing appropriate to the circumstances, lack of bias, providing evidence and reasoning to support a decision, and making proper inquiry into matters in dispute.

Section 14 – Corporation must publish program guidelines

Subsection 14(1) provides that the Corporation must develop and publish program guidelines consistent with the rule. It is envisaged that the guidelines will set out detailed program information for potential applicants, for example eligibility requirements, how applications will be assessed and how to apply.

Subsection 14(2)(a) requires that the Corporation must include details of the right to request an internal review of application decisions and the process for requesting such a review in the program guidelines. This provision will ensure transparency. Paragraph 2(b) requires that guidelines contain information about the types of security the Corporation will consider accepting in relation to a loan. Paragraph 2(c) requires that guidelines specify when the Corporation will consider a person to be an Australian citizen or permanent resident within section 7 of the Rule in relation to eligibility of a farm business.

Section 15 – Corporation must report to responsible Ministers

This section sets out reporting requirements for the Corporation in relation to these loans, including quarterly reports to the responsible Ministers. These reporting requirements are in addition to reporting obligations the Corporation may have under other applicable legislation, including the *Public Governance and Performance Accountability Act 2013* which amongst other things requires the development of a corporate plan and annual reports.

Subsection 15(1) provides that 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 subsection further provides that the quarterly loan report must include information regarding the uptake of loans and details of the loan portfolio for example loan amounts, loan uses and agricultural industries, as well as financial performance information and any other matters requested by the responsible Ministers.

Subsection 15(2) provides that the Corporation is expected to proactively advise the Commonwealth on matters that will improve the operation and policy outcomes of loans.

Section 16 – Responsible Ministers may give written directions

This section provides 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

Section 17 – Corporation may charge transaction costs

This section states for the purposes of subparagraph 8(5)(b)(i) of the Act, the Corporation may charge a recipient of an Agristarter loan for transaction costs incurred by the Corporation in relation to the loan. Under section 47 of the Act, if the Corporation provides a loan to a person, the Corporation may charge transactions costs incurred in relation to farm business loans (for example, fees for title searches and mortgage registrations).

Section 18 – Funding arrangements

Subsection 18(1) provides that funds for farm business loans will be provided to the Corporation upon the Corporation's request to enable the advance of loan funds to recipients. Paragraph 2(a) provides that loan funds must only be requested by the Corporation as they are required to advance loan funds to recipients (once a loan has been approved, loan documentation is finalised and settlement is imminent).

This ensures that funds are held by the Commonwealth until required, thereby minimising the cost of borrowing (or cost of capital) to the Corporation, supporting the Corporation to offer concessional interest rates. Paragraph (2)(b) provides that the Corporation must only use funds provided for loans for that purpose. This is to ensure that loan funding is available only for loans.

Subsection 18(3) provides that the Corporation is authorised to collect all loan repayments (including principal repayments and payments of interest) and transaction costs from loan recipients. The purpose of this subsection is to clarify the application of subsection 8(6) of the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*.

Subsection 18(4) provides that, subject to subsection 18(5), 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.

Subsection 18(5) provides that 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.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Regional Investment Corporation (Agristarter Loans) Rule 2019

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 a new loan product to allow the Regional Investment Corporation to provide loans to encourage and assist purchasers to acquire a farm business or a controlling stake of a farm business and to assist farm businesses effect their succession plans.

Human rights implications

This Legislative Instrument engages an applicable right in Article 17 of the International Covenant on Civil and Political Rights, that is, the prohibition on interference with a person's privacy, family and home, because the Legislative Instrument permits the Regional Investment Corporation to take loan recovery and foreclosure action.

However, the foreclosure action is not arbitrary; rather, the Corporation may only take foreclosure action on Agristarter loans for recovery purposes. Further, under subsection 12(3), in developing its policies and procedures in relation to Agristarter loan management activities, the Corporation is expected to have regard to the concessional nature of the Agristarter loans and consider the impact on the farm business of any proposed action in relation to the Agristarter loan. The Corporation must also offer, and undertake when required, farm debt mediation. These provisions ensure the limitation on the prohibition on interference with privacy and the home is reasonable, necessary and proportionate to achieve the legitimate aim of Agristarter loan recovery.

Conclusion

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

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