



Regional Investment Corporation (Agristarter Loans) Rule 2019

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

Dated 3 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 (Agristarter Loans) 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;
- (e) constitutional trade or commerce.

In this instrument:

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.

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Part 2—Provision of Loans

5 Prescription of the 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:
- (a) to assist purchasers to acquire a farm business or a controlling stake of a farm business, and
 - (b) to assist farm businesses to undertake succession planning.

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 trade and commerce with other countries, and among the States.

6 Application for an agristarter loan

- (1) 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.
- (3) The application must:
- (a) be in writing; and
 - (b) include any information, and be accompanied by any documents, required by the Corporation.

7 When a business is an eligible farm business

- (1) Eligible farm businesses are those:
- (a) where at least one member of the farm business is an Australian citizen or a permanent resident as defined in the program guidelines; and
 - (b) that are assessed as financially viable, or as having sound prospects of becoming financially viable within the term of the loan; and
 - (c) that undertake all primary production aspects of the business wholly within Australia; and
 - (d) where at least one member has experience operating a farm business or a demonstrated potential to operate a farm business; and
 - (e) where at least one member of the farm business:
 - (i) in respect of all loans—intends to have the farm business as their principal business pursuit (in terms of being where they contribute at least 50 per cent of their labour and where they derive or plan to derive at least 50 percent of their income); and
 - (ii) in respect of succession loans provided directly to a farm business only—currently has the farm business as their principal business pursuit (in terms of being where they contribute at least 50 per cent of their labour and where they derive or plan to derive at least 50 percent of their income); and

- (f) that are operated by a sole trader, partnership, trustee of a 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 are engaged solely or mainly in producing commodities for constitutional trade or commerce.

8 Grant of a succession loan

Eligibility requirements—succession loans

- (1) Subject to subsection (2), the Corporation may grant a loan to a farm business or farm business inheritor (**recipient**) where the Corporation is satisfied that:
 - (a) the business is undertaking or has undertaken succession planning and the loan is to support the activities identified in the succession planning process; and
 - (b) the recipient will obtain or has obtained a loan on commercial terms; and
 - (c) the recipient is in financial need of a concessional loan; and
 - (d) the recipient has the capacity to repay the loan; and
 - (e) the business is an eligible farm business and will continue to be an eligible farm business after the succession arrangements take place.

When a succession loan must not be granted

- (2) The Corporation must not grant a loan under subsection (1) if it is not satisfied of the matters set out in that subsection.

9 Grant of a purchaser loan

Eligibility requirements—purchaser loans

- (1) Subject to subsection (2), the Corporation may grant a loan to a purchaser where the Corporation is satisfied that:
 - (a) the purchaser will obtain or has obtained a loan on commercial terms; and
 - (b) the purchaser is in financial need of a concessional loan; and
 - (c) the purchaser has the capacity to repay the loan; and
 - (d) the farm business to be purchased will be an eligible farm business after the purchase has completed.

When a purchaser loan must not be granted

- (2) The Corporation must not grant a loan under subsection (1) if it is not satisfied of the matters set out in that subsection.

10 Terms of agristarter loans

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

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Offering agristarter loans

- (2) The maximum amount of an agristarter loan is the lesser of:
 - (a) the amount that would result in the recipient having 50 per cent of its total debt in Commonwealth funded concessional loans; or
 - (b) \$2 million.
- (3) The Corporation has discretion to set the terms and conditions upon which an agristarter loan is made, provided that the agristarter loan:
 - (a) has an initial loan term of ten years; and
 - (b) has an initial interest-only period of five years; and
 - (c) interest is payable at the rate mentioned in subsection (4); and
 - (d) allows full or partial early repayment (of principal, interest or both, at the recipients discretion) at any time without penalty; and
 - (e) is backed by sufficient security.
- (4) For the purposes of paragraph (3)(c)—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*.

Types of security the Corporation must consider

- (5) For the purposes of paragraph (3)(e)—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.

Meaning of total debt

- (6) For the purposes of paragraph (2)(a)—**total debt** means 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

11 Notice of decision to grant or refuse loan

The Corporation will ensure that applicants for agristarter loans 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

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- (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(1)(a).

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 agristarter 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 recipient for transaction costs incurred by the Corporation in relation to an agristarter loan.

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.