

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Water Resources, Drought, Rural Finance,
Natural Disaster and Emergency Management and the Minister for Finance

Regional Investment Corporation Act 2018

*Regional Investment Corporation (Agristarter Loans) Amendment (Loan Terms and
Eligibility) 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.

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.

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.

Purpose

The purpose of the *Regional Investment Corporation (Agristarter Loans) Amendment (Loan Terms and Eligibility) Rule 2019* (Amendment Rule) is to amend the *Regional Investment Corporation (Agristarter Loans) Rule 2019* (the Rule) to allow for agristarter loans to be made available to farm businesses that intend to be engaged solely or mainly in producing commodities for constitutional trade and commerce.

Background

The Rule provides for the Regional Investment Corporation to provide for loans to encourage and assist purchasers to acquire a farm business or a controlling stake of a farm business, or assist farm businesses effect their succession plans.

Subsection 5(3) of the Rule specifies 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. The Rule currently draws on this power to provide for loans to be made to farm businesses that solely or mainly engage in constitutional trade and commerce.

Section 4 of the Act defines constitutional trade and commerce to mean trade and commerce:

- between Australia and places outside Australia; or
- among the States; or
- within a Territory, between a State and Territory or between two Territories.

Impact and Effect

The Amendment Rule will allow the Corporation to lend to farm business that do not currently solely or mainly engage in constitutional trade and commerce, but intend to do so in the future. This will ensure a larger cohort of farmers can seek a loan to assist with acquiring a farm business or a controlling stake of a farm business, or giving effect to farm business succession plans. These loans encourage growth, investment and resilience in Australian farm businesses and regional and rural communities.

Consultation

The Department of Agriculture consulted with the Department of Finance; the Regional Investment Corporation; and the Department of the Prime Minister and Cabinet in drafting the Rule.

Details / Operation

Details of the Amendment Rule are set out in [Attachment A](#).

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

The Amendment 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](#).

Details of the *Regional Investment Corporation (Agristarter Loans) Amendment (Loan Terms and Eligibility) Rule 2019*

Section 1 – Name

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

Section 2 – Commencement

This section provides for the Amendment 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 – Schedules

This section specifies that the *Regional Investment Corporation (Agristarter Loans) Rule 2019* is amended as outlined in Schedule 1 of instrument.

Schedule 1 – Amendments

Item 1 – Section 7 provides the mandatory eligibility requirements for the agristarter loans. Item 1 amends the definition of eligible farm businesses at paragraph 7(1)(i) to enable farm businesses to be those that are, or intend to be, engaged solely or mainly in producing commodities for constitutional trade and commerce.

The purpose of this amendment is to ensure the Corporation can lend to farm business that do not currently solely or mainly engage in constitutional trade and commerce, but intend to do so in the future.

Item 2 – Section 8 provides additional eligibility requirements for succession loans. Item 2 amends subsection 8(2) to specify that the succession loan must not be granted under subsection 8(1) if the Corporation is not satisfied:

- of the matters set out in subsection 8(1); and
- that the loan is made in respect of farm business that is engaged solely or mainly in producing commodities for constitutional trade and commerce, or for the purpose of encouraging or promoting constitutional trade and commerce.

The purpose of this amendment is to ensure that succession loans can be provided where the farm businesses does not currently solely or mainly engage in constitutional trade and commerce, but intends to do so in the future.

Item 3 – Section 9 provides additional eligibility requirements for purchaser loans. Item 3 amends subsection 9(2) to specify that the succession loan must not be granted under subsection 9(1) if the Corporation is not satisfied:

- of the matters set out in subsection 9(1); and
- that the loan is made in respect of farm business that is engaged solely or mainly in producing commodities for constitutional trade and commerce, or for the purpose of encouraging or promoting constitutional trade and commerce.

The purpose of this amendment is to ensure that purchaser loans can be provided where the farm business does not currently solely or mainly engage in constitutional trade and commerce, but intends to do so in the future.

Item 4 – Section 10 provides the terms of agristarter loans. Item 4 amends paragraph 10(3)(d) to allow for the farm business to repay the whole or part of an amount of principal or interest owing on the loan without penalty (at the recipient’s discretion).

The purpose of this amendment is to correct a minor typographical error in the Rule where it referred to the term ‘recipients’ when it should read ‘recipient’s’.

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) Amendment (Loan Terms and Eligibility) 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 the *Regional Investment Corporation (Agristarter Loans) Amendment (Loan Terms and Eligibility) Rule 2019* (Amendment Rule) is to amend the *Regional Investment Corporation (Agristarter Loans) Rule 2019* (the Rule) to enable the Corporation to lend to farm businesses that do not currently solely or mainly engage in constitutional trade and commerce, but intend to do so in the future.

Human rights implications

This Amendment Rule 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 Rule permits the Regional Investment Corporation (the Corporation) to take loan recovery and foreclosure action.

However, the foreclosure action is not arbitrary; rather, the Corporation may only take foreclosure action on farm business loans for recovery purposes. Further, under subsection 12(3) of the Rule, 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 loans and consider the impact on the farm business of any proposed action in relation to the 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 loan recovery.

Conclusion

The Amendment Rule is compatible with human rights as it does not raise any human rights issues.

The Hon. David Littleproud MP
Minister for Water Resources, Drought, Rural Finance, Natural Disaster and
Emergency Management

Senator the Hon. Mathias Cormann
Minister for Finance