

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 (Small Business Drought Loans) Rules 2020

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.

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 (Small Business Drought Loans) Rules 2020* (the Rules) is to allow for loans to be made available to drought-affected small businesses that can demonstrate they have a direct dependency on farmers through providing primary production related goods and services to farm businesses currently in drought.

These loans will provide these small businesses with a better chance of remaining viable during the drought, until their farming customers begin to resume or increase production and once again seek their goods and services.

Background

A large range of small farm-dependant businesses are either directly or indirectly affected by enduring drought conditions. Concessional loan funding, including an interest free period, from the Government and administered by the Corporation will provide practical support to these drought-affected small businesses, and assist them in managing through the drought.

Impact and Effect

The Rules will enable the Corporation to make loans available to drought-affected small businesses with a direct dependency on farmers because they provide primary production related goods and services to drought-affected farm businesses.

The new loan product, in conjunction with other assistance provided to farm businesses, will have flow-on effects to other businesses and rural communities. It will provide these small businesses with a better chance of remaining viable until their drought-affected farming

customers begin to resume or increase production and once again seek their goods and services.

Consultation

The Department of Agriculture consulted with the Department of Finance and the Regional Investment Corporation on the Rules. The Office of Best Practice Regulation has been consulted on this loan program who advise that a Regulatory Impact Statement is not required for this program (OBPR ID 25752).

Details / Operation

Details of the Rules are set out in Attachment A.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Rules are 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 (Small Business Drought Loans) Rules 2020*

Part 1 - Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Regional Investment Corporation (Small Business Drought Loans) Rules 2020* (the Rules).

Section 2 – Commencement

This section provides that the instrument commences on the day after registration.

Section 3 – Authority

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

Section 4 – Definitions

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

- **Act** means the *Regional Investment Corporation Act 2018*.
- **affected area** has the same meaning as in the *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa* (the Desertification Convention).
- **commercial debt** has the meaning of debt that is held on commercial terms at commercial interest rates, terms and conditions. Examples of debt that is not considered to be commercial debt include, but are not limited to; private debt or family debt not provided at arm's length and at commercial interest rates and terms and conditions, and non-balance sheet loans.
- **drought-affected small business** has the meaning given in section 5 of the Rules, which identifies a small business' turnover requirements, the effect of drought on the small business, that the small business must have fewer than 20 employees and that it is not a farm business.
- **maximum loan amount** means the maximum amount the Regional Investment Corporation small business loan can be. This is the lesser of:
 - the amount equal to 50% of the business' existing commercial debt;
 - \$500,000.
- **program** means the Small Business Drought Loans Program prescribed by section 6, which identifies activities which comprise the program, and that relates to small business drought loans funded in accordance with Division 8 of Part 2.
- **small business drought loan** means a loan by the Corporation to a drought-affected small business, of not more than the maximum loan amount for the business, for the purpose of providing working capital for the business or refinancing existing commercial debt owed by the business, on non-exhaustive terms and conditions as listed in the definition.

Section 5 – What is a *drought-affected small business*?

This section defines a ‘drought-affected small business’. Subsection 5(1) specifies that all requirements in section 5 are to be met for the business to be a ‘drought-affected small business’. A note to that provision identifies extra conditions, as provided for in Division 3 of Part 2, which must be met for a loan to be made to a drought-affected small business under the Small Business Drought Loans Program.

Subsection 5(2) provides that a substantial part of the turnover of the business must be, or have been, from the business supplying goods or services to farm businesses in affected areas, and that the goods or services are related to primary production by those farm businesses.

Subsection 5(3) deals with the effect of drought on the business and specifies that as a consequence of drought affecting farm businesses in affected areas, there must have been a material reduction in the turnover of the business or a material increase in unsecured debts to the business by farm businesses.

Subsection 5(4) specifies that the business must have fewer than 20 employees other than casual employees. This limits the availability of these concessional loans to just small businesses. Specifying small businesses to be those with fewer than 20 employees is consistent with the Australian Bureau of Statistics definition of a small business.

Subsection 5(5) specifies that the business must not be a farm business. This ensures that farm businesses are not eligible for loans under these Rules, and reflects the fact that there are existing concessional loans products available from the Corporation for drought-affected farm businesses.

Part 2—Small Business Drought Loans Program

Division 1—Prescribing Small Business Drought Loans Program

Section 6 – Small Business Drought Loans Program prescribed

Subsection 6(1) prescribes the Small Business Drought Loans Program for the purposes of paragraph 8(1)(g) of the Act, which provides that one of the functions of the Corporation is to administer programs prescribed by the Rules.

Paragraph 6(2)(a) provides that the Small Business Drought Loans program is the program that consists of the following activities:

- receiving applications for small business drought loans and dealing with applications in accordance with Division 2;
- making small business drought loans in accordance with Division 3;
- determining the terms and conditions on which small business drought loans are made in accordance with Division 4;
- taking security for small business drought loans;
- charging borrowers for transaction costs incurred by the Corporation in relation to small business drought loans;
- collecting and dealing with payments of interest on, repayments of principal amounts of, small business drought loans and if required, enforcing security taken for small business drought loans in accordance with Division 5;

- reviewing periodically small business drought loans and the terms and conditions on which they are made;
- dealing with debts relating to small business drought loans in accordance with Division 6; and
- reporting to the responsible Ministers on small business drought loans in accordance with Division 7.

Paragraph 6(2)(b) provides that the Small Business Drought Loans Program is the program that relates to small business drought loans funded in accordance with Division 8 of Part 2 of the Rules.

Section 7 – Constitutional basis for program

This section provides that the constitutional basis for the Small Business Drought Loans Program is paragraph 51(xxix) of the Constitution, in so far as it provides a basis for implementing Australia’s international obligations under the Desertification Convention.

Division 2—Dealing with applications for small business drought loans

Section 8 – Informing applicants of outcome of applications for small business drought loans

This section provides that the Corporation must ensure that applicants for small business drought loans are informed of the outcomes of their loan applications as soon as practicable after decisions on their applications have been made. This provision is intended to provide certainty to applicants that they will receive appropriate notice of the outcomes of loan applications.

Division 3—Making small business drought loans

Section 9 – Small business drought loans to be made only on application

This section provides that the Corporation may make a small business drought loan to a drought-affected small business only if the business makes an application for the loan that is in writing, includes information (if any) required by the Corporation and is accompanied by documents (if any) required by the Corporation.

The information and documents required by the Corporation may vary for each application, depending on the circumstances of the applicant. Therefore, specific kinds of information and documents cannot be prescribed in the Rules.

Section 10 – Capacity to repay loan and provide security

This section provides that the Corporation must not make a small business drought loan to a drought-affected small business unless the business is assessed as having the capacity to repay the loan and the business has provided sufficient security for the loan.

Section 11 – Extra preconditions for making small business drought loans

This section prescribes additional conditions to be met for making a small business drought loan to a drought-affected small business. These are that the business:

- is in financial need of a concessional loan; and
- is assessed as financially viable or as having sound prospects of a return to financial viability within 10 years; and
- owes commercial debt; and
- had fewer than 20 employees other than casual employees throughout the six months before the business applied for the loan;
- is carried on by:
 - a sole trader who is an Australian citizen or permanent resident, and whose principal business pursuit is the drought-affected small business; or
 - a partnership whose partners include a person who is an Australian citizen or permanent resident, and a person whose principal business pursuit is the drought-affected small business (whether it is the same partner or different partners); or
 - a trust, whose beneficiaries or unit-holders include a person who is an Australian citizen or permanent resident, and a person whose principal business pursuit is the drought-affected small business (whether it is the same beneficiary or unit-holder or different ones); or
 - a corporation (within the meaning of the *Corporations Act 2001*) other than a public company (within the meaning of that Act), whose members include a person who is an Australian citizen or permanent resident and a person whose principal business pursuit is the drought-affected small business (whether it is the same member or different members);
- is registered for tax purposes in Australia with an Australian Business Number, and is registered for Goods and Services Tax under the *A New Tax System (Goods and Services Tax) Act 1999*.;
- is not subject to external administration or bankruptcy.

Section 11 prevents the Corporation from making a small business drought loan to a public company. This reflects the intention of the loans, which is to provide financial relief to drought-affected small businesses only.

The Rules incorporate by reference the definitions of a corporation and a public company in the *Corporations Act 2001*. The definitions are incorporated as in force from time to time (as permitted by section 14 of the *Legislation Act 2003*).

Division 4—Determining terms and conditions of small business drought loans

Section 12 – Extra terms and conditions of small business drought loans

This section provides that the Corporation may determine the terms and conditions on which a small business drought loan is made. This section includes a note that the loan needs to be subject to the terms and conditions mentioned in the definition of ‘small business drought loan’ in section 4 of the Rules. This section provides for the Corporation to develop and set additional loan conditions as necessary. It is envisaged such terms and conditions could relate to loan reviews, repayment frequencies and the security held for the loan. These terms and conditions are in addition to those provided in the definition of small business drought loan in section 4.

Section 13 – Setting interest rates

This section provides that the Corporation must determine the interest rates on all small business drought loans in accordance with the methodology as described in section 25. The section includes a note that the first two years of each small business drought loan are interest-free. This is the methodology the responsible Ministers have agreed to.

Division 5—Collecting and dealing with payments and enforcing security

Section 14 – Corporation to pay amounts collected to Commonwealth

This section provides that the Corporation must pay the Commonwealth, as soon as reasonably practicable, all loan repayments received by the Corporation from recipients of small business drought loans. This includes repayments of principal and payments of interest.

This section excludes payments of any transaction costs the Corporation charges loan recipients in relation to the loans (for example, fees for title searches and mortgage registrations). This provision ensures that any transaction costs paid by the Corporation and repaid by loan recipients do not need to be paid to the Commonwealth.

Section 15 – Decisions on foreclosure to be made by Board

This section provides that any decision of the Corporation on foreclosure on a small business drought loan must be made by the Corporation's Board (and not by a delegate of the Corporation or the Board). This reflects the serious nature of these decisions and the impact they may have upon both the small business and the Commonwealth.

Division 6—Dealing with debt relating to small business drought loans

Section 16 – Mediation

This section provides that the Corporation must offer to undertake mediation relating to debts relating to small business drought loans. It also provides that, if the offer is accepted, the Corporation is required to undertake the mediation.

Section 17 – Waiver

This section provides that a decision of the Corporation to waive debt relating to a small business drought loan must be made by the Corporation's Board (not a delegate of the Corporation or the Board) after consulting with the responsible Ministers and taking their views into account.

This reflects the serious nature of these decisions given the implication for the small business and the Commonwealth. The requirement for consultation with the responsible Ministers reflects the financial impact that waiving debt may have upon the Commonwealth and the usual role of the Finance Minister in waiving debts owed to the Commonwealth.

Division 7— Reporting to responsible Ministers

Section 18 – Quarterly reporting

This section provides that the Corporation must provide a report on small business drought loans to the responsible Ministers as at the end of every March, June, September and December. It also specifies the report must include information regarding small business drought loans uptake and details of the portfolio of small business drought loans, as well as overall financial performance.

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.

A note to the section provides that under section 23 of the Rules, the Corporation also has the function of providing information about small business drought loans to the responsible Ministers on request.

Division 8— Funding of small business drought loans

Section 19 – Funding of small business drought loans

This section sets out the funding provisions for small business drought loans.

Subsection 19(1) provides that the Corporation will be funded to make small business drought loans through an appropriation made by an Act.

Subsection 19(2) provides that funds for small business drought loans will be provided upon the Corporation's request to enable the Corporation to advance loan funds to recipients of those loans as required.

Under paragraph 19(3)(a), the Corporation must only request funds as they are required to advance loan funds to recipients of small business drought loans. This ensures that funds are held by the Commonwealth until required, thereby minimising the cost of borrowing (or the cost of capital), supporting the Corporation to offer loans at concessional interest rates.

Paragraph 19(3)(b) provides that the Corporation must only use funds provided for small business drought loans for that purpose. This is to ensure that loan funding is available only for those loans.

Division 9— Other matters relating to program

Section 20 – Charging of transaction costs

This section provides that the Corporation may charge transaction costs incurred by the Corporation in relation to the program, for the purposes of subparagraph 8(5)(b)(i) of the Act.

This section allows for the Corporation to charge transactions costs incurred in relation to a small business drought loan (for example, fees for title searches and mortgage registrations).

Section 21 – Directions by responsible Ministers

This section provides that the responsible Ministers may give written directions to the Corporation relating to the Small Business Drought Loans Program, for the purposes of subparagraph 8(5)(b)(iii) of the Act.

This section prevents the responsible Ministers providing directions that direct, or have the effect of directing, the Corporation in relation to a particular small business drought loan. This limitation ensures that decisions on individual loans are made independently of the government.

Part 3—Other functions relating to program

Division 1—Corporation functions

Section 22 – Preparing and publishing guidelines relating to program

This section provides that, for the purposes of paragraph 8(1)(h) of the Act, the Corporation has the functions of preparing, in consultation with the responsible Ministers, written guidelines about the program, including guidelines about:

- the types of security the Corporation will consider and require for small business drought loans;
- how the Corporation will determine whether persons are Australian citizens or permanent residents; and
- the right to request review of decisions to make or refuse small business drought loans and the process for requesting such reviews.

The Corporation also has the function of publishing the guidelines.

It is envisaged that these guidelines will set out detailed guidance for the delivery of the Small Business Drought Loans Program, for example eligibility requirements, loan uses, how to apply, and the assessment of applications.

Section 23 – Providing information and advice to responsible Ministers

This section provides that, for the purposes of paragraph 8(1)(h) of the Act, the Corporation has the functions of providing information about small business drought loans to the responsible Ministers on request and advising the Commonwealth on matters that will improve the operation and policy outcomes of small business drought loans.

This provision is intended to facilitate the Corporation in actively advising, or responding to requests for advice from, the responsible Ministers about the delivery of small business drought loans.

Division 2—Board functions

Section 24 – Ensuring internal review of decisions about loans

This section provides that, for the purposes of paragraph 15(1)(e) of the Act, the Board has the function of ensuring that the Corporation develops and applies procedures, for reviewing decisions to make or refuse small business drought loans.

Paragraph (a) provides that the procedures for reviewing decisions to make or refuse small business drought loans are required to be transparent, robust and fair. Paragraph (b) provides that the internal review procedures be carried out by a person who was not the primary decision-maker of the original decision. It also provides that the decision on the internal review be made by a person who was not the primary decision-maker of the original decision. Paragraph (c) provides that the internal review procedures must be consistent with the principles of procedural fairness.

The principles of procedural fairness include giving a fair hearing appropriate to the circumstances and lack of bias.

Through this section, applicants will have the ability to have decisions made by the Corporation to grant or refuse loans reviewed on their merits.

Section 25 – Setting interest rates

Subparagraph 25(a)(i) provides that, for the purposes of paragraph 15(1)(e) of the Act, a function of the Board is to agree with the responsible Ministers on a methodology for setting variable interest rates for small business drought loans. The methodology must:

- result in rates that only cover the Corporation’s administrative costs to deliver small business drought loans and the Commonwealth’s borrowing costs to fund the Corporation to make such loans; and
- involve review of the interest rate each November and May and, if necessary, revising it in line with changes of more than 0.1 per cent in the Commonwealth 10-year bond rate.

This provision reflects that the Corporation’s concessional loans programs are intended to be budget neutral over their life, with interest rates to be set at a level that only covers the Corporation’s administrative costs to deliver concessional loans and the Commonwealth’s borrowing costs. The Commonwealth’s borrowing costs are determined using the Commonwealth 10-year bond rate. Rates are set in this manner, independently of commercial interest rates.

Paragraph 25(b) provides that the Board has the function of ensuring the Corporation applies any revised interest rate on the first day of the third month after the month the relevant review was conducted, and notifies affected recipients in advance of any revision of the interest rate.

This provision will ensure the Corporation treats clients fairly by providing adequate and appropriate notice of changes to loan interest rates.

Section 26 – Developing and applying loan management policies and procedures

Subsection 26(1) provides that, for the purposes of paragraph 15(1)(e) of the Act, the Board has the functions of ensuring that the Corporation develops and applies policies and procedures described in subsection 26(2) that take into account:

- the concessional nature of small business drought loans and
- the effect on drought-affected small businesses of taking action in accordance with those policies and procedures.

Subsection 26(2) provides that subsection 26(1) applies to policies and procedures for managing small business drought loans in a prudential manner to minimise the risk of default, including policies and procedures for arrears management, recovery action, foreclosure arrangements, waiving debt after consulting the responsible Ministers, writing off debt and handling disputes and complaints.

It is intended that the Corporation will ensure it balances careful management of small business drought loans to minimise the risk of default, with appropriate flexibility for small businesses in need.

Statement of Compatibility with Human Rights

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

Regional Investment Corporation (Small Business Drought Loans) Rules 2020

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 (Small Business Drought Loans) Rules 2020* (the Rules) is to enable the Regional Investment Corporation (the Corporation) to provide small business drought loans to drought-affected small businesses.

Human rights implications

These Rules engage 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. This is because the Rules refer to the Corporation taking loan recovery and foreclosure action following a decision by the Board to take such action.

However, the foreclosure action is not arbitrary; rather, the Corporation may only take foreclosure action on small business drought loans for recovery purposes. Further, under section 26 of the Rules, in developing and applying its policies and procedures in relation to small business drought loans, the Corporation is expected to have regard to the concessional nature of the loans and consider the impact on the drought-affected small business of any proposed action in relation to the loan in accordance with those policies and procedures. Under section 16 of the Rules, the Corporation must also offer, and undertake when accepted, 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 where necessary.

Conclusion

The Rules are compatible with human rights. To the extent that the Rules limit human rights, these limitations are necessary, reasonable and proportionate.

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