

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Drought and Emergency Management
and the Minister for Finance

Regional Investment Corporation Act 2018

Regional Investment Corporation (Drought Loans Expansion) Rule 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 relevantly 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 (Drought Loans Expansion) Rule 2020* (the Rule) is to expand the eligibility criteria so that drought loans can be made available to farm businesses located outside the affected area defined by the United Nations Convention to Combat Desertification.

Background

The existing drought loans currently administered by the Corporation feature an eligibility requirement that the farm business must be located in an affected area as defined in the Desertification Convention.

The current drought conditions are impacting regions outside this affected area and the government has made the decision to expand eligibility for drought loans to include farm businesses located outside this area. Providing these farm businesses with concessional drought loans with an interest free period will provide practical support and assist these businesses in preparing for, and managing and recovering from drought.

Impact and Effect

The Rule will enable the Corporation to make loans available to farm businesses outside the affected area. This will mean farm businesses can access drought loans, regardless of their location.

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 farm

businesses with a better chance of remaining viable during the drought and after the drought breaks.

Consultation

The Department of Agriculture, Water and the Environment consulted with the Department of Finance and the Regional Investment Corporation on the Rule. The Office of Best Practice Regulation (OBPR) has advised that loan program has no more than a minor regulatory impact on business, community organisations or individuals (OBPR reference 23656).

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.

Details of the *Regional Investment Corporation (Drought Loans Expansion) Rule 2020*

Part 1 - Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Regional Investment Corporation (Drought Loans Expansion) Rule 2020* (the Rule).

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 used in the Rule.

Section 5 – What is an eligible farm business?

This section defines an ‘eligible farm business’ for the program. A farm business is eligible for an expanded drought loan if the farm business is not located in an affected area or a Territory, not solely or mainly engaged in producing commodities for constitutional trade or commerce, and not a constitutional corporation.

This reflects that drought loans are already available from the Corporation to farm businesses who are located in an affected area or a Territory, are solely or mainly engaged in producing commodities for constitutional trade or commerce, or are a constitutional corporation. The legislative authority for these existing drought loans is the Act and the *Regional Investment Corporation Operating Mandate Direction 2018*.

Part 2—Drought Loans Expansion Program

Division 1—Prescribing Drought Loans Expansion Program

Section 6 – Drought Loans Expansion Program prescribed

Subsection 6(1) prescribes the Drought Loans Expansion 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 Rules.

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

- receiving applications for expanded drought loans and dealing with applications in accordance with Division 2;
- making expanded drought loans in accordance with Division 3;
- determining the terms and conditions on which expanded drought loans are made in accordance with Division 4;
- taking security for expanded drought loans;
- charging borrowers for transaction costs incurred by the Corporation in relation to expanded drought loans;
- collecting and dealing with payments of interest on, repayments of principal amounts of, expanded drought loans and if required, enforcing security taken for expanded drought loans in accordance with Division 5;
- seeking, where the Corporation considers it is appropriate, to recover any costs the Corporation incurs when taking action to enforce a loan agreement;
- reviewing periodically expanded drought loans and the terms and conditions on which they are made;
- dealing with debts relating to expanded drought loans in accordance with Division 6; and
- reporting to the responsible Ministers on expanded drought loans in accordance with Division 7.

Paragraph 6(2)(b) provides that the Expanded Drought Loans Program is the program that relates to expanded drought loans funded in accordance with Division 8 of Part 2 of the Rule.

Section 7 – Constitutional basis for program

This section provides that the constitutional basis for the Expanded 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 and one or more of the three Climate Change Conventions being the United Nations Framework on Climate Change, the Kyoto Protocol to the United Nations Framework Convention and the Paris Agreement.

Division 2—Dealing with applications for expanded drought loans

Section 8 – Expanded drought loan applications must meet certain criteria

This section provides that to obtain an expanded drought loan, an eligible farm business must make an application which must meet certain criteria. Subsection 8(1) specifies that eligible farm businesses must make an application to the Corporation. Subsection 8(2) specifies that in order to be valid an application must be in writing, include information (if any) required by the Corporation and be accompanied by documents (if any) required by the Corporation. Subsection 8(3) specifies that the Corporation is not required to consider an application that is not valid.

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 Rule.

Section 9 – Informing applicants of outcome of applications for expanded drought loans

This section provides that the Corporation must ensure that applicants for expanded 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 expanded drought loans

Section 10 – Expanded drought loan not to be made where farm business loan available

This section provides that the Corporation must not make an expanded drought loan to an eligible farm business if that business would be eligible to receive a farm business loan. This section draws on the definition of farm business loan in the Act.

This reflects there is an existing concessional drought loan available from the Corporation for farm businesses who do not meet the eligibility criteria for an expanded drought loan. The legislative authority for the existing drought loans is the Act and the *Regional Investment Corporation Operating Mandate Direction 2018*.

Section 11 – Purpose criteria – connection with drought

Subsection 11(1) sets out the circumstances in which the Corporation cannot make a loan under the program. The effect of that section is that the Corporation cannot make an expanded drought loan to an eligible farm business unless the loan will assist the business to do the things specified in paragraph 11(1)(a) or 11(1)(b).

Paragraph 11(1)(a) provides for an expanded drought loan to assist the business to engage in drought preparedness activities.

Paragraph 11(1)(b) provides for an expanded drought loan to assist the business to manage or recover from the effects of the drought by doing one or more of the following activities:

- restructuring existing debt;
- meeting its operating expenses;
- enhancing its productivity.

Subsection 11(2) sets the requirement for recipients to be in financial need of assistance due to a particular event. The cause of the financial need of assistance varies depending on the purpose criteria specified in subsection 11(1).

Paragraph 11(2)(a) states that the Corporation must not make an expanded drought loan to an eligible farm business to engage in drought preparedness activities unless the business is in financial need of assistance due to an event outside of its control. Examples of events outside of a farm business' control may include, but are not limited to, disease outbreaks, pest or weed incursions, sudden and unexpected biosecurity restrictions, or market closures. This reflects the intention for loans for preparedness activities to be targeted to farm business that have experienced a negative financial impact from an event outside of their control.

Paragraph 11(2)(b) states that the Corporation must not make an expanded drought loan to an eligible farm business to manage or recover from the effects of drought unless the business is in financial need of assistance as a consequence of drought. This reflects the intention for loans for drought management and recovery purposes to be targeted to farm businesses that have experienced a financial impact from drought.

Subsection 11(3) specifies that the Corporation must not provide an expanded drought loan to an eligible farm business unless that business has a drought management plan outlining the activities the business will spend loan funds on and that sets out the business's drought preparedness, management and recovery strategies. This requirement is intended to encourage loan recipients to plan for how they will prepare for, manage and recover from drought.

Section 12 – Capacity to repay loan and provide security

This section provides that the Corporation must not make an expanded drought loan to an eligible business unless the Corporation is satisfied that the business has the capacity to repay the loan and the business has provided sufficient security for the loan.

The Corporation must consider requiring security in the form of a registered mortgage over land or over livestock or a registered security interest in water rights. The Guidelines will set out other securities the Corporation may consider and require in relation to expanded drought loans.

Section 13 – Financial criteria

This section sets out the financial criteria for making an expanded drought loan to an eligible business. It provides that the Corporation must not make an expanded drought loan to an eligible farm business, unless:

- the Corporation is satisfied that the business is financially viable or has sound prospects of a return to financial viability within 10 years; and
- the business owes commercial debt; and
- the business has support of the commercial lender to the proposed concessional loan; and
- the entity carrying on the business is not subject to external administration or bankruptcy; and
- the entity carrying on the business 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*.

This section reflects the intent for expanded drought loans to only be provided to businesses that are assessed by the Corporation as financially viable, or having sound prospects of returning to financial viability within 10 years.

The requirement for the Corporation to only provide loans to farm businesses that have commercial debt reflects the intention for the Corporation not to be the sole lender to farm businesses.

Section 14 – Business activities and ownership criteria

This section outlines the business and ownership criteria for making an expanded drought loan to an eligible business. It provides that the Corporation must not make an expanded drought loan to an eligible farm business, unless the business:

- undertakes all primary production aspects of the business wholly within Australia; and
- is the person's principal business pursuit that the person derives the majority of their income from and devotes the majority of their labour to; and
- is carried on by:
 - a sole trader who is an Australian citizen or permanent resident; or
 - a partnership, where at least one of the partners in which is an Australian citizen or permanent resident; or
 - a trust, where at least one of whose beneficiaries or unit-holders is an Australian citizen or permanent resident; or
 - a corporation (within the meaning of the *Corporations Act 2001*) where at least one of whose members is an Australian citizen or permanent resident (other than a public company (within the meaning of that Act) or a constitutional corporation).

Section 14 prevents the Corporation from making an expanded drought loan to a public company. The rationale for this requirement is that the government is targeting the loans to businesses with less capacity to prepare for, manage through and recover from drought. Public companies generally have structures that are more complex, of a larger scale, and have better access to raise capital when compared to businesses that are not public companies. Section 14 also prevents the Corporation from making an expanded drought loan to a constitutional corporation. This reflects that constitutional corporations are not eligible for loans under the program, as specified in paragraph 5(d).

The Rule incorporates 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 subparagraph 14(1)(a)(i) of the *Legislation Act 2003*).

Division 4—Determining terms and conditions of expanded drought loans

Section 15 – Maximum amount of expanded drought loans

This section provides that the Corporation must not grant a loan greater than the maximum amount. The maximum loan amount is defined as an amount that is the lesser of the following:

- an amount that would result in an eligible business holding 50% of its total debt in Commonwealth funded concessional loans; or
- \$2 million.

The section defines total debt of an eligible farm business as the sum of the eligible business's commercial debt and the amount owing under each Commonwealth-funded concessional loan the eligible business holds.

Section 16 – Extra terms and conditions of expanded drought loans

This section provides that the Corporation may determine the terms and conditions on which an expanded drought loan is made. 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 and repayment frequencies.

This section includes a note that the loan needs to be subject to the terms and conditions mentioned in the definition of the ‘expanded drought loan’ in section 4 of the Rule.

Section 17 – Setting interest rates

This section provides that the Corporation must determine the interest rates on all expanded drought loans in accordance with the methodology as described in section 29. The section includes a note that the first two years of each expanded drought loan are interest-free.

Division 5—Collecting and dealing with payments and enforcing security

Section 18 – 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 expanded 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 19 – Decisions on foreclosure should be made by Board

This section provides that any decision of the Corporation on foreclosure on an expanded drought loan should 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 foreclosure would have on both the farm business and the Commonwealth.

Division 6—Dealing with debt relating to expanded drought loans

Section 20 – Mediation

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

Section 21 – Waiver

This section provides that a decision of the Corporation to waive debt relating to an expanded drought loan should be made by the Corporation’s Board (not a delegate of the Corporation or the Board) and must only be made after the Corporation has consulted the responsible Ministers and taken their views into account.

This reflects the serious nature of these decisions given the implication for the eligible 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 22 – Quarterly reporting

This section provides that the Corporation must provide a report on expanded 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 expanded drought loans uptake and details of the portfolio of expanded 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, Performance and 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 27 of the Rule, the Corporation also has the function of providing information about expanded drought loans to the responsible Ministers on request.

Division 8— Funding of expanded drought loans

Section 23 – Funding of expanded drought loans

This section sets out the funding provisions for expanded drought loans.

Subsection 23(1) provides that the Corporation will be funded to make expanded drought loans through an appropriation made by an Act. This provision is not, of itself, an appropriation and is intended to cross-refer to the general Appropriation Acts under which the funds will be appropriated, not the *Regional Investment Corporation Act 2018*. This reflects that the *Regional Investment Corporation Act 2018* does not feature an appropriation power, with the funding for the Corporation's loans being appropriated in general Appropriation Acts.

Subsection 23(1) is introductory to the remainder of section 23 of the Rule, which sets out the broader funding arrangements for the expanded drought loans, including how loan funds are to be provided to the Corporation and how the funds are to be used.

Subsection 23(2) provides that funds for expanded drought loans will be provided to the Corporation upon the Corporation's request to enable the Corporation to advance loan funds to recipients of those loans as required.

Under paragraph 23(3)(a), the Corporation must only request funds as they are required to advance loan funds to recipients of expanded 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 23(3)(b) provides that the Corporation must only use funds provided for expanded 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 24 – Charging of transaction costs

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

This section allows for the Corporation to charge transaction costs incurred in relation to an expanded drought loan (for example, fees for title searches and mortgage registrations).

Section 25 – Directions by responsible Ministers

Subsection 25(1) of this section provides that the responsible Ministers may give written directions to the Corporation relating to the Expanded Drought Loans Program, for the purposes of subparagraph 8(5)(b)(iii) of the Act.

Subsection 25(2) of this section prevents the responsible Ministers providing directions that direct, or have the effect of directing, the Corporation in relation to a particular expanded 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 26 – 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 expanded drought loans;
- how the Corporation will determine whether persons are Australian citizens or permanent residents;
- the right to request review of decisions to make or refuse expanded drought loans and the process for requesting such reviews; and
- the kinds of loans the Corporation considers to be Commonwealth-funded concessional loans.

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 Expanded Drought Loans Program, for example eligibility requirements, loan uses, how to apply, and the assessment of applications.

Section 27 – 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 expanded drought loans to the responsible Ministers on request and advising the Commonwealth on matters that will improve the operation and policy outcomes of expanded 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 expanded drought loans.

Division 2—Board functions

Section 28 – 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 expanded drought loans.

Paragraph 28(a) provides that the procedures for reviewing decisions to make or refuse expanded 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. This ensures applicants can have loan decisions reviewed in a transparent, robust and fair manner.

Decisions made by the Corporation are not subject to external merits review. This approach reflects the governance arrangements of the Corporation, as well as its legal obligation to manage Commonwealth funds prudently.

The Corporation is a corporate Commonwealth entity with an independent expertise-based Board whose role it is to ensure the proper, efficient and effective performance of the Corporation's functions. Under this section, the Board has the function of ensuring the Corporation develops the policies and procedures for managing drought loans in a prudential manner to minimise the risk of default. Providing for a further, external, merits review process, in relation to the Corporation's decisions to grant loans may jeopardise the capacity of the Board to ensure the Corporation is adequately managing the financial risk of the loan and minimising the risk of default.

Section 29 – Setting interest rates

Subparagraph 29(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 expanded drought loans. The methodology must:

- result in rates that only cover the Corporation’s administrative costs to deliver expanded 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 29(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 30 – Developing and applying loan management policies and procedures

Subsection 30(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 30(2) that take into account:

- the concessional nature of expanded drought loans and
- the effect on eligible farm businesses of taking action in accordance with those policies and procedures.

Subsection 30(2) provides that subsection 30(1) applies to policies and procedures for managing expanded 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 expanded drought loans to minimise the risk of default, with appropriate flexibility for eligible 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 (Drought Loans Expansion) Rule 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 (Drought Loans Expansion) Rule 2020* (the Rule) is to expand the eligibility criteria so that drought loans can be made available to farm businesses that are not eligible for existing concessional drought loans from the Corporation due to being located outside the affected area defined by the United Nations Convention to Combat Desertification.

Human rights implications

This 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. This is because the Rule refers 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 expanded drought loans for recovery purposes. Further, under section 30 of the Rule, in developing and applying its policies and procedures in relation to expanded drought loans, the Corporation is expected to have regard to the concessional nature of the loans and consider the impact on the eligible businesses of any proposed action in relation to the loan in accordance with those policies and procedures. Under section 20 of the Rule, 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 Rule is compatible with human rights. To the extent that the Rule limits human rights, these limitations are necessary, reasonable and proportionate.

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Senator the Hon. Mathias Cormann
Minister for Finance