

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 (Agristarter Loans) Amendment 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 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

Agristarter loans are intended for first farmers wishing to purchase, establish or develop a farm business (first farmer loans), and assist with succession arrangements in relation to farm businesses and assets (succession loans). The purpose of the *Regional Investment Corporation (Agristarter Loans) Amendment Rule 2020* (Amendment Rule) is to amend the *Regional Investment Corporation (Agristarter Loans) Rule 2019* (the Rule) to better align the loan with the policy intent of the program.

The Amendment Rule clarifies that the first farmer loan will be available to those wishing to purchase, establish or develop a recently purchased farm business who have not previously held the sole or a controlling interest in a farm business other than a recently-acquired or recently-established farm business.

The Amendment Rule broadens the availability of the succession loan to allow agristarter loans to be provided to assist farm business successors (rather than just inheritors) and also to provide for loans to support farm asset succession.

The Amendment Rule also corrects some typographical errors and inserts some new definitions.

Background

As part of the Pre-election Economic and Fiscal Outlook 2019, the Australian Government announced a new concessional loan product to assist new entrants into farming. The new loan product, known as agristarter loans, was to support farmers to buy their first farm and support succession arrangements within farming families. With individual loans up to \$2 million to be

made available through the Corporation, it was intended that new entrants to farming would get the support they need and families would be able to discuss succession arrangements and plan for the future.

The Rule for the loan product was originally registered on 11 April 2019, and on 22 July 2020 the Government announced that agristarter loans would commence on 1 January 2021. It was announced that an additional \$75 million in loan funding through the Corporation would be provided for agristarter loans in 2020-21.

The Amendment Rule makes changes to ensure the product is consistent with the intended policy, including clarifying that it is for new entrants to obtain their first farm. The loans will encourage investment and resilience in Australian farm businesses and regional and rural communities.

Impact and Effect

Agristarter loans are intended to encourage a new generation of farmers to the agricultural sector. The Amendment Rule will ensure that concessional loans are available for new entrants to farming to purchase, establish or develop a farm business. It will also clarify the loan cohort by allowing the Corporation to make loans available to not only those wishing to purchase a farm business, but also to establish or develop a farm business.

Furthermore, the Amendment Rule makes changes to succession loans by ensuring loans are available to not only inheritors and farm businesses to assist with succession planning, but also farm business successors and farm asset successors (inclusive of inheritors).

Consultation

The Corporation, the Department of Finance, the Attorney-General's Department and some stakeholders were consulted in relation to the rules and/or development of the agristarter loan product throughout 2019 to 2020. The agristarter loan product is expected to be positively received by farmers given the interest received to date.

The Office of Best Practice Regulation (OBPR) has advised that the loan program has only minor regulatory impact on business, community organisations or individuals (OBPR reference 23332).

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 Rule 2020*

Section 1 – Name

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

Section 2 – Commencement

This section provides that the Amendment Rule is to commence the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that this instrument is made under section 54 of the *Regional Investment Corporation Act 2018* (the Act).

Section 4 – Schedules

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

Schedule 1 – Amendments

Regional Investment Corporation (Agristarter Loans) Rule 2019

Item 1 – Section 4 (paragraph (c) of the note after the section heading)

Section 4 of the Rule sets out the definitions for the Rule and commences with a note cross-referring to definitions in the Act that are used in the Rule. Item 1 repeals paragraph (c) of the note, which refers to the *farm business loan* as this definition is not used in the Rule.

Item 2 – Section 4 (definition of *agristarter loan*)

Item 2 omits *purchaser* and substitutes it with *first farmer* in the definition of *agristarter loan* in section 4 of the Rule. The definition of an *agristarter loan* is amended to allow for either a first farmer loan or a succession loan. This is a consequential amendment because the definitions of *purchaser* and *purchaser loan* in the Rule have been replaced with the definitions of *first farmer* and *first farmer loan*, respectively.

The purpose of this amendment is to ensure the Corporation can make agristarter loans available to applicants not only seeking to purchase a farm business, but also to applicants seeking to establish or develop a farm business in which the person holds or will hold the sole or a controlling interest.

Item 3 – Section 4

Item 3 inserts a new definition *farm asset successor* into section 4 of the Rule.

A *farm asset successor* is defined as a person who holds the sole or a controlling interest in a farm business and:

- has recently inherited or will inherit farm assets; or
- has recently acquired or will acquire farm assets under a succession plan.

A note is also included under the definition of *farm asset successor* with examples of what could be considered to be farm assets (for example, farm land, farm infrastructure and farm equipment).

The purpose of this amendment is to expand the cohort able to receive an agristarter loan to include farm asset successors and provide examples of what these farm assets could be. Previously, under the succession loan, the Rule only allowed for the Corporation to grant a loan to farm business inheritors or farm businesses to undertake succession planning.

Item 4 – Section 4 (definition of *farm business inheritor*)

Item 4 repeals the definition of *farm business inheritor* and substitutes a definition of *farm business successor*. *Farm business successor* means a person who:

- has recently inherited or will inherit an interest in a farm business; or
- has recently acquired or will acquire an interest in a farm business under a succession plan.

The purpose of this amendment is expand the category of persons who are eligible for a agristarter loan to include a person who has recently acquired or will acquire an interest in a farm business under a succession plan, as well as to a person who has recently inherited or will inherit an interest in a farm business.

‘An interest’ includes either one, some, or all, of the interests in the farm business.

Item 5 – Section 4

Item 5 inserts the following new definitions into section 4 of the Rule:

- a *first farmer* means a person who is seeking to purchase, establish or develop a farm business in which the person holds or will hold the sole or a controlling interest.
- a *first farmer loan* means a loan made to a first farmer under section 9.
- a *member* of a farm business means, where the farm business is carried on by:
 - a sole trader—the sole trader;
 - a partnership—a partner of the partnership;
 - a trust—a beneficiary or unit-holder of the trust; or
 - a corporation (within the meaning of the *Corporations Act 2001*)—a member of the corporation.

The new definitions of *first farmer* and a *first farmer loan* are consequential to Item 12 of the Amendment Rule, which relevantly repeals and substitutes section 9 of the Rule. Section 9 specifies the eligibility requirements for a first farmer loan.

This item also inserts the definition of a *member* into section 4 of the Rule. The purpose of this amendment is to clarify who is a member of a farm business for the purposes of the Rule. Relevantly, a member will be any of the following persons carrying on a farm business:

- sole trader– the sole trader;
- partnerships – the partner of a partnership;
- trusts – a beneficiary or unit-holder of the trust; or
- a corporation (within the meaning of the *Corporations Act 2001*) – a member of a corporation.

Item 6 – Section 4

Item 6 inserts a new definition – *principal business pursuit* – into section 4 of the Rule. *Principal business pursuit* of a person means a business pursuit:

- to which the person contributes or plans to contribute at least 50 per cent of their labour; and
- from which the person derives or plans to derive at least 50 percent of their income.

This new definition is used in new section 8 and section 9 (see item 12 of the Amendment Rule) which set out the eligibility requirements for succession loans and first farmer loans, respectively. The definition is also consistent with other loan products offered by the Corporation.

Item 7 – Section 4 (definitions of *purchaser* and *purchaser loan*)

Item 7 repeals the definitions *purchaser* and *purchaser loan* in section 4 of the Rule. These definitions are no longer required as item 5 of the Amendment Rule replaces these definitions with *first farmer* and *first farmer loan* – allowing loans to be made available to those seeking to purchase, establish or develop a farm business in which the person holds or will hold the sole or a controlling interest.

The Corporation will still be able to provide loans to those seeking to purchase a farm business, in addition to providing loans to persons wishing to establish or develop a farm business.

Item 8 – Section 4

Item 8 inserts a new definition of *succession arrangements* in section 4 of the Rule. *Succession arrangements* mean the succession planning process or activities identified in the succession planning process.

This item clarifies that succession arrangements include the succession planning process or activities identified in the succession planning process, for the purposes of the succession loans category under section 8 of the Rule.

Item 9 – Section 4 (definition of *succession loan*)

Item 9 repeals the definition of *succession loan* in section 4 of the Rule and substitutes a new definition. A *succession loan* means a loan made to a farm business, a *farm business successor* or a *farm asset successor* under section 8 of the Rule.

Previously the definition of *succession loan* only allowed for the Corporation to make loans to farm businesses or farm business inheritors regarding intergenerational transfer of farms. The new definition will allow for succession loans to also be provided to *farm business successors*

and *farm asset successors*. This ensures that loans can also be provided to assist in the transition of farm businesses where the person has not passed away, and also allow for the transfer of assets as part of the succession arrangements.

Item 10 – Subsections 5(2) and 5(3)

Item 10 repeals and substitutes subsections 5(2) and 5(3) with new subsections. Subsection 5(2) of the Rule sets out the purpose of the agristarter loans program and subsection 5(3) of the Rule provides the constitutional basis of the program.

Purpose of program

New subsection 5(2) of the Rule provides that the purpose of the program is to provide loans to assist:

- first farmers to purchase, establish or develop a farm business in which they hold or will hold the sole or a controlling interest; or
- farm businesses, farm business successors and farm asset successors with succession arrangements.

This amendment is required because of the replacement of the concepts of:

- purchaser with first farmer; and
- farm business inheritor with both farm business successor and farm asset successor.

Specified constitutional basis of program

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, as well as the power of the Parliament to make laws with respect to a Territory.

The amendment also provides for the addition of the Territories power to the constitutional basis of the program. The constitutional basis of the program, along with the requirements for succession loans and first farmer loans outlined in sections 8 and 9 of the Rule means that a farm business located in a territory will be required to trade, or intend to trade, within the territory they are in or with another Territory or interstate or overseas. This is in addition to the requirement that all farm businesses located in states will be required to trade, or intend to trade, either interstate, with a Territory or overseas.

Item 11 – Subsection 6(1)

Section 6 of the Rule provides application requirements for an agristarter loan. Item 11 repeals and substitutes subsection 6(1) to provide that to obtain an agristarter loan, a first farmer, farm business, farm business successor or farm asset successor must make an application to the Corporation.

The purpose of this amendment is to clarify the cohort eligible to be considered for an agristarter loan. This is achieved by updating the wording in subsection 6(1) to reflect the new definitions, which better align the loan cohort with the policy intent of the program.

Item 12 – Sections 7, 8 and 9

Item 12 repeals sections 7, 8 and 9 of the Rule and substitutes new sections 7, 8 and 9.

New section 7 of the Rule specifies when a business is an eligible farm business; new section 8 of the Rule sets out the eligibility requirements for succession loans, and new section 9 of the Rule sets out the eligibility requirements for first farmer loans.

Section 7

New section 7 describes an eligible farm business as:

- where at least one member of the farm business is an Australian citizen or a permanent resident;
- that are financially viable, or have sound prospects of becoming financially viable within the term of the loan;
- that undertake all primary production aspects of the business wholly within Australia;
- that are carried on by a sole trader, partnership, a trust, or corporation (within the meaning of the *Corporations Act 2001*);
- where the entity carrying on the farm business is registered for tax purposes in Australia with an Australian Business Number, and is registered under the *A New Tax System (Goods and Services Tax) Act 1999*; and
- where the entity carrying on the farm business is not under external administration or bankrupt.

New section 7 does not contain the constitutional requirement (paragraph 7(1)(i)) or the principal business pursuit requirement (paragraph 7(1)(e)). These have each been incorporated into the eligibility requirements for a succession loan (section 8) and first farmer loan (section 9).

Additionally, the reference to private company (paragraph 7(1)(f) has been replaced with corporation (within the meaning of the *Corporations Act 2001*). This amendment is intended to clarify the type of legal entity that would be eligible for a farm business loan and reflects modern drafting practices.

Section 8

Section 8 – *Grant of a succession loan* – is replaced with a new section 8 with the same title. The new section 8 sets out revised eligibility requirements for succession loans and the circumstances in which a succession loan must not be granted.

The new subsection 8(1) provides that subject to subsection (2) (regarding the constitutional basis of the program), the Corporation may grant a loan to a farm business, a farm business successor or a farm asset successor (recipient) where the Corporation is satisfied that:

- the farm business is undertaking or has undertaken succession planning;
- the loan is to support succession arrangements;
- the recipient has obtained or will obtain within a reasonable period a loan on commercial terms;
- the recipient is in financial need of a concessional loan;
- the recipient has the capacity to repay the loan;
- in respect of a loan to support farm business succession, after the succession arrangements are carried out:
 - at least one member of the farm business has experience operating a farm business or a demonstrated potential to operate a farm business; and

- at least one member of the farm business intends to have the farm business as their principal business pursuit; and
 - the business will be an eligible farm business.
- in respect of a loan to support farm asset succession, after the succession arrangements are carried out, the farm business in which the farm asset successor holds the sole or a controlling interest:
 - will have at least one member who has experience operating a farm business or a demonstrated potential to operate a farm business; and
 - will have at least one member who intends to have the farm business as their principal business pursuit; and
 - will be an eligible farm business; and
- in respect of succession loans provided directly to a farm business, at least one member of the farm business has the farm business as their principal business pursuit.

The new subsection 8(1) clarifies the eligibility requirements and better aligns the loan program with the policy intent by allowing the Corporation to provide loans to not only inheritors and farm businesses to support succession arrangements, but also farm business successors and farm asset successors (inclusive of inheritors). The requirement for the business to be an eligible farm business after the succession arrangements are carried out is therefore expanded to include farm asset succession.

Paragraph 8(2) ensures that where loans are provided to support farm asset succession, the farm business in which a farm asset successor holds the sole or a controlling interest, is engaged solely or mainly in producing commodities for constitutional trade or commerce. This amendment ensures consistency with the constitutional basis of the program.

Section 9

Section 9 of the Rule – *Grant of a purchaser loan* – is replaced with a new section 9 - *Grant of a first farmer loan*. The new section 9 sets out revised eligibility requirements for first farmer loans and the circumstances under which a first farmer loan must not be granted.

The new subsection 9(1) provides that subject to subsection (2) (regarding the constitutional basis of the program) the Corporation may grant a loan to a first farmer where the Corporation is satisfied that:

- the loan is for one or more of the following purposes:
 - purchasing the sole or a controlling interest in a farm business;
 - establishing a farm business in which the first farmer will hold the sole or a controlling interest;
 - developing a farm business that the first farmer has recently acquired or will acquire, being a farm business in which the first farmer holds or will hold the sole or a controlling interest;
 - developing a farm business that the first farmer has recently established or will establish, being a farm business in which the first farmer holds or will hold the sole or a controlling interest; and
- the first farmer has obtained or will obtain within a reasonable period a loan on commercial terms;
- the first farmer is in financial need of a concessional loan;
- the first farmer has the capacity to repay the loan;
- the farm business will be an eligible farm business;

- the first farmer has not previously held the sole or a majority interest in a farm business other than a recently-acquired or recently-established farm business in respect of which the first farmer loan is sought;
- the first farmer has at least three years of relevant on-farm or equivalent experience; and
- the first farmer intends to have the farm business as their principal business pursuit.

The note to subparagraph 9(1)(aa)(iv) states that a first farmer loan may be granted for one or more of the above purposes (i.e. those outlined in paragraph 9(1)(aa) of the Rule following the amendment). The loan can be used to, among other things, purchase an interest in a farm business, acquire farm assets (including land, infrastructure, equipment and stock), refinance loans associated with a farm business, and cover farm costs (including operating expenses, costs associated with purchasing an interest in a farm business and costs associated with acquiring farm assets).

This item also amends subsection 9(1) to replace references to *purchaser loan* with *first farmer loan*.

In addition, the amendment better aligns the loan program with the policy intent by allowing the Corporation to now provide loans to not only those wishing to purchase a farm business, but also those wishing to establish or develop a farm business.

Item 13 – Before paragraph 10(3)(a)

Item 13 inserts new paragraph 10(3)(aa) into subsection 10(3). Subsection 10(3) provides that the Corporation has discretion to set the terms and conditions upon which an agristarter loan is made, provided that the loan meets certain conditions.

Subparagraph 10(3)(aa)(i) provides an additional condition that must be met in the case of a succession loan (to support succession arrangements in respect of a farm business that is or will be an eligible farm business). New subparagraph 10(3)(aa)(ii) provides an additional condition that must be met in the case of a first farmer loan (to support the purchase, establishment or development of a farm business that is or will be an eligible farm business).

Item 14 – Subsection 10(5)

Item 14 amends subsection 10(5) of the Rule to insert ‘including’ after ‘security’. Subsection 10(5) provides the forms of security that the Corporation must consider requiring for the purposes of the requirement in paragraph 10(3)(e) that the agristarter loan is backed by sufficient security.

The purpose of this amendment is to clarify that the types of security the Corporation must consider requiring for the purposes of paragraph 10(3)(e) include, but are not limited to, the types listed in paragraphs 10(5)(a), (b) and (c).

Item 15 – After subsection 14(1)

Item 15 inserts new subsection 14(1A) into the Rule, which provides that the program's guidelines must be developed in consultation with the responsible Ministers. This is consistent with other loan program guideline requirements made by the Corporation.

Item 16 – Before paragraph 14(2)(a)

Item 16 amends subsection 14(2) of the Rule by inserting new paragraph 14(2)(aa). Paragraph 14(2)(aa) provides that without limiting subsection (1) (which requires the Corporation to develop and publish written guidelines relating to the program), the program guidelines must specify the uses to which the agristarter loans can be applied, consistently with this rule and having regard to the purpose of the program.

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 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 *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.

The purpose of the *Regional Investment Corporation (Agristarter Loans) Amendment Rule 2020* (Amendment Rule) is to amend the *Regional Investment Corporation (Agristarter Loans) Rule 2019* (the Rule) to better align the loan with the policy intent of the program. Agristarter loans are intended for first farmers wishing to purchase, establish or develop a farm business (first farmer loans), and assist with succession arrangements in relation to farm businesses and assets (succession loans).

The Amendment Rule clarifies that the first farmer loan will be available to those wishing to purchase, establish or develop a recently purchased farm business who have not previously held the sole or a controlling interest in a farm business other than a recently-acquired or recently-established farm business.

The Amendment Rule broadens the availability of the succession loan to allow agristarter loans to be provided to assist farm business successors (rather than just inheritors) and also to provide for loans to support farm asset succession.

The Amendment Rule also corrects some typographical errors and inserts some new definitions.

Human rights implications

The *Regional Investment Corporation (Agristarter Loans) Amendment Rule 2020* (the Amendment Rule) engages the following human rights:

- the prohibition on interference with a person's privacy, family and home in Article 17 of the International Covenant on Civil and Political Rights (ICCPR);
- rights of parents and children in article 24(1) of the International Covenant on Civil and Political Rights (ICCPR);

- right to social security in article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- right to work in articles 6(1) and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Prohibition on interference with a person’s privacy, family and home

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Article 17 of the ICCPR also provides that everyone has the right to the protection of the law against such interference or attacks. The Amendment Rule engages the prohibition on interference with a person’s privacy, family and home because there is a reference in the Rule to the Corporation taking loan recovery and foreclosure action (in the event that the debt is not repaid) following a decision by the Corporation’s Board to take such action. The Amendment Rule also expands the agristarter loan to a broader cohort of people including those seeking to establish a farm business, farm business successors and farm asset successors.

It is important to note, however, that the foreclosure action is not arbitrary; rather, the Corporation may only take foreclosure action on agristarter loans for loan recovery purposes. Further, under subsection 12(3) of the Rule, in developing and applying its policies and procedures in relation to agristarter 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 accepted, farm debt mediation under subsection 12(3). 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.

Rights of parents and children

Article 24(1) of the ICCPR provides that every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. The agristarter loan provides loans for succession arrangements and for the intergenerational transfer of farm assets to children. The Amendment Rule expands the agristarter loan to a broader cohort of people including farm business successors and farm asset successors. These succession arrangements allow for the best interests of the child to be considered and upheld and therefore promotes and advances the rights of parents and children.

Right to social security

Article 9 of the ICESCR recognises the right of everyone to social security, including social insurance. The agristarter loan program is similar to other concessional loan products delivered by the Corporation. This Amendment Rule will enable loans to be provided to a broader cohort of farmers including those looking to establish and develop a farm business as well as farm business successors and farm asset successors to undertake succession arrangements.

Where agristarter loans are not granted to individuals or businesses, this could be seen to negatively impact their right to social security. However, the Amendment Rule does not remove any existing assistance payments to farmers. Agristarter loans are concessional loans not direct assistance payments but they are provided to farmers in need and at a concessional rate. As a result, overall where loans are granted to farmers, this will enhance their right to social security.

Right to work

Article 6(1) of the ICESCR recognises the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts. Article 7 of the ICESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work. Under the Amendment Rule, agristarter loans can be provided to a broader cohort of people seeking establish a farm business as well as undertake succession arrangements. The increased availability and eligibility criteria of the agristarter loans will allow more people to access the loans. This is likely to provide more opportunities to work and promote and advance the right to work.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it promotes the protection of human rights.

The Hon. David Littleproud MP
Minister for Agriculture, Drought and Emergency Management

Senator the Hon. Simon Birmingham
Minister for Finance