

Explanatory Statement

**Issued by Authority of the Minister for Agriculture and Northern Australia and
the Minister for Finance**

Regional Investment Corporation Act 2018

Regional Investment Corporation (Plantation Development Concessional Loans) Rules 2021

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.

The *Regional Investment Corporation (Plantation Development Concessional Loans) Rules 2021* (the rules) are made under section 54 of the Act.

Purpose

The purpose of the rules is to encourage new plantation developments and the replanting of 2019-20 bushfire-damaged plantations through a new concessional loan product administered by the Corporation. The loans will support the objectives of the National Forest Industries Plan, including the commitment to support the forest sector's long-term goal to increase domestic wood supply by planting a billion new plantation trees over the next decade.

Background

In the May 2019 document, *Our Plan for a Stronger Agriculture, Fisheries and Forestry Sector*, the Government committed to support the delivery of 1 billion new plantation trees through a new concessional loan product administered by the Corporation.

Impact and Effect

The rules will allow the Corporation to lend to an eligible business to establish a plantation or purchase land for developing a plantation. This will encourage growth and investment in the plantation forestry industry and increase future wood supply.

Consultation

Public consultation on the Plantation Development Concessional Loans took place from 8 November 2019 to 20 December 2019. The Department of Agriculture, Water and the Environment also consulted with the Department of Finance, the Department of Foreign

Affairs and Trade and the Regional Investment Corporation on the rules. The Attorney-General's Department was consulted on the Statement of Compatibility with Human Rights. The Office of Best Practice Regulation was consulted on this loan program and advised the program is non-regulatory (OBPR ID: 23537).

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 (Plantation Development Concessional Loans) Rules 2021*

Part 1 - Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Regional Investment Corporation (Plantation Development Concessional Loans) Rules 2021* (the rules).

Section 2 – Commencement

This section provides that the instrument commences on 6 December 2021.

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 expressions in the rules.

The section provides that:

- *Act* means the *Regional Investment Corporation Act 2018*.
- *Australian entity* has the meaning given in subsection 5(2) of the rules.
- *commercial debt* has the meaning of debt that is held on commercial terms at commercial interest rates. Examples of debt 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.
- *constitutional corporation* has the meaning of a corporation to which paragraph 51(xx) of the Constitution applies.
- *eligible business* has the meaning given in section 5 of the rules.
- *plantation* means an intensively managed stand of trees of either native or exotic species, created by the regular placement of seedlings or seed. It is the policy intention that the trees will be planted for wood production not horticultural purposes.
- *plantation loan* means a loan by the Corporation in relation to an eligible business, for the purpose of: establishing a plantation (including purchasing land for a plantation); or re-establishing a plantation damaged by bushfire in the financial year beginning on 1 July 2019; on non-exhaustive terms and conditions as listed in the definition. This definition includes a note that the plantation loan could be used for purchasing seedlings, labour hire, to plant and site preparation. This note is not intended to be an exhaustive list of loan uses but inserted to provide guidance. Further detail about uses may be set out in the guidelines.
- *program* means the Plantation Loans Program prescribed by section 6 of the rules.

Section 5 – What is an *eligible business*?

This section defines an ‘eligible business’. If an application is received by the Corporation by an applicant who is not applying in relation to an ‘eligible business’, the loan could not be approved.

Subsection 5(1) sets out the parameters for a business to be eligible for a plantation loan. For example, a body corporate that is incorporated in the Australian Capital Territory would be an eligible business. A note to that provision identifies extra conditions, as provided for in Division 3 of Part 2, that must be met for a loan to be made to a plantation loan under the Plantation Loans Program.

Subsection 5(2) defines an ‘Australian entity’. The term Australian entity is relevant to paragraphs 5(1)(f) and (g). For example, an Australian citizen or permanent resident whose core or routine activities are carried out in or connection with a Territory, or which involve trade or commerce between a State and a Territory, would be an eligible business for the purposes of the rules.

Part 2—Plantation Loans Program

Division 1—Prescribing Plantation Loans Program

Section 6 – Plantation Loans Program prescribed

This section prescribes the Plantation Loans Program (the program).

Subsection 6(1) prescribes the program for the purposes of paragraph 8(1)(g) of the Act, that provides that one of the functions of the Corporation is to administer programs prescribed by the rules.

Paragraph 6(2)(a) provides that the program consists of the following activities:

- making plantation loans, and dealing with applications for loans, in accordance with Division 2;
- determining the terms and conditions on which plantation loans are made in accordance with Division 3;
- taking security for plantation loans;
- charging borrowers for transaction costs incurred by the Corporation in relation to plantation loans;
- collecting and dealing with payments of interest on and repayments of principal amounts of plantation loans and, if required, enforcing security taken for plantation loans in accordance with Division 4;
- reviewing periodically plantation loans and the terms and conditions on which they are made;
- dealing with debts relating to plantation loans in accordance with Division 5; and
- reporting to the responsible Ministers on plantation loans in accordance with Division 6.

Paragraph 6(2)(b) provides that the program relates to plantation loans funded in accordance with Division 7 of the rules.

Section 7 – Constitutional basis for program

This section specifies that the constitutional basis for the program are the trade and commerce, corporations, and territories powers; paragraphs 51(i) and (xx), and section 122 of the Constitution respectively.

Division 2—Making plantation loans and dealing with applications for plantation loans

Section 8 – Plantation loans to be made only on application

This section provides that the Corporation may make a plantation loan in relation to an eligible business only if the application for the loan 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 and entity type (for example, in the case of a partnership, proof may be required that there is no existing application for dissolution of the partnership).

Section 9 – Preconditions for making plantation loans

Subsection 9(1) prescribes additional conditions to be met for making a plantation loan in relation to an eligible business. These are that the Corporation is satisfied that:

- the business is, or is able to demonstrate a preparedness to be, involved in the plantation forestry industry, i.e. the growing of trees for commercial wood production; and
- the location or proposed location of the plantation is in Australia and is economically viable for wood production; and
- the size of the proposed plantation is greater than 30 hectares; and
- the business has an appropriate plantation management plan; and
- the business owes commercial debt; and
- 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*; and
- the business is not subject to external administration, bankruptcy, appointment of a receiver or (in the case of a partnership) an application for dissolution of the partnership; and
- the business has insurance for natural disasters in relation to the plantation or proposed plantation.

This subsection includes a note that the Board has the function of ensuring that the Corporation has procedures for review of decisions to make or refuse plantation loans. The note refers to section 25.

Subsection 9(2) provides that the preconditions in paragraphs 9(1)(e) and 9 (1)(h), in relation to commercial debt and natural disaster insurance, may be satisfied:

- if the eligible business is a trust—by one or more trustees on behalf of the trust; or

- if the eligible business is a partnership—by one or more partners on behalf of the partnership.

Section 10 – Amount of loan

This section sets out the amount that the Corporation can provide for a plantation loan.

Subsection 10(1) provides that the Corporation must not make a plantation loan in relation to an eligible business that would result in the eligible business having more than 50 per cent of its total debt in government funded concessional loans (including plantation loans).

Subsection 10(2) provides that, the reference to debt in subsection 10(1) includes:

- if the business is a trust—the debt owed by any trustee on behalf of the trust; or
- if the business is a partnership—the debt owed by any partner on behalf of the partnership.

Subsection 10(3) further provides that the Corporation must not make a plantation loan of more than \$2,500,000, in relation to an eligible business, whether in a single plantation loan or in total over multiple plantation loans.

This means that the Corporation can provide an eligible business with more than one plantation loan. However, if the Corporation provides an eligible business with more than one plantation loan, the combined total amount of the loans must not be more than \$2,500,000.

If the Corporation provides an eligible business with one plantation loan, that loan amount must not be more than \$2,500,000.

Section 11 – Capacity to repay loan and provide security

This section provides that the Corporation must not make a plantation loan in relation to an eligible business unless the recipient of the loan is assessed as having the capacity to repay the loan and has provided sufficient security for the loan.

Section 12 – Informing applicants of outcome of applications for plantation loans

This section provides that the Corporation must ensure that applicants for plantation loans are informed of the outcome of their loan application/s as soon as practicable after decisions 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—Determining terms and conditions of plantation loans

Section 13 – Extra terms and conditions of plantation loans

This section provides that the Corporation may determine the terms and conditions on which a plantation 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 ‘plantation 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 plantation loan in section 4.

Section 14 – Setting interest rates

This section provides that the Corporation must determine the interest rates on all plantation loans in accordance with the methodology as described in section 26.

Division 4—Collecting and dealing with payments and enforcing security

Section 15 – 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 plantation loans.

This includes repayments of principal and payments of interest.

This excludes payments of any transaction costs the Corporation charges loan recipients in relation to the plantation 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 16 – Decisions on foreclosure to be made by Board

This section provides that any decision of the Corporation on foreclosure on a plantation 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 eligible business and the Commonwealth.

Division 5—Dealing with debt relating to plantation loans

Section 17 – Mediation

This section provides that the Corporation must offer to undertake mediation relating to debts relating to plantation loans.

This section also provides that, if the offer is accepted, the Corporation is required to undertake the mediation.

Section 18 – Waiver

This section provides that a decision of the Corporation to waive debt relating to a plantation 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 implications for the eligible business and the Commonwealth.

The requirement for consultation with the responsible Ministers also 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 6— Reporting to responsible Ministers

Section 19 – Quarterly reporting

This section provides that the Corporation must provide a report on plantation loans to the responsible Ministers as at the end of every March, June, September and December.

This section also specifies the report must include information regarding the uptake of plantation loans, the details of the portfolio of plantation loans and financial performance information.

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.

This section includes a note that the Corporation also has the function of providing information about plantation loans to the responsible Ministers on request. The note refers to section 24.

Division 7— Funding of plantation loans

Section 20 – Funding of plantation loans

This section sets out the funding provisions for plantation loans.

Subsection 20(1) provides that the Corporation will be funded to make plantation loans through an appropriation made by an Act.

Subsection 20(2) provides that funds for plantation loans will be provided upon the Corporation’s request to enable the Corporation to advance loan funds to recipients of those loans as required.

Subsection 20(3) provides conditions for the Corporation in funding the plantation loans.

Paragraph 20(3)(a) provides that the Corporation must only request funds as they are required to advance loan funds to recipients of plantation 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 20(3)(b) provides that the Corporation must only use funds provided for plantation loans for that purpose.

This is to ensure that loan funding is available only for those loans.

Division 8— Other matters relating to program

Section 21 – 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 plantation loan (for example, fees for title searches and mortgage registrations).

Section 22 – Directions by responsible Ministers

This section provides that the responsible Ministers may give written directions to the Corporation relating to the 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 plantation loan.

Part 3—Other functions relating to program

Division 1—Corporation functions

Section 23 – 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 and publishing guidelines about the program.

Paragraph 23(a) provides that the Corporation has the function 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 plantation loans; and
- the right to request review of decisions to make or refuse plantation loans and the process for requesting such reviews; and
- what is required in a plantation management plan.

Paragraph 23(b) provides that the Corporation has the function of publishing the guidelines.

It is envisaged that these guidelines will set out detailed guidance for the delivery of the plantation loans program, for example eligibility requirements and loan uses in addition to those included in this instrument, how to apply, and the assessment of applications.

Section 24 – 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 plantation loans to the responsible Ministers on request and advising the Commonwealth on matters that will improve the operation and policy outcomes of plantation loans.

This provision is intended to outline the Corporation’s role in actively advising, or responding to requests for advice from, the responsible Ministers about the delivery of plantation loans.

Division 2—Board functions

Section 25 – 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 (the original decisions) to make or refuse plantation loans.

Paragraph 25(a) provides that the procedures for reviewing decisions to make or refuse plantation loans are required to be transparent, robust and fair.

Paragraph 25(b) requires that reviews carried out and decisions to be made on reviews be undertaken by persons who were not the primary decision-maker of the original decisions.

Paragraph 25(c) provides that the procedures are consistent with the principles of procedural fairness. The principles of procedural fairness include giving a fair hearing appropriate to the circumstances, lack of bias, perception of bias or apprehension of bias.

Section 26 – Setting interest rates

This section describes the Board’s functions in relation to setting interest rates for plantation loans (as required under section 14 of the rules) for the purposes of paragraph 15(1)(e) of the Act.

Paragraph 26(a) provides that a function of the Board is to agree with the responsible Ministers on a methodology for setting variable interest rates for plantation loans.

The methodology must:

- result in rates that only cover the Corporation’s administrative costs to deliver plantation loans and the Commonwealth’s borrowing costs to fund the Corporation to make such loans; and
- involve review of the interest rates 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 26(b) provides that a function of the Board is to ensure that 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 loan recipients fairly by providing adequate and appropriate notice of changes to loan interest rates.

Section 27 – Developing and applying loan management policies and procedures

This section confers the function of developing and applying loan management policies and procedures for plantation loans on the Board for the purposes of paragraph 15(1)(e) of the Act.

Subsection 27(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 27(2) that take into account:

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

Subsection 27(2) provides that subsection 27(1) applies to policies and procedures for managing plantation 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 plantation loans to minimise the risk of default, with appropriate flexibility for eligible businesses.

Statement of Compatibility with Human Rights

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

Regional Investment Corporation (Plantation Development Concessional Loans) Rules 2021

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 (Plantation Development Concessional Loans) Rules 2021* (the rules) is to enable the Regional Investment Corporation (the Corporation) to provide plantation loans in relation to eligible 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 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 plantation loans for recovery purposes.

Under section 17 of the rules, the Corporation must also offer, and undertake when accepted, 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 recovery of funds, where necessary.

Further, under section 27 of the rules, in developing and applying its policies and procedures in relation to plantation loans, the Corporation is expected to have regard to the concessional nature of the loans and consider the impact on the eligible business of any proposed action in relation to the loan in accordance with those policies and procedures.

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 Agriculture and Northern Australia

Senator the Hon. Simon Birmingham
Minister for Finance