

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Agriculture and Northern Australia and
the Minister for Finance

Regional Investment Corporation Act 2018

*Regional Investment Corporation (Agristarter Loans) Amendment (Share Farming and Farm
Leasing) Rules 2022*

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.

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.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

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. Where the rules do so, the rules must address the constitutional basis for each program (paragraph 8(5)(a)).

The *Regional Investment Corporation (Agristarter Loans) Rule 2019* (the Rule) is made under section 54 of the Act. Subsection 5(3) of the Rule describes its constitutional basis as the power of the Parliament to make laws with respect to: trade and commerce with other countries and among the States; and a Territory.

Purpose

The Rule establishes the Agristarter loans scheme. Agristarter loans are concessional loan products offered by the Corporation to encourage and support farmers wishing to purchase, establish or develop their first farming business (first farmer loans), and to assist with farm business succession planning and giving effect to succession plans (succession loans).

The purpose of the *Regional Investment Corporation (Agristarter Loans) Amendment (Share Farming and Farm Leasing) Rules 2022* (the Amendment Rules) is to amend the Rule to allow the Corporation to grant first farmer loans to farmers currently involved in share farming or farm leasing or both.

In particular, the Amendment Rules provide that first farmers involved in share farming or farm leasing (or both) may be eligible for a first farmer loan where they hold the sole or a majority interest in their farm business and have not previously held the sole or a majority

interest in land on which primary production aspects of a farm business were being undertaken. This cohort of farmers has generally been ineligible for the first farmer loan under the Rule where they are in possession of the sole or a majority interest in the farm business, other than a recently acquired or recently established farm business. The holding of such an interest in a farm business for an extended period is the reason behind this cohort's ineligibility for the first farmer loan.

The intent behind the proposed extension of eligibility criteria is to better support these farmers to own their own land and develop more sustainable and profitable businesses. The financial backing of a first farmer loan for business development has the prospect of encouraging growth, investment and resilience in Australian farm businesses, especially within regional and rural communities. Where first farmer loans provide a pathway to land ownership, they will provide farmers with greater security and autonomy over their enterprise, leading to greater opportunities to succeed and care for their land.

The extension of the eligibility of first farmer loans is consistent with building the agriculture workforce of the future, in pursuit of the Australian Government's goal of supporting industry to reach \$100 billion in agricultural production by 2030.

Background

In 2019, the Australian Government released a new concessional loan product known as the Agristarter loan. With individual loans of up to \$2 million to be made available through the Corporation, it was intended that new entrants would receive support to purchase, establish and develop their farm business and families would be able to implement succession arrangements and plan for the future. The Rule for the loan product commenced on 1 January 2021.

The cost of farmland is rising, and new entrants often find it difficult to obtain sufficient commercial finance to purchase land, notably due to high deposit and equity requirements from commercial lending institutions. This means that new and existing farmers still encounter major obstacles with respect to owning the land on which primary production aspects of their farm businesses are carried out on. Hence, share farming and farm leasing are common alternative models of farming being utilised by farmers for the purposes of entering the agriculture sector without the significant upfront capital cost of land.

Share farming involves a farmer or farmers engaged in a joint arrangement with a property or landowner via a formal written agreement, to undertake farming activities on the land. Through this arrangement, profits and risks are usually shared, with each business remaining legally separate. Farm leasing is an arrangement whereby the property owner, known as the landlord, leases land to the farmer, in exchange for the payment of rent. Unlike a share farming arrangement, profits arising out of the farming activities conducted on the leased land are not usually shared with the landlord.

In these alternative farming arrangements, farmers do not have full control over the land and business. As such, there is less incentive to make long term business plans and further invest in the business and land to maximise its profitability and sustainability.

In recognition of these obstacles faced by farmers in alternative arrangements, the Australian Government, via the 2021-22 Mid-Year Economic and Fiscal Outlook, announced the

extension of the eligibility criteria for Agristarter loans to farmers leasing or share farming land from 1 April 2022. The intention is to better support this cohort of farmers to purchase land and or develop their business. This will provide them with greater control over their business to make the best possible investment decisions, contributing to a more profitable and sustainable agricultural sector.

Impact and Effect

Agristarter loans are intended to encourage a new generation of farmers to the agricultural sector. However, there is a cohort of first farmers, being existing farmers involved in share farming or farm leasing, who are looking to purchase farmland and to pursue business development opportunities but are currently ineligible for a first farmer loan under the Rule. The Amendment Rules ensure that first farmer loans are made available to this cohort of farmers.

Consultation

The Department of Agriculture, Water and the Environment (department) consulted with the Corporation and the Department of Finance on the Amendment Rules.

The department consulted broadly with the National Farmers Federation, the Future Farmers Network and the New South Wales Department of Primary Industries on options to support new entrants to farming including farmers in share farming and farm leasing arrangements.

Given that policy development was informed by broader consultation, targeted consultation with the Corporation and the Department of Finance on the specifics of the instrument was considered sufficient to ensure effective and timely implementation of the original policy intent and as a result it was considered unnecessary to undertake additional consultation in relation to the specific instrument.

The Office of Best Practice Regulation has advised that extending the Agristarter loan program to farmers in share or lease farming arrangements has only a minor regulatory impact on business, community organisations or individuals.

Details / Operation

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

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

The Amendment 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 (Agristarter Loans) Amendment (Share Farming and Farm Leasing) Rules 2022*

Section 1 – Name

This section provides that the name of the instrument is the *Regional Investment Corporation (Agristarter Loans) Amendment (Share Farming and Farm Leasing) Rules 2022* (the Amendment Rules).

Section 2 – Commencement

This section provides that the commencement date of the Amendment Rules is 1 April 2022.

Section 3 – Authority

This section provides that this instrument is made under 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 Rules.

Schedule 1 – Amendments

Regional Investment Corporation (Agristarter Loans) Rule 2019

Item 1 – Subparagraph 9(1)(aa)(iv)

Item 1 amends subparagraph 9(1)(aa)(iv) of the Rule to omit the word ‘and’ from the subparagraph.

This is a consequential amendment to reflect the insertion of new subparagraph 9(1)(aa)(v), as detailed in item 2 immediately below.

Item 2 – After subparagraph 9(1)(aa)(iv)

Item 2 amends the eligibility criteria for a first farmer loan in paragraph 9(1)(aa) of the Rule to include an additional purpose for which the Corporation may grant a first farmer loan.

Specifically, this item inserts new subparagraph 9(1)(aa)(v), which has the effect that the Corporation may grant a first farmer loan where the Corporation is satisfied that the purpose of the loan is for developing a farm business involved in share farming or farm leasing (or both) in which the farmer holds the sole or a controlling interest in the farm business.

The purpose of this amendment is to ensure that existing farmers involved in share farming or farm leasing arrangements may be granted a first farmer loan under the Rule for the purposes of developing their share farming or farm leasing business. Where the farmer is involved in a

share farming or farm leasing arrangement and is seeking to exit their arrangement to purchase, establish or develop a separate farm business where they will hold the sole or a controlling interest, they may still be eligible for a loan. This is clarified in Note 2, which is inserted by Item 4 of the Amendment Rules.

Item 3 – Paragraph 9(1)(aa) (note)

Item 3 amends the note to paragraph 9(1) (aa) of the Rule so that it is titled ‘Note 1’.

This is a consequential amendment to reflect the inclusion of an additional note, Note 2, as detailed in item 4 below.

Item 4 – At the end of paragraph 9(1)(aa) (note)

Item 4 amends paragraph 9(1)(aa) by adding a new note, Note 2, directly following Note 1.

The purpose of this amendment is to clarify that, where a first farmer loan is granted for the purpose of developing a farm business that involves share farming or farm leasing (or both), the loan may be used to develop the farm business even if this has the result that the farm business is no longer involved in share farming or farm leasing.

For example, a first farmer granted such a loan may use that loan for the purposes of purchasing the land on which their farm business is carried out on, thereby exiting the share farming or farming leasing arrangement in place at the time of the loan grant.

Such loans may also be used for any of the other purposes set out in paragraph 9(1)(aa) and the more detailed examples as set out in Note 1.

Item 5 – Paragraph 9(1)(e)

Item 5 amends paragraph 9(1)(e) of the Rule to insert the phrase ‘if subsection (1A) does not apply to the first farmer—’ before ‘the first farmer has’.

The purpose of this amendment is to exempt farmers involved in share farming or farm leasing from the eligibility requirement in paragraph 9(1)(e) of the Rules, where those farmers meet the criteria in new subsection 9(1A) as inserted by item 6.

Section 9 of the Rules deals with grants of first farmer loans by the Corporation. Paragraph 9(1)(e) of the Rule is an eligibility criterion that has the effect that the Corporation may grant a first farmer loan to a first farmer where the Corporation is satisfied that the 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 purpose of this amendment to paragraph 9(1)(e) is to ensure that this eligibility requirement does *not* apply to first farmers involved in share farming or farm leasing (or both) who meet the criteria in new subsection 9(1A), as inserted by item 6 of the Amendment Rules. New subsection 9(1A) is discussed immediately below.

Item 6 – After subsection 9(1)

Item 6 inserts new subsection 9(1A) into section 9 of the Rule. The purpose of new subsection 9(1A) is to provide that the eligibility requirement in paragraph 9(1)(e) of the Rule does *not* apply to first farmers who meet the criteria in new subsection 9(1A).

The amendment made by item 6 has the effect that the eligibility requirement in paragraph 9(1)(e) of the Rule will *not* apply where a first farmer:

- a. holds the sole or a majority interest in a farm business that involves share farming or farm leasing (or both); and
- b. has not previously held the sole or a majority interest in an estate in fee simple in land on which primary production aspects of a farm business were being undertaken.

Effect of new subsection 9(1A)

New subsection 9(1A) will allow the Corporation to grant a first farmer loan to a first farmer who has been involved in share farming or farm leasing for some time, provided that the farmer has not previously held the sole or a majority interest in an estate in fee simple in land on which primary production aspects of a farm business were being undertaken. The term ‘estate in fee simple’ has been used in paragraph 9(1A)(b) to avoid excluding those farmers who may hold other interests, such as easements, from being eligible.

Such farmers are ineligible for a first farmer loan under the Rule due to the operation of paragraph 9(1)(e), which limits eligibility to first farmers who have *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.

By removing this barrier to eligibility, the amendment made by item 6 will better align the operation of the Agristarter loan program with its intended policy outcome of better supporting new entrants to farming to develop their businesses in a way that gives them more control over their assets to build their profitability and sustainability.

Subsection 9(1A) will not apply to farmers who hold the sole or a majority fee simple interest

Under the amendment, paragraph 9(1)(e) of the Rule will continue to apply to farmers with the sole or a majority interest in an estate in fee simple in land on which primary production aspects of a farm business were being undertaken. This has the effect that those farmers will continue to be ineligible for an Agristarter loan under the Rule. It is intended to exclude this cohort of farmers because they already have control over their asset (farmland) and their business.

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 (Share Farming and Farm Leasing) Rules 2022

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 (Share Farming and Farm Leasing) Rules 2022* (the Amendment Rules) is to amend the *Regional Investment Corporation (Agristarter Loans) Rule 2019* (the Rule). The Rule establishes a loans scheme known as Agristarter, which provides financial assistance to certain farmers, including first farmers wishing to purchase, establish or develop a farm business. Such loans are known as first farmer loans.

The purpose of the Amendment Rules is to expand the eligibility criteria for first farmer loans to include an additional class of farmers. Specifically, the Amendment Rules provide that first farmers involved in share farming or farm leasing may be eligible for first farmer loans where those first farmers own the sole or a majority interest in their farm business and have not previously held the sole or a majority interest in certain land.

Human rights implications

The Amendment Rules engage the following human rights:

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

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 their living by work which they freely choose or accept. Article 7 of the ICESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work.

Under the Amendment Rules, first farmer loans will be extended to a broader cohort of farmers to include farmers carrying out farm businesses involved in share farming or farm leasing arrangements. The expanded eligibility criteria for the first farmer loan under the Agristarter loan program will allow more people to access the financial assistance to develop their farm business. This is expected to provide more opportunities for such farmers to work, and potentially to provide employment opportunities to other individuals.

Right to social security

Article 9 of the ICESCR recognises the right of everyone to social security, including social insurance. The Amendment Rules will enable loans to be provided to a broader cohort of farmers including those carrying out a farm business involved in share farming or farm leasing arrangements.

Where Agristarter loans are not granted to individuals or businesses, this could be seen to negatively impact upon their right to social security. However, the Amendment Rules do not remove any existing assistance payments to farmers, but rather expands the cohorts of eligible farmers. Agristarter loans are concessional loans, not direct assistance payments. These loans are provided to farmers in need and at a concessional rate. Overall, in circumstances where loans are granted to farmers, this will enhance their right to social security.

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 their privacy, family, home or correspondence, nor to unlawful attacks on their 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 Rules engage 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 Rules also expand the first farmer loan eligibility criteria to a broader cohort of first farmers. It is recognised that farmers in this cohort may be subject to loan recovery and foreclosure action in circumstances where the loan is unable to be repaid.

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.

Conclusion

This disallowable legislative instrument is compatible with human rights as it enhances and promotes the human rights engaged by the instrument.

**The Hon. David Littleproud MP
Minister for Agriculture and Northern Australia**

**Senator the Hon. Simon Birmingham
Minister for Finance**