



Australian Government
Department of Agriculture
and Water Resources

SECRETARY

Ref: EC17-000317

Dr Jane Thomson
Committee Secretary
Senate Rural and Regional Affairs and Transport Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Dr Thomson *Jae*

The Australian Government Department of Agriculture and Water Resources welcomes the opportunity to provide the attached submission on the provisions of the Regional Investment Corporation Bill 2017 to the Senate Rural and Regional Affairs and Transport Legislation Committee.

I trust that the information in the submission will assist the Committee with its inquiry into the provisions of the Bill.

Yours sincerely

Daryl Quinlivan

13 July 2017

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE INQUIRY INTO THE REGIONAL INVESTMENT CORPORATION BILL 2017 (PROVISIONS)

Submission by the Department of Agriculture and Water Resources

On 22 June 2017, the provisions of the Regional Investment Corporation Bill 2017 (the Bill) were referred to the Senate Rural and Regional Affairs and Transport Legislation Committee (the Committee) for inquiry and report by 14 August 2017.

In the 2016 election campaign, the Deputy Prime Minister and Minister for Agriculture and Water Resources, the Hon. Barnaby Joyce MP, announced the government's intention to establish a Regional Investment Corporation (the Corporation). The Bill gives effect to that commitment, as well as subsequent government decisions on preferred governance arrangements for the Corporation.

The key aspects of the Bill are outlined below.

Establishment of the Corporation (clause 7 of the Bill)

The Corporation will be established as a corporate Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act). As such, the provisions of the PGPA Act will apply to the Corporation. The governance structure of the Corporation will provide for independent commercial decision-making, and appropriate responsiveness to government and the needs of industry.

Overview of the functions of the Corporation (clause 8 of the Bill)

The Corporation will deliver up to \$2 billion in Commonwealth farm business concessional loans and the \$2 billion National Water Infrastructure Loan Facility (NWILF). The Bill will also enable the rules, as set out in clause 54 of the Bill, to prescribe additional programmes that may be administered by the Corporation. The rules will be a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

As the administrator for both farm business concessional loans and the NWILF, the Corporation will consolidate loan delivery expertise within the portfolio. This will allow skills and expertise to be shared across administration of both programmes, particularly at the senior level, delivering flexibility and economies of scale.

Delivery of the farm business concessional loans and the NWILF is intended to be budget neutral over the life of these programmes. The establishment and operating costs of the Corporation are expected to be offset through the interest charged on loans to farm businesses and state and territory governments.

Farm business concessional loans

The Corporation will deliver farm business loans nationally, streamlining administration and ensuring national consistency in decision-making. The farm business loans will not be the same as those that are currently offered by the Commonwealth through the state and territory government delivery agencies. Through this Bill, the Corporation will deliver a new concessional loans programme that aims to support the long-term strength, resilience and profitability of Australian farm businesses.

The new programme will help farm businesses build and maintain diversity in the markets they supply and take advantage of new and emerging opportunities across Australia and overseas. The Corporation will also provide loans to help farm businesses prepare for, manage through and recover from periods of drought. The functions associated with delivering farm business loans are set out in clause 8(1)(a) of the Bill.

Under subclause 12(1) of the Bill, the responsible Ministers (as defined in clause 4 of the Bill) may give a written direction to the Corporation in relation to a class of farm business loans, but may not give a direction in relation to a particular farm business loan. This allows for the responsible Ministers to respond to a particular industry event or regional circumstance by giving a direction to the Corporation on its treatment of classes of loans. These directions are not legislative instruments for the purposes of the Legislation Act.

Concessional loans under the NWILF

The \$2 billion NWILF is available to provide state and territory governments with concessional loans to co-fund the construction of water infrastructure. These loans are currently available through an expression of interest process run by the Department of Agriculture and Water Resources. Funding aims to accelerate the construction of major water infrastructure projects such as dams, weirs, pipelines, and managed aquifer recharge and wastewater treatment and use projects to provide affordable and secure water supplies to support the growth of regional economies and communities across Australia.

The Corporation will provide independent expert advice to the government on projects being considered under the NWILF, which may include advice on matters such as feasibility, alignment with government objectives for water infrastructure, and suitable terms and conditions for any financial assistance. Decisions whether to grant a loan to a state or territory under the NWILF will continue to be made by the government, rather than the Corporation. The associated functions are set out in subclauses 8(1)(b) and 8(1)(c) of the Bill.

Under subclause 12(3) of the Bill, the responsible Ministers may give a written direction to the Corporation to enter into an agreement, on behalf of the Commonwealth, for the grant of financial assistance to a particular state or territory in relation to a particular water infrastructure project. These directions are not legislative instruments for the purposes of the Legislation Act. This direction provides the mechanism in which the government notifies the Corporation of its decision relating to a proposed loan under the NWILF.

Operating Mandate (clause 11 of the Bill)

The Corporation will undertake its functions in line with an Operating Mandate issued by the responsible Ministers for the entity—the Minister for Agriculture and Water Resources and the Minister for Finance.

The Operating Mandate is a critical part of the Corporation's governance arrangements and will enable the government to set out its expectations in relation to the performance of the Corporation's functions. The Operating Mandate may include matters such as:

- the objectives that the Corporation is to pursue in administering the programmes for which it is responsible,
- expectations in relation to the strategies and policies to be followed for the effective performance of the Corporation's functions,
- eligibility criteria for loans or financial assistance,
- management of funding, and
- other matters the responsible Ministers think appropriate.

Directions by a Minister to a corporate Commonwealth entity within the meaning of the PGPA Act are prescribed by the *Legislation (Exemptions and Other Matters) Regulation 2015* as a class of instruments that are exempt from the definition of legislative instrument in section 8 of the Legislation Act. However, clause 11 of the Bill states that the Operating Mandate will be a legislative instrument because it is intended that the Operating Mandate will provide for both administrative

matters and legislative matters. As such, it is appropriate that the Operating Mandate is subject to the tabling requirements of the Legislation Act.

The Operating Mandate will not, however, be subject to disallowance or sunseting due to the exemptions in sections 9 and 11 of the Legislation (Exemptions and Other Matters) Regulation. It is appropriate that those exemptions apply to the Operating Mandate because directions to corporate Commonwealth entities should appropriately be the subject of executive control, and are instruments that are intended to have an enduring nature.

Other directions (clause 12 of the Bill)

Clause 12 of the Bill will also enable the responsible Ministers to issue directions on several other matters, including directions relating to farm business loans and particular water infrastructure projects. As noted above, directions by a Minister to a corporate Commonwealth entity within the meaning of the PGPA Act are prescribed by the Legislation (Exemptions and Other Matters) Regulation as a class of instruments that are exempt from the definition of legislative instrument in section 8 of the Legislation Act. As these other directions will not be legislative instruments, they will not be subject to the requirements of the Legislation Act, including in relation to disallowance and sunseting.

However, reporting requirements for corporate Commonwealth entities under the PGPA Act will mean that details of any directions given by the responsible Ministers will be published in the relevant annual report of the Corporation.

The responsible Ministers are required to consult with the Board of the Corporation prior to making a direction on classes of farm business loans or an individual water infrastructure project under subclauses 12(1) or 12(3) of the Bill. There is no similar requirement to consult the Board prior to making a direction under subclause 12(5) of the Bill in relation to the location of the Corporation because the government has announced its decision for the Corporation to be established in Orange, NSW.

Board, CEO and staff (Parts 3 and 4 of the Bill)

The Board of the Corporation will be comprised of the Chair of the Board and two other Board members. The Board will be responsible for ensuring the proper and efficient performance of the functions of the Corporation. Members of the Board will be appointed by the responsible Ministers based on appropriate qualifications, skills or experiences in the particular fields identified by subclause 17(2) of the Bill as:

- agribusiness and the financial viability of businesses within the agricultural sector
- banking and finance
- water infrastructure planning and financing
- issues concerning rural industries and communities
- economics
- financial accounting or auditing
- government funding programs or bodies, and
- law.

Under clause 36 of the Bill, the Board will appoint a Chief Executive Officer (CEO) to undertake the day-to-day administration of the Corporation and sign, on behalf of the Corporation, the loan agreements to be administered by the Corporation.

The Corporation will also be able to employ its own staff, as well as have the capacity to engage consultants to assist in the performance of its functions.

Powers of delegation and subdelegation (clauses 49, 50 and 51 of the Bill)

Clauses 49, 50 and 51 of the Bill will enable the Corporation, the Board and the CEO to delegate, and subdelegate, their powers and functions under the Bill. These clauses will provide operational efficiency and flexibility for the Corporation, the Board and the CEO.

The approach proposed by the Bill is appropriate for a corporate Commonwealth entity that will be overseen by an independent Board, which is ultimately responsible for the proper, efficient and effective performance of the Corporation's functions.

It is also important to note that clauses 49, 50 and 51 of the Bill will limit the scope of any delegation, or subdelegation, to staff of the Corporation. On establishment of the Corporation, it is anticipated that there will be around 30 staff members, each of whom will have been selected for their expertise in relation to the functions of the Corporation.

There are also safeguards proposed by the Bill. For example, a delegate exercising the power to enter into agreements with states and territories for grants of financial assistance for water infrastructure projects (see subclause 12(3) of the Bill) must take all reasonable steps to comply with written directions from the responsible Ministers.

Finally, the Corporation, the Board and the CEO are not required to delegate their powers and functions, and any such delegation may be limited to particular powers and functions or to particular persons. It is appropriate that the Corporation, the Board and the CEO are able to exercise their discretion as to who is an appropriate delegate, which is a decision that will necessarily involve regard to the relevant power or function, and an assessment of the skills, training and expertise needed for any particular decision.

Review of the operation of the Act (clause 53 of the Bill)

As the programmes that will be administered by the Corporation are of a time-limited nature, it is anticipated that the role of the Corporation will change over time. Clause 53 of the Bill requires the Minister for Agriculture to arrange for a review of the operation of the Act to be finalised before 1 July 2024. The review must consider the scope of the activities of the Corporation after 30 June 2026, and the appropriate governance arrangements for the Corporation after that date. The review, and the corresponding written report that will be required under clause 53 of the Bill, will inform the government in its consideration of future arrangements for the Corporation.

Other relevant matters

Australian National Audit Office report on the administration of concessional loans

In 2016, the Australian National Audit Office undertook an independent performance audit to assess the Department of Agriculture and Water Resources establishment and administration of the Farm Finance and Drought Concessional Loans schemes.

These findings have been considered in the design of the Corporation and the delivery of the concessional loans. While some of the ANAO's recommendations are not relevant to the Corporation (as they refer to the concessional loan arrangements with state and Northern Territory delivery agencies), the key principles of their recommendations have been adopted (including findings about good governance and risk management).