

Chapter 2

Issues raised in evidence

2.1 This chapter considers the key measures in the bill and explores the concerns raised in evidence regarding the bill's provisions.

Farm business concessional loans

2.2 Concessional loans have been provided to assist farm businesses to improve their debt servicing capacity, or recover from the effects of drought, since 2003.

2.3 Under the program, the Commonwealth provides loan funding to the states and the Northern Territory to establish and fund schemes that provide concessional loans to eligible farming businesses.¹ The loans provide short-term, targeted assistance to farm businesses suffering financial hardship, but which have a sound prospect of returning to commercial viability.

2.4 Currently, the delivery arrangements for the scheme are negotiated bilaterally with each jurisdiction and are underpinned by a loan agreement and a service level agreement that outlines roles and responsibilities, reporting and performance requirements and the terms and conditions of the Commonwealth's loan.²

2.5 In April 2016, the Australian National Audit Office (ANAO) published a performance audit report in relation to the first two concessional loan programmes established by DAWR including the Farm Finance Concessional Loans Program and the Drought Concessional Loans Program.³

2.6 In its audit report, the ANAO recognised that decentralised delivery models such as the farm finance scheme, generally involve more complex arrangements than centralised models. In the case of the concessional loans programmes, the ANAO noted that the model incorporates a range of jurisdiction specific arrangements while the schemes themselves are administered by a diverse range of entities with differing levels of loan management experience.⁴ In addition, the ANAO found that decentralised delivery models can, due to the number of different arrangements to be agreed, affect the ability of the federal department to open schemes simultaneously.⁵

1 Australian National Audit Office, *Administration of Concessional Loans Program*, ANAO Report No. 28 2015–16, April 2016, p. 7.

2 Australian National Audit Office, *Administration of Concessional Loans Program*, ANAO Report No. 28 2015–16, April 2016, p. 17.

3 Australian National Audit Office, *Administration of Concessional Loans Program*, ANAO Report No. 28 2015–16, April 2016, p. 7.

4 Australian National Audit Office, *Administration of Concessional Loans Program*, ANAO Report No. 28 2015–16, April 2016, pp 18 and 31.

5 Australian National Audit Office, *Administration of Concessional Loans Program*, ANAO Report No. 28 2015–16, April 2016, p. 37.

2.7 The Minister for Agriculture and Water Resources acknowledged these primary concerns – inconsistency in delivery and the different arrangements across states and territories – in his second reading speech on the bill:

There is no doubt these loans are successfully providing practical support to the farm businesses that have received them, with over \$680 million in loans approved to 1,270 farm businesses as of 30 April 2017.

But the fact is that delivering through the states is unwieldy and there is a lack of consistency in delivery across the country.

Currently the Commonwealth has to negotiate separately with each state government to change an existing arrangement or roll out a new program to farmers.

Even with the best endeavours, this can involve protracted negotiations over delivery, loan terms and administration costs—delaying the rollout of and farmers' ability to apply for this important government support.

We have also found that loan decisions are not being made consistently across the country.

For example, some states apply a very restrictive approach to assessing loan applications and have a very low rate of loan approvals.⁶

2.8 The National Farmers' Federation (NFF) observed that where previous state-based organisations did not have the 'bandwidth to do so', the RIC should aim to react efficiently and effectively to the needs of regional and rural communities.⁷ For these reasons, it voiced its support for the bill's centralised approach:

The NFF is supportive of having farm business loans controlled and operated out of a central location, as there is less scope for funds to be lost through administrative costs...There is hope in the farming community that the lag between political announcements about farm business loan programs and that the actual delivery will be significantly shortened. Thus, during tough seasons, a streamlined and centrally administered farm business loan program could prove vital to farmers across the nation. Paramount to a functional and useful RIC will be to eliminate unnecessary paperwork and to process applications in a timely manner.⁸

2.9 DAWR noted in its submission that the ANAO's findings had been considered in the design of the RIC, and in the delivery of concessional loans. In particular, the key principles contained in the ANAO's recommendations relating to good governance and risk management, have been incorporated into the bill.⁹

6 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Second Reading Speech, 14 June 2017, *Representatives Hansard*, p. 11.

7 National Farmers' Federation, *Submission 5*, p. 2.

8 National Farmers' Federation, *Submission 5*, p. 2.

9 Department of Agriculture and Water Resources, *Submission 2*, p. 5.

2.10 DAWR made the point that by delivering farm business loans nationally, the RIC will streamline administration and ensure national consistency in decision-making. It noted that the farm business loans will not be the same as those currently offered by the Commonwealth through the state and territory government delivery agencies. Instead, the proposed RIC will deliver a new concessional loans programme that aims to 'support the long-term strength, resilience and profitability of Australian farm businesses'.¹⁰ Furthermore:

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.¹¹

National Water Infrastructure Loan Facility

2.11 The secondary function of the RIC is to administer, on behalf of the Commonwealth, financial assistance for water infrastructure projects which were granted to states and territories.

2.12 The National Water Infrastructure Loan Facility (NWILF) was announced as part of the 2016–17 federal budget. It provides state and territory governments with concessional loans to co-fund the construction of water infrastructure. These loans are available through an expression of interest process managed by DAWR.

2.13 The NWILF is designed to assist state and territory governments to co-invest in vital water infrastructure. DAWR noted that the funding aims to accelerate the construction of major water infrastructure projects including 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.¹²

Concerns raised in evidence

2.14 Under the proposed provisions of the bill (namely subclauses 8(1)(b) and 8(1)(c)), the RIC will provide advice to the Government on projects being considered under the NWILF.

2.15 The Australia Institute (AI) raised concerns regarding the provision of 'independent advice', noting that the bill does not elaborate what the independent advice will involve, or how the ministers will be required to consider it. AI also argued that the bill does not provide that the advice, or a version of it, be publicly disclosed. AI held the view that this brings into question the 'accountability and rigour of the Corporation and the spending the Bill will facilitate'.¹³

10 Department of Agriculture and Water Resources, *Submission 2*, p. 2.

11 Department of Agriculture and Water Resources, *Submission 2*, p. 2.

12 Department of Agriculture and Water Resources, *Submission 2*, p. 3.

13 The Australia Institute, *Submission 3*, p. 2.

2.16 DAWR clarified that the independent advice provided by the RIC to government may include advice on matters such as feasibility, alignment with government objectives for water infrastructure, and suitable terms and conditions for any financial assistance.¹⁴ However, it was made clear that the decision about whether to grant a loan to a state or territory under the NWILF, will continue to be made by the government, rather than the RIC.¹⁵

2.17 Under subclause 12(3) of the bill, the ministers may give a written direction to the RIC 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. DAWR noted that these directions are not legislative instruments for the purpose of the Legislation Act. The direction provides the mechanism in which the government notifies the RIC of its decision relating to a proposed loan under the NWILF.¹⁶

Operating Mandate

2.18 The RIC will undertake its functions in line with an Operating Mandate issued by the responsible ministers. The Operating Mandate will 'enable the government to set out its expectations' in relation to the performance of RIC's functions. It may include matters such as:

- the objectives that the RIC is to pursue in administering the programmes for which it is responsible;
- expectations in relation to the strategies and policies to be followed from the effective performance of the RIC's functions;
- eligibility criteria for loans or financial assistance;
- management of funding; and
- other matters the responsible ministers deem appropriate.¹⁷

2.19 The NFF argued in favour of a provision in the bill within the Operating Mandate to require the RIC to specify timeframes for the assessment and determination of loan applications.¹⁸ It also suggested an amendment to clause 11 to require the responsible ministers to conduct public consultation on a draft Operating Mandate, prior to its finalisation. According to the NFF, the responsible ministers are not required to consult with stakeholders when formulating the first mandate or receive advice from the RIC board when revising the mandate in the future.¹⁹

14 Department of Agriculture and Water Resources, *Submission 2*, p. 3.

15 Department of Agriculture and Water Resources, *Submission 2*, p. 3.

16 Department of Agriculture and Water Resources, *Submission 2*, p. 3.

17 Department of Agriculture and Water Resources, *Submission 2*, p. 3.

18 National Farmers' Federation, *Submission 5*, p. 3.

19 National Farmers' Federation, *Submission 5*, p. 3.

2.20 However, DAWR emphasised that the Operating Mandate will set out the Government's expectations in relation to the performance of the RIC's functions. This may include matters such as the eligibility criteria for loans or financial assistance, as well as expectations in relation to strategies and policies.²⁰

Role of ministers

2.21 Under clause 12 of the bill, the responsible ministers may give 'other directions' to the RIC. This may include directions relating to farm business loans and particular water infrastructure projects.

2.22 The AI raised concerns about subclause 12(1) of the bill which provides that the ministers cannot make directives with regard to particular loans under the farm loan programme, but can make directions with regard to a 'class' of such loans. It argued that as a 'class' is not defined in the bill, it would appear possible for the Government to issue directives that 'concern arbitrarily tightly defined classes of loans'.²¹

2.23 The AI was also concerned by subclause 12(4) of the bill whereby the grants of assistance for water infrastructure may be given on direction of the responsible ministers. It argued that, given the functions outlined in subclause 8(1)(b), the ministers would be able to determine the terms and conditions of the loans. At the same time, those functions do not allow the RIC to give such loans without direction. It suggested that the end result was that, 'very substantial aspects of the Corporation's lending activities will be at ministerial discretion' which 'creates serious risk of politically directed spending without rigorous oversight or analysis'.²²

2.24 However, the EM explained that the responsible ministers may give a written direction to the RIC in relation to a class of farm business loans under subclause 12(1) as:

This provision is intended to allow the responsible Ministers to respond, for example, to a particular industry event or regional circumstance, by giving a direction to the Corporation on its treatment of classes of loans. This direction power cannot be used to direct in relation to a particular farm business loan.²³

2.25 It should also be noted that subclause 12(2) requires the responsible ministers to seek advice from the board prior to giving a direction under subclause 12(1). This ensures that the board has an opportunity to provide expert advice to the responsible ministers, prior to the direction being made, for example, on how best to frame the direction to ensure its successful completion. Similarly, the responsible ministers are

20 Department of Agriculture and Water Resources, *Submission 2*, p. 3.

21 The Australia Institute, *Submission 3*, p. 2.

22 The Australia Institute, *Submission 3*, p. 2.

23 Regional Investment Corporation Bill 2017, *Explanatory Memorandum*, p. 9. See also, Department of Agriculture and Water Resources, *Submission 2*, p. 3.

required to consult with the board prior to making a direction on an individual water infrastructure project under subclause 12(3) of the bill.²⁴

2.26 In terms of oversight, DAWR made the point that the reporting requirement for corporate Commonwealth entities under the PGPA Act, require that the details of any directions given by the responsible ministers will be published in the relevant annual report of the Corporation.²⁵

RIC board and expertise

2.27 The RIC will be a corporate Commonwealth entity with an independent board consisting of a part-time chairperson and two part-time board members. The role of the board is to ensure the proper, efficient and effective performance of the RIC's functions.²⁶

2.28 Clause 17 of the bill provides that the members and the chair will be appointed by the responsible ministers by written instrument. The ministers must be satisfied that a person has appropriate qualifications, skills or experience in one or more of the following areas in order to be eligible for appointment as a board member:

- 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.

2.29 Alternatively, a person would be eligible for appointment to the board if they have expertise in an area that is relevant to a program prescribed by the relevant rules.

2.30 The Chair of the board must convene at least four meetings a calendar year; while clause 29 specifies that quorum is constituted by a majority of board members.

Concerns raised in evidence

2.31 The Pastoralists & Graziers Association of WA (PGA) argued that a board membership of three was too small, and that the governance arrangements 'enshrine political influence' into what should be a purely commercial operation.²⁷ It suggested

24 Department of Agriculture and Water Resources, *Submission 2*, p. 4.

25 Department of Agriculture and Water Resources, *Submission 2*, p. 4.

26 Department of Agriculture and Water Resources, Regional Investment Corporation, <http://www.agriculture.gov.au/ag-farm-food/drought/assistance/ric> (accessed 22 June 2017).

27 Pastoralists & Graziers Association of WA, *Submission 1*, p. 5.

that the size of the board and its composition should be similar to that found in private financial organisations in order to cover the range of qualifications, skills and experience listed in section 17 of the bill.²⁸ Similarly, the AI queried whether a board of three members would be 'sufficient to effectively govern' the RIC and that there was a risk that the board would 'end up having a limited range of experience'.²⁹ These concerns were also raised by the NFF.³⁰

2.32 The Western Australia Department of Industries and Regional Development (WADIRD) also raised concerns about the proposed board in terms of both the membership under clause 16, and what constitutes a quorum under clause 29. It argued that as RIC is to manage a loan portfolio of \$4 billion, and up to 1000 clients, while operating across all jurisdictions with variations in climatic and production zones, three members would provide an 'insufficient spread of skills and experience for effective governance'.³¹

2.33 The WADIRD highlighted section 201A of the *Corporations Act 2001*, which states that there should be at least three board members for a public company while the Australian Institute of Company Directors suggests that, as a minimum, a public sector board should comprise six to twelve members. Based on these standards, it argued that the RIC board should comprise a membership of five.³² The NFF held the same view, arguing that three was 'too few in number to deal with unforeseen circumstances'.³³

2.34 The WADIRD also argued for amendment to the quorum provision proposed in the bill in accordance with its suggestion of a board of five members.³⁴

2.35 However, it should be noted that the PGPA Act does not specify a minimum number of members to be appointed to a board. According to the Australian Securities and Investments Commission, a proprietary company must have at least one director while a public company must have at least three directors.³⁵

2.36 Therefore, the number of proposed RIC board membership complies with the minimum requirement.³⁶

28 Pastoralists & Graziers Association of WA, *Submission 1*, p. 5.

29 The Australia Institute, *Submission 3*, p. 3.

30 National Farmers' Federation, *Submission 5*, p. 3.

31 Department of Industries and Regional Development Western Australia, *Submission 4*, p. 1.

32 Department of Industries and Regional Development Western Australia, *Submission 4*, p. 1.

33 National Farmers' Federation, *Submission 5*, p. 3.

34 Department of Industries and Regional Development Western Australia, *Submission 4*, p. 2.

35 Australian Securities & Investments Commission, Minimum officeholders, <http://asic.gov.au/for-business/registering-a-company/steps-to-register-a-company/minimum-officeholders/> (accessed 25 July 2017).

36 P Pyburne, *Regional Investment Corporation Bill 2017*, Bills Digest, 13, 2017–18, Parliamentary Library, Canberra, 2017.

2.37 In response to concerns about expertise, DAWR confirmed to the committee that the governance structure would provide for 'independent commercial decision-making, and appropriate responsiveness to government and the needs of industry'.³⁷ It made the point that RIC will not only be able to employ its own staff, but will also have the capacity to engage consultants to assist in the performance of its functions.³⁸

2.38 Accordingly, the NFF voiced its support for subclause 44(3) of the bill which would enable the RIC to source local expertise. It noted that this provision is 'likely to add significantly to the effectiveness of the RIC'.³⁹

2.39 Finally, DAWR explained that to administer both farm business loans and the NWILF, the RIC will 'consolidate loan delivery expertise within the portfolio'. It argued that 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'.⁴⁰

RIC location

2.40 The PGA argued that the location of the RIC had been 'unilaterally decided without any apparent economic analysis or even discussion with agricultural industry stakeholders' which in turn highlighted 'another dimension of the non-commercial nature of RIC'.⁴¹

2.41 However, the Minister for Agriculture and Water Resources stated that the location of the RIC in Orange, NSW made sense because:

Orange is an important agricultural hub in a region which generates about \$1.7 billion in gross agricultural production, and is the home of the NSW Department of Primary Industries.⁴²

2.42 The Minister highlighted that establishing the RIC in Orange would 'present new growth opportunities for the city and surrounding areas, creating expanded career pathways for regional people'.⁴³

37 Department of Agriculture and Water Resources, *Submission 2*, p. 2.

38 Department of Agriculture and Water Resources, *Submission 2*, p. 4.

39 National Farmers' Federation, *Submission 5*, p. 2.

40 Department of Agriculture and Water Resources, *Submission 2*, p. 2.

41 Pastoralists & Graziers Association of WA, *Submission 1*, p. 5.

42 The Hon Barnaby Joyce MP, Deputy Prime Minister and Minister for Agriculture and Water Resources, 'Regional Investment Corporation gets green light in Orange', *Media release*, 16 May 2017, <http://minister.agriculture.gov.au/joyce/Pages/Media-Releases/Regional-Investment-Corporation-gets-green-light-in-Orange.aspx> (Accessed 19 July 2017).

43 The Hon Barnaby Joyce MP, Deputy Prime Minister and Minister for Agriculture and Water Resources, 'Regional Investment Corporation gets green light in Orange', *Media release*, 16 May 2017.

2.43 Most recently, the Minister noted that the announced decision to establish the RIC in Orange would provide certainty to the board about the location of the entity and allow it to focus on having the RIC fully operational by July 2018.⁴⁴

Budget neutrality

2.44 The Financial Impact Statement contained in the EM states that:

The farm business concessional loans programme and National Water Infrastructure Loan Facility are expected to be budget neutral over their life, with the establishment and operating costs of the Corporation to be recovered through the interest charged on loans to farm businesses and state and territory governments.⁴⁵

2.45 The AI argued that it would appear that there is no requirement in the bill that this must happen, or a requirement that decisions – by the RIC or the ministers directing it – be informed by appropriate financial due diligence, to ensure that it happens.⁴⁶

2.46 However, DAWR confirmed that the delivery of farm business loans and the NWILF is intended to be budget neutral over the life of the programmes. Therefore, the establishment and operating costs of the RIC are expected to be offset through the interest charged on loans to farm businesses and state and territory governments.⁴⁷

44 The Hon Barnaby Joyce MP, Minister for Agriculture and Water Resources, Response to Senate Standing Committee for the Scrutiny of Bills, 14 July 2017, p. 4.

45 *Explanatory Memorandum*, p. 2.

46 The Australia Institute, *Submission 3*, p. 3.

47 Department of Agriculture and Water Resources, *Submission 2*, p. 2.

