



Government
of South Australia

Department of the
Premier and Cabinet



STATE DEVELOPMENT COORDINATION AND FACILITATION ACT

Draft Issues Paper

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INTRODUCTION

STRATEGIC CONTEXT

The global economy and our role in within it are changing fast – and we need to ensure that we are well-positioned to respond to both the challenges and the opportunities that this presents.

Leveraging our renewables advantage to decarbonise and reindustrialise our economy

Amid a global climate emergency, energy security challenges and increasing drive towards decarbonisation, South Australia leads by example, committed to our unparalleled clean energy transformation.

With our energy mix on track to reach net-zero by 2027, our legacy is one of pioneering renewables. But our story doesn't stop there. South Australia seeks to not just embrace the green transition, but define it. Our almost fully renewable energy mix means that new renewables generation doesn't need to replace existing capacity, but can be used to fuel new activity. Add to this our rich resources endowment and strong industrial base, and South Australia is primed to become a leader in net-zero industries among fierce competition.

It also provides the State with a strong starting position to power economy-wide decarbonisation.

Capitalising on the economic opportunities of a low-carbon future allows us to support our economy's transition – one that more than offsets the costs of transitioning to net-zero with the benefits of growth, while protecting our precious environment.

Decarbonisation is the driving force behind a major pipeline of time-critical current and future developments, as well as existing facilities looking to transition their operations to net-zero. This is a key driver for reform. However, it is not the only contributor to more and more urgent (re)development right across our economy – other factors further compound the issue.

Navigating the challenges of a fast-changing world

A deteriorating global security outlook is seeing Australia invest in major defence projects in our state – all with highly ambitious timeframes, driven by our country's national security needs.

At the same time, South Australia is taking action to address a housing crisis that continues to impact on people's lives and is increasingly becoming a barrier to economic growth, both in metropolitan Adelaide and in our regions.

As set out in the state's [Housing Roadmap](#), South Australia needs the right housing solutions, in the right place, and with the right infrastructure and services – both to address current housing pressures, as well as to ensure we have the workforce to deliver on the major economic opportunities ahead of us.





Regulatory reform to deliver proactive, system-wide planning, coordination and pace

To tackle these challenges, investment and policy alone are not enough.

The scale and urgency of decarbonisation mean that we also need to challenge the status quo and reimagine regulation. A significant increase in projects will need to be built or transitioned to achieve net-zero – so we'll soon need to plan, assess and approve more projects, more quickly.

Our housing and infrastructure needs, our responsibility as the key manufacturing hub under the AUKUS partnership, and our broader economic transformation further add to the need for action.

Our regulatory frameworks need to be smarter, faster and more flexible, while maintaining their robust checks and balances, for South Australia to both deliver on its economic transition in time and compete for growth. Our planning and regulatory frameworks need to keep pace.

And to deliver the right economic, social and, importantly, environmental outcomes, they will need to proactively facilitate the right developments in the right places.

New legislation is proposed to help South Australia do so – the **State Development Coordination and Facilitation Act (SDCF Act)**. Through the SDCF Act, we will deliver sound outcomes for our communities, our climate, our environment and our economy.

The Department of the Premier and Cabinet (DPC) welcomes your views on the proposed reforms.

PURPOSE OF PROPOSED REFORMS

The proposed reforms are primarily driven by the need to facilitate economy-wide decarbonisation.

They are designed to make sure that our regulatory and planning system is efficient, competitive, and fit-for-purpose for the increased demand and urgency a changing economy will place on it – including, first and foremost, rapid, economy-wide decarbonisation – all while supporting, rather than challenging, sustainable growth.

Delivering on this ambition of sustainable growth requires a proactive balancing of our economic, environmental and social needs, and a whole-of-system, place-based approach.

To achieve this, the SDCF Bill would introduce new functions and powers to directly address key challenges in regulatory and planning assessment and approval processes.

What is being proposed

The proposed Act would create a new, central regulatory coordination body: the Coordinator-General's Office (CGO). CGO would be responsible for coordinating the planning, assessment and facilitation of designated projects of state significance, and the creation of 'state development areas'. It would do so by using new statutory powers, which would allow it to:

- streamline regulatory processes without compromising on rigour or standards

- lead proactive planning and assessment of defined areas and (groups of) projects, rather than reactively assessing individual applications as and when they are made
- use conditions for assurance, de-risking and benefit-sharing with local communities
- work with regulators to establish state development areas (SDAs), with regulators identifying suitable areas where development will have no significant impacts or risks
 - make plans for the well-coordinated development of SDAs, including benefit-sharing and impact management
 - work with regulators to publish requirements about siting and specifications for projects in SDAs which, based on regulators' assessments, will be acceptable
 - take a targeted, risk-based approach to approvals in SDAs, by introducing faster approval processes for projects that demonstrably comply with these published requirements for projects in SDAs
 - obtain or provide land, and build enabling infrastructure, for example to make development land immediately available and construction-ready in SDAs
- SDAs could take the form of infrastructure corridors, green manufacturing hubs, port-industrial zones and/or common-user infrastructure areas
- provide a one-window-to-government pathway for major and complex projects, including in sectors that cannot currently benefit from such a service – and coordinate all necessary approvals through a single process. This is particularly important for large projects comprising multiple developments in different locations across multiple pieces of legislation/highly regulated industries
- mechanisms to speed up the delivery of enabling infrastructure for housing
- use cost recovery to create flexible, central regulatory capacity to deploy as needed
- provide a streamlined exemption process for unintended barriers with robust oversight
- standardise and moderate timeframes for appeals and review

The proposed mechanisms to achieve the above are outlined from page 10.

What this will deliver

The above model is designed to:

- improve efficiency and coordination, to keep up with growing regulatory demand
- enable proactive, system-wide and place-based planning to improve siting, efficiency, and management of impacts
- deliver a needs-based, flexible model with economy-wide application
- put in place a cost-effective and collaborative approach to regulatory capacity
- maintain the same high levels of regulatory scrutiny and protection we currently enjoy
- deliver a regulatory competitive advantage for major and complex projects.



EVIDENCE BASE: NEED FOR REFORM

Delivering a timely green transition comes with a range of challenges, including technological and commercial viability. However, the ability to deliver the required infrastructure and projects quickly enough while also ensuring appropriate environmental, social and community outcomes is fast becoming one of the most pertinent among these challenges.

The proposed SDCF Bill is based on a large, fast-growing body of research that points to improved **permitting** – i.e. the process of government assessments and approvals – and streamlined deployment as being among governments' most impactful levers to achieve decarbonisation in a timely manner.

Publications that support this position include reports by:

- South Australian Productivity Commission (SAPC)
- Princeton University
- International Energy Agency (IEA)
- World Economic Forum (WEF)
- The European Union (EU)
- Committee for Economic Development of Australia (CEDA)
- Brookings Institute
- Energy Transitions Committee
- CSIRO
- Australian Energy Market Operator (AEMO)
- Clean Energy Council
- Centre for Policy Development

Appendix 2 includes a full list of relevant independent research and advisory reports relied upon.

A consistent theme throughout these publications is the need to plan, assess, and (re)develop more projects, more quickly than before. However, large projects may currently take 2, 3 or even 4 years to plan and approve. This will become increasingly problematic as both the number and urgency of developments continue to grow.

State-specific research

The independent SAPC recommended in its 2022 *Inquiry into South Australia's renewable energy competitiveness* that government reform its major project approvals processes, increase transparency and proponent certainty, and maintain appropriate controls.

While stakeholder feedback indicated South Australia's approval processes are generally fit-for-purpose for projects of a regular scale and complexity, for major projects, they were seen as complicated and difficult to navigate, placing them behind interstate best practice.

Indeed, challenges are already arising under current arrangements for larger and/or more complex developments, with approvals for key projects like major hydrogen hubs – several of which are proposed across the state – expected to take well over two years.

This is consistent with the SAPC's earlier recommendations from its *Inquiry into South Australia's regulatory frameworks* to:

- improve the consistency and timeliness of regulators' practice
- improve the way regulators coordinate decision-making and compliance monitoring, particularly in industries where multiple regulators have jurisdiction
- consider a central leadership model for regulatory reform.

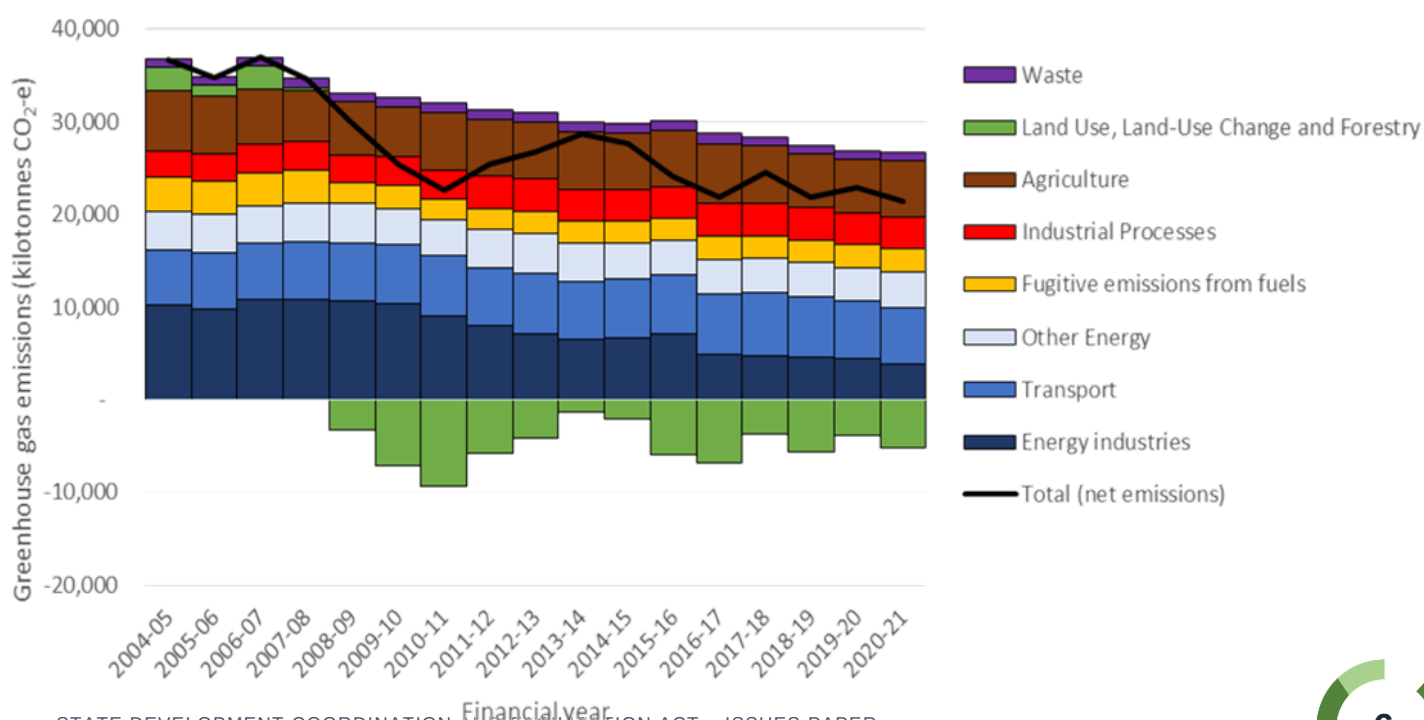
In summary, evidence indicates that, while South Australia's frameworks may be effective now, as the economy's green transition gathers pace, permitting demand will grow, and the state's regulatory systems must keep pace. Otherwise, a timely and well-managed transition that benefits the state's economy and environment is unlikely.

Sectoral pathways to net-zero

Current emissions data indicates that as at 2021, South Australia has achieved a 42% overall emissions reduction from 2004-2005 levels.

However, this reduction has been driven almost exclusively by renewable energy generation and land use (i.e. a move from deforestation to reforestation, plantations, natural regeneration, improved cropland activities, etc).

High-emitting sectors such as industry, manufacturing, transport and agriculture have achieved comparatively little emissions reductions to date (refer figure 1 below).





An accelerating move towards decarbonisation is anticipated across the aforementioned sectors, especially when considered in a context of strengthening drivers for decarbonisation such as ESG-driven investment and consumer decisions, the progressive implementation of carbon border adjustment mechanisms, the Australian Government's safeguard mechanism, and fast-approaching emissions reduction targets.

This is expected to result in a large increase in new developments that seek to leverage decarbonisation – such as increased demand for copper to enable electrification, for green iron made using natural gas and subsequently green hydrogen rather than coal, for green cement for sustainable construction, and so forth.

But it is also expected to give rise to more and more re-development of existing facilities and projects towards net-zero operations – and again with growing levels of urgency.

The proposed SDCF Bill will help the state's regulatory framework keep pace with this trend – supporting both climate action and timely transition of multiple industries to net zero, while also fostering the growth of new low-carbon and decarbonised industries.

GLOBAL BENCHMARKING

Many developed countries are embarking on permitting reform to help decarbonise their economies quickly while unlocking green economic growth. The need to for rapid action is consistently driven by a combination of factors, including:

- fast-approaching emissions reduction targets (state and federal)
- energy security, reliability and affordability issues
- sovereign capability considerations
- a need to better manage environmental and social impacts as more developments with a large footprint emerge
- competitiveness and urgency considerations driving net-zero industry development.

The combination of competitiveness and urgency also means that early movers can seize a larger share of investment, while jurisdictions unable to offer timely approvals risk missing out. Increasingly, jurisdictions are also introducing permitting reforms and new regulatory coordination bodies to address the persistent housing crises facing most developed economies.

Key concepts of global reforms

The proposed Act is informed by contemporary best practice from across the globe.

Many examples, including confirmed EU regulations and proposed United States (US) regulation, seek to **shorten approval timeframes**, with the EU even legislating fixed time limits.



Both are also putting in place **permitting ‘go-zones’**, where demonstrated suitability and low expected impacts enable regulators to apply expedited assessments and approvals.

Governments in the EU and the US, including Germany, France, California and New York, are also developing **‘one-stop-shops’ to manage all relevant approvals**, to provide improved coordination and clarity.

These same jurisdictions are also creating mechanisms that allow regulators to **address regulatory barriers under certain circumstances** and where it is in the public interest. For example, certain US’ states’ overriding of local-level regulations, or the presumption of renewables’ overriding public interest in the context of assessments as implemented in Europe.

Closer to home, Western Australia (WA) and New South Wales (NSW) are also engaged in permitting reform. Examples include ‘go-zones’ akin to those described above, central ‘one-stop-shops’ for priority projects, Coordinators-General for housing and infrastructure, and more.

Permitting benchmarks

A key objective of permitting reform is to streamline timeframes where possible. Many jurisdictions are therefore introducing target timeframes through policy, or legislating maximum timeframes for regulatory approvals.

Some, like Portugal, are even introducing a ‘tacit approval’, which would be granted automatically if a regulator does not make a decision within the legislated timeframe.

Most reforms differentiate between timeframes for general projects, and those for projects in ‘go-zones’ or brownfield sites. The latter categories often benefit from an expedited process.

Most fixed-timeframe systems only apply to certain types of developments (i.e. renewable energy generation infrastructure, i.e. wind, solar and grid projects).

Reforms that apply to multiple types of developments or are sector-agnostic often take a case-by-case approach. This reflects that a one-size-fits-all time limit is high-risk and often not feasible if applied to a variety of types of projects, which is why the SDCF Bill takes a case-by-case approach.

The table overleaf outlines other jurisdictions’ benchmarks for approval processes.

Global best practice underpinning SDCF Bill

The SDCF Bill combines the best elements of contemporary best practice as set out in this section. In doing so, it seeks to provide the most complete and suitable set of solutions, contextualised for South Australia’s circumstances, and appropriately balanced to provide flexibility and pace without compromising on our robust regulatory standards.

The first table on the next page sets out relevant reforms from across representative group of comparable jurisdictions within the Organisation for Economic Co-operation and Development (OECD), and indicates which mechanisms are also proposed for the SDCF Bill.



TABLE: GLOBAL REFORMS AND BENCHMARKS**Legend:**

	Measure exists / is proposed
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	Part of measure exists / is proposed
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	Measure not in place
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Type of reform, function or power	US	EU	Germany	France	CA (US)	NY (US)	NSW	WA	QLD	SDCF Bill
Faster or fixed approval timeframes										
'Go-zones' with faster approvals										
Single process for all approvals		n/a								
Managed by one-stop-shop		n/a								
New regulatory body or capacity										
Integrated planning, impact mgmt. powers										
Powers to directly develop / construct										
Limited ability to override										
Limiting litigation delays										

Approval benchmarks (months)	US	EU	Germany	France	CA (US)	NY (US)	WA	QLD	SDCF Bill
General	Case-by-case	24	24	24	12	12	n/a	Case-by-case	Case-by-case
Projects in 'go-zones'	Case-by-case	12	12	12	12	6	n/a	Case-by-case	Case-by-case
Upgrades/brownfield	Case-by-case	6	6	6	N/A	6	n/a	Case-by-case	Case-by-case
State-significant projects / areas	Case-by-case	n/a	n/a	n/a	n/a	n/a	2 - 4	Case-by-case	Case-by-case

Note: benchmarks include mandatory time limits (EU, Germany, France, WA) and aspirational/policy targets (CA, NY). Table is for illustrative purposes only. Certain measures span multiple laws, regulations or other instruments. Not all inclusions represent new reforms; some jurisdictions already have relevant legislation in place. A full list of reforms referred in the Table is at Annex 1

PROPOSED FUNCTIONS AND POWERS

The following functions, powers and mechanisms are proposed for the SDCF Bill:

- Act to only apply to declared projects of significance to South Australia and proposed 'State Development Areas', such as infrastructure corridors or industrial hubs
- Act's object would be to coordinate, facilitate and promote development in South Australia for economic, social and environmental purposes
- Decision-makers would be required to carefully consider social, environmental, economic and local outcomes in performing functions and making decisions under the Act
- A Coordinator-General's Office (CGO) would be created as a new regulatory coordination body, to perform the new functions created by the Act
- Powers to expedite assessment and approval timelines where possible, while retaining the same rigorous assessments and protections that currently exist
- Powers to take on (or 'call in'), or review, regulatory processes and decisions, while continuing to rely on regulators' activities and assessments, including making decisions in the regulator's stead
- Powers to work with regulators to identify and create 'state development areas' (SDAs), where CGO and regulators can create development plans, arrange for appropriate zoning, and build critical infrastructure, as well as to allow regulators to specify conditions and thresholds under which streamlined approvals can be provided
- Powers to modify or exempt from legislative requirements, where clearly reasonable and in the public interest, similar to provisions relating to exemptions/modifications to the *Mining Act 1971* (Mining Act), or those relating to the trialling of automotive technologies in the *Motor Vehicles Act 1959* – subject to Parliamentary scrutiny / consent
- Application of existing compulsory land acquisition provisions under the *Land Acquisition Act 1969* (LAA Act), subject to ministerial approval, for essential infrastructure development (as already exist) as well as for state significant projects (similar to, but less significant than those in the Harbors and Navigation Act or Urban Renewal Act) – and with no changes to the LAA Act's special and protective provisions relating to Native Title
- Greater scope to attach conditions to regulatory approvals, in consultation with regulators. For example, requiring project proponents to:
 - take environmental protection measures
 - meet local or Aboriginal employment targets as part of licence requirements

- provide financial assurance to ensure a project's site is properly rehabilitated and returned to its original state after a development reaches end-of-life
- offset any acceptable but unavoidable impacts, through payments into existing statutory funds, such as the Native Vegetation Fund
- ensure projects are operational by a certain date, e.g. to avoid land-banking
- promote the public interest in accordance with the Act's primary principle
- create an appropriate and flexible fees and cost recovery scheme, to allow CGO to recover costs from proponents, where reasonable and agreed in advance
- ability to apply a more comprehensive basic infrastructure scheme (consistent with interstate practice) in a more streamlined manner to speed up housing delivery
- powers to coordinate and ensure more efficient decisions on licensing and third-party access to private proponents looking to provide utilities such as water
- provisions to standardise and moderate (timeframes for) appeal and review
- apply a robust transparency, accountability and disclosure regime to CGO.

No substantive changes to other Acts are proposed, other than minor consequential amendments to align the overall system and enable it to function seamlessly.

Other legislation will continue to apply, and any powers under existing legislation will continue to be exercised by the relevant ministers and authorities.

POTENTIAL CASE STUDIES

This section provides several examples of possible use cases for the proposed SDCF Bill.

While these examples are hypothetical and for illustrative/explanatory purposes only, they are based on real information. This section is **not** indicative of any formal government intention to use the proposed SDCF Bill for any of the example projects listed below.

Example 1: complex, multi-purpose hubs subject to multiple pieces of legislation

Industry is proposing several multi-purpose net-zero industry hubs in the state.

Most represent an interconnected cluster of large, multi-proponent, multi-purpose, high-complexity projects that combine renewable energy generation, hydrogen production and storage, and import/export. There are also several proposals for hubs that also cover green manufacturing, such as green iron, green steel or green fuels production.

These would also bring mining, processing/manufacturing, workers accommodation, and infrastructure corridors to connect these various elements across different locations into scope. Some also include expansions of the closest regional cities or townships.

These types of precincts would have a large footprint and high degree of complexity. Importantly, they would straddle multiple pieces of complex legislation, including:

- *Hydrogen and Renewable Energy Act 2023* (HRE Act) for renewable energy and hydrogen generation, transmission and storage and all immediately associated activities;
- *Mining Act* for the mine and immediately associated activities;
- *Planning, Infrastructure and Development Act 2016* (PDI Act) for the connecting infrastructure corridors, the manufacturing and industrial precinct and associated housing and traditional infrastructure;
- *Harbors and Navigation Act 1993* for the port development and operations;
- Other Acts for enabling and utility infrastructure, such as water, power, gas, etc.

It is estimated that most such hubs will eventually require at least 12 different approvals and/or licences from at least 8 regulators. The overall assessment timeframes are anticipated to take more than 2 years, not counting preparatory work. Without regulatory reform, this may take even longer for more complex proposals, such as green iron.

By establishing a coordinating piece of legislation, including a central regulatory coordination body, South Australia could considerably de-risk and streamline these types of complex projects.

Importantly, the proposed SDCF Bill would enable proactive, system-wide planning across all relevant State legislation to ensure timely, environmentally appropriate, economically viable and de-risked, and socially beneficial site selection, scoping and development decisions.

It represents a logical next step that builds on the HRE Act – which regulates renewable energy generation and hydrogen production, or the *supply side* of the transition – by coordinating the following for the *demand side* of the transition, that is, net zero industry. It does so by coordinating the regulatory process across the full end-to-end value chain, including:

- *inputs* (renewables and hydrogen under the HRE Act and minerals under the Mining Act)
- *off-take* (manufacturing plant that use those inputs, e.g. green iron, critical minerals or battery/turbine/other manufacturing); and
- *connections* between them (infrastructure corridors or transport links).

The SDCF Bill would reduce project risk, complexity and timeframes by using new powers to:

- establish a State Development Area, with regulators proactively identifying suitable land;
- use consolidated consultation processes instead of multiple disparate processes;

- create Statements of Regulatory Requirements (SRRs) to pro-actively determine suitable siting, specifications, acceptable impacts and other considerations, unlocking expedited approval pathways for projects within this Area that comply with these SRRs;
- prevent avoidable costs, risks and delays from occurring by providing proponents with early clarity on suitable siting, specifications;
- proactively coordinate the delivery of enabling infrastructure and corridors (including utility connections, access roads, etc), and expansion land (if needed);
- responsibly streamline key approval processes, where feasible and necessary. Note that the SDCF Bill proposes a case-by-case approach, where feasible time savings are determined based on projects' circumstances. Time savings will differ per project;
- provide a single, dedicated point for whole-of-government oversight, leadership and case management for the precinct, ensuring its well-managed development.

Combined, this would improve siting and planning; improve timeliness, certainty, and transparency; reduce risk, cost and effort; enable more complete regulatory assessments of cumulative impacts; better coordinate the precinct's development; and improve competitiveness from an investment attraction perspective.

Example 2: transitioning existing industrial facilities to net-zero

Transitioning existing heavy industrial plant, such as steelworks – critical, yet hard-to-abate heavy industrial plant with high emissions – presents another key use case.

Transitioning such facilities from coal-based to net-zero (such as hydrogen-based), requires several statutory approvals, as well as significant new infrastructure, for example to supply gas and subsequently hydrogen, water and power.

Importantly, these types of transitions must occur quickly to both meet decarbonisation targets and secure market share in sectors driven by an increasing urgency to substitute fossil fuel-based inputs with clean, green inputs. They often also require significant finance, which becomes less difficult to secure as a project's risk profile is reduced. The SDCF Bill could be used to support these transition projects by:

- providing a single, coordinated regulatory process with early clarity on timeframes;
- expediting relevant assessments where possible;
- enabling streamlined development of supporting infrastructure, e.g. water or power; and
- providing demonstrable de-risking support.

Doing so would help achieve such projects' decarbonisation / environmental objectives and their economic / commercial objectives through a timely, well-managed process.



Example 3: AUKUS-related developments

An example of the Act supporting other sectors requiring de-risking and assurance on timeliness is development related to submarine construction. To enable submarine construction at Osborne to start this decade, certain developments will require increased certainty on timeframes, or expedited approvals, including across the (more immediate) supply chain.

Using the SDCF's provisions to set suitable timeframes for regulatory decisions, responsibly streamline approval pathways where possible, provide a single, well-coordinated process and coordinate with the Commonwealth, would all assist in ensuring any such developments could occur in time to avoid delays in submarine construction and/or relocation of project activity due to project risk or timeframe considerations.

These solutions would not be available without the newly proposed legislation.

Example 4: streamlining infrastructure for major and housing developments

The SDCF Bill would also improve coordination and delivery of key enabling infrastructure for major and housing developments. At present, Government regularly establishes project- or problem-specific entities without regulatory levers to facilitate enabling and/or essential infrastructure, for example the Northern Water Project or the Housing, Infrastructure, Planning and Development Unit. While generally effective, this approach provides limited ability to address regulatory issues, offers no system-wide remit or economies of scale, and may create inefficiencies, especially if a capability is disbanded once a project is completed.

Given its system-wide remit and proposed regulatory coordination, planning, development, and cost recovery powers, CGO would be well-placed to coordinate or support such functions in future. That could include improved feasibility assessment, site selection, streamlined planning and delivery of essential, trunk and enabling infrastructure for strategic employment precincts, industrial hubs and critical housing developments which require a streamlined delivery mechanism and resolution of complex land development constraints.

Specific provisions that would allow for this are roll-out of improved infrastructure schemes, and coordinating licensing and third party access processes for prospective private utility providers.

Example 5: investment attraction

The SDCF Bill would also improve the state's inward investment competitiveness. At present, the state is at a competitive disadvantage in new industries that require time-sensitive development to meet urgent demand or lock in early-mover advantage. This is mainly due to other jurisdictions offering greater certainty and coordination, pre-identified suitable land (i.e. 'go-zones'), and efficient assessment pathways. Net-zero and newly emerging industries are often subject to such urgent demand drivers and enduring early-mover advantage dynamics.

It is anticipated that improving the state's regulatory frameworks to match or exceed interstate performance, will help attract investment to the state, creating high-value local jobs, including in sectors like green manufacturing (electrolysers, batteries), green fuels or green iron.

PROBLEM DEFINITIONS IN DETAIL

This section explores the following set of technical issues that have been identified with South Australia's current permitting and major/complex projects frameworks.

1. Processes are effective but will not keep up with growing pace and future demand;
2. Reactive and individualised processes / limited ability for proactive system-wide planning;
3. Similar processes apply for both known low-risk and high-risk areas;
4. Inconsistent availability of one-window-to-government for major projects / lack of ability to coordinate across multiple pieces of legislation;
5. Regulatory capacity is inflexible;
6. No flexibility to address statutory barriers in the public interest.

If left unaddressed, we expect these issues will:

- limit South Australia's ability to fully decarbonise in a timely manner;
- lead to South Australia missing out on part of the green transition's economic benefits, due to competitive disadvantage;
- limit South Australia's ability to adequately and proactively plan and manage the impacts of a changing economy;
- repeat themselves across other sectors with urgent requirements, such as defence and housing.

These issues span a range of regulatory Acts. Combined, they demonstrate a clear need for urgent reform. South Australia needs a new system that:

- offers improved efficiency, and can keep up with demand
- retains the same high levels of scrutiny and protection
- allows for pro-active and whole-of-system planning, siting and de-risking
- provides a competitive advantage to help South Australia secure the largest possible number of well-paying jobs
- is flexible, cost-effective and future-proof, and applies to multiple sectors.



1. PROCESSES ARE EFFECTIVE, BUT WILL NOT KEEP UP WITH GROWING DEMAND

Stakeholder feedback indicates that South Australia's assessment and approval processes are generally fit-for-purpose for facilitating projects of a regular scale and level of complexity, although they can at times be complicated. However, challenges are already arising under our current arrangements for larger and/or more complex developments.

As the SAPC identified, with the number of large or complex projects set to significantly increase, it is unlikely that our current frameworks will be able to keep up with the demand.

For example, complex, multi-purpose and multi-proponent projects like, hydrogen or net-zero industry hubs, combine various activities, like renewable energy generation, hydrogen and ammonia production, industrial activities and large-scale export. Under current arrangements, this combination of different developments led by different companies in the same area means that:

- the overall timeframe for all approvals will cover well over 2 years
- the process will include separate applications for at least 12 approvals, consents and licences, and deal with at least 10 different Acts and 8 different regulators
- proponents will still face considerable uncertainty after investing significant amounts of effort and resources in their applications.

Under current frameworks, it is not uncommon for regulatory issues to emerge towards the later stages of a multi-approval process, which can significantly impact a on a development's viability. This can cause significant delay or cost, or send projects back to the drawing board.

The ability to proactively assess and identify environmentally suitable and economically / technically viable sites (e.g. for state development areas or infrastructure corridors, refer Issue 6), to pro-actively undertake assessments or studies on an agreed cost-recovery basis, and to streamline, consolidate and coordinate activity across multiple pieces of legislation will all help to enable better planning and prevention, support more efficient and effective management of issues, reduce duplication and improve consultation.

The proposed new framework will, importantly, provide a single point of contact within government to manage these processes to identify potential regulatory risks or barriers early, and enable them to be proactively managed or addressed – preventing unnecessary delay.

Examples of such regulatory interplays impacting on projects include:

- site planning approvals preceding native vegetation consent
- different Acts requiring separate consultation processes about the same project



- projects proposing a footprint that sits across council borders, requiring multiple simultaneous assessments of the same development but by different authorities
- inability for upfront consideration of cumulative impacts, which can lead to late-stage realisation that proposed development of an area by multiple proponents is unsustainable or impossible, imposing considerable cost and delay
- limited ability to prioritise or address delays due to capacity constraints
- inability to efficiently resolve funding of enabling infrastructure for major housing developments; limited levers to efficiently address delivery issues.

2. REACTIVE AND INDIVIDUALISED PROCESSES / LIMITED ABILITY FOR PROACTIVE SYSTEM-WIDE PLANNING

South Australia's current framework is generally based on a project proponent's decisions about elements such as site selection and the specifications of a proposed development.

At a high level, under current legislation, it is not possible for Government to take a proactive and steering role to manage the anticipated 'big build' to decarbonise and address current housing pressures. Proactive and place-based application of our planning and regulatory processes will help us maximise economic outcomes while managing environmental impacts much better – thereby reducing the risk of adverse outcomes.

Under current legislation, assessment and approval processes can generally only start once a proponent lodges an application. While some issues can be avoided through pre-lodgement meetings, these tend to be agency and legislation specific. They can miss opportunities for risk mitigation across multiple relevant Acts and regulations prior to lodging. Under current arrangements, it is not uncommon for:

- significant effort and investment to be put towards developments that end up not being approved (or not without significant changes to the proposal)
- there being limited ability for regulators to steer major project proponents towards more suitable locations and/or more suitable proposals relating to the same land (because no proactive assessments have been done)
- multiple proponents to lodge applications for projects that are mutually exclusive
- first-moving developments to (intentionally or unintentionally) preclude optimal use of adjacent land (due to requirements such as setbacks, access, etc.).

Understandably, this issue can cause significant delay, as well as added cost and effort. Depending on the circumstances, it may even render projects unviable. The proposed SDCF Bill will address these issues by enabling CGO to coordinate proactive, place-based planning across regulatory Acts, and provide regulatory / facilitative incentives for compliance.



3. SIMILAR PROCESSES APPLY FOR BOTH KNOWN LOW-RISK AND HIGH-RISK AREAS

Current regulatory frameworks tend to apply the same process to projects, regardless of whether they are in low-risk or high-risk areas, and irrespective of what the Government already knows about the area's environmental, biodiversity and technical particulars (and therefore its suitability or unsuitability for proposed development).

The SDCF Bill's proposed process to identify lower-risk or suitable areas for development is based on rigorous assessment by relevant regulators across the full spectrum of relevant regulatory issues. Because of this, taking a streamlined approach to subsequent approvals based on this rigorous pre-work is possible without affecting the level of rigour or protection that is applied.

To the contrary, it allows for better planning and siting based on proactive assessments designed to identify optimal locations and parameters, rather than reactively assessing a proposal based on an environmentally problematic or high-risk site. The benefits of this system are reinforced by providing a strong incentive for developments that align with those areas and assessments (because site selection that sits outside the identified areas would not have access to any streamlined process).

4. INCONSISTENT AVAILABILITY OF ONE-WINDOW-TO-GOVERNMENT / LACK OF ABILITY TO COORDINATE ACROSS KEY LEGISLATION

A one-window-to-government system allows a lead agency to streamline the end-to-end process for project proponents. It provides a single point of contact, continuity of service, and provides the connection between proponent and all relevant regulators to get all the necessary approvals (as opposed to just those that sit with a single agency or regulator). In doing so, these frameworks can reduce uncertainty and effort, and help position South Australia as a desirable and competitive investment destination.

Examples of where this approach is already being applied are South Australia's *Petroleum and Geothermal Energy Act 2000* and the *Hydrogen and Renewable Energy Act 2023*.

Stakeholder feedback on the usefulness of these types of frameworks where they do exist, also highlights the negative impacts that arise when they are absent. Importantly, it has been identified that for large-scale, complex projects that span multiple regulated industries (and therefore Acts), this type of service is not available.

An increase in these types of developments is expected as the transition to net-zero advances. Green iron projects, for example, will generally cover a mine, renewable energy and hydrogen



generation, production, transmission and storage, processing and manufacturing plant, workers accommodation, potentially a port, and infrastructure corridors connecting these various sites.

This also means that these types of projects are required to navigate the Mining Act, HRE Act, PDI Act, Harbors Act, and others. While some of those Acts provide sector-based one-window-to-government mechanisms, it is not possible for the Mining Act to regulate a hydrogen project, or for the HRE Act to approve a mine.

Particularly given the high levels of interlinkages, the regulatory, planning and technical complexity, as well as the significant footprint and impact of such projects, the ability to apply system-wide and place-based planning, coordination and facilitation that spans multiple primary pieces of legislation is expected to be important.

It is anticipated that this will not only assist in de-risking and increasing the likelihood of such developments proceeding, but also improve the state's ability to ensure environmentally appropriate site selection, social acceptance is obtained and maintained, and that impacts and benefits are managed well.

Furthermore, other sectors, such as manufacturing (whether that be green manufacturing, defence, or health developments), do not have access to any such one-window-to-government statutory coordination service at all.

There are recent examples of important investments across these sectors being made interstate, due in part to South Australia being unable to provide a comparable level of regulatory de-risking and facilitation.

5. REGULATORY CAPACITY IS INFLEXIBLE AND DISPERSED

South Australia's current regulatory capacity is mostly spread across a range of specialised bodies. Most are responsible for assessments and/or approvals relating only to their own legislation. Generally, resourcing is funded through the State Budget and, in some cases, supplemented by cost recovery mechanisms.

While this allows the state government to develop specialist regulatory capability, it is not necessarily geared towards a system-wide perspective or a proactive, prioritised approach.

For highly significant and/or major projects, these issues are at times mitigated considerably through whole-of-government taskforces and pre-lodgement meetings. However, this approach remains based on existing resourcing and arrangements, does not offer any regulatory improvements, requires considerable effort to stand-up and wind down, and cannot be applied on an ongoing basis.

Additionally, in cases where cost recovery pathways exist and can facilitate a sufficient increase in deployable resources, the work to secure additional staff or contractors / consultancies can usually only start after an application is lodged. This creates little scope for any efficiency gains.

The impact of regulators' varying ability to scale-up, and this generally being regulator-specific, is also apparent where certain approval processes precede others.

For example, it is usually necessary to seek planning approval prior to seeking native vegetation approval. If the native vegetation assessment identifies the need to change the project site, there is a risk of needing to vary or re-apply for planning approval.

Applying upfront resources to the end-to-end process enables proactive and simultaneous management of these issues, reducing delays and avoiding processes needing repetition.

6. NO FLEXIBILITY TO ADDRESS STATUTORY BARRIERS IN THE PUBLIC INTEREST

In certain circumstances, laws may have unintended consequences. It is not unusual for legislation to be effective and fit-for-purpose in general, yet still lead to unintended negative outcomes contrary to the public interest in specific cases.

This may occur when certain types of land use or technologies did not yet exist when legislation was being passed. It can also occur where a statutory decision-maker is required to make a decision based on a defined, inflexible set of criteria under their relevant legislation. This can lead to significant interests being unable to be considered (or sufficiently considered) as part of a decision. This can in turn lead to outcomes that are contrary to the public interest and/or the regulator's preferred outcome.

Examples

One example of legislation having such unintended outcomes may be a project proposed by a Registered Native Title Body Corporate for their relevant area.

On occasion, such projects may be unable to be approved due to native vegetation considerations – despite the relevant Traditional Owners / Native Title holders supporting the proposal and its environmental impacts based on their unique and long-standing connection to country, and despite the preferences of the local community and the government.

Another example may be a project or development that seeks to trial a new technology, which requires a statutory exemption to be built or operate legally.

On these occasions, it may well be in the state's interest to grant a temporary exemption or modification (with appropriate conditions and oversight arrangements, and in an appropriate, contained environment), to ensure a highly promising technology is developed and then scaled to commercial levels in South Australia, as opposed to elsewhere.

Reasons for that may include anticipated high-value investment and employment outcomes, or the introduction of industrial and/or technological capabilities that would lift the competitiveness of sectors of the state economy or would help address a societal issue.



Proposed response mechanism

It is not uncommon for these types of issues to emerge. They can lead to a proposed project getting 'stuck' as alternative options are explored over a long period of time, or to projects being rejected despite all parties willing it to proceed.

Common 'work arounds' are to either avoid the statutory barrier, to address it via regulation or even legislation, or – where legislation allows for this – to provide an exemption or modification from a statutory requirement.

Avoiding such barriers can be done by modifying project siting and specifications. This can be an effective and efficient solution, but is not always an option, as such changes may undermine or undo a project's viability and/or benefits.

Another method is making new regulations to address a particular barrier. This can at times be a disproportionate solution, as legislation often limits the possible scope of regulations. For example, regulations may only be able to adjust the general regulatory framework 'across the board', or may only be able to fully exempt an area from the application of an Act. Both can be unnecessarily broad in scope, and do not allow for a more targeted approach that modifies or addresses a specific issue on a case-by-case basis.

A better option may be to issue a targeted exemption or modification of a specific, individual statutory requirement in a particular case (i.e. on a case-by-case basis). This would be more proportionate and targeted, less likely to have unintended impacts, and more flexible.

Examples of such provisions in existing South Australian legislation include:

- section 56C of the *Mining Act 1971* and section 134E of the *Motor Vehicles Act 1959*, under which the Minister can generally modify or exclude the application of any Act;
- Section 108 of the *Water Industry Act 2012*, under which both the Minister and the Commission have very broad powers of exemption;
- Section 83 of the *Harbors and Navigation Act 1993*, under which the Chief Executive may exempt a person from a wide range of this Act's requirements.

The SDCF Bill is proposed to include an exemptions and modification mechanism that is broader in scope, but subject to greater Parliamentary scrutiny than the above provisions.

This would allow the new legislation and CGO to address any unintended statutory barriers efficiently, effectively, but also in a targeted and proportionate manner, while remaining subject to robust, appropriate checks and balances – stronger ones, in fact, than exist for the provisions outlined above.

KEY ISSUES FOR DISCUSSION

This section outlines the key issues that the Bill incorporates. Together, they are designed to address the problem definition outlined in the previous chapter.

DPC welcomes feedback on the proposal in general, the policy problems that have been identified, and in particular the specific issues and solutions explored below.

ISSUE 1: OBJECT AND STATUTORY PRINCIPLES

Objects explain the purpose of an Act and set the context for interpreting its provisions.

It is proposed the objects of the Act focus on ensuring South Australia's planning and regulatory system can continue operating effectively and efficiently in the face of increased demand. They will optimise project coordination and facilitation for state development for economic, social and environmental purposes – not just economic purposes – and establish the Coordinator-General's Office to manage the Act's new functions, powers and processes.

It is also proposed for the Act to include a primary statutory principle to define how and for what purpose these new functions and powers can be exercised. The proposed principle is:

In performing functions or making decisions under this Act or another Act connected to it, the Minister or CGO must have regard to the economic, social and environmental outcomes of a project (for the State as a whole and in the locality of the project), in addition to any relevant objects or principles under the other relevant Act/s.

The intention is to ensure that the authorities who apply the SDCF Bill, including to make a decision under another Act, must consider:

- the potential outcomes and impacts across each of the three key domains to inform how they will perform a function or make a decision under the Act;
- what those outcomes and impacts would look like from a state and a local perspective; and
- any principles, requirements, criteria or considerations that may apply under another Act (if the function or decision originally derives from another Act).

It is proposed for this principle to apply only to decisions that relate to the declaration of projects and the exercise of CGO's key statutory powers (such as the declaration of a coordinated project or the issuing of a notice to an authority to make a statutory decision by a certain date), as opposed to procedural or internal provisions. This is because the latter category, which includes provisions on CGO's operating procedures, annual reports, provision of information, etc, simply does not lend itself to the application of the primary principle.

ISSUE 2: SCOPE OF THE ACT

NO SECTORAL LIMITATIONS PROPOSED

As the primary driver for the proposed reforms is economy-wide decarbonisation, the legislation is proposed to have economy-wide application.

However, the legislation also needs to be future-proof and address technological, industrial and societal innovations, as well as other urgent drivers for change as they emerge.

This approach will allow the proposed legislation to also apply to major projects of state significance in other sectors such as defence, technology and critical infrastructure, where urgent requirements to facilitate a major project or development may arise from time to time.

Defence industries provide for a useful example of this rationale. To start construction of nuclear-powered submarines in South Australia within this decade, key enabling projects for AUKUS (including in relation to the submarine shipyard at Osborne) are expected to have ambitious national security-driven timeframes and complex requirements.

Also applying the functions and powers under the proposed Act to these types of projects will make sure South Australia can deliver on its responsibilities under AUKUS. It will help maximise local defence industry and jobs, support national security, and mitigate the risk of delays, capacity constraints or uncertainty which could prompt AUKUS activity to move interstate to meet ambitious timelines.

Finally, the legislation must be able to address critical enablers – such as traditional infrastructure, common-user infrastructure, as well as housing.

Housing is increasingly a barrier to project development, particularly in regional areas, and in the context of the current housing crisis, is also facing a need for improved coordination more generally, especially as it relates to streamlined infrastructure provision.

Proactive provision of enabling infrastructure, such as roads or utility connections – particularly if done on a common-user basis – can play an important role in de-risking and streamlining delivery of developments.

APPLICABILITY TO SIGNIFICANT PROJECTS AND DEFINED AREAS

It is proposed for newly introduced functions and powers to only be available for designated projects, and for geographically defined areas of expected suitability and need (State Development Areas).

This is to ensure they are only used when necessary and where there is significant importance to the state.

A project must generally be of state significance by virtue of, for example, its social, economic or environmental importance, or due to significant risks or expected impacts.



It is proposed for State Development Areas (SDAs) to be established by the Governor, based on advice from the Minister regarding similar criteria, the need for coordinated, well-planned development, and/or critical infrastructure or infrastructure corridor requirements.

Appropriate prior public consultation, including with relevant Aboriginal representative bodies, would be required before establishing an SDA.

For the avoidance of doubt, unless the SDCF Bill would be actively 'switched on' in relation to a specific project or area, there would be no change to the existing legislative framework.

NO FINANCIAL THRESHOLDS PROPOSED

No minimum financial thresholds are being suggested for the proposed Act's applicability. This is because a project of limited financial value could be of highly significant strategic value to South Australia.

As an example, the Government may need to develop minor infrastructure and effect an urgent land swap at no cost to enable a highly significant development by a third party.

Similarly, a complex or urgent, yet low-value, development to trial a new technology, which, if successful, would deliver significant economic activity and high-value jobs to South Australia, may well be of sufficient interest to the state to warrant facilitation.

FUNCTIONS TO APPLY ONLY TO CERTAIN STATE LEGISLATION

Legislation the SDCF Bill would apply to

It is proposed that the SDCF Bill's new functions and powers would apply only to legislation included on a list attached to the Act (Schedule 1). The list of Acts contained in Schedule 1 features the state's key regulatory Acts, as well as legislation relevant to planning, development and infrastructure, for example:

- *Planning, Development and Infrastructure Act 2016*
- *Harbors and Navigation Act 1993*
- *Local Government Act 1999*
- *Native Vegetation Act 1991*
- *Highways Act 1926*

The legislation in Schedule 1 has been selected to ensure CGO and the Minister administering the SDCF Bill can effectively coordinate across all relevant state legislation to deliver the legislation's stated objectives. Functions, processes and decisions under any Act not listed in Schedule 1, cannot be affected by the SDCF Bill's provisions.

It is proposed that Schedule 1 can be added to by Regulation.

This would allow relevant future legislation to be added as it is passed by Parliament – for example, the Biodiversity Act the Government has committed to.

Legislation the SDCF Bill would **not** apply to

Notable legislation not included in Schedule 1 are the state's Aboriginal land-related Acts and its conservation and protected areas legislation.

In other words, the SDCF Bill cannot affect any function, decision or process under any of the following legislation:

- *National Parks and Wildlife Act 1972*
- *Anangu Pitjantjatjara Land Rights Act 1981*
- *Maralinga Tjarutja Land Rights Act 1984*
- *Wilderness Protection Act 1992*
- *Native Title (South Australia) Act 1994*
- *Adelaide Dolphin Sanctuary 2005*
- *Marine Parks Act 2007*
- *Arkaroola Protection Act 2012*
- *Aboriginal Lands Trust Act 2013*

TIERS OF PROJECT DECLARATIONS

Three tiers of declarations are proposed, with each progressive tier activating a greater scope of functions for the Minister and CGO.

1. Coordinated projects

The first tier would be the declaration of a Coordinated Project. This declaration would only enliven CGO's *coordinating powers* – specifically, its powers to impose or vary timeframes for statutory processes and decisions, allowing CGO to consolidate, align and streamline them.

In addition to this, CGO could facilitate a Coordinated Project by relying on a general administrative duty for state authorities to cooperate with CGO.

As this is a defined and relatively modest, low-intervention set of functions, it is proposed for CGO to declare Coordinated Projects. This would be done by applying the primary principle (consideration of economic, social, environmental and local impacts and outcomes).



Higher tiers of project declarations would require a declaration by the Minister or the Governor.

This approach is considered to represent a proportionate balance between the efficient, independent exercise of low-impact, low-risk functions, and requiring direct ministerial oversight where it is warranted (i.e. when the activation of more significant functions and powers is being sought by CGO).

2. Designated projects

The second tier would be the declaration of a Designated Project.

This declaration would enliven CGO's coordinating powers, but also most of the other functions under the SDCF Bill. This includes powers to call-in, review, add or amend conditions, undertake infrastructure works, enter onto land, acquire land compulsorily in accordance with existing processes, and initiate a targeted statutory modification or exemption.

As these powers are more significant, it is proposed for the Minister to be the declaring authority. While this provides for less efficiency and independence, it introduces important checks and balances, and democratically accountable oversight, on if and when these powers can be enlivened.

It is proposed that the Minister make this declaration by considering the primary principle, and applying a major significance test to the various elements of the primary principle (i.e. economic, social, environmental and local outcomes and impacts).

3. State Development Areas

The highest tier of declarations would be State Development Areas (SDAs).

For projects in State Development Areas, the Minister and CGO would have access to the functions associated with a Designated Project, but would also enliven CGO's powers to create 'State Development Area Plans' that determine zoning, land use, infrastructure siting, and how conditions and other SDCF Bill powers would be used to achieve the government's policy objectives for the area, including in relation to benefit-sharing and impact management.

Additionally, it would make available CGO's function of working with regulators to proactively assess areas and (classes of) projects, and determine the statutory requirements to and enable expedited subsequent approvals.

As an even greater range of powers would be available in an SDA, multi-stage statutory consultation would be required at each key step of the process.

Firstly, consultation prior to the establishment of the SDA area, secondly on the proposed SDA Plan, and finally on the proactively determined statutory requirements for any proposed (class of) project, which, if complied with, would allow for an expedited approvals process.



Each step is proposed to require consultation of no less than 20 business days, with the Minister or CGO determining the appropriate duration (e.g. 4, 6 or 8 weeks, etc).

It is proposed for SDAs to be established by the Governor on the recommendation of the Minister. They would be established for the purposes of:

- industrial or economic development;
- the provision of essential infrastructure; and / or
- the protection, conservation or enhancement of the environment.

ISSUE 3: MODEL FOR COORDINATOR-GENERAL'S OFFICE

The establishment of a new regulatory coordination body – CGO – is proposed. This new entity would be charged with exercising the majority of the newly proposed statutory powers.

CGO is proposed to be a statutory entity; a body corporate comprised of three appointees; and an instrumentality of the Crown, as opposed to being a single statutory officeholder. Decisions would be made in accordance with published procedures agreed to by the three appointees, providing for an appropriate, flexible balance between board-like governance, streamlined decision-making, and transparency.

It is also proposed CGO will generally operate independently but remain subject to written and published ministerial directions, and subject to strengthened transparency and accountability requirements.

This suggested approach will:

- avoid overconcentrating responsibilities to a single individual, while still allowing for highly efficient decision-making;
- cause the potentially significant assets held by CGO to be overseen by a board-like structure, which is preferable from a corporate governance perspective;
- enable robust yet efficient decision-making, including through board-like decision-making processes for longer-term planning, high-value or high-risk decisions, etc;
- create a default position of functional independence and impartiality in how new functions and powers are exercised;
- create appropriate internal checks and balances for newly proposed powers;
- provide continuity and redundancy; and
- be subject to robust ministerial and democratic oversight, and strengthened public scrutiny.

An example of how the combination between board-like and streamlined decision-making could be structured in a way that applies board-like governance where appropriate and more efficient decision-making where that is more suitable, are CGO procedures that:

- require consensus (board-like decision-making) for decisions on state development areas, financial transactions above a certain threshold, and long-term strategic plans; and
- authorise a CGO member with specific sectoral experience to deal with defined project decisions relating to that sector (such as case management activity and the issuing of notices to vary a timeframe for a regulatory decision, etc).

Establishing a new central regulatory facilitation and coordination body, combined with an ability to collect fees and/or funds through cost recovery, will introduce flexible capacity to South Australia's regulatory system that can scale to meet demand and be deployed in a targeted way when needed.

This approach will allow for scaling-up of resources to be done in a targeted and efficient manner and enable mechanisms to share costs with (a) proponent(s), where appropriate.

ISSUE 4: RESPONSIBLY STREAMLINING PROCESS

The Bill includes powers to streamline overall timeframes, manage and align approvals through a single process, and reduce uncertainty by enabling earlier, more proactive regulatory engagement.

The Bill seeks to must balance mechanisms that are more flexible and collaborative, and more appropriately manage risk, against the important legal protections our environment and communities rightly enjoy.

The proposed model is geared towards aligning and streamlining timeframes for priority projects where this is considered necessary and feasible, and after consulting with the relevant decision maker. This can take the form of imposing a timeframe where none would otherwise exist, or varying an already existing timeframe, for example to ensure it is made at the same time as other relevant decisions.

CGO would be the authority to initiate these powers, and may support the decision maker with additional capacity to meet shorter timeframes. CGO would be required to first consult with the relevant decision maker to determine an appropriate timeframe, based on the circumstances of the relevant project. This contrasts with arbitrary, one-size-fits-all maximum time limits other jurisdictions have introduced or are introducing.

Where necessary, CGO could facilitate multiple simultaneous assessment processes, which would otherwise occur consecutively, in partnership with regulators for a single project.

An example of this could be applying upfront resourcing to simultaneously investigate and assess planning, environmental, native vegetation and licensing considerations.



Simultaneous assessment has the potential to deliver considerable gains for proponents in terms of reduced timeframes and uncertainty.

It is proposed that existing regulators will continue to be the default decision makers, and that existing statutory processes (such as assessment processes) will still apply.

While it is proposed CGO may set time limits based on what is reasonable and appropriate in the circumstances, it is suggested that they are no less than 20 business days (i.e. one month). While this may appear relatively short, this is a so-called ‘floor’, not a ‘ceiling’ – in most cases, a longer timeframe would be determined in partnership with the default decision maker. Additionally, and consistent with current practice, timeframes only start when a valid application (or similar) is made.

Accordingly, the more likely occasions on which a minimum timeframe might be considered are to impose a timeframe for the finalisation of an assessment that has already exceeded regular timeframes (i.e. as a last resort), or in instances where a considerable body of pre-assessment has already been undertaken.

An example of the latter scenario is enabling infrastructure (like an access road) consistent with a State Development Area Plan (SDA Plan). In these instances, a truncated timeframe could be applied due to the considerable studies, surveys and site/environmental assessments that will have already been undertaken for the SDA Plan – in summary, it would be done to leverage a prior process, rather than duplicating it.

To provide flexibility to respond to changing or unforeseen circumstances, or events beyond the decision maker’s control (e.g. inadequate information or evidence provided by the applicant), it is proposed that CGO may grant extensions to any set timeframes.

The intent of the proposed approach is to ensure:

- processes and decisions can be streamlined where necessary to the extent feasible, rather than by default and through fixed, one-size-fits-all time limits;
- there is no impact on the rigour and quality of the relevant statutory process, such as an assessment;
- there are pathways to make expedited treatment feasible in practice; and
- the system is flexible and can revert to longer timeframes where required.

Another mechanism to expedite the end-to-end process is the ability for CGO to apply upfront resources (generally recovered from the relevant proponent) to initiate proactive assessment mechanisms, such as State Development Areas (refer also Issues 6 and 10).



ISSUE 5: CALL-IN POWERS

It is proposed for CGO to have the ability to take over certain statutory processes and decisions in certain circumstances and in consultation with the original decision maker. This would be possible, for example:

- to simultaneously deal with multiple similar processes for the same project through a single process (for example, to conduct a single, comprehensive consultation process instead of several separate ones under separate legislation for the same project);
- to enable the process to be done in a timelier manner (for example due to capacity constraints faced by the original decision-maker; because CGO has already undertaken a considerable body of preparatory work, e.g. studies, assessments, surveys, business cases etc, on a proposed infrastructure corridor; or because CGO is already the decision-maker of a directly connected development);
- when it is considered in the public interest for CGO, rather than another entity or set of entities, to deal with the matter. Examples may include:
 - developments that are located across local council boundaries and would otherwise require separate assessment by two councils;
 - significant projects of high complexity that sit across multiple pieces of legislation;
 - sensitive projects relevant to (national) security or public safety; and
 - multiple significant projects within the same SDA, so that their cumulative impacts and mutual (in)compatibility can be assessed.
- to allow the decision to be made consistent with established legislation but based on a slightly broadened set of balanced considerations (i.e. by considering the provisions and principles of the relevant Act *and* the Primary Principle of the SDCF Bill in making the decision).

In practice, this is not dissimilar to how the *Planning, Development and Infrastructure Act 2016 (PDI Act)* interacts with other legislation, such as the *Environment Protection Act 1993*.

The new Act would enable the ‘calling in’ of a project, and apply the relevant legislation to CGO as if CGO were the original decision-maker. It also allows for the flexibility for the original entity to continue managing the relevant statutory process (e.g. an assessment) and provide their eventual report or information to CGO, where this is considered preferable.

When CGO becomes the decision maker, it is proposed for CGO to act in the same capacity as the relevant decision maker. CGO’s decision will be based on the relevant legislation and the principles of the proposed Act (refer Issue 1).



The relevant provisions will also enable CGO to call in only part of a statutory *process*, but not the *decision*. The intention of this is, for example, to:

- allow CGO to take over a focused consultation process to incorporate it into a broader consultation process relating to a state development area;
- enable CGO to do an impact assessment for a project when it links to other projects being managed by CGO, so their cumulative impacts can be appropriately assessed and considered.

Across all scenarios (calling in a process, a decision, or both), prior consultation between the original decision-maker and CGO is mandatory. This will in turn determine whether it will be necessary to use the newly proposed statutory provisions and, if so, what approach is preferable and what (if any) additional resources need to be applied to manage the matter. This is similar to the considerations set out under Issue 4.

For constitutional reasons, CGO is not proposed to be able to call-in a decision from a Minister or the Governor.

Where it is preferable for CGO to exercise such a power, a request for it to be delegated can generally already be made under existing legislation (i.e. irrespective of the SDCF Bill).

ISSUE 6: STATE DEVELOPMENT AREAS

CONCEPT AND PURPOSE OF PROPOSED MECHANISM

Many jurisdictions, including European countries and several Australian states, are preparing reforms to create ‘go zones’, ‘renewable energy zones’ or ‘state development areas’.

These initiatives involve relevant authorities working with regulators to determine geographical areas with ideal circumstances for certain projects or land uses (for example, renewable energy generation, large-scale manufacturing, or ports) and are found to be as free as possible from barriers to development (for example, regulators’ pre-assessment has identified which areas should be avoided for environmental or public safety reasons). An example of this practice is the concept of ‘release areas’ in the HRE Act.

The SDCF Bill proposes a similar concept, ‘state development areas’ (SDAs) but without limiting them to a particular land use or industry. This enables their application to manufacturing or port-industrial scenarios, infrastructure corridors, or even environmental projects.

In essence, this would create a proactive, whole-of-regulatory-system master planning mechanism that considers all relevant state legislation, appropriately balancing environmental, economic, social and local considerations, to deliver appropriate, well-balanced outcomes in the right locations.





SDAs would see regulators work with CGO to identify appropriate areas, pre-assess proposed (classes of) projects within the designated area, determine which upper limits, specifications and locations would generally be permitted, and publish these in a Statement of Regulatory Requirement (SRR).

By relying on the content of SRRs, project proponents can address or avoid issues identified in an SSR in their planning and/or site selection, before making certain project investment decisions or applying for an approval.

As rigorous regulatory assessments will have already been undertaken to prepare the SSRs, it is proposed for an expedited approvals pathway to be open to applications that demonstrate compliance with the relevant SRR(s). Such applications would be issued a Facilitation Certificate, which would certify their compliance with the relevant SRR(s).

This approach will help the government reduce approval timeframes, duplication and wasted effort by both proponents and public authorities.

To further improve planning, certainty and timeliness, it is proposed CGO can arrange to initiate re-zoning – to achieve the intended objectives of the SDA – and facilitate enabling infrastructure, such as access roads, utility connections and other such works.

As part of this comprehensive planning and pre-assessment work, relevant authorities can proactively determine the types and general specifications of developments that are desirable in certain locations. This will help prevent unintended loss of optimal overall land use caused by first mover activity and improve our ability to facilitate the best outcomes for local communities and the state.

Examples of complex precincts that could benefit from an SDA declaration are:

- integrated green industry hubs involving co-located green iron/steel, hydrogen production and export facilities;
- multi-purpose, multi-user infrastructure corridors, including common-user infrastructure, trunk infrastructure, and/or corridors connecting various elements of a larger and/or vertically integrated project;
- large biomedical precincts that cover hospital and allied health, research and innovation, education, and commercial facilities; and
- environmental projects, such as the establishment and development of biodiversity corridors between national parks.

FUNCTIONING OF PROPOSED MECHANISM

It is proposed that the Governor have the authority to establish SDAs, following no less than 20 business days of public consultation, and for one, or several, specific purposes as follows:



- economic or industrial development;
- establishing essential infrastructure, like an infrastructure corridor, a public hospital or essential infrastructure for a significant housing development; or
- environmental protection, conservation or enhancement.

The Governor would establish an SDA on the Minister's recommendation, who in turn would base their decision on considerable studies and other preparatory work by regulatory authorities, coordinated by CGO.

Within these areas, it is proposed CGO may:

- make SDA plans for the coordinated delivery of projects, development and infrastructure – including controlling land use, zoning and development – in accordance with relevant legislation and for the purpose of achieving the intended objectives of an SDA. This would also include making plans about how CGO intends to use its powers, including the making of conditions, controlling land use, providing infrastructure, and using cost recovery mechanisms, to achieve the SDA's intended objectives. This would allow CGO to provide proactive clarity on issues such as benefit-sharing, managing cumulative impacts, and the like. CGO would be required to conduct another round of consultation of no less than 20 business days before being able to finalise an SDA Plan.
- directly undertake infrastructure works or take over a state authority's development, project or construction works (subject to the Minister's approval);
- initiate a collaborative process with regulators to develop SRRs;
 - SRRs would set out thresholds, specifications and other requirements which, if complied with, would be considered acceptable by the regulator(s) in relation to defined projects within the SDA, in accordance with relevant legislation;
 - SRRs would be published to inform proponents of what developments are permissible, on which locations, and with what (maximum) impacts. Prior to SRRs finalisation and publication, public consultation would be required of no less than 28 days, including consultation with the relevant Minister(s) and affected parties, e.g. local councils, communities and Traditional Owners;
 - SRRs would not impact land ownership, land rights or give rise to other direct impacts on property. Matters such as land acquisition will be dealt with separately in accordance with existing processes;
- grant expedited regulatory approvals for projects within SDAs that demonstrate compliance with any published SRRs;

- the original decision-maker would certify compliance with the SRRs and, by extension, the requirements under the relevant legislation. It is suggested the original decision-maker has no less than 10 days to provide such certification
- such approvals will be granted as if the function was exercised by the original decision-maker and taken to be made within the relevant legislation.
- attach conditions to any such approval for the purposes of:
 - promoting the objects and primary principle of the Act (refer Issue 1)
 - ensuring appropriate land management or rehabilitation will be undertaken
 - payment of reasonable costs relating to the SRR and the process of granting the approval, either to CGO or the relevant responsible entity
 - facilitating local community benefit, e.g. through setting Aboriginal employment targets; limiting the percentage of fly-in-fly-out workers; or a contribution to a local development or organisation (such as facilities of a local township).

Similar to the call-in process, it is proposed that CGO may initiate the statutory exemption process outlined under Issue 7 for facilitated projects in SDAs.

OBJECTIVES OF PROPOSED MECHANISM

The intended purpose of SDAs is for CGO and regulators to work together to proactively determine the types, sites, and specifications of (classes) of projects and developments that would be permissible within SDAs under relevant legislation. Doing this work early and proactively, prior to proponent involvement, will:

- apply a well-coordinated, whole-of-system approach to siting and master planning that appropriately balances environmental, economic, social and local considerations;
- enable planning and consultation to occur through a single, proactive and coordinated process in relation to a defined area, as opposed to several separate, reactive processes based on multiple proponents' separate proposals;
- enable regulators to assess multiple projects' cumulative impacts upfront and in a coordinated manner, as opposed to being constrained by assessing separate applications (and the impacts thereof) as and when they are lodged;
- provide clarity on the permissible proposals and specifications, thereby reducing uncertainty and risk for both proponents and regulators (i.e. facilitating clarity on the right developments in the right locations);
- reduce assessment timeframes, thereby reducing the costs, risk and effort associated with applications – including by helping proponents avoid 'unapprovable' applications;



EXAMPLES OF USE OF SDA PLANS AND SRRS

SDA Plans

SDA Plans could improve planning and de-risk development in SDAs through system-wide collaboration, controlling zoning and land use, infrastructure provision and using cost-recovery.

For example, CGO could work with the Planning Department and the Department for Environment and Water to assess local vegetation, biodiversity, and other considerations to identify the ideal siting for infrastructure and development, and use this as a basis for making appropriate zoning decisions and initiating pre-assessment of proposed projects.

CGO could also work with Attorney-General's Department to map which (if any) areas within an SDA feature Aboriginal heritage, for example through extensive consultation, non-invasive ground-penetrating radar surveys and other investigations, to determine appropriate project sites in the context of the *Aboriginal Heritage Act 1988*.

Sites likely to be free of any Aboriginal heritage considerations could be included in an SDA Plan as suitable for infrastructure or project development, while sites with likely or known Aboriginal cultural heritage could be avoided through the Plan, through identification, re-zoning and/or removal from the SDA.

Conducting appropriate engagement and investigations proactively and early-on will improve coordination, timeliness and outcomes.

SRRs

Within areas identified as suitable for infrastructure or project development, CGO could subsequently work regulators such as the Environment Protection Agency (EPA) to determine 'approvable' siting and environmental impacts for critical projects (generally those directly relevant to the reason for establishing the SDA).

An example could be SRRs that set out the above requirements in the context of the *Environment Protection Act 1993* for a water desalination plant and a connected manufacturing facility, for the purpose of enabling rapid approval of such plant that meet the requirements published in an SRR.

Especially where such facilities are required to be operational within a defined timeframe to meet decarbonisation and economic viability requirements, SRRs could be of great benefit in reducing the time, effort and risk associated with identifying appropriate sites and specifications and minimising the scope for issues or delay during subsequent statutory assessment processes.



ISSUE 7: LIMITED STATUTORY EXEMPTIONS

The SDCF Bill is proposed to contain a mechanism for limited statutory exemptions relating to a particular project, in a similar way to how provisions in the *Mining Act 1971* or the *Motor Vehicles Act 1959* allow for such exemptions for special mining enterprises or automotive technology trials, respectively.

This mechanism can be initiated by CGO under section 25, 36 or 37. The process would be conducted by the Minister administering the SDCF Bill. Sections 43 and 44 set out how the process for this mechanism.

It is designed to be targeted and proportionate, leaving statutory standards and protections unchanged outside of the specific case, and will enable a process to make a balanced regulatory decision within the combined context of the relevant legislation and the proposed objects of the SDCF Bill, instead of simply overriding such barriers.

In practice, the mechanism would be able to modify or exclude a specific provision in a designated Act where this is reasonably required for a particular project.

It is proposed such exemptions may only be issued in relation to:

- projects called in by CGO, following consultation, including with the original regulator;
- co-developing and operating SRRs in SDAs, again following such consultation; and
- CGO directly developing essential infrastructure, with the Minister's approval.

It is proposed for these mechanisms to not be applied as exemptions of general application. Instead, they would apply only to specific cases (i.e. to a single, defined project) and in relation to a specific provision of an Act (i.e. not relating to an entire Act or all legislation).

The Minister would need to publish a Notice in the Government Gazette and provide this Notice and an accompanying report to Parliament. Either House of Parliament would have the power to confirm or disallow them, similar to how they can currently disallow regulations. This will ensure their use is restricted to instances where it is clearly necessary and appropriate, proportionate, and in the public interest.

The Bill also provides for an ability for Parliament to proactively 'confirm' very minor exemptions or modifications without needing to let the full timeframe for disallowance pass. It could do so through a resolution to that effect by the Legislative Review Committee.

These arrangements provide more oversight and stronger boundaries than comparable current statutory mechanisms for modifications (refer section 56C in the *Mining Act 1971* and 134E of the *Motor Vehicles Act 1959*, neither of which provide for Parliamentary oversight).

This is to ensure the proposed mechanism strikes an appropriate balance between providing the intended increased level of flexibility and timeliness, while also providing for adequate, proportionate governance and control over the use of these provisions.





Key objectives in the design of this exemption mechanism are:

- **retention of existing standards** – existing statutory standards and protections remain unchanged by default;
- **proportionately limited scope** – the scope of applicability is limited to a single occasion, but still provides for the required levels of flexibility;
- **consultation** – appropriate prior consultation is undertaken with the public and affected parties;
- **oversight** – there is adequate and proportionate oversight, control and governance;
- **balanced decision-making, instead of overriding process** – the mechanism allows balanced decision-making within the context of the relevant legislation containing the statutory barrier to be addressed *and* the primary principle of the SDCF Bill;
- **ability to control effects** – there is an ability for comprehensive and detailed control over the effects of any exemption(s) by allowing mandatory conditions to be attached to approvals that contain an exemption, on a case-by-case basis; and
- **Parliamentary scrutiny and primacy** – Parliament retains the power to determine whether a proposed exemption is permitted or not, and scrutinises all proposed exemptions.

ISSUE 8: INTERFACE WITH EXISTING ONE-WINDOW-TO-GOVERNMENT MODELS

It is proposed that CGO provide a one-window-to-government and case management function for projects or state development areas that have been designated by the relevant Minister or Governor (refer Issue 2: Scope).

For sectors or projects not already captured by existing one-window-to-government frameworks, this will take the form of CGO establishing a proactive case management role.

This would be based on formal administrative arrangements with other regulators that align and streamline key assessment and approval processes across multiple regulators and Acts, as is already being done for certain sectors. This is intended to also include whole-of-system pre-lodgement meetings in partnership with other agencies, to shape and steer projects towards optimal sites and specifications, consistent with existing best practice.

For sectors where one-window-to-government functions do already exist, like the *Petroleum and Geothermal Energy Act* or the *Hydrogen and Renewable Energy Act 2023*, a ‘co-case management’ approach is proposed.

This would see CGO supporting the existing lead agency to progress a declared project, and activate relevant statutory processes and powers where they jointly consider this necessary. This will likely include CGO being added as a referral agency alongside other regulators, as part of existing one-window-to-government arrangements and agreements.

This approach ensures the independent exercise of the new Act's functions and powers by CGO, instead of providing multiple sector-specific entities with direct access to them.

It will also improve, rather than duplicate, existing frameworks, and allow these to continue to be led by the relevant expert bodies – but with the ability to benefit from the added capacity and capability of CGO, including its new statutory powers (where necessary).

Consistent with current practice, this would be primarily managed administratively. However, the SDCF Bill would allow this practice to be strengthened by allowing new statutory powers to be used in a complementary manner.

For example, for a project that seeks approval for a railway corridor that is consistent with an already established SDA and SDA Plan, CGO and the usual regulator might determine it desirable for CGO to call in the relevant assessment process so that it can be done efficiently by the authority responsible for the studies, assessments and reports underpinning the overarching plan.

ISSUE 9: USE OF CONDITIONS AND SDA PLANS TO PROMOTE THE OBJECTS OF THE ACT

Conditions

Consistent with established practice, it is proposed the conditions CGO can attach to its own decisions (or those of other regulators) be mandatory, in the sense that if they are not complied with, the relevant approval, consent or licence can be revoked. Conditions could be imposed at CGO's discretion in accordance with the Act's objects and statutory principle.

It is proposed that in performing functions or making decisions under the Act, including attaching conditions, regard must be had to the economic, social, environmental and local outcomes of a project, and any considerations under other relevant Acts.

Defined conditions are being proposed relating to CGO's ability to grant expedited approvals under Statements of Regulatory Requirements (SRRs), including:

- ensuring that the proponent or key beneficiary from an approval makes adequate financial provision for managing or rehabilitating land in connection with their project;
- facilitating payment of reasonable costs of CGO and the responsible entity, related to approving the project and the performance of functions under the Act; or

- assisting the local community affected by a project to benefit from the project (for example by setting Aboriginal employment targets or requiring the project is developed by a certain date to avoid 'land-banking', etc).

The intent of these provisions is to ensure CGO and the state government have appropriate levers available to mitigate any key risks and deliver on the Act's overall objects and principles relating to designated major projects.

In many cases, regulators already have broad-based scope to attach conditions to their approvals. The proposed powers to set conditions are therefore designed to provide similar powers to CGO, as well as to ensure they are in place and can be applied in situations where existing regulators may not have these powers.

SDA Plans

As outlined under Issue 6, it is proposed that SDA Plans may set out the policy objectives for the area and how CGO proposes to use its powers – notably including the making of conditions – to promote these objectives.

This will provide upfront clarity as to the public expectations that will be placed on proponents for key developments in an SDA.

Examples include minimum Aboriginal employment targets, milestones to transition from fossil fuel to sustainable energy sources, or partial cost-recovery of costs associated with studies and surveys conducted to enable an expedited approval (which applicants would be the beneficiaries of, and the costs of which would, under usual arrangements, be incurred by applicants).

ISSUE 10: COST RECOVERY AND FEES

It is proposed that CGO can recover reasonable costs incurred by it and/or other state authorities from proponents, in accordance with requirements published by the Minister administering the Act. The Minister would be able to prescribe fees by fee notice under the *Legislation (fees) Act 2019*, as per current processes. It is proposed that cost recovery will require prior agreement with the party that costs are to be recovered from.

It is reasonable to recover costs where they are significant and associated with a large proponent requesting CGO facilitate a major project. This is particularly relevant when costs are incurred over and above any usual costs associated with processes and fees under other applicable legislation, such as the *Planning, Development and Infrastructure Act 2016*.

Examples are the early provision by CGO of enabling infrastructure that would usually be the responsibility of a proponent (e.g. electricity connection) on a cost-recovery basis, to enable the proponent to meet ambitious development timeframes, or the establishment of an infrastructure corridor SDA for a large business, where they would be the major or exclusive beneficiary.



It is anticipated there will be instances where, for strategic reasons, CGO may wish to facilitate a project by using its powers under the SDCF Bill for a minor proponent or a small project without charging a fee or recovering costs. For example, the government may want to waive otherwise prohibitive fees for an early-stage proponent that is developing a promising technology to secure early-adopter advantages for the state's economy.

In other cases, costs to CGO or another state authority may be minor or fall within the scope of another authority's regular functions (or could be covered by their own fees or charges under their relevant legislation), in which case charging a fee would not be preferable.

ISSUE 11: TRANSPARENCY AND ACCOUNTABILITY

Some of the newly proposed statutory processes and powers are significant and many apply specifically to major and critical projects.

CGO will be able to directly deal with real and personal property, including assets of considerable value. Accordingly, it is considered important for the Act to apply robust transparency and accountability requirements to CGO, as the main body exercising functions under the Act.

CGO will be subject to all South Australian governance Acts of general application, including:

- *Public Finance and Audit Act 1987*;
- *Public Sector (Honesty and Accountability) Act 1995*;
- *Freedom of Information Act 1991*;
- *Public Sector Act 2009*;
- *Independent Commissioner Against Corruption Act 2012*; and
- *Ombudsman Act 1972*.

DPC is not proposing any exemptions to provisions under these Acts for the SDCF Bill. The *Public Sector (Honesty and Accountability) Act 1995* applies a range of disclosure, honesty and accountability requirements to CGO, and creates several types of offences should CGO contravene these requirements/act where conflicts of interest exist.

Above and beyond this regime, it is proposed the SDCF Bill provides for strengthened requirements relating to CGO members' disclosure of interests, including:

- disclosure of 'relevant interests' of a pecuniary or non-pecuniary nature (such as a non-remunerated position with an interest group or non-profit organisation);
 - 'relevant interests' requiring disclosure include those held by a CGO member's immediate family, family company, or family trust, or by an associate of CGO member (associate is a category to be defined by regulation, but would generally include people closely affiliated with the member of CGO, to the extent that, to the neutral observer, an apparent or potential conflict of interest would arise);

- disclosures upon appointment to CGO would be required within 20 business days, and no less than twice a year following appointment, with the relevant Minister able to set a more frequent periodic basis for such disclosures;
- electronically publishing a record of disclosed interests for the public to inspect; and
- it being an offence for a member of CGO to submit a false declaration or otherwise not comply with their disclosure requirements.

The rationale for increasing the scope of 'relevant interests' and the minimum frequency for disclosure is to increase the likelihood of capturing any new interests acquired, including in instances where they would otherwise be acquired and disposed of in between disclosures.

CGO is also required to publish its procedures so that its operating procedures and the validity of its decisions are knowable by the public. This requirement does not generally apply to other statutory authorities. Finally, all project designations and each exercise of a statutory power by CGO or the Minister requires a Notice published in the Gazette. This provides a high level of contemporaneous transparency to CGO's operations and individual actions, in that such information is accessible by the public as decisions are made, instead of only being available for reference in an Annual Report after the fact.

ISSUE 12: COMPULSORY ACQUISITION OF LAND

It is proposed for the SDCF Bill to apply the Land Acquisition Act's provisions relating to compulsory acquisition to CGO, but only for two defined purposes.

PROPOSED GROUNDS

It is proposed that CGO would be able to use these provisions for two purposes:

1. Essential infrastructure works as defined in the PDI Act

This grounds for compulsory acquisition is already available to the Government through various other Acts; this would simply also apply it to CGO. In a practical sense, this would allow CGO to acquire easements or land for the purposes of developing essential infrastructure such as:

- Roads;
- Water infrastructure;
- Power lines and other energy infrastructure;
- Water infrastructure;
- Communications infrastructure; or
- Health, education or community infrastructure.



2. State projects

State projects are defined as designated projects or a project in a State Development Area that is to be carried out by, or that involves, a State agency and that is identified by the Minister in a Gazette Notice. Both types of purposes would require Ministerial approval.

Examples of compulsory acquisition of land for these types of projects include:

- Acquiring privately held vacant land for a designated project in an SDA where other options have been exhausted, for example to resolve restrictive land-banking or excessive speculation.

Such practices represent known potential for market failure that inhibits productive use of land (and all the major benefits associated with it), in favour of narrow potential future increases in land value.

- Acquiring land for the purposes of establishing a biodiversity/conservation corridor between two (parts of) (a) national park(s) or wildlife area(s) as part of a Designated Project aimed at enhancing these areas and their impacts;
- Acquiring land for the purposes of achieving an offset for the purposes of the *Native Vegetation Act 1999*, to enable a State Project to proceed.

SCOPE

The proposed compulsory acquisition powers are deliberately limited in scope and designed as a power of last resort.

This is because it is anticipated that in the large majority of cases, land will be able to be acquired (or will already have been acquired) by proponents by agreement, with there being no need for State involvement relating to land acquisition.

This is a comparatively moderate approach, as the Government already has broader powers of compulsory acquisition under the PDI Act (s243), which provides the Minister administering that Act with the power to compulsorily acquire land where they consider that reasonably necessary:

- for the operation or implementation of the Planning and Design Code; or
- for the implementation of a development authorisation of a prescribed class;
- in order to further the objects of the PDI Act (which are very broad).

Broader powers of compulsory acquisition – including on behalf of third parties – also exist under the *Urban Renewal Act 1995*, which allows a public corporation established under it (e.g. Renewal SA) to compulsorily acquire land ‘for a purpose associated with the performance of its functions’, with the Minister’s approval.



Another example is section 16 of the *Harbors and Navigation Act 1993*, which authorises the Minister to acquire land compulsorily for the purposes of establishing or improving a harbor, but also for the purposes of facilitating industrial or commercial development associated with or to be associated with a harbor (e.g. for the purposes of third party activity).

The powers of compulsory acquisition proposed for CGO are not dissimilar to those available to in these two Acts, but are more limited in scope.

More specifically, CGO will **not** be able to simply acquire land for any purpose associated with the performance of its functions (like in the Urban Renewal Act), or for any type of industrial or commercial development associated with a harbor (like in the Harbors and Navigation Act).

Instead, CGO will only be able to do so as is required for the development of essential infrastructure or a State Project, which is a more limited scope, and requires separate Ministerial approvals.

APPLICABLE PROCESS

It is proposed for the SDCF Bill to simply apply the processes of the *Land Acquisition Act 1969*.

Accordingly, the same processes, mechanisms, rights and entitlements, and procedural requirements will apply to CGO as they already apply to other parts of Government that are authorised to compulsorily acquire land in accordance with that Act.

The only deviation from this process that would be open to CGO without requiring separate Parliamentary approval, would be to vary timeframes as they exist in the *Land Acquisition Act 1969* to a limited extent.

NATIVE TITLE

It is also important to note that all of the Land Acquisition Act's provisions relating to Native Title apply in full, as do the *Native Title Act 1993* (Cth) and South Australian legislation relating to Aboriginal land rights – none of which the SDCF Bill or CGO would modify or affect.

More generally, in circumstances where large-scale land access and native title considerations are significant to a project, they are managed through existing legislation's dedicated native title and land access processes. Examples include the HRE Act, the Mining Act, or the *Pastoral Land Management and Conservation Act 1989*.

The only process relevant to land use that is unique to the SDCF Bill is the concept of State Development Areas (SDAs). For proposed SDAs that would cover land subject to a native title determination or claim, prior consultation with native title parties is a mandatory requirement for the establishment of the SDA. Land access would then be negotiated through existing processes under Native Title legislation, consistent with established practice. In summary, there would be no change to Native Title considerations, processes or rights.





ISSUE 13: MODERATING SCOPE FOR APPEAL AND REVIEW

Standardising and moderating timeframes for appeals

At present, decisions under various legislation are subject to a variety of timeframes within which appeals can be commenced against a decision.

The SDCF Bill proposes to standardise this timeframe to 15 business days for any declared projects.

This is intended to increase clarity and certainty, and reduce scope for confusion and/or delay, while maintaining appropriate timeframes for stakeholders to initiate an appeal.

Accordingly, if CGO would arrange for all statutory decisions to be made on the same date (as is generally intended), then stakeholders – including both the community and the proponent – have certainty that, if no appeal or review is lodged within three weeks from that date, all decisions will stand.

The exception to the 15 business days timeframe is decisions to which a shorter timeframe applies under existing legislation. In these cases, the shorter timeframe continues to apply.

The chosen timeframe of 15 business days is consistent with that which currently applies to appeals against decisions on restricted developments under the PDI Act, is slightly longer than timeframes to appeal certain decisions under the Land Acquisition Act (7 days) or the Environment Protection Act (14 days), but shorter than existing timeframes under, for example, the Mining Act (28 days).

The SDCF Bill would *not* remove any existing grounds or pathways to appeal a decision.

Moderating scope for judicial review

It is also proposed that the SDCF Bill limit judicial review of decisions made or actions taken in connection with the operation of the SDCF Bill, to judicial reviews relating to jurisdictional error.

This means that the Supreme Court could review whether the decision-maker (such as CGO or the Minister) made a decision or took an action outside the limits of the function or powers conferred on them under the SDCF Bill or another Act.

For example, if CGO calls-in a decision from another entity, then the decision to do so can only be tested in relation to whether CGO had the legal authority to issue the Notice, *not* to review other factors such as the decision's specific procedural steps or merit.

The purpose of this provision is to ensure legal certainty and efficiency in relation to decisions under the SDCF Bill. In practice, this provision would deliver only a limited reduction of the scope for judicial review, as judicial review does not include a review of the merit or substance of a decision. Generally speaking, this provision only excludes from review those types of errors that would not be material to the outcome of the decision.



The SDCF Bill does *not* remove options to start an appeal or statutory review of a decision. For example, it will remain possible to start a review of an authority's decision to compulsorily acquire land by using s12A of the *Land Acquisition Act 1969*, or to commence an appeal of a decision by the Environment, Resources and Development Court to not make an order to make repairs or make payments due to a breach of the *Native Vegetation Act 1991*.

ISSUE 14: COMMONWEALTH LEGISLATION

Context

State legislation is unable to affect Commonwealth legislation. However, the two do intersect, including in policy areas relevant to the SDCF Bill, such as the environment and development. The main Commonwealth Act relevant to these issues is the *Environment Protection and Biodiversity Conservation Act 1999*, or 'EPBC Act'.

In instances where a proposed development in a State or Territory has the potential to impact on a matter of national environmental significance (MNES), such as a listed threatened species or a national heritage place, approval from the Federal Environment Minister may be required under the EPBC Act.

Proposed approach for SDCF Bill

While the SDCF Bill cannot change this, it is designed to have the ability to feed into the EPBC process, improving assessments and minimising scope for duplication and/or delay.

It does so through clauses 32, 33 and 34. These clauses enable CGO to conduct certain assessment pathways that exist in other State legislation, and which are proposed to be included in a future 'bilateral agreement' between the State Government and the Commonwealth in relation to assessments for the purposes of the EPBC Act.

If an agreement were made, these assessment pathways could be accredited by the Commonwealth. This means that such an assessment conducted by the State could be used as the basis for both State and Federal approvals (e.g. under the State PDI Act *and* the federal EPBC Act – also known as 'single touch'). This would avoid the need for two separate processes.

If activated through clauses 32 – 34, CGO would be able to conduct these processes, but would be unable to modify how they work.

The reason for this is 'accreditability'. If CGO were to change these processes, they would no longer represent the accredited processes, and accordingly, would no longer be able to serve as a single touch assessment to underpin both a State and a Federal decision.

Therefore, the SDCF Bill provides CGO with the ability to conduct these processes in a way that cannot be modified, so as to provide the scope for CGO to conduct single touch assessments (if agreed with the Commonwealth).



CONSULTATION APPROACH AND NEXT STEPS

DPC approaches consultation as an ongoing process of engagement to inform continuous improvement and refine the proposed reforms and frameworks. DPC intends to continue engaging with key stakeholders, organisations and individuals through multiple stages of consultation, as outlined below.

1. INTERNAL CONSULTATION (PREVIOUS)

Multiple rounds of internal consultation within government have been conducted during the development of the proposal, starting in early 2023.

This process involved meetings with government agencies, departments and committees, to develop problem definitions and options to address them. It subsequently featured technical meetings to develop and refine the proposals contained in this paper.

Consultation included key regulators such as the Department for Environment and Water (DEW), the Environment Protection Authority (EPA), Planning and Land Use Services (DTI-PLUS), the Department for Infrastructure and Transport (DIT), and Primary Industries and Regions South Australia (PIRSA).

2. TARGETED CONSULTATION (PREVIOUS)

The previous preliminary consultation phase sought feedback on the proposal from expert, academic, regulatory, industry and advocacy bodies.

Consultation was conducted through a combination of written input and meetings.

The objective of this phase was to seek substantive, technical, industry and general feedback on the proposal and draft Bill. DPC used this input to enable further optimisation of the draft Bill. This allows us to now consult on a well-informed, mature legislative proposal.

3. PUBLIC CONSULTATION (CURRENT) AND NEXT STEPS

The current stage of consultation is public consultation. We are now seeking feedback from the general public as well as any industry, expert, advocacy and civil society groups that wish to comment. We will carefully consider all feedback we receive to finalise a draft Bill.

Once ready, the state government will introduce the Bill to Parliament.

At this point, DPC will engage with those who participated in the consultation rounds and communicate the key themes of feedback received, and discuss how this has been considered and incorporated in the draft Bill.

APPENDIX 1: GLOBAL PERMITTING REFORMS

Reforms referred to in the table on page 7 include the following.

Jurisdiction	Relevant reforms
United States of America	<i>Biden-Harris Administration Permitting Action Plan (May 2023)</i> <i>Building United States Infrastructure through Limited Delays and Efficient Reviews Act of 2023 (BUILDER Act)</i> <i>Further legislative proposals (Senate and House Energy and Natural Resources Chairs; House Sustainable Energy and Environment Coalition; et al)</i>
European Union	<i>REPowerEU initiative</i> <i>Revised European Union Renewable Energy Directive (March 2023)</i> <i>EU Emergency Measures (Council Regulations) – interim measures to enable action while legislative proposal (Directive) progresses</i> <i>European Commission: Technical Support Initiative 2023 Flagship Project: Renewable Permits</i>
Germany	<i>2023 amendments to Renewable Energy Act (EEG)</i> <i>Federal Requirements Plan Act</i> <i>Grid Expansion Acceleration Act (NABEG) and</i> <i>Onshore Wind Energy Act 2023</i> <i>Implementation of EU Emergency measures</i>
France	<i>Renewable Energy Acceleration Bill 2023</i>
California	<i>Assembly Bill 205 2021-22</i> <i>Infrastructure Advisor, State of California: Building a More Inclusive and Sustainable California: Maximizing the federal infrastructure funding opportunity (May 2023)</i> <i>California Executive Order N-8-23 (2023)</i> <i>Proposed reforms of California Environmental Quality Act (CEQA)</i>
New York	<i>Accelerated Renewable Energy Growth and Community Benefit Act (2021)</i>



Jurisdiction	Relevant reforms
New South Wales	<i>NSW Planning Reform Action Plan</i> <i>NSW Planning Delivery Unit</i> <i>NSW Planning System Acceleration Program</i> <i>Accelerated Infrastructure Fund</i> <i>NSW Electricity Infrastructure Roadmap</i> <i>NSW Renewable Energy Zones</i>
Victoria	<i>VIC Planning Reform Program</i> <i>VIC Renewable Energy Zones</i>
Western Australia	<i>2023 Planning Reform Program</i> <i>WA Strategic Industrial Areas</i>
Queensland	<i>QLD Gas Supply and Other Legislation (Hydrogen Industry Development) Amendment Bill 2023</i> <i>QLD State Development and Public Works Organisation Act</i> <i>QLD Renewable Energy Zones</i> <i>QLD State Development Areas</i>

Note: overview for illustrative purposes only.

Included reforms are in varying stages of maturity; some have been proposed but not (yet) introduced. Certain reforms span multiple laws, regulations or other instruments.

Not all inclusions represent new reforms; some governments already had relevant legislation in place.

APPENDIX 2: RELEVANT PUBLICATIONS

#	Publication
1	<i>South Australian Productivity Commission: Final Report - Inquiry into South Australia's renewable energy competitiveness (August 2022)</i>
2	<i>South Australian Productivity Commission: Final Report - Inquiry into reform of South Australia's regulatory framework (Oct 2021)</i>
3	<i>World Economic Forum: Speeding up renewables – how to resolve bottlenecks (2023)</i>
4	<i>International Energy Agency (IEA): Australia 2023 Energy Policy Review (2023)</i>
5	<i>IEA: Net Zero by 2050 – Roadmap for the Global Energy Sector (May 2021)</i>
6	<i>IEA: Net Zero by 2050 – Updated Roadmap for the Global Energy Sector (Nov 2022)</i>
7	<i>AU Productivity Commission: Plan to identify planning, zoning reforms (March 2021)</i>
8	<i>Worley Australia, Princeton University Adlinger Center for Energy and the Environment: The infrastructure of net zero: a unique challenge for Australia (May 2022)</i>
9	<i>Worley and Princeton University Adlinger Center for Energy and the Environment: From ambition to reality - Weaving the threads of net-zero delivery (2021)</i>
10	<i>Deloitte Australia: Australia's Hydrogen Tipping Point (Feb 2023)</i>
11	<i>European Commission: 2023 Flagship Project: Renewable Permits (2023)</i>
12	<i>Brookings Institute: How to reform federal permitting to accelerate clean energy infrastructure: a non-partisan way forward (Feb 2023)</i>
13	<i>Princeton University: Net Zero America – Final Report (2021)</i>
14	<i>Energy Transitions Committee: Planning and Permitting Solutions Toolkit (Jan 2023)</i>
15	<i>Energy Transitions Committee: Streamlining planning and permitting to accelerate wind and solar deployment (Jan 2023)</i>
16	<i>Centre for Policy Development – Green Gold (Sept 2023)</i>
17	<i>Clean Energy Council – Power Playbook (Oct 2023)</i>
18	<i>Net Zero Australia Report (Universities of QLD, MEL, Princeton; Nous Group, 2023)</i>
19	<i>CEDA: Clean Energy Precincts: How to Seize the Green Export Opportunity (2024)</i>
20	<i>Australian Government emissions data by State/Territory (2021; most recent)</i>



**Government
of South Australia**

Department of the
Premier and Cabinet