



Government
of South Australia

Department of the
Premier and Cabinet



STATE DEVELOPMENT COORDINATION AND FACILITATION ACT

Explanatory Guide

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INTRODUCTION

South Australia has long been a world-leader in the push to respond to rapid climate change.

A key effort in continuing this success is the ability to quickly reduce carbon emission across all sectors of our economy to meet our net-zero targets, while maximising the economic opportunities that will flow from the transition.

Transitioning to net-zero will mean a growing number of developments to be planned, assessed and approved. Whether it's existing facilities looking to decarbonise or newly proposed projects looking to leverage our abundant renewables, minerals and industrial legacy, the Government needs to be prepared to rise to the challenge.

Australia's ongoing housing crisis further adds to this challenge, strengthening the need to respond with urgency to deliver more housing and enabling infrastructure at pace.

The Government's recently released Our Housing Roadmap sets out a range of ambitious actions to deliver more homes more quickly – and innovative, sensible planning and regulatory reform will play an important role in making it happen.

New legislation is proposed to help South Australia address the challenge of planning, assessing and approving more developments, more quickly while delivering sound outcomes for our communities, our climate, our environment and our community – **the State Development Coordination and Facilitation Act (SDCF Act)**.

This **Guide to the Bill** provides a clause-by-clause explanation of the draft Bill to help you understand, and have your say on, the proposed legislation. It is intended for use alongside the **Issues Paper**, which provides further information.

Please note that standard or procedural clauses are not explained in detail for brevity purposes.

WHAT THE STATE DEVELOPMENT COORDINATION AND FACILITATION BILL SEEKS TO DELIVER

Governments across Australia and the globe are responding to the challenges set out in the previous section through ambitious reforms to better plan, coordinate, de-risk and accelerate development.

It is critical that South Australia, too, has the tools it needs to remain ahead of the curve in its efforts to reduce emissions, drive clean industry growth, and address the broader challenges our economy and housing market are facing.

The SDCF Bill is designed to help us do so by enabling a more proactive, place-based and efficient approach to the regulation of major projects and development areas.

This is intended to ensure the right developments occur in the right locations, delivering appropriate economic, environmental and social outcomes – and do so more quickly.





Importantly, this new approach to regulation is also necessary to seize the opportunity to create thousands of secure, well-paying jobs in net zero industries.

Key features of the proposed legislation

The SDCF Bill contains the following key mechanisms.

- establish the concept of ‘state development areas’ – environmentally and economically suitable ‘go zones’, such as net zero industry precincts – that have been proactively assessed by regulators as environmentally and economically suitable for key developments to be facilitated at pace
- enable the proactive application of our regulatory processes
- streamline the provision of enabling infrastructure for housing, major developments and development areas, unlocking timelier delivery
- allow for the responsible streamlining of regulatory processes where possible
- improve consultation and regulatory coordination through an enhanced one-window-to-government mechanism, managed by a new Coordinator-General’s Office; and
- maintain our existing Acts and protections

Combined, these new functions will allow South Australia to remain competitive, seize a world-leading position in clean industries, respond to the challenges posed by global warming, and address the state’s urgent housing needs.



GUIDE TO THE BILL

PART 1 - PRELIMINARY

1 – Short title

This details the formal citation/name for this Act. This also sets out its overarching purpose.

2 – Commencement

3 – Interpretation

This section provides formal definitions of all key terms used within the provisions of the Act.

4 – Primary principle

This provision creates a requirement for the Minister and CGO to always consider a newly proposed ‘primary principle’ in performing any of the key powers or functions under the Act. Accordingly, these considerations inform the decision or action these decisions-makers make or perform. The proposed primary principle of the Act requires consideration of:

- economic, social and environmental outcomes of a project (which includes both positive and negative impacts); and
- the implications of these outcomes on both a state and local level.

Decision-makers under the Act must consider this alongside any principles or requirements under other Acts, where relevant, thus slightly broadening the basis for decision-making, while still requiring full compliance with existing legislative requirements.

The provision aims to ensure well-informed, balanced decision-making that appropriately considers benefits and impacts for local community stakeholders and the State as a whole.

PART 2 - COORDINATOR-GENERAL’S OFFICE

DIVISION 1 - COORDINATOR-GENERAL’S OFFICE

5 – Establishment of Coordinator-General’s Office

This provision creates the new, legislated public body called ‘Coordinator-General’s Office’ (CGO), empowered by the Act to exercise the new functions and powers created by the Act. The provision sets CGO up as:

- a body corporate, (i.e. a legal ‘person’) to have the legal ability do things like employ staff, hold property, enter into contracts, and sue and be sued
- an instrumentality of the Crown, and
- a statutory authority (i.e. a public body established by its own legislation) to be able to be conferred with the Act’s newly created powers, and have a level of independence.



This approach is consistent with other State legislation establishing public entities of a regulatory, governance and infrastructure-providing nature.

6 – Constitution of CGO etc

This provision stipulates that the Governor appoints members of CGO on the Minister's recommendation, rather than the Minister doing so directly (both options are relatively common). As the SDCF Act contains considerable new functions and powers across multiple Acts, which are administered by multiple Ministers, appointments by the Governor are considered appropriate.

In keeping with the legislation's intent, it also establishes CGO as a board-like entity comprising three members, with the flexibility to determine its own procedures. This allows CGO to balance robust governance and board-like decision-making for long-term or highly significant decisions, with more efficient decision-making for less significant, lower-risk interventions where speed is key. It also allows diversity of skillsets and minimises administrative cost and burden.

Tenure of up to five years is proposed to ensure consistency and to support a level of independence.

7 – Removal from office

8 – Casual vacancies

9 – Ministerial direction

This provision provides the Minister responsible for the administration of the Act with the power to give a direction to CGO, provided they consult with CGO before doing so. For transparency purposes, any direction to CGO must be done in writing, and must be published online in a timely manner, and included in CGO's annual report.

DIVISION 2 - FUNCTIONS ETC

10 – Functions generally

This section outlines the functions of CGO under this Act;

- to facilitate, manage, coordinate, assess and deliver projects of importance to the State. This includes working with other jurisdictions when required, including the Australian Government. '*Projects of importance to the State*' limits CGO's remit to projects of a certain level of importance, and clarifies that the Act doesn't apply as a default regime for any and all projects. It also reflects that most of CGO's powers can only be enlivened for a project or area upon its declaration by the Minister or Governor (refer Part 3 – Division 2).
- to advise the State on potential improvements to project regulation. As CGO will play a coordination and oversight role in significant projects spanning multiple regulatory functions, it will be well-placed to identify potential areas for improvement.

- to provide a single point of contact (case management) for proponents, and to assist government in delivering project functions.
- to facilitate engagement and consultation between government, proponents and local communities for projects and State Development Areas, particularly relating to planning and land use matters, and local community impacts and benefits. This function gives CGO a lead role in ensuring appropriate, holistic and place-based consultation and engagement between the community and key stakeholders underpins the planning, siting, development and delivery of declared projects and State Development Areas.
- to coordinate dealings between relevant State authorities and prospective private sector providers of essential services (such as water, wastewater and sewerage) for the purposes of assisting providers in addressing licensing and third party access requirements; and promoting efficiency and confidence in decision-making, including by performing assurance functions or other functions under the SDCF Act or other legislation. This signals that where necessary, CGO can use its powers under this Act in relation to these matters, for example by taking on decision-making responsibility.
- to acquire, hold, manage and deal with real and personal property when performing its functions under this or another Act. This might mean buying land to provide infrastructure and connections before conducting a competitive tender process, allowing development to commence swiftly while factoring costs into the eventual sale.
- To perform any other actions directed by the Minister, or assigned under this or any other Act. Similar clauses exist in other legislation. If the Minister assigns a function to CGO, the CGO must publish a copy of this direction. Additional transparency is included in this Act as the CGO has wider reaching responsibilities than other regulatory bodies.

11 – Cooperation etc by State authorities

This clause stipulates that state authorities (such as a government department or a regulator like the Environment Protection Authority) must, within their usual responsibilities, reasonably cooperate with CGO in such a way that enables CGO to perform its role effectively and efficiently under the SDCF Act without the need for repeated formal negotiation. It also allows CGO to inform the relevant Minister if their agency fails to comply with this duty. This supports the Act's intent to improve and streamline government-wide coordination and facilitation.

DIVISION 3 - RELATED MATTERS

12 – Procedures

The purpose of this clause is to allow CGO to set procedures for its meetings and decisions, and to review and amend procedures to suit the type and complexity of decisions required. These procedures must follow strict transparency and record-keeping requirements, commensurate with CGO's considerable powers.



13 – Minister’s representative may attend meetings

This provision clarifies that the Minister responsible for the SDCF Act may authorise a representative to attend CGO’s meetings and/or receive papers relevant to such meetings. It also applies clauses relating to confidentiality of information, in a similar model to public corporation legislation, reflecting CGO’s dealings with commercial property (both real and intellectual) of considerable value.

14 – Vacancies or defects in appointment of members

15 – Disclosure of relevant interests

This provision applies strengthened disclosure of interests requirements to CGO.

As CGO is a statutory authority, the Public Sector Act 2009 and the Public Sector (Honesty and Accountability) Act 1995 apply. CGO members are legally required to act honestly; exercise care and diligence; not be involved with unauthorised transactions or interests; and declare and suitably manage any conflict of interest.

However, given the breadth and significance of CGO’s functions, and the potential for CGO to hold assets of considerable value, the SDCF Act applies strengthened requirements for the disclosure and management of relevant interests, set out in Schedule 2.

16 – Remuneration

17 – Staff

18 – Delegation

PART 3 - PROJECT COORDINATION AND FACILITATION

This is the most important Part of the SDCF Act.

It is the source of the majority of CGO’s statutory functions relating to the coordination and facilitation of projects, including its powers to responsibly expedite processes, call certain decisions in, review decisions, and attach conditions to them.

This Part also deals with the establishment and management of State Development Areas – another one of the Act’s most important mechanisms – the development of essential infrastructure, and a statutory process with Parliamentary oversight, designed to enable the modification of the application of other Acts.

Finally, this Part includes provisions relating to limitations to judicial review, appeal and community land classification procedures.



DIVISION 1 - PRELIMINARY

19 – Interpretation

This section introduces several new concepts which are used throughout this Part of the Bill. The key concepts are as follows.

Designated Act: this means an Act included in Schedule 1 of the SDCF Bill.

Acts included on this list are the Acts that are in scope for CGO to use its powers and functions under this Part.

If an Act is not included in Schedule 1, CGO cannot use any of its statutory functions in relation to processes or decisions undertaken or made under such an Act.

Notable exclusions are South Australia's *National Parks and Wildlife Act 1972* and *Aboriginal Lands Trust Act 2013*. The SDCF Act's functions and powers therefore cannot be exercised in relation to these Acts.

The Bill allows government to add an Act to Schedule 1 by making Regulations. This is a common mechanism, allowing the Government of the day to add new legislation as it is passed.

Designated decision: this means a decision made by a decision-maker under a designated Act. For example: a decision of the Native Vegetation Council under section 29 of the NV Act to consent or not consent to an application to clear native vegetation.

CGO can call-in, attach conditions to, or review a designated decision under this Part (refer s24 and s25, for example).

Designated function: this means a function or process contained in a designated Act in relation to a relevant project. This includes a designated decision outlined above, but may also include such things as consultation processes, assessment processes, or advisory functions.

Designated functions are the types of statutory decisions and processes of which CGO can;

- vary a timeframe (or impose one if no timeframe applies, refer s24), or
- issue a 'call in' notice (assume responsibility to perform the function, process or decision as if CGO were the original or 'usual' decision-maker under the other Act, refer s25). For example undertake public consultation, issue a licence or make a decision. If CGO issues a call-in notice, it can only make the decision on the basis of the same legislative requirements and standards that would apply to the usual decision-maker.

Scope of designated decision and designated function: subclauses 2 and 3 further specify that, importantly, CGO can not affect any decisions, approvals or functions made, granted or performed by the Governor or a Minister. Ministers may, however, choose to delegate statutory decision-making powers to CGO under existing legislation. This is usually open to them already irrespective of the SDCF Act.



Disallowable notices: these are the Gazette notices made by CGO that are subject to Parliamentary scrutiny under sections 43 and 44, which provide a process through which either House of Parliament can disallow a notice of this kind.

Disallowable notices are notices through which the Minister administering the SDCF Act could propose to modify the application of a designated Act in relation to a specific project on a one-off basis. As the scope for such changes would be broad, and any such change would amount to an exemption to a legislative requirement, it is proposed that the notices are subject to Parliamentary scrutiny to ensure appropriate oversight, checks and balances.

CGO or the Minister must consult with the Minister responsible for the Act that is proposed to be modified, as well as with any other entity or person they consider would be affected by the proposal.

The Minister must then provide the notice and an explanatory report to both Houses of Parliament, with either House then able to disallow it within 14 sitting days. This process and timeframe is the same for Regulations made by the Government.

One point of difference is that Parliament, through its Legislative Review Committee can actively confirm a notice through a resolution to provide early certainty. This would give Parliament the option to not require 14 sitting days to pass (which can encompass several months, depending on the time of year and proximity to elections) for low-impact or procedural changes.

20 – Effect of Part etc

This section confirms that the contents of Part 3 of the SDCF Bill, including notices made under it, apply despite any other state legislation's provisions.

This ensures that CGO's powers, such as varying the timeframes for a certain decision, can override the relevant sections of other legislation, allowing CGO to effectively function as intended. Similar provisions also exist in other legislation where required.

DIVISION 2 - PROJECT DECLARATIONS AND ESTABLISHMENT OF STATE DEVELOPMENT AREAS

21 – Coordinated projects

This section allows CGO to declare a project a 'coordinated project'.

Declaring a coordinated project only enlivens CGO's power to issue a Section 24 Notice in relation to the project, which allows CGO to impose a time period for a decision or process. Refer to section 24 for more information.

CGO is the declaring authority for a coordinated project, as this declaration only enlivens a modest, low-intervention power. Higher tiers of declarations, such as designated projects and State Development Areas, require a declaration by the Minister or the Governor.



A declaration can only be made by placing a Notice in the Government Gazette, providing transparency as soon as the declaration is made (as opposed to weeks or months later). The primary principle of the SDCF must be adhered to in declaring a project.

22 – Designated projects

This section allows the Minister to declare a project a ‘designated project’.

This type of declaration enlivens the ability to issue Section 24 Notices, plus a suite of other functions contained in Part 3, Division 4, including using call in powers, attaching conditions to decisions, and developing infrastructure.

Because this category of projects allows CGO to make use of more powers, including powers that more directly affect the physical environment and third parties, it is proposed that the Minister must make the declaration.

Before making a declaration, the Minister must apply the primary principle, and also satisfy themselves that the project meets a higher threshold of state significance – being of *major* economic, social or environmental importance to the state.

This is similar to the test the Minister for Planning uses to decide whether or not to ‘call in’ an assessment otherwise undertaken by the State Planning Commission under the PDI Act.

23 – Establishment of State development areas

This section sets out the process by which the Governor may declare a ‘State development area’ (abbreviated as ‘SDA’). This declaration may only be made on recommendation by the Minister, and must be declared by the Governor via Gazette Notice.

SDAs are areas that are pre-assessed by CGO and regulators as suitable for significant developments, such as a proposed net-zero manufacturing precinct, an infrastructure corridor, and areas for the delivery of high-value environmental offsets.

These pre-assessments seek to identify and avoid or manage barriers to proposed development, providing greater certainty and de-risking of projects by establishing ‘go zones’. This may include, for example, ensuring the site is fit for purpose and does not feature prohibitive types or quantities of native vegetation.

It can also include ensuring the area is, or is able to be, zoned appropriately, and can accommodate key infrastructure and developments without undue local impacts.

The Minister’s recommendation to establish an SDA must be based on an assessment of whether the establishment of the area is appropriate for the purposes of:

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

A combination of all three might apply.



Importantly, the Minister must consult on the proposed area with prescribed persons such as native title holders, and the public generally, for a minimum of 20 business days before making a recommendation to establish an SDA.

This provides the community and relevant stakeholders appropriate opportunity to provide their views on the proposal, and allows government's decision to balance relevant interests.

Note that another round of consultation is required to be undertaken in relation to the proposed State Development Area Plan for the SDA.

Section 23 includes a subclause that prohibits the establishment of SDAs in environmentally protected areas under State law, such as national parks, the Arkaroola Protection Area, etc.

DIVISION 3 – FUNCTIONS – PROJECTS GENERALLY

24 – CGO may vary or specify time periods relating to certain functions

This clause sets out the mechanism by which CGO can set or modify timeframes on specific processes, functions and decisions.

CGO must take the following steps;

- consult with the decision maker, or 'responsible authority' who is usually responsible for that process, function or decision
- publish a section 24 notice in the Gazette
- provide a copy of this notice to the responsible authority

The CGO cannot set or impose a timeframe of less than 20 business days, and the timeframe commences from the date of the section 24 notice. A section 24 notice only applies to timeframes, and does not affect any other function or decision related to the direction.

The responsible authority must perform the function within the timeframe set. This is consistent with interstate models but is a more collaborative model, and avoids decision timeframes that are unreasonably short and/or do not allow for a sufficiently robust underlying assessment.

It is important to note that a section 24 notice would generally be issued for the purpose of aligning multiple processes and decisions (so they are completed around the same date), or after a process has already taken considerable time.

DIVISION 4 – FUNCTIONS – DECLARED PROJECTS

Division 4 sets out the GCO's powers in relation to designated and other functions, decisions, declared projects, State development areas, and interaction with the Acts listed in Schedule 1.

As with the section 24 notices contained in Division 3, CGO cannot exercise any of these powers without first consulting with the decision maker ('responsible authority') who usually performs the function under that Act. This might be a government agency or statutory authority, local government council, or a Minister responsible for a designated Act.



Subdivision 1 - General

25 – CGO may call in designated function

This allows CGO to ‘call in’, or take over, a function or decision usually performed or made by another statutory authority. As with other mechanisms in this Bill which ensure balance and collaboration, the CGO must first consult with the body (‘original entity’) who usually undertakes that function or decision, and must publish notice in the Gazette.

Once the notice is issued, CGO can perform the function as if it were delegated to CGO by the original entity.

Additional to this information, CGO may request any other information that assists it to make an informed decision. The original entity remains responsible for the implementation and enforcement of CGO’s decision or process.

In line with the primary principle of the Bill, unless CGO expressly seeks Parliamentary approval to exclude or modify a certain legal requirement (see sections 43 and 44 – disallowable notices), it must make the decision or perform the function by applying the existing relevant law.

In other words, the decision or process is performed by someone else, but there is no change to any rules, requirements, protections or processes.

This clause also confirms that calling in a decision or function does not remove any right of review or appeal, if and when such rights exist under the original Act.

Subclause 7(e) allows a Minister, who is making a decision under an Act based on statutory advice or recommendations, to make the decision under that Act on the basis of CGO’s advice or recommendation, but without being strictly bound to that Act’s procedural requirements on how the advice or recommendation was given.

This is required in cases where CGO calls in a function which amounts to the provision of advice or a recommendation to the relevant Minister to make a decision. This Minister is then able to make their decision based on CGO’s advice, even if their Act technically requires them to make the decision based on the advice from a different authority. The Minister must still make their decision within the broader constraints of that legislation.

Finally, to ensure appropriate separation of powers and avoidance of bias, if CGO is the proponent of declared project, CGO cannot use its call-in power. Instead, the Minister responsible for the SDCF Act may instead call in the function.

26 – CGO may impose, amend etc conditions on certain decisions

The purpose of this clause is to allow CGO to impose conditions on designated decisions, and outlines the limitations and process for doing so. This clause applies even if the designated Act to which the decision applies, regulates or limits conditions or the way they are imposed or amended.



Where a decision has not yet been made, CGO can issue a notice to a decision-maker (an agency or a Minister) under a designated Act, requiring the decision-maker to impose any condition/s on their decision as CGO considers necessary.

If CGO seeks to amend the conditions of an existing already in place (ie to change the conditions of an existing decision), they must also consult with, and provide written notice to, the proponent of the declared project for that designated decision. Amending conditions would only be possible in a select number of circumstances as outlined below, which are generally consistent with existing legislation.

Decision-makers must comply with these conditions and cannot impose contradictory or inconsistent conditions. Further, if a Minister is the designated decision maker for a decision, that Minister must be consulted, and the condition would require their approval.

CGO can only amend conditions of an existing decision if the amendment is made under any of the following circumstances;

- the conditions are amended in accordance with the provisions of the designated Act
- the person benefiting from the designated decision consents to the change
- the person benefiting from the designated decision fails to comply with a requirement under an Act or law
- the change only takes effect on renewal or extension of an existing approval
- the amendment provides consistency with conditions imposed under an Act of the Commonwealth
- the amendment is likely to prevent harm to a person or material environment (as defined in the *Environment Protection Act 1993*)

Finally, CGO may at any time revoke conditions it imposed in accordance with the above. This does not allow CGO to revoke any conditions that were independently imposed or amended by another decision-maker without CGO's involvement; it only allows CGO to revoke its 'own' conditions.

27 – CGO may review certain decisions

This provision allows CGO to review a designated decision by another decision-maker, subject to a number of limitations. As only *designated decisions* (as defined in s19) can be reviewed, this means that decisions made by a Minister or the Governor cannot be reviewed.

Limitations include that a decision can only be reviewed if no more than 10 days have passed after the decision was made. This time limit is imposed to preserve legal, investor and community certainty and confidence. CGO must also consult with the original decision maker before being able to use this power, and must notify the decision maker of the review in writing. This notice must include information about the designated decision, and of the original declaration of the declared project in question. If the review is initiated by CGO, then CGO must also notify the project proponent.

If a decision is currently subject to an appeal or to judicial review (or in simple terms: if the decision is already before the courts), then CGO cannot start a review, and if it already started



one, it must discontinue it. If that appeal or judicial review is subsequently dismissed, withdrawn or discontinued, CGO can continue with its review within 10 days of that cessation. However, if a matter is settled by the courts, the decision stands and CGO cannot affect or overturn it.

While the Minister responsible for this Act may extend the review timeline beyond 10 days, a decision maker asked to respond to a CGO request for information must do so within 10 days of receiving the notice. The decision maker must provide a statement of reasons for the decision, and any supporting material that may be relevant to CGO's review.

Once CGO has conducted the review, it can affirm or vary the designated decision, it can set aside the designated decision and substitute its own decision, or it can return the matter to the decision maker for reconsideration or any other direction from CGO. After completing a review, CGO cannot conduct another review of the same decision, and the reviewed decision is considered effective from the effective date of the original designated decision.

Finally, an original decision-maker cannot review their own decision ('internal review') while CGO is reviewing the same decision. This avoids simultaneous conflicting reviews from being undertaken.

Subdivision 2 – Particular functions relating to State development areas

28 – State development areas – functions generally

This provision outlines CGO's statutory functions related to State development areas (SDAs), which apply in addition to other functions. These include general advisory functions, oversight of development, planning and delivering works and essential infrastructure, and other functions assigned to CGO relating to State development areas.

29 – State development areas – planning functions

This section creates the concept of State development area plans, which are the main instrument through which CGO can activate an SDA and facilitate development within it. They are based on the pre-assessments undertaken by and with regulators, as well as extensive (master) planning coordinated by CGO.

The outcomes of these activities are recorded into a legal document – the State development area plan (SDA plan) – which confirms the following intentions for the SDA:

- types of land uses;
- scale of development;
- siting of existing essential infrastructure;
- proposed siting and specifications of required essential infrastructure;
- off-setting contributions under Part 15 Division 2 of the PDI Act (such as open space contributions etc);
- the economic, social and environmental policy objectives for the area, including a statement of how the provisions of the SDA plan will promote them (such as by



providing for certain land uses, essential infrastructure and open space); and how conditions and cost recovery might be used in relation to projects to promote these objectives;

- any other matter as specified by the Minister.

The SDA plan must be subject to 20 business days' consultation with the public and with prescribed persons, for example under the *Native Title Act (Cth) 1993*.

In summary, the SDA Plan sets out where and how projects, infrastructure and other developments in the SDA will be developed, proposed SDA objectives, and how the Minister and CGO intend to use their functions and powers under the Act to achieve them.

Subdivision 3 – Interaction with other Acts

30 – Division of land etc in State development areas

This section ensures the SDA Plan is the primary instrument to deal with land use and land divisions in State development areas by CGO. Specifically, it requires relevant authorities within the meaning of the *Planning, Development and Infrastructure Act 2016* (such as the State Planning Commission, a council or a regional assessment panel) to:

- accept CGO's certification that a proposed division of land in a State development area satisfies the Planning, Development and Infrastructure Act 2016 conditions; and
- not impose any requirements within SDAs inconsistent with the SDA Plan's contents relating Part 15, Division 2 of the PDI Act (e.g. open space contributions or similar, subclause 2).

Removing the scope for different authorities to impose conflicting requirements provides public legal and investment certainty, and will enable CGO to consistently, efficiently and effectively perform its role in planning SDAs.

31 – 33 – CGO able to use various existing assessment pathways

These provisions all serve the same purpose: to allow a designated project or a project in an SDA to be assessed via a particular assessment pathway that already exists in state legislation, but by CGO (or the relevant Minister, on CGO's recommendation) in a manner that CGO or the Minister cannot change in any way.

In other words, if CGO or the Minister chooses to assess a project by activating any of these provisions in the SDCF Bill, they choose to run the relevant process in a 'non-modifiable' way. Specifically, this removes the ability for CGO or the Minister to make a disallowable Gazette notice to modify or exclude the application of any of the legal provisions that govern these assessment pathways – they can only follow the regular process as it currently exists under the relevant legislation.

Enabling CGO to perform an accredited process is considered the most efficient option where CGO is the main assessment authority for key projects in SDAs.



Subdivision 4 – Expedited approval where regulatory requirements satisfied

This subdivision is a key mechanism of the SDCF, as it allows for significant proactive de-risking and expediting of approval processes, but without changing regulatory requirements. It sets out a process to expedite approval of projects which meet the usual regulatory requirements under a relevant Act, and allows for minor variations (conditions) to be imposed on these projects.

34 – Definitions

35 – Statement of regulatory requirements for facilitated projects

Clause 35 sets out a process for CGO to initiate, and direct regulators to undertake, assessment of projects within an SDA proposed by CGO (*‘facilitated projects’*; essentially applications for an ‘example’ project that take the form of applications under the relevant existing Acts).

It sets out the obligations of both CGO and a ‘responsible entity’ (the entity who would usually be responsible for approval under a designation Act).

This clause applies irrespective of whether the facilitated project will eventually be developed by the public or the private sector, and serves to expedite approval processes by undertaking all necessary assessments proactively and upfront.

This process involves CGO working with regulators to proactively assess facilitated projects, by directing a responsible entity to prepare a statement of regulatory requirements (SRR) in relation to a facilitated project.

This would entail regulators working with CGO to proactively assess the application and information CGO puts to them, and record whether the facilitated project as applied for would be approved under the regulators’ relevant legislation, and if so, under which conditions (if relevant).

In simple terms, this process would amount to pre-assessing a project upfront, so that it can be approved more quickly once applied for by a proponent.

Consistent with other powers in this Bill, CGO must consult with the relevant regulator before being able to direct them to prepare an SRR

CGO must consult on the proposed SRR for at least 28 days, including with the Minister responsible for the relevant Act, and any entity CGO considers may be affected by the proposed project. Once an SRR has been published and the facilitation certificate issued, clause 36 provides an expedited approval pathway for such projects.

The 28-day SRR consultation period takes the place of any existing consultation processes that may otherwise apply to the relevant approvals under that Act. Combined with the prior consultation on the creation of the SDA and the SDA Plan, this would be a third consultation of no less than 20 business days (i.e. a cumulative total of no less than 60 business days).



36 – Expedited approvals where regulatory requirements satisfied

Section 36 sets out the expedited approval pathway for projects *for which a facilitation certificate* has been issued.

As relevant regulators will have already completed a full assessment prior to the application(s) being made, this clause provides that CGO or the relevant authority can simply assess the application for compliance with the contents of the SRR proposed by CGO.

Put simply, this amounts to a quick check to confirm whether the application is consistent with the pre-assessed ‘example application’ CGO and regulators developed via section 35.

Regulators must respond to an assessment request within a timeframe set by CGO, which cannot be less than 10 business days.

If relevant regulators confirm that a project is not compliant, the relevant approval cannot be issued, however an applicant can be given the opportunity to amend their application to make it compliant.

An approval issued under this section has the legal status of a decision made “*as if the power to do so was duly delegated*” under the relevant Act, and must be granted via Gazette notice, with a copy provided to the applicant. The relevant authority (‘prescribed authority’) will be CGO unless;

- CGO is the applicant, in which case the Minister responsible for the SDCF Act is the prescribed authority, or
- the Minister administering the SDCF Act was the Minister who prepared the facilitation certificate, in which case this decision will lie with a different Minister designated by the Governor;

This clause also provides that the relevant authority may impose conditions on an approval under this section, particularly in relation to benefit-sharing, providing for rehabilitation of land, and recovery of costs.

While the combined mechanism of clauses 35 and 36 takes the place of the legislated assessment or approval process that would usually apply under a designated Act, it is important to remember that regulators will apply their usual legislation to prepare an SRR.

Subclause 9 allows CGO or the Minister to initiate a disallowable notice process to modify or exempt from a legislative requirement in relation to an approval under section 36.



Subdivision 5 – Other functions

37 – CGO may be authorised to undertake essential infrastructure works

This section allows the Minister to authorise CGO to undertake essential infrastructure works for a designated project or a project in an SDA. The definition of ‘essential infrastructure’ is as applied in the PDI Act. This means that it covers infrastructure, equipment, structures, works and other facilities used in or in connection with designated or declared projects.

Subject to section 18, CGO would also be able to delegate such an authorisation to another authority, such as the Department for Infrastructure and Transport or Renewal SA, if it is determined that they are better placed to deliver the infrastructure (but may not necessarily have the statutory grounds to do so under legislation other than the SDCF Act).

Subclause 1 states that the Minister may only authorise CGO under this section via a Gazette notice, consistent with other significant decision points in the Bill.

Subclause 2 allows the Minister, in authorising CGO, to initiate a modification or exclusion of the application of a provision under state legislation. If they do so, they must have regard to the primary principle, and this would start the section 44 disallowable notice process, which means any changes are made subject to Parliamentary consent.

Section 37 does not give CGO the power to freely build anything on any land. In addition to the scope limitations bound by the definition of essential infrastructure and the application of the primary principle (see section 4), CGO will still need to acquire land access and obtain all relevant approvals in accordance with existing legislation.

38 – Entry onto land etc

This clause provides CGO with powers to enter onto land that are essentially the same as other Government entities’ existing powers to enter onto land for temporary, preparatory and investigatory purposes, for example in the context of developing infrastructure. This provision simply provides such powers to CGO as a newly established entity.

This means CGO (or a person authorised in writing by CGO), can enter onto land, and temporarily occupy land, for a ‘*designated purpose*’ as defined in subclause 8.

Any person authorised by CGO must still adhere to existing land entry principles, such as;

- providing land owners with at least 7 days’ prior notice before entering onto land
- providing land owners with evidence of authorisation to enter onto land
- providing land owners compensation for loss or damage, determined in accordance with the *Land Acquisition Act 1969*.

Penalties apply for unreasonably obstructing or hindering a person authorised to enter onto land.



39 – Compulsory acquisition of land

This clause provides that CGO, subject to consent of the Minister, may compulsorily acquire land or easements where this is reasonably necessary in connection with a State project (such as a critical emergency services or healthcare facility), a designated project (such as a multi-billion dollar green iron plant), or to facilitate essential infrastructure (similar to existing powers of compulsory acquisition for, for example, road or rail).

While this section provides for new grounds for compulsory acquisition, it makes no change whatsoever to the process, rights, protections and entitlements that apply to compulsory acquisition under the *Land Acquisition Act 1969*.

In terms of scope, this provision is similar to compulsory acquisition provisions that exist in the *Harbors and Navigation Act 1993*.

40 – CGO may take over State projects

This provision allows the Minister to authorise CGO to take over responsibility for a State project, including any work in connection with a State project. It also allows the Minister to direct a State agency to transfer to CGO relevant assets, rights or liabilities in relation to the project.

This could be used to transfer a State project to CGO if it has become apparent after its start, that CGO's powers are required for the project's timely and successful delivery.

41 – Revocation of community land classification for land acquired

This clause allows CGO, subject to the process outlined, to revoke the classification of land as 'community land' where it is acquired for a declared project, and allows the relevant council to transfer such land.

CGO must undertake at least 20 business days' public consultation before it can approve the revocation, and must publish a Gazette notice identifying the land.

As this clause applies to declared projects, which by definition must be of state significance, CGO must undertake consultation on the project, land use and development. Without this provision, the *Local Government Act 1999* would require local councils to conduct a second, separate and highly complex consultation process on any proposed disposal of 'community land' under that Act for a project that is not theirs.

In relation to declared projects, this would give rise to potential for duplication, confusion, delay and sub-optimal consultation.



DIVISION 5: OTHER MATTERS

42 – Limitation of judicial review

The Supreme Court has power to review statutory decisions (i.e. judicial review) irrespective of whether the legislation under which the decision is made specifically provides for such a review or appeal.

This clause stipulates that decisions or actions under Part 3 of the SDCF Act can only be subject to a judicial review relating to *jurisdictional error*.

In practice, this is only a minor reduction in scope, as the large majority of matters that can be subject to judicial review relate to jurisdictional error. This category includes a Court reviewing whether a relevant decision-maker had the power to make the decision; applied the relevant legislation correctly; had regard to the correct/required considerations; acted in bad faith or without supporting evidence. All these types of issues would continue be open to judicial review.

Generally, only minor issues that would not affect the decision or outcome of a statutory process either way would be able to be excluded.

To maintain appropriate access to legal protection and recourse, the SDCF Act also deliberately does *not* remove any existing options to commence an appeal or statutory review process against a decision.

43 – Disallowable notices – consultation and publication

Disallowable notices are Gazette notices made by CGO or the Minister which propose a *modification* to, or *exemption* from, an existing legislative requirement in relation to a declared project. Once published, the Minister must table the report before both Houses of Parliament

This clause outlines a mandatory requirement to consult for a period of at least 10 business days on the proposed Notice and its contents. Consultation must include the Minister responsible for the administration of the relevant Act, and any entity that would be affected by the modification or exemption.

44 – Disallowable notices – Parliamentary scrutiny

This sets out the obligations and process for disallowable notices, including timeframes and publication requirements, including the provision of a report that explains the notice (for example, providing details of the project and proposed exemption, outlining why the notice is required, how any exemption would be appropriately overseen, monitored and controlled, etc).

The default process is identical to the existing process that applies to how Government may make regulations, and how Parliament may disallow these.

The provision also allows the Minister to consult with the Legislative Review Committee (LRC) prior to making a disallowable notice, and should the LRC determine that the disallowable notice does not need to be laid before Parliament, the notice can simply remain in effect.



PART 4: MISCELLANEOUS

45 – Limitation on time allowed for appeal or review of decisions

This standardises the time period within which an application for appeal or a review may be lodged, as 15 business days, unless a shorter timeframe is already in place under the relevant Act. In that case, that shorter timeframe continues to apply.

The benefit of this provision is that, if CGO streamlines all statutory decisions to be made on the same date (as is generally intended), then stakeholders – including the community and the proponent – will have certainty about the timeframes for starting an appeal or review, and by extension, have certainty about the date on which, if no appeal or review is lodged all relevant project decisions will stand.

This improves clarity and reduces scope for confusion for all stakeholders, while also improving investor certainty.

46 – Certain applicants to provide reports, information or material

This clause creates a mechanism for CGO to collect any existing reports, information or other material (such as datasets, survey findings etc) from proponents seeking approvals in relation to their coordinated or designated projects, or projects within an SDA. It also sets out the obligations, limitations and compliance requirements of all parties.

It is important to note that this mechanism only entails a requirement to share any existing information assets – it does not create a requirement to produce and provide anything new. Further, the public release of any data or information provided to CGO under this section can only be done so in accordance with the requirements of the regulations.

Confidentiality provisions set out in Clause 48 apply.

The *Hydrogen and Renewable Energy Act 2023* (s 46) and the *Mining Act 1971* (s 15AJ) contain nearly identical provisions.

47 – Provision of information

This provision allows CGO to require a State authority to provide certain information to CGO where this information is required by CGO for the performance of its functions.

The purpose of this provision is to make it clear that information should be shared with CGO when requested, and to avoid inefficiencies from State authorities repeatedly having to determine which information can and cannot be shared with CGO.

Confidentiality provisions set out in Clause 48 apply to this clause as well.

48 – Confidentiality

This clause provides for the confidentiality requirements for data collected under sections 46 or 47, and confirms that providing otherwise confidential information to CGO is permitted, including where it would not otherwise be permitted under another Act.



It sets out the conditions under which information can be disclosed, and further details which are to be prescribed in the regulations, will be consulted on prior to adoption.

Similar provisions, including the exceptions, are relatively common in other state legislation, such as the *Hydrogen and Renewable Energy Act 2023* or the *Water Industry Act 2012*.

49 – Amendment of notices etc

50 – Recovery of costs etc

This clause provides a legal basis for CGO to enter into a cost recovery arrangement with third parties.

This is intended to allow CGO to, for example, construct access roads and other enabling infrastructure that would benefit only a private proponent, and recover the relevant costs from the proponent afterwards. Another example could be the recovery of costs associated with CGO conducting a review of a designated decision by a different authority where a proponent requests this (but where CGO did not consider this necessary).

For legal, proponent and investor certainty purposes, prior agreement by the proponent will be required before any costs can be recovered.

51 – Annual report

This is a standard provision applied to all statutory authorities, requiring them to prepare an annual report for the responsible Minister to lay before Parliament.

52 – Regulations and fee notices

This is a standard clause that allows the Governor to make regulations in relation to the SDCF Bill, and allows the Minister to prescribe fees in relation to the Bill.

These provisions mirror those in, for example the PDI Act, the HRE Act, the *Landscape South Australia Act 2019*, and many others.

The only difference is that subclause 4 allows the Minister to create a fee notice which can enable the waiver, reduction or remission of fees. This provides the Minister with flexibility in situations where the Government has a strategic interest in supporting a small or emerging company's project, and where the application of fees may have a prohibitive effect.

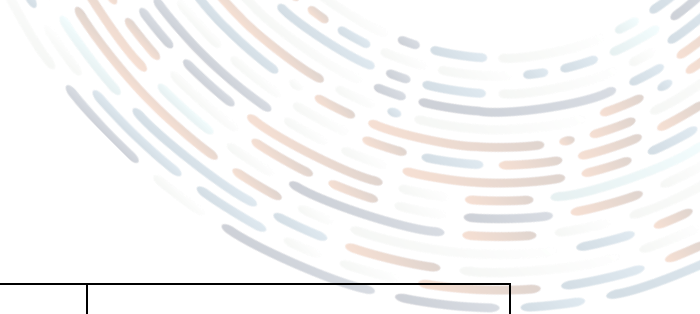
An example may be projects which, while representing a low capital value and/or job figures, would see the development and scaling up of a highly prospective new technology to the State with potential to deliver significant indirect future growth.

SCHEDULE 1: DESIGNATED ACTS

Schedule 1 lists all state legislation to which CGO and the Minister can apply their powers under the SDCF Bill. If an Act is not listed in this Schedule, it cannot be affected by the powers and functions of the SDCF Bill.

These Acts are relevant to the planning and authorisation of project and infrastructure developments and land access arrangements, explained in the table below.

Act	Function of Act	Reason for inclusion
Adelaide Parklands Act	Sets planning requirements, vests land, sets requirements about changes in tenure, land use.	Facilitates environmental projects / parklands enhancement.
Coast Protection Act	Provides for planning of certain coast protection areas. Authorises certain works.	Facilitates environmental projects and preventative/protective works.
Dangerous Substances Act	Authorises dealing with certain dangerous substances as relevant in several key sectors.	Facilitates licensing (support timeliness, add conditions etc).
Development Act	Included for transitional reasons – some key projects are still being assessed under the old Development Act regime.	Likely to be removed in future.
Electricity Act	Authorises certain developments and operations.	Facilitates licensing (support timeliness, add conditions etc).
Environment Protection Act	Authorises certain developments and operations.	Facilitates licensing (support timeliness, add conditions etc).
Essential Services Commission Act	Authorises certain project activities and provision of essential services	Facilitates licensing (support timeliness, add conditions etc) and third party access.
Explosives Act	Authorises dealing with certain dangerous substances relevant in several key sectors.	Facilitates licensing (support timeliness, add conditions etc).
Gas Act	Authorises certain developments and operations.	Facilitates licensing (support timeliness, add conditions etc).
Harbors and Navigation Act	Authorises land access, infrastructure provision, certain developments and operations.	Facilitates efficient operation.
Heritage Places Act	Authorises certain developments and operations.	Support proactive application and timeliness of decisions e.g. exclusion certificates, permits.
Highways Act	Authorises land access and infrastructure development.	Enables timely and coordinated infrastructure provision in SDAs.
Hydrogen and Renewable Energy Act	Authorises land access, infrastructure and other certain developments, and operations.	Facilitates timeliness and coordination of project and infrastructure delivery.



Land Acquisition Act	Authorises compulsory acquisition of land and easements.	
Landscape South Australia Act	Authorises land access, planning regimes and certain works, as well as licencing (water etc).	To facilitate timeliness and coordination of licencing and project/infrastructure delivery.
Local Government Act	Authorises planning, development, and certain land access matters.	To facilitate timeliness and coordination of project and infrastructure delivery.
Mining Act	Authorises land access, infrastructure development, certain developments and operations.	To facilitate timeliness and coordination of project and infrastructure delivery.
Native Vegetation Act	Authorises land clearance as required for certain developments, contributions to NV Fund etc.	To facilitate timeliness and enable CGO to coordinate proactive decision-making.
Offshore Minerals Act	Authorises land access, infrastructure and certain other developments, and operations.	To facilitate timeliness and coordination of project and infrastructure delivery.
Pastoral Land Management & Conservation Act	Authorises land access as required for certain project operations and developments.	To facilitate timeliness and coordination of project delivery.
Petroleum and Geothermal Energy Act	Authorises land access, infrastructure development, developments and operations.	To facilitate timeliness and coordination of project and infrastructure delivery.
Petroleum (Submerged Lands) Act	Authorises land access, infrastructure development, developments and operations.	To facilitate timeliness and coordination of project and infrastructure delivery.
Planning, Development & Infrastructure Act	Authorises developments.	To facilitate timeliness and coordination of project and infrastructure delivery.
Rail Commissioner Act	Authorises land access and infrastructure development.	To enable timely and coordinated infrastructure provision in SDAs.
Roads (Opening and Closing) Act	Contains authorisations required for the development of projects.	To facilitate CGO coordination of decision-making and timely development.
Urban Renewal Act	Creates planning schemes and deals with project authorisations and licenses relevant to projects.	To facilitate CGO to coordinate UR Act processes and ensure timeliness.
Water Industry Act	Contains authorisations for activities relevant to projects.	To facilitate licensing (support timeliness, add conditions etc).
Work Health and Safety Act	Contains authorisations for certain activities relevant to projects (Major Hazard Facilities)	To facilitate proactive application of assessments for the licensing of Major Hazard Facilities.



SCHEDULE 2: DISCLOSURE OF RELEVANT INTERESTS

This Schedule sets out the various disclosure requirements that will be incumbent on members of CGO. Because CGO will exercise a relatively broad range of significant statutory powers, the SDCF Act proposes a more robust and stricter disclosure regime for members of CGO than applies to other statutory office holders.

Clause 1 broadens the scope of relevant interests that require disclosure beyond the usual definition of pecuniary interests. It brings personal interests into scope, as well as any types of interests specified by the Minister.

This means that a range of relevant (but non-pecuniary) interests like memberships of certain clubs, associations or interest groups will require disclosure.

This clause also stipulates that interests held by immediate family, a family company or trust, or an associate of a member of CGO are in-scope.

This is a broader scope than commonly in place, for example under Schedule 1 of the PDI Act, which limits the scope to only financial interests held by a member or their family.

Clause 2 requires disclosure of all interests within 20 days upon appointment, and no less than twice per year after that. The Minister may determine a more frequent basis. This is more frequent than what generally applies, and serves to reduce the risk of interests not being captured (or not in a timely manner) by relevant disclosures.

The general South Australian governance legislation still applies to CGO, such as:

- *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*
- *Ombudsman Act 1972*

Subclause 3 requires the Minister to maintain a register of interests and make it publicly available online.

Other subclauses of Schedule 2 are standard clauses that apply in most disclosure of interest provisions under State legislation.



SCHEDULE 3: RELATED AMENDMENTS TO PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016

This Schedule contains several minor consequential amendments to the PDI Act, designed to make the overall model work efficiently and effectively alongside other legislation.

Clause 1 adds CGO to the PDI Act's definitions.

Clause 2 contains minor consequential amendments that allow CGO to amend 'designated instruments' under the PDI Act to make them consistent with CGO's State Development Area (SDA) Plan and with key projects, developments or works in an SDA.

Designated instruments in the PDI Act are:

- a state planning policy;
- a regional plan;
- the Planning and Design Code; and
- a design standard.

In practice, this provision allows CGO to exercise its planning powers within an SDA as applied by Section 29 – State development areas – Planning functions.

Examples include re-zoning, planning and constructing essential infrastructure, and determining types of development that would qualify as deemed-to-satisfy within the SDA for the purposes of the PDI Act.

Subclause 3 ensures there is always public consultation on the exercise of these planning functions. This would either be done via consultation on the SDA Plan (section 29), or, if the project, development or works were not covered by that Plan, via separate consultation.

Clause 3 allows CGO to transfer a development application from a local council to the State Planning Commission for assessment and approval.

The Minister for Planning already has the same power available to them – therefore, the key change that this provision creates is that use of this power would now also be open to CGO.

The purpose of this clause is to allow CGO to move an assessment and approval process under the PDI Act to the State Planning Commission (i.e. from the council to the state level) where they consider this desirable.

Circumstances where this could be done include, but are not limited to:

- Projects that comprise multiple developments across several council areas – to allow a single, consistent assessment on the basis of cumulative impacts;
- Projects that physically span the boundaries between council areas;
- Projects where the highly complex and/or time-sensitive nature of a development exceed a council-based assessment panels' capacity and/or capability;

- Instances where councils request this course of action.

It is important to note that this power is proposed to be available to CGO for all classes of projects – i.e. not limited to designated projects or state development areas only.

This is similar to the scope the Minister has to make this decision under the PDI Act.

It also reflects that this power is not highly invasive or significant, does not involve CGO directly dealing with the matter itself, and that its use is likely to be appropriate and useful in cases where the higher thresholds of designated projects are not met.

Clause 4 is a consequential amendment that reflects that the Minister administering the SDCF Act would be able to declare a particular project to be an impact assessed development under the PDI Act.

This is a minor procedural clause, required to make the PDI Act consistent with section 31 of the SDCF Act).

Subclauses 5 through to 14 create a slight expansion of the scope of ‘basic infrastructure schemes’ as they exist under the PDI Act, to also include within their scope the most basic of social infrastructure commonly expected for contemporary housing developments of scale. This represents a very minor increase to the scope, brings South Australia’s infrastructure schemes in line with Australia’s other jurisdictions.

Importantly, these provisions improve the time savings the use of schemes can deliver by eliminating the need to still negotiate separate deeds to cover social infrastructure (which would undermine the purpose of using schemes in the first place).



**Government
of South Australia**

Department of the
Premier and Cabinet