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South Australia

Infrastructure SA Bill 2018

A BILL FOR

An Act to promote the provision and management of infrastructure for the benefit of the South Australian community and economy, to establish Infrastructure SA and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Infrastructure SA Act 2018*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

- (1) In this Act, unless the contrary intention appears—

10 *appointed member* of the board means a member appointed by the Governor under section 10;

board means the board of directors established as the governing body of Infrastructure SA under Part 2 Division 2;

director means a person appointed or holding office as a member of the board under Part 2 Division 2;

15 *Infrastructure SA* means the body corporate established under Part 2 Division 1;

major infrastructure project means—

20 (a) a project to provide infrastructure that has a capital investment value of \$50 million or more or, if some other amount (whether greater or smaller) is prescribed by regulation for the purposes of this definition, that other amount;
or

(b) a project, or a project of a class, to provide infrastructure that is determined by the Minister to be a project, or project of a class, requiring oversight or coordination by Infrastructure SA;

private sector includes the not-for-profit sector;

25 *public sector agency* has the same meaning as in the *Public Sector Act 2009*.

- (2) For the purposes of this Act—

capital investment value of a project includes all costs necessary to establish the project (including design, construction and land costs but not including GST).

Part 2—Infrastructure SA

Division 1—Establishment

4—Establishment of Infrastructure SA

- (1) *Infrastructure SA* is established.
- 5 (2) Infrastructure SA—
- (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) is capable of suing and being sued in its corporate name.

5—Objects and functions

- 10 (1) The objects of Infrastructure SA are—
- (a) to promote such efficient, effective and timely coordination, planning, prioritisation, delivery and operation of infrastructure as is necessary for the economic, social or environmental benefit of the State; and
 - (b) to promote the adoption and use of policies, practices, information and analysis to support sound decision-making in relation to infrastructure.
- 15 (2) Infrastructure SA has the following functions to further its objects:
- (a) to provide the Minister with strategies, statements and plans in accordance with Part 3;
 - (b) to review and evaluate proposals for major infrastructure projects by public sector agencies;
 - (c) to assess the risks involved in planning, funding, delivering and managing infrastructure, and the management of those risks;
 - (d) to monitor the delivery of—
 - 25 (i) major infrastructure projects and other infrastructure projects identified in strategies, statements or plans adopted by the Minister under Part 3; and
 - (ii) any other infrastructure project at the request of the Minister;
 - (e) to carry out reviews of—
 - 30 (i) completed major infrastructure projects; and
 - (ii) any other completed infrastructure project at the request of the Minister;
 - (f) to provide advice to the Minister—
 - 35 (i) in respect of infrastructure submissions that may be made by the State and its agencies to the Commonwealth Government and other bodies; and
 - (ii) on appropriate funding and financing models for infrastructure; and

- (iii) on economic or regulatory impediments to—
 - (A) the efficient delivery of particular infrastructure projects or infrastructure projects of a particular class; or
 - (B) the efficient use of infrastructure; and

- 5 (iv) on any other matter relating to infrastructure referred by the Minister;
- (g) to administer this Act;
- (h) to perform any other function conferred on Infrastructure SA under this or any other Act;
- (i) to do anything incidental to any of the preceding functions.

10 **6—Powers**

Infrastructure SA has all the powers of a natural person and, in particular, may—

- (a) enter into any form of contract or arrangement; and
- (b) engage experts and consultants; and
- (c) acquire, hold, deal with or dispose of real or personal property; and
- 15 (d) establish and operate ADI accounts and invest money; and
- (e) do anything necessary or convenient to be done in the exercise of its functions.

7—Statement of expectations

- 20 (1) The Minister must, after consultation with Infrastructure SA, prepare a statement setting out the Minister's expectations in relation to the operations and performance of Infrastructure SA.
- (2) The Minister may, after consultation with Infrastructure SA, review and amend the statement at any time.

8—Independence

25 Except as provided under this or any other Act, Infrastructure SA is not subject to Ministerial direction in the exercise of its functions or powers.

9—Infrastructure SA may publish statements, reports and guidelines

Infrastructure SA may publish statements, reports and guidelines relating to the performance of its functions.

30 **Division 2—Board**

10—Board of Infrastructure SA

- (1) A board of directors is established as the governing body of Infrastructure SA.
- (2) The board is to consist of—
 - (a) 4 members appointed by the Governor on the nomination of the Minister; and
 - 35 (b) the Chief Executives ex officio—
 - (i) of the Department of the Premier and Cabinet;

- (ii) of the Department of Treasury and Finance;
- (iii) of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Planning, Development and Infrastructure Act 2016*.

- 5 (3) The Minister must, when nominating persons for appointment to the board, seek to ensure that, as far as is practicable, the members of the board collectively have qualifications, knowledge, expertise and experience in infrastructure planning, funding, delivery, management and other relevant areas of expertise.
- (4) The Minister may appoint 1 of the appointed members to chair meetings of the board.
- 10 (5) The Minister may appoint another of the appointed members to be the deputy of the director appointed to chair the board and the deputy may perform or exercise the functions and powers of that director in that director's absence.
- (6) On the office of an appointed member of the board becoming vacant, a person may be appointed in accordance with this section to the vacant office.

15 **11—Conditions of membership**

- (1) An appointed member of the board is appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- 20 (2) The Governor may, on the recommendation of the Minister, remove an appointed member of the board from office—
- (a) for breach of, or non-compliance with, a condition of appointment; or
 - (b) for misconduct; or
 - (c) for failure or incapacity to carry out official duties satisfactorily.
- 25 (3) The office of an appointed member of the board becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is convicted of an indictable offence or is sentenced to imprisonment for an
 - 30 (e) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (f) is removed from office under subsection (2).

12—Remuneration

- 35 An appointed member of the board is entitled to remuneration, allowances and expenses determined by the Governor.

13—Meetings etc of board

- (1) A quorum of the board consists of a majority of the members of the board in office for the time being.

- (2) The member of the board appointed to chair meetings will preside at meetings of the board or, in the absence of that member, the member appointed under section 10(5) to be the deputy of that member will preside.
- 5 (3) In the absence of both of the members referred to in subsection (2), another member chosen by those present at the meeting will preside.
- (4) A decision arising at a meeting of the board is a decision of the board if carried by a majority of the votes cast by members at the meeting.
- (5) Each member present at a meeting of the board has 1 vote on any question arising for decision and, if the votes are equal, the chair may exercise a casting vote.
- 10 (6) A conference between members constituting a quorum by telephone, audio visual or other means is a valid meeting of the board if—
- (a) a notice of the conference is given to all members in the manner determined by the board for that purpose; and
- (b) the system of communication allows a participating member to communicate with any other participating member during the conference.
- 15 (7) A resolution of the board—
- (a) of which prior notice was given to members in accordance with procedures determined by the board; and
- (b) in which at least the majority of members of the board expressed their concurrence in writing or by electronic communication,
- 20 will be taken to be a decision of the board made at a meeting of the board.
- (8) The board must cause accurate minutes to be kept of its proceedings.
- (9) Subject to this Act, the board may regulate its own procedures.

14—Validity of acts

- 25 An act or proceeding of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Division 3—Related matters

15—Delegations

- (1) Infrastructure SA may delegate any of its functions or powers.
- 30 (2) A delegation—
- (a) may be made—
- (i) to a particular person or body; or
- (ii) to the person for the time being occupying a particular office or position; and
- 35 (b) may be made subject to conditions or limitations specified in the instrument of delegation; and
- (c) if the instrument of delegation so provides, may be further delegated by the delegate; and

- (d) is revocable at will and does not derogate from the power of the Infrastructure SA to act in any matter.

16—Staff

- (1) The staff of Infrastructure SA may comprise—

- (a) persons employed in the Public Service of the State and assigned to assist Infrastructure SA; and
- (b) persons appointed by Infrastructure SA on terms and conditions determined by Infrastructure SA.

- (2) Infrastructure SA may, by arrangement with the relevant body, make use of the services, facilities or staff of an administrative unit or an instrumentality or agency of the Crown.

17—Honesty and accountability

The appointed members of the board are senior officials for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

18—Accounts and audit

- (1) Infrastructure SA must cause proper accounting records to be kept in relation to the financial affairs of Infrastructure SA, and must have annual statements of account prepared in respect of each financial year.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of Infrastructure SA.

19—Annual report

- (1) Infrastructure SA must, on or before 30 September in each year, deliver to the Minister a report on the work and operations of Infrastructure SA for the preceding financial year.
- (2) The report must contain the audited statements of account of Infrastructure SA for the preceding financial year.
- (3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

Part 3—Infrastructure planning

Division 1—20-year State Infrastructure Strategy

20—Preparation

- (1) Infrastructure SA must prepare a 20-year State Infrastructure Strategy.
- (1a) In preparing the Strategy, Infrastructure SA must—
- (a) consult the public by publishing a notice on its website informing the public of the preparation of the Strategy and inviting submissions on the Strategy within a period (which must be at least 21 days) stated in the notice; and
- (b) publish on its website a summary of the submissions received.

- (2) The Strategy must be prepared and submitted to the Minister within such time as the Minister directs.
- (3) Infrastructure SA must review the Strategy at least once in every 5 years (and at such other times as the Minister directs) and, following any such review, submit a revised Strategy to the Minister.
- (4) Infrastructure SA must, in preparing the 20-year State Infrastructure Strategy or a revised Strategy, comply with the principles of consultation published by Infrastructure SA for the purposes of this subsection.

21—20-year State Infrastructure Strategy

- (1) The 20-year State Infrastructure Strategy must—
- (a) be consistent with Infrastructure SA's objects; and
 - (b) assess the State's existing infrastructure; and
 - (c) consider relevant current State Government strategies; and
 - (d) consider relevant information provided by the public, private and not-for-profit sectors; and
 - (e) consider trends in infrastructure provision; and
 - (f) assess the needs, strategic goals and priorities for infrastructure in the State for the next 20 years.
- (2) The Strategy may include—
- (a) a statement of social, economic and environmental objectives with respect to infrastructure in the State; and
 - (b) an assessment of the options relating to planning, funding, delivering and managing infrastructure in the State to address the State's needs, strategic goals and priorities for infrastructure for the next 20 years, including—
 - (i) options involving infrastructure projects; and
 - (ii) policies and other reforms (such as the management of infrastructure demand or structural reforms); and
 - (c) the identification of action that would best address the State's needs, strategic goals and priorities for infrastructure for the next 20 years; and
 - (d) such recommendations as Infrastructure SA thinks fit.

22—Adoption of 20-year State Infrastructure Strategy

- (1) The Minister must consider the 20-year State Infrastructure Strategy submitted by Infrastructure SA and adopt the Strategy, with or without amendments, or refer it back to Infrastructure SA for further consideration.
- (2) The Minister must—
- (a) notify Infrastructure SA of the Minister's decision; and
 - (b) make the adopted Strategy publicly available within 14 days of its adoption by ensuring that it is published on Infrastructure SA's website.

- (3) If the Minister makes an amendment to the Strategy before it is adopted by the Minister, Infrastructure SA may advise the Minister that it does not agree with the amendment and make that advice available to the public.

Division 2—Statement of Capital Intentions

23—Preparation

- (1) Infrastructure SA must prepare a Statement of Capital Intentions identifying the specific major infrastructure projects to be undertaken in the State as a priority within the next 5 years.
- (2) The Statement must be prepared and submitted to the Minister within such time as the Minister directs.
- (3) Infrastructure SA must review the Statement at least once in every year (and at such other times as the Minister directs) and, following any such review, submit a revised Statement to the Minister.

24—Statement of Capital Intentions

- (1) A Statement of Capital Intentions may include the following in relation to the identified priority major infrastructure projects:
- (a) the reasons for selecting the major infrastructure projects as priority projects;
 - (b) the estimated cost of the priority projects;
 - (c) the recommended funding and delivery arrangements for the priority projects;
 - (d) the estimated timeframe for the delivery of the priority projects.
- (2) In preparing the Statement, Infrastructure SA must have regard to the following:
- (a) the 20-year State Infrastructure Strategy adopted by the Minister;
 - (b) any proposal for a priority project provided to Infrastructure SA by a public sector agency.

25—Adoption of Statement of Capital Intentions

- (1) The Minister must consider a Statement of Capital Intentions submitted by Infrastructure SA and adopt the Statement, with or without amendments, or refer it back to Infrastructure SA for further consideration.
- (2) The Minister—
- (a) must notify Infrastructure SA of the Minister's decision; and
 - (b) must make the adopted Statement publicly available within 14 days of its adoption by ensuring that it is published on Infrastructure SA's website.
- (3) If the Minister makes an amendment to the Statement before it is adopted by the Minister, Infrastructure SA may advise the Minister that it does not agree with the amendment and make that advice available to the public.

Division 3—Preparation of additional infrastructure strategies, statements or plans

26—Preparation

- 5 (1) In addition to the preparation of the 20-year State Infrastructure Strategy and the Statement of Capital Intentions, Infrastructure SA—
- (a) may, from time to time, on its own initiative; and
 - (b) must, on the request of the Minister,
- prepare other strategies, statements or plans relating to infrastructure in the State.
- 10 (2) A strategy, statement or plan that has been requested by the Minister must be prepared and submitted to the Minister within such time as the Minister directs.

27—Adoption

- 15 (1) The Minister must consider a strategy, statement or plan submitted by Infrastructure SA under this Division and adopt it, with or without amendments, or refer it back to Infrastructure SA for further consideration.
- (2) The Minister—
- (a) must notify Infrastructure SA of the Minister's decision; and
 - (b) may make the adopted strategy, statement or plan publicly available.
- 20 (3) If the Minister makes an amendment to any strategy, statement or plan before it is adopted by the Minister, Infrastructure SA may advise the Minister that it does not agree with the amendment and make that advice available to the public.

28—Publication of additional infrastructure strategies and plans

Infrastructure SA may publish a strategy, statement or plan prepared on its own initiative under this Division on its website.

Division 4—Collection and use of information

29—Power to require information

- 25 (1) Infrastructure SA may, by written notice served personally or by post, require a person to provide Infrastructure SA with such information and material as may be reasonably required for the purposes of assisting Infrastructure SA in the performance of its functions under this Act.
- 30 (2) A person required to provide information or material under subsection (1) must—
- (a) provide the information and material within the time specified in the notice (which must be reasonable); and
 - (b) provide the information and material in the manner and form specified in the notice (which may, for example, include the provision of a business case).

35 Maximum penalty: \$20 000.

- (3) A person cannot be compelled to give information under this section if the information might tend to incriminate the person of an offence or is privileged on the ground of legal professional privilege.

30—Obligation to preserve confidentiality

- 5 (1) Information gained under this Part that—
- (a) could affect the competitive position of a person; or
 - (b) is commercially sensitive for some other reason,
- is, for the purposes of this Act, confidential information and a person performing a function under this Act is guilty of an offence if the person discloses such information otherwise than as authorised under this section.
- 10 Maximum penalty: \$20 000 or imprisonment for 2 years.
- (2) Confidential information may be disclosed if—
- (a) the disclosure is made to another who is also performing a function under this Act; or
 - 15 (b) the disclosure is made with the consent of the person who gave the information or to whom the information relates; or
 - (c) the disclosure is authorised or required under any other Act or law; or
 - (d) the disclosure is authorised or required by a court or tribunal constituted by law; or
 - 20 (e) the disclosure is authorised by regulation.
- (3) If a person, when giving information to Infrastructure SA in response to a requirement of Infrastructure SA under this Part, claims that the information is confidential information, Infrastructure SA must, before disclosing the information otherwise than as referred to in subsection (2), give the person written notice of the proposed disclosure and the reasons for the disclosure.
- 25 (4) A person performing a function under this Act must not use confidential information for the purpose of securing a private benefit for themselves or for some other person.
- Maximum penalty: \$20 000 or imprisonment for 2 years.
- (5) Information classified by Infrastructure SA as being confidential under subsection (1) is not liable to disclosure under the *Freedom of Information Act 1991*.
- 30

31—Statutory declarations

- Infrastructure SA may require a person who is required by or under this Act to give information to Infrastructure SA to verify the information to be given by statutory declaration and, in that event, the person will not be taken to have given the information as required unless it has been verified in accordance with the requirements of Infrastructure SA.
- 35

Part 4—Miscellaneous

31A—General requirements in preparing a strategy, statement or plan

In preparing a strategy, statement or plan under this Act, Infrastructure SA must use a method of cost benefit analysis that it has approved and published on its website.

5 32—Service

(1) A notice or other document required or authorised to be given to or served on a person under this Act may be given or served—

- (a) by delivering it personally to the person or an agent of the person; or
- 10 (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.

15 (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given to or served on a person may be given to or served on the person in accordance with the *Corporations Act 2001* of the Commonwealth (if applicable to the person).

33—Regulations

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

20 (2) Without limiting subsection (1), the regulations may—

- (a) prescribe, or provide for the calculation of, fees to be paid in respect of any matter under this Act and the recovery, refund, waiver or reduction of such fees; and
- (b) prescribe penalties not exceeding \$5 000 for contravention of a regulation.

25 (3) The regulations may—

- (a) be of general application or limited in application according to the persons, areas, times or circumstances to which it is expressed to apply; and
 - (b) provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister or Infrastructure SA.
- 30