

Impact Assessment Agency of Canada

Proposed Amendments to the *Impact Assessment Act*

TIMELY. EFFICIENT. RIGHT FOR TODAY.

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NEED FOR CHANGE

In October 2023, the Supreme Court of Canada issued a decision that the *Impact Assessment Act* (IAA) was partially unconstitutional and must focus on areas of federal jurisdiction. The decision underscores the need for federal and provincial governments to work together on impact assessment in the spirit of cooperative federalism. The Government of Canada committed to introduce meaningful and targeted amendments to the IAA to respond to the decision, ensure the IAA is constitutionally sound, and restore regulatory certainty.

AMENDMENT HIGHLIGHTS

- Decision-making provisions, namely the designation decision, the screening decision, and the final decision at the end of the assessment, would now be clearly based on preventing or mitigating adverse effects in areas of federal constitutional responsibility
- Definition of “effects within federal jurisdiction” would now clearly correspond to areas of federal jurisdiction under the Constitution
- Enhanced opportunities for efficiency and reliance on, and cooperation with, other jurisdictions would be introduced
- Transitional provisions would ensure continuity for proponents who chose to advance their projects during the interim period

BEST PRACTICES REMAIN

- Planning, transparency, consideration of environmental, social, health and economic effects, assessments that are scoped and tailored to the project, and legislated timelines, along with regional and strategic assessments
- Collaboration with jurisdictions, from joint assessments by panels to substituting assessments, would remain as enhanced flexibility to cooperate is introduced via amendments
- Continued meaningful engagement with Indigenous Peoples in the assessment process, and respect for the *United Nations Declaration on the Rights of Indigenous Peoples*

IMPACT ASSESSMENTS: RIGHT FOR TODAY

- Focus on understanding effects of major projects and preventing and mitigating significant adverse effects within federal jurisdiction
- Are efficient, collaborative, and transparent
- Are timely and predictable
- Demonstrate commitment to the *United Nations Declaration on the Rights of Indigenous Peoples*
- Protect Indigenous rights and incorporate Indigenous Knowledge
- Assess environmental, health, social and economic impacts to promote sustainable development
- Prioritize meaningful engagement
- Are part of a broader framework to support clean growth objectives while protecting the environment

This overview is written using simplified language to help understand the amendments. It is not designed to replace formal documentation. In the event of any inconsistency between this content and the tabled amendments and official Supreme Court of Canada opinion, the latter two documents prevail.



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PROPOSED AMENDMENTS TO THE *IMPACT ASSESSMENT ACT*

	CURRENT	COURT'S DIRECTION	PROPOSED CHANGE
PROJECT DESIGNATION (S. 9, S. 109(b))	Designated projects are subject to the IAA either by: 1. Inclusion on the Project List (<i>Physical Activities Regulations</i>); or 2. Discretionary designation by Minister if there are potential adverse federal effects OR public concerns about effects. Intended for exceptional circumstances only.	Project designation must be based on the potential for adverse federal effects.	1. The Project List remains in effect, but regulation-making provisions ensure only projects with potential non-negligible adverse effects in federal jurisdiction will be included ¹ . 2. The Minister cannot designate unless there is potential for non-negligible adverse federal effects. If so, other factors can be considered in whether designation is warranted: <ul style="list-style-type: none"> other existing federal or provincial processes that could address the potential adverse federal effects impacts on Indigenous rights, etc.
SCREENING DECISION (S. 16)	The Agency decides whether an impact assessment is required based on a list of equally weighted factors: <ul style="list-style-type: none"> potential for adverse federal effects information provided by proponents, Indigenous groups and the public in the planning stage 	Potential for adverse federal effects is a precondition, with consideration of other factors informing whether to proceed with a full impact assessment.	The Agency cannot require an impact assessment unless it is satisfied that the carrying out of the designated project may cause non-negligible adverse federal effects. If so, other factors can be considered to determine whether an assessment is warranted, e.g.: <ul style="list-style-type: none"> other existing federal or provincial processes that could address the potential adverse federal effects impacts on Indigenous rights, etc.
	The timing of the screening decision can only occur after the Detailed Project Description is complete.		The timing of the screening decision can happen after the proponent has responded to the Summary of Issues; a Detailed Project Description is requested only if more information is needed for a decision.
PUBLIC INTEREST DECISION (S. 60-63)	Minister or Governor in Council must decide whether adverse effects within federal jurisdiction are in the public interest. The decision requires consideration of numerous equally weighted factors that are outside federal jurisdiction. Time limit extensions for the Governor in Council to issue a decision statement can be made multiple times for any reason.	The final decision, including conditions or a permanent prohibition, must be based on significant adverse federal effects. Other non-federal factors cannot be used to exacerbate the federal effects but may inform the positive side of the ledger in determining whether to allow effects. Governor in Council time limit extensions must not allow for indefinite prohibitions.	Decision-making is clearly focused on prevention of adverse effects in federal jurisdiction. The Minister or Governor in Council must first determine whether there are likely significant adverse federal effects, and the extent to which those effects are significant after taking into account mitigation measures. Then they determine whether the effects are justified considering, e.g.: impacts on Indigenous rights and positive and negative effects on Indigenous Peoples; the positive contribution of the project to sustainability, including economic benefits; and the contribution of the project to meeting Canada's climate objectives. Time limit extension by the Governor in Council can be done once for a definite period, with reasons posted on the Canadian Impact Assessment Registry.
DEFINITION OF FEDERAL EFFECTS (S. 2)	"Effects within federal jurisdiction" includes any change to components of the environment, including any transboundary change to the environment, and any change to the conditions of Indigenous Peoples.	Effects must be linked clearly to federal matters under the constitution, including only those transboundary effects where federal jurisdiction has been established. Appropriate thresholds must apply to ensure prohibitions do not apply to trivial effects or positive changes.	"Adverse effects within federal jurisdiction" include "non-negligible adverse changes" to federal aspects: <ul style="list-style-type: none"> for provincial activities (mines, provincial roads, electricity), this includes fish and fish habitat, aquatic species at risk, migratory birds, transboundary water and marine pollution, and impacts on Indigenous Peoples for federal activities (interprovincial, nuclear, certain ports, rail), effects include broader environmental and socio-economic effects
COOPERATIVE FEDERALISM (S. 31-35, S. 43.1)	Substitution: The Minister can substitute the whole of a process to another jurisdiction, save the final decision, when all requirements of the IAA are met by that jurisdiction's process. Assessment by Integrated Panels: Lack of clarity regarding mechanisms for other jurisdictions to participate in the integrated assessment of nuclear or pipeline projects.	The federal and provincial governments have a role in project impact assessments, underscoring the importance of exercising respective powers in the spirit of cooperative federalism. While promoting "one project, one assessment," the current substitution provisions practically ensure that the "one assessment" will be federal.	Substitution: The Minister can substitute a process, in whole or in part, to another jurisdiction when requirements would be met <u>between the jurisdictions</u> , allowing for a harmonized process for the best placed jurisdiction to undertake aspects of the assessment. Final decision-making remains with each jurisdiction. Assessment by Integrated Panels: Clarity that jurisdictions may participate in integrated review panels to assess nuclear or pipeline projects.

¹ The public consultation process to review and amend the Project List (*Physical Activities Regulations*) will continue once legislative amendments are in force.