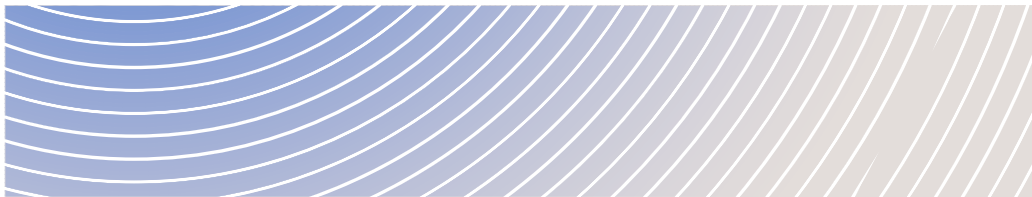


# Compliance Promotion and Enforcement Policy



FOR DESIGNATED PROJECTS SUBJECT TO THE *IMPACT  
ASSESSMENT ACT*

November 2020



Impact Assessment  
Agency of Canada

Agence d'évaluation  
d'impact du Canada

Canada



# Document information

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## Notice

This policy is not a substitute for the *Impact Assessment Act* (IAA) or its regulations. In the event of an inconsistency between this document and the IAA and its regulations, the IAA and its regulations would prevail.

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## Updates

This document may be reviewed and updated periodically. To ensure that you have the most up-to-date version, please consult the [Compliance and Enforcement](#) page of the Impact Assessment Agency's website.

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# Introduction

On August 28, 2019, the *Impact Assessment Act* (the IAA) came into force. The IAA created the Impact Assessment Agency of Canada (the Agency), making it the single agency responsible for the management of federal impact assessments in Canada.

The Agency is a federal body that is accountable to the Minister of Environment and Climate Change (the Minister) and serves as the centre of expertise for federal impact assessment. The IAA and its regulations establish the legislative basis for federal impact assessments. The mandate of the Agency is to conduct or administer impact assessments and administer any other requirements and procedures established by this Act and the regulations, including promoting, monitoring and facilitating compliance with the IAA.

The IAA repealed the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). However, environmental assessments that commenced under CEAA 2012 will continue under that legislation and will continue to be subject to enforcement provisions of CEAA 2012 until the Minister issues the Decision Statement. All decision statements issued under CEAA 2012 are enforced under the IAA.

Any new projects submitted to the Agency since the coming into force of the IAA will go through the impact assessment process and are subject to the enforcement program, policies and requirements of the IAA.

Proponents of designated projects must meet requirements set out in the IAA or CEAA 2012, and any Decision Statement issued by the Minister. Compliance with CEAA 2012, the IAA, its regulations, and decision statements is mandatory.

Should you require further information on the administration or procedures established by this Act, please send an email to [iaac.compliance-conformite.aeic@canada.ca](mailto:iaac.compliance-conformite.aeic@canada.ca).

# Purpose

The purpose of this policy is to describe the Agency's approach to compliance with, and enforcement of, the IAA. This policy is intended to promote a consistent and transparent approach to compliance with, and enforcement of the IAA.

Note that this policy applies solely to the Agency and the Agency only enforces requirements with respect to environmental or impact assessments of designated projects for which it is responsible.

The terms "compliance" and "enforcement" are important for understanding the approach being taken by the Agency.

**"Compliance"** means the state of conformity with the IAA. The Agency's role in ensuring compliance with the IAA is through two types of activities: promotion and enforcement. Measures to promote compliance include offering education and training opportunities, doing outreach, providing information, and consulting and engaging stakeholders and proponents whose designated projects are subject to the IAA.



**“Enforcement”** means the verification of compliance with the IAA, to compel compliance or respond to alleged or potential contraventions. Enforcement measures include inspections, investigations and enforcement actions, such as notice of non-compliance, orders, injunctions, and prosecutions.

## The principles and expectations that guide compliance and enforcement

The following general principles govern the Agency’s application of the IAA with respect to compliance promotion and enforcement:

- The Agency fosters compliance by communicating the IAA requirements in a clear, transparent manner.
- The Agency fully appreciates the relationship that Indigenous peoples have with the land and strongly values Indigenous knowledge gained since time immemorial. The Agency welcomes the opportunity to learn from Indigenous peoples and recognizes the potential for this knowledge to be critical for the compliance, promotion and enforcement of the IAA.
- The Agency is transparent about compliance and enforcement and makes information related to its compliance and enforcement activities available to the public.
- The Agency applies the IAA in a manner that is fair, predictable and consistent.
- The Agency undertakes compliance promotion and enforcement activities to prevent adverse effects.
- The Agency examines suspected contraventions of the IAA of which it has knowledge and takes appropriate action consistent with this Compliance and Enforcement Policy.
- The Agency encourages the reporting of suspected contraventions of the IAA via email at [iaac.compliance-conformite.aeic@canada.ca](mailto:iaac.compliance-conformite.aeic@canada.ca).

The following are the Agency’s expectations of proponents with respect to complying with the IAA. Proponents are expected to:

- comply with the obligations and the prohibitions of the IAA;
- provide input on potential conditions for decision statements when published for public comment;
- seek clarification when unsure about the IAA requirements;
- monitor their own compliance with all environmental, health, social and economic requirements that apply to their designated projects;
- ensure that the proponent’s actions in meeting conditions in the Decision Statement are guided by best available information and knowledge, including community and Indigenous knowledge and have applied the best available economically and technically feasible technologies; and
- correct and report any non-compliance upon discovery.



# Fundamentals of the IAA in relation to compliance and enforcement

The IAA and its regulations establish the legislative basis for federal impact assessments. Impact assessment is a planning and decision-making tool that is intended to:

- minimize or avoid adverse environmental, health, social and economic effects before they occur; and
- incorporate environmental, health, social and economic considerations into decision-making.

For the purpose of enforcement of the IAA, the President of the Agency has the power to designate persons or a class of persons under subsection 120 (1) of the IAA. Those designated persons are referred to as **enforcement officers** and **analysts**. Subsequently, an enforcement officer with the support of an analyst, may be required to enforce the IAA and its regulations for designated projects.

A Decision Statement issued by the Minister under CEAA 2012 is deemed to be a Decision Statement issued under the IAA.

A Decision Statement issued in relation to a designated project that includes activities that are regulated under the *Canadian Energy Regulator Act*, *Nuclear Safety and Control Act*, *Canada Oil and Gas Operations Act*, *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act* or *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act* may be considered to be a part of the certificate, order, permit, license, authorization issued, the leave or exemption granted or the direction or approval given under the applicable Act in relation to the designated project. When the conditions of a Decision Statement, or the Decision Statement itself, are adopted into a license, certificate, order, authorization, leave, exemption, direction or approval, the administration and enforcement provisions of the IAA no longer apply.

Enforcement officers base their enforcement actions on the requirements of the IAA, categorized as obligations and prohibitions. Obligations are actions that a proponent of a designated project must undertake and prohibitions are actions that a proponent of a designated project must not undertake. Obligations and prohibitions are in place from before an impact assessment commences, through all phases of an impact assessment (IA), to the end of project decommissioning. The role of the compliance promotion and enforcement unit in relation to the described activities is undertaken by Agency officials.

The IA process includes five distinct phases, each of which includes considerations for how the proponent must comply with the IAA. The phases are defined as follows:

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## Planning phase

The *Physical Activities Regulations* under the IAA identify the physical activities that constitute designated projects that may require an impact assessment and are subject to the IAA. Proponents of a designated project must provide the Agency with an initial project description that includes the information prescribed



by the *Information and Management of Time Limits Regulations*. After a review of the Initial Project Description, the Agency will issue a Summary of Issues to the proponent, which includes the information that is incomplete or does not contain sufficient detail, which should be addressed in the Detailed Project Description. Once a Detailed Project Description is accepted, the Agency will then determine whether or not an impact assessment is required.

The Minister may, on request or their own initiative, by order, designate a physical activity that is not prescribed by the *Physical Activities Regulations*, if, in their opinion, the carrying out of that physical activity may cause:

- adverse effects within federal jurisdiction or adverse direct or incidental effects, as defined by the IAA, and/or
- public concerns related to those effects warrant the designation.

The proponent must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause an effect as defined in subsection 7(1) of the IAA, unless the Agency has decided that an impact assessment of the designated project is not required.

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## Impact Statement phase

At the completion of the Planning phase, the proponent is provided with clear requirements for the information and studies required for an Impact Statement, through the issuance of the Tailored Impact Statement Guidelines. Sound science and Indigenous knowledge inform the development of the Impact Statement.

Should the Agency determine during the conduct of the impact assessment that existing information with respect to the designated project is insufficient in order for the Agency to advise the Minister on the project's positive and negative environmental, health, social and economic effects, the Agency may request information from the proponent during the Impact Statement phase, to address any deficiencies in relation to the information or studies outlined in the Tailored Impact Statement Guidelines. The Agency may require the proponent to collect information and/or conduct a study to assess the change.

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## Impact Assessment phase

The assessment considers potential environmental, health, social and economic impacts, including benefits of proposed projects. Potential impacts on Aboriginal treaty rights are also assessed and consultation activities are undertaken. The Agency or review panel uses the information provided in the Impact Statement to develop an impact assessment report.



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## Decision-making phase

Public interest is the decision that is needed at the end of the process. The impact assessment report and Crown consultation outcomes inform the Minister or Governor in Council decision on whether a project's adverse impacts are in the public interest. If yes, the Minister must establish conditions for the proponent. Decision statements set out the rationale for the decision, providing transparency and accountability.

If the proponent comes forward with a change in the design, construction or operation plans at any phase in the process, that would alter the potential effects of the project and there is insufficient information for the Agency to conduct the impact assessment or prepare the impact assessment report, the Agency may require the proponent to collect information or conduct a study to assess the change.

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## Post Decision phase - After completion of the impact assessment

After taking into account the impact assessment report of a designated project that is submitted to the Minister, the Minister must determine if the adverse effects within federal jurisdiction, and the adverse direct or incidental effects, are in the public interest. If the matter is referred to the Governor in Council under paragraph 60(1)(b) or section 61, the Governor in Council must determine if the adverse effects within federal jurisdiction, and the adverse direct or incidental effects, are in the public interest. If it is determined that the effects of a designated project are in the public interest, the Minister issues a Decision Statement. Decision statements contain the public interest decision made by either the Minister or the Governor in Council, reasons for the decision, an expiry date for the Decision Statement in the event the proponent does not substantially begin the project in a certain time period, and enforceable conditions with which the proponent must comply. Enforceable conditions include mitigation measures, as well as a follow-up program to verify the accuracy of the impact assessment and determine the effectiveness of the mitigation measures.

The proponent must comply with the conditions of the Decision Statement issued by the Minister. Compliance with those conditions is a principal requirement of the IAA towards which most of the Agency's compliance promotion and enforcement efforts are directed.

Every person or entity in a place that is being inspected by an enforcement officer or analyst must give all reasonable assistance to an enforcement officer or analyst to carry out the inspection and to exercise their powers or perform their duties and functions. No person, including the proponent, may obstruct or hinder an enforcement officer or analyst from exercising their powers or performing their duties and functions under the IAA.

Any person subject to an order issued under subsection 127(1) of the IAA must comply with the order. For example, section 127 allows an enforcement officer to take any measure that is necessary in order to comply with this Act or to mitigate the effects of non-compliance.



No person or entity, may make a false or misleading statement, or provide false or misleading information in connection with any matter under the IAA to any person who is exercising their powers or performing their duties and functions under the IAA.

## How the Agency promotes compliance with the IAA

The Agency raises awareness of the IAA requirements by offering education and training opportunities, doing outreach, and providing information. The goal of these activities is to promote compliance, to deter future non-compliance and increase awareness of the IAA requirements.

Accordingly, the Agency undertakes activities such as:

- holding information sessions on the IAA, its provisions and regulations;
- issuing publications, including technical guides for proponents and impact assessment practitioners to assist in conducting impact assessments that meet the IAA requirements;
- participating in seminars and conferences to provide information on the IAA;
- communicating with proponents throughout the impact assessment process to provide information that will support their compliance with the IAA; and
- providing proponents with an opportunity to provide comments on potential conditions to be recommended to the Minister for incorporation in a Decision Statement.

Compliance promotion is also a part of the Agency's day-to-day business. This includes sharing information about the IAA during meetings with proponents, federal departments and agencies, provinces, territories, Indigenous governments and Indigenous peoples, industry, environmental groups and others.

While the Agency engages with proponents of designated projects subject to the IAA, the responsibility for compliance rests with proponents.

Promotion of compliance with the IAA is carried out by Agency employees. A large component of compliance promotion is undertaken by impact assessment experts in regional offices and at headquarters.

Enforcement officers and analysts, due to the nature of their responsibilities for verifying compliance with the IAA and investigating suspected contraventions, limit their compliance promotion activities to:

- directing proponents and the public to the Agency website which has various sources of information about the IAA; and
- providing copies of the IAA, its accompanying regulations, decision statements and this policy.



# How the Agency verifies compliance and detects alleged contraventions

Inspections are used by enforcement officers and analysts to verify compliance and/or prevent non-compliance. An inspection can be on-site or off-site.

Enforcement officers and Analysts carry out inspections:

- in accordance with the Agency's annual inspection plan;
- as required when information is submitted to the Agency by proponents in accordance with conditions in a Decision Statement;
- on the basis of information received from the public, Indigenous groups, federal entities and/or provincial entities about a designated project; or
- on the basis of their own information-gathering.

On-site inspections are conducted at the place where the designated project is being carried out, or where a record or anything relating to the designated project is located, such as the office or other premises of the proponent or of a third party. These on-site inspections can be planned and announced or unannounced. Alternatively, off-site inspections are conducted from the office of an enforcement officer and analyst and include but are not limited to, reviewing reports, implementation schedules and plans submitted by a proponent.

## Coordination with other government authorities

Decision statements for designated projects may contain conditions that are similar or identical to those set out in an authorization, license or other approval issued by another federal, provincial or territorial authorities. At the Agency's discretion, it may coordinate inspections with other federal, provincial or territorial authorities.

The compliance verification and enforcement of any conditions that are identified in a Decision Statement as being part of a licence or certificate issued by a lifecycle regulator will be undertaken by the lifecycle regulator.



# The responsibilities of enforcement officers

Enforcement officers are responsible for enforcing the IAA requirements. They are “designated persons” or “classes of persons” under section 120 of the IAA. Enforcement officers are responsible for:

- carrying out inspections in relation to designated projects to verify compliance with the IAA, accompanying regulations and decision statements;
- taking measures during an inspection to verify compliance or prevent non-compliance, such as directing or prohibiting actions described in section 122 of the IAA;
- issuing notices of non-compliance to proponents;
- issuing orders under section 127 and directing corrective measures where there is an alleged contravention of the IAA;
- investigating suspected contraventions; and
- undertaking measures to compel compliance through court action, such as injunctions and prosecution.

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## Powers of enforcement officers

Enforcement officers are responsible for enforcing IAA requirements. They are “designated persons” or “classes of persons” under section 120 for the purposes of the administration and enforcement of the IAA.

In the course of an on-site inspection, an enforcement officer may use their inspection powers pursuant to subsection 122(2) of the IAA to:

- examine anything in the place;
- use any means of communication in the place or cause it to be used;
- use any computer system in the place, or cause it to be used, to examine data contained in or available to it;
- prepare a document, or cause one to be prepared, based on the data;
- use any copying equipment in the place or cause it to be used;
- remove anything from the place for examination or copying;
- take photographs and make recordings or sketches;
- direct the owner of person in charge of the place or a person at the place to establish their identity to the enforcement officer’s satisfaction or to stop or start an activity;
- direct the owner or a person having possession, care or control of anything in the place not to move it, or to restrict its movement, for as long as, in the enforcement officer’s opinion, is necessary;

- direct any person to put any machinery, vehicle or equipment in the place into operation or to cease operating it; and
- prohibit or limit access to all or part of the place.

An enforcement officer may be accompanied by any other person that they believe is necessary to help them exercise their powers and perform their duties and functions.

Enforcement officers may also, for the purpose of verifying compliance or preventing non-compliance with the IAA, including an injunction ordered under section 140, require any person to produce at a place specified by the enforcement officer, within any reasonable time and in the manner specified, any books, records, electronic data or other documents that the enforcement officer believes on reasonable ground contain any information relevant to the administration of the IAA.

An investigation occurs where an enforcement officer finds an alleged contravention and gathers evidence to confirm whether or not there is a contravention. If, during an inspection, an IAA enforcement officer discovers an alleged contravention, they may shift to an investigation and must so inform the proponent or the person in charge of the site where the inspection is being carried out.

## The responsibilities of analysts

Analysts are responsible for:

- supporting the enforcement officer in carrying out inspections in relation to designated projects to ensure compliance with the IAA and decision statements;
- reviewing and analyzing reports, plans and schedules to verify compliance with decision statements;
- collaboratively advising and supporting the enforcement officers in investigating suspected contraventions and making determinations on appropriate enforcement actions; and
- taking measures to support the enforcement officer in the verification of compliance by exercising the powers referred to in paragraphs 122(2) (a) to (g) of the IAA.

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## Powers of analysts

An analyst may also be responsible for enforcing IAA requirements, should they be “designated persons” or “classes of persons” under section 120 for the purposes of the administration and enforcement of the IAA.

In the course of an on-site inspection, an analyst who is accompanied by an enforcement officer may use their inspection powers pursuant to subsection 122(2) of the IAA to:

- examine anything in the place;
- use any means of communication in the place or cause it to be used;

- use any computer system in the place, or cause it to be used, to examine data contained in or available to it;
- prepare a document, or cause one to be prepared, based on the data;
- use any copying equipment in the place or cause it to be used;
- remove anything from the place for examination or copying; and
- take photographs and make recordings or sketches.

## How enforcement officers respond to alleged contraventions

When enforcement officers have reasonable grounds to believe that non-compliance has occurred, various enforcement actions are available to them to restore compliance. Enforcement officers will consider the following:

- **Nature of the alleged contravention**—this includes consideration of the seriousness of the harm or potential harm, the intent of the alleged offender, whether this is a repeated occurrence and whether there are attempts to conceal information or otherwise subvert the objectives and requirements of the IAA.
- **Effectiveness in achieving the desired result with the alleged offender**—the desired result is compliance with the IAA within the shortest time possible and with no further contravention. Factors considered include:
  - the alleged offender's history of compliance with the IAA and CEAA 2012;
  - the alleged offender's willingness to cooperate with the enforcement officers and analysts;
  - evidence of corrective action already taken by the alleged offender; and
  - the existence of enforcement actions under other statutes by other federal authorities or by provincial, territorial or Indigenous governments as a result of the same activity.
- **Consistency in enforcement**— enforcement officers aim to be consistent in their enforcement actions. Accordingly, enforcement officers consider how similar situations were previously handled when deciding what enforcement action to take.

While each situation of alleged contravention of the IAA is different, the most important factor in determining an enforcement action is its effectiveness in securing compliance as quickly as possible with no further contravention.



# Enforcement actions taken in the event of alleged contraventions of the IAA

When enforcement officers have reasonable grounds to believe that a contravention has occurred, various enforcement actions are available to restore compliance. These enforcement actions are described below.

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## Notice of Non-compliance

Notice of non-compliance under section 126 is a type of enforcement action used when an IAA enforcement officer believes, on reasonable grounds, that a person or entity has contravened the IAA.

The notice of non-compliance cannot compel a return to compliance as it does not contain measures directing an alleged offender or violator to return to compliance. The notice of non-compliance is intended to encourage an alleged offender or violator to bring themselves into compliance and to deter that person from future contraventions.

The notice of non-compliance must be made in writing and must set out the name of the person or entity to whom it is directed. The notice of non-compliance states the provision of the IAA for which there is an alleged contravention and includes the relevant facts surrounding the alleged contravention (for example, identification of a condition of the Minister's Decision Statement, the aspect(s) of the condition that are out of compliance, and the reasonable grounds established by the enforcement officer).

The notice of non-compliance contains a statement that a person or entity may provide comments in response to the notice and the time within which they may do so following the issuance of the notice of non-compliance.

The alleged offender or violator may, for example:

- disagree with the facts of the alleged offence or violation, as presented by the enforcement officer in the notice of non-compliance;
- claim faulty identification of the provision of the IAA or of the condition of the Decision Statement with which the enforcement officer claims there is non-compliance; and/or
- claim that they have returned to compliance and request that the notice of non-compliance be withdrawn.

After consideration of any comments received, the enforcement officer may confirm, amend or revoke the notice of non-compliance. The enforcement officer's decision will be provided in writing to the person or entity subject to the notice of non-compliance. All comments by the alleged offender or violator, plus any supporting documents submitted, and the actions of the enforcement officer following those comments become part of the Agency's files and will be posted to the Canadian Impact Assessment Registry.

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## Orders

Orders are used by enforcement officers when they believe, on reasonable grounds, that there is or is likely to be a contravention of the IAA. Under section 127, an order may, among other things order a person or entity to:

- stop doing something that is or is likely to be in contravention of the IAA or cause it to be stopped; or
- take any measure that is necessary in order to comply with the IAA, or to mitigate the effects of non-compliance.

The order must be made in writing and must set out the name of the person or entity to whom it is directed. The order states the provision of the IAA for which there is an alleged contravention and includes the relevant facts surrounding the alleged contravention (for example, alleged non-compliance with a condition of the Minister's Decision Statement, the number or other identifier for the condition, and the aspects or parts of the condition not complied with). The order includes the measures to be taken, the time of the day when each measure is to begin or the period during which it is to be carried out and the duration of the order.

The order also contains a statement that a person or entity may provide comments to the enforcement officer in response to the order and a statement that a request for a review may be made to the President of the Agency and the time period for doing so, in accordance with section 130 of the IAA.

The enforcement officer may, after giving reasonable notice to all persons or entities named in the order, and so long as the President of the Agency has not received a notice requesting a review of the order, amend or suspend a condition of the order, add a condition to it or delete a condition from it. The enforcement officer may also cancel the order, correct a clerical error in the order or extend the order's duration.

In exigent circumstances, where an enforcement officer judges it necessary, the enforcement officer may give the offender or violator a verbal order on the condition that is out of compliance, followed within seven days by a written order issued in accordance with section 127. For greater certainty, exigent circumstances includes circumstances in which the delay necessary to issue a written order that meets the requirements of the IAA would likely result in a danger to the environment, human life or health or public safety.

## How to access the provisions of a Review Officer

### Request for a Review

Any person or entity to whom an order is given under section 127 or 128 of the IAA may, by notice in writing given to the President of the Agency within 30 days after the day on which the person or entity





receives a copy of the order, make a request to the President for a review of the order by the review officer including the alleged non-compliance and the supporting facts and evidence.

Upon the receipt of a request for a review the President of the Agency must designate an individual as a review officer to review the order.

## Extension of Period for Request for a Review

The President of the Agency may extend the period within which a request for a review may be made if, in the President's opinion, it is in the public interest to do so.

## Review Officer

While exercising their powers or performing their duties or functions under the IAA, no action or other proceeding of a civil nature may be brought against the review officer in respect of anything that is done or omitted to be done in good faith.

## Role of the Review Officer

A review officer may, on application made by a person or entity to whom an order is given, suspend the operation of the order if the review officer considers it appropriate and, in that case, impose on all persons or entities subject to the order conditions that are reasonable in the circumstances and consistent with the protection of the environment, human life or health or public safety. Should the review officer suspend the order, the period for which the order is issued is suspended until the review is completed.

The request for a review of an order does not suspend the operation of an order.

A review officer, after considering the order under review and giving all persons or entities who are subject to it a reasonable opportunity to make representations, may:

- confirm or cancel the order;
- amend or suspend a condition of the order, add a condition to it or delete a condition from it; or
- extend the order's duration.

## Collection of Evidence by the Review Officer

A review officer may order any person to give evidence in writing or produce any documents and things relevant for the purpose of performing any of their functions.

Any order made per the review officer may be made an order of the Federal Court or of the superior court of a province and is enforceable in the same manner as an order of that court. An order made per the review officer may be made an order of the Federal Court or of the superior court of a province by following the usual practice and procedure of the court in such matters, or by filing a certified copy of the order with the registrar of the court.

## Decision by the Review Officer

A review officer must render a written decision, with reasons, and provide all persons or entities to whom the order was given and the President of the Agency with a copy of the decision and the reasons. Any person or entity that is subject to an order confirmed or varied must comply with the order.

## Appeal to Federal Court

An order by a review officer may be appealed to the Federal Court within 30 days after the day on which the written reasons are provided further to the review officer's decision. The filing of a notice of appeal under section 138 of the IAA does not suspend the operation of an order, as confirmed or varied by a review officer.

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# Injunctions

Injunctions are court orders. They are administrative in nature, similar to a fine. Under the IAA, injunctions impose an obligation on a person or an entity that has done, is about to do, or is likely to do anything that is considered an offence under the IAA. An injunction under section 140 can stop an action or order one to take place. Hence, the person or entity subject to the injunction may be ordered by the court to:

- refrain from doing an act that, in the court's opinion, may constitute or be directed toward the commission of the offence; or
- do an act that, in the opinion of the court, may prevent the commission of the offence.

An enforcement officer does not have direct access to the injunction power in section 140 of the IAA. The Agency will recommend usage of the injunction power to the Minister. Under subsection 140(2), the Minister is obliged to give 48 hours' notice of his or her application for an injunction to any party or parties that will be subject to the injunction. Subsection 140(2) does allow the court to set aside the requirement for 48 hours' notice, if the delay to give notice would not be in the public interest.

The court of competent jurisdiction will name an enforcement officer in the injunction as having authority to inspect the person and/or the entity identified in that injunction to verify their compliance with the injunction.

If the person or entity named in the injunction do not comply, the Minister may return to court to seek:

- a contempt of court ruling;
- a penalty, such as a fine or imprisonment, that the court may see fit to impose in its contempt of court ruling; or
- instruction by the court for the concerned person or entity to comply with the injunction within the time stated in the injunction or, if the original time period is expired, within a time limit set by the court in its instruction.

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## Prosecution

Prosecution is one of many tools available to its enforcement officers to enforce the IAA and its regulations. Enforcement officers rely on Crown prosecutors of the Public Prosecution Service of Canada to prosecute alleged offences.

Enforcement officers will lay a charge for every alleged violation of the IAA, except where, in accordance with this policy, they determine that one of the following responses is sufficient and appropriate;

- a notice of non-compliance; and / or
- an order

Prosecutions will always be pursued when, for example:

- the alleged offence has resulted in adverse effects caused by or in connection with the carrying out of designated projects in whole or in part, as described at sections 7 of the IAA;
- repetitive non-compliance with apparent disregard for other inspections and notices of non-compliance;
- there is serious harm or risk to the environment, human life or health;
- an enforcement officer or analyst has been obstructed or hindered from exercising their powers or performing their duties and functions under the IAA;
- an alleged person or entity that makes a false or misleading statement or provide false or misleading information to any person who is exercising their powers or performing their duties or functions under the IAA; and
- an alleged offender fails to comply with a section 127 order.

After the enforcement officers have investigated an alleged offence and decide to recommend prosecution, they will:

- prepare a report to Crown Counsel and recommend charges; and
- submit the evidence and information they gathered during the course of the investigation.

The enforcement officer provides support to a Crown prosecutor in the form of information, affidavits and/or additional testimony when the prosecutor seeks a court order. If a prosecution is successful, the Crown prosecutor may seek a court order to punish or deter the alleged offender from future non-compliance. A court order may be sought to accomplish various ends such as compelling the convicted offender to adjust their practices in relation to the designated project to avoid or reduce adverse effects in the future or requiring that person to provide funds for research. The Crown prosecutor can have an enforcement officer named in the court order, so that the officer can inspect to verify the convicted offender's compliance with the order, using powers under subsections 122(1) and (2) of the IAA.

As an alternative to prosecution, a Crown prosecutor may negotiate and put in place an alternative measures agreement with the alleged offender. The offender must meet eligibility requirements that are found in section 717 of the Criminal Code of Canada. Factors and circumstances that can influence a Crown prosecutor's decision of whether to use alternative measures are contained in Part 3.8 of the Public



Prosecution Service of Canada Deskbook. Compliance with an alternative measures agreement brings an alleged offender into compliance and avoids the formal court prosecution process.

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## Penalties upon conviction

If prosecution of an alleged offence of the IAA under subsection 144(1) leads to an accused person or entity pleading guilty or being found guilty at the conclusion of their court proceedings, fines are the only penalty provided for in the IAA.

The fines under the IAA are as follows:

- **Individuals:** Under subsection 144(2), are liable on summary conviction; for a first offence, to a fine of not less than \$5,000 and not more than \$300,000; for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000.
- **Small revenue corporations or entities:** Under subsection 144(3), are liable on summary conviction; for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000; for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.
- **Other corporations or entities:** Under subsection 144(4), are liable on summary conviction; for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000; for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

## Continuing offences

Under section 146 of the IAA, if an offence of contravening section 7, subsection 129(1) or 135(2) or section 142, or an offence under paragraph 144(1)(b), is committed or continued on more than one day, it constitutes a separate offence for each day on which it is committed or continued.

## Notice to shareholders

If a corporation that has shareholders is convicted of an offence under this Act, the court must make an order directing the corporation to notify its shareholders, in the manner and within the time directed by the court, of the facts relating to the commission of the offence and of the details of the punishment imposed.

## Recovery of costs

Under subsection 129(2) of the IAA, if a person or entity subject to an order issued by an enforcement officer does not comply with the order within the time specified, the enforcement officer may take the necessary steps to carry out the measures required. The actions taken by the enforcement officer may be at the expense of the alleged offender or violator. In cases where a person or entity fails or refuses to pay for actions taken under subsection 129(2) of the IAA, the Agency will take action to recoup any monies that were spent to carry out the measures required.

## What enforcement information the Agency discloses to the public

The Agency makes public the following information on its website in order to promote accessibility and accountability while respecting the principles and requirements of the Access to Information and Privacy Acts:

- annual summary of numbers of on-site and off-site inspections conducted by enforcement officers during a given fiscal year;
- summary of on-site inspection reports prepared by enforcement officers;
- information submitted to the Agency from a proponent that is required by conditions in decision statements (e.g. implementation schedules, annual reports and plans);
- notices of non-compliance issued by enforcement officers and any documentation received from proponents in response to Notices of Non-compliance;
- orders issued by enforcement officers and any documentation received from proponents related to those orders;
- applications, by the Minister, for injunctions and the result of those requests (whether the injunction is granted or refused by the court), including any conditions imposed by the injunction;
- charges laid in a prosecution and the result, whether there is a plea of guilty, a conviction or an acquittal, and, in the case of a plea of guilty or a conviction, the amount of any fine and the subject matter of any court order imposed on the convicted offender; and
- any other documents that, in the view of the Agency, would be in the public interest to disclose through the Canadian Impact Assessment Registry.

The Agency includes the name of the proponent and designated project in the information posted on the Agency's website. Information regarding enforcement actions is also made publicly available at the [Enforcement Actions](#) page on the Agency's website.



# How the public can ask questions, submit a complaint or report a suspected contravention

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## Request for confidentiality

When you provide the Agency with a tip about a suspected offence or with any other information related to the enforcement of the IAA, you may request that your identity, and any information that may reveal your identity, not be disclosed. In addition, if you have requested confidentiality, an enforcement officer and the Agency, must exercise all due diligence to not disclose your identity.

Any traditional knowledge of the Indigenous peoples of Canada that is provided to the Minister, the Agency or the review panel under the IAA in confidence is deemed confidential and must not knowingly be, or permitted to be, disclosed without written consent.

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## Employee protection

Employees who report a suspected contravention are protected under the IAA. Despite any other Act of Parliament, an employer must not dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee, or deny an employee a benefit of employment, with the intent to retaliate against the employee because the employee (a) made a report; (b) acting in good faith and on the basis of reasonable belief, refused or stated an intention of refusing to do anything that is an offence under this Act; or (c) acting in good faith and on the basis of reasonable belief, done or stated an intention of doing anything that is required to be done by or under this Act.

For any inquiries related to compliance and enforcement, or to report a suspected contravention of the IAA, please send an email to [iaac.compliance-conformite.aeic@canada.ca](mailto:iaac.compliance-conformite.aeic@canada.ca).