



Premier of Alberta

Office of the Premier, 307 Legislature Building, Edmonton, Alberta T5K 2B6 Canada

October 3, 2024

Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada
80 Wellington Street
Ottawa ON K1A 0A2

Dear Prime Minister:

Following the Supreme Court of Canada ruling on October 13, 2023, which validated our concerns that the *Impact Assessment Act* (IAA) was largely unconstitutional and blatantly encroached on provincial jurisdiction, your government proceeded to announce amendments to the IAA without meaningfully consulting with Alberta. Despite repeated requests, detailed amendments were not shared with the province, which demonstrates that there was never an intention to address Alberta's fundamental concerns with this legislation.

The amendments your government passed do not address Alberta's concerns with the IAA nor do they adequately address the Supreme Court of Canada's ruling. The situation could have been avoided if, following Alberta's Supreme Court victory, your government agreed to meaningfully consult with the province.

Attached are Alberta's proposed legislative amendments to the IAA that would be necessary to address our ongoing concerns, including the need to:

- eliminate federal encroachment into provincial jurisdiction;
- recognize equivalency and the ability to fully substitute our provincial environment assessment for federal impact assessment;
- create certainty for industry and increase investor confidence by imposing concrete timelines and curbing ministerial discretion;
- emphasize that significant adverse effects within federal jurisdiction is the minimum threshold for federal involvement;
- streamline the process by scoping projects appropriately and placing some parameters on public involvement; and
- focus the public interest decision-making process on significant adverse effects within federal jurisdiction and countervailing positive effects.

Alberta's amendments to the IAA must be considered concurrently with our proposed changes to the *Physical Activities Regulation* (the Project List). It is only through amending the IAA and the Project List, as we propose, that the federal regime will be constitutionally compliant.

Alberta's proposed amendments should be tabled immediately. We continue to call on your government to learn the lessons from the Supreme Court decision and abandon your ongoing unconstitutional efforts to seize regulatory control over our natural resource sector. Instead, we invite you to come to the table in good faith and work with Alberta to align our mutual efforts on emissions reductions and the development of our world-class energy sector.

We will always stand up for Alberta's economy and rights. If your government continues to ignore our concerns, we will again be carefully considering our options to defend our jurisdiction. We look forward to hearing from you in writing within the next four weeks, confirming your commitment to implement these changes. If we do not receive a satisfactory response within that time, it is our intent to bring a further legal challenge. Alberta has won in court twice in the past year and, if needed, we are ready to win again.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Smith". The signature is fluid and cursive, with a large initial "D" and "S".

Hon. Danielle Smith
Premier

cc: Honourable Minister Mickey Amery
Honourable Minister Rebecca Schulz
Honourable Minister Arif Virani
Honourable Minister Steven Guilbeault
Honourable Pierre Poilievre, Leader of the Official Opposition

Enclosure:

Alberta's Amendments to the Impact Assessment Act ("IAA")

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IMPACT ASSESSMENT ACT (the "IAA" or the "Act")		
	Description of issue	Legislative proposal
Row	Preamble and definitions	
1	The preamble includes concepts that are not within the Parliament's jurisdiction and should not be part of the assessment process.	<p>Amend the preamble to remove references to climate change and sustainability:</p> <p>Whereas Parliament recognizes the importance of implementing the impact assessment process in a manner that...</p> <p>contributes to fostering sustainability and to the Government of Canada recognizes that impact assessment contributes to Canada's ability to meet its environmental obligations and its commitments in respect of climate change;</p>
2	The preamble references UNDRIP which is out of the scope for the IAA.	<p>Amend the preamble to remove reference to UNDRIP:</p> <p>Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples;</p>
3	The defined term "adverse effects within federal jurisdiction" is key to every decision-making function in the Act; however, the "non-negligible" threshold is too low to justify federal involvement. The subsections are worded too broadly to comply with the Supreme Court of Canada's ruling.	<p>Amend the definition of "adverse effects within federal jurisdiction" in section 2:</p> <p><i>adverse effects within federal jurisdiction</i> means, with respect to a physical activity or a designated project,</p> <p>(a) a non-negligible <u>significant</u> adverse change to the following components of the environment that are within the legislative authority of Parliament:</p> <p style="padding-left: 40px;">(i) <i>fish</i> and <i>fish habitat</i>, as defined in subsection 2(1) of the <i>Fisheries Act</i>,</p> <p style="padding-left: 40px;">(ii) <i>aquatic species</i>, as defined in subsection 2(1) of the <i>Species at Risk Act</i>, <u>and</u></p> <p style="padding-left: 40px;">(iii) <i>migratory birds</i>, as defined in subsection 2(1) of the <i>Migratory Birds Convention Act, 1994</i>, and</p> <p style="padding-left: 40px;">(iv) any other component of the environment that is set out in Schedule 3;</p> <p>(b) a non-negligible <u>significant</u> adverse change to the environment that would occur on federal lands;</p> <p>(c) a non-negligible <u>significant</u> adverse change to the marine environment that is caused by pollution and that would occur outside Canada;</p> <p>(d) a non-negligible <u>significant</u> adverse change — that is caused by pollution — to <i>boundary waters</i> or <i>international waters</i>, as those terms are defined in subsection 2(1) of the <i>Canada Water Act</i>, or to interprovincial waters;</p> <p>(e) with respect to the Indigenous peoples of Canada, a non-negligible <u>significant</u> adverse impact to a <u>matter under section 91(24) of the <i>Constitution Act, 1867</i></u> occurring in Canada and resulting from any change to the environment; on;</p> <p style="padding-left: 40px;">(i) <i>physical and cultural heritage</i>;</p>

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		<p>(ii) the current use of lands and resources for traditional purposes, or</p> <p>(iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;</p> <p>(f) a non-negligible adverse change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada; and</p> <p>(g) a non-negligible <u>significant</u> adverse change to a health, social or economic matter that is within the legislative authority of Parliament that is set out in Schedule 3.</p>
4	See above.	<p>Amend the definition of “direct or incidental adverse effects” in section 2:</p> <p><i>direct or incidental adverse effects</i> means non-negligible <u>significant</u> adverse effects that are directly linked or necessarily incidental to a federal authority’s exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of a physical activity or designated project, or to a federal authority’s provision of financial assistance to a person for the purpose of enabling that activity or project to be carried out, in whole or in part.</p>
5	A project is automatically subject to the Act if it is listed in the <i>Physical Activities Regulations</i> (" Regulations "). The Regulations include numerous physical activities that have little, if any, connection to federal decision-making.	<p>Amend the definition of "designated project" in section 2:</p> <p><i>designated project</i> means one or more physical activities that</p> <p>(a) are carried out in Canada or on federal lands; and</p> <p>(b) are designated by regulations made under paragraph 109(b) or designated in an order made by the Minister under subsection 9(1); and</p> <p>(c) <u>requires a federal authority to exercise any power or perform any duty or function under a provision prescribed pursuant to paragraph 109(f) in order for the designated project to be carried out in whole or in part.</u></p>
6	The definition of Indigenous Knowledge is vague.	<p>Amend the definition of “Indigenous knowledge” in section 2:</p> <p><i>traditional Indigenous knowledge</i> means <u>the accumulated body of knowledge about the environment that is rooted in the traditional way of life of Indigenous peoples of Canada.</u> the Indigenous knowledge of the Indigenous peoples of Canada.</p> <p>The term needs to be amended throughout the Act.</p>
7	The definition of “sustainability” should be deleted.	<p>Delete the definition of “sustainability” in section 2:</p> <p><i>sustainability</i> means the ability to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health in a manner that benefits present and future generations.</p>
Issue: Mandate		

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8	The mandate includes terms that should be removed or refined.	<p>Amend section 6(2):</p> <p>(2) The Government of Canada, the Minister, the Agency and federal authorities, in the administration of this Act, must exercise their powers in a manner that fosters sustainability, respects the Government's commitments with respect to the rights of the Indigenous peoples of Canada and recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>, takes into account <u>traditional</u> Indigenous knowledge, considers the cumulative effects of physical activities, applies the precautionary principle and promotes cooperation among jurisdictions and with the Indigenous peoples of Canada.</p>
Issue: Inability to advance works that do not require federal authorization		
9	Section 7 of the IAA precludes the carrying out of works that do not otherwise require federal authorization.	<p>Delete section 7.</p> <p>7(1) Subject to subsection (3), the proponent of a designated project 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 any adverse effects: within federal jurisdiction.</p> <p>(2) The Governor in Council may, by order, amend Schedule 3 to add or remove a component of the environment or a health, social or economic matter.</p> <p>(3) The proponent of a designated project may do an act or thing in connection with the carrying out of the designated project, in whole or in part, that may cause adverse effects within federal jurisdiction if</p> <p style="padding-left: 40px;">(a) the Agency makes a decision under subsection 16(1) that no impact assessment of the designated project is required and posts that decision on the Internet site;</p> <p style="padding-left: 40px;">(b) the proponent complies with the conditions included in the decision statement that is issued to the proponent under section 65 with respect to that designated project and is not expired or revoked; or</p> <p style="padding-left: 40px;">(c) the Agency permits the proponent to do that act or thing, subject to any conditions that it establishes, for the purpose of providing to the Agency the information or details that it requires in order to prepare for a possible impact assessment of that designated project or for the purpose of providing to the Agency or a review panel the information or studies that it considers necessary for it to conduct the impact assessment of that designated project.</p> <p>Amend sections 144(1)(a), 146(1) and (2) to remove reference to section 7.</p>
Issue: Prohibition on exercise of federal authority		
10	Section 8 of the IAA broadly prohibits federal authorities from carrying out any duty or function under an Act of Parliament that would permit the carrying out of the designated project, in whole or in part, until the	<p>Amend section 8:</p> <p>8 A federal authority must not exercise any power or perform any duty or function <u>under a provision prescribed pursuant to paragraph 109(f)</u> conferred on it under any Act of Parliament other than this Act that could permit a designated project to be carried out in whole or in part and must not provide financial assistance to any person for the purpose of enabling that designated</p>

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	<p>project is screened out of the IAA process or a positive decision statement is issued. This prohibition captures immaterial or administrative-type authorizations.</p>	<p>project to be carried out, in whole or in part, unless</p> <p>(a) the Agency makes a decision under subsection 16(1) that no impact assessment of the designated project is required and posts that decision on the Internet site; or</p> <p>(b) the decision statement with respect to the designated project that is issued to the proponent of the designated project under section 65 sets out that</p> <p style="padding-left: 20px;">(i) the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that are indicated in the report with respect to the impact assessment of that project are in the public interest not likely to be, to some extent, significant, or</p> <p style="padding-left: 20px;">(ii) the Minister has determined under paragraph 60(1)(b), or the Governor in Council has determined under paragraph 62(b), that the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that are the subject of the determination are justified in the public interest; or</p> <p>(c) — the exercise of the power, the performance of the duty or function or the provision of financial assistance is for the purpose of authorizing the proponent to do an act or thing referred to in paragraph 7(3)(c).</p>
Issue: Ministerial designation under section 9		
11	<p>Section 9 of the IAA grants the federal Minister broad discretion to designate a physical activity based on potential adverse effects within federal jurisdiction or adverse direct or incidental effects.</p>	<p>Delete section 9.</p> <p>9(1) The Minister may, on request or on the Minister's own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in the Minister's opinion, either the carrying out of that physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental adverse effects:</p> <p>(2) — If the Minister is of the opinion that the carrying out of the physical activity may cause adverse effects within federal jurisdiction or direct or incidental adverse effects, the Minister may, in deciding whether to make an order, consider</p> <p style="padding-left: 20px;">(a) public concerns related to the adverse effects within federal jurisdiction — or the direct or incidental adverse effects — that may be caused by the carrying out of the physical activity;</p> <p style="padding-left: 20px;">(2b) the adverse impacts that the physical activity may have on the rights of the Indigenous peoples of Canada — including Indigenous women — recognized and affirmed by section 35 of the Constitution Act, 1982;</p> <p style="padding-left: 20px;">(c) any relevant assessment referred to in section 92, 93 or 95;</p> <p style="padding-left: 20px;">(d) whether a means other than an impact assessment exists that would permit a jurisdiction to address the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that may be caused by the carrying out of the physical activity; and</p> <p style="padding-left: 20px;">(e) any other factor that the Minister considers relevant.</p> <p>(3) — The Agency may require any person or entity to provide information with respect to any physical activity</p>

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		<p>that can be designated under subsection (1).</p> <p>(4) — The Minister must respond, with reasons, to a request referred to in subsection (1) within 90 days after the day on which it is received. The Minister must ensure that his or her response is posted on the Internet site.</p> <p>(5) — The Agency may suspend the time limit for responding to the request until any activity that is prescribed by regulations made under paragraph 112(1)(c) is completed. If the Agency suspends the time limit, it must post on the Internet site a notice that sets out its reasons for doing so.</p> <p>(6) — When the Agency is of the opinion that the prescribed activity is completed, it must post a notice to that effect on the Internet site.</p> <p>(7) — The Minister must not make the designation referred to in subsection (1) if</p> <p style="padding-left: 20px;">(a) the carrying out of the physical activity has substantially begun; or</p> <p style="padding-left: 20px;">(b) a federal authority has exercised a power or performed a duty or function conferred on it under any Act of Parliament other than this Act that could permit the physical activity to be carried out, in whole or in part.</p> <p>(8) — The Agency must post on the Internet site a copy of the order made under subsection (1).</p> <p>Amend section 116 to delete reference to section 9(1).</p>
Issue: Screening under section 16		
12	<p>A decision under section 16 to require an impact assessment results in the imposition of significant burden and can have material implications for project schedule, cost and regulatory certainty. Projects should only be screened “in” based on a higher threshold.</p>	<p>Amend subsection 16(2.1):</p> <p>16(2.1) The Agency may decide that an impact assessment is required only if it is satisfied that the carrying out of the designated project may cause <u>significant</u> adverse effects within federal jurisdiction or <u>significant</u> adverse direct or incidental effects <u>and such effects are unlikely to be addressed by a means other than an impact assessment.</u></p>
Issue: One project, one assessment		
13	<p>The IAA does not mandate cooperation and coordination amongst jurisdictions that have powers, duties or functions in relation to a designated process, which can result in regulatory approval processes that are disconnected in terms of both information and timing. There is an opportunity to require closer alignment between the impact assessment process and other approval processes, particularly federal processes.</p>	<p>Amend subsection 13(2):</p> <p>(2) Every federal authority that has powers, duties or functions conferred on it under any Act of Parliament other than this Act with respect to a designated project that is the subject of the Agency's preparations — including the Canadian Energy Regulator, the Canadian Nuclear Safety Commission, the Canada-Nova Scotia Offshore Petroleum Board and the Canada–Newfoundland and Labrador Offshore Petroleum Board — <u>must, on the Agency's request,</u> engage the proponent of the designated project in order that the federal authority may specify to the proponent the information, if any, that it may require in order to exercise those powers or perform those duties or functions.</p>
14	<p>Under the IAA, the Agency (or Minister) and federal authorities have</p>	<p>Add section 21.1:</p>

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	limited obligations to coordinate the impact assessment process with other applicable federal regulatory processes, which often reduces the efficiency of federal decision-making processes. In some cases, federal decisions are issued well after the impact assessment process is completed.	21.1 The Agency — or the Minister if the impact assessment of the designated project has been referred to a review panel — must coordinate with any federal authority that has powers, duties or functions conferred on it under any Act of Parliament with respect to a designated project to ensure that, to the extent possible, the impact assessment of the designated project provides the information that the federal authority may require in order to exercise those powers or perform those duties or functions.
15	See above.	Add section 23.1: 23.1 Every federal authority that has powers, duties or functions conferred on it under any Act of Parliament other than this Act with respect to a designated project must coordinate with the Agency – or the Minister if the impact assessment of the designated project has been referred to a review panel – to ensure that, to the extent possible, the impact assessment of the designated project provides the information that the federal authority may require in order to exercise those powers or preform those duties or functions.
16	Under the IAA, the Minister <u>may</u> enter into an agreement for a joint review panel with jurisdictions, including federal authorities, that have responsibilities in relation to a designated project; however, it is entirely discretionary. As above, there is an opportunity to mandate closer coordination of federal decision making under the IAA, including in relation to review panels.	Add subsection 39(1.1): 39 (1.1) When the Minister refers the impact assessment of a designated project to a review panel, and a jurisdiction referred to in paragraph (a) of the definition jurisdiction in section 2 has powers, duties or functions in relation to an assessment of the environmental effects of a designated project that includes activities that are regulated under the <i>Canada Transportation Act</i> or the <i>Fisheries Act</i> , the Minister must enter into an agreement or arrangement with such jurisdiction respecting the joint establishment of a review panel and the manner in which the impact assessment of the designated project is to be conducted by that panel.
Issue: Substitution/Equivalency		
17	In the current substitution process, the federal Minister and the Governor in Council maintain decision-making roles in respect of designated projects even where the assessment is undertaken by another jurisdiction (like a province). This does not achieve “one project, one assessment.”	Delete the substitution provisions in ss. 31-35. Add a new section on equivalency: 35.1 (1) Subject to subsection (2), the Minister must, on request, approve the substitution of a process that is followed by a jurisdiction referred to in paragraphs (c) or (d) of the definition jurisdiction in section 2 for the process under this Act if (a) directly and adversely affected persons will be given an opportunity to participate in the assessment; (b) the public will have access to records in relation to the assessment; (c) the process to be substituted will include consultations with any Indigenous group that may be affected by the carrying out of the designated project

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		<p>(d) at the end of the assessment, a report will be submitted to the Minister; and</p> <p>(e) the report will be made available to the public.</p> <p>(2) The Minister must not approve the substitution of a process in relation to a designated project that includes activities that are regulated under the <i>Canada Oil and Gas Operations Act</i>, the <i>Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act</i>, the <i>Canada-Newfoundland and Labrador Atlantic Accord Implementation Act</i> or the <i>Canada Transportation Act</i>.</p> <p>(3) If the Minister approves the substitution process under subsection (1), the Governor in Council must, by order, exempt the designated project from the application of this Act, if the Governor in Council is satisfied that the jurisdiction referred to in paragraphs (c) or (d) of the definition jurisdiction in section 2 determines whether, taking into account the implementation of any mitigation measures that it considers appropriate, the designated project is likely to cause significant adverse effects within federal jurisdiction.</p> <p>(4) The Agency must post a notice of any order made under subsection (3) on the Internet site.</p> <p>Amend sections 23(c), 75(2) to replace “section 31” with “section 35.1”.</p> <p>Amend section 60(1) to delete “or at the end of the assessment of the effects of a designated project in respect of which the Minister has approved a substitution under section 31”.</p>
Issue: Project and Assessment Scoping		
18	<p>The IAA currently provides very little discretion to the Agency or the Minister to define the scope of the project that is subject to impact assessment or the scope of the factors to be considered and assessed in the impact assessment. Due to the expansive scope of impact assessments under the IAA (and under predecessor legislation), they can become unwieldy while providing little incremental value.</p> <p>The Agency or the Minister, as applicable, ought to have discretion to determine the scope of the designated project subject to the impact assessment and the scope of the impact assessment itself.</p>	<p>Amend subsection 18(1)(a):</p> <p>18 (1) If the Agency decides that an impact assessment of a designated project is required —and the Minister does not approve the substitution of a process under section 31 in respect of the designated project— the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with</p> <p>(a) a notice of the commencement of the impact assessment of the project that sets out the information or studies that the Agency considers necessary for it to conduct the impact assessment;</p> <p>(i) <u>the scope of the designated project as described in section 2 that the Agency has determined will be subject to the impact assessment;</u></p> <p>(ii) the information or studies that the Agency considers necessary for it to conduct the impact assessment;</p> <p>(iii) <u>the factors under subsection 22(1) that the Agency has determined will be considered in the impact assessment of the designated project; and</u></p> <p>(iv) <u>the scope of the factors to be taken into account in the impact assessment; ...</u></p>

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		<p>Delete subsection 18(1.1) and replace with</p> <p>(1.1) The Agency must take into account the factors set out in subsection 22(1) in determining what information or which studies it considers necessary for the conduct of the impact assessment.</p> <p>(1.1.) The Agency must provide reasons for its consideration of factors in section 18(1)(a).</p> <p>Delete section 18(1.2):</p> <p>(1.2) The scope of the factors referred to in paragraphs 22(1)(a) to (f), (h) to (l) and (s) and (t) that are to be taken into account under subsection (1.1) and set out in the tailored guidelines referred to in paragraph (1)(b), including the extent of their relevance to the impact assessment, is determined by the Agency.</p>
19	<p>As it is currently written, section 22 requires the Agency or review panel to take into account all of the listed factors when conducting an impact assessment. An impact assessment that does not take into account a factor in the list may be challenged for failing to comply with procedural requirements.</p> <p>The list of factors in section 22 that "must" be taken into account in an impact assessment is lengthy and includes matters that are beyond federal authority or are vague.</p>	<p>Amend subsection 22(1):</p> <p>22 (1) <u>In determining the factors to be set out in the notice of commencement provided pursuant to subsection 18(1) and to be considered in the impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must take into account consider the following factors:</u></p> <p>(a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project, including</p> <p style="padding-left: 20px;">(i) the effects of malfunctions or accidents that may occur in connection with the designated project,</p> <p style="padding-left: 20px;">(ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and</p> <p style="padding-left: 20px;">(iii) the result of any interaction between those effects;</p> <p>(b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project;</p> <p>(c) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>;</p> <p>(d) the purpose of and need for the designated project;</p> <p>(e) alternative means of carrying out the designated project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means;</p> <p>(f) any alternatives to the designated project that are technically and economically feasible and are directly related to the designated project;</p> <p>(g) <u>traditional</u> Indigenous knowledge provided with respect to the designated project;</p> <p>(h) the extent to which the designated project contributes to sustainability;</p>

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		<p>(i) the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change;</p> <p>(j) any change to the designated project that may be caused by the environment;</p> <p>(k) the requirements of the follow-up program in respect of the designated project;</p> <p>(l) considerations related to Indigenous cultures raised with respect to the designated project;</p> <p>(m) community knowledge provided with respect to the designated project;</p> <p>(n) comments received from <u>directly and adversely impacted persons</u> the public;</p> <p>(o) comments from a jurisdiction that are received in the course of consultations conducted under section 21;</p> <p>(p) any relevant assessment referred to in section 92, 93 or 95;</p> <p>(q) any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project;</p> <p>(r) any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2 — that is in respect of a region related to the designated project and that has been provided with respect to the project;</p> <p>(s) the intersection of sex and gender with other identity factors; and</p> <p>(t) any other matter relevant to the impact assessment that the Agency requires to be taken into account.</p> <p>Delete 18(2):</p> <p>Scope of factors (2) The Agency's determination of the scope of the factors made under subsection 18(1.2) applies when those factors are taken into account under subsection (1).</p>
20	Additional amendments are required to carry the "scoping" amendments proposed above through to the review panel process.	<p>Amend section 42:</p> <p>42 When there is an agreement or arrangement to jointly establish a review panel under subsection 39(1) or (3), or when there is a document jointly establishing a review panel under subsection 40(2), the agreement, arrangement or document must provide that the impact assessment of the designated project includes a consideration of the factors set out in <u>the notice of commencement provided to a proponent pursuant to subsection 18(1)</u> 22(1) and is conducted in accordance with any additional requirements and procedures set out in it and provide that...</p>
21	See above.	<p>Amend section 49:</p> <p>49 In establishing or approving a panel's terms of reference, the Minister must consider, among other things, the summary of issues and the information or knowledge referred to in section 14 <u>and the content of the notice of commencement for the designated project provided to the proponent pursuant to subsection 18(1).</u></p>
22	Regional and strategic	<p>Add section 25.1:</p>

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	<p>assessments may be valuable tools to address scoping matters such as cumulative effects, standard mitigation, policy issues, among other things. However, the permitted uses and status of regional and strategic assessments under the IAA is unclear.</p>	<p><u>25.1</u> In conducting an impact assessment of a designated project, the Agency must act in accordance with any relevant assessment referred to in section 92, 93 or 95 that is applicable to the impact assessment according to its terms.</p> <p>Add section 51.1:</p> <p><u>51.1</u> In conducting an impact assessment of a designated project, a review panel must act in accordance with any relevant assessment referred to in section 92, 93 or 95 that is applicable to the impact assessment according to its terms.</p>
23	<p>Regional and strategic assessments do not require provincial cooperation and it is not clear that they are limited to matters within federal jurisdiction.</p>	<p>Amend section 92(1):</p> <p>92 (1) If the Minister is of the opinion that it is appropriate to conduct a regional assessment of the effects of existing or future physical activities carried out in a region that is composed in part of federal lands or in a region that is entirely outside federal lands,</p> <p style="padding-left: 20px;">(a) the Minister may <u>must</u></p> <p style="padding-left: 40px;">(i) enter into an agreement or arrangement with any jurisdiction referred to in paragraphs (a) to (g) (c) of the definition jurisdiction in section 2 <u>that will be impacted by the assessment</u> respecting the joint establishment of a committee to conduct the assessment and the manner in which the assessment is to be conducted; or</p> <p style="padding-left: 40px;">(ii) — authorize the Agency to conduct the assessment; and</p> <p style="padding-left: 20px;">(b) the Minister and the Minister of Foreign Affairs may enter into an agreement or arrangement with any jurisdiction referred to in paragraph (h) or (i) of that definition respecting the joint establishment of a committee to conduct the assessment and the manner in which the assessment is to be conducted.</p> <p>Add section 92.1:</p> <p>92.1 Any regional assessment of the effects of existing or future physical activities carried out in a region must be related to a matter within section 91 of the <i>Constitution Act, 1867</i>.</p> <p>Amend section 94:</p> <p>94 (1) The Minister may establish a committee — or authorize the Agency — to conduct an assessment of</p> <p style="padding-left: 20px;">(a) any Government of Canada policy, plan or program — proposed or existing — that is relevant to conducting impact assessments; or</p> <p style="padding-left: 20px;">(b) any issue that is relevant to conducting impact assessments of designated projects or of a class of designated projects:</p> <p style="padding-left: 20px;"><u>provided that the policy, plan, program or issue is a matter within section 91 of the <i>Constitution Act, 1867</i>.</u></p>

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		<p>Delete section 94(2):</p> <p>(2) The Minister may deem any assessment that provides guidance on how Canada's commitments in respect of climate change should be considered in impact assessments and that is prepared by a federal authority and commenced before the day on which this Act comes into force to be an assessment conducted under this section.</p> <p>Add the following after section 94:</p> <p>94.1 For clarity, the purpose of an assessment under section 92 or 93 shall include, but is not limited to:</p> <ul style="list-style-type: none"> (a) improving knowledge of baseline environmental conditions in a region, and (b) providing information that can be relied on in an impact assessment to reduce the scope of studies required and expedite the impact assessment.
Issue: Standing test for public participation		
24	<p>There is no legal standing test in the Act. The public is permitted to have input into many aspects of decision-making without any explicit parameters on this input.</p>	<p>Amend sections 11, 14(2), 16(2)(c), 22(1)(n), 27, 28(1)(b), (2) and (3.2), 51(1)(c) and (d)(iii), 69(1)(b) and (2), and 75(1), 84(1)(d), 86(1), 89(1) and (2), 99, 105(2)(a), (g.1) and (3)(b), 106(3)(c) to replace "the public" with "directly and adversely affected persons".</p> <p>Amend section 18(1)(b) to replace "public participation" with "the participation of directly and adversely affected persons".</p> <p>Amend section 36(2)(b) to replace "public concerns" with "concerns of directly and adversely affected persons".</p> <p>Amend section 105(2)(g.1) to replace "public" with "from directly and adversely affected persons".</p>
Issue: Timelines		
25	<p>The Act contains several different opportunities for timeline extensions in the impact assessment process (an unlimited number of extensions in some cases), which creates uncertainty for project proponents in project planning and development.</p>	<p>Add the following after section 65:</p> <p><u>65.1 (1) Notwithstanding any other provision of this Act, a decision statement for a designated project must be issued pursuant to section 65 within 730 days of the notice being posted by the Agency to the Internet site under subsection 19(4) for the designated project.</u></p> <p><u>65.1 (2) The time period in subsection (1) does not include</u></p> <ul style="list-style-type: none"> (e) any period required for the proponent to provide the information or studies that are set out in the notice of the commencement of the impact assessment of the designated project; (d) any period requested in writing by the proponent; and (e) any time, to a maximum of 30 days following the receipt of information or studies that are set out in the notice of the commencement of the impact assessment of the designated project, needed by the Agency to determine whether the proponent has provided it with all the information or studies.

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Issue: Public Interest Decision Making		
26	<p>In the <i>IAA Reference</i>, the Supreme Court of Canada identified the public interest decision making provisions of the <i>IAA</i> as particularly problematic, finding that they gave Canada the power to make a decision on a project as a whole having regard to, among other things, adverse non- federal effects. The Supreme Court stated that the decision- making provisions need to be focused on matters of federal jurisdiction and that adverse non-federal effects cannot be used to support a negative public interest decision.</p> <p>The Supreme Court also noted the lack of a materiality threshold in decision-making provisions, suggesting that CEAA 2012's "significant adverse effects" threshold may be more acceptable.</p> <p>If a project likely causes significant adverse effects within federal jurisdiction, there is discretion to refer the matter to the Governor in Council or not.</p>	<p>Amend subsection 60(1):</p> <p>60 (1) After taking into account the report with respect to the impact assessment of a designated project that is submitted to the Minister under subsection 28(2) or at the end of the assessment under the process approved under section 31, the Minister must (a) determine, after taking into account the implementation of any mitigation measures that the Minister considers appropriate, whether the <u>designated project is likely to cause significant adverse effects within federal jurisdiction or significant and the adverse direct or incidental effects. — that are indicated in the report are, in light of the factors referred to in section 63 and the extent to which those effects are significant; and</u></p> <p>(b) if the Minister determines that any of the effects referred to in paragraph (a) are likely to be, to some extent, significant, determine whether the effects so determined are, in light of the extent to which the Minister determined them to be significant and factors referred to in section 63, justified in the public interest.</p> <p>Delete subsection (1.1) and replace with:</p> <p>(1.1) After taking into account the report referred to in subsection (1) or at the end of the assessment of the effects of a designated project in respect of which the Minister has approved a substitution under section 31, the Minister may, instead of making the determinations under that subsection, refer to the Governor in Council the matter of making those determinations.</p> <p>(1.1) If the Minister determines that the designated project is likely to cause significant adverse effects within federal jurisdiction or significant adverse direct or incidental effects, the Minister must refer to the Governor in Council the matter of whether those effects are justified in the circumstances having regard to the positive effects of the designated project.</p>
27	<p>See above.</p>	<p>Amend subsection 61(1):</p> <p>61 (1) After taking into account the report with respect to the impact assessment of a designated project that the Minister receives under section 55 or that is submitted to the Minister under section 59, the Minister, in consultation with the responsible Minister, if any, must <u>determine, after taking into account the implementation of any mitigation measures that the Minister and the responsible Minister consider appropriate, whether the designated project is likely to cause significant adverse effects within federal jurisdiction or significant and or adverse direct or incidental effects. refer to the Governor in Council</u></p> <p>(a) the matter of determining, after taking into account the implementation of any mitigation measures that the Governor in Council considers appropriate, whether the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that are indicated in the report</p>

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		<p>are, likely to be, to some extent, significant and, if so, the extent to which those effects are significant; and</p> <p>(b) the matter of determining whether the effects, if any, that are likely to be, to some extent, significant are, in light of the extent to which they are significant and the factors referred to in section 63, justified in the public interest.</p> <p>Add subsection (1.2):</p> <p><u>(1.2) If the Minister determines that the designated project is likely to cause significant adverse effects within federal jurisdiction or significant adverse direct or incidental effects, the Minister must refer to the Governor in Council the matter of whether those effects are justified in the circumstances having regard to the positive effects of the designated project.</u></p>
28	<p>In the <i>IAA Reference</i>, the Supreme Court noted that the public interest factors in section 63 permitted Canada to make a decision on a project as a whole having regard to, among other things, adverse non-federal effects. The Supreme Court stated that the decision-making provisions need to be focused on matters of federal jurisdiction and that adverse non-federal effects cannot be used to support a negative public interest decision.</p> <p>While the Court suggested that the justification decision in CEAA 2012 might be more appropriate, it nonetheless leaves uncertainty regarding what the Governor in Council can consider in relation to such decision.</p>	<p>Delete and replace section 62:</p> <p>62 If the matter is referred to the Governor in Council under subsection 60(1.1) or 61(1) the Governor in Council must, after taking into account the report with respect to the impact assessment of the designated project</p> <p>(a) determine, after taking into account the implementation of any mitigation measures that the Governor in Council considers appropriate, whether the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that are indicated in the report are likely to be, to some extent, significant and, if so, the extent to which those effects are significant; and</p> <p>(b) (b) if the Governor in Council determines that any of the effects referred to in paragraph (a) are likely to be, to some extent, significant, determine whether the effects so determined are, in light of the extent to which the Governor in Council determined them to be significant and the factors referred to in section 63, justified in the public interest.</p> <p>62 Where a matter is referred to the Governor in Council under subsection 60(1.1) or subsection 61(1.2), the Governor in Council must, after taking into account the report with respect to the impact assessment of the designated project that is the subject of the referral, determine whether the significant adverse effects within federal jurisdiction and the significant adverse direct or incidental effects are justified in the circumstances having regard to the positive effects of the designated project.</p> <p>Delete section 63.</p> <p>63 The Minister's determination under paragraph 60(1)(b) and the Governor in Council's determination under paragraph 62(b) must be based on the report with respect to the impact assessment of the designated project and a consideration of the following factors:</p> <p>(a) the impact that the effects that are likely to be caused by the carrying out of that project may have on any Indigenous group and any adverse</p>

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		<p>impact that those effects may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>;</p> <p>(b) the extent to which the effects that are likely to be caused by the carrying out of that project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change; and</p> <p>(c) the extent to which the effects that are likely to be caused by the carrying out of that project contribute to sustainability.</p>
29	<p>Amendments to the provisions addressing federal conditions are required to carry through the two-step decision-making process.</p>	<p>Delete section 64 and replace with:</p> <p>64—(1) The Minister must, based on any determination made by the Minister under subsection 60(1) or any determination made by the Governor in Council under section 62, as the case may be, establish any conditions that the Minister considers appropriate in relation to the adverse effects within federal jurisdiction that are indicated in the report. The proponent of the designated project must comply with those conditions.</p> <p>(2)—The Minister must, based on any determination made by the Governor in Council under section 62, as the case may be, establish in relation to the direct or incidental adverse effects that are indicated in the report any conditions that the Minister considers appropriate and that are directly linked or necessarily incidental to the exercise of a power or performance of a duty or function by a federal authority that would permit the designated project to be carried out, in whole or in part, or to the provision of financial assistance by a federal authority to a person for the purpose of enabling the carrying out, in whole or in part, of that project. The proponent of the designated project must comply with those conditions.</p> <p>(3)—The conditions referred to in subsection (2) take effect only if the federal authority exercises the power or performs the duty or function or provides the financial assistance.</p> <p>64 (1) If the Minister determines under subsection 60(1) or subsection 61(1), that the designated project is not likely to cause significant adverse effects within federal jurisdiction, or the Governor in Council determines under section 62 that such effects that the designated project is likely to cause are justified in the circumstances, the Minister must establish conditions the Minister considers appropriate</p> <p>(a) in relation to the adverse effects within federal jurisdiction with which the proponent of the designated project must comply; and</p> <p>(b) that is directly linked or necessarily incidental to the exercise of a power or performance of a duty or function by a federal authority that would permit a designated project to be carried out, in whole or in part,</p>

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		<p>or to the provision of financial assistance by a federal authority to a person for the purpose of enabling the carrying out, in whole or in part, of that designated project — in relation to the adverse direct or incidental effects with which the proponent of the designated project must comply.</p>
30	<p>Administrative amendments are required to carry the above amendments into the decision statement provision.</p>	<p>Amend section 65:</p> <p>65 (1) The Minister must issue a decision statement to the proponent of a designated project that</p> <p>(a) informs the proponent of the determination made under <u>subsection 60(1) or section 62 in relation to that project and, if a matter was referred to the Governor in Council, of the decision made under section 62, and the reasons for the determinations; ...</u></p> <p>(2) The reasons for the determination must demonstrate that the Minister or the Governor in Council, as the case may be, based the determination on the report with respect to the impact assessment of the designated project and considered each of the factors referred to in section 63.</p> <p>(3) The Minister must issue the decision statement no later than 30 days after the day on which the report with respect to the impact assessment of the designated project, or a summary of that report, is posted on the Internet site if the Minister makes a determination under paragraph subsection 60(1)(a) or subsection 61(1) that the designated project is not likely to cause significant adverse effects within federal jurisdiction or significant adverse direct or incidental effects,</p> <p style="padding-left: 40px;">(a) makes a determination under paragraph 60(1)(a) that the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that are indicated in the report are not likely to be, to some extent, significant; or</p> <p style="padding-left: 40px;">(b) makes a determination under paragraph 60(1)(b).</p> <p>(4) If the Governor in Council makes a determination under <u>section 62</u> paragraph 62(a) that the adverse effects within federal jurisdiction — and or the direct or incidental adverse effects — that are indicated in the report are not likely to be, to some extent, significant or makes a determination under paragraph 62(b), the Minister must issue the decision statement no later than 90 days after</p> <p>(a) the day on which the report with respect to the impact assessment of the designated project, or a summary of that report, is posted on the Internet site, if the report is submitted to the Minister under subsection 28(2) or section 59 or at the end of the assessment under the process approved under section 31; or</p> <p>(b) the day on which the Agency posts its recommendations on the Internet site under subsection 55.1(2), if the recommendations are in respect of a designated project that is the subject of a report received by the Minister under section 55.</p>