# Reform Scope Of Federal Environmental Assessments To Accelerate National Infrastructure Development

## DESCRIPTION

Projects critical to the national economy face months or years of delay due to the over-sized scope of federal Environmental Assessment (EA) regimes. Instead of genuinely assessing environmental risk, today's federal Environmental Assessments are empty shells. They create hurdles for project development and provide a platform for opponents to object. Without an objective set of rules and standards, EAs often become politicized. The outcome seems mostly determined by the priorities of the government in power, while critical infrastructure projects languish in red tape.

## BACKGROUND

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Investment in Canada's economy is hampered due to the uncertainty that is created around the delays and increased costs of prolonged environmental assessments. Investment in natural resource, transportation and city-building infrastructure is increasingly inadequate. Cost overruns and schedule delays on infrastructure projects are a common occurrence. Balancing environmental protection with infrastructure development is an economic necessity. Project assessments should be rules-based as opposed to the current discretionary case-by-case reviews.

The economic prosperity resulting from Canadian natural resource development – estimated at nearly one-fifth of the nation's GDP and 1.7 million jobs -- is dependent on industry's ability to pursue new projects; for decades, these have been subject to environmental assessments (EAs) at the provincial/territorial level as well as at the federal level through the Impact Assessment Act(IAA).

Coordination of assessments required at both levels has been problematic for most of this period, with the need for two separate and often duplicative processes resulting in considerable regulatory overlap, delays and uncertainty that have, in many cases, led to weakened project economics, fragmented consultations, and reduced business competitiveness.

IAA 2019 reforms

On June 21, 2019, the federal government of Canada (Canada) passed Bill C-69, new legislation that would materially reform the federal environmental assessment regime in Canada. The reforms will see the National Energy Board (NEB) replaced by the Canadian Energy Regulator (CER) and the Canadian Environmental Assessment Act, 2012 (CEAA 2012) replaced by a new Impact Assessment Act (IAA). This was an attempt to address these challenges aimed at attempting to harmonize the provincial-federal regulatory overlap and shorten the duration of the overall process through the introduction of specific timelines. However, some elements of these reforms have instead had the opposite effect: since its implementation, the mining industry has seen a duplication of provincial processes, federal intrusion into provincial jurisdiction, and a deterioration in federal and provincial coordination and among federal

government departments and agencies. Combined, these have resulted in "inefficient and costly impacts to project economics."

The 2019 legislative amendments also exacerbated the growing delays associated with EAs. While the process introduced specific timelines, it also added various means to stop and extend timelines within the process itself, which have further complicated the federal processes' ability to align with provincial processes; in practice, this – along with a significant decline in federal scientific support for EAs -- has in fact lengthened the overall duration of federal EA processes.
Related federal reforms

It's also important to consider the impact of additional reviews the federal government is also conducting on other legislation directly tied to EA projects in Canada: the Fisheries Act, the Navigation Protection Act, and the National Energy Board. Each set of reforms is being handled as a separate process with disparate sets of recommendations. Given the considerable overlap in the mandates of these panels and the potential impact that each could have on the EA process, it is crucial that the federal government ensures that any efforts to introduce changes to any and all of these elements does not result in duplicative or contradictory regulation, and does not complicate industry's ability to navigate the federal EA process.

## RECOMMENDATIONS

That the Government of Canada:

1. Develop a framework fully supporting a "one project, one assessment" approach that recognizes equivalency when appropriate for projects that trigger environmental assessment requirements at both the federal and provincial/territorial levels by;
    a. Moving from a discretionary case-by-case review system to a rules-based system;
    b. Publishing substantive EA requirements listing pre-determined criteria, with full transparency, before projects are proposed;
    c. Allowing regional EAs to avoid delays and duplication; and
    d. Ensuring assessments prioritize the economic benefits of a project.

2. Respect provincial/territorial jurisdiction by maintaining the current scope of effects considered within federal environmental assessments and preventing new federal environmental assessment requirements from being created for categories of projects already captured by provincial/territorial assessment requirements.

3. Improve timelines and reduce duplication for environmental assessments by:
    a. enhancing coordination with provincial/territorial governments,
    b. working with industry to identify potential efficiencies, and
    c. adequately resourcing federal scientific support for provincial/territorial governments and federal departments as required throughout the process.

4. Make all information generated during environmental assessments accessible to the public through an online library or registry, which should also provide information about post-assessment monitoring and enforcement.

5. Ensure Indigenous peoples have the capacity to participate in the environmental assessment project review process by enhancing funding for participation and by developing strategies to build longer-term capacity within communities.

6. Engage potentially impacted Indigenous communities as early in the process as possible and jointly determine desired outcomes for consultation and participation.

7. Retain the Canadian Environmental Assessment Act 2012 definition of "interested parties" of public hearing participants as being those directly affected by a given project or those with relevant information or expertise.

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