

Indigenous Women and Impact Assessment Quick Guide

Opportunities for Engagement under the IAA

What is impact assessment?

The *Impact Assessment Act* (IAA) regulates how proposed industrial projects that are within the jurisdiction of the Government of Canada will be assessed and which factors will be considered to determine whether projects will be approved. The IAA also determines under what conditions approval will be granted.

The text of the IAA can be found online here: <https://laws-lois.justice.gc.ca/eng/acts/I-2.75/FullText.html>

An overview of the impact assessment (IA) process and the roles and responsibilities of various actors can be found here: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview.html>

There are five phases of impact assessments under the IAA: Planning, impact statement, impact assessment, decision-making, and post decision. **This document identifies opportunities for Indigenous women to participate in each of these five stages.**

What are the purposes of impact assessment?

While there are about 15 stated purposes of the IAA, the ultimate goal of IA under the Act is to identify adverse and positive impacts of proposed projects in order to determine whether carrying out the project would be in the public interest. Several of the IAA's stated purposes are related to Indigenous peoples, including: promoting cooperation, coordination and communication between the federal government and Indigenous governing bodies (IGBs) and Indigenous peoples more broadly in IAs; ensuring respect for the rights of Indigenous peoples in IA processes and decision-making; and ensuring that Indigenous knowledge is taken into account in IAs.

What kinds of projects are subject to impact assessments?

Projects are subject to the IAA if they fall within a type of physical activity that is included in the *Physical Activities Regulations* (a.k.a., “The Projects List”) or the Minister of the Environment and Climate Change Canada designates a physical activity as being subject to the IAA. A project that is subject to the IAA is referred to as a “designated project”.

The Projects List can be found here: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-285/index.html>. Generally, these activities include:

- Construction activities in national parks and protected areas;
- The construction, operation, decommissioning and abandonment of various types of mines and mills depending on their production capacity;
- The construction, operation and decommissioning of nuclear facilities;
- Oil and gas extraction, production, refining and storage facilities;
- The construction, operation, decommissioning and abandonment of electrical transmission lines;
- The construction, operation, decommissioning and abandonment of oil and gas pipelines; and
- The construction, operation, decommissioning and abandonment of various renewable energy projects.

Where can I find more information on IA processes for Indigenous peoples?

The Agency has developed guidance for Indigenous participation in IA that can be found here: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/interim-guidance-indigenous-participation-ia.html>.

Phase 1: Planning

If a proposed project is a designated project, the proponent must provide the Impact Assessment Agency of Canada (“the Agency”) with an Initial Project Description (IPD). The IPD must include certain information, including a list of the Indigenous groups that may be affected by the project and summaries of the engagements that have taken place with these groups, including a summary of key issues raised at these engagements, and a description of future plans for engagement. For a full list of the information that must be included in the IDP, visit: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-283/index.html>.

Because IAs must take into account impacts that the project may have on Indigenous rights as well as Indigenous knowledge and the intersection of sex and gender with other identity factors, Indigenous communities, groups and individuals who participate in the early planning engagement sessions should try to determine whether the proposed project may impact on any of these factors.

Indigenous women are often differently impacted by the effects of industrial activities and are often underrepresented in consultation and governance processes and decision-making. This is one of the reasons it is important for Indigenous women to raise issues of concern to them at this early planning phase.

Because engaging in IA processes can be costly, Indigenous women should apply for capacity funding, such as the Agency's Indigenous Capacity Support Program. More information on this program can be found here: <https://www.canada.ca/en/impact-assessment-agency/services/public-participation/indigenous-capacity-support-program.html>.

While no Indigenous community and group is the same, some common concerns of Indigenous women with respect to industrial projects include:

- Equal participation in processes and decision-making in consultations and negotiations affecting the governance of Indigenous lands and resources;
- Health and safety concerns, particularly:
 - Increased rates of sexual violence and human trafficking related to industrial work camps;
 - Workplace harassment and discrimination against Indigenous women in mining and energy sector projects;
 - Increased rates of spousal abuse, addiction and mental health and suicide in relation to industrial projects; and
 - Pressures on health and social services related to industrial projects;
- Impacts of projects on access to traditional lands and the practice of cultural activities;
- Economic concerns, including:
 - Negative impacts of industrial projects on traditional economic activities and access to consumable country foods;
 - Equal employment, career advancement, training and education opportunities; and
- Environmental impacts on biodiversity, water, climate change and food security and country foods.

The IPD is then posted on the Agency's online registry. This provides the public with an opportunity to participate meaningfully in preparations for a possible IA of the project. The Agency must also offer to consult with any Indigenous group that may be affected by the project. **Note that the Agency must offer to consult with any Indigenous Group, not limited to IGBs.** This includes groups and organizations representing Indigenous women.

The Agency must then provide the proponent with a summary of issues (SoI) with respect to the project, including issues raised through public comments and consultations with Indigenous groups. The Agency must also post the SoI on its website.

The proponent must then respond to the SoI by providing the Agency with a notice that sets out how it intends to address the issues raised in the SoI and include a detailed description of the Project (DPD). The Agency must then post the completed notice to its website.

The Agency must then determine, taking into account impacts on Indigenous rights and comments received from Indigenous groups, among other things, whether the project must undergo an IA. If

the Agency decides that it must undergo an IA, the Agency must, within 180 days from the Agency posts the IPD on its website, provide the proponent with, among other things,

- a notice of commencement of the IA that sets out the information and studies the proponent must provide;
- Indigenous Engagement and Partnership Plan (IEPP);
- plans for public participation; and
- the Tailored Impact Statement Guidelines (outlining the information the proponent must provide in its impact statement).

Indigenous peoples will continue to have opportunities to engage with the Agency on the development of these plans and guidelines.

The Agency must then post the notice of commencement of the IA to its website.

The Minister may, if it is in the public interest, or must under certain other circumstances, refer the IA to a review panel within 45 days of posting the notice of commencement of the IA on the Agency's website.

Review panels are responsible for, among other things, conducting IAs of the projects referred to them, including holding public hearings that give the public meaningful opportunities to participate, and preparing and submitting to the Minister reports that include information the effects of the project and how Indigenous knowledge was taken into account in the assessment process.

If the IA is referred to a review panel, the Minister may enter into agreements with IGBs to form joint review panels. If the IA is not referred to a review panel, the Agency is responsible for conducting the IA and must set out in its report how it took into account and used any Indigenous knowledge provided with respect to the designated project.

These requirements ensure that, where Indigenous women provide information about the effects of the proposed project either to the Agency or a review panel, this information must be considered. The Agency or review panel must show how this information was considered.

Phase 2: Impact Statement (IS)

The proponent must develop and submit an impact statement (IS) to the Agency within three years of the date the notice of commencement of the IA was posted to the Agency's website. The IS must include all the information and studies identified in the Agency's notice of commencement of the IA. If the proponent does not provide the Agency with the information and studies required within the three-year period (or any granted extension of that period), the IA is terminated.

In order to provide information required under the notice of commencement, the proponent will need to engage with affected Indigenous peoples and with Indigenous women, in order to meet the requirement of considering the intersection of sex and gender with other identity factors.

The Agency reviews proponents' IAs using the Tailored Impact Statement Guidelines (TISG) (<https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/tailored-impact-statement-guidelines-projects-impact-assessment-nuclear-safety-act.html>). This review determines whether the IS provides the required information and studies, including information related to engagement with Indigenous peoples, baseline conditions of affected Indigenous peoples, and effects on Indigenous peoples and their rights. If the IS does not provide the required information, the Agency will require the proponent to provide further information.

The Agency engages with the public, other government departments and agencies, Indigenous peoples and jurisdictions in the review of the IS. If the Agency is satisfied with the IS, it posts a notice of this determination on its website. Any issues in the IS with engagement, baseline conditions, or effects of the project as they relate to Indigenous women should be raised before the Agency posts its determination that it is satisfied with the IS. Deficiencies in the IS can have detrimental effects on the IA's ability to account for and address impacts on Indigenous women.

If the IA is referred to a Review Panel, the Agency may continue to require the proponent to collect information and conduct studies until the Review Panel is established.

Within 45 days of the day the Agency posts the notice on its website that the IS is accepted, the Minister must establish the terms of reference for the panel if the IA is referred to a Review Panel. The Agency must appoint one or more members to the Panel within this 45-day period from a roster of qualified persons established by the Minister.

Phase 3: Impact Assessment (IA)

The Agency is responsible for conducting the IA in a manner that provides opportunities for the public to meaningfully participate. For Indigenous women who face challenges participating in the process through formal engagement and consultation processes with Indigenous peoples, these public participation opportunities provide another avenue to raise concerns.

The Agency must post a draft version of its IA report to its website and invite public comment on the draft report. The IA report must be finalized and submitted to the Minister within 300 days from the day the Agency posted its notice that it was satisfied with the IS. The Agency must set out how it took into account and used Indigenous knowledge provided to it with respect to project effects. The report must also summarize any comments received from the public and the Agency's recommendations for mitigation measures, follow-up programs and the Agency's conclusion. The Report must then be posted to the Agency's website.

The Agency may delegate carrying out the IA or preparing the IA Report to IGAs. The Minister can also substitute IAs conducted by IGAs, on request by the IGA, with IA processes under the IAA. The Minister may approve substitute IA processes only if certain criteria are met, including that the substitute processes include consultations with Indigenous peoples and the consideration of factors such as impacts on Indigenous peoples and their rights as well as the intersection of sex and gender with other identity factors.

If the IA is referred to a Review Panel, it is responsible for conducting the IA and preparing the IA report, including information on how the panel took into account and used any Indigenous knowledge provided to it. The Agency, however, continues to lead government consultations with Indigenous groups in accordance with the Indigenous Engagement and Partnership Plan and prepares a report of government consultations with Indigenous groups. The Agency is also responsible for drafting potential project conditions based on the Panel's IA report and invites public comment on those potential conditions.

Indigenous women have opportunities to engage in several formats throughout the IA process and the draft report stages. Whether as delegates from IGBs, as Indigenous organizations, or as private citizens, Indigenous women have opportunities to make written and/or oral submissions to the Agency or Review Panel to share their knowledge, experience and concerns about the positive and adverse effects of the proposed project. This is an important opportunity for Indigenous women to educate proponents, governments, and practitioners about Indigenous cultures and ways of knowing, socio-economic issues and environmental concerns and how project impacts on any of these systems can adversely and disproportionately affect women.

Phase 4: Decision-making

The Minister must, within 30 days of the Agency's report being posted to its website, determine whether the adverse effects of the project are in the public interest taking into account various factors including impacts on Indigenous groups and Indigenous rights. The Minister's determination must also set out any conditions to be imposed on the project, deadlines for beginning the project, and a description of the project.

The Minister *can*, and, under certain circumstances, *must* refer the determination of whether the adverse effects of the project are in the public interest to the Governor in Council. In the event the Governor in Council makes this decision, the decision statement must be issued within 90 days of the IA report being posted to the Agency's website.

While there is no opportunity for Indigenous decision-making at this phase in the process, any decision that is inconsistent with the rights of Indigenous peoples may have to be challenged at court.

Phase 5: Follow-up and Monitoring

The Agency must establish participant funding programs for the public to participate in the design and implementation of follow-up programs for the ongoing monitoring of the project and its compliance with the conditions set out in the decision statement. More information on the Indigenous Capacity Support Program, see: <https://www.canada.ca/en/impact-assessment-agency/services/public-participation/indigenous-capacity-support-program.html>.

Although the proponent is responsible for carrying out the follow-up programs set out in the IA report, the Agency may establish monitoring committees related to the implementation of follow-up programs, including with respect to the interests and concerns of Indigenous peoples. Given the often significant and disproportionate adverse effects of some industrial projects on the basis of indigeneity, sex, and gender, it is advisable that Indigenous women pursue participant funding and advocate for the establishment of Indigenous monitoring committees to ensure that the appropriate conditions are imposed on projects and that those conditions are effectively monitored.

Where there are reasonable grounds to believe that a project is operating without proper approvals under the IAA or that a proponent is in breach of project conditions, individuals can also report the matter to the Agency's enforcement officers. These officers may, if on discovery of a contravention of the Act, issue a notice of non-compliance and order the proponent to stop doing something doing something or take an action in order to comply with the IAA.

These opportunities for ongoing monitoring of compliance are important mechanisms to ensure that the conditions imposed on projects to address the issues of concern for Indigenous women are properly abided by.