

# Impact Assessment Act

(as amended by the *Budget Implementation Act, 2024, No. 1*)<sup>1</sup>

S.C. 2019, c. 28, s. 1

Assented to 2019-06-21

An Act respecting a federal process for impact assessments and the prevention or mitigation of significant adverse environmental effects within federal jurisdiction

[Enacted by section 1 of chapter 28 of the Statutes of Canada, 2019, in force August 28, 2019, see SI/2019-86.]

## Preamble

Whereas ~~the Government of Canada~~ Parliament is committed to ~~fostering sustainability~~ having an impact assessment process that prevents or mitigates significant adverse effects within federal jurisdiction;

~~Whereas the Government of Canada recognizes that impact assessments provide an effective means of integrating scientific information and Indigenous knowledge into decision-making processes related to designated projects;~~

~~Whereas the Government of Canada recognizes the importance of public participation in the impact assessment process, including the planning phase, and is committed to providing Canadians with the opportunity to participate in that process and with the information they need in order to be able to participate in a meaningful way;~~

Whereas the Government of Canada ~~recognizes that the public should have access to the reasons on which decisions related to impact assessments are based~~ is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples;

Whereas the Government of Canada is committed, ~~in the course of exercising its powers and performing its duties and functions in relation to impact, regional and strategic assessments,~~ to ensuring respect for the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the ~~Constitution Act, 1982,~~ and to ~~fostering reconciliation and working in partnership with them~~ Constitution Act, 1982;

~~Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples;~~

<sup>1</sup> This draft version of the updated *Impact Assessment Act* includes amendments proposed in the “Notice of Ways and Means Motion to introduce a bill entitled An Act to implement certain provisions of the budget tabled in Parliament on April 16, 2024”. Subsequent changes may occur prior to the *Budget Implementation Act, 2024, No. 1* receiving Royal Assent.

Whereas Parliament recognizes the importance of implementing the impact assessment process in a manner that

~~Whereas the Government of Canada recognizes the importance of cooperating with~~ supports coordinated action among jurisdictions that have powers, duties and functions in relation to the assessment of the effects of designated projects- ~~in order that impact assessments may be conducted more efficiently;~~<sub>1</sub>

fosters reconciliation and working in partnership with the Indigenous peoples of Canada,

integrates scientific information and Indigenous knowledge,

fosters meaningful public participation,

~~Whereas the Government of Canada recognizes that a~~ is transparent, efficient and timely ~~decision-making process~~ and contributes to a positive investment climate in Canada;<sub>2</sub>

encourages the use of innovative approaches and technologies to prevent or mitigate adverse effects within federal jurisdiction, and

~~Whereas~~ 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;

~~Whereas the Government of Canada recognizes the importance of encouraging innovative approaches and technologies to reduce adverse changes to the environment and to health, social or economic conditions;~~

Whereas Parliament is committed, in order to prevent or mitigate significant adverse environmental effects, as defined in section 81, to having a process for the assessment of projects, as defined in that section, that are to be carried out on federal lands, or those that are outside Canada and that are to be carried out or financially supported by a federal authority;

And whereas ~~the Government of Canada~~ Parliament recognizes the importance of regional assessments in understanding the effects of existing or future physical activities and the importance of strategic assessments in assessing federal policies, plans or programs that are relevant to conducting impact assessments;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

## Short Title

Short title

1 This Act may be cited as the *Impact Assessment Act*.

## Interpretation

Definitions

2 The following definitions apply in this Act.

**Adverse effects within federal jurisdiction** means, with respect to a physical activity or a designated project,

(a) a non-negligible adverse change to the following components of the environment that are within the legislative authority of Parliament:

(i) fish and fish habitat, as defined in subsection 2(1) of the *Fisheries Act*,

(ii) aquatic species, as defined in subsection 2(1) of the *Species at Risk Act*,

(iii) migratory birds, as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*, and

(iv) any other component of the environment that is set out in Schedule 3;

(b) a non-negligible adverse change to the environment that would occur on federal lands;

(c) a non-negligible adverse change to the marine environment that is caused by pollution and that would occur outside Canada;

(d) a non-negligible adverse change — that is caused by pollution — to boundary waters or international waters, as those terms are defined in subsection 2(1) of the *Canada Water Act*, or to interprovincial waters; (e) with respect to the Indigenous peoples of Canada, a non-negligible adverse impact — occurring in Canada and resulting from any change to the environment — on

(i) physical and cultural heritage,

(ii) the current use of lands and resources for traditional purposes, or

(iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;

(f) a non-negligible adverse change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada; and

(g) a non-negligible adverse change to a health, social or economic matter that is within the legislative authority of Parliament that is set out in Schedule 3.

In the case of a physical activity or a designated project that is carried out on federal lands or is a federal work or undertaking, as defined in subsection 3(1) of the *Canadian Environmental Protection Act, 1999*, this definition also includes the non-negligible adverse effects of that activity or project. (*effets négatifs relevant d' un domaine de compétence fédérale*)

**Agency** means the Impact Assessment Agency of Canada that is continued under section 153. (*Agence*)

**analyst** means a person or a member of a class of persons designated as an analyst under subsection 120(1). (*analyste*)

**assessment by a review panel** means an impact assessment that is conducted by a review panel. (*examen par une commission*)

**Canadian Energy Regulator** means the Canadian Energy Regulator established by subsection 10(1) of the *Canadian Energy Regulator Act*. (*Régie canadienne de l'énergie*)

**Canadian Nuclear Safety Commission** means the Canadian Nuclear Safety Commission established by section 8 of the *Nuclear Safety and Control Act*. (*Commission canadienne de sûreté nucléaire*)

**designated project** means one or more physical activities that

- (a) are carried out in Canada or on federal lands; and
- (b) are designated by regulations made under paragraph 109(b) or designated in an order made by the Minister under subsection 9(1).

It includes any physical activity that is incidental to those physical activities, but it does not include a physical activity designated by regulations made under paragraph 112(1)(a.2). (*projet désigné*)

**direct or incidental adverse effects** means non-negligible 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. (*effets directs ou accessoires négatifs*)

**effects** means, unless the context requires otherwise, changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes. (*effets*)

~~**effects within federal jurisdiction** means, with respect to a physical activity or a designated project,~~

~~(a) a change to the following components of the environment that are within the legislative authority of Parliament:~~

~~(i) fish and fish habitat, as defined in subsection 2(1) of the *Fisheries Act*,~~

~~(ii) aquatic species, as defined in subsection 2(1) of the *Species at Risk Act*,~~

~~(iii) migratory birds, as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*, and~~

~~(iv) any other component of the environment that is set out in Schedule 3;~~

~~(b) a change to the environment that would occur~~

~~(i) on federal lands;~~

~~(ii) in a province other than the one where the physical activity or the designated project is being carried out, or~~

~~(iii) outside Canada;~~

~~(c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on~~

~~(i) physical and cultural heritage;~~

~~(ii) the current use of lands and resources for traditional purposes, or~~

~~(iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;~~

~~(d) any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada; and~~

~~(e) any change to a health, social or economic matter that is within the legislative authority of Parliament that is set out in Schedule 3. (*effet relevant d'un domaine de compétence fédérale*)~~

**enforcement officer** means a person or a member of a class of persons designated as an enforcement officer under subsection 120(1). (*agent de l'autorité*)

**environment** means the components of the Earth, and includes

(a) land, water and air, including all layers of the atmosphere;

(b) all organic and inorganic matter and living organisms; and

(c) the interacting natural systems that include components referred to in paragraphs (a) and (b). (*environnement*)

**federal authority** means

(a) a Minister of the Crown in right of Canada;

(b) an agency of the Government of Canada or a *parent Crown corporation*, as defined in subsection 83(1) of the *Financial Administration Act*, or any other body established by or under an Act of Parliament that is ultimately accountable through a Minister of the Crown in right of Canada to Parliament for the conduct of its affairs;

(c) any department or departmental corporation that is set out in Schedule I, I.1 or II to the *Financial Administration Act*; and

(d) any other body that is set out in Schedule 1.

It does not include the Executive Council of — or a minister, department, agency or body of the government of — Yukon, the Northwest Territories or Nunavut, a *council of the band* within the meaning of the *Indian Act*, Export Development Canada or the Canada Pension Plan Investment Board. It also does not include a *Crown corporation*,

as defined in subsection 83(1) of the *Financial Administration Act*, that is a *wholly-owned subsidiary*, as defined in that subsection, a harbour commission established under the *Harbour Commissions Act* or a not-for-profit corporation that enters into an agreement under subsection 80(5) of the *Canada Marine Act*, that is not set out in Schedule 1. (*autorité fédérale*)

**federal lands** means

(a) lands that belong to Her Majesty in right of Canada, or that Her Majesty in right of Canada has the power to dispose of, and all waters on and airspace above those lands, other than lands under the administration and control of the Commissioner of Yukon, the Northwest Territories or Nunavut;

(b) the following lands and areas:

(i) the internal waters of Canada, in any area of the sea not within a province,

(ii) the territorial sea of Canada, in any area of the sea not within a province,

(iii) the exclusive economic zone of Canada, and

(iv) the continental shelf of Canada; and

(c) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and that are subject to the *Indian Act*, and all waters on and airspace above those reserves or lands. (*territoire domaniale*)

**follow-up program** means a program for verifying the accuracy of the impact assessment of a designated project and determining the effectiveness of any mitigation measures. (*programme de suivi*)

**impact assessment** means an assessment of the effects of a designated project that is conducted in accordance with this Act. (*évaluation d'impact*)

**Indigenous governing body** means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. (*corps dirigeant autochtone*)

**Indigenous knowledge** means the Indigenous knowledge of the Indigenous peoples of Canada. (*connaissances autochtones*)

**Indigenous peoples of Canada** has the meaning assigned by the definition *aboriginal peoples of Canada* in subsection 35(2) of the *Constitution Act, 1982*. (*peuples autochtones du Canada*)

**Internet site** means the Internet site that is established under section 105. (*site Internet*)

**jurisdiction** means

(a) a federal authority;

- (b) any agency or body that is established under an Act of Parliament and that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project;
- (c) the government of a province;
- (d) any agency or body that is established under an Act of the legislature of a province and that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project;
- (e) any body — including a co-management body — established under a land claim agreement referred to in section 35 of the *Constitution Act, 1982* and that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project;
- (f) an Indigenous governing body that has powers, duties or functions in relation to an assessment of the environmental effects of a designated project
  - (i) under a land claim agreement referred to in section 35 of the *Constitution Act, 1982*, or
  - (ii) under an Act of Parliament other than this Act or under an Act of the legislature of a province, including a law that implements a self-government agreement;
- (g) an Indigenous governing body that has entered into an agreement or arrangement referred to in paragraph 114(1)(e);
- (h) a government of a foreign state or of a subdivision of a foreign state, or any institution of such a government; and
- (i) an international organization of states or any institution of such an organization. (*instance*)

**Minister** means the Minister of the Environment. (*ministre*)

**mitigation measures** means measures to eliminate, reduce, control or offset ~~the~~ adverse effects ~~of a project or designated project~~ within federal jurisdiction, direct or incidental adverse effects or adverse environmental effects, as defined in section 81, and includes restitution for any damage caused by those effects through replacement, restoration, compensation or any other means. (*mesures d'atténuation*)

**prescribed** means prescribed by the regulations. (*Version anglaise seulement*)

**proponent** means the person or entity — federal authority, government or body — that proposes the carrying out of, or carries out, a designated project. (*promoteur*)

**record** includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape and machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy of it. (*document*)

**Registry** means the Canadian Impact Assessment Registry established under section 104. (*registre*)

**review panel** means a review panel established

- (a) under section 41;
- (b) under subsection 44(1);
- (c) under subsection 47(1);
- (d) under an agreement or arrangement entered into under subsection 39(1) or (3); or
- (e) by document referred to in subsection 40(2). (*commission*)

**sustainability** 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. (*durabilité*)

### Rights of Indigenous peoples of Canada

**3** For greater certainty, nothing in this Act is to be construed as abrogating or derogating from the protection provided for the rights of the Indigenous peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.

## Application

### Non-application

**4** This Act does not apply in respect of physical activities to be carried out wholly within lands described in Schedule 2.

## Her Majesty

### Binding on Her Majesty

**5** This Act is binding on Her Majesty in right of Canada or a province.

## Purposes

### Purposes

**6 (1)** The purpose of this Act is to prevent or mitigate significant adverse effects within federal jurisdiction — and significant direct or incidental adverse effects — that may be caused by the carrying out of designated projects, as well as significant adverse environmental effects, as defined in section 81, that may be caused by the carrying out of projects, as defined in that section, by establishing processes to anticipate, identify and assess the potential effects of those projects in order to inform decision making under this or any other Act of Parliament in respect of those effects.

~~**6 (1)** The purposes of this Act are~~

- ~~(a) to foster sustainability;~~



~~(b) to protect the components of the environment, and the health, social and economic conditions that are within the legislative authority of Parliament from adverse effects caused by a designated project;~~

~~(b.1) to establish a fair, predictable and efficient process for conducting impact assessments that enhances Canada's competitiveness, encourages innovation in the carrying out of designated projects and creates opportunities for sustainable economic development;~~

~~(c) to ensure that impact assessments of designated projects take into account all effects — both positive and adverse — that may be caused by the carrying out of designated projects;~~

~~(d) to ensure that designated projects that require the exercise of a power or performance of a duty or function by a federal authority under any Act of Parliament other than this Act to be carried out, are considered in a careful and precautionary manner to avoid adverse effects within federal jurisdiction and adverse direct or incidental effects;~~

~~(e) to promote cooperation and coordinated action between federal and provincial governments — while respecting the legislative competence of each — and the federal government and Indigenous governing bodies that are jurisdictions, with respect to impact assessments;~~

~~(f) to promote communication and cooperation with Indigenous peoples of Canada with respect to impact assessments;~~

~~(g) to ensure respect for the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*, in the course of impact assessments and decision making under this Act;~~

~~(h) to ensure that opportunities are provided for meaningful public participation during an impact assessment, a regional assessment or a strategic assessment;~~

~~(i) to ensure that an impact assessment is completed in a timely manner;~~

~~(j) to ensure that an impact assessment takes into account scientific information, Indigenous knowledge and community knowledge;~~

~~(k) to ensure that an impact assessment takes into account alternative means of carrying out a designated project, including through the use of best available technologies;~~

~~(l) to ensure that *projects*, as defined in section 81, that are to be carried out on federal lands, or those that are outside Canada and that are to be carried out or financially supported by a federal authority, are considered in a careful and precautionary manner to avoid significant adverse environmental effects;~~

~~(m) to encourage the assessment of the cumulative effects of physical activities in a region and the assessment of federal policies, plans or programs and the consideration of those assessments in impact assessments; and~~

~~(n) to encourage improvements to impact assessments through the use of follow-up programs.~~

## Mandate

(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 Constitution Act, 1982, takes into account 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.

## Application of principles to powers

(3) The Government of Canada, the Minister, the Agency and federal authorities must, in the administration of this Act, exercise their powers in a manner that

(a) ensures that processes referred to in subsection (1) are fair, predictable and efficient; and

(b) adheres to the principles of scientific integrity, honesty, objectivity, thoroughness and accuracy.

## Prohibitions

### Proponent

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 ~~of the following~~ adverse effects: within federal jurisdiction.

~~(a) a change to the following components of the environment that are within the legislative authority of Parliament:~~

~~(i) fish and fish habitat, as defined in subsection 2(1) of the Fisheries Act,~~

~~(ii) aquatic species, as defined in subsection 2(1) of the Species at Risk Act,~~

~~(iii) migratory birds, as defined in subsection 2(1) of the Migratory Birds Convention Act, 1994, and~~

~~(iv) any other component of the environment that is set out in Schedule 3;~~

~~(b) a change to the environment that would occur~~

~~(i) on federal lands;~~

~~(ii) in a province other than the one in which the act or thing is done, or~~

~~(iii) outside Canada;~~

~~(c) with respect to the Indigenous peoples of Canada, an impact occurring in Canada and resulting from any change to the environment on~~

~~(i) physical and cultural heritage,~~

~~(ii) the current use of lands and resources for traditional purposes, or~~

~~(iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;~~

~~(d) any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada; or~~

~~(e) any change to a health, social or economic matter within the legislative authority of Parliament that is set out in Schedule 3.~~

### Schedule 3

(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.

### Conditions

(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 ~~any of the~~ adverse effects ~~described in subsection (1)~~ within federal jurisdiction if

(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;

(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

(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.

### Conditions — agreement with Indigenous governing body

~~(4) Despite paragraph (1)(d), 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 a change described in that paragraph in relation to an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the Constitution Act, 1982 if the change is not adverse and the council, government or other entity that is authorized to act on behalf of the Indigenous group, community or people and the proponent have agreed that the act or thing may be done.~~

~~(4) [repealed] Federal authority~~

**8** A federal authority must not exercise any power or perform any duty or function 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 project to be carried out, in whole or in part, unless

(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~~

(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

(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~~

(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~~

(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).~~

## Designation of Physical Activity

### Minister's power to designate

**9 (1)** The Minister may, on request or on ~~his or her~~ the Minister's own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in ~~his or her~~ 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, ~~or public concerns related to these effects warrant the designation.~~

### Factors ~~to be taken into account~~

(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

(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;~~

(2b) ~~Before making the order, the Minister may consider~~ the adverse impacts that at 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* ~~as well as~~;

(c) any relevant assessment referred to in section 92, 93 or 95;

(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

(e) any other factor that the Minister considers relevant.

### **Agency's power to require information**

(3) The Agency may require any person or entity to provide information with respect to any physical activity that can be designated under subsection (1).

### **Minister's response — time limit**

(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.

### **Suspending time limit**

(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.

### **Notice posted on Internet site**

(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.

### **Limitation**

(7) The Minister must not make the designation referred to in subsection (1) if

(a) the carrying out of the physical activity has substantially begun; or

(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.

### **Posting of notice of order on Internet site**

(8) The Agency must post on the Internet site a copy of the order made under subsection (1).

## **Planning Phase**

### **Obligations**

#### **Proponent's obligation — description of designated project**

**10 (1)** The proponent of a designated project must provide the Agency with an initial description of the project that includes the information prescribed by regulations made under paragraph 112(1)(a).

**Copy posted on Internet site**

**(2)** The Agency must post a copy of the description on the Internet site.

**Public participation**

**11** The Agency must ensure that the public is provided with an opportunity to participate meaningfully, in a manner that the Agency considers appropriate, in its preparations for a possible impact assessment of a designated project, including by inviting the public to provide comments within the period that it specifies.

**Agency's obligation — offer to consult**

**12** For the purpose of preparing for a possible impact assessment of a designated project, the Agency must offer to consult with any jurisdiction that has powers, duties or functions in relation to an assessment of the environmental effects of the designated project and any Indigenous group that may be affected by the carrying out of the designated project.

**Federal authority's obligation**

**13 (1)** Every federal authority that is in possession of specialist or expert information or knowledge with respect to a designated project that is the subject of the Agency's preparations must, on the Agency's request and within the period that it specifies, make that information or knowledge available to the Agency.

**Engaging proponent**

**(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 — must, on the Agency's request, 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.

**Agency's obligation — summary of issues**

**14 (1)** The Agency must provide the proponent of a designated project with a summary of issues with respect to that project that it considers relevant, including issues that are raised by the public or by any jurisdiction or Indigenous group that is consulted under section 12, and with any information or knowledge made available to it by a federal authority that the Agency considers appropriate.

**Copy posted on Internet site**

**(2)** The Agency must post on the Internet site a copy of the summary of issues that it provided to the proponent.

**Proponent's obligation — notice**

**15 (1)** The proponent must provide the Agency with a notice that sets out, ~~in accordance with the regulations,~~ how it intends to address the issues referred to in section 14 ~~and,~~ including any issues that relate to the 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 *Constitution Act, 1982*.

#### Detailed project description

**(1.1)** The Agency may require the proponent to include in the notice a detailed description of the designated project that includes the information prescribed by regulations made under paragraph 112(1)(a) if it is of the opinion that a decision cannot be made under subsection 16(1) without that description and information.

#### **Additional information**

**(2)** ~~If, after receiving the notice from~~ The Agency may require the proponent, ~~to provide an amended notice that includes the information or details that~~ the Agency specifies if it is of the opinion that a decision cannot be made under subsection 16(1) because

**(a)** the initial description or the prescribed information ~~set out in the notice provided under subsection 10(1)~~ is incomplete or does not contain sufficient details, ~~the Agency may require the proponent to provide an amended notice that includes the information or details that the Agency specifies;~~ or

**(b)** if a detailed description and prescribed information are required, under subsection (1.1), to be included in the notice referred to in subsection (1), the detailed description or prescribed information included in that notice is incomplete or does not contain sufficient details.

#### **Copy posted on Internet site**

**(3)** When the Agency is satisfied that the notice includes all of the information or details that it specified, it must post a copy of the notice on the Internet site.

## Decisions Regarding Impact Assessments

### Agency's Decision

#### Decision

**16 (1)** After posting a copy of the notice on the Internet site under subsection 15(3), the Agency must decide whether an impact assessment of the designated project is required.

#### Factors

**(2)** In making its decision, the Agency must take into account the following factors:

**(a)** the description referred to in section 10 and any notice referred to in section 15;

**(b)** the possibility that adverse effects within federal jurisdiction — or the direct or incidental adverse effects — that may be caused by the carrying out of the designated project ~~may cause adverse effects within federal jurisdiction or adverse direct or incidental effects;~~

(c) 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 *Constitution Act, 1982*;

(d) any comments received within the time period specified by the Agency from the public and from any jurisdiction or Indigenous group that is consulted under section 12;

(e) any relevant assessment referred to in section 92, 93 or 95;

(f) any study that is conducted or plan that is prepared by a jurisdiction — in respect of a region that is related to the designated project — and that has been provided to the Agency; ~~and~~

(f.1) 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 designated project; and

(g) any other factor that the Agency considers relevant.

### Limitation

(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 adverse effects within federal jurisdiction or direct or incidental adverse effects.

### **Posting notice on Internet site**

(3) The Agency must post a notice of its decision and the reasons for it on the Internet site.

## **Minister's Notice**

### **Minister's obligation**

**17 (1)** If, before the Agency provides the proponent of a designated project with a notice of the commencement of the impact assessment of the designated project under subsection 18(1), a federal authority advises the Minister that it will not be exercising a power conferred on it under an Act of Parliament other than this Act that must be exercised for the project to be carried out in whole or in part, or the Minister is of the opinion that it is clear that the designated project would cause unacceptable environmental effects within federal jurisdiction, the Minister must provide the proponent with a written notice that he or she has been so advised or is of that opinion. The written notice must set out the reasons why the federal authority will not exercise its power or the basis for the Minister's opinion.

### **Copy posted on Internet site**

(2) The Agency must post a copy of the notice on the Internet site.

## **Information Gathering**

### **Notice of commencement**



**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

(a) a notice of the commencement of the impact assessment of the project that sets out the information or studies that the Agency requires from the proponent and considers necessary for the conduct of the impact assessment; and

(b) any documents that are prescribed by regulations made under paragraph 112(1)(a), including tailored guidelines regarding the information or studies referred to in paragraph (a) and plans for cooperation with other jurisdictions, for engagement and partnership with the Indigenous peoples of Canada, for public participation and for the issuance of permits.

#### **Factors to consider — information or studies**

**(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.

#### **Scope of factors**

**(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.

#### **Copy posted on Internet site**

**(2)** The Agency must post a copy of the notice of the commencement of the impact assessment on the Internet site.

#### **Extension of time limit**

**(3)** The Agency may, on request of any jurisdiction referred to in paragraphs (c) to (g) of the definition *jurisdiction* in section 2, extend the time limit referred to in subsection (1) by any period up to a maximum of 90 days, to allow it to cooperate with that jurisdiction with respect to the Agency's obligations under subsection (1).

#### **Posting notice on Internet site**

**(4)** The Agency must post a notice of any extension granted under subsection (3), including the reasons for granting it, on the Internet site.

#### **Suspending time limit**

**(5)** The Agency may suspend the time limit within which it must provide the notice of the commencement of the impact assessment 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.

#### **Notice posted on Internet site**

**(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.

#### **Time limit for information or studies**

**19 (1)** The proponent of a designated project must provide the Agency with the information or studies that are set out in the notice of the commencement of the impact assessment of the designated project within three years after the day on which a copy of that notice is posted on the Internet site.

#### **Extension of time limit**

**(2)** On the proponent's request, the Agency may extend the time limit by any period that is necessary for the proponent to provide the Agency with the information or studies.

#### **Additional information or studies**

**(3)** If the Agency extends the time limit, it may require the proponent to provide it with any additional information or studies that the Agency considers necessary for it to conduct the impact assessment.

#### **Notice posted on Internet site**

**(4)** When the Agency is satisfied that the proponent has provided it with all of the information or studies, it must post a notice of that determination on the Internet site.

#### **Termination of impact assessment**

**20 (1)** If the proponent does not provide the Agency with the information or studies within the time limit referred to in subsection 19(1), or within any extension of that time limit, the impact assessment is terminated.

#### **Notice posted on Internet site**

**(2)** The Agency must post a notice on the Internet site indicating that the impact assessment is terminated.

## **Impact Assessments**

### **Consultation and Cooperation with Certain Jurisdictions**

#### **Agency's or Minister's obligations**

**21** The Agency — or the Minister if the impact assessment of the designated project has been referred to a review panel — must offer to consult and cooperate with respect to the impact assessment of the designated project with

**(a)** any jurisdiction referred to in paragraph (a) of the definition *jurisdiction* in section 2 if the jurisdiction 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 *Canada Oil and Gas Operations Act*, the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* or the *Canada Transportation Act*; and

**(b)** any jurisdiction referred to in paragraphs (c) to (i) of that definition if the jurisdiction has powers, duties or functions in relation to an assessment of the environmental effects of the designated project.

## Factors To Be Considered

### Factors — impact assessment

**22 (1)** The impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must take into account the following factors:

**(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

**(i)** the effects of malfunctions or accidents that may occur in connection with the designated project,

**(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

**(iii)** the result of any interaction between those effects;

**(b)** mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project;

**(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 *Constitution Act, 1982*;

**(d)** the purpose of and need for the designated project;

**(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;

**(f)** any alternatives to the designated project that are technically and economically feasible and are directly related to the designated project;

**(g)** Indigenous knowledge provided with respect to the designated project;

**(h)** the extent to which the designated project contributes to sustainability;

**(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;

**(j)** any change to the designated project that may be caused by the environment;

**(k)** the requirements of the follow-up program in respect of the designated project;

- (l) considerations related to Indigenous cultures raised with respect to the designated project;
- (m) community knowledge provided with respect to the designated project;
- (n) comments received from the public;
- (o) comments from a jurisdiction that are received in the course of consultations conducted under section 21;
- (p) any relevant assessment referred to in section 92, 93 or 95;
- (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;
- (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;
- (s) the intersection of sex and gender with other identity factors; and
- (t) any other matter relevant to the impact assessment that the Agency requires to be taken into account.

#### 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).

## Federal Authority's Obligation

### Specialist or expert information

**23** Every federal authority that is in possession of specialist or expert information or knowledge with respect to a designated project that is subject to an impact assessment must, on request, make that information or knowledge available, within the specified period, to

- (a) the Agency;
- (b) the review panel; and
- (c) a ~~government, an agency or body, or a~~ jurisdiction that, in relation to a designated project in respect of which the Minister has approved a substitution under section 31, conducts an assessment of the effects of the designated project ~~under a substituted process approved under section 34~~ or undertakes activities under an agreement or arrangement referred to in paragraph 114(1)(f) in relation to the assessment of those effects.

## Impact Assessment by Agency

### General Rules

Application only when no referral to review panel

**24** Sections 25 to 29 cease to apply to a designated project if the impact assessment of the project is referred by the Minister to a review panel.

### **Agency's obligations**

**25** The Agency must ensure that

- (a) an impact assessment of the designated project is conducted; and
- (b) a report is prepared with respect to that impact assessment.

### **Information**

**26 (1)** The Agency may, when conducting the impact assessment of a designated project and preparing the report with respect to that impact assessment, use any information that is available to it.

### **Studies and collection of information**

**(2)** However, if the Agency is of the opinion that there is not sufficient information available to it for the purpose of conducting the impact assessment or preparing the report with respect to the impact assessment, it may require the collection of any information or the undertaking of any study that, in the Agency's opinion, is necessary for that purpose, including requiring the proponent to collect that information or undertake that study.

### **Public participation**

**27** The Agency must ensure that the public is provided with an opportunity to participate meaningfully, in a manner that the Agency considers appropriate, within the time period specified by the Agency, in the impact assessment of a designated project.

### **Public notice in certain cases — draft report**

**28 (1)** The Agency must ensure that a draft report with respect to the impact assessment of a designated project is prepared, and must ensure that the following are posted on the Internet site:

- (a) a copy of the draft report or an indication of how a copy may be obtained; and
- (b) a notice that invites the public to provide comments on the draft report within the period specified.

### **Final report submitted to Minister**

**(2)** After taking into account any comments received from the public, the Agency must, subject to subsection (5), finalize the report with respect to the impact assessment of the designated project and submit it to the Minister no later than 300 days after the day on which the notice referred to in subsection 19(4) is posted on the Internet site.

### **Effects set out in report**

**(3)** The report must set out the effects that, in the Agency's opinion, are likely to be caused by the carrying out of the designated project. It must also indicate, from among the effects set out in the report, those that are adverse effects within federal jurisdiction and those that are ~~adverse~~ direct or incidental adverse effects, and specify, from

among those adverse effects within federal jurisdiction and direct or incidental adverse effects, the ones that are likely to be, to some extent, significant and the extent to which ~~those effects~~they are significant.

#### **Report — Indigenous knowledge**

**(3.1)** Subject to section 119, the report must set out how the Agency, in determining the effects that are likely to be caused by the carrying out of the designated project, took into account and used any Indigenous knowledge provided with respect to the designated project.

#### **Report — additional content**

**(3.2)** The report must also set out a summary of any comments received from the public, as well as the Agency's recommendations with respect to any mitigation measures and follow-up program and the Agency's rationale and conclusions.

#### **Copy posted on Internet site**

**(4)** A copy of the report or a summary of the report and an indication of how a copy of the report may be obtained must be posted on the Internet site on the day on which the report is submitted to the Minister.

#### **Time limit established by Agency — designated project**

**(5)** Before the commencement of the impact assessment, the Agency may establish

**(a)** a longer time limit than the time limit referred to in subsection (2) to take into account circumstances that are specific to the designated project or to allow the Agency to cooperate with a jurisdiction referred to in section 21 with respect to the impact assessment of ~~the designated project or to take into account circumstances that are specific to~~ that project; or

**(b)** a shorter time limit than the time limit referred to in subsection (2), for any reason that the Agency considers appropriate.

#### **Extension of time limit by Minister**

**(6)** The Minister may extend the time limit referred to in subsection (2) or any time limit established under subsection (5) by any period — up to a maximum of 90 days — that is necessary to ~~permit~~take into account circumstances that are specific to the designated project or to allow the Agency to cooperate with a jurisdiction referred to in section 21 ~~-or to take into account circumstances that are specific to the designated project.~~

#### **Extension of time limit by Governor in Council**

**(7)** The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (6) by any number of times period that is necessary to take into account circumstances that are specific to the designated project or to allow the Agency to cooperate with a jurisdiction referred to in section 21.

#### **Posting notices on Internet site**

**(8)** The Agency must post on the Internet site a notice of the time limit established under subsection (5) and of any extension granted under this section, including the reasons for establishing that time limit or for granting that extension.

#### **Suspending time limit**

**(9)** The Agency may suspend the time limit within which it must submit the report until any activity that is prescribed by a regulation 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.

#### **Notice posted on Internet site**

**(10)** 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.

#### **Delegation**

**29** The Agency may delegate to any person, body or jurisdiction referred to in paragraphs (a) to (g) of the definition *jurisdiction* in section 2 the carrying out of any part of the impact assessment of the designated project and the preparation of the report with respect to the impact assessment of the designated project.

#### **Non-disclosure**

**30 (1)** If the Agency is satisfied that the disclosure of evidence, records or other things would cause specific, direct and substantial harm to a person or Indigenous group, the evidence, records or things are privileged and even if their disclosure is authorized under subsection 119(2) must not, without the authorization of the person or Indigenous group, knowingly be, or be permitted to be, disclosed by any person who has obtained the evidence, records or other things under this Act.

#### **Non-disclosure**

**(2)** If the Agency is satisfied that the disclosure of evidence, records or other things would cause specific harm to the environment, the evidence, records or things are privileged and must not, without the Agency's authorization, knowingly be, or be permitted to be, disclosed by any person who has obtained the evidence, records or other things under this Act.

### **Substitution**

#### **Minister's power**

**31 (1)** Subject to sections 32 and 33, ~~if the Minister is of the opinion that a process for assessing the effects of designated projects that is followed by~~ may, on request of a jurisdiction referred to in any of paragraphs (c) to (g) of the definition of jurisdiction in section 2, that has powers, duties or functions in relation to an assessment of the effects of a designated project ~~would be an appropriate substitute, the Minister may, on request of the jurisdiction~~ and before the expiry of the time limit referred to in subsection 18(1), or any extension of that time limit, ~~approve the substitution of that process for the impact assessment.~~ do one of the following:

(a) if the Minister is of the opinion that a process for assessing the effects of designated projects that is followed by the jurisdiction would be an appropriate substitute, approve the substitution of that process for the impact assessment;

(b) if the Minister is of the opinion that a process for assessing the effects of designated projects that is followed by the jurisdiction would, together with the activities undertaken under an agreement or arrangement referred to in paragraph 114(1)(f) in relation to the assessment of the effects of the designated project, be an appropriate substitute, approve the substitution of that process and those activities for the impact assessment.

#### **Notice inviting public comments**

(2) When the Minister receives a request for substitution, the Agency must post the request on the Internet site as well as a notice that invites the public to provide comments respecting the substitution within 30 days after the day on which the notice is posted.

#### **Minister must consider public comments**

(3) The Minister must consider any comments received from the public in deciding whether to approve the substitution.

#### **Posting of Minister's decision on Internet site**

(4) The Agency must post a notice of the Minister's decision with respect to the request for substitution and the reasons for it on the Internet site.

#### **Exceptions**

**32** The Minister must not approve the substitution of a process in relation to a designated project

(a) the impact assessment of which has been referred by the Minister to a review panel; or

(b) that includes activities that are regulated under the *Canada Oil and Gas Operations Act*, the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* or the *Canada Transportation Act*.

#### **Conditions**

**33 (1)** The Minister may only approve a substitution if he or she is satisfied that

~~(a) the process to be substituted will include a consideration of the factors set out in subsection 22(1);~~

(a) the factors set out in subsection 22(1) will be considered under the process to be substituted or under an agreement or arrangement referred to in paragraph 114(1)(f);



(b) federal authorities that are in possession of relevant specialist or expert information or knowledge will be given an opportunity to participate in the assessment;

(c) the jurisdiction that is following the process to be substituted has the ability to enter into an arrangement with any jurisdiction referred to in paragraphs (e) to (g) of the definition *jurisdiction* in section 2 respecting cooperation between those jurisdictions in the conduct of the assessment;

(d) the process to be substituted will include consultations with any Indigenous group that may be affected by the carrying out of the designated project or the consultation will be undertaken under an agreement or arrangement referred to in paragraph 114(1)(f);

(e) the public will be given an opportunity to participate meaningfully in the assessment and to provide comments on a draft report;

(f) the public will have access to records in relation to the assessment to enable its meaningful participation;

(g) at the end of the assessment, a report will be submitted to the Minister;

(g.1) in the case of a substitution approved under paragraph 31(1)(b), the report will be based on the process and the activities referred to in that paragraph;

(h) the report will be made available to the public; and

(i) any other conditions that the Minister establishes are or will be met.

### Effects set out in report

(2) The Minister must be satisfied that the report that will be submitted to ~~him or her~~ the Minister will set out the effects that, ~~in the opinion of the jurisdiction that is following the process to be substituted,~~ are likely to be caused by the carrying out of the designated project. The Minister must also be satisfied that the report will

(a) indicate, from among the effects set out in it, those that are adverse effects within federal jurisdiction and those that are direct or incidental adverse effects; and

(b) specify, from among those adverse effects within federal jurisdiction and direct or incidental adverse effects, ~~and specify~~ the ones that are likely to be, to some extent, significant and the extent to which ~~those effects~~ they are significant.

### Report — Indigenous knowledge

(2.1) The Minister must be satisfied that the report that will be submitted to ~~him or her~~ the Minister will set out how ~~the jurisdiction that is following the process to be substituted,~~ any Indigenous knowledge provided with respect to the designated project was taken into account and used in determining the effects that are likely to be caused by the carrying out of ~~the designated project,~~ took into account and used any Indigenous knowledge provided with respect to the designated that project.

### Approval

**(3)** The Minister may also approve the substitution of a process that has already been completed for an impact assessment if he or she is satisfied that the conditions referred to in subsections (1) and (2) have been met.

#### Availability

**(4)** The conditions referred to in paragraph (1)(i) must be made available to the public.

#### Assessment considered in conformity

**34** ~~If~~ The assessment of the effects of a designated project in respect of which the Minister ~~approves the~~ has approved a substitution ~~of a process under section 31, the assessment that results from the substituted process~~ is considered to be an impact assessment under this Act and to satisfy any requirements of this Act and the regulations in respect of an impact assessment.

#### Additional information

**35** If, ~~after taking into account the report~~ with respect to the ~~impact~~ assessment of the effects of a designated project ~~that is submitted to~~ in respect of which the Minister ~~at the end of the assessment under the substituted process~~ has approved ~~under section 31 a~~ substitution, the Agency is of the opinion that ~~additional~~ information is required for the purpose of ensuring that the factors set out in subsection 22(1) will be considered or for the purposes of subsection 60(1) or (1.1), it may require the proponent of ~~the designated~~ that project to provide the ~~additional~~ information to the Minister or may make a request to the jurisdiction that is following or followed the process — or to any jurisdiction that is undertaking or undertook activities under an agreement or arrangement referred to in paragraph 114(1)(f) in relation to the assessment of effects of that project — to provide that information to the Minister.

## Impact Assessment by a Review Panel

### General Rules

#### Referral to review panel

**36 (1)** Within 45 days after the day on which the notice of the commencement of the impact assessment of a designated project is posted on the Internet site, the Minister may, if he or she is of the opinion that it is in the public interest, refer the impact assessment to a review panel.

#### Public interest

**(2)** The Minister's determination regarding whether the referral of the impact assessment of the designated project to a review panel is in the public interest must include a consideration of the following factors:

**(a)** the extent to which the effects within federal jurisdiction or the direct or incidental effects that the carrying out of the designated project may cause are adverse;

**(b)** public concerns related to those effects;

(c) opportunities for cooperation with any jurisdiction that has powers, duties or functions in relation to an assessment of the environmental effects of the designated project or any part of it; and

(d) 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 *Constitution Act, 1982*.

### **Suspending time limit**

(3) The Agency may suspend the time limit within which the Minister may refer an impact assessment to a review panel 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.

### **Notice posted on Internet site**

(4) 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.

### **Posting notice on Internet site**

(5) The Agency must post on the Internet site a notice of any decision made by the Minister to refer the impact assessment of the designated project to a review panel, including the Minister's reasons for making that decision.

### **Time limit**

**37 (1)** If the Minister refers the impact assessment of a designated project to a review panel, the Agency must establish the following time limits:

(a) the time limit, after the day on which the notice referred to in subsection 19(4) with respect to the designated project is posted on the Internet site, within which the review panel must submit a report with respect to that impact assessment to the Minister; and

(b) the time limit, after the day on which the review panel submits the report, within which the Agency must post its recommendations under subsection 55.1(2).

### **Limit of 600 days**

(2) Subject to subsection (3), the total number of days for the time limits established under subsection (1) must not exceed 600 unless the Agency is of the opinion that more time is required to [take into account circumstances that are specific to the designated project or to](#) allow the review panel to cooperate with a jurisdiction referred to in section 21 with respect to the impact assessment of ~~the designated project or to take into account circumstances that are specific to~~ that project.

### **Extension of time limit by Minister**

(3) The Minister may extend the time limit established under paragraph (1)(a) by any period — up to a maximum of 90 days — that is necessary to ~~permit~~ [take into account circumstances that are specific to the designated project or allow](#) the review panel to

cooperate with a jurisdiction referred to in section 21 ~~or to take into account circumstances that are specific to the designated project.~~

#### **Extension of time limit by Governor in Council**

(4) The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (3) by any number of times period that is necessary to take into account circumstances that are specific to the designated project or to allow the review panel to cooperate with a jurisdiction referred to in section 21.

#### **Posting notices on Internet site**

(5) The Agency must post the following items on the Internet site:

(a) the Agency's reasons for establishing the time limits under subsection (1);

(b) a notice of any extension granted under subsection (3), including the Minister's reasons for granting that extension; and

(c) a notice of any extension granted under subsection (4), including the Governor in Council's reasons for granting that extension.

#### **Suspending time limit**

(6) The Agency may suspend the time limit within which the review panel must submit the report 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.

#### **Notice posted on Internet site**

(7) 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.

#### **Time limit**

**37.1 (1)** Despite section 37, if the review panel is to conduct an impact assessment of a designated project that includes physical activities that are regulated under any of the Acts referred to in section 43, the Agency must establish the following time limits:

(a) the time limit, after the day on which the notice referred to in subsection 19(4) with respect to the designated project is posted on the Internet site, within which the review panel must submit a report with respect to that impact assessment to the Minister; and

(b) the time limit, after the day on which the review panel submits the report, within which the Agency must post its recommendations under subsection 55.1(2).

#### **Limit of 300 days**

(2) Subject to subsection (4), the total number of days for the time limits established under subsection (1) must not exceed 300. However, the total number of days may be up to 600 if the Agency is of the opinion that the review panel requires more time and it

establishes those time limits before it posts a copy of the notice of the commencement of the impact assessment on the Internet site.

#### **Factors to consider**

**(3)** The Agency must take into consideration the factors set out in subsection 36(2) in establishing a time limit that exceeds 300 days.

#### **Application**

**(4)** Subsections 37(3) to (7) apply, with any modifications that the circumstances require, with respect to a time limit established under this section.

#### **Studies and collection of information**

**38** When the Minister refers the impact assessment of a designated project to a review panel, the Agency may, from the day on which the referral is made and until the day on which the panel is established, require the proponent of the designated project to collect any information or undertake any studies that, in the opinion of the Agency, are necessary for the impact assessment by the review panel.

#### **Agreement to jointly establish review panel**

**39 (1)** When the Minister refers the impact assessment of a designated project to a review panel, he or she may enter into an agreement or arrangement with any jurisdiction referred to in paragraphs (a) to (g) of the definition *jurisdiction* in section 2 that has powers, duties or functions in relation to an assessment of the environmental effects of the designated project, 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.

#### **Limitation**

**(2)** However, the Minister is not authorized to enter into an agreement or arrangement referred to in subsection (1) with

**(a)** the Canadian Nuclear Safety Commission if the designated project includes physical activities that are regulated under the *Nuclear Safety and Control Act*; or

**(b)** the Canadian Energy Regulator if the designated project includes physical activities that are regulated under the *Canadian Energy Regulator Act*.

#### **Other jurisdiction**

**(3)** When the Minister refers the impact assessment of a designated project to a review panel, 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 the definition *jurisdiction* in section 2 that has powers, duties or functions in relation to an assessment of the environmental effects of the designated project 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.

#### **Posting on Internet site**

(4) Any agreement or arrangement referred to in subsection (1) or (3) must be posted on the Internet site before the commencement of the hearings conducted by the jointly established review panel.

### ***Mackenzie Valley Resource Management Act***

**40 (1)** When a proposal is referred to the Minister under paragraph 130(1)(c) of the *Mackenzie Valley Resource Management Act*, the Minister must refer the proposal to a review panel.

#### **Document establishing review panel**

(2) When the Minister is required to refer the proposal to a review panel, he or she and the Mackenzie Valley Environmental Impact Review Board must, in writing, jointly establish a review panel and prescribe the manner of its examination of the impact of the proposal on the environment.

#### **If no agreement**

(3) Despite subsection (2), if, in respect of a proposal referred to in subsection 138.1(1) of the *Mackenzie Valley Resource Management Act*, no agreement is entered into under that subsection within the period fixed by the regulations referred to in subsection 138.1(4) of that Act, an assessment by a review panel of the proposal must be conducted.

#### **Coordination with environmental impact review**

(4) The Minister must, to the extent possible, ensure that any assessment of the proposal required by subsection (3) is coordinated with any environmental impact review of the proposal under the *Mackenzie Valley Resource Management Act*.

#### **Consultations**

(5) Before making a referral under section 61 in relation to the proposal referred to in subsection (4), the Minister must consult with the persons and bodies to whom a report concerning the proposal that is issued under subsection 134(2) of the *Mackenzie Valley Resource Management Act* is submitted or distributed under subsection 134(3) of that Act.

#### **Report taken into account**

(6) Before making ~~its decision~~any determination under section 62 in relation to the proposal, the Governor in Council must take into account any report referred to in subsection (5) and any information that the Minister provides to the Governor in Council following the consultations referred to in that subsection.

#### **Posting on Internet site**

(7) Any document establishing a review panel under subsection (2) must be posted on the Internet site before the commencement of the hearings conducted by the jointly established review panel.

#### **Terms of reference and appointment of members**

**41 (1)** If the impact assessment of a designated project is referred to a review panel, the Minister must — within 45 days after the day on which the notice referred to in subsection 19(4) with respect to the designated project is posted on the Internet site — establish the panel's terms of reference and the Agency must, within the same period, appoint as a member one or more persons who are unbiased and free from any conflict of interest relative to the designated project and who have knowledge or experience relevant to the designated project's anticipated effects or have knowledge of the interests and concerns of the Indigenous peoples of Canada that are relevant to the assessment.

#### **Restriction**

**(2)** Subsection (1) is subject to the following sections:

- (a)** section 42;
- (b)** section 44;
- (c)** section 47.

#### **Provisions of agreement**

**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 subsection 22(1) and is conducted in accordance with any additional requirements and procedures set out in it and provide that

- (a)** the Minister must — within 45 days after the day on which the notice referred to in subsection 19(4) with respect to the designated project is posted on the Internet site — establish or approve the review panel's terms of reference, which are to include the time limit established under paragraph 37(1)(a);
- (b)** the Minister may, at any time, modify the terms of reference in order to reflect an extension of the time limit granted under subsection 37(3) or (4);
- (c)** the Agency must — within 45 days after the day on which the notice referred to in subsection 19(4) with respect to the designated project is posted on the Internet site — appoint the chairperson, or a co-chairperson, and at least one other member of the review panel; and
- (d)** the members of the panel must be unbiased and free from any conflict of interest relative to the designated project and must have knowledge or experience relevant to the designated project's anticipated effects or have knowledge of the interests and concerns of the Indigenous peoples of Canada that are relevant to the assessment.

#### **Obligation to refer**

**43** The Minister must refer the impact assessment of a designated project to a review panel if the project includes physical activities that are regulated under any of the following Acts:

- (a) the *Nuclear Safety and Control Act*;
- (b) the *Canadian Energy Regulator Act*.

#### Agreement — referral under paragraph 43(a)

43.1 (1) The Minister may, when referring an impact assessment of a designated project to a review panel under paragraph 43(a), enter into an agreement or arrangement with respect to the impact assessment with the President of the Canadian Nuclear Safety Commission and any jurisdiction referred to in paragraphs (a) to (g) of the definition *jurisdiction* in section 2.

#### Agreement — referral under paragraph 43(b)

(2) The Minister may, when referring an impact assessment of a designated project to a review panel under paragraph 43(b), enter into an agreement or arrangement with respect to the impact assessment with the Lead Commissioner of the Canadian Energy Regulator and any jurisdiction referred to in paragraphs (a) to (g) of the definition *jurisdiction* in section 2.

#### **Terms of reference — *Nuclear Safety and Control Act***

**44 (1)** When the Minister refers an impact assessment of a designated project that includes activities regulated under the *Nuclear Safety and Control Act* to a review panel, the Minister must — within 45 days after the day on which the notice referred to in subsection 19(4) with respect to the designated project is posted on the Internet site — establish the panel's terms of reference in consultation with the President of the Canadian Nuclear Safety Commission and the Agency must, within the same period, appoint the chairperson and at least two other members.

#### **Appointment of members**

**(2)** The persons appointed to the review panel under subsection (1) must be unbiased and free from any conflict of interest relative to the designated project and must have knowledge or experience relevant to the designated project's anticipated effects or have knowledge of the interests and concerns of the Indigenous peoples of Canada that are relevant to the assessment.

#### **Appointment from roster**

**(3)** At least one of the persons appointed under paragraph (1) must be appointed from a roster established under paragraph 50(b), on the recommendation of the President of the Canadian Nuclear Safety Commission.

#### **Not majority**

**(4)** The persons appointed from the roster must not constitute a majority of the members of the panel.

#### **Impact assessment to be used**

**45** The impact assessment conducted by a review panel established under subsection 44(1) is the only assessment that the Canadian Nuclear Safety Commission may use for the purpose of issuing the licence referred to in the panel's terms of reference.



### **Powers in relation to *Nuclear Safety and Control Act***

**46** For the purpose of conducting an impact assessment of a designated project that includes activities regulated under the *Nuclear Safety and Control Act*, including preparing a report with respect to that impact assessment, the review panel may exercise the powers conferred on the Canadian Nuclear Safety Commission.

### **Terms of reference — *Canadian Energy Regulator Act***

**47 (1)** When the Minister refers an impact assessment of a designated project that includes activities regulated under the *Canadian Energy Regulator Act* to a review panel, the Minister must — within 45 days after the day on which the notice referred to in subsection 19(4) with respect to the designated project is posted on the Internet site — establish the panel's terms of reference in consultation with the Lead Commissioner of the Canadian Energy Regulator and the Agency must, within the same period, appoint the chairperson and at least two other members.

### **Appointment of members**

**(2)** The persons appointed to the review panel under subsection (1) must be unbiased and free from any conflict of interest relative to the designated project and must have knowledge or experience relevant to the designated project's anticipated effects or have knowledge of the interests and concerns of the Indigenous peoples of Canada that are relevant to the assessment.

### **Appointment from roster**

**(3)** At least one of the persons appointed under paragraph (1) must be appointed from a roster established under paragraph 50(c), on the recommendation of the Lead Commissioner of the Canadian Energy Regulator.

### **Not majority**

**(4)** The persons appointed from the roster must not constitute a majority of the members of the panel.

### **Powers in relation to *Canadian Energy Regulator Act***

**48** For the purpose of conducting an impact assessment of a designated project that includes activities regulated under the *Canadian Energy Regulator Act*, including preparing a report with respect to that impact assessment, the review panel may exercise the powers conferred on the Commission that is referred to in subsection 26(1) of that Act.

### **Summary and information**

**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.

### **Establishment of roster**

**50 (1)** The Minister must establish the following rosters:

- (a)** a roster of persons who may be appointed as members of a review panel established under any of the following:

- (i) section 41,
  - (ii) subsection 44(1),
  - (iii) subsection 47(1),
  - (iv) an agreement, arrangement or document referred to in section 42;
- (b) a roster of persons who are members of the Canadian Nuclear Safety Commission and who may be appointed as members of a review panel established under subsection 44(1);
- (c) a roster of persons who are commissioners under the *Canadian Energy Regulator Act* and who may be appointed as members of a review panel established under subsection 47(1).

**Establishment of roster — *Nuclear Safety and Control Act***

(2) In establishing a roster under paragraph (1)(b), the Minister must consult with the Minister of Natural Resources or the member of the Queen’s Privy Council for Canada that the Governor in Council designates as the Minister for the purposes of the *Nuclear Safety and Control Act*.

**Establishment of roster — *Canadian Energy Regulator Act***

(3) In establishing a roster under paragraph (1)(c), the Minister must consult with the member of the Queen’s Privy Council for Canada that the Governor in Council designates as the Minister for the purposes of the *Canadian Energy Regulator Act*.

**Review panel’s duties**

**51 (1)** A review panel must, in accordance with its terms of reference,

- (a) conduct an impact assessment of the designated project;
- (b) ensure that the information that it uses when conducting the impact assessment is made available to the public;
- (c) hold hearings in a manner that offers the public an opportunity to participate meaningfully, in the manner that the review panel considers appropriate and within the time period that it specifies, in the impact assessment;
- (d) prepare a report with respect to the impact assessment that
  - (i) sets out the effects that, in the opinion of the review panel, are likely to be caused by the carrying out of the designated project,
  - (ii) indicates which of the effects referred to in subparagraph (i) are adverse effects within federal jurisdiction and which are ~~adverse~~ direct or incidental ~~effects,~~adverse effects and specifies, from among those adverse effects within federal jurisdiction and direct or incidental adverse effects, the ones that are likely to be, to some extent, significant and the extent to which ~~those effects~~they are significant,

(ii.1) subject to section 119, sets out how the review panel, in determining the effects that are likely to be caused by the carrying out of the designated project, took into account and used any Indigenous knowledge provided with respect to the designated project,

(iii) sets out a summary of any comments received from the public, and

(iv) sets out the review panel's rationale, conclusions and recommendations, including conclusions and recommendations with respect to any mitigation measures and follow-up program;

(e) submit the report with respect to the impact assessment to the Minister; and

(f) on the Minister's request, clarify any of the conclusions and recommendations set out in its report with respect to the impact assessment.

#### **Duties in relation to *Nuclear Safety and Control Act***

(2) A review panel established under subsection 44(1) must, in accordance with its terms of reference, include in the report that it prepares the information necessary for the licence referred to in the panel's terms of reference to be issued under section 24 of the *Nuclear Safety and Control Act* in relation to the designated project that is the subject of the report.

#### **Duties in relation to *Canadian Energy Regulator Act***

(3) A review panel established under subsection 47(1) must, in accordance with its terms of reference, include in the report that it prepares the conclusions or recommendations necessary for a certificate, order, permit, licence or authorization to be issued, a leave or an exemption to be granted or a direction or approval to be given under the *Canadian Energy Regulator Act* in relation to the designated project that is the subject of the report.

#### **Information**

**52 (1)** A review panel may, when conducting the impact assessment of a designated project and preparing the report with respect to the impact assessment of the designated project, use any information that is available to it.

#### **Studies and collection of information**

(2) However, if the review panel is of the opinion that there is not sufficient information available for the purpose of conducting the impact assessment or preparing the report with respect to the impact assessment of the designated project, it may require the collection of any information or the undertaking of any study that, in the opinion of the review panel, is necessary for that purpose, including requiring the proponent to collect that information or undertake that study.

#### **Power to summon witnesses**

**53 (1)** A review panel has the power to summon any person to appear as a witness before it and to order the witness to

(a) give evidence, orally or in writing; and

**(b)** produce any records and other things that the panel considers necessary for conducting its impact assessment of the designated project.

### **Enforcement powers**

**(2)** A review panel has the same power to enforce the attendance of witnesses and to compel them to give evidence and produce records and other things as is vested in a court of record.

### **Hearings to be public**

**(3)** A hearing by a review panel must be public unless the panel is satisfied after representations made by a witness that specific, direct and substantial harm would be caused to the witness or specific harm would be caused to the environment by the disclosure of the evidence, records or other things that the witness is ordered to give or produce under subsection (1).

### **Non-disclosure**

**(4)** If a review panel is satisfied that the disclosure of evidence, records or other things would cause specific, direct and substantial harm to a person or Indigenous group, the evidence, records or things are privileged and even if their disclosure is authorized under subsection 119(2) must not, without the authorization of the person or Indigenous group, knowingly be, or be permitted to be, disclosed by any person who has obtained the evidence, records or other things under this Act.

### **Non-disclosure**

**(5)** If a review panel is satisfied that the disclosure of evidence, records or other things would cause specific harm to the environment, the evidence, records or things are privileged and must not, without the review panel's authorization, knowingly be, or be permitted to be, disclosed by any person who has obtained the evidence, records or other things under this Act.

### **Enforcement of summonses and orders**

**(6)** Any summons issued or order made by a review panel under subsection (1) must, for the purposes of enforcement, be made a summons or order of the Federal Court by following the usual practice and procedure.

### **Immunity**

**(7)** No action or other proceeding lies against a member of a review panel for or in respect of anything done or omitted to be done during the course of and for the purposes of the assessment by the review panel.

### **Informal proceedings**

**54** A review panel must, to the extent that is consistent with the general application of the rules of procedural fairness and natural justice, emphasize flexibility and informality in the conduct of hearings and in particular must allow, if appropriate, the admission of evidence that would not normally be admissible under the rules of evidence.

### **Copy posted on Internet site**

**55** On receiving a report with respect to the impact assessment of the designated project by a review panel, the Minister must ensure that a copy of the report is posted on the Internet site.

### **Recommendations**

**55.1 (1)** The Agency must make recommendations to assist the Minister in establishing conditions under section 64 in respect of the designated project that is the subject of a report referred to in section 55.

### **Recommendations posted on Internet site**

**(2)** The Agency must post its recommendations on the Internet site.

### **Studies and collection of information**

**56** The Minister may, before making a referral under section 61, require the proponent of the designated project to collect any information or undertake any studies that are necessary for the Governor in Council to make [aany](#) determination under section 62.

## **Confidential Information**

### **Non-disclosure**

**57** If the Agency is of the opinion that, in respect of a review panel to which it is providing or has provided support under paragraph 156(1)(a), the disclosure of a record would reveal the substance of the panel's deliberations in relation to an impact assessment that the panel is conducting or has conducted, the Agency may refuse to disclose the record to any person who is not a member of the review panel.

## **Rules in Case of Termination**

### **Power to terminate**

**58 (1)** The Minister may terminate the assessment by a review panel of a designated project if

**(a)** he or she is of the opinion that the review panel will not submit its report within the time limit established under paragraph 37(1)(a), including any extension of that time limit; or

**(b)** the review panel fails to submit its report within that time limit, including any extension of that time limit.

### **Preliminary consultations**

**(2)** Before the Minister exercises the power referred to in subsection (1) with respect to a review panel that is jointly established under one of the following agreements, arrangements or documents, he or she must

**(a)** in the case of an agreement or arrangement referred to in subsection 39(1), consult with the jurisdiction with which the agreement or arrangement was entered into;

(b) in the case of an agreement or arrangement referred to in subsection 39(3), obtain the approval of the Minister of Foreign Affairs and consult with the jurisdiction with which the agreement or arrangement was entered into; and

(c) in the case of a document referred to in subsection 40(2), consult with the Mackenzie Valley Environmental Impact Review Board.

#### **Preliminary consultations — other**

(3) The Minister must, before he or she exercises the power referred to in subsection (1) with respect to one of the following review panels,

(a) in the case of a review panel established under subsection 44(1), consult with the President of the Canadian Nuclear Safety Commission; and

(b) in the case of a review panel established under subsection 47(1), consult with the Lead Commissioner of the Canadian Energy Regulator.

#### **Completion of impact assessment by Agency**

**59 (1)** When the assessment by a review panel of a designated project is terminated under section 58, the Agency must, in accordance with directives provided by the Minister, complete the impact assessment of the designated project and prepare a report and submit it to the Minister.

#### **Effects set out in report**

(2) The report must set out the effects that, in the Agency's opinion, are likely to be caused by the carrying out of the designated project. It must also indicate, from among the effects set out in the report, those that are adverse effects within federal jurisdiction and those that are ~~adverse~~-direct or incidental ~~effects~~, adverse effects and specify, from among those adverse effects within federal jurisdiction and direct or incidental adverse effects, the ones that are likely to be, to some extent, significant and the extent to which ~~those effects~~they are significant.

#### **Report — Indigenous knowledge**

(3) Subject to section 119, the report must set out how the Agency, in determining the effects that are likely to be caused by the carrying out of the designated project, took into account and used any Indigenous knowledge provided with respect to the designated project.

## **Decision-Making**

#### **Minister's decision**

**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 of the effects of a designated project in respect of which the Minister has~~ approved a substitution 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 adverse effects within federal jurisdiction — and the ~~adverse~~-direct or incidental adverse effects

— that are indicated in the report are, ~~in light of the factors referred to in section 63 and~~ likely to be, to some extent, significant and, if so, the extent to which those effects are significant, ~~in the public interest; or~~ and

~~(b) refer to the Governor in Council the matter of whether the~~ 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 ~~and the extent to which those effects are significant,~~ justified in the public interest.

### Referral to Governor in Council

(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.

### Notice posted on Internet site

(2) If the Minister refers the matter to the Governor in Council, he or she must ensure that a notice of the referral and the reasons for it are posted on the Internet site.

### Referral to Governor in Council

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 refer to the Governor in Council

(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 ~~adverse~~ direct or incidental adverse effects — that are indicated in the report are, ~~in light of the factors referred to in section 63 and~~ likely to be, to some extent, significant and, if so, the extent to which those effects are significant, ~~in the public interest;~~ and

(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.

### Definition of *responsible Minister*

(1.1) For the purpose of subsection (1), *responsible Minister* means the following Minister:

(a) in the case of a report prepared by a review panel established under subsection 44(1), the Minister of Natural Resources or the member of the Queen's Privy Council for Canada that the Governor in Council designates as the Minister for the purposes of the *Nuclear Safety and Control Act*;

(a.1) in the case of a report prepared by a review panel established under subsection 46.1(1), the Minister of Natural Resources;

(b) in the case of a report prepared by a review panel established under subsection 47(1), the member of the Queen's Privy Council for Canada that the Governor in Council designates as the Minister for the purposes of the *Canadian Energy Regulator Act*;

(c) in the case of a report prepared by a review panel established under subsection 48.1(1), the Minister of Natural Resources.

### Responsible Minister's obligation

(2) If the report relates to a designated project that includes activities that are regulated under the *Canadian Energy Regulator Act*, the responsible Minister must, at the same time as the referral described in subsection (1) in respect of that report is made,

(a) submit the report to the Governor in Council for the purposes of subsection 186(1) of that Act; or

(b) submit the decision made for the purposes of subsection 262(4) of that Act to the Governor in Council if it is decided that the certificate referred to in that subsection should be issued.

2019, c. 28, s. 1 "61"; 2019, c. 28, s. 8.1

### Governor in Council's determination

**62** If the matter is referred to the Governor in Council under ~~paragraph~~subsection 60(1.1) or 61(1)(b) or section 64, 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~~,

(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 ~~adverse~~ direct or incidental adverse effects — that are indicated in the report are, ~~in light of the factors referred to in section 63 and likely to be, to some extent, significant and, if so,~~ the extent to which those effects are significant, ~~in the public interest;~~ and

(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.

### Factors — justification in public interest

**63** The Minister's determination under ~~paragraph 60(1)(ab) in respect of a designated project referred to in that subsection~~, and the Governor in Council's determination under ~~section~~paragraph 62 in respect of a designated project referred to in that subsection (b), must be based on the report with respect to the impact assessment of the designated project and a consideration of the following factors:

~~(a) the extent to which the designated project contributes to sustainability;~~



~~(b) the extent to which the adverse effects within federal jurisdiction and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project are significant;~~

~~(c) the implementation of the mitigation measures that the Minister or the Governor in Council, as the case may be, considers appropriate;~~

~~(da)~~ the impact that the designated effects that are likely to be caused by the carrying out of that project may have on any Indigenous group and any adverse impact that ~~the designated project~~those effects may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*; ~~and~~

~~(eb)~~ the extent to which the effects ~~of the designated~~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

~~(c)~~ the extent to which the effects that are likely to be caused by the carrying out of that project contribute to sustainability.

#### Conditions — effects within federal jurisdiction

**64 (1)** ~~If~~ The Minister must, based on any determination made by the Minister ~~determines~~ under ~~paragraph~~subsection 60(1)(a), ~~or~~ or any determination made by the Governor in Council ~~determines~~ under section 62, ~~that the effects that are indicated in the report that the Minister or the Governor in Council, as the case may be, takes into account are in the public interest,~~ establish any conditions that the Minister ~~must establish any condition that he or she~~ considers appropriate in relation to the adverse effects within federal jurisdiction ~~with which the~~ that are indicated in the report. The proponent of the designated project must comply with those conditions.

#### Conditions — direct or incidental effects

**(2)** ~~If the~~ The Minister ~~determines under paragraph 60(1)(a), or~~ must, based on any determination made by the Governor in Council ~~determines~~ under section 62, ~~that the~~ 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 ~~or the Governor in Council, as the case may be, takes into account are in the public interest, the Minister must establish any condition that he or she~~ considers appropriate — and that ~~is~~ 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 ~~a~~ 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 ~~designated~~ project — ~~in relation to the adverse direct or incidental effects with which the~~ The proponent of the designated project must comply with those conditions.

#### Conditions subject to exercise of power or performance of duty or function

(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.

#### Mitigation measures and follow-up program

(4) The conditions referred to in subsections (1) and (2) must include

(a) the implementation of the mitigation measures that the Minister takes into account in making a determination under ~~paragraph~~subsection 60(1)(a), or that the Governor in Council takes into account in making ~~a~~any determination under section 62, other than those the implementation of which the Minister is satisfied will be ensured by another person or by a jurisdiction; and

(b) the implementation of a follow-up program and, if the Minister considers it appropriate, an adaptive management plan.

## Decision Statement

### Decision statement issued to proponent

**65 (1)** The Minister must issue a decision statement to the proponent of a designated project that

(a) informs the proponent of ~~the~~any determination made under ~~paragraph~~subsection 60(1)(a) or section 62 in relation to that project and the reasons for the determination;

(b) includes any conditions that are established under section 64 in relation to the designated project and that must be complied with by the proponent;

(c) sets out the period established under subsection 70(1); and

(d) includes a description of the designated project.

### Detailed reasons

(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.

### Time limit ~~of decision statement~~ — Minister's determination

(3) ~~When the~~The Minister ~~makes a determination under paragraph 60(1)(a), he or she~~ 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

(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

(b) makes a determination under paragraph 60(1)(b).

### **Time limit ~~of decision statement~~ — Governor in Council's decision**

(4) ~~When~~If the Governor in Council makes a determination under ~~section 62~~[paragraph 62\(a\) 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 makes a determination under paragraph 62\(b\)](#), the Minister must issue the decision statement no later than 90 days after

(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

(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.

### **Extension of time limit by Minister**

(5) The Minister may extend the time limit referred to in subsection (3) or (4) by any period — up to a maximum of 90 days — ~~for any reason that the Minister considers necessary~~[that is necessary to take into account circumstances that are specific to the designated project or to facilitate cooperation with a jurisdiction referred to in section 21](#).

### **Extension of time limit by Governor in Council**

(6) The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (5) ~~by any number of times~~[period that is necessary to take into account circumstances that are specific to the designated project or to facilitate cooperation with a jurisdiction referred to in section 21](#).

### **Proponent informed of extension**

(7) The Minister must inform the proponent in writing of any extension granted under this section and the reasons for granting it and ensure that a notice of the extension and the reasons for granting it are posted on the Internet site.

### **Posting of decision statement on Internet site**

**66** The Agency must post on the Internet site any decision statement that the Minister issues under section 65.

### **Decision statement considered to be part of licence under *Nuclear Safety and Control Act***

**67 (1)** The Minister may, in a decision statement issued in relation to a designated project that includes activities that are regulated under the *Nuclear Safety and Control Act*, designate any condition that is included in the decision statement, and any condition designated by the Minister is considered to be a part of the licence issued under section 24 of that Act in relation to the designated project.

### **Decision statement considered part of certificate, etc., under *Canadian Energy Regulator Act***

**(2)** A decision statement issued in relation to a designated project that includes activities that are regulated under the *Canadian Energy Regulator Act* is considered to be a part of the certificate, order, permit, licence or authorization issued, the leave or exemption granted or the direction or approval given under that Act in relation to the designated project.

**Decision statement considered to be part of authorization, etc., under *Canada Oil and Gas Operations Act***

**(3)** A decision statement issued in relation to a designated project that includes activities that are regulated under the *Canada Oil and Gas Operations Act* is considered to be a part of the authorization or licence issued, the approval granted or the leave given under that Act in relation to the designated project.

**Non-application**

**(3.1)** Sections 120 to 152 do not apply to the administration or enforcement of this Act as it relates to a condition of a decision statement that is issued in relation to a designated project that includes activities that are regulated, as applicable, under the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act* or the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act* if the condition is a requirement of an authorization issued under the Act in question in relation to that designated project.

**Non-application**

**(4)** Sections 120 to 152 do not apply to the administration or enforcement of this Act as it relates to any condition that is considered to be a part of a licence and any decision statement that is considered to be a part of a licence, certificate, order, permit, authorization, leave, exemption, direction or approval.

**Minister’s power — decision statement**

**68 (1)** The Minister may amend a decision statement, including to add or remove a condition, to amend any condition or to modify the designated project’s description. However, the Minister is not permitted to amend the decision statement to change the decision included in it.

**Limitation — condition**

**(2)** The Minister may add, remove or amend a condition only if he or she is of the opinion that doing so will not increase the extent to which the effects that are indicated in the report with respect to the impact assessment of the designated project are adverse.

**Limitation and application**

**(3)** The Minister may add or amend a condition only if the new or amended condition could be established under subsection 64(1) or (2). Subsection 64(3) applies with respect to the new or amended condition if it could be established under subsection 64(2).

**Limitation — *Nuclear Safety and Control Act***

**(4)** The Minister is not permitted to amend or remove a condition designated under subsection 67(1) and is not permitted to designate, under that subsection, any condition added under this section.

#### **Public notice — amendment to decision statement**

**69 (1)** If the Minister intends to amend a decision statement under section 68, the Minister must ensure that the following are posted on the Internet site:

- (a)** a draft of the amended decision statement; and
- (b)** a notice that invites the public to provide comments on the draft within the period specified.

#### **Posting of amended decision statement on Internet site**

**(2)** If, after taking into account any comments received from the public, the Minister decides to amend the decision statement, he or she must ensure that the amended decision statement and his or her reasons for amending the decision statement are posted on the Internet site.

#### **Minister's obligation**

**70 (1)** The Minister must, after considering any views provided by the proponent on the matter, establish the period within which the proponent must substantially begin to carry out the designated project.

#### **Extension**

**(2)** The Minister may, after considering any views provided by the proponent on the matter, extend the period by any period that the Minister considers reasonable and, in that case, must ensure that a notice of the extension and the reasons for the extension are posted on the Internet site.

#### **Expiry of decision statement**

**(3)** If the proponent does not substantially begin to carry out the designated project within the period established by the Minister, or any extension of that period, the decision statement expires on the expiry of that period or any extension of that period.

#### **Notice posted on Internet site**

**(4)** The Agency must post on the Internet site a notice that a decision statement has expired.

#### **Revocation of decision statement**

**71** If the proponent of a designated project advises the Minister in writing that the designated project will not — or will no longer — be carried out, the Minister may revoke the decision statement issued in respect of that project.

#### **Amending decision statement — information**

**72 (1)** The Minister may, before amending a decision statement, require the proponent of the designated project described in the decision statement to provide the Minister

with any information that he or she considers necessary for the purpose of amending the decision statement.

#### **Offer to consult**

**(2)** If the decision statement is considered to be a part of a licence, certificate, order, permit, authorization, leave, exemption, direction or approval referred to in section 67, the Minister must, before amending or revoking the decision statement, offer to consult with the entity that issues the certificate, order, permit, licence or authorization, grants the exemption, gives the direction or gives or grants the leave or approval, as the case may be.

#### **Offer to consult — *Nuclear Safety and Control Act***

**(3)** Before the Minister amends any portion of a decision statement referred to in subsection 67(1) that is not considered to be part of a licence referred to in that subsection, or revokes such a decision statement, he or she must offer to consult with the Canadian Nuclear Safety Commission.

## **Termination of Impact Assessment**

### **Termination by Agency or Minister**

**73** The Agency — or the Minister if the impact assessment of the designated project has been referred to a review panel — may terminate the impact assessment if the proponent advises the Agency or the Minister in writing that the designated project will not be carried out.

## **Confidential Information**

### **No disclosure**

**74** Despite any other provision of this Act, no confidence of the Queen's Privy Council for Canada in respect of which subsection 39(1) of the *Canada Evidence Act* applies is to be disclosed or made available under this Act to any person.

## **Participant Funding Programs**

### **Agency's obligation**

**75 (1)** The Agency must establish a participant funding program to facilitate the participation of the public in

**(a)** the Agency's preparations for a possible impact assessment of — or the impact assessment of and the design or implementation of follow-up programs in relation to — designated projects that include physical activities that are designated by regulations made under paragraph 112(1)(e) or that are part of a class of activities designated by those regulations;

**(b)** the impact assessment of, and the design or implementation of follow-up programs in relation to, designated projects that are referred to a review panel and that do not include physical activities that are designated by regulations made under paragraph 112(1)(e) or that are not part of a class of activities designated by those regulations; and

(c) regional assessments and strategic assessments.

#### **Exception**

(2) The obligation does not apply with respect to any designated project for which the Minister has approved the substitution of a process under section 31.

## **Cost Recovery**

### **Regulations**

**76 (1)** The Governor in Council may make regulations

(a) providing for fees, charges or levies that are payable for the purpose of recovering all or a portion of any costs incurred by the Agency or a review panel in relation to the exercise of its powers or the performance of its duties and functions; and

(b) providing for the manner of calculating those fees, charges or levies and their payment to the Agency.

### **Proponent's obligation to pay costs**

(2) If the Agency or a review panel incurs a cost in relation to the exercise of its powers or the performance of its duties and functions in respect of which no fee, charge or levy is provided for under subsection (1), the proponent of the designated project in respect of which the power is exercised or the duty or function is performed must pay to the Agency

(a) any costs that the Agency or review panel incurs for prescribed services provided by a third party in the exercise of that power or the performance of that duty or function; and

(b) any prescribed amount that is related to the exercise by the Agency or review panel of that power or the performance by it of that duty or function.

### **Service Fees Act**

(3) The *Service Fees Act* does not apply to the fees, charges or levies referred to in subsection (1) or the prescribed amount referred to in paragraph (2)(b).

### **Powers exercised, duties and functions performed during a given period**

**77** For the purposes of section 76, the powers, duties and functions are limited to those exercised or performed during the period that begins on the day on which the initial description of a designated project referred to in subsection 10(1) is received by the Agency and ends on the day on which the follow-up program in respect of the project is completed.

### **Expenditure of fees, charges, etc.**

**78** The Agency may spend for any prescribed purpose the fees, charges, levies, costs and amounts referred to in section 76 in the fiscal year in which they are paid or, unless an appropriation Act provides otherwise, in the next fiscal year.

### **Debt due to Her Majesty**

**79** The fees, charges and levies that are payable, and the costs and amounts that the proponent must pay, under section 76 constitute a debt due to Her Majesty in right of Canada and may be recovered as such in any court of competent jurisdiction.

**Unpaid fees, charges, etc.**

**80** If a proponent does not pay a fee, charge, levy, cost or amount referred to in section 76 that they owe within 90 days after the day on which it is due,

(a) the Agency is authorized, despite any other provision of this Act, to not exercise any of its powers or not perform any of its duties or functions in relation to an impact assessment of any designated project that the proponent proposes to carry out until the proponent pays the debt; or

(b) the Minister may, if an impact assessment of any designated project that the proponent proposes to carry out has been referred to a review panel, make an order directing the review panel to, despite any other provision of this Act, not exercise any of its powers or not perform any of its duties or functions in relation to the impact assessment until the proponent pays the debt.

## **Duties of Certain Authorities in Relation to Projects**

### **Definitions**

**81** The following definitions apply in this section and sections 82 to 91.

***authority*** means

(a) a federal authority; and

(b) any other body that is set out in Schedule 4. (*autorité*)

***environmental effects*** means changes to the environment and the impact of these changes on the Indigenous peoples of Canada and on health, social or economic conditions. (*effets environnementaux*)

***project*** means

(a) a physical activity that is carried out on federal lands or outside Canada in relation to a physical work and that is not a designated project or a physical activity designated by regulations made under paragraph 112(1)(a.2); and

(b) a physical activity that is designated under section 87 or that is part of a class of physical activities that is designated under that section. (*projet*)

### **Project carried out on federal lands**

**82** An authority must not carry out a project on federal lands, exercise any power or perform any duty or function conferred on it under any Act of Parliament other than this Act that could permit a project to be carried out, in whole or in part, on federal lands or provide financial assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, on federal lands, unless

(a) the authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or



(b) the authority determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances.

### **Project outside Canada**

**83** A federal authority must not carry out a project outside Canada, or provide financial assistance to any person for the purpose of enabling that project to be carried out, in whole or in part, outside Canada, unless

(a) the federal authority determines that the carrying out of the project is not likely to cause significant adverse environmental effects; or

(b) the federal authority determines that the carrying out of the project is likely to cause significant adverse environmental effects and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances.

### **Factors**

**84 (1)** An authority's determination regarding whether the carrying out of the project is likely to cause significant adverse environmental effects must be based on a consideration of the following factors:

(a) any adverse impact that the project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;

(b) Indigenous knowledge provided with respect to the project;

(c) community knowledge provided with respect to the project;

(d) comments received from the public under subsection 86(1); and

(e) the mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project that the authority is satisfied will be implemented.

### **Factors — project outside Canada**

(2) However, if the project is to be carried out outside Canada, the authority's determination need not include a consideration of the factors set out in paragraphs (1)(a) and (b).

### **Federal authority's obligation**

**85** Every federal authority that is in possession of specialist or expert information or knowledge with respect to a project must, on an authority's request and within the period that it specifies, make that information or knowledge available to the authority.

### **Notice posted on Internet site**

**86 (1)** Before making a determination under section 82 or 83, an authority must post on the Internet site a notice that indicates that it intends to make such a determination and that invites the public to provide comments respecting that determination.

**Notice of determination posted on Internet site**

**(2)** No sooner than 30 days after the day on which it posts the notice referred to in subsection (1), the authority must post on the Internet site a notice of its determination, including any mitigation measures that it took into account in making the determination.

**Power to designate physical activities**

**87** The Minister may, by order, designate a physical activity, or a class of physical activities, carried out on federal lands or outside Canada that is not in relation to a physical work and is not a designated project, but that, in the Minister's opinion, may cause significant adverse environmental effects.

**Designation of class of projects**

**88 (1)** The Minister may, by order, designate a class of projects if, in the Minister's opinion, the carrying out of a project that is a part of the class will cause only insignificant adverse environmental effects.

**Projects excluded**

**(2)** Sections 82 and 83 do not apply to an authority in respect of a project that is part of a class of projects that is designated under subsection (1).

**Notice inviting public comments**

**89 (1)** If the Minister intends to designate a physical activity, or a class of physical activities, under section 87 or a class of projects under subsection 88(1), the Agency must post on the Internet site a notice that invites the public to provide comments respecting the designation within 30 days after the day on which the notice is posted.

**Minister must consider public comments**

**(2)** The Minister must consider any comments received from the public in deciding whether to make the designation.

**Posting notice on Internet site**

**(3)** If the Minister designates a physical activity, or a class of physical activities, under section 87 or a class of projects under subsection 88(1), the Agency must post on the Internet site a notice that includes a description of the physical activity, the class of physical activities or the class of projects, as the case may be, and the Minister's reasons for making the designation.

**Referral to Governor in Council**

**90 (1)** If the authority determines that the carrying out of a project on federal lands or outside Canada is likely to cause significant adverse environmental effects, the authority may refer to the Governor in Council the matter of whether those effects are justified in the circumstances.

**Referral through Minister**

**(2)** When the determination is made by an authority other than a federal Minister, then the referral to the Governor in Council is made through the Minister responsible before Parliament for that authority.

#### **Governor in Council's decision**

**(3)** When a matter has been referred to the Governor in Council, the Governor in Council must decide whether the significant adverse environmental effects are justified in the circumstances and must inform the authority of its decision.

#### **Non-application — national emergency or emergency**

**91** Sections 82 and 83 do not apply to an authority in respect of a project

- (a)** in relation to which there are matters of national security;
- (b)** that is to be carried out in response to a national emergency for which special temporary measures are being taken under the *Emergencies Act*; or
- (c)** that is to be carried out in response to an emergency, and the carrying out of the project without delay is in the interest of preventing damage to property or the environment or is in the interest of public health or safety.

## **Regional Assessments and Strategic Assessments**

### **Regional Assessments**

#### **Regional assessments — region entirely on federal lands**

**92** The Minister may establish a committee — or authorize the Agency — to conduct a regional assessment of the effects of existing or future physical activities carried out in a region that is entirely on federal lands.

#### **Regional assessments — other regions**

**93 (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,

- (a)** the Minister may
  - (i)** enter into an agreement or arrangement with any jurisdiction referred to in paragraphs (a) to (g) of the definition *jurisdiction* in section 2 respecting the joint establishment of a committee to conduct the assessment and the manner in which the assessment is to be conducted, or
  - (ii)** authorize the Agency to conduct the assessment; and
- (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.

#### **Committee — foreign state or international organization of states**

**(2)** If an agreement or arrangement referred to in paragraph (1)(b) is entered into, the Minister must establish — or approve — the committee’s terms of reference and appoint as a member of the committee one or more persons, or approve their appointment.

**Committee — federal authority, etc.**

**(3)** In respect of an agreement or arrangement entered into under subparagraph (1)(a)(i), the Minister must

**(a)** establish or approve the committee’s terms of reference, including a specified time limit within which the assessment must be completed; and

**(b)** appoint or approve the appointment of the members of the committee, of which at least one person must have been recommended by the jurisdiction with which the agreement or arrangement was entered into.

**Agency’s obligation to offer to consult**

**94** If the Agency conducts an assessment referred to in subsection 92 or 93, it must offer to consult and cooperate with any jurisdiction referred to in paragraphs (a) to (g) of the definition *jurisdiction* in section 2 that has powers, duties or functions in relation to the physical activities in respect of which the assessment is conducted.

## Strategic Assessments

### Assessments

**95 (1)** The Minister may establish a committee — or authorize the Agency — to conduct an assessment of

**(a)** any Government of Canada policy, plan or program — proposed or existing — that is relevant to conducting impact assessments; or

**(b)** any issue that is relevant to conducting impact assessments of designated projects or of a class of designated projects.

### Minister’s power

**(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.

## General Rules

### Committee’s mandate and appointment of members

**96 (1)** If the Minister establishes a committee under section 92 or 95, he or she must establish its terms of reference and appoint as a member of the committee one or more persons.

### Agency’s mandate

**(2)** If the Minister authorizes the Agency to conduct an assessment under section 92, subsection 93(1) or section 95, he or she must establish the Agency's terms of reference with respect to the assessment.

#### **Minister's obligations — request for assessment**

**97 (1)** The Minister must respond, with reasons and within the prescribed time limit, to any request that an assessment referred to in section 92, 93 or 95 be conducted. The Minister must ensure that his or her response is posted on the Internet site.

#### **Committee's or Agency's obligation**

**(2)** When conducting an assessment referred to in section 92, 93 or 95, the Agency or committee, as the case may be, must take into account any scientific information and Indigenous knowledge — including the knowledge of Indigenous women — provided with respect to the assessment.

#### **Information available to public**

**98** Subject to section 119, the Agency, or the committee, must ensure that the information that it uses when conducting an assessment referred to in section 92, 93 or 95 is made available to the public.

#### **Public participation**

**99** The Agency, or the committee, must ensure that the public is provided with an opportunity to participate meaningfully, in a manner that the Agency or committee, as the case may be, considers appropriate, in any assessment referred to in section 92, 93 or 95 that it conducts.

#### **Federal authority's obligation**

**100** Every federal authority that is in possession of specialist or expert information or knowledge with respect to the physical activities in respect of which an assessment referred to in section 92 or 93 is conducted — or with respect to any policy, plan, program or issue in respect of which an assessment referred to in section 95 is conducted — must, on request, make that information or knowledge available to the committee or Agency that conducts the assessment within the specified period.

#### **Application of section 53**

**101** Section 53 applies, with any necessary modifications, to a committee established under section 92 or 95 or under an agreement or arrangement entered into under subparagraph 93(1)(a)(i) or paragraph 93(1)(b) and, for the purpose of applying section 53 to a committee, a reference in that section to a review panel is a reference to a committee.

#### **Report to Minister**

**102 (1)** On completion of the assessment that it conducts, the committee established under section 92 or 95 or under an agreement or arrangement entered into under subparagraph 93(1)(a)(i) or paragraph 93(1)(b) or the Agency, as the case may be, must provide a report to the Minister.

#### **Indigenous knowledge**

**(2)** Subject to section 119, the report must set out how the Agency or committee, as the case may be, took into account and used any Indigenous knowledge provided with respect to the assessment.

#### **Copy of report posted on Internet site**

**103** The Agency must post a copy of the report on the Internet site.

## **Canadian Impact Assessment Registry**

### **Establishment of Registry**

#### **Canadian Impact Assessment Registry**

**104 (1)** There is to be a registry called the Canadian Impact Assessment Registry, consisting of an Internet site and project files.

#### **Right of access**

**(2)** The Registry must be operated in a manner that ensures convenient public access to it. That right of access to the Registry is in addition to any right of access provided under any other Act of Parliament.

#### **Copy**

**(3)** For the purpose of facilitating public access to records included in the Registry, the Agency must ensure that a copy of any of those records is provided in a timely manner on request.

## **Internet Site**

### **Establishment and maintenance**

**105 (1)** The Agency must establish and maintain an Internet site that is available to the public.

#### **Contents — assessment conducted by Agency**

**(2)** The Agency must ensure that the following records and information relating to the impact assessment of the designated project that it conducts are posted and, subject to paragraph (4)(c), maintained on the Internet site:

**(a)** any public notice that is issued by the Agency to request the participation of the public in the impact assessment;

**(b)** a description of the factors to be taken into account in the impact assessment and of the scope of those factors;

**(c)** the report with respect to the impact assessment that is taken into account by the Minister under subsection 60(1) or (1.1), or a summary of the report and an indication of how a copy of the report may be obtained;

**(d)** any scientific information that the Agency receives from a proponent or federal authority, or a summary of the scientific information and an indication of how that information may be obtained;

**(e)** a description of the results of the follow-up program that is implemented with respect to that designated project or a summary of the results and an indication of how such a description may be obtained;

**(f)** notice of the Agency's decision to terminate the impact assessment under section 73;

**(g)** any other information that the Agency considers appropriate, including information in the form of a list of relevant records and an indication of how a copy of them may be obtained;

**(g.1)** any public comments received during the impact assessment; and

**(h)** any other record or information prescribed by regulations made under paragraph 112(1)(f).

### **Contents — assessment conducted by review panel**

**(3)** The Agency must ensure that, in the case of an assessment conducted by a review panel or an impact assessment completed under section 59, the following records or information are posted and, subject to paragraph (4)(c), maintained on the Internet site:

**(a)** the review panel's terms of reference;

**(b)** any public notice that is issued by the review panel to request the participation of the public in an impact assessment;

**(c)** the report with respect to the review panel's impact assessment referred to in section 55 or the impact assessment completed under section 59, or a summary of the report and an indication of how a copy of the report may be obtained;

**(d)** any scientific information that the Agency or the review panel receives from a proponent or federal authority, or a summary of the scientific information and an indication of how that information may be obtained;

**(e)** a description of the results of the follow-up program that is implemented with respect to that designated project or a summary of the results and an indication of how such a description may be obtained;

**(f)** notice of the termination of an assessment by the review panel under section 58;

**(g)** notice of the Minister's decision to terminate an impact assessment under section 73;

**(h)** any other information that the Agency considers appropriate, including information in the form of a list of relevant documents and an indication of how a copy of them may be obtained;

**(h.1)** any public comments received in the course of the impact assessment; and

**(i)** any other record or information prescribed by regulations made under paragraph 112(1)(f).

## Management of Internet site

(4) The Agency must determine

- (a) what the form of the Internet site is to be and how it is to be kept;
- (b) what information must be contained in any record required to be posted on the Internet site under this Act; and
- (c) when information may be removed from the Internet site.

## Project Files

### Establishment and maintenance

**106 (1)** Subject to subsection (2), in respect of every designated project, a project file must be established by the Agency on the day on which the notice referred to in subsection 10(1) in respect of the designated project is posted on the Internet site and maintained until the day on which any follow-up program in respect of that designated project is completed.

### Exception

(2) The obligation set out in subsection (1) ends on the earliest of the following days:

- (a) the day on which the Agency under subsection 16(1) decides that an impact assessment in respect of the designated project is not required;
- (b) the day on which the impact assessment in respect of the designated project is terminated under subsection 20(1) or section 73;
- (c) the day on which the Minister issues, ~~in respect of the designated project,~~ a decision statement that informs the proponent of ~~his or her~~ the designated project of the Minister's, or the Governor in Council's, determination that the ~~adverse effects within federal jurisdiction, or the adverse direct or incidental effects, that the designated project is likely to cause are not~~ effects referred to in paragraph 60(1)(a) or 62(a), as the case may be, that are likely to be, to some extent, significant are not justified in the public interest; and
- (d) the day on which the decision statement expires under subsection 70(3) or is revoked under section 71.

### Contents of project file

(3) A project file must contain all records produced, collected or received in relation to the Agency's preparations for a possible impact assessment of a designated project and in relation to the impact assessment of that designated project, including

- (a) all records posted on the Internet site;
- (b) any report relating to the impact assessment;
- (c) any comments that are received from the public in relation to the Agency's preparations for a possible impact assessment and in relation to the impact assessment;



(d) any records relating to the design or implementation of any follow-up program; and

(e) any records relating to the implementation of any mitigation measures.

## General

### Categories of available information

**107 (1)** Despite any other provision of this Act, the Registry is to contain a record, part of a record or information only if

(a) it has otherwise been made publicly available; or

(b) the Minister determines

(i) that it would have been disclosed to the public in accordance with the *Access to Information Act* if a request had been made in respect of that record under that Act at the time the record came under the control of the Agency, including any record that would be disclosed in the public interest under subsection 20(6) of that Act, or

(ii) that there are reasonable grounds to believe that it would be in the public interest to disclose it because it is required for the public to participate effectively in the Agency's preparations for a possible impact assessment or the impact assessment — other than any record the disclosure of which would be prohibited under section 20 of the *Access to Information Act*.

### Applicability of sections 27, 28 and 44 of *Access to Information Act*

**(2)** Sections 27, 28 and 44 of the *Access to Information Act* apply to any information described in subsection 27(1) of that Act that the Agency intends to be included in the Registry with any necessary modifications, including the following:

(a) the information is deemed to be a record that the head of a government institution intends to disclose; and

(b) any reference to the person who requested access must be disregarded.

### Protection from civil proceeding or prosecution

**108** Despite any other Act of Parliament, no civil or criminal proceedings lie against the Agency or the Minister — or any person acting on behalf of, or under the direction of, either of them — and no proceedings lie against the Crown or the Agency, for the disclosure in good faith of any record or any part of a record or any Indigenous knowledge under this Act or for any consequences that flow from that disclosure or for the failure to give any notice required under section 27 or 28 of the *Access to Information Act* if reasonable care is taken to give the required notice.

## Administration

### Regulations — Governor in Council

**109** The Governor in Council may make regulations

- (a) amending Schedule 1 or 4 by adding or deleting a body or a class of bodies;
- (b) for the purpose of the definition *designated project* in section 2, designating a physical activity — or class of physical activities — the carrying out of which may, in the Governor in Council's opinion, cause adverse effects within federal jurisdiction or direct or incidental adverse effects and specifying which physical activity or class of physical activities may be designated by the Minister under paragraph 112(1)(a.2);
- (c) exempting any class of proponents or class of designated projects from the application of section 76;
- (d) varying or excluding any requirement set out in this Act or the regulations as it applies to physical activities to be carried out
  - (i) on reserves, surrendered lands or other lands that are vested in Her Majesty and subject to the *Indian Act*,
  - (ii) on lands covered by land claim agreements referred to in section 35 of the *Constitution Act, 1982*,
  - (iii) on lands with respect to which agreements or arrangements referred to in paragraph 114(1)(d) or (e) apply,
  - (iv) under international agreements or arrangements entered into by the Government of Canada, or
  - (v) in relation to which there are matters of national security;
- (e) respecting agreements or arrangements referred to in paragraph 114(1)(d) or (e);
- (f) prescribing — other than the time limit referred to in subsection 97(1) — anything that, by this Act, is to be prescribed;
- (g) prescribing the way in which anything that is required or authorized by this Act to be prescribed is to be determined; and
- (h) generally, for carrying out the purposes and provisions of this Act.

#### **Amendment of Schedule 2**

**110** The Governor in Council may, by order, amend Schedule 2 by adding, replacing or deleting a description of lands that are subject to a land claim agreement referred to in section 35 of the *Constitution Act, 1982*.

#### **Review of regulations**

**111 (1)** The Agency must review, within the prescribed period, any regulations made under paragraph 109(b).

#### **Report**

**(2)** After completing its review the Agency must submit to the Minister a report setting out its conclusions and recommendations.

### **Regulations — Minister**

**112 (1)** The Minister may make regulations

**(a)** prescribing the information that must be contained in the description referred to in subsection 10(1) or 15(~~4~~1.1) and the documents referred to in paragraph 18(1)(b);

**(a.1)** respecting the form and format of a description referred to in subsection 10(1), of a notice referred to in subsection 15(1) and of any information or study provided under this Act and the manner of providing the description, notice, information or study;

**(a.2)** designating, for the purposes of section 112.1, a physical activity or class of physical activities from among those specified by the Governor in Council under paragraph 109(b), establishing the conditions that must be met for the purposes of the designation and setting out the information that a person or entity — federal authority, government or body — that is referred to in subsection (3) must provide the Agency in respect of the physical activity that they propose to carry out;

**(a.3)** respecting the procedures and requirements relating to assessments referred to in section 92, 93 or 95;

**(b)** respecting the procedures, requirements and time periods relating to impact assessments, including the manner of designing a follow-up program;

**(c)** prescribing, for the purposes of any of subsections 9(5), 18(6), 28(9), 36(3) and 37(6), any activity in respect of which a time limit may be suspended and respecting circumstances, in relation to an activity, in which a time limit may be suspended;

**(d)** respecting a participant funding program established under section 75;

**(e)** designating, for the purposes of section 75, a physical activity or class of physical activities;

**(e.1)** prescribing the time limit referred to in subsection 97(1);

**(f)** respecting the Registry, including the identification of records or information to be posted on the Internet site and the establishment and maintenance of project files referred to in section 106; and

**(g)** respecting the charging of fees for providing copies of documents contained in the Registry.

### **Condition**

**(2)** The Minister may make a regulation designating a physical activity or class of physical activities under paragraph (1)(a.2) only after considering an assessment

referred to in section 92 or 93 that is in relation to that physical activity or class of physical activities.

#### **Written notice**

**(3)** A person or entity — federal authority, government or body — that proposes the carrying out of a physical activity that is designated by the Minister under paragraph 112(1)(a.2) or that is part of a class of physical activities that is designated by the Minister under that paragraph must notify the Agency in writing that they propose to do so.

#### **Statutory Instruments Act**

**(4)** The *Statutory Instruments Act* does not apply to a regulation made under paragraph 112(1)(a.2).

#### **Regulation posted on Internet site**

**(5)** The Agency must post any regulation made under paragraph 112(1)(a.2) on the Internet site.

#### **Physical activity excluded**

**112.1** A physical activity or class of physical activities that is designated by the Minister under paragraph 112(1)(a.2) is excluded from the physical activities or class of physical activities that is designated by the Governor in Council under paragraph 109(b) if it meets the conditions established by the Minister.

#### **Externally produced documents**

**113 (1)** A regulation made under this Act may incorporate by reference documents that are produced by a person or body other than the Agency, including a federal authority referred to in any of paragraphs (a) to (d) of the definition *federal authority* in section 2.

#### **Ambulatory incorporation by reference**

**(2)** A document may be incorporated by reference either as it exists on a particular date or as amended from time to time.

#### **Accessibility of incorporated document**

**(3)** The Minister must ensure that any document incorporated by reference in a regulation is accessible.

#### **No registration or publication**

**(4)** For greater certainty, a document that is incorporated by reference into a regulation is not required to be transmitted for registration or published in the *Canada Gazette* by reason only that it is incorporated by reference.

#### **Minister's powers**

**114 (1)** For the purposes of this Act, the Minister may

**(a)** issue guidelines and codes of practice respecting the application of this Act;

**(b)** establish research and advisory bodies in the area of impact assessment, including with respect to the interests and concerns of Indigenous peoples of Canada, and appoint as a member of any such bodies one or more persons;

**(c)** enter into agreements or arrangements with any jurisdiction referred to in paragraphs (a) to (g) of the definition *jurisdiction* in section 2 respecting assessments of effects;

**(d)** if authorized by the regulations, enter into agreements or arrangements with any jurisdiction referred to in paragraph (e) or (f) of the definition *jurisdiction* in section 2 to

**(i)** authorize the jurisdiction, on lands with respect to which it already has powers, duties or functions in relation to an assessment of the environmental effects of a designated project, to exercise powers or perform duties or functions in relation to impact assessments under this Act — except for those set out in section 16 — that are specified in the agreement or arrangement, or

**(ii)** in relation to lands, specified in the agreement or arrangement, with respect to which it does not already have powers, duties or functions in relation to an assessment of the environmental effects of a designated project,

**(A)** provide that the jurisdiction is considered to be a jurisdiction for the application of this Act on those lands, and

**(B)** authorize the jurisdiction, on those lands, to exercise powers or perform duties or functions in relation to impact assessments under this Act — except for those set out in section 16 — that are specified in the agreement or arrangement;

**(e)** if authorized by the regulations, enter into agreements or arrangements with any Indigenous governing body not referred to in paragraph (f) of the definition *jurisdiction* in section 2 to

**(i)** provide that the Indigenous governing body is considered to be a jurisdiction for the application of this Act on the lands specified in the agreement or arrangement, and

**(ii)** authorize the Indigenous governing body, with respect to those lands, to exercise powers or perform duties or functions in relation to impact assessments under this Act — except for those set out in section 16 — that are specified in the agreement or arrangement;

**(f)** enter into agreements or arrangements with any jurisdiction for the purposes of coordination, consultation, exchange of information and the determination of factors to be considered in relation to the assessment of the effects of designated projects of common interest;

**(g)** establish criteria for the appointment of members of review panels; and

(h) establish criteria for the appointment of members of committees established under section 92 or 93.

#### **International agreements and arrangements**

(2) The Minister and the Minister of Foreign Affairs may enter into agreements or arrangements with any jurisdiction referred to in paragraphs (h) and (i) of the definition *jurisdiction* in section 2 respecting assessments of environmental effects, including for the purposes of implementing the provisions of any international agreement or arrangement respecting the assessment of environmental effects to which the Government of Canada is a party.

#### **Opportunity for public to comment**

(3) The Minister must provide reasonable public notice of and a reasonable opportunity for anyone to comment on draft guidelines, codes of practice, agreements, arrangements or criteria under this section.

#### **Availability to public**

(4) Any guidelines, codes of practice, agreements, arrangements or criteria must be made available to the public.

#### **Agreements or arrangements posted on Internet site**

(5) The Minister must ensure that an agreement or arrangement referred to in paragraph (1)(d) or (e) is posted on the Internet site.

#### **Non-application — national security**

**115 (1)** The Governor in Council may, by order, exclude a designated project from the application of this Act if, in the Governor in Council's opinion, the designated project is one in relation to which there are matters of national security.

#### **Non-application — national emergency or emergency**

(2) The Minister may, by order, exclude a designated project from the application of this Act if, in the Minister's opinion, the designated project is one to be carried out in response to

(a) a national emergency for which special temporary measures are being taken under the *Emergencies Act*; or

(b) an emergency, and carrying out the designated project without delay is in the interest of preventing damage to property or the environment or is in the interest of public health or safety.

#### **Posting of notice of order on Internet site**

(3) The Agency must post on the Internet site a notice of any order made under subsection (2).

#### **Statutory Instruments Act**

**116** An order made under subsection 9(1) or 115(1) or (2) is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

## **Minister's Advisory Council**

### **Advisory council to be established**

**117 (1)** The Minister must establish an advisory council to advise him or her on issues related to the implementation of the impact assessment and regional and strategic assessment regimes set out under this Act.

### **Appointment**

**(2)** The Minister must appoint members to the advisory council, including a chairperson.

### **Membership**

**(3)** The membership of the council must include at least

**(a)** one person recommended by an Indigenous governing body or other entity that represents the interests of First Nations;

**(b)** one person recommended by an Indigenous governing body or other entity that represents the interests of the Inuit; and

**(c)** one person recommended by an Indigenous governing body or other entity that represents the interests of the Métis.

### **Meetings**

**118 (1)** The advisory council must meet at least once a year.

### **First report**

**(2)** Within three months after the end of the fiscal year during which the first anniversary of the coming into force of this Act occurs, the advisory council must submit to the Minister a report setting out the advice it provided during the period beginning on the day on which this Act comes into force and ending on the day on which that fiscal year ends, including the advice with respect to regional and strategic assessments to be given priority.

### **Subsequent reports**

**(3)** Within three months after the end of each period of two fiscal years not addressed by the previous report, the advisory council must provide to the Minister a report setting out the advice it provided during that period of two fiscal years, including the advice with respect to regional and strategic assessments to be given priority.

### **Tabling of report**

**(4)** The Minister must cause a copy of the report to be tabled in each House of Parliament on any of the first 15 days on which that House is sitting after the Minister receives the report and then ensure the report is posted on the Internet site.

### **Minister's comments**

**(5)** Within 90 days after the day on which he or she receives the report, the Minister must provide his or her comments on the report to the advisory council, including with respect to the advice the council provided about regional and strategic assessments, and then ensure they are posted on the Internet site.

## **Indigenous Knowledge**

### **Confidentiality**

**119 (1)** Any Indigenous knowledge that is provided to the Minister, the Agency, a committee referred to in section 92, 93 or 95 or a review panel under this Act in confidence is confidential and must not knowingly be, or be permitted to be, disclosed without written consent.

### **Exception**

**(2)** Despite subsection (1), the Indigenous knowledge referred to in that subsection may be disclosed if

**(a)** it is publicly available;

**(b)** the disclosure is necessary for the purposes of procedural fairness and natural justice or for use in legal proceedings; or

**(c)** the disclosure is authorized in the prescribed circumstances.

### **Consultation**

**(2.1)** Before disclosing Indigenous knowledge under paragraph 2(b) for the purposes of procedural fairness and natural justice, the Minister, the Agency, the committee or the review panel, as the case may be, must consult the person or entity who provided the Indigenous knowledge and the person or entity to whom it is proposed to be disclosed about the scope of the proposed disclosure and potential conditions under subsection (3).

### **Further disclosure**

**(3)** The Minister, the Agency, the committee or the review panel, as the case may be, may, having regard to the consultation referred to in subsection (2.1), impose conditions with respect to the disclosure of Indigenous knowledge by any person or entity to whom it is disclosed under paragraph (2)(b) for the purposes of procedural fairness and natural justice.

### **Duty to comply**

**(4)** The person or entity referred to in subsection (3) must comply with any conditions imposed under that subsection.

## **Administration and Enforcement**

### **Enforcement Officers and Analysts**

#### **Designation**



**120 (1)** The President of the Agency may designate persons or classes of persons as enforcement officers or analysts for the purposes of the administration and enforcement of this Act.

### **Certificate**

**(2)** The President of the Agency must provide every person designated under subsection (1) with a certificate of designation. That person must, if so requested, produce the certificate to the occupant or person in charge of a place referred to in subsection 122(1).

### **Immunity**

**121** No action or other proceeding of a civil nature lies against an enforcement officer or analyst in respect of anything that is done or omitted to be done in good faith while exercising their powers or performing their duties or functions under this Act.

## **Powers**

### **Authority to enter**

**122 (1)** An enforcement officer may, for the purpose of verifying compliance or preventing non-compliance with this Act, including an injunction ordered under section 140, enter a place in which they have reasonable grounds to believe a designated project is or was being carried out or a record or anything relating to a designated project is located.

### **Powers on entry**

**(2)** The enforcement officer may, for those purposes,

- (a)** examine anything in the place;
- (b)** use any means of communication in the place or cause it to be used;
- (c)** use any computer system in the place, or cause it to be used, to examine data contained in or available to it;
- (d)** prepare a document, or cause one to be prepared, based on the data;
- (e)** use any copying equipment in the place, or cause it to be used;
- (f)** remove anything from the place for examination or copying;
- (g)** take photographs and make recordings or sketches;
- (h)** direct the owner or 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;
- (i)** 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;

(j) direct any person to put any machinery, vehicle or equipment in the place into operation or to cease operating it; and

(k) prohibit or limit access to all or part of the place.

#### **Person accompanying enforcement officer**

(3) An enforcement officer who enters a place under subsection (1) may be accompanied by any other person that they believe is necessary to help them exercise their powers and perform their duties and functions under this section.

#### **Analysts**

(4) An analyst who accompanies an enforcement officer may exercise any of the powers referred to in paragraphs (2)(a) to (g).

#### **Duty to assist**

(5) The owner or person in charge of the place and every person in the place must give all assistance that is reasonably required to enable the enforcement officer or analyst to exercise a power or perform a duty or function under this section and must provide any documents, data or information that are reasonably required for that purpose.

#### **Warrant for dwelling-house**

**123 (1)** If the place is a dwelling-house, the enforcement officer may enter it without the occupant's consent only under the authority of a warrant issued under subsection (2).

#### **Authority to issue warrant**

(2) On *ex parte* application, a justice of the peace may issue a warrant authorizing an enforcement officer who is named in it to enter a dwelling-house, subject to any conditions specified in the warrant, and authorizing any analyst named in the warrant to accompany the enforcement officer, if the justice is satisfied by information on oath that

(a) the dwelling-house is a place referred to in subsection 122(1);

(b) entry to the dwelling-house is necessary for any of the purposes of that subsection; and

(c) entry was refused by the occupant or there are reasonable grounds to believe that entry will be refused or that consent to entry cannot be obtained from the occupant.

#### **Use of force**

(3) In executing a warrant to enter a dwelling-house, an enforcement officer or analyst may use force only if the use of force has been specifically authorized in the warrant and the enforcement officer or analyst is accompanied by a peace officer.

#### **Entry on private property**

**124 (1)** For the purpose of gaining entry to a place referred to in subsection 122(1), an enforcement officer and analyst may enter private property and pass through it, and are not liable for doing so. For greater certainty, no person has a right to object to that use

of the property and no warrant is required for the entry, unless the property is a dwelling-house.

### **Person accompanying**

**(2)** A person may, at an enforcement officer or analyst's request, accompany them to assist them to gain entry to the place referred to in subsection 122(1) and is not liable for doing so.

### **Production of documents**

**125 (1)** An enforcement officer may, for the purpose of verifying compliance or preventing non-compliance with this Act, 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 grounds contain any information relevant to the administration of this Act.

### **Proof of delivery**

**(2)** The enforcement officer must make the request by a means that provides a record of delivery.

### **Compliance**

**(3)** Any person who is required to produce anything under subsection (1) must, despite any other law to the contrary, do so as required.

## **Notice of Non-compliance**

### **Issuance**

**126 (1)** If an enforcement officer believes on reasonable grounds that a person or entity has contravened this Act, they may issue a notice of non-compliance to that person or entity.

### **Contents of notice**

**(2)** The notice must be made in writing and must set out

- (a)** the name of the person or entity to whom it is directed;
- (b)** the provision of this Act or the regulations, or the condition established under section 64, amended under subsection 68(1) or added to a decision statement under that subsection, that is alleged to have been contravened;
- (c)** the relevant facts surrounding the alleged contravention; and
- (d)** a statement that the person or entity may provide comments in response to the notice and the time within which they may do so.

## **Orders**

### **Measures required**

**127 (1)** If an enforcement officer believes on reasonable grounds that there is or is likely to be a contravention of this Act, they may, among other things, order a person or entity to

- (a) stop doing something that is or is likely to be in contravention of this Act or cause it to be stopped; or
- (b) take any measure that is necessary in order to comply with this Act or to mitigate the effects of non-compliance.

#### **Contents of order**

**(2)** Subject to section 128, the order must be made in writing and must set out

- (a) the name of the person or entity to whom it is directed;
- (b) the provision of this Act or the regulations, or the condition established under section 64 or added or amended under section 68, that is alleged to have been or that is likely to be contravened;
- (c) the relevant facts surrounding the alleged contravention;
- (d) the measures to be taken;
- (e) the time or the day when each measure is to begin or the period during which it is to be carried out;
- (f) the duration of the order;
- (g) a statement that the person or entity may provide comments to the enforcement officer in response to the order; and
- (h) a statement that a request for a review may be made to the President of the Agency and the time period for doing so.

#### **Variation or cancellation of order**

**(3)** 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,

- (a) amend or suspend a condition of the order, add a condition to it or delete a condition from it;
- (b) cancel the order;
- (c) correct a clerical error in the order; or
- (d) extend the order's duration.

#### **Exigent circumstances**

**128 (1)** In the case of exigent circumstances, an order may be given orally on the condition that it is followed, within seven days, by a written order issued in accordance with section 127.

### **For greater certainty**

**(2)** For greater certainty, *exigent circumstances* includes circumstances in which the delay necessary to issue a written order that meets the requirements of subsection 127(2) would likely result in danger to the environment, human life or health or public safety.

### **Duty to comply with order**

**129 (1)** Any person or entity to whom an order is given under section 127 or 128 must comply with the order.

### **Measures taken by enforcement officer**

**(2)** If the person or entity does not comply with the order within the time specified, the enforcement officer may, on their own initiative and at that person or entity's expense, carry out the measure required.

## **Review of Orders**

### **Request for review**

**130 (1)** Any person or entity to whom an order is given under section 127 or 128 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.

### **Extension of period for request**

**(2)** 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**

**131** On receipt of a request made under subsection 130(1), the President of the Agency must designate an individual as a review officer to review the order.

### **No automatic stay on review**

**132 (1)** Subject to subsection (2), the request for a review of an order does not suspend the operation of an order.

### **Suspension on application**

**(2)** 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.

### **Duration of suspension**

**(3)** If the operation of an order is suspended under subsection (2), the period for which the order is issued is suspended until the review is completed.

### **Evidence**

**133 (1)** A review officer may order any person to give evidence in writing or produce any documents and things that the review officer considers relevant for the purpose of performing any of their functions.

#### **Enforcement of orders**

**(2)** Any order made under subsection (1) 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.

#### **Procedure**

**(3)** An order made under subsection (1) 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.

#### **Powers of review officer**

**134** 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

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

#### **Decision**

**135 (1)** 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.

#### **Duty to comply with revised order**

**(2)** Any person or entity that is subject to an order confirmed or varied under section 134 must comply with the order.

#### **Immunity**

**136** No action or other proceeding of a civil nature may be brought against a review officer in respect of anything that is done or omitted to be done in good faith while exercising their powers or performing their duties or functions under this Act.

#### **Rules**

**137** The Agency may make rules

- (a)** governing the practice and procedure for the review of orders;
- (b)** generally, respecting the work of review officers; and

(c) for preventing trade secrets and information described in section 20 of the *Access to Information Act* from being disclosed or made public as a result of their being used as evidence before a review officer.

## Federal Court

### Appeal to Federal Court

**138** The Minister or any person or entity to whom an order, as confirmed or varied by a review officer, is directed may, by filing a written notice of appeal within 30 days after the day on which the written reasons are provided by the review officer under section 135, appeal to the Federal Court from the review officer's decision.

### Order not suspended

**139** The filing of a notice of appeal under section 138 does not suspend the operation of an order, as confirmed or varied by a review officer.

## Injunctions

### Court's power

**140 (1)** If, on the Minister's application, it appears to a court of competent jurisdiction that a person or entity has done, is about to do or is likely to do any act constituting or directed toward the commission of an offence under this Act, the court may issue an injunction ordering the person or entity who is named in the application to

(a) refrain from doing an act that, in the court's opinion, may constitute or be directed toward the commission of the offence; or

(b) do an act that, in the court's opinion, may prevent the commission of the offence.

### Notice

(2) No injunction is to be issued under subsection (1) unless 48 hours' notice is served on the party or parties who are named in the application or unless the urgency of the situation is such that service of notice would not be in the public interest.

## Voluntary Reports

### Voluntary reports

**141 (1)** If a person has knowledge of the commission or reasonable likelihood of the commission of an offence under this Act, but is not required to report the matter under this Act, the person may report any information relating to the offence or likely offence to an enforcement officer or the Agency.

### Request for confidentiality

(2) The person making the report may request that their identity, and any information that may reveal their identity, not be disclosed.

### Due diligence

**(3)** An enforcement officer and the Agency must exercise all due diligence to not disclose the identity of a person who makes a request under subsection (2) or any information that may reveal their identity.

#### **Prohibition**

**(4)** A person not referred to in subsection (3), or an entity, must not disclose the identity of a person who makes a request under subsection (2) or any information that may reveal that person's identity unless that person authorizes the disclosure in writing.

#### **Employee protection**

**(5)** 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 has

**(a)** made a report under subsection (1);

**(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.

## **Prohibitions and Offences**

#### **Obstruction**

**142** A person or entity must not obstruct or hinder an enforcement officer or analyst who is exercising their powers or performing their duties or functions under this Act.

#### **False statements or information**

**143** A person or entity must not make a false or misleading statement or provide false or misleading information in connection with any matter under this Act to any person who is exercising their powers or performing their duties or functions under this Act.

#### **Offences**

**144 (1)** Every person or entity commits an offence that

**(a)** contravenes section 7, subsection 122(5), 125(3), 129(1), 135(2) or 141(4) or (5) or section 142 or 143;

**(b)** contravenes a condition established under subsection 64(2) or added or amended under section 68 with which the person or entity must comply; or

**(c)** omits to provide to the Minister information required to be provided under subsection 72(1).

#### **Penalty — individuals**

**(2)** Every individual who commits an offence under subsection (1) is liable on summary conviction



(a) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000; and

(b) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000.

#### **Penalty — small revenue corporations or entities**

(3) Every corporation or entity that commits an offence under subsection (1) and that the court determines under section 145 to be a small revenue corporation or entity is liable on summary conviction

(a) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000; and

(b) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

#### **Penalty — other corporations or entities**

(4) Every corporation or entity, other than a corporation or entity referred to in subsection (3), that commits an offence under subsection (1) is liable on summary conviction

(a) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000; and

(b) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

#### **Determination of small revenue corporation or entity status**

**145** For the purpose of subsection 144(3), a court may determine a corporation or entity to be a small revenue corporation or entity if the court is satisfied that the gross revenues of the corporation or entity for the 12 months immediately before the day on which the subject matter of the proceedings arose — or, if it arose on more than one day, for the 12 months immediately before the first day on which the subject matter of the proceedings arose — were not more than \$5,000,000.

#### **Continuing offences**

**146 (1)** 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.

#### **Due diligence defence**

(2) A person or entity must not be found guilty of an offence for a contravention of section 7, subsection 129(1) or 135(2) or section 142, or of an offence under paragraph 144(1)(b), if they establish that they exercised due diligence to prevent the commission of the offence.

#### **Liability of senior officers**

**147** If a corporation or entity commits an offence under this Act, any *senior officer*, as defined in section 2 of the *Criminal Code*, of the corporation or entity who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable on conviction to the penalty provided for by this Act for an individual in respect of the offence committed by the corporation or entity, whether or not the corporation or entity has been prosecuted.

#### **Duties of senior officers**

**148** Every *senior officer*, as defined in section 2 of the *Criminal Code*, of a corporation or entity must take all reasonable care to ensure that the corporation or entity complies with this Act and any order issued by an enforcement officer or review officer.

#### **Limitation period or prescription**

**149** Proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within two years after the day on which the Minister becomes aware of the acts or omissions that constitute the alleged offence.

#### **Admissibility of evidence**

**150 (1)** In proceedings for an offence under this Act, a statement, certificate, report or other document of the Minister, an officer or employee of the Agency, an enforcement officer or an analyst that is purported to have been signed by that person is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and, in the absence of evidence to the contrary, is proof of the matters asserted in it.

#### **Copies and extracts**

**(2)** In proceedings for an offence under this Act, a copy of or an extract from any document that is made by the Minister, an officer or employee of the Agency, an enforcement officer or an analyst that appears to have been certified under the signature of that person as a true copy or extract is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and, in the absence of evidence to the contrary, has the same probative force as the original would have if it were proved in the ordinary way.

#### **Presumed date of issue**

**(3)** A document referred to in this section is, in the absence of evidence to the contrary, presumed to have been issued on the date that it bears.

#### **Notice**

**(4)** No document referred to in this section may be received in evidence unless the party intending to produce it has provided reasonable notice of that intention to the party against whom it is intended to be produced together with a copy of the document.

#### **Notice to shareholders**

**151** 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.

## Publication

### Power

**152** The Agency must publish, in the manner it considers appropriate,

- (a) information or a document provided by a proponent to comply with a condition established under section 64 or added or amended under section 68;
- (b) a summary of a report that an enforcement officer or analyst may prepare in the exercise of their powers or the performance of their duties and functions under sections 122 to 125;
- (c) a notice of non-compliance referred to in section 126;
- (d) a written order issued by an enforcement officer in accordance with section 127 or by a review officer under section 134; or
- (e) a decision rendered under section 135.

## Impact Assessment Agency of Canada

### Agency continued

**153 (1)** The Canadian Environmental Assessment Agency is continued as the Impact Assessment Agency of Canada. The Impact Assessment Agency must advise and assist the Minister in exercising the powers and performing the duties and functions conferred on him or her by this Act.

### Minister's responsibility

**(2)** The Minister is responsible for the Agency. The Minister may not, except as provided in this Act, direct the President of the Agency or its employees, or any review panel members, with respect to a report, decision, order or recommendation to be made under this Act.

### Delegation to Agency

**154 (1)** The Minister may, subject to any terms and conditions that the Minister specifies, delegate to an officer or employee of the Agency any of the powers, duties and functions that the Minister is authorized to exercise or perform under this Act.

### Restriction

**(2)** However, the Minister is not authorized to delegate a power to make regulations or a power to delegate under subsection (1).

### Agency's objects

**155** The Agency's objects are

- (a) to conduct or administer impact assessments and administer any other requirements and procedures established by this Act and the regulations;

**(b)** to coordinate — during the period that begins on the day on which a copy of the description of the project referred to in subsection 10(1) is posted on the Internet site, and that ends on the day on which the decision statement in respect of the project is issued — consultations with Indigenous groups that may be affected by the carrying out of a designated project;

**(c)** to promote harmonization in relation to the assessment of effects across Canada at all levels of government;

**(d)** to promote or conduct research in matters of impact assessment and to encourage the development of impact assessment techniques and practices, including testing programs, alone or in cooperation with other agencies or organizations;

**(e)** to promote impact assessment in a manner that is consistent with the purposes of this Act;

**(f)** to promote, monitor and facilitate compliance with this Act;

**(g)** to promote and monitor the quality of impact assessments conducted under this Act;

**(h)** to develop policy related to this Act; and

**(i)** to engage in consultation with the Indigenous peoples of Canada on policy issues related to this Act.

#### **Agency's duties**

**156 (1)** In carrying out its objects, the Agency must

**(a)** provide support for review panels and any committees established under section 92 or under an agreement or arrangement entered into under paragraph 93(1)(a) or (b);

**(b)** provide, on the Minister's request, administrative support for any research and advisory body established under paragraph 114(1)(b); and

**(c)** provide information or training to facilitate the application of this Act.

#### **Agency's powers**

**(2)** In carrying out its objects, the Agency may

**(a)** undertake studies or activities or conduct research relating to impact assessment;

**(b)** advise persons and organizations on matters relating to the assessment of effects;

**(c)** issue guidelines and codes of practice;

**(d)** negotiate agreements or arrangements referred to in paragraphs 114(1)(c) to (f) on the Minister's behalf; and

(e) establish research and advisory bodies for matters related to impact assessment and monitoring committees for matters related to the implementation of follow-up programs and adaptive management plans, including with respect to the interests and concerns of Indigenous peoples of Canada, and appoint as a member of any such bodies one or more persons.

#### **Expert committee**

**157 (1)** The Agency must establish an expert committee to advise it on issues related to impact assessments and regional and strategic assessments, including scientific, environmental, health, social or economic issues.

#### **Appointment**

(2) The Agency may appoint any person with relevant knowledge or experience as a member of the expert committee. The membership of the committee must include at least one Indigenous person.

#### **Publication**

(3) The Agency must post on the Internet site all advice it receives from the expert committee.

#### **Advisory committee — interests and concerns of Indigenous peoples**

**158 (1)** The Agency must establish an advisory committee to advise it with respect to the interests and concerns of the Indigenous peoples of Canada in relation to assessments to be conducted under this Act.

#### **Appointment**

(2) The Agency may appoint any person with relevant knowledge or experience as a member of the advisory committee.

#### **Membership**

(2.1) The membership of the committee must include at least

(a) one person recommended by an Indigenous governing body or other entity that represents the interests of First Nations;

(b) one person recommended by an Indigenous governing body or other entity that represents the interests of the Inuit; and

(c) one person recommended by an Indigenous governing body or other entity that represents the interests of the Métis.

#### **Publication**

(3) The Agency must post on the Internet site all advice it receives from the advisory committee.

#### **Using government facilities**

**159** In exercising its powers and performing its duties and functions under this Act, the Agency must, when appropriate, make use of the services and facilities of departments, boards and agencies of the Government of Canada.

#### **President**

**160 (1)** The Governor in Council appoints an officer to be the President of the Agency, to hold office during pleasure, who is, for the purposes of this Act, a deputy of the Minister.

#### **President — chief executive officer**

**(2)** The President is the Agency's chief executive officer, and may exercise all of the Minister's powers under this Act as authorized by the Minister.

#### **Acting President — Executive Vice-president**

**(3)** Subject to subsection (5), in the event of the absence or incapacity of the President or a vacancy in that office, the Executive Vice-president acts as, and exercises the powers of, the President in the interim.

#### **Acting President — other person**

**(4)** Subject to subsection (5), the Minister may appoint a person other than the Executive Vice-president to act as the President in the interim.

#### **Governor in Council's approval required**

**(5)** The Executive Vice-president, or a person appointed under subsection (4), must not act as the President for a period exceeding 90 days without the Governor in Council's approval.

#### **Executive Vice-president**

**161 (1)** The Governor in Council may appoint an officer to be the Executive Vice-president of the Agency and to hold office during pleasure.

#### **Powers, duties and functions**

**(2)** The Executive Vice-president must exercise any powers and perform any duties and functions that the President may assign.

#### **Remuneration**

**162** The President and the Executive Vice-president are to be paid any remuneration that the Governor in Council may fix.

#### **Appointment under *Public Service Employment Act***

**163** The employees who are necessary to carry out the Agency's work are to be appointed in accordance with the *Public Service Employment Act*.

#### **Head office**

**164** The head office of the Agency is to be in the National Capital Region as described in the schedule to the *National Capital Act*.

#### **Contracts, etc., binding on Her Majesty**

**165 (1)** Every contract, memorandum of understanding and arrangement entered into by the Agency in its own name is binding on Her Majesty in right of Canada to the same extent as it is binding on the Agency.

#### **Legal proceedings**

**(2)** Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Agency, whether in its own name or in the name of Her Majesty in right of Canada, may be brought or taken by or against the Agency in its own name in any court that would have jurisdiction if the Agency were a corporation that is not an agent of Her Majesty.

## **Annual Report**

### **Annual report to Parliament**

**166 (1)** The Minister must, at the end of each fiscal year, prepare a report on the Agency's activities and the administration and implementation of this Act during the previous fiscal year.

### **Tabling in Parliament**

**(2)** The Minister must, during the fiscal year after the fiscal year for which the report is prepared, cause the report to be laid before each House of Parliament.

## **Review of Act**

### **Review of Act after 10 years**

**167** Ten years after the day on which this Act comes into force, a comprehensive review of the provisions and operation of the Act is to be undertaken by the committee of the Senate, of the House of Commons or of both Houses of Parliament that is designated or established by the Senate or the House of Commons, or by both Houses of Parliament, as the case may be, for that purpose.

## **Transitional Provisions**

### **Definitions**

**168** The following definitions apply in this section and sections 169 to 188.

**1992 Act** means the *Canadian Environmental Assessment Act*. (*Loi de 1992*)

**2012 Act** means the *Canadian Environmental Assessment Act, 2012*. (*Loi de 2012*)

**environmental assessment** has the same meaning as in subsection 2(1) of the 2012 Act. (*évaluation environnementale*)

**former Agency** means the Canadian Environmental Assessment Agency continued under section 103 of the 2012 Act. (*ancienne Agence*)

### **President of former Agency**

**169** The person who holds the office of President of the former Agency immediately before the day on which this Act comes into force continues in office as the President of the Agency until the expiry or revocation of the appointment.

#### **Executive Vice-president of former Agency**

**170** The person who holds the office of Executive Vice-president of the former Agency immediately before the day on which this Act comes into force continues in office as the Executive Vice-president of the Agency until the expiry or revocation of the appointment.

#### **Employment continued**

**171 (1)** Nothing in this Act is to be construed to affect the status of an employee who, immediately before the day on which this Act comes into force, occupies a position in the former Agency, except that the employee, on that day, occupies their position in the Agency.

#### **Definition of *employee***

**(2)** For the purposes of this section, ***employee*** has the same meaning as in subsection 2(1) of the *Public Service Employment Act*.

#### **References**

**172** Every reference to the former Agency in any deed, contract, agreement or other document executed, or in Quebec, signed, by the former Agency in its own name is, unless the context otherwise requires, to be read as a reference to the Agency.

#### **Transfer of rights and obligations**

**173** All rights and property of the former Agency and of Her Majesty in right of Canada that are under the administration and control of the former Agency and all obligations of the former Agency are transferred to the Agency.

#### **Commencement of legal proceedings**

**174** Any action, suit or other legal proceeding in respect of an obligation or liability incurred by the former Agency may be brought against the Agency in any court that would have had jurisdiction if the action, suit or other legal proceeding had been brought against the former Agency.

#### **Continuation of legal proceedings**

**175** Any action, suit or other legal proceeding to which the former Agency is party that is pending in any court immediately before the day on which this Act comes into force may be continued by or against the Agency in the same manner and to the same extent as it could have been continued by or against the former Agency.

#### **Appropriations**

**176** Any amount that is appropriated by an Act of Parliament for the fiscal year in which this Act comes into force to defray the expenditures of the former Agency and that is unexpended on the day on which this Act comes into force is deemed to be an amount appropriated to defray the expenditures of the Agency.



## **Persons designated**

**177** A person or class of persons who are designated under subsection 89(1) of the 2012 Act, immediately before the day on which this Act comes into force, are deemed to have been designated as enforcement officers under subsection 120(1) of this Act.

## **Screenings commenced under 1992 Act**

**178** Any screening of a project commenced under the 1992 Act in respect of which the responsible authority has not, before the day on which this Act comes into force, taken a course of action under section 20 of that Act is terminated.

## **Comprehensive studies commenced under 1992 Act**

**179 (1)** Any comprehensive study of a project commenced under the 1992 Act in respect of which the former Agency has not, before the day on which this Act comes into force, published a notice under subsection 22(1) of that Act is terminated.

## **Comprehensive studies continued under 2012 Act**

**(2)** Any comprehensive study of a project commenced under the 1992 Act in respect of which the former Agency has, before the day on which this Act comes into force, published a notice under subsection 22(1) of that Act is continued as an environmental assessment by the Agency under the 2012 Act as if the 2012 Act had not been repealed.

## **Comprehensive studies subject to subsection 125(7) of 2012 Act**

**(3)** Any comprehensive study of a project that was the subject of an order made by the Minister under subsection 125(7) of the 2012 Act before the day on which this Act comes into force is continued as an environmental assessment under the 2012 Act as if that Act had not been repealed.

## **Screenings under 2012 Act**

**180** If the proponent of a designated project provided the former Agency with a description of the designated project under subsection 8(1) of the 2012 Act and the former Agency has not, before the day on which this Act comes into force, posted a notice under section 12 of the 2012 Act of its decision with respect to the designated project, the screening is terminated. The description of the designated project that was provided under subsection 8(1) of the 2012 Act is deemed to be an initial description of the project provided under subsection 10(1) of this Act on the day on which this Act comes into force.

## **Environmental assessments by former Agency under 2012 Act**

**181 (1)** Any environmental assessment of a designated project by the former Agency commenced under the 2012 Act before the day on which this Act comes into force, in respect of which the former Agency has posted the notice of commencement under section 17 of the 2012 Act before that day, is continued under the 2012 Act as if that Act had not been repealed.

## **Information or studies**

(2) The proponent of a designated project referred to in subsection (1) must provide the Agency with any information or studies required by the Agency or the former Agency under subsection 23(2) of the 2012 Act within three years after the day on which this Act comes into force.

#### **Extension of time limit**

(2.1) At the proponent's request, the Agency may, before the time limit referred to in subsection (2) has expired, extend the time limit by any period that is necessary for the proponent to provide the Agency with the information or studies.

#### **Termination**Continuance or termination of environmental assessment

(3) If the proponent fails to provide the information or studies within the time limit referred to in subsection (2) or within any extension of that time limit, the or notifies the Agency that it will fail to do so, the Agency may decide that the environmental assessment is of the designated project is to be continued as an impact assessment under this Act or is to be terminated. ~~The Agency must post a notice of the termination on the Internet site.~~

#### Posting of notice on Internet site

#### **Request of proponent**

~~(4) Despite subsection (1), at the request of the proponent of a designated project referred to in that subsection that is made within 60 days after the day on which this Act comes into force, the Agency may offer to continue the environmental assessment as an impact assessment under this Act by providing, within 90 days after the day on which the request is made, the proponent with~~

~~(a) a written direction that sets out any information and studies that the Agency considers necessary for it to conduct the impact assessment, other than any information and studies already provided by the proponent with respect to the environmental assessment; and~~

~~(b) the documents referred to in paragraph 18(1)(b).~~

(4) The Agency must post a copy of the written direction on the Internet site a notice of any decision made under subsection (3).

#### **Public comments**

~~(4.1) Before continuing an environmental assessment as an impact assessment under subsection (4), the Agency must ensure that the public and any Indigenous group that may be affected by the carrying out of the designated project are provided with an opportunity to participate meaningfully in the preparation of the offer by inviting them to provide comments, within the period that the Agency specifies, on any information and studies that are necessary to conduct the impact assessment and on the contents of the documents referred to in paragraph 18(1)(b) that are to be provided to the proponent.~~

#### **Acceptance**

~~(4.2) If, within 60 days after the day on which the Agency provides the proponent with the written direction and documents referred to in subsection (4), the proponent provides the Agency with written notice that they accept the offer made under that subsection,~~

~~(a) the environmental assessment is continued as an impact assessment under this Act; and~~

~~(b) the direction is deemed to be a notice of commencement provided under paragraph 18(1)(a) and is deemed to have been posted on the Internet site on the day on which the proponent provided the Agency with the notice of acceptance.~~

#### No review panel

~~(4.34.1) Despite subsection 36(1), the Minister is not permitted to refer an impact assessment referred to in paragraph (4.2)(a) to a review panel an environmental assessment that, in accordance with subsection (3), is continued as an impact assessment under this Act.~~

#### Exception

(5) This section does not apply to an environmental assessment of a project that was the subject of an order made by the Minister under subsection 125(7) of the 2012 Act.

#### Environmental assessments by other responsible authorities

**182** Any environmental assessment of a designated project by the Canadian Nuclear Safety Commission or the National Energy Board commenced under the 2012 Act, in respect of which a decision statement has not been issued under section 54 of the 2012 Act before the day on which this Act comes into force, is continued under the 2012 Act as if that Act had not been repealed.

#### Environmental assessments by National Energy Board

**182.1** Any environmental assessment of a designated project by the National Energy Board commenced under the 2012 Act, in respect of which a decision statement has not been issued under section 31 of the 2012 Act before the day on which this Act comes into force, is continued under the 2012 Act as if that Act had not been repealed.

#### Environmental assessments referred to review panel

**183 (1)** Any environmental assessment of a designated project referred to a review panel under section 38 of the 2012 Act before the day on which this Act comes into force is continued under the 2012 Act as if that Act had not been repealed.

#### Request of proponent

(2) Despite subsection (1), on request made to the Minister by the proponent of a designated project referred to in that subsection, the environmental assessment is continued as an impact assessment under this Act as if the impact assessment had been referred by the Minister to a review panel under subsection 36(1) of this Act.

#### Power of Agency

(2.1) If, within one year after the day on which this subsection comes into force, the proponent of a designated project referred to in subsection (1) fails to collect the information or undertake the studies required by the Agency under section 39 of the 2012 Act, the Agency may, despite subsection (1), decide that the environmental assessment of that project is to be continued as an impact assessment under this Act as if the impact assessment had been referred by the Minister to a review panel under subsection 36(1) of this Act.

#### Posting of notice on Internet site

(2.2) The Agency must post on the Internet site a notice of any decision made under subsection (2.1).

#### Rules concerning review panels

(3) The following rules apply in respect of an impact assessment referred to in subsection (2):

- (a) if, before the day on which this Act comes into force, a review panel was established under subsection 42(1) of the 2012 Act, that review panel is deemed to have been established — and its members are deemed to have been appointed — under section 41 of this Act;
- (b) if, before that day, an agreement or arrangement was entered into under section 40 of the 2012 Act, that agreement or arrangement is deemed to have been entered into under section 39 of this Act; and
- (c) if, before that day, a review panel was established by an agreement or arrangement entered into under section 40 of the 2012 Act or by document referred to in subsection 41(2) of the 2012 Act, it is deemed to have been established by — and its members are deemed to have been appointed under — an agreement or arrangement entered into under section 39 of this Act or by document referred to in subsection 40(2) of this Act.

#### Decision statements issued under 2012 Act

~~184 A decision statement issued by the Minister under subsection 54(1) of the 2012 Act is deemed to be a decision statement issued under subsection 65(1) of this Act, other than for the purposes of section 70 of this Act.~~

#### 184 [repealed]

#### Substitution

**185** The environmental assessment of a designated project commenced under the 2012 Act before the day on which this Act comes into force for which the Minister has, before that date, approved the substitution of a process under section 32 of the 2012 Act is continued as if the 2012 Act had not been repealed.

#### Non-application of this Act

**185.1 (1)** This Act does not apply to a *designated project*, as defined in subsection 2(1) of the 2012 Act, that is a *designated project*, as defined in section 2 of this Act, if the

former Agency determined that no environmental assessment was required under the 2012 Act or that section 128 of that Act applied to the project.

### **Non-application of this Act**

**(2)** This Act does not apply to a *designated project*, as defined in section 2 of this Act, that is not a *designated project*, as defined in subsection 2(1) of the 2012 Act, if one of the following conditions applies:

**(a)** the proponent began the carrying out of the project before the day on which this Act comes into force;

**(b)** a *federal authority*, as defined in subsection 2(1) of the 2012 Act, 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 project to be carried out, in whole or in part;

**(c)** an environmental assessment of the project was commenced or completed before the day on which this Act comes into force by a *jurisdiction* other than a *federal authority*, as those terms are defined in subsection 2(1) of the 2012 Act.

### **Unpaid costs**

**186** If the proponent of a designated project has not paid any costs or amounts referred to in section 59 of the 2012 Act that were due more than 90 days before the day on which this Act comes into force, the Agency is authorized, despite any other provision of the 2012 Act or this Act, to not commence any preparations for a possible impact assessment of any designated project the proponent proposes to carry out on or after the day on which this Act comes into force until the proponent pays the costs or amounts.

### **Privileged evidence, documents or things**

**187** The evidence, documents or things that, before the day on which this Act comes into force, are privileged under subsection 45(4) or (5) of the 2012 Act are considered to be privileged under subsection 53(4) or (5), respectively, of this Act.

### **Regional studies commenced under 2012 Act**

**187.1 (1)** A study referred to in subsection 73(1) or 74(1) of the 2012 Act that was commenced under that Act but was not completed before the day on which this Act comes into force is continued as an assessment referred to in section 92 or 93, respectively, of this Act.

### **Report provided under 2012 Act**

**(2)** A report referred to in section 75 of the 2012 Act is deemed to be a report referred to in subsection 102(1) of this Act that is provided to the Minister on completion of an assessment referred to in section 92 or 93 of this Act.

### **Regulations**

**188** The Governor in Council may make any regulations that the Governor in Council considers necessary to provide for any other transitional matter arising from the coming into force of this Act.

## Transitional Provisions

### Definitions

**302 (1)** The following definitions apply in this section and sections 303 to 318.

amended Act means the Impact Assessment Act, as it reads on or after the commencement day. (loi modifiée)

commencement day means the day on which this section comes into force. (date de référence)

2012 Act means the Canadian Environmental Assessment Act, 2012, section 52 of chapter 19 of the Statutes of Canada, 2012. (Loi de 2012)

### Terminology

**(2)** Words and expressions used in sections 303 to 318 have the same meaning as in section 2 of the amended Act.

### Designation of physical activity

**303 (1)** Despite subsection 9(4) of the amended Act, if, in respect of a request referred to in sub-section 9(1) of the amended Act that the Minister received before the commencement day, the Minister has not responded to the request before that day, the Minister must respond, with reasons, within 90 days after that day. The Minister must ensure that the response is posted on the Internet site.

### Deeming

**(2)** Everything that was done before the commencement day with regard to the physical activity in respect of which the request was made is, if it may or must be done **under the** amended Act with regard to that physical activity, deemed, as of the day on which the response is posted, to have been done under the amended Act.

### Deeming — no impact assessment

**304** If the Agency, before the commencement day, made a decision **that an impact assessment of a designated project** is not required and posted that decision on the Internet site, that decision is deemed, as of that day, to be a decision made under subsection 16(1) of the amended Act.

### Designated projects

**305 (1)** This section applies **in respect of a designated project** if the Minister or the Agency, during the six-month period that starts on the commencement day, takes a step with regard to that project under any of sections 10 to 59 of the amended Act.

### Posting

(2) The Agency must post a notice on the Internet site that indicates the first step taken, the provision under which it was taken, the date on which it was taken and the designated project in respect of which it was taken.

### **Deeming**

(3) Everything that was done before the commencement day with regard to a designated project in respect of which a notice is posted under subsection (2) is, if it may or must be done under the amended Act in respect of the designated project, deemed, as of the day on which the first step is taken, to have been done under the amended Act.

### **Agency's power**

(4) The Agency may, when the first step is taken with regard to a designated project, replace, in respect of that project, any time limit or period established by or under the amended Act by an- other time limit or period.

### **Posting**

(5) The Agency must post a notice on the Internet site that indicates, for each time limit or period that it replaces, the new time limit or period and the designated project with regard to which that new time limit or period applies.

### **Clarification**

(6) For greater certainty, nothing in subsection (4) affects any power conferred on the Agency under the amended Act to extend or shorten any time limit or period.

### **Definition of first step**

(7) In this section, first step means the first step taken by the Minister or the Agency under any of sections 10 to 59 of the amended Act in respect of a designated project during the six-month period that starts on the commencement day.

### **Decision statements issued before commencement day**

306 (1) If the Minister is of the opinion that the conditions included in a **decision statement issued** by the Minister, including a decision statement issued **by the Minister under subsection 54(1) of the 2012 Act**, before the commencement day could be included in a **decision statement issued under subsection 65(1) of the amended Act**, the Minister may post a notice to that effect on the Internet site.

### **Decision statements issued on or after commencement day**

(2) If the Minister is of the opinion that the conditions included in a decision statement issued by the Minister under subsection 54(1) of the 2012 Act on or after the commencement day could be included in a decision statement issued under subsection 65(1) of the amended Act, the Minister may post a notice to that effect on the Internet site.

### **Deeming**

(3) A decision statement in respect of which a notice is posted under subsection (1) or (2) is deemed, as of the day on which the notice is posted, to be a decision statement issued under sub-section 65(1) of the amended Act.

#### **Amendment to decision statement — Impact Assessment Act**

307 (1) Subsection 68(2), paragraph 69(1)(b) and subsection 69(2) of the amended Act do not apply in respect of an amendment made under subsection 68(1) of the amended Act to a decision statement that was issued with respect to a designated project before the commencement day if the amendment

(a) is made during the six-month period that starts on that day;

(b) removes a condition that, in the Minister's opinion, could not be included in a decision statement issued under subsection 65(1) of the amended Act or amends a condition so that, in the Minister's opinion, the condition is one that could be included in such a decision statement; and

(c) does not add a condition or modify the designated project's description.

#### **Posting of amended decision statement**

(2) If the Minister amends a decision statement in accordance with subsection (1), the Minister **must ensure that the** amended decision statement is posted on the Internet site.

#### **Deeming**

(3) The amended decision statement is deemed, as of the day on which it is posted on the Internet site, to be a decision statement issued under sub-section 65(1) of the amended Act.

#### **Amendment to decision statement — 2012 Act**

308 (1) The Minister may, during the six-month period that starts on the commencement day, amend a decision statement issued by the Minister under subsection 54(1) of the 2012 Act before that day to

(a) remove a **condition that**, in the Minister's opinion, could not be included in a decision statement issued under subsection 65(1) of the amended Act; or

(b) amend a condition so that, in the Minister's opinion, the condition is one that could be included in a decision statement issued under subsection 65(1) of the amended Act.

#### **Posting of amended decision statement**

(2) If the Minister amends a decision statement in accordance with subsection (1), the Minister must ensure that the amended decision statement is posted on the Internet site.

#### **Deeming**

(3) The amended decision statement is deemed, as of the day on which it is posted on the Internet site, to be a decision statement issued under sub-section 65(1) of the amended Act.



### Regional assessments — committee report not provided

309 (1) If a committee established by the Minister before the commencement day to conduct an assessment described in section 92 or 93 of the amended Act, or a committee the members of which are appointed or whose appointment is approved by the Minister for that purpose before that day, has not, before that day, provided a report to the Minister in respect of the assessment,

(a) the committee is deemed to be established, as the case may be, in accordance with section 92 of the amended Act or in accordance with an agreement or arrangement entered into under subparagraph 93(1)(a)(i) or paragraph 93(1)(b) of the amended Act, on that day; and

(b) everything that was done in respect of the assessment before that day by or in respect of the committee is, if it may or must be done under the amended Act, deemed, as of that day, to have been done under the amended Act.

### Regional assessments — committee report provided

(2) If a committee established by the Minister to conduct an assessment described in section 92 or 93 of the amended Act, or a committee the members of which are appointed or whose appointment is approved by the Minister for that purpose, has, before the commencement day, provided a report to the Minister in respect of the assessment, the report is deemed to be a report provided under subsection 102(1) of the amended Act.

### Regional assessments — Agency report not provided

310 (1) If the Agency, having been authorized by the Minister before the commencement day to conduct an assessment described in section 92 or 93 of the amended Act, has not, before that day, provided a report to the Minister in respect of the assessment,

(a) the Agency is deemed, as of that day, to be authorized under section 92 or 93 of the amended Act, as the case may be, to conduct an assessment; and

(b) everything that was done in respect of the assessment before that day by or in respect of the Agency is, if it may or must be done under the amended Act, deemed, as of that day, to have been done under the amended Act.

### Regional assessments — Agency report provided

(2) If the Agency, having been authorized by the Minister to conduct an assessment described in section 92 or 93 of the amended Act, has, before the commencement day, provided a report to the Minister in respect of the assessment, the report is deemed to be a report provided under subsection 102(1) of the amended Act.

### Strategic assessments — committee report not provided

311 (1) If a committee established by the Minister before the commencement day to conduct an assessment described in section 95 of the amended Act has not, before that day, provided a report to the Minister in respect of the assessment,

(a) the committee is deemed, on that day, to be established in accordance with section 95 of the amended Act; and

(b) everything that was done in respect of that assessment before that day by or in respect of the committee is, if it may or must be done under the amended Act, deemed, as of that day, to have been done under the amended Act.

#### **Strategic assessments — committee report provided**

(2) If a committee established by the Minister to conduct an assessment described in section 95 of the amended Act has, before the commencement day, provided a report to the Minister in respect of the assessment, the report is deemed to be a report provided under subsection 102(1) of the amended Act.

#### **Strategic assessments — Agency report not provided**

**312 (1)** If the Agency, having been authorized by the Minister before the commencement day to conduct an assessment described in section 95 of the amended Act, has not, before that day, provided a report to the Minister in respect of the assessment,

(a) the Agency is deemed, as of that day, to be authorized under section 95 of the amended Act to conduct that assessment; and

(b) everything that was done in respect of that assessment before that day by or in respect of the Agency is, if it may or must be done under the amended Act, deemed, as of that day, to have been done under the amended Act.

#### **Strategic assessments — Agency report provided**

(2) If the Agency, having been authorized by the Minister to conduct an assessment described in section 95 of the amended Act, has, before the commencement day, provided a report to the Minister in respect of the assessment, the report is deemed to be a report provided under subsection 102(1) of the amended Act

#### **Time limit — response to request for assessment**

**313** Despite section 8 of the Information and Management of Time Limits Regulations, for the purpose of subsection 97(1) of the amended Act, if, in respect of a request that an assessment described in section 92, 93 or 95 of the amended Act be conducted, the Minister has not responded before the commencement day, the Minister must respond within 90 days after that day.

#### **Agreements or arrangements**

**314 (1)** Any agreement or arrangement described in paragraph 114(1)(c) or (f) of the amended Act that was entered into by the Minister before the commencement day is deemed, as of that day, to be an agreement or arrangement entered into under paragraph 114(1)(c) or (f) of the amended Act, as the case may be.

#### **International agreements or arrangements**

(2) Any agreement or arrangement described in subsection 114(2) of the amended Act that was entered into by the Minister and the Minister of Foreign Affairs before the commencement day is deemed, as of that day, to be an agreement or arrangement entered into under subsection 114(2) of the amended Act.

### **Non-application**

**(3)** Subsection 114(3) of the amended Act does not apply in respect of the agreements or arrangements referred to in subsections (1) and (2).

### **Cost Recovery Regulations**

**315** The Cost Recovery Regulations, as they read on August 27, 2019, registered as SOR/2012-146, are deemed to be made by the Governor in Council, under section 109 of the amended Act, on the commencement day.

### **Physical Activities Regulations**

**316** The Physical Activities Regulations, as published in the Canada Gazette, Part II, on August 21, 2019 but with the amendments set out in section 93 of the Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations, as published in the Canada Gazette, Part II, on March 17, 2021, and section 1 of the Regulations Amending and Repealing Certain Department of the Environment Regulations (Miscellaneous Program), as published in the Canada Gazette, Part II, on April 12, 2023, are deemed

**(a)** to be made by the Governor in Council, under sections 109 and 188 of the amended Act, on the commencement day;

**(b)** to be registered as SOR/2019-285;

**(c)** to designate physical activities, or classes of physical activities, the carrying out of which may, in the Governor in Council's opinion, cause adverse effects within federal jurisdiction or direct or incidental adverse effects; and

**(d)** despite section 5 of the Physical Activities Regulations, as so published, to come into force on the commencement day.

### **Information and Management of Time Limits Regulations**

**317** The Information and Management of Time Limits Regulations, as published in the Canada Gazette, Part II, on August 21, 2019, are deemed

**(a)** to be made by the Minister, under section 112 of the amended Act, on the commencement day;

**(b)** to be registered as SOR/2019-283; and

**(c)** despite section 10 of the Information and Management of Time Limits Regulations, as so published, to come into force on the commencement day.

### **Regulations Respecting Excluded Physical Activities (Newfoundland and Labrador Offshore Exploratory Wells)**

**318 (1)** The Regulations Respecting Excluded Physical Activities (Newfoundland and Labrador Offshore Exploratory Wells), as posted on the Internet site on June 4, 2020, are deemed

**(a)** to be made by the Minister, under paragraph 112(1)(a.2) of the amended Act, on the commencement day; and

(b) despite section 4 of the Regulations Respecting Excluded Physical Activities (Newfoundland and Labrador Offshore Exploratory Wells), as so posted, to come into force on the commencement day.

(2) The Minister is deemed, for the purpose of subsection 112(2) of the amended Act, to have considered an assessment described in section 92 or 93 of the amended Act that is in relation to the physical activities or classes of physical activities designated in the Regulations Respecting Excluded Physical Activities (Newfoundland and Labrador Offshore Exploratory Wells).

### Regulations

319 The Governor in Council may make any regulations that the Governor in Council considers necessary to provide for any other transitional matter arising from the coming into force of this Division.