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The Proposed New Federal Impact Assessment Act (IAA) Under Bill C-69: Assessment & Reform Proposals

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In this working paper, I offer my assessment of what I consider to be some of the key elements of the proposed new federal Impact Assessment Act (the first part of Bill C-69, available at: http://www.parl.ca/DocumentViewer/en/42-1/bill/C-69/first-reading). In Part 1, I offer an overview of the proposed process as it compares to the existing process under CEAA 2012. I then consider reform proposals on the Review Panel Process (Part 2), Public Participation (Part 3), Follow-up (Part 4) and Regional and Strategic Assessments (Part 5).

1. Overview of the Proposed IAA

I have grouped my assessment of the proposed IAA according to the main elements of the process and other key features. There are many cross-cutting and other issues that deserve separate attention, such as public participation, transparency issues, the role of Indigenous peoples, learning, accountability, multi-jurisdictional cooperation, climate change, assessment of projects on federal lands and outside Canada, among others.

Triggers, Application of the Assessment Process

The triggering process for projects has not changed significantly from CEAA 2012. The starting point is a designated projects list. The Minister can, on request or on her own, require a project to be assessed that is not on the list. One limitation is that that there is no power to require an assessment of a non-designated project that has substantially begun, or that has received federal approvals. This is a new provision. There is a discussion document available on the expected revisions to the designated project list available on the federal government website (https://www.impactassessmentregulations.ca/) on the proposed new Act.

There are no triggers for strategic or regional assessments (other than an opportunity to petition for an assessment under section 97), nor any criteria for when a regional or strategic assessment may be warranted. The initiation of any regional or strategic assessment is left to the discretion of the Minister. Strategic assessments appear limited to the implication of policies, plans and programs for project EA, rather than broader questions about the environmental or sustainability implications of policies, plans or programs. The future of the Cabinet Directive on Strategic Environmental Assessment is not addressed in the Bill. Given that assessments under the Directive are not covered

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under the proposed Impact Assessment Act, the expectation is that it will continue as the main vehicle for strategic assessments of federal policies, plans and programs. There is no established link between project assessments and regional or strategic assessments (sometimes referred to as a strategic assessment off-ramp).

The Assessment Planning Process

The planning phase is a new phase introduced in Bill C-69. It starts with a project description prepared by the proponent in accordance with regulations. The idea is clearly to initiate the process early, but it is unclear how this goal will be achieved. In fact, the timelines may discourage a proponent from initiating the process until fairly late in its own planning process, and there are no legislative provisions to motivate an earlier start to the process. Ultimately, the timing of the initiation is left to the discretion of the proponent.

Under section 11, the public will have an opportunity to participate in the planning process, which will be led by the Agency. It would appear that the purposes of the planning process are to decide whether to the carry out an assessment, whether and how to cooperate and coordinate with other jurisdictions, what the scope of the assessment will be, and perhaps whether to subject the project to a standard assessment or a panel review. The decision whether to commence with an assessment is to be made within 180 days, a time limit that can be extended by up to 90 days.

Determination of the scope of the assessment (other than the scope of the project itself) seems to be intended to start during the planning process, though it is not clear in the Bill whether scoping is concluded at this stage. It starts with the Agency proposing a list of issues, based on input from the public and any jurisdiction the Agency has consulted with. The proponent then responds with an indication of the information it intends to provide in response to the issues that have been identified.

A key change to scoping includes the addition of a number of factors to be assessed in section 22 when compared to the elements in section 19 of CEAA 2012. Among the notable additions to the section 22 are the need to consider impacts on Indigenous communities, impacts on Indigenous rights, the need and purpose of the projects, alternative means and alternatives to the project, the project's contribution to sustainability, the results of regional and strategic assessments, impacts on the intersection of sex and gender with other identify factors, and the impact of the project on environmental obligations including climate change commitments. The scope of these factors is to be determined by the Minister for panel reviews, and the Agency for standard assessments. The public is to be involved in scoping.

The Agency decides whether it has enough information to decide whether to proceed with an assessment. This is one place where the existence and results of a regional or strategic assessment can be considered, suggesting that strategic and regional assessments may lead to fewer project assessments. The decision whether to refer the project to a panel review is a separate decision made by the Minister. The Minister can also decide at this stage that the project will be rejected without an EA. Finally, the

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Agency can decide that the project can proceed without an EA. The resulting process options at the end of the planning process are essentially the following:

1. No process (either with approval or rejection of the project)
2. Standard EA process (potentially with delegation)
3. Substitution to an Indigenous process or a provincial process
4. A Review Panel

The Standard (Agency) Assessment Process

The standard assessment process has not changed fundamentally from CEAA 2012. The Agency still runs the process, and the basic elements seem similar. Of course, as discussed above, the scope has been broadened significantly under section 22. Timelines are shorter than under CEAA 2012, though with additional time for the planning phase, and a three year window for the provision of information by the proponent before the start of the assessment process. The general impression left in Bill C-69 is that the Agency will be more front and centre in the assessment, and the proponent will play more of a supportive role of providing information rather than carrying out a preliminary assessment, as has been the case to date in the form of proponent's Environmental Impact Statements. Bill C-69 does not use the term impact statement. It appears from the government IA Handbook that the proponent may still be expected to prepare some version of an impact statement under section 19, but one that focusses on providing the information rather than an assessment of the information. The IA Handbook is available in PDF format through the following link: https://www.canada.ca/content/dam/themes/environment/conservation/environmental-reviews/ia-handbook-e.pdf.

The provisions of Bill C-69, more generally, beyond the proponent's responsibility to provide information under section 19, and a general responsibility for federal authorities with expertise to assist, do not delineate the allocation of responsibility for the gathering of the information needed, particularly in light of the much broader scope of the assessment. Nor is Bill C-69 clear about the impact of information gathering (beyond the preparation of the impact statement) on the time limits for the assessment phase. Much of the scope of a particular assessment may now be outside the expertise of proponents. It remains to be seen who else will have responsibilities for ensuring adequate information is before the Agency (or Panel) on issues such as alternatives, impacts on Indigenous communities and rights, and social, economic and health impacts of proposed projects, and how this information will be gathered within the time frames permitted. Much of this information could be gathered in parallel with the proponent's gathering of information under section 19. However, this is not clear from the provisions of Bill C-69, and some of this work may arise out of the review of the information during the course of the assessment.

Panel Review Process

The proposed new Act continues the recent trend toward strict timelines to decide whether to proceed with a panel review, and to carry out such a review. Decisions to

refer a project to a Review Panel are to be made within 45 days of the commencement of the assessment. The decision is to be made based on a combination of potential for adverse effects on areas of federal jurisdiction, public concern, and opportunities for collaboration with other jurisdictions.

The timeline for completing the panel review process has been shortened from 2 years to 600 days, and time taken up by the proponent in responding to information requests after the impact statement is filed will no longer automatically be subtracted from the panel's time (assuming the panel continues to have the opportunity to seek additional information from the proponent), making the total time for panel reviews potentially significantly shorter than under CEAA 2012. The discretion to suspend time rests with the Minister, not the Panel.

As indicated, there is no legislative clarity on what happens if a panel, in carrying out its work after the impact statement is completed, determines that additional information is required from the proponent, a federal agency, or some other source (though there is discretion to suspend time through regulations). There are opportunities to suspend time, and to extend the timelines, but any significant extension granted by the Minister has to be made at the start of the process. The Cabinet has broader powers to extend the timelines during the course of a panel review, but this does not appear to be a practical option for a panel faced with delays in getting the information it needs.

Section 56 allows the Minister to seek additional information from the proponent at the conclusion of the panel review process to inform its conclusion on whether the project is in the public interest. It is unclear why the proponent would be asked to feed into the public interest determination at this late stage. Furthermore, any information gathered at this stage in the process would not be available to the independent Review Panel, and would not be subject to the same level of public scrutiny. The role of the Panel in informing the Minister's or Cabinet's 'public interest' finding, such as through a recommendation or conclusion as to whether the project is in the public interest in the view of the Panel, is not set out in the Bill.

Harmonization

The general approach to harmonization with other jurisdictions with assessment responsibilities under the proposed Act is one of cooperation, but with flexibility to harmonize through delegation or substitution at the discretion of the Minister. The key difference between cooperative assessments and delegation or substitution is that through delegation and substitution, the assessment or parts of it are done by another jurisdiction, and the results are then used for federal decision making. Delegation and substitution are available for Standard Assessments, not for Panel Reviews. Under Section 33(3), substitution can be approved after the completion of the process to be substituted. Substitution decisions appear to be made on a project by project basis.

Compared to CEAA 2012, there is a clear difference in tone and preference in favour of cooperation in Bill C-69, but the main substantive change is the elimination of equivalency. Otherwise, the shift from delegation to cooperation is dependent largely on

the exercise of Ministerial discretion. Most notably, there are no clear provisions to support/encourage cooperation over other forms of harmonization. The elimination of equivalency means the federal government now clearly retains decision making responsibility, but project decisions can in some cases be made based on information gathering and assessment carried out by another jurisdiction. It is important to note that the shift to broader sustainability considerations adds much more value judgement to the assessment process, raising questions about the appropriateness of federal decision-makers relying on provincial assessment and analysis, rather than just on provincial information gathering.

Of course, the Agency's discretion at the planning stage of the process can also be used as a tool to avoid any federal assessment in situations where other jurisdictions are carrying out their own assessment. In such a case, there would not be a federal assessment decision at all, similar to the effect of the equivalency provisions under CEAA 2012.

The two fundamental questions with a substitution and delegation approach to harmonization are whether it ensures a fair and thorough information base and, more importantly, objective assessment and analysis to adequately inform federal decisions, and whether federal decision makers will have adequate appreciation for the underlying value judgements of provincial assessments, and for the complexities sustainability-based decision-making without having the federal government actively involved in the process of analyzing and assessing the information. The discretion to delegate appears unlimited, whereas the discretion to substitute is subject to certain limitations under section 33(1).

For Panel Reviews, the approach to harmonization is focused on joint assessments. This includes the continuation of the long tradition of carrying out joint assessment with the provinces, a process that has generally worked well in the past. The Bill includes a new variation on the longstanding effort to identify an appropriate role for energy regulators in the assessment process. The focus here is on the new Canadian Energy Regulator (the CER, to replace the NEB), as well as the Canada Nuclear Safety Commission (CNSC), and the NS and NL Offshore Petroleum Boards.

Formal joint assessments are not to be carried out with the CNSC or the CER, though both are expected to support the impact assessment process and will be directly involved in it. Most importantly, at least one of the panel members are to be appointed from these energy regulators when the project is one that they regulate. There is no limit to the number of panel members from the regulators that can serve on a panel. Furthermore, under section 48, the panel is authorized to exercise powers of the CER, suggesting that the panel will have a dual function, perhaps similar to joint CEAA/NEB panels of the past. However, the reference is to section 25(1) of "that Act", a section that does not appear to exist in the proposed CER Act.

Interestingly, all projects on the designated project list that are regulated by one of these energy regulators have to be assessed by way of a Review Panel (assuming the projects are assessed). It appears under section 39(2) that no joint panels with other

jurisdictions are possible where these regulators are involved. What is unclear is what effect these provisions will have on which projects regulated by these regulators will be listed on the designated project list. It would be fair to assume that smaller projects that don't warrant a panel review may be taken off the list or the Agency will exercise its discretion not to require a federal assessment.

Bill C-69 includes changes that would essentially treat the NS and NL offshore petroleum boards in a manner similar to the CER and the CNSC. The main difference is that in cases of panel reviews involving the offshore boards, the panels are to consist of 5 panel members, at least two of which are to be appointed from a roster from the offshore boards. The effect appears similar, to carry out a panel review that has a significant presence from the regulator, and the potential for a majority or even all panel members to be appointed from the offshore boards' rosters. The ultimate question is what effect these alterations to the panel review process involving energy regulators will have on the quality and focus of the process and its ability to provide an appropriate basis for the "public interest" determination.

Strategic and Regional Assessments

Bill C-69 allows the Minister to initiate regional and strategic assessments. Neither is defined. Regional assessment can either be entirely on federal lands, or outside. If partly or completely outside federal lands, a cooperative approach is clearly preferred under Section 93, but a 'federal only' regional assessment remains an option. The assessments are to be carried out by the Agency or through a committee, with terms of reference to be established (or approved) by the Minister. Similarly, strategic assessments are to be conducted by the Agency or through a committee. The focus of strategic assessments is on federal policies, plans and programs (and their impact on project assessments), and classes of designated projects.

The public is to have an opportunity to participate in the regional or strategic assessment, and to have access to relevant information. No further details are provided in Bill C-69 on the process or the outcome of a regional or strategic assessment. The report is to be filed with the Minister, but there is no provision for decision making, and no guidance on how the results of a regional or strategic assessment are to be used in future project decisions.

Project Assessment Decision-Making

For project assessments, the ultimate decision to be made is whether "a proposed project is in the public interest". This is different from CEAA 2012, which broke the decision-making process into two steps. Step 1 was a determination whether the project was likely to cause significant adverse environmental effects. If so, step 2 was a determination whether the likely adverse environmental effects were justified in the circumstances. In short, the new decision-making process skips step one and jumps straight to whether the project is in the public interest in light of the factors set out in section 63. The Minister either makes the decision or makes a recommendation to

Cabinet, with Cabinet making the ultimate decision on whether a project is in the public interest in case of panel reviews.

'Public interest' decisions would need to articulate which areas of federal jurisdiction are impacted by the project, and separate these impacts from other, broader impacts and benefits that could be taken into account in deciding whether to accept the impact on federal jurisdiction. However, this appears designed not to replace the significance finding under CEAA 2012, but rather to clarify the basis for federal jurisdiction to make a project decision. In short, it seems not intended, as the previous significance test was, as a threshold finding leading to a presumption against approving a project that can only be overcome with a finding of overriding other benefits.

Section 63 provides a list of factors to be considered in determining whether a project is in the public interest. Many but not all factors are also included in section 22 as factors to be considered in the assessment. Included in section 63 are the following:

- The extent to which the project contributes to sustainability
- The extent to which effects on areas of federal responsibility are adverse
- The implementation of mitigation measures (defined to include compensation)
- Impacts on Indigenous Communities and Indigenous Rights
- Impacts on Canada's environmental obligations and climate commitments

The decision maker, whether the Minister or Cabinet, has to give reasons for the decisions that demonstrate that these factors were considered in the decision. There is no clarity on the level of detail to be provided in the reasons, or the underlying analysis for determining, for example, whether a project makes a net contribution to sustainability, or whether it helps with or hinders Canada's climate commitments. There is no opportunity provided in Bill C-69 to appeal or otherwise review the decision or its basis.

The final project decision must be published in the form of a decision statement. The statement can be amended, but not the underlying decision. There is no apparent link to monitoring and follow-up, such as the ability to adjust terms and conditions if mitigation measures turn out to be ineffective, or predictions made during the course of the assessment turn out to be wrong (thought that may very well be the intention). The decision (assuming approval) has to include a time period within which the proponent has to commence with the project, after which the approval expires.

2. The Review Panel Process under the Proposed IAA

Environmental assessments in Canada have gone through many changes over the past 40 years. The federal process has evolved from the 1973 EARP process to the 1984 EARP Guidelines Order, the 1992, 2003, 2010, and 2012 versions of CEAA, and now the proposed IAA under Bill C-69. Through these various transitions, there have been

changes to the triggering mechanism, the process options, scope and decision making (among others). A constant throughout has been that Review Panels have served as the high-water mark of assessments under the federal process. Of course, Review Panels have not been immune to change during this 40-year evolution of federal EA, and they have been affected by other changes to federal EA. In this Part, I consider the proposed changes in Bill C-69 as they relate to the process for Review Panels. This Part considers these changes in the broader context of the transition that Review Panels have undergone prior to the introduction of Bill C-69. The following are particularly noteworthy in this regard:

- There has been a trend to reduce the Panel's role in determining the scope of assessments, with the Minister gradually taking over the role of making scope determinations (in the form of the Terms of Reference for the Panel and the EIS Guidelines issued to the proponent). Both are now finalized before Panel's are appointed.
- There has been a trend toward imposing legislated timelines on Review Panel processes.
- There has been a trend away from asking Panels to offer overall recommendations and conclusions about a proposed project.
- There has been a trend toward Joint Review Panels that include other interested jurisdictions as well as regulators.
- There has been a trend toward fewer Review Panels under the federal EA process, using substitution and other process options to reduce the number of Review Panels carried out.

A. Key Changes in Bill C-69

This section identifies the key changes in the proposed IAA with respect to the Review Panel process compared to CEAA 2012. As discussed in a previous post, the public interest standing requirement has been eliminated. This means that any member of the public would be eligible to participate in the process. The timeline for the Review Panel process has been reduced from 2 years to 600 days. CEAA 2012 provides that any time spent by the proponent providing information requested by the Panel does not count toward the 2-year time limit. There is no equivalent provision in the proposed IAA. Instead, the Bill proposes giving discretion to the Minister to suspend the 600-day time period until the proponent has provided information required under regulations. This changes the suspension of time from an automatic suspension under CEAA 2012 to a suspension at the discretion of the Minister.

There is no legislative clarity on the role of the Review Panel in scoping and information gathering phases of the process. This is not new. However, there are reasons to highlight this aspect of Bill C-69 here. First, while the role of the Panel in these critical elements of the process were not set out in previous legislation, the practice has changed significantly over the past 25 years, resulting in a gradually reduced role of the Panel in scoping in particular. Furthermore, with the introduction of the planning phase in the Bill, and the proposed timing of the appointment of the Panel (i.e. after direction on what information is required has been issued to the proponent), it seems that the role of

the Review Panel in scoping (and perhaps even information gathering) could be further eroded under the IAA.

Another key change in Bill C-69 is the approach to key 'energy regulators', such as the National Energy Board (to be changed to the Canadian Energy Regulator, or CER), the Canada Nuclear Safety Commission (CNSC), and the two offshore petroleum boards (CNSOPB, CNLOPB). Under CEAA 2012, the NEB and the CNSC were given control over any environmental assessments required of designated projects. Under Bill C-69, all assessments involving designated projects regulated by one of these four energy regulators would have to be assessed by way of a Review Panel. There would be no opportunity for substitution. A project would either be assessed by way of a Review Panel, or not assessed at all. Under section 39, these Review Panels involving energy regulators would have to be 'federal only' Review Panels, eliminating the option of Joint Review Panels with other interested jurisdictions.

The Bill proposes that the Review Panel process for projects regulated by one of the energy regulators would have its own unique rules. At least one out of three panel members would have to be appointed from a roster established by the CER and the CNSC, and at least two out of five for the offshore petroleum boards. In addition, the Panels would be tasked with carrying out both their assessment responsibilities under the IAA and their regulatory duties with respect to the proposed project under their home statute. Essentially, the end result is still a combination of the regulatory process and the assessment process (as was the case under CEAA 2012), but under the IAA rather than under the energy regulators' home statutes.

The role of the Panel in the decision-making process is changing under the proposed IAA. Under the various versions of CEAA, the role of the Panel had gradually shifted from making significance findings and overall project recommendations to frequently only being asked to make 'significance' findings. Under the proposed IAA, there will no longer be a 'significance' finding. Rather, the project decision will be made by the Minister or Cabinet based on whether the project is in the 'public interest'. That decision, in turn, is to be informed by factors set out in section 63 of the IAA. The Bill does not provide for any formal link between the report of the Panel and the 'public interest' determination.

Finally, the decision to refer a project to a Review Panel is guided by section 36 of the IAA. The decision is to be based on the public interest, to be determined by the Minister based on direct or indirect effects on areas of federal jurisdiction, public concern, and opportunities for cooperation with another jurisdiction.

C. Recommendations for Amendments

In this section, recommendations for law reform are offered, grouped into four categories. First, I consider the connection between the planning phase and the work of Review Panels, with a focus on scoping and information gathering. I then consider the role of Review Panels in project decision-making. This is followed with recommendations for the Review Panel process involving projects regulated by energy

regulators. Finally, I offer some miscellaneous recommendations dealing with timelines, secretariat and powers of Review Panels.

1. Panel Role in Planning, Scoping and Information Gathering

Panels should be appointed earlier than currently anticipated under Bill C-69. Ideally, Panels would be appointed during the planning phase, at least for projects for which it is clear that a Review Panel is the appropriate assessment process. At the latest, Panels should be appointed at the conclusion of the planning phase, while the proponent starts to gather the information it is required to provide under section 19. The Panel should have a legislative right to conduct scoping hearings, and have input into the scope of the assessment and the information needed to complete its assessment. This can be done without any delay to the overall timelines if Panels are appointed early and scoping sessions are held in parallel with the proponent's information gathering. This would mean, however, that decisions made during the planning phase about the scope of the assessment, the information needed for the assessment and who is required to provide the information cannot be final decisions about the scope of the assessment by a Review Panel or the information required. They have to remain open to input from the Panel during its scoping and assessment processes. In other words, the direction to the proponent on information to be provided under section 19 cannot amount to a final scope determination. As well, our suggestions here require that the Panel be struck and be interacting with the public, proponent and IA Agency well before the 600 day clock starts.

Bill C-69 should be amended to offer more clarity, perhaps through a specific regulation making responsibility under section 112, not only on what the proponent is required to do at the end of the planning phase, but also on what everyone else is expected to do to prepare for the assessment phase while the proponent provides the information required under section 19. What are the responsibilities of the Agency, federal regulators and federal authorities? What contributions will other jurisdictions make to the process in case of Joint Review Panels? What needs to be done during this period to ensure the public is adequately prepared for the assessment phase? The lack of clarity on these responsibilities has hampered the federal assessment process in the past. The broader sustainability focus, the addition of the planning phase, and the introduction of timelines for the assessment phase all make it more imperative than ever to be clear about the allocation of responsibility to ensure the appropriate information is gathered, and that effective steps are taken to engage the public and to ensure interested members of the public are able to engage effectively once the assessment process is initiated.

2. The Panel's Role in Project Decision-Making

There has been much debate over the best way to make project decisions at the end of the project assessment process. As discussed above, some, such as the Expert Panel, have suggested that project decisions be taken out of the hands of elected officials and instead be made by Panels or an independent commission. It is not my intention here to weigh in on this debate. Rather, I offer suggestions on how to improve the political decision-making process as envisaged in Bill C-69, and, in particular, how to take

advantage of the unique contribution Panels can make to good project decisions by the Minister or Cabinet.

My basic proposition is that Panels will spend two years or more immersed with the assessment of the full range of predicted impacts and benefits, with the risks and uncertainties associated with proposed projects, and with alternatives and alternative means of carrying out the project. There will be no one else involved in the process, and certainly not the Minister of Cabinet, who will have the unique combination of having carried out a detailed analysis of the proposed project's impacts and benefits and the big picture perspective on its contribution to the public interest. This is particularly true now that the scope has been broadened to include all benefits and impacts of a proposed project. In light of this, it is a missed opportunity not to require the Panel (under section 51) to apply the criteria in section 63 and make recommendations to the Minister and Cabinet about each of the criteria (in accordance with guidance to be set out in regulations), and to reach its own conclusion on whether and under what conditions the project is likely to be in the public interest.

The Minister or Cabinet can, of course, reach a different conclusion, either because she disagrees with the analysis of the Panel, or because Nation to Nation negotiations carried on outside the assessment process warrant a different conclusion. In that case, I recommend a provision that would require the Minister to give written reasons for deciding not to follow a recommendation of the Panel, creating transparency and accountability for the final project decision, while leaving ultimate accountability in the hands of elected officials and allowing the results of Nation to Nation negotiations to feed into the final project decision. There was a similar provision in section 38(2) the original version of CEAA 1992, but it was later repealed. CEAA 1992 used the following wording:

> *38 (2) A responsible authority referred to in (1) shall, in accordance with any regulations made for that purpose, advise the public of:*
> *...*
> *(c) the extent to which the recommendations set out in any report submitted by a mediator or a review panel have been adopted and the reasons for not having adopted any of those recommendations.*

Without a clear role in applying the section 63 criteria and in reaching a 'public interest' conclusion, Review Panels are at risk of becoming little more than facilitators of hearings and note takers. It is important to consider, in particular, the impact of eliminating the 'significance' test, whether the project is likely to cause significant adverse environmental effects, from the federal assessment process. The responsibility to make 'significance' findings has been at the heart of the responsibility of Review Panels under CEAA. If this responsibility is not replaced with a clear role in informing the application of section 63 criteria and the "public interest" determination, the role and value of Review Panels will be drastically diminished under the proposed IAA.

3. Role of Energy Regulators in the Review Panel Process

Regulators have important expertise to bring to the Review Panel process. At the same time, it is clear that the central role some regulators have played in EA's under CEAA 2012 has undermined the public credibility of the federal EA process. More fundamentally, the merging of EA and regulatory processes ignores the fundamental differences, and the sequential nature of planning and regulating. The work of assessing and approving a project must occur separate from and before the regulatory processes. This was the case under the original CEAA, but was changed under CEAA 2012 for projects regulated by the CNSC and NEB. This clearly did not work. Bill C-69 is an improvement over CEAA 2012, in that it has the potential to ensure proper assessment approval before regulatory considerations and may focus the role of energy regulators in the assessment process to its appropriate role as a source of technical expertise about the proposed project. It does not, however, as currently drafted, adequately protect the integrity and independence of the assessment process. The IAA needs to limit the role of energy regulators to ensure the assessment process will take an impartial independent look at the proposed project, and fairly and impartially considers issues such as need and alternatives. To achieve this goal, I recommend the following:

- The number of panel members to be appointed from a roster of an energy regulator (CER, CNSC, CNSOPB, CNLOPB) should be limited to a maximum of one, rather than a minimum of one or two, as proposed in Bill C-69.
- Panel members appointed from the regulators' rosters should not be eligible to serve as Panel chairs, as this would risk having energy regulators in control of the assessment process, rather than their intended focus on having them contribute their technical expertise.
- Regulatory decisions should be made by energy regulators following the assessment decision, not in parallel. The Panel hearings can, in appropriate circumstances, serve to inform the regulatory process, but only when this does not risk undermining the planning nature of an assessment process, such as the consideration of alternatives and alternative means.
- Contrary to section 39, Joint Review Panels for assessments involving energy regulators should be encouraged, not prohibited.

4. Other Recommendations to Improve the Review Panel Process

In addition to the three broad areas of reform covered above, there are a number of specific issues related to Review Panels that warrant attention. Some deal with the timelines for Review Panels. Others are more technical in nature, but are equally important to the effectiveness of the Review Panel process:

- Appropriate timelines for Review Panels should be determined at the conclusion of the planning phase in consultation with the Panel. The 600-day period should serve as a default, not as a rigid legislative timeline.
- Panels, not the Minister, should have discretion to suspend time while the proponent is responding to the Panels' information requests.
- Panels should have direct control over a budget for hiring experts and for pursuing alternative dispute resolution options in appropriate circumstances. Experience has shown that delays in federal decision-making during the Panel

process (such as Ministerial or Agency approval) hampers the ability of Panels to retain experts and to pursue mediation or other forms of ADR to resolve disputes that arise during the course of an assessment. This problem has been exacerbated through rigid legislated timelines under CEAA 2012. An important part of the solution to this problem is to give Panels the authority to directly retain experts and mediators or facilitators, and to ensure they have direct budgetary control.

- To be effective, Panels need to have access to competent analysts with respect to the broad range of subject matters covered under sections 22 and 63 of the IAA.
- The Agency should have clear legislative responsibility to serve as Panel secretariat, resolving any doubt that the secretariat will be provided by the Agency, and not by regulators.
- The Act should be clear that even for Joint Review Panels, and Panels involving energy regulators, Panels need to include and should focus on) panel members with local expertise, relevant local and traditional knowledge, and project specific expertise.
- The Act should be clear that project descriptions prepared during the planning phase will be tested and may be altered during the Review Panel process.
- The Act should provide for a panel procedures regulation to further clarity the process and to help fully implement these recommendations.

3. Public Participation under the Proposed IAA

Meaningful public participation has been a goal of environmental assessment (EA) processes for a long time. The implementation of this goal has, however been mixed, and the federal environmental assessment process is no exception. While jurisdictions have struggled to reform their EA processes over time to improve public participation, the role of the public in EA has evolved significantly. As the focus of EA has shifted from a technical exercise of predicting biophysical impacts of proposed undertakings to a consideration of a full range of social, economic, health and cultural impacts of proposals, the need for effective and meaningful public engagement has become more and more pressing. The Multi-Interest Advisory Committee (MIAC), established by the Canadian Environmental Assessment Agency for input into the federal law reform effort, developed the following principles for meaningful participation:

- Participation begins early in the decision process, is meaningful, and builds public confidence;
- Public input can influence or change the outcome/project being considered;
- Opportunities for public comment are open to all interested parties, are varied, flexible, include openings for face to face discussions and involve the public in the actual design of an appropriate participation program;
- Formal processes of engagement, such as hearings and various fora of dispute resolution, are specified and principles of natural justice and procedural fairness are considered in formal processes;
- Adequate and appropriate notice is provided;

- Ready access to the information and the decisions at hand is available and in local languages spoken, read and understood in the area;
- Participant assistance and capacity building is available for informed dialogue and discussion;
- Participation programs are learning oriented to ensure outcomes for all participants, governments, and proponents;
- Programs recognize the knowledge and acumen of the public; and
- Processes need to be fair and open in order for the public to be able to accept a decision.

What Bill C-69 says about Public Participation

Much of the attention has been on the fact that Bill C-69 removes the "standing clause" in CEAA 2012, thereby restoring the right of any interested member of the public to participate in the assessment process. Of course, there are many other provisions in the Bill dealing with public participation, from the purpose section to notice requirements, opportunities for public input in the various phases of the process, access to information and participant funding.

The purpose section dealing with public participation is similar to CEAA 2012. Section 6 1(h) proposes a purpose of the Act will be to ensure "opportunities are provided for meaningful public participation during an impact assessment, a regional assessment or a strategic assessment".

The process for project assessments can be broken into its key phases, the planning phase, the Agency assessment phase, and the Panel Review phase, the decision-making phase, and the follow-up phase. The planning phase will be carried out for all projects assessed. The Agency process and Panel review process are alternative options for the actual assessment phase of the process. This is then followed by the decision making and follow-up phases. Each phase (except for follow-up) includes legislative timelines (180 days for the planning phase, 300 days for the Agency assessment process, and 600 days for the Panel Review), notice requirements and a legislative opportunity for public participation. There is limited detail in the Bill on how to ensure that the public participation will be meaningful.

There is no explicit provision for mediation, alternate dispute resolution or other forms of public engagement. Section 54, however, does allow panels some flexibility in the conduct of hearings. Overall, beyond provisions for notice, access to information, and funding, there is little direction on how meaningful public participation is to be achieved.

There is no legislative requirement for public participation in follow-up and monitoring. Follow-up is, however mentioned in the funding provisions. Under section 75(1), funding can be provided for the implementation of follow-up programs.

Law Reform Recommendations

The main changes to public participation under Bill C-69 are the elimination of the "standing" test and the opportunity for public participation in the new planning phase of the EA process. Of course, the challenge of ensuring meaningful public participation in the federal assessment process predate the introduction of CEAA 2012, and are therefore not addressed by undoing the constraints imposed in that Act. The following additional changes are needed to provide a proper legislative framework for meaningful public participation.

Recommendation 1

Section 2 of the proposed IA should be amended to include the following definition of meaningful public participation. The term "meaningful public participation" should then be used throughout the Act in place of "public participation".

Meaningful public participation *establishes the needs, values, and concerns of the public, provides a genuine opportunity to influence decisions, and uses multiple and customized methods of engagement that promote and sustain fair and open two-way dialogue.*

Recommendation 2

Many of the critical decision about the assessment will be made during the planning phase of the assessment, including whether a full assessment will be required, what the scope of the assessment will be, what information will be gathered to inform the assessment, and what process option will be selected for the assessment.

Meaningful public engagement will be critical to the credibility and effectiveness of this phase, and for the assessment as a whole. To ensure an appropriate legislative framework for meaningful public participation in the planning phase, I recommend the following:

- *A legislative requirement to initiate the planning phase by establishing a multi interest planning committee (MIPC), to include representatives of all interested jurisdictions, affected indigenous communities, local communities, and organizations that represent key stakeholders and public interests. The selection and precise role of non-government members, including the proponent and members of the public, should be set out in regulations. This is the best way to effectively and efficiently engage the range of interests in the early planning phase. It will coordinate input in this phase, ensure there are meaningful opportunities for input (not rely on default mechanisms of notice and 30 day opportunity to comment) and will enhance the steps of the process that follow.*
- *Replace the 180 day timeline with a project specific timeline to be set based on advice from the MIPC. The 180 days can serve as the default, but the process will apply to a wide range of projects, and it is unthinkable that the timeline will be appropriate for the range of projects it will apply to. When timelines are inappropriate, public participation suffers greatly.*

- *The MIPC should have responsibility to advise the Agency on all aspects of the planning phase, including scope, terms of reference for the impact statement, process options, and the design of appropriate public engagement program.*

Recommendation 3

With respect to the Agency led assessment process, my main concern is with the 300 day time limit. This requirement may be quite adequate for some assessments, but will not be adequate for more complex project assessments, and will in those situations serve to undermine meaningful public participation. A solution would be to set 300 days as a default, but to allow the appropriate timeline to be set by the Agency, on advice from the MIPC, at the conclusion of the planning phase of the assessment. The remaining issues on how to ensure meaningful public participation in an Agency lead assessment should be addressed through regulations (see Recommendation 6 below).

Recommendation 4

With respect to the panel review process, the 600 day timeline should also be changed from a legislative timeline to a default, and the Minister should be permitted to set a longer timeline based on advice from the MIPC. The discretion to suspend time while the proponent responds to information requests should rest with the panel, not with the Minister. An alternative would be to return to the approach in CEAA 2012 of suspending time automatically, perhaps with the ability to pass a regulation to clarify how the suspension of time is to work. The remaining issues on how to ensure meaningful public participation in panel reviews should be addressed through regulations.

Recommendation 5

With respect to follow-up, the Act should offer a legislative right to meaningful public participation. It should also clarify that all results of follow-up (not just summaries), including monitoring data and reported information, is public information, and that all data will be made publicly available promptly and permanently. Similarly, all information used during the course of an assessment must be made publicly available promptly and permanently. This is critical to ensure transparency and accountability for the implementation of the results of the assessments, for adaptive management, and for the efficiency and effectiveness of future assessments.

Recommendation 6

No amount of voluntary guidance on its own is going to ensure that meaningful participation is achieved. The CEA Agency in fact has some very good guidance material already available on meaningful participation, but it is simply routinely not followed. Clear direction on meaningful public participation should be given in regulations. To facilitate this, the regulation making power in section 112 should be amended to provide for regulations dealing with the following subject matters:

- *Details on how to ensure meaningful public participation in each of the key phases of the impact assessment process, including the planning phase, the Agency assessment phase, the panel review phase, the decision-making phase, and the follow up phase.*
- *The key purposes of participation in the early planning phase (e.g., participation in the development of the final project plan to be submitted, the development of guidelines and the establishment of a public participation plan).*
- *Meaningful public participation in each of the key phases (planning, assessment, decision making and follow-up) of regional and strategic assessments.*
- *Meaningful public participation that is culturally appropriate and appropriate to the circumstances, such as the right to cross examine expert witnesses, while allowing for information processes to learn about the values, priorities, and aspirations of affected communities.*
- *The design and implementation of the participant funding program.*
- *The manner in which information relevant to the assessment, and all follow-up data and information will be made permanently publicly accessible.*

4. Post-Assessment Approval (Follow-up) Processes

A historically neglected but critical part of any assessment process is what happens after project approval to ensure the project is implemented in the manner envisaged during the assessment, to ensure adjustments are made to regulatory requirements in case predictions about project impacts turn out to be inaccurate, and to ensure we learn from past assessments to improve future assessments. These elements are sometimes collectively referred to as follow-up. It is important to note, however, that this term is also used in a more narrow sense to refer only to post-approval monitoring and reporting.

The post-approval process is conceived here as a process that would include the collection and reporting of information, but would also include evaluation, public reporting, and appropriate responses for the approved project and for future assessments. All too often in assessment processes, critical elements of follow-up are either neglected altogether or are left to project regulators or proponents without formal accountability and without ongoing coordination or transparency. This is not surprising given that historically participants have tended to consider the assessment process to be completed once the project decision is made. However, the cost of not paying adequate attention to this part of the process has been high.

Key for an effective follow-up program is that it has to track whether predictions made during the assessment turn out to have been accurate, whether mitigation measures are as effective as predicted, and whether terms and conditions are complied with and prove to be adequate. Effective follow-up requires the results of this analysis to feed into adaptive regulatory approaches for approved projects, and learning processes for future

assessments. The following are key elements of an appropriate legislative approach to follow-up:

- Clear and adequate monitoring and reporting requirements for project proponents
- A clear plan for engaging affected communities and the interested public in the design and implementation of follow up programs
- Appropriate public registry requirements with respect to follow-up
- Appropriate enforcement provisions to ensure compliance with terms & conditions of approval
- Mechanisms to ensure appropriate learning and clear responsibility to implement lessons learned through adaptive management of approved projects
- Mechanisms to ensure implementation of lessons learned for future assessments
- Cooperation on follow-up with federal regulators, and a clear allocation of responsibilities
- Cooperation with other jurisdictions involved in the life cycle of approved projects without delegating federal responsibilities.

What Bill C-69 Says About Follow-up

A follow-up program is defined under section 2 of Bill C-69 to mean a program for verifying the accuracy of the impact assessment of a designated project and for determining the effectiveness of any mitigation measures. Follow-up programs are included in participant funding programs under section 75, and are mandatory for all assessments of designated projects. The Bill includes the power under section 112 to make regulations respecting the procedures, requirements and time periods relating to designing a follow-up program.

Section 64 provides for conditions with respect to adverse effects within federal jurisdiction. Such conditions include the implementation of follow-up, and where these are set out in a section 65 decision statement, proponents are required to comply with the conditions imposed. Under section 68, the Minister may amend a decision statement, including by adding, removing or amending a condition.

Sections 120 to 128 provide for the designation of enforcement officers and establish broad powers of inspection to verify compliance and prevent non-compliance. This would include the ability to verify compliance with any of the terms and conditions imposed under section 64, including the requirements of the follow-up program.

The internet site to be established under Section 105 would have to include a description or summary of the results of the follow-up program that is implemented with respect to a designated project. Project files under section 106 would have to be kept until the follow-up program is completed. The project files must include any records relating to the design and implementation of follow-up.

Law Reform Recommendations

The proposed elements of follow-up and compliance under Bill C-69 offer some of the key components of an effective approach, and include notable steps forward from CEAA 2012. In particular, it is commendable that follow-up programs would be mandatory for all approved projects, that the level of transparency with respect to the results of follow-up monitoring would improve under the Bill, and that there is a clear link between the terms and conditions of approval and the enforcement provisions. The Bill also includes a clear legislative power to amend the terms and conditions of approval, a power that could be exercised in response to monitoring results that demonstrate that predictions made about impacts, or about the effectiveness of mitigation measures, were wrong.

However, past experience suggests that the improvements proposed in the Bill still fall far short of what is needed to ensure appropriate actions are actually taken after assessed projects are approved and implemented. Among the key missing pieces in the Bill are the following:

- There should be a clear responsibility to amend terms of approval in the event predictions about impacts or mitigation turn out to be wrong, and the Bill should include legislated criteria for when and how the power to amend the terms and conditions for approval is to be exercised. Decades of experience with EA shows that in the absence of clear responsibility and criteria, the mere power to act on the results of follow-up will not be enough.
- While there is an obligation to publish results of follow-up in some form, there is not enough clarity in the Bill that all data collected on the actual impacts of an approved project will be publicly accessible. The Bill should clarify that all data collected are public, and that all data and all documents prepared will be permanently publicly accessible.
- There is no clarity on how inter-jurisdictional cooperation will be achieved in a way that will ensure clear accountability for implementing the follow-up program, sharing the results, and ensuring appropriate action in response. The Bill should include requirements for the Agency to negotiate implementation agreements with any jurisdiction that takes on follow-up responsibilities, with the goal of ensuring full transparency and accountability.
- Federal authorities should have clear legislative responsibility to carry out their regulatory or other duty, power or function with respect to approved projects in such a manner as to ensure the effective implementation of the follow-up programs, full transparency of the results through a central federal registry, and appropriate action in response.
- There should be clear legislative provisions that require the active engagement of affected Indigenous and local communities in the implementation of follow-up programs, including monitoring programs for any impacts of particular concern to an affected community, regardless of which authority oversees the implementation of the follow-up program.
- There should be a clear legislative responsibility for the Agency to track compliance with monitoring and reporting obligations regardless of the lead authority, to report annually on resulting conclusions about compliance and about the lessons learned about predictions made during the assessment, and

about the resulting actions in terms of adaptive management of the approved project.
- There should be a clear legislative accountability for the Agency to ensure that any lessons learned about the accuracy of predictions made and about the effectiveness of mitigation measures are reflected in any future assessment where those lessons may be relevant. Reviewing and comparing the analysis carried out during the assessment against actual impacts tracked during the follow-up stage and sharing the results of this analysis with the public and in future assessments will be a critical part of this responsibility.

5. Regional and Strategic Assessments under the Proposed IAA

There has been broad agreement among academics, practitioners and stakeholders involved in impact assessment in Canada that regional and strategic assessments offer opportunities to improve the efficiency, effectiveness and fairness of assessment processes and resulting decision making. Among the key benefits are the ability to address broader policy issues, to consider the interaction among a range of past, current and possible future activities, to improve the consideration of alternatives and cumulative effects, to streamline assessments at the project level, and to attract better projects as a result of improved clarity on what types of projects are desired. In spite of its tremendous promise, and endorsement by industry, environmental and indigenous interests alike, implementation in Canada has been slow, and so far, largely ad hoc.

What Bill C-69 Says About Regional and Strategic Assessment

Sections 92 to 103 of Bill C-69 set out the basic legislative framework for strategic and regional assessments. The process is to be carried out either by the Agency, or under the direction of a committee to be established by the Minister, likely contemplated primarily in case of a cooperative assessment involving other jurisdictions. Such opportunities to cooperate with other jurisdictions are clearly provided for, particularly in the case of regional assessments beyond federal land. The terms of reference for a regional or strategic assessment have to be approved by the Minister.

Regional assessments are contemplated in the Bill for undertakings both on federal lands and beyond federal lands. The scope of regional assessments beyond federal lands seems broader than envisaged by the Expert Panel. For strategic assessment, both existing and proposed policies, plans and programs are suggested in the Bill, with a required focus on the relevance of the policy plan or program for project impact assessment, rather than a broader assessment of the policy, plan or program. This scope for strategic assessments is considerably narrower then suggested by the Expert Panel.

Section 97 provides an opportunity for any person to request that a regional or strategic assessment be carried out. The Minister has to respond to the request within timelines to be set in regulations, with written reasons for the decision. Otherwise, there is no mechanism provided for triggering a regional or strategic assessment, no criteria, and no list of undertakings to be assessed.

The public is to have an opportunity to participate in any assessment carried out, and to have access to relevant information. This is in line with the purpose section, which provides for meaningful public participation in regional and strategic assessments. The participant funding program established under section 75 makes reference to regional and strategic assessments, suggesting that there will be participant funding for any assessments carried out.

No further details are provided in Bill C-69 on the process or the outcome of a regional assessment. The assessment report is to be filed with the Minister, but there is no provision for decision-making, and no guidance on how the results of a regional or strategic assessment are to be used in future project decisions. There are, however, a number of provisions that generally provide for the consideration of the results of regional and strategic assessment. They include the Ministers decision to designate a project for assessment under section 9, the Agency's decision to require an assessment of a designated project under section 16, and the factors to be considered in a project assessment under section 22. It would appear that the Cabinet Directive on strategic effects assessment will stay in place, but no reference is made to it in the Bill.

Law Reform Recommendations

A. Regional Assessments

The proposed approach to federal regional assessments is clearly a step forward from CEAA 2012, but overly cautious in the manner in which it introduces regional assessments to the federal assessment process. This is unfortunate, as a number of regions of the country (such as the Ring of Fire in Ontario or the Bay of Fundy in Nova Scotia) are in desperate need of regional assessments with full consideration of a range of future development scenarios, alternatives, and a full range of economic, social, environmental, health and cultural considerations.

While there are clearly limits on federal decision-making authority beyond federal lands, it is not clear that the drafters of Bill C-69 have fully appreciated the value of regional assessments to inform project assessments. In short, in order for federal decision-makers to be able to make sound decisions at the project level about a project's contribution to sustainability (a key element in the proposed new 'public interest' test for project decisions), the results of a comprehensive regional assessment that is based on a reasonable range of future development scenarios, are invaluable. In fact, making good decisions under section 63 of the proposed IAA may prove to be challenging in the absence of strong regional assessments completed before project decisions are made.

For those concerned about jurisdictional constraints on federal regional assessments beyond federal land, the issue is not whether the federal government has jurisdiction over all the information needed for a thorough regional assessment; rather, the issue is whether this information will be helpful for project decisions that are within federal jurisdiction. I fully recognize (as does Bill C-69) that there will be situations where the end result of a project assessment is that there are no or minimal impacts on areas of federal areas of jurisdiction, resulting in no federal decision-making authority. However, this can only be determined once the regional and project level information gathering processes are complete, not when decisions are made about the value of a regional assessment. A regional assessment can in fact be very helpful in clarifying federal jurisdiction over particular projects.

Recommendations for Regional Assessments

1. ***The Act should include a definition of regional assessment to clearly separate it from a strategic assessment. A regional assessment should be defined as an assessment whose primary defining features are its regional scope and its focus on understanding the interactions between all past, present and future human activities and the natural world within a given study area.***
2. ***The Act should ensure that there are better incentives for provinces and other affected jurisdictions (such as municipalities and Indigenous communities) to carry out cooperative regional assessments with the federal government. Funding, a commitment to collaborating in creating a common 'sustainability' based foundation for future project decision-making, and a commitment to proceed with a federal assessment in the absence of interest from other jurisdictions, appear to be obvious motivations.***
3. ***The process to be followed (including a planning phase and an assessment phase similar to project assessments), the decisions to be made at the conclusion of the regional assessment, and how the results of the regional assessment are to be used at the project level should also be more clearly set out. As a minimum, the new Act should set out clear regulation making provisions to address these issues.***
4. ***A roster of regional assessments to be carried out would also be helpful, as would a commitment to initiate a minimum number of regional assessments in any given year.***

B. Strategic Assessments

The proposed approach to strategic assessments could be significantly enhanced, as it misses the opportunity to ensure strategic assessments are used effectively to make project assessments more efficient, effective and fair by resolving high level policy issues before specific projects are proposed and assessed (or in parallel with project assessments where necessary). The planning phase for project assessments in particular provides opportunities for sequential or parallel project and strategic assessments. Bill

C-69 contemplates a planning phase before the proponent prepares its impact statement. The proponent has up to three years following the planning phase to complete the statement. This time provides a unique opportunity to identify policy issues during the course of the planning phase and to initiate a strategic assessment process to resolve them.

It is clear that Bill C-69 intends strategic assessment to be used to link existing and proposed federal policies, plans and programs to project assessments, to help those engaged in project assessments understand the implications of existing and proposed federal policies, plans and programs for the projects being assessed. An example specifically addressed is the need for a strategic assessment of climate change, to determine how existing federal climate policies, plans and programs should factor into the assessment of projects and into project decisions.

While the proposed application of strategic assessments to existing and proposed policies, plans and programs is helpful, it is only one part of the overall value and importance of strategic assessments. Equally important is its potential for filling policy gaps, particularly gaps identified during the course of project assessments. Examples include outdated policies, lack of federal policies on important issues, challenges associated with new industries that have not previously been considered, and new scientific developments that make the existing policy framework unworkable at the project level. Strategic assessment can also play an important role in updating regional assessments in light of new developments.

In short, there will be issues that arise at the project assessment level that cannot be resolved between the proponent and interested members of the public when their implications go beyond the scope of a particular project assessment. This will be particularly relevant in cases of emerging or changing industries and with any significant shift in our understanding of the sustainability implications of established industries. The proponent and interested members of the public should be able to initiate a parallel process to address such broader issues in an equally open forum with similar objectives of resolving the issues in such a way as to maximize net contribution to sustainability. The Expert Panel recognized this when it indicated that participants noted that:

This lack of clarity in broad policy objectives leads to an increase in uncertainty, delay in the conduct of project EA and its outcomes, and a more adversarial process. Participants suggested that strategic as well as regional IA be conducted to better understand impacts of climate change in a region and to support the implementation of policies in project EA.

If policy issues are raised during the planning phase of a project assessment, the proponent and public should have a formal opportunity under the legislation to alert the Agency, who would then be responsible for deciding whether to initiate a parallel strategic assessment process to move forward on the policy issues raised. The process for providing this direction could include the following:

1. The Agency would obtain and report on policy issues raised based on consultations within government, including the review of existing related policy and Ministerial/Cabinet advice. A determination would then be made whether a policy review through a strategic assessment is warranted.
2. In circumstances involving a significant policy gap, the Agency would recommend that the gap be filled by way of an open, consultative, public strategic impact assessment (sometimes referred to as the "policy off-ramp").

In most cases, work on the proposed project assessment would continue with the scoping and information gathering phases, but would not complete the assessment until the policy gap was filled and policy direction provided. In most cases, no final project decision would be made until any significant, relevant policy gaps are filled. In some cases, a precautionary approach to the project decision would still enable the project assessment to be completed and a project decision to be made without having to wait for the completion of the strategic assessment.

Recommendations for Strategic Assessments

1. ***The Act should include a definition of strategic assessment to clearly distinguish it from a regional assessment. What distinguishes a strategic assessment from a regional assessment is its focus on a particular set of human activities, either a particular policy, plan or program, a particular issue, or a particular industry or sector of the economy. A regional assessment, on the other hand, would include all human activities within a given study area.***
2. ***The Act should ensure that there are clear requirements to carry out strategic assessments of key existing and proposed federal policies, plans and programs, and not just those relevant to conducting project assessments. The process to be followed (including a planning phase and an assessment phase similar to project assessments), the decisions to be made at the conclusion of the strategic assessment (with respect to the policy, plan and program itself), and how the results of the strategic assessment are to be used at the project level should also be more clearly set out. As a minimum, the new Act should set out clear regulation making provisions to address these issues.***
3. ***To implement a 'policy off-ramp', the Bill should include a clear articulation of:***
    - ***The opportunity to initiate the policy off-ramp;***
    - ***The building of policy considerations into the assessment process – in other words that the proponent, the Agency and interested parties should strive to identify any potential policy issues during the planning phase;***
    - ***The criteria to be applied to determine whether a strategic assessment is warranted (e.g., implication of the policy gap on sustainability pillars in relation to a project; implications of***

not filling the gap; potential undermining of existing policy objectives; etc.)

- ***The criteria to be applied to determine what happens to the project assessment and the project decision pending the conclusion of the strategic assessment (e.g., avoiding undue delay – reasonableness; potential to synchronize the project assessment or decision process with policy development; magnitude of the policy gap in relation to a project; and***
- ***The role of government departments who will be responsible for implementing the results of the strategic assessment.***