

# Impact Assessment Agency of Canada

PRESENTATION TO THE MÉTIS NATION - SASKATCHEWAN WORKSHOP

FEBRUARY 15, 2020 – REGINA, SK



Impact Assessment  
Agency of Canada

Agence d'évaluation  
d'impact du Canada

Canada



# OVERVIEW OF THE *IMPACT ASSESSMENT ACT*



# The *Impact Assessment Act*

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- On August 28<sup>th</sup>, 2019, the *Impact Assessment Act (IAA)*, the *Physical Activities Regulation* and the *Information and Management of Time Limits Regulations* came into force, repealing the *Canadian Environmental Assessment Act, 2012*
- The **Impact Assessment Agency of Canada** is responsible for conducting impact assessments under the *Impact Assessment Act*

# Principles of the *Impact Assessment Act*

The new Impact Assessment Agency of Canada is committed to the following principles:

- Fostering sustainability
- Integrating scientific information and Indigenous knowledge
- Meaningful public engagement
- Reconciliation and partnership with Indigenous peoples
- One-project, one-assessment
- Predictability, transparency and timeliness

# Key Elements

Under the new *Impact Assessment Act*, key elements include:

- One Agency to manage impact assessments
- Early engagement
- Broader scope of assessment
- Coordination of Crown consultation activities
- Expanded regional and strategic studies
- Decisions made in the public interest
- Consideration of Indigenous knowledge is mandatory when provided



# Projects Subject to the Act

- Designated projects are described in the Physical Activities Regulations (Project List).
- Minister may designate any project not described in regulations, based on factors set in the legislation
- Non-designated projects on federal lands and outside Canada are assessed by federal authorities before decisions are made

## Project Examples

Major projects within the following sectors or groups can be found on the Project List:

- Oil and gas
- Linear and transportation-related
- Marine and freshwater
- Mining
- Nuclear
- Hazardous waste
- Federal lands and protected areas



# Regulations

## ***Physical Activities Regulations***

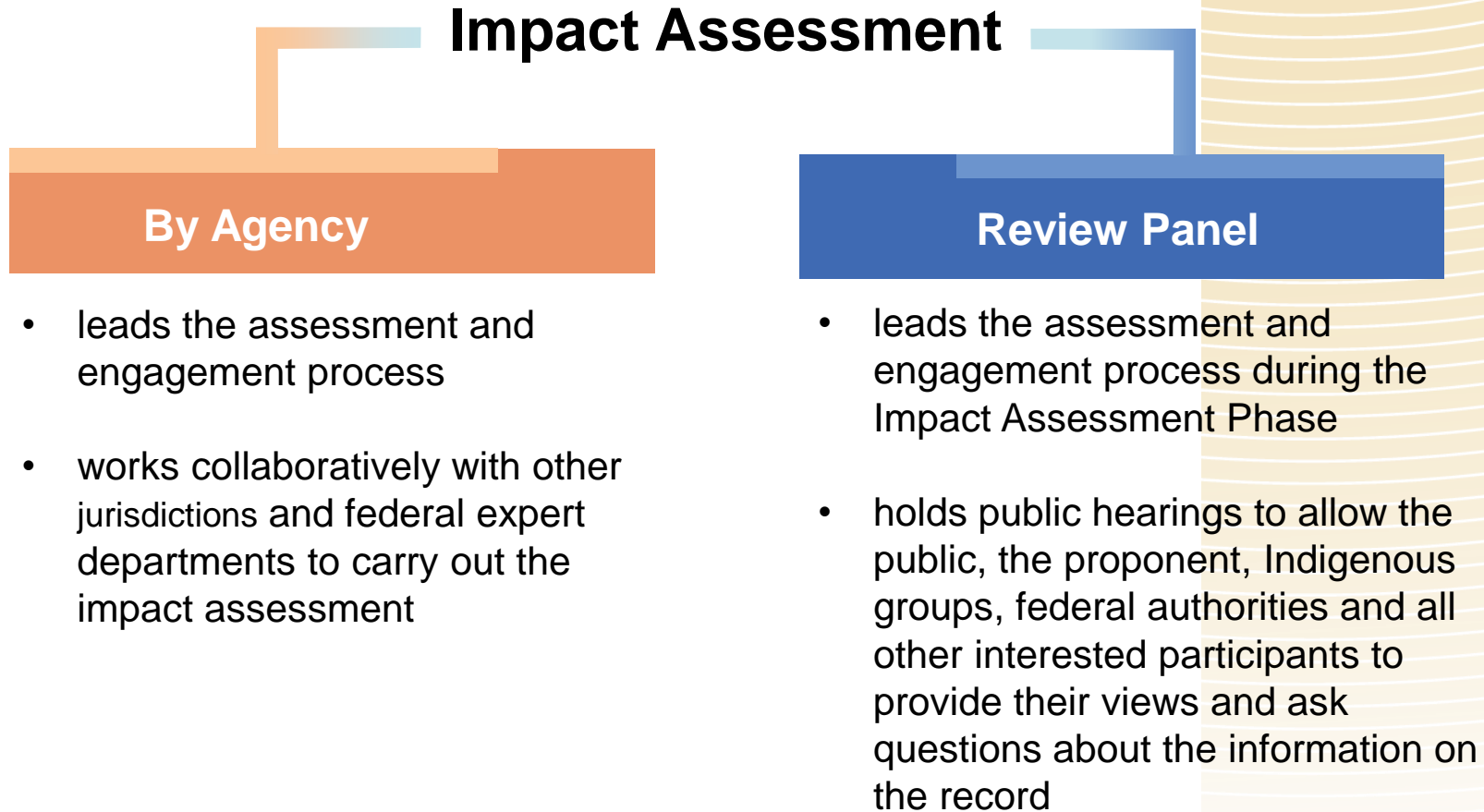
- Describes designated projects (Project List)
- The Project List focuses federal impact assessments on projects that have the most potential for adverse environmental effects in areas of federal jurisdiction

## ***Information and Management of Time Limits Regulations***

- Outlines the information that the proponent must provide to support early planning
- Outlines the documents the Agency must provide to guide the impact assessment
- Provides the circumstances in which the Agency may suspend the legislated timelines

# Types of Impact Assessment

## Designated Projects





# Impact Assessment Process Overview



# The Impact Assessment Process

## TIMELINES AND OUTPUTS



Key points for public engagement



Key points for Indigenous engagement & partnership

### Pre-planning

**10 DAYS**  
SERVICE  
STANDARD

- Proponent submits **initial Project Description**
- Agency accepts Initial PD

### 1. Planning

**UP TO 180 DAYS**

- Agency engages on Initial PD\* & Prepares **summary of Issues**
- Proponent submits **detailed PD** with response to summary of Issues
- Agency determines if Impact Assessment (IA) is required – posts **Notice of Determination (NOD)**
- If IA required, Agency develops draft Tailored Impact Statement Guidelines (TISG) and draft plans\*
- Agency Issues **final TISG and plans** to proponent – posts **Notice of Commencement (NOC)**
- Minister may **refer** IA to Review Panel (within 45 days of NOC)
- Minister may approve request\* that IA be conducted by another Jurisdiction

### 2. Impact Statement (IS)

#### IA by Agency

**UP TO 3 YEARS**

- Proponent submits **IS\*** and supplements It, as needed
- Agency posts **notice** when all required studies and Information provided

- Agency Implements Public Participation Plan/Indigenous Engagement and Partnership Plan

#### IA by Review Panel

**UP TO 3 YEARS**

- Proponent submits **IS\*** and supplements It, as needed
- Minister Issues **Panel Terms of Reference** and Agency **appoints its members** (no later than 45 days from accepting IS)
- Agency posts **notice** when all required studies and Information provided

- Agency or Panel Implements Public Participation Plan/Indigenous Engagement and Partnership Plan

### 3. Impact Assessment (IA)

#### IA by Agency

**UP TO 300 DAYS**

- Agency conducts assessment
- Agency develops **Report\*** and any **potential conditions** and provides to Minister

- Agency Implements Public Participation Plan/Indigenous Engagement and Partnership Plan

#### IA by Review Panel

**UP TO 600 DAYS**

**INTEGRATED ASSESSMENT: 300 DAYS**

- Panel conducts assessment and holds hearing
- Panel develops **Report** and any **potential conditions** and provides to Minister

- Agency or Panel Implements Public Participation Plan/Indigenous Engagement and Partnership Plan

### 4. Decision Making

**Minister 30 DAYS**

**GIC 90 DAYS**

- Minister decides whether the project's adverse effects are in the public interest, or refers to Governor in Council (GIC)
- Minister Issues **Decision Statement** with detailed reasons and any conditions

### 5. Post Decision

(if decision allows project to proceed)

**Ongoing**

- Proponent Implements conditions in Decision Statement, Agency or lifecycle regulator verifies compliance
- Indigenous and community monitoring committees, as needed

\* Public Comment Period

#### Deliverables:

- Impact Assessment Agency
- Review Panel
- Minister or Governor in Council
- Proponent



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# Phase 1: Planning (180 days)

## The first 80 days

### ***Purpose***

- To engage early with Indigenous peoples and the public to **identify issues and concerns**, including potential impacts to Indigenous rights, related to proposed projects
- To produce a Detailed Project Description that responds to issues and concerns identified in the summary of issues
  - Proponents may alter the project description to respond to issues and concerns or may alter the project design
  - This early planning opportunity can help avoid key issues coming up later in the assessment process
- To determine whether an impact assessment is required

# Phase 1: Planning

## The remaining 100 days

### ***Purpose***

- To plan for collaboration/cooperation with other jurisdictions
  - **Impact Assessment Cooperation Plan**
- To provide clarity and certainty around meaningful participation and consultation
  - **Public Participation Plan and Indigenous Engagement and Partnership Plan**
- To provide clarity to proponents on anticipated regulatory needs for the project to proceed
  - **Permitting Plan**
- To clearly identify studies and information requirements for the Impact Statement developed by the proponent
  - **Tailored Impact Statement Guidelines**

# Phase 1: Objectives of Products

<b>Initial Project Description</b>	High-level description of the proposed project
<b>Summary of Issues</b>	List of issues provided by the Agency following engagement and cooperation discussions
<b>Response to the Summary of Issues</b>	Notice prepared by the proponent outlining how they plan to address the issues described in the Summary of Issues
<b>Detailed Project Description</b>	Document containing updated information about the designated project and information about the possible environmental, social, health and economic effects of the project
<b>Public Participation Plan</b>	Document outlining how the public would be engaged throughout the impact assessment process
<b>Indigenous Engagement and Partnership Plan</b>	Document describing how Indigenous groups would be engaged throughout the impact assessment process
<b>Impact Assessment Cooperation Plan</b>	Document describing how the Agency will work with other jurisdictions throughout the impact assessment process
<b>Permitting Plan</b>	Document outlining the anticipated permits, licenses and authorizations required for the designated project
<b>Tailored Impact Assessment Guidelines</b>	Document outlining the information required in the proponent's Impact Statement
<b>Notice of Commencement</b>	Notice issued by the Agency before the end of the 180-day time limit that sets out the information and studies necessary to conduct the impact assessment

# Phase 2: Impact Statement Process

(3 years from Issuance of Notice of Commencement to acceptance of Impact Statement)

## ***Purpose***

To outline and evaluate impacts of a project

- Proponent prepares its Impact Statement based on the Tailored Impact Statement Guidelines
  - These guidelines are informed by **scoping** that took place in the Planning Phase
  - They describe the necessary information and studies that are **required** in the proponent's Impact Statement
- Proponent gathers information through studies and by engaging with Indigenous groups and the public to inform the Impact Statement
- Proponents are encouraged to engage with the Agency and federal authorities and seek clarity on guidelines as necessary



# Phase 3: Impact Assessment Process

(300 – 600 days)

## ***Purpose***

To evaluate impacts of a project, including:

- Agency or review panel analysis and technical review of the Proponent's Impact Statement
- Agency or review panel prepares a draft Impact Assessment Report and potential conditions
  - Engage with public to seek their views
  - Consult with Indigenous groups
  - Potentially, co-develop parts of the Report and potential conditions with Indigenous groups
- Finalized Impact Assessment Report and potential conditions are sent to the Minister to inform the public interest decision

## Phase 4: Decision-Making (30 or 90 days)

### ***Purpose***

Determination by the Minister, or by Governor in Council, on whether adverse federal effects are in the public interest

**Public interest determination** is based on the Impact Assessment Report and a consideration of the following factors:

- Project's contribution to sustainability
- Extent to which adverse effects within federal jurisdiction and the adverse direct or incidental effects are significant
- Associated mitigation measures
- Impacts on Indigenous groups and adverse impacts on rights
- Extent that project's effects hinder or contribute to Canada's environmental obligations and climate change commitments

# Phase 5: Post Decision

## Follow-up, Monitoring and Compliance Verification

### ***Purpose***

- To verify the accuracy of predictions and effectiveness of mitigation measures
- To provide opportunities for Indigenous peoples and the public to participate in monitoring
- To encourage continuous improvements to impact assessments
- To promote and ensure compliance with the Act and Decision Statement



## ***IMPACT ASSESSMENT ACT AND INDIGENOUS PEOPLES***



# Participation of Indigenous Peoples



# *Impact Assessment Act* and Indigenous Peoples - Key Aspects

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- The *Impact Assessment Act* includes provisions pertaining to Indigenous peoples that relate to four themes:
  - Participation in Impact Assessment
  - Cooperation and Collaboration
  - Impacts on Peoples and Rights
  - Indigenous Knowledge



# New Guidance Documents

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Practitioner's Guide on IAAC website ([www.canada.gc/IAAC](http://www.canada.gc/IAAC)) includes:

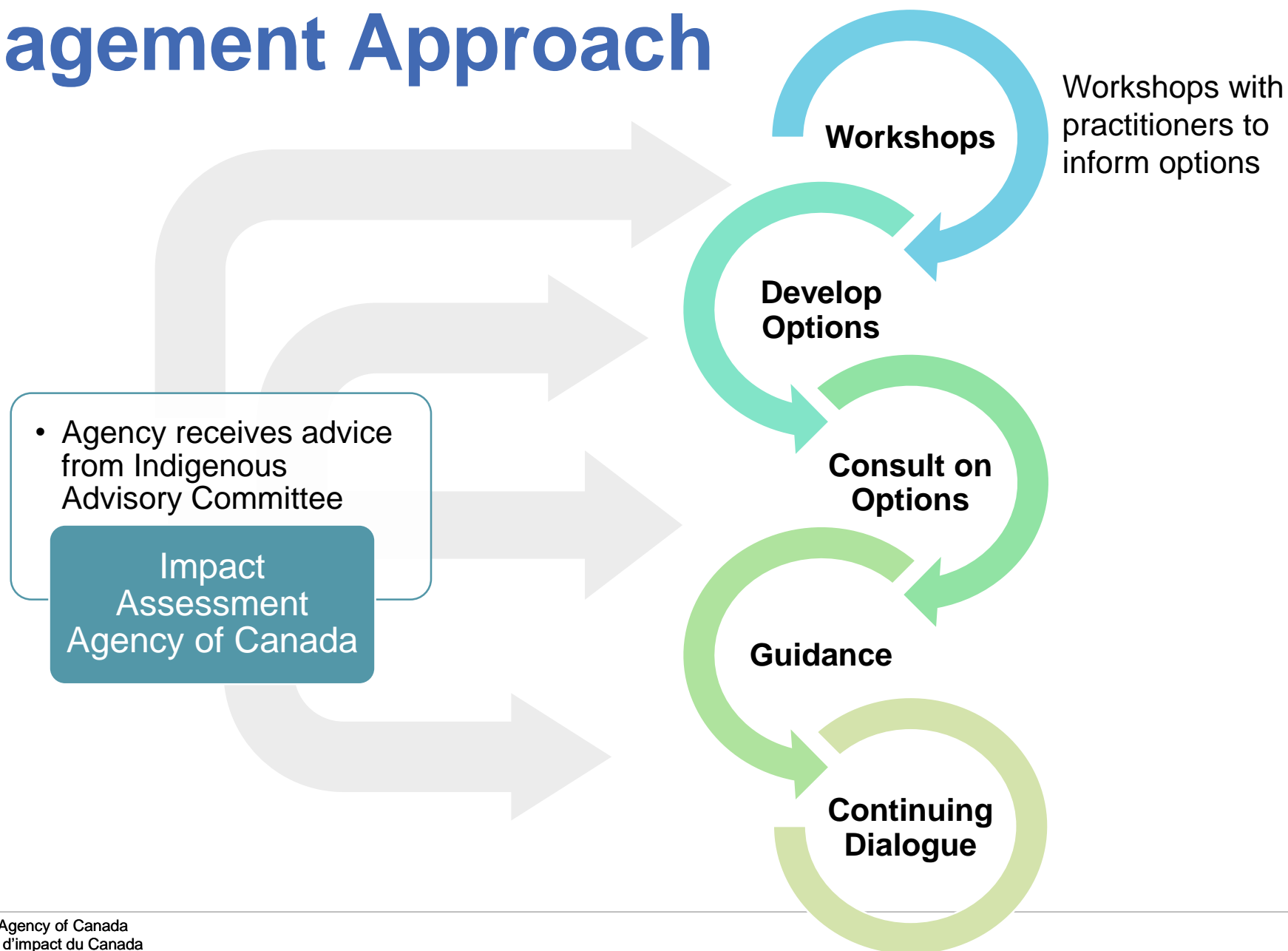
- *Indigenous Participation in Impact Assessment*
- *Collaboration with Indigenous Peoples in Impact Assessment*
- *Assessment of Potential Impacts on the Rights of Indigenous Peoples*

Forthcoming:

- *Consideration of Indigenous Knowledge in Impact Assessment*
- *Practices for Protecting Confidential Indigenous Knowledge in Impact Assessment*

Guidance documents are **interim** and will be updated to reflect comments received, as well as lessons learned through implementation of the Act.

# Engagement Approach



# Participation In Impact Assessment

## What We Heard

Respecting Indigenous culture and protocols & need to adapt to diversity of communities

Streamlined and enhanced funding

Better coordination: federal departments & with provinces

## What IAA Enables

Consultation required from Planning Phase

Tailored Impact Statement Guidelines

Cooperation Plans and Indigenous Engagement and Partnership Plans

Single Agency to lead and coordinate

## What Guidance Says

Agency will ask communities how they wish to participate

Funding starts in Planning phase

Content and approach for Indigenous Engagement and Partnership Plans

# Participation: Guidance

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## SPECTRUM OF ENGAGEMENT



- Agency's approach to participation aligns with the commitment to implement the UN Declaration and the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples
- Effective and meaningful participation of Indigenous peoples in impact assessment requires a flexible and tailored approach
- The Agency's Funding Program will remain an important tool to support Indigenous participation throughout the impact assessment process

# Cooperation and Collaboration

## What We Heard

Consideration of Indigenous laws and value systems

Need to be involved at all stages of the process

Need for full partnerships & leaders working with leaders

## What IAA Enables

Expanded definition of Indigenous jurisdiction and cooperation regulations

Opportunities to lead some aspects of the assessment

Cooperation with other jurisdictions to achieve “one project, one assessment”

## What Guidance Says

Spectrum of collaboration opportunities

Integration of Indigenous-led studies and assessments

Options for co-development

# Collaboration: Guidance

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- Considerations for designing a collaborative process
  - Timing, capacity, number of Indigenous groups, existing agreements.
- Range of collaboration options during the impact assessment
  - Co-development of methodology and assessment of impacts on rights
  - Co-drafting sections of Impact Assessment report and Consultation report
  - Indigenous-led assessments or studies
  - Co-development of federal conditions and accommodations



# Impacts on Peoples and Rights

## What We Heard

Consider impacts on rights earlier  
'Nothing about us without us'  
Consideration of context and cumulative effects  
Cultural and governance impacts need to be better considered

## What the IAA Enables

Impacts on rights included as s.22 factor  
Broader scope of impacts and interrelation between factors  
Indigenous culture in s.22 factors  
Reference to UN Declaration

## What Guidance Says

Begin to identify potential impacts in Planning phase  
Assessment done with Indigenous communities  
Community-defined values, indicators promoted  
Context-based approach

# Impacts on Rights Guidance: Principles

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The process for assessing impacts on rights should:

- Respect, protect and uphold the rights of Indigenous Peoples
- Work in partnership and aim for consensus
- Develop methodology collaboratively
- Consider Indigenous knowledge appropriately
- Take context into account at outset
- Apply a broad and holistic approach
- Use community-defined thresholds and measures
- Use both qualitative and quantitative analysis
- Ensure transparency
- Aim to develop mutually agreeable measures to avoid or minimize adverse impacts

# Indigenous Knowledge

## What We Heard

Equal consideration of knowledge alongside science

Respect for community protocols and knowledge holders, including distinctions based approach

Protect ownership, control and access

## What IAA Enables

Consideration of Indigenous Knowledge provided is mandatory

Protection of confidential knowledge, exemption from *Access to Information Act*

## What Guidance Says

Collaborate with knowledge holders on how to consider IK with science and other evidence

Practices for working respectfully with communities and knowledge holders

Procedures for confidentiality

# Indigenous Knowledge: Best Practices

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- Understand community context
- Respect community protocols on Indigenous knowledge
- Provide capacity support for Indigenous knowledge work
- Protect confidential Indigenous knowledge from unauthorized disclosure
- Include a diversity of knowledge holders
- Understand requirements related to Indigenous languages
- Methods needed to respect oral tradition and teaching on the land
- Understand the linkages and context of Indigenous knowledge

# Funding Programs at IAAC

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- **Participant Funding Program**  
supports public participation in federal environmental assessment.
- **Policy Dialogue Program**  
focuses on engagement on policy issues related to environmental assessment.
- **Indigenous Capacity Support Program**  
longer-term financial support, outside of project specific funding, to support the development of internal capacity related to environmental assessment.

# For More Information

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Impact Assessment policy and guidance products can be found here:

<https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act.html>

Email Impact Assessment Agency at [iaac.ip-pa.aeic@canada.ca](mailto:iaac.ip-pa.aeic@canada.ca)

