

# BRIEFING NOTE

# RESTORING CONFIDENCE IN MAJOR PROJECT REVIEWS

## PART I: THE IMPACT ASSESSMENT ACT

### ABOUT THE REPORT

This report proposes comprehensive reforms to the *Impact Assessment Act* (IAA) and associated permitting processes. The goal is to create an efficient, transparent, predictable, fair, and timely system that helps attract major project investment in Canada.

This paper is Part I of a two-part series, the latter of which proposes legislative changes to the *Canadian Energy Regulator Act* to achieve similar goals for pipeline reviews.

### WHAT'S HOLDING INVESTMENT BACK

Few regulatory barriers deter major capital investments more than Canada's major project review and permitting systems. The federal government has already begun taking steps to address these systems; and the recommendations in this report aim to advance this shared goal. But changes need to go further.

An efficient, timely, transparent, and predictable major projects review system can be part of Canada's global competitive advantage. Right now, federal systems are not. Key barriers to investment include:

- **Late-stage politicized decision-making:** Political decisions at the end of a review create unpredictability for years' long, high-cost review and permitting processes.
- **Duplicative reviews and regulators:** Departmental and jurisdictional overlap in regulatory mandates causes duplicative decisions impacting efficient progression through processes.
- **Excessive timelines:** IAA review and permitting timelines are unpredictable, excessively long, and prone to disruption and delay that hinder anticipated construction timelines.
- **Inflated scope and risk appetite:** Low regulator risk appetite causes reviews to stray from focusing on mitigating only the largest, unique, and material impacts.
- **Ill-timed and uncoordinated permitting:** Review of permit applications after the IAA process by multiple, uncoordinated regulators can cause significant construction delays.
- **Lack of consultation clarity:** Unpredictable Indigenous consultation processes weaken reconciliation efforts, Indigenous participation, and investor confidence.

The result is a review and permitting process that does not provide investors with a line of sight on a return on investment and, therefore, incentive to invest in other jurisdictions.

## PRIORITY ACTIONS

True major project review reform requires structural changes to the IAA and permitting system. Canada needs a universally applicable, efficient, transparent, stable, and predictable process; one that’s codified in the law. The following changes aim to create this ideal IAA process:

ACTION	DETAILS
<p><b>Improve the process for screening reviews in and out of the IAA</b></p>	<ul style="list-style-type: none"> <li>• Require that projects primarily regulated by provinces be reviewed provincially by right – and respect the final decision.</li> <li>• Conduct reviews under the best-placed federal lifecycle regulator (hereafter “responsible lifecycle regulator,” or RLR) and under the most appropriate legislative framework.</li> <li>• Encourage ‘one project, one review, one decision’ by folding federal expertise into provincial reviews as needed; and encourage provincial reciprocation for federally-led reviews.</li> </ul>
<p><b>Remove late-stage political decisions</b></p>	<p>Adopt a two-stage project authorization process:</p> <ul style="list-style-type: none"> <li>• <u>Stage 1</u>: Early political decision on whether a project in the national public interest during the Planning Phase.</li> <li>• <u>Stage 2</u>: Independent, apolitical determination by the RLR on how a project can proceed at the end of the review.</li> </ul>
<p><b>Reduce timelines and stop their expansion</b></p>	<ul style="list-style-type: none"> <li>• Reduce maximum review timelines to two years or less.</li> <li>• Eliminate opportunities for politicians to extend timelines.</li> <li>• Combine the Impact Statement &amp; Impact Assessment phases.</li> </ul>
<p><b>Right-size the scope of reviews</b></p>	<ul style="list-style-type: none"> <li>• Create RLR discretion to scope out factors from the list that must be considered in a review.</li> <li>• Require the adoption of Codes of Practice for standard mitigations; and stop the consideration of impacts already mitigated through existing law, including climate considerations.</li> <li>• Hold a review’s requirements only to those included in the Tailored Impact Statement Guidelines.</li> </ul>
<p><b>Streamline permitting and conditions</b></p>	<ul style="list-style-type: none"> <li>• Make the RLR responsible for making permit decisions and coordinating application submission and review processes.</li> <li>• Align permit decisions with the final decision of the impact assessment, if a proponent so chooses.</li> <li>• Require that permit issuance decisions do not frustrate the final decision of the impact assessment.</li> </ul>

ACTION	DETAILS
<b>Clarify Indigenous consultation processes</b>	<ul style="list-style-type: none"> <li>• Ensure the Crown properly considers and utilizes businesses' engagement as fulfilling procedural aspects of the Crown's duty.</li> <li>• To the extent possible, ensure the duty to consult is fulfilled in alignment with the maximum review timeline.</li> <li>• Build capacity for and enable Indigenous communities to participate in reviews, benefit from projects, and, if desired, own an equity stake.</li> </ul>

## WHO NEEDS TO ACT

<b>PMO and Privy Council Office</b>	Align federal authorities with this report's vision for structural/procedural change — and drive the legislative agenda needed to codify the changes in the law.
<b>Treasury Board Secretariat</b>	Consider structural IAA reforms as part of the Red Tape Reduction Office's advice to government.
<b>Lifecycle Regulators and Project Review Agencies/ Offices</b>	Build internal capacity to review projects and to coordinate permit reviews and decisions on accelerated timelines.
<b>Other Federal Authorities</b>	Embrace structural IAA reforms, and drive the internal cultural change needed to provide expertise to decision-makers within the scope and speed mandated.

## WHAT SUCCESS LOOKS LIKE

- Businesses communicate confidence in the speed and predictability of IAA reviews.
- Investment in major projects increases relative to investment projections under the regulatory status quo.
- Review process and timeline certainty improves so as to no longer require the expedited project review function for national interest projects under the new Major Projects Office.