



Native Women's  
Association of Canada



L'Association des  
femmes autochtones  
du Canada

**Bill C-69, An Act to enact the Impact  
Assessment Act and the Canadian  
Energy Regulator Act, to amend the  
Navigation Protection Act and to make  
consequential amendments to other  
Acts**

**Brief to the Standing Senate Committee  
on Energy, the Environment and Natural  
Resources**

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## Summary

NWAC strongly encourages the Senate of Canada to support Bill C-69. While the Bill is not perfect, it is clearly a result of compromise among many stakeholders in the Canadian patchwork quilt. Bill C-69 is a remarkable improvement on current federal impact assessment legislation and is a large stride in the right direction toward a legislative framework that respects the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

While NWAC is pleased to provide some recommendations on potential improvements to the proposed legislation in this brief, we encourage this Committee to ensure that any changes to the Bill are not likely to impede the likelihood of the legislation receiving royal assent. The current *Canadian Environmental Assessment Act, 2012* does not adequately account for the rights, interests and concerns of Indigenous peoples and Indigenous women in particular, nor does that Act work to guard against the worst effects of climate change.

While Bill C-69 could be amended significantly to better contribute to a rapid and equitable transition to a low-carbon, sustainable economy, the political reality demands compromise. NWAC is of the view that, while more can be done with Bill C-69 to protect the environment and contribute to the self-determination of Indigenous peoples, the current version of the Bill, as passed by the House, should be supported by the Senate of Canada with some minor adjustments.

For these reasons, NWAC is submitting a concise brief with only a few, but important recommendations:

1. Ensure that the intersection of sex and gender with other identity factors is considered in impact assessment processes and decision-making through culturally-relevant gender-based analysis.
2. Require the Minister to consult specifically with Indigenous women when consulting an Indigenous jurisdiction under the proposed *Impact Assessment Act*.



3. Encourage Indigenous governing bodies to achieve gender balance when recommending members to the Minister's Advisory Council under the proposed *Impact Assessment Act*.
4. Expanded impact assessment factors to include a project's contribution to transitioning the workforce to low-carbon industries and, in particular, providing opportunities for Indigenous women to participate in low-carbon economic activities.

NWAC encourages the Senate of Canada to support Bill C-69 to ensure that progress is achieved in federal impact assessment law for the benefit of all Canadians and the furthering of reconciliation.

## Analysis

### Impact Assessment Must Consider the Intersection of Gender and Indigeneity

NWAC strongly supports the provisions of Bill C-69 which will require impact assessments to consider the intersection of sex and gender with other identity factors.<sup>1</sup> While Indigenous peoples tend to be disproportionately negatively impacted by industrial projects, Indigenous women are particularly at risk of incurring negative impacts from these projects as a result of the heightened marginalization related to the intersection of their gender and indigeneity, along with other compounding identities.

Indigenous women endure economic marginalization and food insecurity that is exacerbated by deleterious effects of industrial projects on access to country foods, traditional lands and waters, and the imposition of capital economies. Indigenous women's unique cultural and spiritual relationships are also negatively impacted by disruptions to the natural environment. While industrial projects have the potential to provide, and often do provide, important sources of good-

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<sup>1</sup> Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to Amend the Navigation Protection Act and to make consequential amendments to other Acts*, 1<sup>st</sup> Sess. 42<sup>nd</sup> Parl., As passed by the House of Commons June 20, 2018, at Part 1, Impact Assessment Act, s 22(1)(s) < <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-69/third-reading> > [IAA].



paying jobs for Indigenous peoples, Indigenous women often do not gain access to these economic opportunities and can face harassment, discrimination and sexual violence at or in proximity to industrial projects.

The requirement that the intersectionality of gender and indigeneity be considered when assessing the impacts of proposed industrial projects is a very important improvement on impact assessment legislation that is vital for ensuring the concerns of Indigenous women are heard and considered when setting project conditions and determining whether a project is in the public interest.

Suits and Boots, a pro-pipeline industry group and leading opponent of Bill C-69, has listed ten reasons why they oppose Bill C-69, with number two on the list being the requirement that impact assessments consider the intersection of sex and gender with other identity factors.<sup>2</sup> NWAC is deeply concerned by opponents to Bill C-69 who predicate their objections to the proposed legislation on the requirement that the intersectionality of sex and gender, with other identity factors, must be considered.

Whether these objections are based on ignorance of or indifference to the impacts of industrial projects on intersectionally marginalized persons, NWAC finds it entirely unacceptable that such objections enjoy consideration by the Senate of Canada.

Systemic and overt forms of sexism and racism continue to have significant negative impacts on Indigenous women, often materializing through insufficiently assessed industrial projects. Bill C-69 provides an effective mechanism to address many of these issues and NWAC implores the Senate of Canada to reject objections to the proposed legislation that are based on ignorance or racism with respect to the rights of Indigenous women.

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<sup>2</sup> Rick Peterson, "10 Reasons to Kill Bill C-69 in Canada's Senate" Suits and Boots (9 September 2018) < <https://suitsandboots.ca/10-reasons-to-kill-bill-c-69-in-canadas-senate/> >.



**Recommendation 1: Ensure that the IAA require that the intersection of sex and gender with other identity factors be considered by impact assessments under the Act.**

## Impact Assessment Considerations and Decision-making Must be Inclusive of Indigenous Women

Inclusive impact assessment processes must recognize that Indigenous peoples are not homogenous groups and that intersectionally vulnerable persons in Indigenous communities, particularly women, children and LGBTQ2S+ persons, are differently affected by industrial projects.

The preamble of the IAA reaffirms the commitment of the Government of Canada to use transparent and inclusive impact assessment processes that take into account Indigenous knowledge and Indigenous people in decision-making. The legislation ought to specifically recognize that inclusive impact assessment processes that take into account Indigenous people in decision-making are processes which include Indigenous women specifically.

Bill C-69 includes several provisions that will work to ensure better inclusion of Indigenous peoples in the impact assessment processes. Examples of these improvements include: the requirement that the responsible authority for an assessment offer to consult with Indigenous jurisdictions under the proposed IAA;<sup>3</sup> impact assessments will be required to take into account assessments of proposed projects conducted by or on behalf of Indigenous governing bodies;<sup>4</sup> and the Minister's Advisory Council on impact assessment and regional strategic assessment must include First Nation, Inuit and Métis representatives<sup>5</sup>.

The inclusion of Indigenous concerns and participation in impact assessment is an important component of impact assessment processes that work toward respecting the rights of Indigenous

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<sup>3</sup> IAA, supra note 1, at s.21(b).

<sup>4</sup> Ibid, at S 22(1)(q).

<sup>5</sup> IAA, supra note 1, at s 117(3).



peoples; however, it is important that the inclusion of Indigenous peoples is representative of Indigenous women and their concerns and knowledge.

**Recommendation 2: Paragraph 21(b) of the IAA be amended to require the minister to consult specifically with Indigenous women when consulting a jurisdiction referred to in paragraphs (e) to (g) of the definition of *jurisdiction* in section 2.**

**Recommendation 3: Subsection 117(4) be added to the IAA that calls on Indigenous governing bodies to endeavour to achieve gender balance when recommending members to the Minister's Advisory Council.**

### Indigenous Women are Disproportionately Affected by Climate Change

The preamble of the proposed IAA recognizes the role of impact assessment in contributing to meeting Canada's environmental obligations and commitments in respect of climate change<sup>6</sup> and requires that impact assessments take into account the government's commitments to address climate change<sup>7</sup>. Importantly, the Minister must, in determining whether a proposed project is in the public interest, consider the extent to which the effects of the project hinder or contribute to Canada's ability to meet its commitments in respect of climate change.<sup>8</sup>

Indigenous women have a wealth of valuable traditional ecological knowledge, but are both disproportionately negatively impacted by the effects of climate change and excluded from economic opportunities related to climate action. Requirements under the proposed IAA that public interest determinations account for project contributions, mitigation and adaptation to climate change can help defend against the worst effects of climate change while ensuring economic opportunity and meaningful participation for Indigenous women in the just transition to sustainable industries.

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<sup>6</sup> IAA, *supra* note 1, at s 1.

<sup>7</sup> *Ibid*, at s 22(1)(i).

<sup>8</sup> *Ibid*, at s 63(e).



As noted above, Indigenous women face disproportionately high rates of poverty that subjects them to food insecurity and limits their ability to access services that can result in poorer health outcomes. Climate change impacts on access to traditional country food resources and clean water exacerbates food insecurity and poor health outcomes of Indigenous women and their dependents.

The transition to a net zero greenhouse gas emissions global economy will almost certainly drive significant demand for minerals and metals needed for renewable energy products, many of which are found in Canada.<sup>9</sup> Bill C-69 is an important step toward an impact assessment regime that will consider and account for the contribution of industrial projects to anthropogenic climate change and the contribution of industrial projects to climate action.

The economic opportunities that will emerge from the transition to a net zero GHG economy will certainly be of significant benefit for the Canadian economy. It is important that the impact assessment processes, when assessing project contributions to Canada's commitments to take climate action, also consider the equitable and just transition of workforces as recognized by Canada's adoption of the Silesia Declaration.<sup>10</sup>

Consideration of a project's contribution to Canada's ability to meet its climate change commitments implicates a project's contribution to the cumulative effects of climate change and the economic opportunities related to a low carbon economy. Impact assessments ought to consider both the effects of climate change on Indigenous peoples as well as the just transition of Indigenous workers to low-carbon, sustainable industries.

**Recommendation 4: The factors under IAA subsection 22(1) be expanded to include a project's contribution to transitioning the workforce to low-carbon industries and, in**

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<sup>9</sup> Clean Energy Canada, "Mining for Clean energy" (June 2017) at p 5 < <http://cleanenergycanada.org/report/mining-clean-energy-2017/> >.

<sup>10</sup> COP24 Katowice 2018, "Just Transition Declaration" UNFCCC < <https://cop24.gov.pl/presidency/initiatives/just-transition-declaration/> >.



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**particular, providing opportunities for Indigenous women to participate in low-carbon economic activities.**

## About NWAC

The Native Women's Association of Canada (NWAC) is founded on the collective goal to enhance, promote, and foster the social, economic, cultural and political well-being of First Nations, Métis and Inuit women, children and Two Spirit and LGBTQ+ persons. NWAC is an aggregate of thirteen Native women's organizations from across Canada and was incorporated as a non-profit organization in 1974.

Our mission is to help empower women by being involved in developing and changing legislation which affects them, and by involving them in the development and delivery of programs promoting equal opportunity for Indigenous women.

## Summary of Recommendations

1. Ensure that the IAA require that the intersection of sex and gender with other identity factors be considered by impact assessments under the Act.
2. Paragraph 21(b) of the IAA be amended to require the Minister to consult specifically with Indigenous women when consulting a jurisdiction referred to in paragraphs (e) to (g) of the definition of *jurisdiction* in section 2.
3. Subsection 117(4) be added to the IAA that calls on Indigenous governing bodies to endeavour to achieve gender balance when recommending members to the Minister's Advisory Council.





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4. The factors under IAA subsection 22(1) be expanded to include a project's contribution to transitioning the workforce to low-carbon industries and, in particular, providing opportunities for Indigenous women to participate in low-carbon economic activities.