April 5th, 2019

Senator Rosa Galvez,
Chair of the Standing Committee on Environment and Sustainable Development
The Senate of Canada
Ottawa, Ontario
K1A 0A6

RE: Suncor Energy Inc. ("Suncor") submission to the Senate Committee on Energy, the Environment and Natural Resources ("ENEV") regarding Bill C-69

Dear Senator Galvez and Members of the ENEV Committee,

Executive Summary

Suncor supports the government’s intentions of Bill C-69 ("the Act"). We have been actively engaged in the consultation processes and continue to work with governments, industry and others to ensure we have a regulatory regime that will build public and investor confidence.

Suncor’s focus is to ensure we have an impact assessment ("IA") and regulatory system that:

- Enables the responsible development of energy and resource projects;
- Provides an efficient and predictable process with timely decision-making;
- Allows for openness, transparency and appropriate public participation;
- Allows for regional and strategic assessments to be conducted outside of project reviews;
- Respects provincial jurisdictional powers; and
- Provides increased cooperation with, and appropriate deference to provincial lifecycle regulators to reduce red tape and avoid duplication, providing certainty to investors and stakeholders.

Suncor is recommending a number of amendments that we believe will strengthen the Bill, enhance Canada’s ability to attract capital, be globally competitive and allow the Government of Canada to meet its stated goals. We have identified four areas of concern where we believe amendments would significantly enhance the outcomes without compromising Bill C-69’s intent. This submission outlines our concerns and recommends formal amendments that are aligned fully or in part with other industry member proposals and include:

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1 https://www.canada.ca/content/dam/Themes/environment/conservation/environmental-reviews/ia-handbook-e.pdf
I. Improve clarity and efficiency of the IA process for proponents, Indigenous peoples and stakeholders  
   Solutions:  
   - Define the scope of an IA earlier in the process and ensure capacity to execute;  
   - Ensure only relevant factors to a project are considered;  
   - Include and assess exclusion criteria when deciding if an IA is required;  
   - Increase certainty around timeframes and clock stoppages;  
   - Limit opportunity for frivolous litigation arising from the draft legislation's many decision points and introduction of new areas for review that are not well defined;  
   - Ensure a transparent, timely and predictable process that recognizes, incentives and enables responsible development, best practices, and innovation allowing good projects to move forward in a timely manner.

II. Define the mechanism to empower the governing body to determine public participation  
   Solution:  
   - Empower the IA Agency (or Review Panel) to determine the process for indigenous and stakeholder participation that is commensurate with the impacts of a specific project

III. Eliminate or reduce debate of broad public policy concerns in project-specific assessments  
   Solutions:  
   - Establish clear policy guidance to be used to assess relevant factors in an IA  
   - Clarify the purpose of regional and strategic assessments and how they may be applied in an IA

IV. Establish mechanisms that recognize and support jurisdictional and lifecycle regulators' processes in IA – "One Project, One Assessment”  
   Solutions:  
   - Exclude offshore exploration from the project list and the requirement to undergo a panel review and allow for assessment by the best-placed provincial lifecycle regulator  
   - Ensure cooperation agreements with provincial lifecycle regulators are in place to allow for a timely, efficient and coordinated review process and substitution where project benefits and impacts are clearly within the jurisdiction of the best-placed provincial lifecycle regulator.

Introduction

Suncor is Canada's largest integrated energy company, an active player in Canada's natural resources sector, and a significant contributor to Canada's economy. Suncor is a producer of crude oil in Canada's oil sands and offshore projects on Canada's east coast, and operates three refineries in Canada. Suncor is a major supplier of refined products across Canada including gasoline, diesel, jet fuel,
asphalt and home heating oil, marketing fuel through more than 1800 Petro-Canada retail and wholesale locations across Canada. In 2017, Suncor employed over 12,000 people across Canada, spent more than $6 billion on capital and exploration; contributed $418 million in royalties and taxes to government; and engaged with 4800 different companies across the country\(^2\). In 2018, Suncor spent over $700 million from Indigenous businesses.

In addition to these sources of energy derived from Canada’s hydrocarbon resources, Suncor has also developed renewable energy resources with four wind power projects currently operating in three provinces. Suncor also owns and operates Canada’s largest ethanol production facility located in Sarnia, Ontario.

Suncor believes that Canada’s regulatory systems can and should ensure both environmental protection and economic competitiveness. We continue to emphasize the importance of establishing and maintaining timely regulatory processes that provide certainty and consistency that builds public trust and investor confidence. To achieve certainty and consistency, regulatory processes need to have predictable outcomes, costs and timelines and a well-defined scope.

Through working closely with several other organizations and companies there is general agreement that, as written, Bill C-69 creates uncertainty for project proponents, as well as concerns which include major delays, and opportunity for increased legal challenges to regulatory decisions that will undermine public trust and investor confidence in the process.

Given Canada’s vast resource endowment and geographical reach, we have an opportunity to continue to create prosperity for future generations in a responsible manner. This requires a commitment from all governments and political parties to agree on the process that ensures that the Government of Canada establish a credible regulatory system that will not be overhauled every five to seven years. In order to do this the Government of Canada must recognize that the resource sector (mining, energy, forestry, nuclear, wind/solar, aquaculture, etc.) and infrastructure projects (ports, rail, roads, transmission corridors and pipelines) present unique challenges given geographical location, communities, resource characteristics, costs, etc.

While we appreciate the desire to centralize the IA process, it is equally important to ensure that the expertise and knowledge accumulated over time by federal and provincial life cycle regulators are not dismissed or overshadowed by a well-intentioned process.

A strong regulatory system will enable the timely and responsible development of natural resource and infrastructure projects. Suncor believes with the right amendments, Bill C-69 could strengthen and improve the existing assessment process under CEAA 2012 and improve competitiveness in Canada.

\(^2\) Suncor Energy Inc., Report on Sustainability, 2017
Suncor’s recommended changes are intended to support the Government of Canada’s objectives as proposed in Bill C-69.

I. Clear, Efficient and Predictable Process for Proponents and Stakeholders

Bill C-69 introduces many new concepts. A lack of precedent in many of the areas increases the potential for legal challenges and requires clarification of the scope of an assessment and a clearly defined process.

Canada has a long history of environmental assessment practice in the resource development sector; the Act must utilize and build upon this valuable existing knowledge, expertise, experience and data. Considering this immense knowledge and experience and, to ensure predictable timelines, costs and outcomes, a strong IA process should:

- Tailor and limit the scope of an assessment for a specific project to only those issues that are relevant and within federal jurisdiction;
- Establish a clear, focused and transparent process for the Agency and the proponent(s); and
- Provide policy guidance on how relevant factors to be considered will be assessed.

A. Defining and Limiting the Scope of an Impact Assessment

We are supportive of an early engagement process that will provide a clearly defined scope earlier in the process and should lead to a transparent, efficient and more predictable process for the Impact Assessment Agency (“IAA”), proponents, stakeholders and Indigenous peoples. Emphasis should be placed on ensuring only relevant factors are considered. This aligns with one of the Acts promises, which is to ensure expectations and requirements are clarified up front, that proponents and stakeholders know what is expected of them early on in the process1. Ensuring only relevant factors are considered from the start is necessary to eliminate significant delays throughout the process and will provide assurance that not all factors listed in section 22 must be considered in any given project assessment.

If it is decided that an IA is required for a given project, the scope of the assessment must be defined early in the process which would set out the expectations of the process and requirements against which the IA should be measured.

Suncor recommends that the notice of commencement (18(1)) define the scope of the IA at an early stage. It must also be made clear that the Agency will only consider the factors listed under subsection 22(2) that are relevant to the project. *See recommendations 1 and 4 in Annex 1.*

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1 https://www.canada.ca/content/dam/themes/environment/conservation/environmental-reviews/ia-handbook-e.pdf
Additionally, the Government of Canada has indicated that certain projects may be excluded from requiring an IA if there is a regional or strategic assessment or other policy tools in place that addresses impacts from such projects. However, it is not clear in the Act how this will work in practice.

Suncor recommends that exclusion criteria be included as one of the factors the Agency must consider when deciding if an IA will be required (16(2)). For example, we support the use of regional and strategic assessments but suggest the legislation provide further guidance to clarify the purpose, development and use of regional and strategic assessments and other policy tools in an IA. This will inform and ensure a transparent exclusion criteria to be set out in applicable regulations. See recommendation 7 in Annex I.

B. Certainty of Process and Predictability of Outcomes

Suncor is concerned that as written, Bill C-69 adds further complexity to an already complex project assessment process. All effort must be made to increase transparency, clarity and certainty to ensure an effective, timely and meaningful process that builds public and investor confidence. Transparency of decisions that impact timelines will be a critical success factor in meeting one of the government’s objectives of establishing a more efficient, transparent and predictable process.

In order to ensure consistency throughout the Bill, where a time extension may be granted, Suncor recommends that the Governor in Council is held to the same requirement for publication of reasons when an extension is granted, as is required for the Minister (e.g., 18(5)). See recommendation 8 in Annex I.

Some of the most concerning aspects of the Act that require assurance are the increased opportunities for legal challenges given the new Agency and a new process with many decision points and new factors being introduced. The Act should afford a level of deference to protect a defined, expert process and provide a level of certainty to parties that participate in the process to ensure predictable outcomes. The IA process must utilize subject matter experts and expert panels who have deep relevant experience undertaking these assessments, who are committed to responsible development, and who are able to balance environmental, social and economic considerations when making a decision.

Suncor recommends that the Act include clauses that reasonably limit the opportunities for legal challenges. See recommendation 11 in Annex I.

The proposed provision is analogous to the one found in section 70 of the proposed Canadian Energy Regulator Act, and other examples that can be found in governing statutes of federal agencies and tribunals, such as the National Energy Board Act. The purpose of these provisions is to improve integrity of the regulatory process, consistency, empower the Agency in the process, and strengthen the Bill overall to ensure public trust and investor confidence in the IA process.

Furthermore, to create certainty of process the regulatory process must encourage innovation and build in mechanisms to facilitate the adoption of new technology. This requires a process that allows for changes to proposed projects that are already in the regulatory process. Technological changes to a
project that are already undergoing assessment are common, particularly for long-life assets. Resource projects from conception to build can take up to 20 years or more. Given the pace of innovation it is imperative that the regulatory system is able to accommodate the introduction of new technology into the regulatory process without delaying the decisions. Those changes that improve performance and/or environmental outcomes must be encouraged without triggering a significant delay or restart to the assessment process.

II. Clarity of Process for Determining Public and Indigenous Peoples Participation in an Impact Assessment

The IA participation process must prioritize engagement with directly impacted stakeholders and Indigenous peoples while providing an opportunity for others to provide input within legislated timelines.

We support public involvement in the regulatory process as a way of building trust; however, we believe that the process needs to hold all parties accountable and must allow input in a manner that is commensurate with level of impact. Engagement with directly impacted Indigenous peoples and stakeholders should be prioritized, while still providing opportunities for other members of the public with relevant experience and expertise to provide input within legislated timelines.

The Act, as written, does not provide the IAA with the legislative mechanism to formally empower the Agency or an expert review panel to make reasonable decisions on the nature and scope of public and Indigenous peoples participation in an IA. Determining the scope of public and Indigenous peoples participation is even more critical for review panels, as hearings are mandatory. Without appropriate discretion for the Agency or a review panel to make determinations on its own processes, including participation, the costs and time associated with hearings are likely to increase and any decision by the Agency or review panel regarding participation would be vulnerable to legal challenge. The Agency or review panel must ensure the process of soliciting participation, and decisions regarding participation do not unduly compromise the efficiency, timeliness and predictability of the process, or the burden on the project proponent. A decision on participation in a review or panel process should be clearly linked to concerns that are relevant to the specific details of the project and the scope of relevant areas of federal jurisdiction.

Suncor recommends that the Agency or an expert review panel are provided with the discretion to determine the nature and scope of participation by a member of the public in an IA of a designated project. A decision made by the Agency or review panel must be final and conclusive. See recommendations 12 and 13 in Annex I.

Additionally, a key need will be to ensure that the government is held accountable to deliver on their judicial obligations to fulfill their Constitutional Duty to Consult affected Indigenous peoples.

We recommend that the notice of commencement (18(1)) set out the processes that the Agency considers appropriate to engage meaningfully with the public and the Indigenous peoples that may be affected by the carrying out of the designated project. See recommendation 1 in Annex I.
III. **Address Broad Public Policy Concerns Outside of Project-Specific Reviews**

Debate on broader public policy issues must take place outside of the IA process. The Government should use its legislative authority to clarify public policy issues to focus the assessment process on the actual project itself and not on broad policy debate.

The Act provides the government with the authority to undertake strategic and regional assessments and other policy tools that, if implemented well, can be the forum needed to have a fulsome, nationwide discussion on public policy issues. However, providing additional clarity on how strategic and regional assessments and other policy guidance will be applied in the IA process will enhance public trust and investor confidence.

To bound expectations for a project assessment regarding how public policy issues will be addressed, Suncor recommends that the list of factors under subsection 22(1) clarify that project assessments are not the place to debate broad public policy issues. The Act should provide the IAA or review panel to direct issues of broad policy to the appropriate forum, such as regional or strategic assessments. See recommendation 4 in Annex I.

Suncor supports the use of completed regional and strategic assessments and other policy tools if developed and used appropriately. Suncor believes these assessments can provide appropriate opportunities to address broad public policy issues and can be an effective tool provided that the governments of Canada, the provinces and territories work together to complete assessments. However, we remain concerned that there is no clarity of how regional and strategic assessments will be developed and used. As written, there are no mandated boundaries or guidance in the Act for the completion or application of a regional or strategic assessment and other policy tools in an IA. Regional and strategic assessments should be conducted in a manner that clarifies issues with respect to the IA but does not circumvent the due process required to resolve complex public policy issues (i.e. they are not a substitute for well-crafted legislation).

Additional clarity on the purpose of regional and strategic assessments and how they can be applied in an IA would provide increased transparency and confidence in the IA process. The focus should be on how these studies can be relied on in an IA to reduce the scope of studies required and expedite the process. See recommendation 14 in Annex I.

This provision should also be inclusive of existing regional and strategic frameworks and plans that meet the government’s requirements, for example the Lower Athabasca Regional Plan and other provincial policies and frameworks. Incomplete regional and strategic assessments should not be used to delay project decisions or the IA processes.

IV. **Mechanisms to Support Jurisdictional and Lifecycle Regulator Processes in IA – One Project, One Assessment**

Where impact assessments are required and are located entirely within provincial jurisdiction and/or are routine activities with limited federal authority, the appropriate provincial life-cycle regulator should have authority for project approvals.
Mechanisms within the legislation to support the government’s objective of “One Project – One Assessment” are required to limit potential duplication between other jurisdictions and limit federal overreach into projects and areas currently under the responsibility of provincial life-cycle regulators. The Act must better define the processes for exclusion and substitution and provide mechanisms to utilize the experience and knowledge of the best-placed life-cycle regulator for any given project.

Within the Act as written, offshore exploration, regardless of the activities involved, is subject to a review panel. Given the routine nature of exploration drilling activities, Suncor believes that exploration drilling should be excluded from the designated project list and not be required to undergo an IA. If not excluded from the project list and required to undergo a panel review (section 43), offshore exploration will lose the single-window integration of assessment and licensing processes provided by the offshore boards. An assessment by a panel review is not appropriate considering the routine and small-scale nature of exploration drilling. The process needs to ensure that the scale of the assessment is proportionate to the scale of the potential impacts.

In the absence of clarity on what will be included on the project list, if offshore exploration is included on the project list these activities should be exempt from requiring a panel review (section 43) due to the well understood, routine nature of the activities which have proven mitigation measures in place managed by the existing offshore boards (i.e., the Canada-Newfoundland and Labrador Offshore Petroleum Board) carried out under the Accords Acts. See recommendation 18 in Annex I.

Our position is that where an IA is required for projects that are located entirely within a provincial jurisdiction and/or are routine activities with limited federal authority, the provincial life-cycle regulator should have authority for project approvals. To support one project – one assessment, mechanisms are required to limit potential duplication with other jurisdictions and to reduce timelines. As written the Act does not clearly define the processes for exclusion and substitution or respect existing, established assessment agencies by providing a process to use the experience and knowledge of the current provincial life-cycle regulator for a given project.

Thus, clarity is needed on how the federal government will meet its stated objective of “increased cooperation with provinces to reduce red tape and avoid duplication”. It is unclear how the federal government will cooperate with the provinces and lifecycle regulators to conduct an IA of a designated project under Section 21 of the Act. The provincial and federal assessment processes do not change significantly from one project to another, therefore cooperation plans and agreements should not have to be developed on a project by project basis as part of the early planning phase. Having cooperation plans in place in advance of a project assessment will increase the efficiency of an IA and reduce the demand on Federal Agency resources during the process.

Given the vast experience of regulators throughout Canada’s extensive environmental assessment history, all of the necessary information should be available in order to coordinate between jurisdictions prior to the legislation coming into force. This will help to provide certainty of process and a potential mechanism for substitution of IA to an assessment process carried out by another jurisdiction.
Conclusion

Suncor appreciates the work undertaken to enhance project assessments and build public confidence in the process. Canadians deserve an effective regulatory regime that provides public and investor confidence and enables the responsible and timely development of natural resources and infrastructure projects. We believe the IA process can provide a strong foundation for achieving these key outcomes. However, we remain concerned about the uncertainty related to the potential for an unpredictable, overly complex, and inefficient process that can ultimately increase risk and deter current and future investments. All effort must therefore be made to increase transparency, clarity and certainty to ensure an effective, timely and meaningful process. Bill C-69 requires important amendments and strong, timely regulations to deliver on this opportunity. We will continue to work with the Government and others to develop workable solutions that can deliver an effective regulatory system for the country and look forward to the opportunity to appear in front of the Energy, the Environment and Natural Resources Senate Committee.

Sincerely,

[Signature]

Ginny Flood
Vice-President, Government Relations
Suncor Energy Inc.
## Annex I: Proposed Amendments to Bill C-69: Impact Assessment Act

### 1. Clear and Efficient Process for Proponents and Stakeholders

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Issue</th>
<th>Section</th>
<th>Current Wording</th>
<th>Reasons for Amendment</th>
<th>Proposed Amendment</th>
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</thead>
</table>
| 1              | Scope | 18 & subsequent | Notice of commencement | Issuing the notice of commencement pursuant to subsection 18(1) of the Act provides an opportunity for the Agency to define the scope of the impact assessment at an early stage, which then sets out the process and requirements against which the impact assessment should be measured. This will give participants increased certainty regarding the process, factors to be considered in the impact assessment, and the process for consulting Indigenous groups that may be affected by the designated project. Suncor believes the purpose of subsection 18(1.1) is effectively achieved and clarified through our proposed amendment to subsection 18(1) and proposed amendment to subsection 22(1), below. Accordingly, subsection 18(1.1) should be deleted. | Amend subsection 18(1)(a) as follows: Notice of commencement 18(1) If the Agency decides that an impact assessment of a designated project is required — and the Minister does not approve the substitution of a process under section 31 in respect of the designated project — the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with  
(a) a notice of the commencement of the impact assessment of the project that sets out the information or studies that the Agency considers necessary for it to conduct the impact assessment; and  
(b) the scope of the designated project as described in section 2 that the Agency has determined will be subject to the impact assessment, the information or studies that the Agency considers necessary for it to conduct the impact assessment; and the factors under subsection 22(1) that the Agency has determined will be taken into account in the impact assessment of the designated project, subject to the Minister’s discretion in paragraph 22(2)(b), the scope of the factors to be taken into account in the impact assessment pursuant to paragraph 22(2)(a) and in addition to the information provided pursuant to paragraph 18(1)(b), the processes that the Agency considers appropriate to engage meaningfully with the public and, in particular, the Indigenous groups that may be affected by the carrying out of the designated project.  
Delete subsection 18(1.1). |
| 2              | Scope | 42 (subsequent to 18) | Provisions of agreement | As per the proposed amendment to subsection 18(1), by the time an arrangement or agreement to jointly establish a review panel is executed, the Agency will have determined the relevant factors under subsection 22(1). Accordingly, such arrangement or agreement should require consideration of the relevant factors set out in the notice of commencement, as opposed to all factors set out in subsection 22(1). | Amend section 42 as follows: 42 When there is an agreement or arrangement to jointly establish a review panel under subsection 39(1) or (3), or when there is a document jointly establishing a review panel under subsection 49(2), the agreement, arrangement or document must provide that the impact assessment of the designated project includes a consideration of the factors set out in subsection 22(1) and is conducted in accordance with any additional requirements and procedures set out in it and provide that |
| 3              | Scope | 49 | Summary and information | Where a designated project is referred to a review panel, and before | Amend section 49 as follows: |
49 in establishing or approving a panel’s terms of reference, the Minister must consider, among other things, the summary of issues and the information or knowledge referred to in subsection 18(1).

as currently written, section 22 is stated in mandatory terms: the impact assessment of a designated project “must” take into account the listed factors. The Agency or review panel has no discretion to determine what factors are accounted for in an impact assessment, and an impact assessment that does not account for a factor in the list may be attacked for failing to comply with requirements.

The list of factors in section 22 that “must” be taken into account is extensive. It is very unlikely one or more of the factors listed will not be relevant to a given project’s impact assessment. Nonetheless, if the Agency or review panel does not expressly address one of the factors, the entire process—including the proponent’s considerable time and expense—could be invalidated.

The proposed amendment directs the conduct of the impact assessment to the notice of commencement issued pursuant to subsection 18(1). Further to the referenced amendment, the notice of commencement will give the Agency an opportunity to consider the factors under subsection 22(1) that are relevant to a given project’s impact assessment, allowing the Agency or review panel to focus on relevant matters while reducing the risk that the process will be invalidated because an irrelevant factor was not expressly addressed.

Discouraging regard to what information must be considered is common in provincial environmental assessment legislation (e.g., British Columbia Environmental Assessment Act, section 11; Alberta Environmental Protection and Enhancement Act, section 49).

Project assessments are not the place to debate broader public policy issues. Policy debates have plagued environmental assessments for more than a decade, resulting in delays, increased cost and regulatory uncertainty. A project proponent expects the assessment to focus on the project being reviewed, not become a forum to debate public policy.

The Act provides government with the powers to undertake strategic and regional assessments and develop policy guidance that, if implemented properly, can be the forum needed for considered

Amend subsection 22(1) as follows:

22 (1) In determining the factors to be set out in the notice of commencement provided pursuant to subsection 18(1) and to be taken into account in the impact assessment of a designated project, whether it is conducted by the Agency or a review panel, the Agency must take into account the following factors:

(a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project, including

(i) the effects of malfunctions or accidents that may occur in connection with the designated project,
(ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and
(iii) the result of any interaction between those effects;

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

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

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

(e) alternative means of carrying out the designated project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means;

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

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

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

(i) the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change;

(j) the terms of reference for the review panel are established by the Minister, the Agency will have: (i) issued a notice of commencement pursuant to subsection 18(1), setting out the information and studies required to conduct the impact assessment; and (ii) determined that the proponent has provided all the required information and studies.

This is a significant part of the overall impact assessment process. In essence, most of the scope of the impact assessment will have already been determined. Accordingly, in setting the terms of reference for a review panel, the Minister should consider work that has already occurred, especially the Agency’s determination in the notice of commencement as to what information is required. The rationale for this proposed amendment remains valid whether or not Suncor’s proposed amendment to subsection 18(1) is accepted.
(g) any change to the designated project that may be caused by the environment;
(h) the requirements of the follow-up program in respect of the designated project;
(i) considerations related to Indigenous cultures raised with respect to the designated project;
(j) community knowledge provided with respect to the designated project;
(k) any relevant assessment referred to in section 92, 93 or 95;
(l) any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project;
(m) any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2 — that is in respect of a region related to the designated project and that has been provided with respect to the project;
(n) the intersection of sex and gender with other identity factors; and
(o) any other matter relevant to the impact assessment that the Agency or — if the impact assessment is referred to a review panel — the Minister requires to be taken into account.

Scope of factors
(2) The scope of the factors to be taken into account under paragraphs (1)(a) to (f), (h) to (j) and (k) and (l) is determined by

- discussions on public policy issues such as climate change, sustainability, and the intersection of sex and gender with other identity factors.
- One critical outcome of a strategic assessment is to define a framework to assess whether an individual project is compliant with a given public policy objective. In this way, policy debates will not have to be repeated for every project application.
- Public policy items in the list of factors in subsection 22(1) should be referred to any applicable completed strategic or regional assessments, or other policy guidance. If boundaries are not established for public policy items, the Act will open impact assessments to broad policy debates, which negatively affects certainty, efficiency, and the overall purpose of the process.
- Regarding paragraph 21(1)(f) — alternatives to a designated project — there is no value in requiring a proponent to complete an assessment of theoretical project alternatives they have no intention to invest in or build. Spending proponent, stakeholder and government time and resources in this way will result in inefficiency and waste. The objectives of this type of exercise are appropriately addressed in paragraph (f), alternative means of carrying out a project, as this allows for an investigation of alternative, feasible methods for carrying out a project that still address the project's need and purpose.

- developed by the Agency under paragraph 15(1)(h) and that is identified in the tailored guidelines provided to a proponent of a designated project under paragraph 18(1)(b);
- any relevant assessment referred to in section 92, 93 or 95 regarding the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change, where the assessment has been completed prior to the notice of commencement of the impact assessment of the designated project.
- any change to the designated project that may be caused by the environment;
- the requirements of the follow-up program in respect of the designated project;
- consider the intersection of sex and gender with other identity factors raised with respect to the designated project;
- community knowledge provided with respect to the designated project;
- any comments received from the public;
- any comments from a jurisdiction that are received in the course of consultations conducted under section 21;
- any relevant assessment referred to in section 92, 93 or 95, that is not related to a factor noted in paragraph 22(1)(b), where the assessment has been completed prior to the notice of commencement of the impact assessment of the designated project;
- any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project;
- any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2 — that is in respect of a region related to the designated project and that has been provided with respect to the project;
- relevant policy guidance on the intersection of sex and gender with other identity factors that is provided to a proponent of a designated project under paragraph 18(1)(b); and
- any other matter relevant to the impact assessment that the Agency or — if the impact assessment is referred to a review panel — the Minister requires to be taken into account.

Amend subsection 22(2) as follows:

Scope of factors
(2) The scope of the factors to be taken into account under paragraphs (1)(a) to (f), (h) to (j) and (k) and (l) is determined by

- the Agency; or
- the Minister, if the impact assessment is referred to a review panel.
<table>
<thead>
<tr>
<th>5</th>
<th>Scope</th>
<th>33(1) (subsequent to 22)</th>
<th>Conditions</th>
<th>A condition of approving substitution, per paragraph 33(1)(a), is that the process to be substituted will include a consideration of the factors set out in subsection 22(1).</th>
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<tbody>
<tr>
<td>6</td>
<td>Scope</td>
<td>9(1)</td>
<td>Minister’s power to designate</td>
<td>The list of designated projects to be included in regulations made under paragraph 109(b) will be developed using clear and objective criteria to identify projects that may require impact assessments under the Act. As stated in the Government of Canada’s consultation paper on the “Project List,” the guiding principle is “the potential for adverse effects in an area of federal jurisdiction related to the environment.” As written, the provision leaves total discretion to the Minister regarding whether to designate a project under subsection 9(1). This results in considerable uncertainty for proponents, even where proposed projects are not included on the “Project List.” There should be some minimum threshold for designation that guides the Minister. The proposed amendment sets out objective standards, similar to those used to develop the “Project List,” to guide the Minister’s decision-making under subsection 9(1). Further, physical activities not included in the Project List should only be designated pursuant to subsection 9(1) in exceptional and unique circumstances.</td>
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<td>7</td>
<td>Scope</td>
<td>16</td>
<td>Decision</td>
<td>The Government of Canada has indicated that certain projects on the</td>
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Factors
(2) in making its decision, the Agency must take into account the following factors:
(i) any study that is conducted or plan that is prepared by a jurisdiction — in respect of a region that is related to the designated project — and that has been provided to the Agency; or
(ii) any other factor that the Agency considers relevant.

8 Certainty 18(5)

18(1)…
Extension of time limit by Governor in Council
(4) The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (3) any number of times.
Posting notice on Internet site
(5) The Agency must post on the Internet site a notice of any extension granted under subsection (3), including the Minister's reasons for granting that extension, and a notice of any extension granted under subsection (4).

The Act reasonably requires that where the Minister extends a timeline — for example, under subsection 18(3) — the extension and the reasons for granting the extension must be published as outlined in subsection 18(5). The Act does not impose the same requirement for publication of reasons where the extension is decided by the Governor in Council. This inconsistency should be rectified, to facilitate process transparency and discipline.

This amendment will improve transparency in the process for all stakeholders involved.

Amend subsection 18(5) by adding the underlined wording:
18(5) The Agency must post on the Internet site a notice of any extension granted under subsection (3), including the Minister's reasons for granting that extension, and a notice of any extension granted under subsection (4), including the Governor in Council's reasons for granting that extension.

This revision is also required for subsections 28(8) and 37(5).

9 Certainty Section 7 (1)(d), MAC has also proposed this.

7 (1) Subject to subsection (3), the proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause any of the following effects:
(c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on
(i) physical and cultural heritage,
(ii) the current use of lands and resources for traditional purposes, or
(iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;
(d) any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada; or
This clause captures a wide range of activities that presumably are not meant to be prohibited by the Act (e.g., executing capacity funding agreements with Indigenous groups) and it creates considerable uncertainty for proponents in terms of project planning.

The terms "may cause" and "any change" are vague criteria not tied to an environmental impact, have no materiality thresholds, and would apply even where changes are positive. In addition, given the complex social, economic and other factors that affect the health, social or economic conditions of Indigenous groups, almost any activity anywhere "may cause" changes in conditions.
As currently drafted, this paragraph would prohibit pre-approval activities that would have a positive impact on health, social or economic conditions of Indigenous groups. For instance, paragraph 7(1)(d) could be interpreted to prohibit a proponent from signing capacity building or impact benefit agreements with Indigenous groups regarding a designated project, as such agreements could change economic conditions.
To address this uncertainty, Suncor recommends that paragraph (d) be included as Roman numeral (v) in paragraph (c), as the effects listed in paragraph (c) are tied to a "change to the environment."

Amend section 7 as follows:
7 (1) Subject to subsection (3), the proponent of a designated project must not do any act or thing in connection with the carrying out of the designated project, in whole or in part, if that act or thing may cause any of the following effects:
(c) with respect to the Indigenous peoples of Canada, an impact — occurring in Canada and resulting from any change to the environment — on
(i) physical and cultural heritage,
(ii) the current use of lands and resources for traditional purposes, or
(iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance; or
(iv) any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada.
Delete subsection 7(1)(d).

10 Certainty 6(1)

6 (1) The purposes of this Act are…
See comments under section 63 amendment rationale.

Revise subsection 6(1) by adding paragraph 6(1)(c):
6 (1) The purposes of this Act are...
<table>
<thead>
<tr>
<th>Proposed Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Act has many decision points, any of which could mean that in early planning stages the reviewing court could substitute its judgment for the Agency, the review panel, the Minister or the Governor in Council, and then deem determinations to be in error because of a failure to strictly adhere to the impact assessment process as perceived by the court. The government will have established an expert Agency as well as a roster of subject matter experts who may be appointed to a review panel. In light of this specific expertise, decisions made under the Act should be respected in order to protect the expert review process, and provide a level of certainty to process participants. Court challenges should be narrowly focused on matters of law and jurisdiction, and not create an opportunity to re-litigate matters of fact and the reasonable judgement rendered by the Agency, a review panel, the Minister, or the Governor in Council. The proposed provision is analogous to the one proposed in section 70 of the Canadian Energy Regulator Act, and other examples that can be found in governing statutes of federal agencies and tribunals, such as the National Energy Board Act. These provisions aim to improve consistency, empower the Agency in the process, and strengthen the Bill overall.</td>
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<tr>
<td>Add the following in the Act:</td>
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<tr>
<td>Section 37.5 The Agency has discretion to determine the nature and scope of participation by a member of the public in an impact assessment of a designated project conducted by the Agency. A decision of the Agency under this section is final and conclusive.</td>
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### 2. Clarity of process for public participation in project assessment and panel review process

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Issue</th>
<th>Section</th>
<th>Current Wording</th>
<th>Reasons for Amendment</th>
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</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Scope</td>
<td>27</td>
<td>Currently no provision.</td>
<td>Repeated references in the Act to meaningful public participation, which is undefined, will lead to unintended consequences such as confusing the voices of directly impacted parties. As currently drafted, the Act does not provide appropriate discretion to the Agency to determine the nature and scope of public participation in an impact assessment. Without appropriate discretion, any decision by the Agency regarding public participation would be vulnerable to legal challenge. The Agency must have appropriate discretion to determine its own processes, and this should be clearly stated in the Act.</td>
<td>Add the following after section 27:</td>
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<tr>
<td>13</td>
<td>Scope</td>
<td>51</td>
<td>Review panel’s duties S1(1) A review panel must, in accordance with its terms of reference, determining public participation is even more critical for review panels, as hearings are mandatory. Without clear discretion for a review panel to make determinations on its own processes, including public participation, the costs and time associated with hearings will increase and any decision by the review panel regarding public participation</td>
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Add the following after subsection S1(3): S1(4) A review panel has discretion to determine the nature and scope of participation by a member of the public in a hearing conducted under paragraph 51(1)(c). A decision of a review panel
3. Address Broad Public Policy Concerns Outside of Project-Specific Reviews

<table>
<thead>
<tr>
<th>Recommendation</th>
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</tr>
</thead>
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<tr>
<td>14</td>
<td>Certainty</td>
<td>93</td>
<td>93 (1) If the Minister is of the opinion that it is appropriate to conduct a regional assessment of the effects of existing or future physical activities carried out in a region that is composed in part of federal lands or in a region that is entirely outside federal lands, (a) the Minister may (i) enter into an agreement or arrangement with any jurisdiction referred to in paragraphs (a) to (g) of the definition jurisdiction in section 2 respecting the joint establishment of a committee to conduct the assessment and the manner in which the assessment is to be conducted, or (ii) authorize the Agency to conduct the assessment; and (b) the Minister and the Minister of Foreign Affairs may enter into an agreement or arrangement with any jurisdiction referred to in paragraph (h) or (i) of that definition respecting the joint establishment of a committee to conduct the assessment and the manner in which the assessment is to be conducted.</td>
<td>Suncor supports the use of regional and strategic assessments if developed and used appropriately. Suncor believes these assessments can provide appropriate opportunities to address broader public policy issues. Regional assessment can be an effective tool, provided the governments of Canada, the provinces and territories work together to complete assessments. However, Suncor is concerned that regional and strategic assessments have no clarity about how they will be used. As written, there are no mandated boundaries or guidance in the Act for the completion of a regional or strategic assessment. This provision should also be inclusive of existing regional and strategic frameworks and plans, for example the Lower Athabasca Regional Plan (LARP) and other provincial policies and frameworks.</td>
<td>Add the following after section 94: 94.4 For clarity, the purpose of an assessment under section 92 or 93 shall include, but is not limited to (i) improving knowledge of baseline environmental conditions in a region; and (ii) providing information that can be relied on in an impact assessment to reduce the scope of studies required and expedite the impact assessment. Add the following after section 95: 95.1 For clarity, the purpose of an assessment under section 95 shall include, but is not limited to, providing information that can be relied on in an impact assessment to reduce the scope of studies required and expedite the impact assessment.</td>
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| 15 | Scope | 63 | Factors — public interest 63 The Minister's determination under paragraph 60(1)(a) in respect of a designated project referred to in that subsection, and the Governor in Council's determination under section 62 in respect of a designated project referred to in that subsection, must be based on the report with respect to the impact assessment and a consideration of the following factors: | Further, and consistent with Suncor's proposed amendments to subsection 22(1), consideration of Canada's obligations and commitments in respect of climate change should be framed under applicable completed regional or strategic assessments. While references to protecting the environment are found throughout the Impact Assessment Act, economic considerations do not figure prominently in the legislation. To ensure that economic the Minister's stated objectives under the legislation are recognized and factored into decision making, to address this perceived imbalance, it should be explicit that a decision maker will consider the economic and social effects of a designated project. | Amend section 63 as follows: 63 The Minister's determination under paragraph 60(1)(a) in respect of a designated project referred to in that subsection, and the Governor in Council's determination under section 62 in respect of a designated project referred to in that subsection, must be based on the report with respect to the impact assessment and a consideration of the following factors: (c) any relevant assessment referred to in section 92, 93 or 95 regarding the extent to which the effects of the designated project will contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change, where such assessment was completed prior to the notice of the commencement of the impact assessment of the designated project; and (f) the potential economic and social effects of the designated project. |

4. Mechanisms to allow and Support Jurisdictional/Lifecycle Regulator Process in IA – One Project, One Review

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<tr>
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</tr>
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<tr>
<td>16</td>
<td>Review Panels</td>
<td>47(4)</td>
<td>47 (1) When the Minister refers an impact assessment of a designated project that includes activities regulated under the Canadian Nuclear Safety Commission, 46.1(4) (Canada-Nova Scotia Offshore Petroleum Board) and 48.1(4) (Canada—Newfoundland and Labrador Offshore Petroleum Board) should also be deleted for the reasons setout.</td>
<td>This clause minimizes the involvement of lifecycle regulators and the expertise of such organizations. Review processes should leverage the unique expertise of both provincial and federal lifecycle regulators, especially since the Minister will have established the roster of experts who may be appointed to a review panel.</td>
<td>Amend section 47 by deleting subsection 47(4). Subsections 44(4) (Canadian Nuclear Safety Commission), 46.1(4) (Canada-Nova Scotia Offshore Petroleum Board) and 48.1(4) (Canada—Newfoundland and Labrador Offshore Petroleum Board) should also be deleted for the reasons setout.</td>
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</table>
Suncor proposes removing the mandatory panel review and opening up all existing process options in the Act to offshore oil and natural gas activities (i.e., Agency review, panel review, substitutions and joint panel reviews). This allows the “scale of the assessment to be aligned with the scale of the potential impacts.”

In support of a joint collaborative Agency/Board process, we have also proposed amendments to section 21, which currently requires that the Agency or Minister “offer to consult and cooperate” with the Boards. Suncor’s proposed process obligates the Boards and Agency/Minister to cooperate, and sets out a process for collaboration. For Agency reviews, the Boards and Agency should conclude a memorandum of understanding (MOU) as to how they want to proceed. This MOU process has precedent in the Accord Acts, where the Boards are obligated to enter into MOUs with other government departments and agencies to avoid duplication and ensure effective coordination. We have used similar language here.

With respect to impact assessments referred to review panels, we have suggested the Minister must include provisions for cooperation in the panel’s terms of reference, and the panels must include Board members. This approach is similar to the current process, but mandates closer cooperation than the currently proposed process, where the Minister simply appoints two offshore board members.

Additionally, further clarity is needed on how the federal government will cooperate with the provinces and lifecycle regulators to conduct an impact assessment of a designated project and what the mechanism for substitution will be. Suncor supports the use of cooperation agreements between the federal government and the provinces and lifecycle regulators whom have processes in place to conduct an assessment. These cooperation plans should be established through the regulations.

Amend section 21 as follows:

21 [1]—
(a) any jurisdiction referred to in paragraph (a) of the definition jurisdiction in section 2 if the jurisdiction has powers, duties or functions in relation to an assessment of the environmental effects of a designated project that includes activities that are regulated under the Canada Oil and Gas Operations Act, the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act or the Canada Transportation Act; and

Add the following after section 21:

(2) The Agency — or the Minister if the impact assessment of the designated project has been referred to a review panel — and the Canada-Nova Scotia Offshore Petroleum Board or Canada-Nova Scotia Offshore Petroleum Board shall, to ensure effective cooperation and avoid duplication of work and activities, conclude memorandums of understanding in relation to the conduct of impact assessments — other than any impact assessments referred to a review panel — referred to in subsection (1) above.

(3) The Agency and the Canada-Nova Scotia Offshore Petroleum Board and Canada-Nova Scotia Offshore Petroleum Board shall, to ensure effective cooperation and avoid duplication of work and activities, conclude memorandums of understanding in relation to the conduct of impact assessments — other than any impact assessments referred to a review panel — referred to in subsection (2) above.

(4) Sections 25-29 apply mutatis mutandis to the Agency and the Canada-Nova Scotia Offshore Petroleum Board or Canada-Nova Scotia Offshore Petroleum Board and Canada-Nova Scotia Offshore Petroleum Board, as the case may be, in relation to the impact assessment of a designated project — other than any impact assessment referred to a review panel — referred to in subsection (2) above.

(5) Where the Minister has referred the impact assessment of designated project referred to in subsection (2) above to a review panel:

| Review Panel | 43 | The Minister must refer the impact assessment of a designated project to a review panel if the project includes physical activities that are regulated under any of the following Acts:  
(a) the Nuclear Safety and Control Act;  
(b) the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act;  
(c) the Canadian Energy Regulator Act.  

Suncor proposes that the mandatory review panel requirement be removed for designated offshore oil and natural gas projects regulated under the Accord Acts, and that flexibility be added by permitting substitutions and joint panel reviews where appropriate. A proposed amendment to Section 43 is provided. To permit substitutions and joint panel reviews, similar revisions will be required at subsection 31(1), and paragraphs 32(b), 39(2)(a) and (c).  

Offshore exploration activities are routine and well-understood, and are appropriately managed under the expertise of the offshore boards regulated by the Accord Acts.  

Additionally, further clarity is needed on the timing and purpose of the federal governments proposed Regional Assessment for Offshore Exploration Drilling. We support a completed Regional Assessment being used as a mechanism for exclusion of routine offshore drilling and exploration activities from the designated project list.  

For most designated projects, the Act permits a variety of impact assessment processes. Where an impact assessment is required, the Agency will generally conduct the impact assessment (ss. 24-29); however, the Minister also has the discretion to refer the impact assessment to a review panel if the Minister is of the opinion that a review panel is in the public interest (ss. 36).  

On the request of certain jurisdictions, the Minister may approve the use of that jurisdiction’s assessment process in substitution of an impact assessment under the Act (ss. 31(1)). If the Minister refers an impact assessment to a review panel, the Minister may enter into an agreement with certain jurisdictions to jointly establish a review panel and the manner in which the impact assessment will be conducted (ss. 39(1)).  

Amend section 43 as follows:  
43 The Minister must refer the impact assessment of a designated project to a review panel if the project includes physical activities that are regulated under any of the following Acts:  
(a) the Nuclear Safety and Control Act;  
(b) the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act;  
(c) the Canadian Energy Regulator Act.  

To permit substitutions and joint panel reviews, similar revisions will be required at subsection 31(1), and paragraphs 32(b), 39(2)(a) and (c). |
By allowing a variety of levels and types of impact assessment processes, the scale of the assessment and the type of process used can be aligned with the particular circumstances, nature, scope and potential impact risks associated with the designated project.

However, this flexibility is inapplicable to the assessment of offshore oil and natural gas activities regulated under the Canada–Newfoundland and Labrador Atlantic Accord Implementation Act and the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act. For such activities, the Act requires a mandatory review panel (ss. 43), and the Minister has no discretion to permit substitutions (s. 32(6)) or joint panel reviews (s. 39(2)(a.1, c)). As a result, the Act provides no means to align the scale and type of assessment process to the particular designated offshore project.