

ISSUES UPDATE

Safe Drinking Water for First Nations Legislation

History

The original Safe Drinking Water for First Nations Act (SDWFNA) came into force on November 1, 2013, without First Nations consultation. It was extensively criticized by First Nations for imposing unjust liability on First Nations without proper resources, and for granting sweeping enforcement, legislative, and judicial powers to the Crown. Since then, the AFN has advocated against unilaterally imposed water legislation. The First Nations-in-Assembly mandated the repeal and replacement of the SDWFNA through AFN Resolutions 88/2017, *First Nations led Engagement Process for Safe Drinking Water Legislation*, 01/2018, *First Nations Led Process to Develop New Federal Safe Drinking Water Legislation*, 26/2018, *Support for a First Nations Preliminary Concepts further direct the AFN in its activities on the SDWFNA* and 14/2019, *Endorsement of the Refined Preliminary Concepts for Repeal and Replacement of the Safe Drinking Water for First Nations Act*.

The repeal of SDWFNA received Royal Assent on June 23, 2022, following the advocacy of the Assembly of First Nations (AFN) and the settlement of national litigation on Drinking Water Advisories in First Nations.. The settlement, committed the federal government to repealing the SDWFNA and replacing it with new legislation, developed in consultation with First Nations by December 31, 2022.

Since the repeal, the AFN has been engaged in discussions with Canada on replacement legislation. Throughout these discussions, the AFN has urged Canada to co-develop meaningful legislation with First Nations and uphold the UN-affirmed human right to safe water and sanitation. Uncertain access to safe and reliable drinking water and inadequate sanitation continues to have significant negative impacts on First Nations health, education, and economic development. In addition, through AFN Resolution 01/2018, 26 Preliminary Concepts were identified as necessary components of new legislation, that must be addressed in the co-development process.

On February 17, 2023, Canada released a consultation draft of the proposed Bill entitled "*An Act respecting drinking water, wastewater and related infrastructure on First Nation lands*" to all rights holders. This marked the beginning of a 30-day consultation period with rights holders, prior to the introduction of the Act in the House of Commons.

AFN's recent advocacy

In response to Canada's release of the consultation draft, the AFN conducted a legal analysis on the proposed Act, with direction from the First Nations-in-Assembly through resolutions and engagement. The AFN's analysis of the proposed Act identified five key areas, including First Nations rights and responsibilities to water; funding commitments; minimum standards and regulations; governance; and transboundary water issues. AFN continues to advocate that these areas be included in Canada's draft legislation.

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During the 30-day consultation period which ended March 19, 2023, the AFN supported regional engagement sessions with First Nations led by our Regional Water Coordinators, to ensure that all First Nations from across the country have a meaningful opportunity to provide feedback on the proposed Act. Results of these engagements were compiled and shared with Indigenous Services Canada (ISC).

Furthermore, the AFN continued to meet with ISC throughout this period to urge Canada to ensure that the legislation addresses these key areas of concern, as directed by Resolution 23/2022, *Re-Commitment to Co-Development of Replacement Legislation for Safe Drinking Water for First Nations* and the numerous Resolutions mandated by the First Nations-in-Assembly since 2015.

Next Steps

After the legislation is introduced to Parliament, expected to occur in early April 2023, the AFN will work to ensure First Nations have the information and resources that they need to respond to the Act through Parliamentary Committee hearings and written submissions.

The AFN continues to urge the federal government to close the infrastructure gap by 2030, and to prioritize the human right to safe drinking water and proper sanitation through significant investments into water treatment and distribution, including adequate supply for fire suppression, wastewater treatment and collection for all First Nations.

The AFN continues to advocate for First Nations-led policies, solutions, economic opportunities, and institutions related to safe, clean and reliable drinking water while also working with our federal partners to close the infrastructure gap.