



Indigenous Impact Assessment Co-Administration Agreements

DISCUSSION PAPER

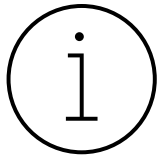


Purpose



INTRODUCE

Introduce the Indigenous Impact Assessment Co-Administration Agreement Discussion Paper



**SHARE
INFORMATION**

Share information on the engagement process



LISTEN

Invite comments on the options, considerations, benefits and limitations set out in the Discussion Paper



The Circle of Experts

- Established in 2022 as a subcommittee of the Indigenous Advisory Committee
- Made up of First Nations, Inuit and Métis, and experts recommended by Indigenous individuals and organizations
- Terms of Reference: to work with the Agency as a partner to provide non-political technical expertise to the co-development of the discussion paper



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Context

Strong collaboration and partnership between the federal government and Indigenous Peoples is critical to achieving the best possible outcomes under the *Impact Assessment Act* (IAA)

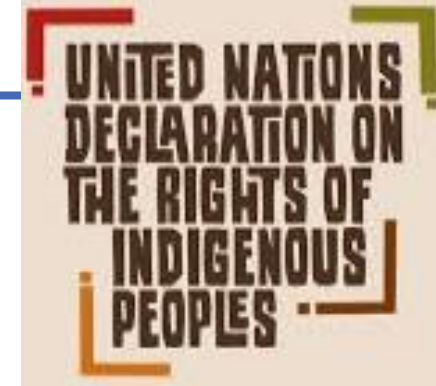
The Impact Assessment Agency of Canada (IAAC) is committed to maximizing those partnership opportunities and seeking the consent of potentially impacted Indigenous groups in a manner that aligns with Indigenous governance and stewardship rights and responsibilities

“Be realistic. Acknowledge that it’s under Canada’s system. But this is another tool to exercise self-determination; a step forward in decolonization.”

Circle of Experts

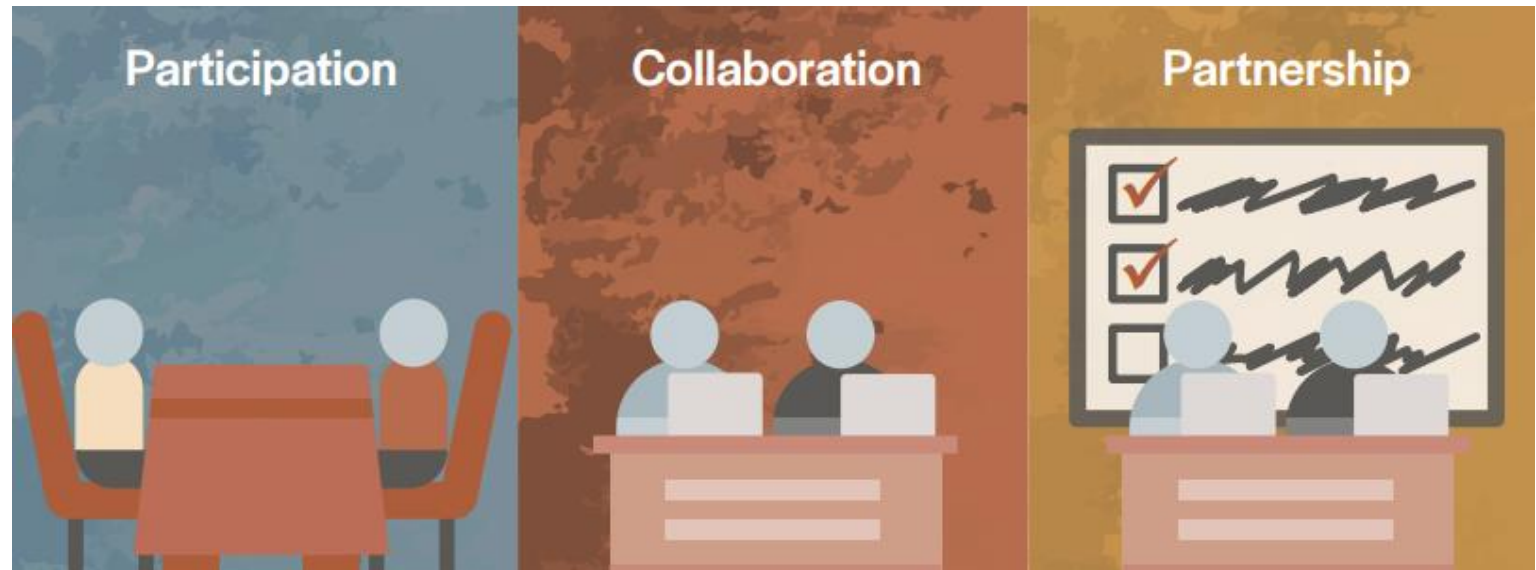
Commitment to advance regulations

- IAAC is committed to implementing the IAA in a way that aligns with the UN Declaration
- Advancing co-administration regulations is part of broader Government of Canada commitments:
 - Action 1.4 of the Clean Growth action plan: Work with Indigenous Peoples on developing Indigenous Co-administration Regulations, to reflect a commitment to enhancing Indigenous participation and leadership in project assessments under the IAA...
 - Shared Priority 51 of the UN Declaration Act Action Plan: Maximizing Indigenous collaboration and partnership, including the advancement of regulations to enable agreements under p.114(1)(d) and (e) of the IAA...



Existing opportunities

- Collaborating on assessment of impacts on rights
- Co-drafting IA Report
- Co-developing mitigation measures
- Potential for a Joint Assessment Committee
- Mandatory consideration and protection of Indigenous Knowledge
- Mandatory consideration of an Indigenous-led assessments



A new tool in the collaboration toolbox

- Section 114 (1) (d) and (e) of the IAA
 - Authorizes the Minister to enter into agreements with Indigenous governing bodies and other bodies to take on certain powers, duties and functions under the IAA on lands specified in the agreements.
 - Under these agreements, Indigenous governing bodies would be considered jurisdictions for the application of the IAA.
- Before entering into these agreements, regulations must be in place.



INDIGENOUS IMPACT ASSESSMENT CO-ADMINISTRATION AGREEMENT REGULATIONS

WHAT WE'VE DONE & THE NEXT STEPS

EARLY ENGAGEMENT

2019-2020: National engagement on partnership and collaboration with Indigenous Peoples



ESTABLISH CIRCLE OF EXPERTS POLICY FRAMEWORK

2022: Work with the Indigenous Advisory Committee to establish the Circle of Experts



NATIONAL COMMENT PERIOD

2024: Engagement with Indigenous rights-holders and organizations on discussion paper. Concurrent engagement with provinces, territories and stakeholders



DISCUSSION PAPER

2022-2024: The Impact Assessment Agency of Canada and Circle of Experts co-develop discussion paper with input from national Indigenous representatives



REGULATIONS

Department of Justice drafts the regulations based on instructions developed by the Impact Assessment Agency of Canada in consultation and collaboration with Indigenous partners

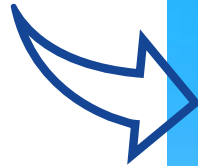


POLICY & GUIDANCE

The Impact Assessment Agency of Canada works in consultation and collaboration with Indigenous Peoples to develop policy and guidance documents to support implementation



We are here



Overview of discussion paper

EXECUTIVE SUMMARY

INTRODUCTION

- The current landscape & guiding principles
- Examples of collaboration using other, existing mechanisms
- Modern Treaty implications
- Importance of cooperating with provinces and territories

GOVERNANCE

- Who can enter into a co-administration agreement?
- On what lands would agreements apply?

SHARING DECISION-MAKING IN IMPACT ASSESSMENT

- Potential roles in impact assessment and the powers, duties, and functions that may be of interest

REGULATORY AND POLICY FRAMEWORK

- What should be included in policy versus in regulations?

AGREEMENTS

- How could agreements be developed and what would they contain?

READINESS

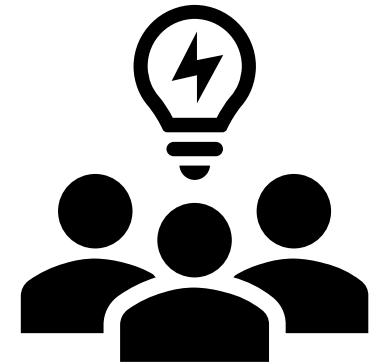
- What kinds of resources need to be in place?

PATH FORWARD



Key Findings

- Agreements would be **optional**, long term, not project-specific
- An Indigenous jurisdiction could adopt a different approach to implementation guided by Indigenous laws and perspectives, as long as requirements of the IAA and co-administration agreement are met
- In practice, shared decision-making most likely to occur at key points throughout the impact assessment process
- Shared interest in ensuring timelines are respected and decision processes are defensible
- Agreements would bring **greater certainty** about Indigenous jurisdictions' roles in future IA processes



**SHARED
DECISIONS**



Potential benefits and limitations

Benefits

- Enables Canada and Indigenous governing bodies to formally share decision-making at key points
- Contributes to certainty and defensible assessment outcomes
- Facilitates the advancement of Indigenous self-determination

Limitations and considerations

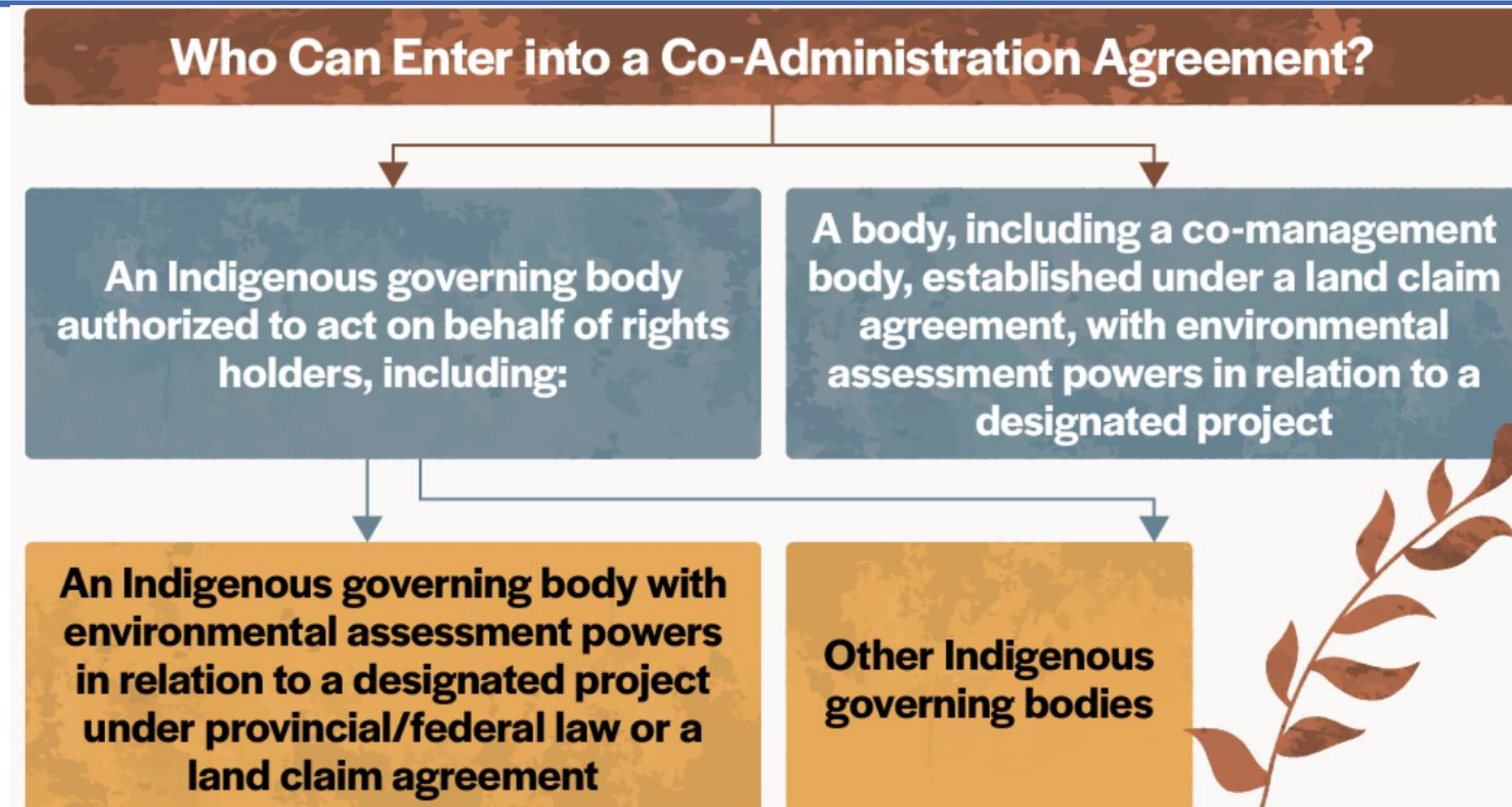
- Processes and timelines under the Act are still mandatory (cannot impose requirements outside the scope of the IAA)
- Challenges, including capacity and territorial overlaps, may limit Indigenous uptake
- Preference may be to participate through less resource-intensive means
- IAAC's view that in most cases the final determination would rest with Minister or GiC

- Given the potential benefits and limitations, would this new mechanism be of interest?

Scoping agreements



Eligibility



“Determining who is ‘authorized to act on behalf of’ rights holders should be read pursuant to Indigenous legal processes and standards, consistent with the UN Declaration.”

Circle of Experts

Where agreements would apply

Options that have been discussed with the Circle:

1. Joint representation through a tribal council or other joint entity
 2. Having an agreement with only one Indigenous governing body (with consultation/collaboration of others)
 3. Having agreements with multiple Indigenous governing bodies on overlapping lands
 4. Other?
- What do you think of the options presented? Do you have other suggestions?

Shared decision-making

The Circle suggests that Indigenous jurisdictions may want to focus their resources on activities more likely to influence the assessment and the final outcomes

- Tailored Impact Statement Guidelines
- Sufficiency of Impact Statement
- Impact Assessment Report
- Proposed Conditions
- Final Determination

This list is NOT exhaustive

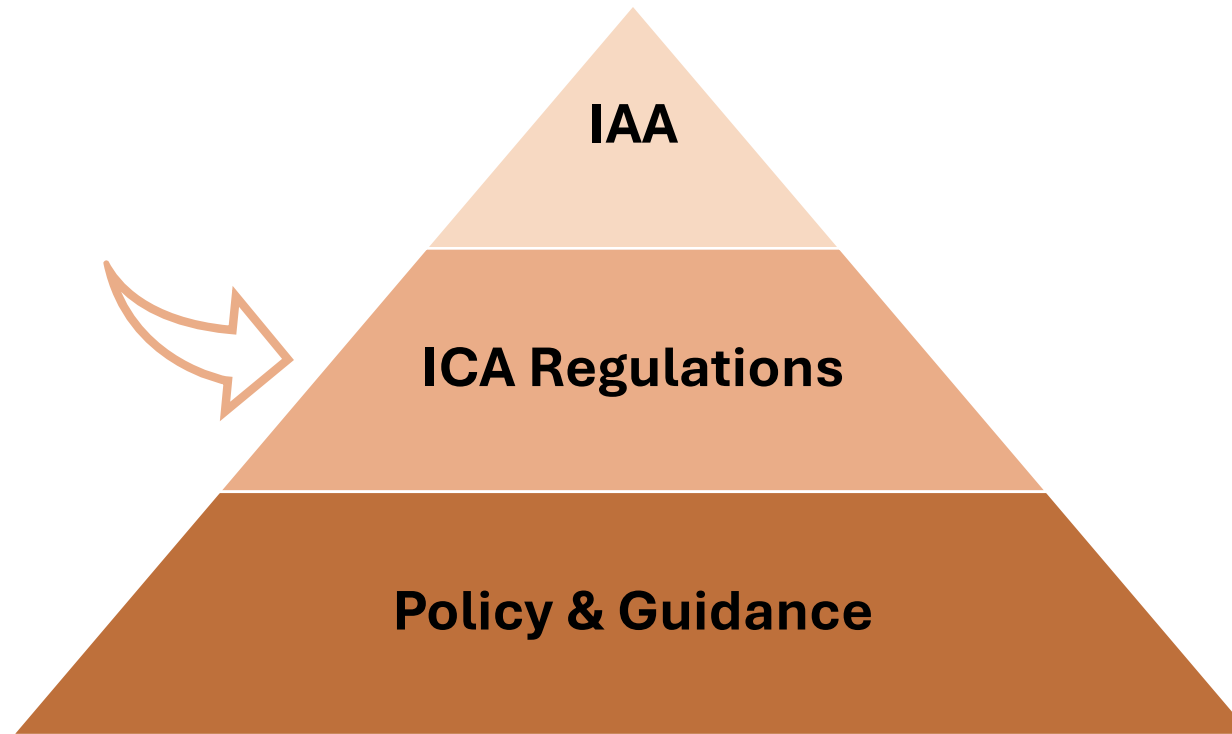


- What specific roles or decisions throughout the impact assessment process should be included/would be of interest?

“Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.”

UN Declaration, 18

What should be included in regulations?



- What are some important matters that should be included in regulations?
- What should be covered in policy?



Implications for Modern Treaty Partners

- Canada is committed to meeting obligations under treaties and stand-alone self-government agreements
- Co-administration agreements would not infringe on treaties, as they are **constitutionally entrenched** commitments
- Some Modern Treaty and Self Government Partners have existing powers, duties, and functions related to the environmental assessments of designated projects; therefore, these are already considered jurisdictions under the IAA
- For these jurisdictions, a co-administration agreement could provide additional specificity on how to collaborate
- A co-administration agreement could apply on lands where they already have environmental assessment powers, or on other lands



Considerations for all parties

- Co-administration agreements would only apply to federal (and not provincial) powers, however IAAC emphasizes that they be negotiated:
 - in coordination and cooperation with provinces and territories,
 - and account for agreements that are already in place with other jurisdictions (and other Indigenous governing bodies)
- IAAC wants to work with proponents and assessment participants to understand challenges, potential impacts, and perspectives on how to successfully implement co-administration agreements
- Do you have ideas for how jurisdictions could work together effectively?
- How can we work with proponents to support successful implementation?



Path forward

- Comment period runs **until October 28**
- Information and comments received will be summarized in a “What We Heard” report in Fall 2024
- What we learn through this engagement and dialogue will inform the development of regulations, policy and guidance
- IAAC recognizes that neither the Government of Canada nor Indigenous groups have experience building this kind of partnership
- We are committed to learning together, taking time to advance this work in collaboration with Indigenous Peoples, remaining flexible and changeable to meet the evolving needs of Indigenous communities



Contact us

Feel free to contact our team at the email address below:

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Thank you • Merci • Ekosani • Miigwech
Meegwetch • Niá:wen • Mahseecho
Mutna • Wopida • Hei Hei • Marci Cho
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Qujanaq • Kukwstsétsemc • Woliwon
Woliwun • Wela'lin

See the Discussion Guide



- **Are you interested in this mechanism? Do you prefer other collaboration opportunities?**
- What specific roles or decisions throughout the impact assessment process would be of interest to you?
- The paper sets out some options and considerations for addressing eligibility and overlapping territories. What do you think of the options presented? Do you have other ideas?
- We will need both regulations and policies to guide co-administration agreements. What kinds of things should be in regulations? What should be in policies?
- Do you have ideas for how federal, provincial and Indigenous jurisdictions could work together effectively during impact assessment processes?
- How can IAAC work with proponents and other assessment participants to address challenges and support successful implementation?

