

# Intelligence MEMOS



From: Sharon Mascher

To: The Honourable Minister of Environment and Climate Change and the Canadian Environmental Assessment Agency

Date: September 27, 2017

Re: **DEFINING A THRESHOLD FOR A CREDIBLE FEDERAL IMPACT ASSESSMENT PROCESS  
NON-INDIGENOUS CANADIANS**

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Last June, the Government of Canada released a discussion paper on environmental and regulatory reviews outlining a series of system-wide changes “to strengthen Canada’s environmental assessment and regulatory processes”.

A central question is what projects trigger federal impact assessment before proceeding.

And the answer, of course, is central to delivering on the government’s commitment to deliver credible impact assessment and regulatory processes.

The current *Canadian Environmental Assessment Act*, ([CEAA 2012](#)) uses a ‘Project List plus’ trigger approach, designating classes or types of projects that require federal assessment before proceeding. The ‘plus’ part of this approach gives discretion to the minister to require a federal assessment when a project is not on the Project List, or to exclude from federal assessment a project that is on the Project List.

This approach stands in contrast to the ‘all in unless out’ approach taken in the Mulroney-era *Canadian Environmental Assessment Act*, ([CEAA 1992](#)). That act required some level of federal assessment of almost all projects under federal authority unless the activity was specifically excluded. The difference in approach is significant – the number of federal assessments conducted annually has dropped from thousands under CEAA 1992 to just dozens under CEAA 2012.

The discussion paper demonstrates a preference for the CEAA 2012 trigger approach, with a general reference to adding clear criteria and transparent processes and the promise of a revised Project List that is subject to regular review. These changes would certainly be useful. But will these changes lead to a more credible federal impact assessment process? For some, the answer might depend on whether a revised Project List spreads the federal assessment net wider than is currently the case. For others, credibility might depend on the number of federal assessments carried out in any given year, and how closely that number correlates with the old CEAA 1992.

Better, however, the measure of a credible federal impact assessment project is not the length of the Project List or the number of assessments. Rather, the measure is whether projects falling within federal jurisdiction with the potential to cause more than trivial impacts to present and future generations are subject to federal assessment before they proceed.

This requires the articulation of a clear threshold, one that makes clear to proponents, decision-makers and the Canadian public why projects are on the Project List, or why projects might otherwise be included or excluded from federal assessment. I have [written elsewhere](#) that Australia may offer a useful example, not least in the fact that it articulates a threshold to trigger its process and begins with a focus on prohibited actions.

Any Canadian threshold should make clear the line that cannot be crossed without federal assessment before a project proceeds. An Expert Panel providing advice to the Government recommended a consequential impact threshold which could include those that affect multiple matters of federal interest; impacts that are of a duration that will be multi-generational; and/or impacts that extend beyond a project site in geographic extent.

This is a good starting point. To this, I would add impacts that involve the release into the environment of any substance that has been determined to be toxic or capable of becoming toxic and contribute to cumulative impacts. I would also add to this list impacts that have the potential to substantially deprive future generations of Aboriginal title holders of the benefit of their land. (Click here for a [more detailed outline](#) of my recommendations.)

I accept this threshold is not easy to define. But if the goal is to create a credible federal assessment process, in my view its definition is essential.

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