Canada's National Energy Regulator: Preparing for Tomorrow's Energy

Nature Canada's Comments to the

National Energy Board Modernization Expert Panel

March 31, 2017

INTRODUCTION

Nature Canada is the oldest national nature conservation organization in Canada. We have more than 45,000 members and supporters and a network of more than 350 naturalist organizations operating in every province across Canada.

Nature Canada's comments on the modernization of the National Energy Board ("NEB" or "Board") address the governance and structure of the Board, its mandate, decision-making role, compliance and enforcement functions, indigenous engagement and public consultation. These comments are categorized into two parts: Role & Mandate and Procedure.

Three assumptions are made in the following Nature Canada comments and recommendations regarding the modernization of Canada's national energy regulator: First, that government assessments of projects will employ "sustainability assessment" approaches to environmental assessment; second, that the government will take the necessary steps to meet its greenhouse gas (GHG) emission reduction targets; and third, that the government will respect indigenous rights under domestic and international law.

The modernization of Canada's national energy regulator requires more than repairing the damage caused to the Board by its inappropriate proximity to industry and failures to conduct sufficient oversight of pipelines. The legislative reform processes of Canadian environmental law are a unique and promising opportunity to shift toward a truly sustainable and just society. Modernizing the NEB must not be limited to addressing the issues that confound the Board today, but instead should be taken as the best opportunity in a generation to create world-leading sustainability legislation.

Modernizing the national energy regulator means going beyond merely addressing immediate issues of lack of public confidence and impartiality with the current Board, and focus as well on anticipating the shape of Canada's energy future: low GHG emissions, clean energy; projects with net contributions to biodiversity, and processes that are fair and just for proponents, the public and indigenous peoples. Modernizing the NEB must be about preparing for tomorrow's energy in a sustainable and just Canada.

SUMMARY OF RECOMMENDATIONS

Role & Mandate

1. *The Act should limit or prohibit the appointment of Members to the Board who have recent involvement in energy sector businesses and associations as a measure of establishing an enhanced standard for impartiality.*
2. *The Act should set out criteria for determining whether a proposed project is in the public interest, including whether the project contributes to ecological sustainability, reduces GHG emissions and infringes indigenous rights.*
3. *The Board's assessment of projects should focus on the economic need and impacts of projects, energy resource management, and technical elements of applications, with responsibility for environmental/ sustainability assessments of projects transferred to the Canadian Environmental Assessment Agency or other body established pursuant to the new federal assessment law*.
4. *The NEB should have a mandate to make final determinations on approval and conditions of projects with Governor in Council interventions in final decisions strictly limited to occasions where Board decisions are inconsistent with established government policy.*
5. *The NEB should be required by law to operate and make decisions that are consistent with and support achievement of the Federal Sustainable Development Strategy.*
6. *The mandate of the national energy regulator must be consistent with policies to achieve a low GHG emissions energy future for Canada; in particular, its mandate must transition from project application review to pipeline oversight, energy-related GHG emission accounting, and facilitating the development of clean energy.*
7. *The Act should require that Board decisions regarding international power lines conform with and facilitate the achievement of government GHG emission reduction targets and set minimum clean energy quotas for electricity exports.*
8. *Uncontrolled or unintended releases from pipelines should constitute independent, absolute liability offences under the Act with mandatory punishments of fines sufficient to eliminate or significantly reduce such release occurrences.*
9. *The Act should explicitly delegate the duty to consult and accommodate indigenous peoples impacted by NEB decisions to the Board.*

Procedure

1. *Sections of the NEB Act setting time limits for review processes and affording the Chairperson with the authority to take actions in the face of unmet time limits should be repealed.*
2. *The right to oral cross-examination ought to be guaranteed under the Act where the Board has determined that applications are to be dealt with by oral hearings.*
3. *The PFP should provide sufficient intervener funding for meaningful participation, play a facilitator role in connecting interveners with legal professionals to reduce cost redundancies, and permit a reasonable amount of organizational wages as eligible expenses for the review of project applications.*
4. *The Act should include specific format and accessibility requirements of applications submitted to the Board in order to facilitate public understanding of projects and participation in review processes.*
5. *The Act should explicitly state that it is to be interpreted in conformity with the UNDRIP and it should set out decision-making processes that include affected indigenous peoples in decision making panels where their rights or interests are impacted with the requirement of respecting the indigenous rights to self-determination, self-governance and FPIC.*

PART ONE: ROLE & MANDATE

The composition of Board membership must respect, and must be seen to respect, principles of natural justice.

The crisis of confidence the NEB currently suffers in the court of public opinion is rooted in the inappropriate proximity of Board members with the industries the Board purports to regulate. Having expertise in the fields relevant to the matter before a tribunal is an indisputable benefit for any adjudicator; however, the benefit of a Board with expertise in pipeline construction or operations must be weighed against the necessity of respecting, and being seen to respect, the rule against bias.

To regain public confidence in NEB decisions, the Board must be comprised of members with expertise in procedural fairness. Expertise in pipeline technical matters is a lower priority in Nature Canada's view.

The public reasonably perceives that the Board's current composition of industry insiders is designed less for the provision of valuable expertise than to provide for industry self-regulation. Such de facto self-regulation undermines public confidence that the Board respects the principle that no one is fit to be the judge in their own counsel (*Nemo judex in sua causa debet esse*). This perceived or real breach of the rule against bias undermines the public's faith that the principles of natural justice are being respected.

While it is entirely possible that former industry insiders can perform functions as Board Members in a manner that respects the principles of natural justice while contributing valuable expertise, it is neither necessary nor helpful for the Board to maintain its present composition. The *NEB Act* allows for the government to appoint experts to assist the Board in any matters. Thus, the NEB can continue to benefit from technical expertise without comprising the Board of members primarily from the industries it is responsible for regulating.

> ***Recommendation:*** *The Act should limit or prohibit the appointment of Members to the Board who have recent involvement in energy sector businesses and associations as a measure of establishing an enhanced standard for impartiality.*

The NEB's determination of public interest should explicitly include sustainability, GHG emissions and indigenous rights criteria.

When making a determination as to whether a proposed project is in the public interest, the responsible authority conducting the environmental assessment of NEB projects should be required to consider sustainability criteria, whether the project will result in a net reduction of GHG emissions and whether the project infringes on any indigenous rights.

Where the environmental assessment of a proposed project determines that the project will not contribute to ecological sustainability, reduce GHG emissions or will infringe indigenous rights, the Act should prohibit the Board from making a determination that the Project is in the public interest.

> ***Recommendation:*** *The Act should set out criteria for determining whether a proposed project is in the public interest, including whether the project contributes to ecological sustainability, reduces GHG emissions and infringes indigenous rights.*

Environmental assessments of designated projects should be performed by the Canadian Environmental Assessment Agency

The NEB has lost the public's confidence that it can conduct environmental assessments impartially. The Canadian Environmental Assessment Agency (CEAA) is the more qualified and appropriate responsible authority for conducting environmental assessments of proposed pipeline projects, particularly in the context of the evolution of environmental assessment to the "next generation of environmental assessment".

The Expert Panel on Environmental Assessment has received significant evidence on the importance of a new law that employs next generation environmental assessment or "sustainability assessment" principles. While fitting the project-level assessments of NEB applications into the more complex and high-level processes in sustainability assessment will require significant coordination in legislative reforms, the ultimate determination of assessments of NEB projects by CEAA ought to be binding on the NEB.

The Board's determinations on questions of public interest and ultimate decisions for project approval must be bound to the determination and conditions that result from the CEAA assessment. Thus, while the Board should be the ultimate decision-maker, any conditions determined to be necessary by CEAA must be conditions of the Board's approval.

> ***Recommendation:*** *The Board's assessment of projects should focus on the economic need and impacts of projects, energy resource management, and technical elements of applications, with responsibility for environmental/ sustainability assessments of projects transferred to the Canadian Environmental Assessment Agency or other body established pursuant to the new federal assessment law*.

The NEB must implement federal policies and the Board's review processes should result in final decisions.

The Board's role as a quasi-judicial body must be clarified. The NEB is not, and should not be, a policy-making body. The federal government is responsible for setting Canada's energy policies and it is the government that must ultimately be held to account for those decisions. Parties to the review processes of proposed projects deserve to know that their participation in the review processes will be heard and considered by an impartial adjudicator. The *NEB Act*, therefore, ought not afford a second kick at the policy can after the review processes have been completed. The national energy regulator should make final decisions on the matters before it.

NEB review processes should result in real decisions as a matter of fairness to all parties involved in those processes. While Nature Canada is opposed to government policies that fail to conserve nature or respect Canada's international commitments to address climate change, we are also opposed to unfair quasi-judicial processes. Project proponents and interveners have a right to participate in the true decision-making processes without the risk of political interference that runs contrary to the adjudicator's determination of public convenience, necessity and interest.

The *NEB Act* must continue to set out specific factors that the Board must consider when making its determination, and those factors must be expanded and elaborated to include and respect Canada's GHG

reduction commitments and indigenous rights at international law; however, section 52 of the Act should be amended in order to afford the Board with the ultimate decision-making authority.

It is not in the interests of any parties, peoples or organizations in Canada to afford governments with the power to undermine fair and just processes of determining the public interest. It is unfair to proponents and interveners that their contributions and investments in the review process may be undermined by late-stage politicking.

Where the government has set policies that facilitate continued development of fossil fuel energy infrastructure, the government itself must own those policies. It is unfair to all participants for the government to interfere in individual project applications after an impartial and independent tribunal has made a determination on the application within the confines of established government policy.

> ***Recommendation:*** *The NEB should have a mandate to make final determinations on approval and conditions of projects with Governor in Council interventions in final decisions strictly limited to occasions where Board decisions are inconsistent with established government policy.*

Canada's national energy regulator should be required to respect and contribute to the objectives of the Federal Sustainable Development Strategy.

The *Federal Sustainable Development Act* requires the Minister of the Environment to set out the federal sustainable development strategy and requires most of the federal government's largest agencies to prepare strategies consistent with the whole-of-government strategy.

The NEB must be required to operate and make decisions that are consistent with the FSDS. Because the NEB is not a listed agency under Schedule I of the *Financial Administration Act*, it is not currently required to develop a departmental sustainable development strategy. Given the significant impact the Board has on the government's ability to meet its sustainability targets, Nature Canada is of the view that specific statutory provisions should be established that require the NEB to operate and make decisions consistent with the FSDS and report to Parliament through the Minister on the regulator's progress in achieving or contributing to whole-of-government sustainability policies and objectives.

The 2016-2019 FSDS sets out several sustainability objectives in areas ranging from climate change and clean energy to infrastructure and land management. The NEB can influence the government's ability to meet many of these objectives and should be incorporated into the government apparatus for executing the strategy.

Some examples of 2016-2019 FSDS objectives the NEB may affect, include:

- Climate change objective of reducing Canada's total GHG emissions by 30% below 2005 levels by the year 2030 (30by30);
- Clean growth objective of doubling federal government investments in clean energy research, development and demonstration by 2020;
- Modern and resilient infrastructure objective of investing in green infrastructure initiatives that reduce GHG emissions;

- Clean energy objective of 100% domestic electricity generation from renewable and non-emitting sources; and
- Safe and healthy communities objective of implementing the Air Quality Management System to decrease volatile organic compound emissions.

Recommendation: *The NEB should be required by law to operate and make decisions that are consistent with and support achievement of the Federal Sustainable Development Strategy.*

From Pipeline Assessment to Oversight: The NEB mandate must work to achieve Canada's GHG emission reduction targets.

In order for the Government of Canada to achieve its GHG emission reduction targets of 80by50, it is not possible for federal policy to continue to facilitate the development of fossil fuel infrastructure; therefore, the primary role of the NEB should be to track compliance of existing pipelines with approval conditions and regulations, GHG accounting and clean energy development.

The Fall 2015 Report of the Commissioner of the Environment and Sustainable Development found that the NEB was inadequately tracking compliance with pipeline approval conditions and the Board's information management system was outdated and inefficient.

The NEB must conduct oversight of pipelines with a superior level of impartiality and excellence in order for the Board to regain public confidence as a regulator. This is particularly important as the Board's role transitions from assessing new project application to primarily monitoring pipeline compliance.

The national energy regulator should also have mandates to conduct national GHG emissions accounting from energy sources and to advise the government on investment in clean energy research and development as well as project-level investments.

For Canada to meet its GHG emission reduction targets, accurate, public accounting of GHG emissions is essential, regardless of whether the federal or provincial governments have decision-making authority over projects having GHG emissions. The federal government has little to no authority over renewable energy projects that are local in nature; however, there is, arguably, a role for the federal government in the assessment of the GHG emissions of all energy projects in order to inform policy and spending decisions in spheres within federal and shared jurisdictions.

Canada's *Mid-century Long-term Low-greenhouse Gas Development Strategy* (the Mid-century Strategy) sets out the contours for Canada's approach for reducing GHG emissions to 80% below 2005 levels by the year 2050 (80by50). The Strategy specifically speaks to the risk of energy policies and project decisions made today affecting the 80by50 target.

The federal government's GHG emission reduction commitments submitted to the United Nations Framework Convention on Climate Change (UNFCCC) does not unilaterally extend the constitutional powers of the federal government into provincial jurisdictions; however, a GHG accounting mandate that does not infringe on the decision-making authority of the provinces is consistent with the constitution and the spirit of cooperative federalism.

The Mid-century Strategy specifically speaks to the risk of energy policies and project decisions made today affecting the 80by50 target and the government's intent of driving emission reductions through investments in clean energy technology.

The transition away from GHG-heavy energy sources to renewables poses critical questions for the NEB. Federal policy must shift the country away from supporting continuing fossil fuel infrastructure development if GHG emission reduction targets are to be achieved. A serious federal policy to achieve these targets would mean that new fossil fuel infrastructure such as interprovincial pipelines would not be approved. As noted above, the NEB is not an appropriate venue for policy making, and as the federal government implements policies to achieve 80by50 the NEB will be required to abide by policy decisions that ensure "that greenhouse gas emissions will continue to decline towards a low GHG future".

Achieving GHG emission reduction targets will require national accounting of energy-related GHG emissions and investments in research and development. Therefore, the mandate of Canada's national energy regulator should include the accounting of upstream and downstream energy-related GHG emissions as well as advisory functions to the federal government on investments to promote the development of low-GHG energy sectors.

> ***Recommendation:*** *The mandate of the national energy regulator must be consistent with policies to achieve a low GHG emissions energy future for Canada; in particular, its mandate must transition from project application review to pipeline oversight, energy-related GHG emission accounting, and facilitating the development of clean energy.*

The federal government should use its existing heads of power over energy imports and exports to promote the transition to clean energy.

Canada's Mid-century Strategy indicates that Canada intends to invest in clean energy technology that enables the country to export electricity from low or no GHG energy sources. The federal government has jurisdiction over international power lines and can advance GHG emission reductions by ameliorating criteria for certificates for the construction and operation of international power lines.

The Act should require that Board decisions conform with and facilitate the achievement of Canada's GHG emission reduction targets. Subsection 58.16(2) of the *NEB Act* affords the Board complete authority on determining what considerations are to be taken into account when deciding whether to issue a certificate for an international power line. The Board is required to consider some criteria when making recommendations for the issuance of a permit or license to export electricity; however, those criteria do not consider whether approval of those permits or licenses will contribute to Canada's GHG emission reduction commitments. Contribution to reducing Canada's GHG emissions should be a legislated criterion.

In deciding whether to issue a certificate for the construction or operation of an international power line the *NEB Act* should require that the Board consider whether the project will help Canada meet its GHG emission reduction targets. This can be done, for example, by setting renewable energy quotas for international power lines. Such quotas will stimulate investment in low or no carbon energy resources. The failure to meet quotas should constitute an offence under the Act punishable through meaningful fines or revocation of the operating certificate or export permit.

Recommendation: *The Act should require that Board decisions regarding international power lines conform with and facilitate the achievement of government GHG emission reduction targets and set minimum clean energy quotas for electricity exports.*

The polluter pays principle should be augmented with absolute liability penalties.

Section 48.12 of the Act establishes absolute but limited liability for companies authorized to construct or operate a pipeline that suffers a spill. Absolute liability is the appropriate standard for pipeline spills; however liability for spills should not be limited to one billion dollars and, additionally, fines should be established independently for every barrel of uncontrolled or unintentionally released product from a pipeline.

Including damage to human health or the environment as "aggravating factors" when a person is found guilty of an offence under the *NEB Act*, per section 132, is insufficient. Pipeline spills should constitute independent, absolute liability offences under the Act. Regulations ought to set the fine for such offences at a rate that will reasonably ensure pipeline operators employ the best technologies and techniques for reducing the risk of unintentional or uncontrolled pipeline releases.

Recommendation: *Uncontrolled or unintended releases from pipelines should constitute independent, absolute liability offences under the Act with mandatory punishments of fines sufficient to eliminate or significantly reduce such release occurrences.*

The NEB should be delegated with the Crown's duty to consult and accommodate indigenous peoples in matters related to the Board's mandate.

Because the NEB should be the final decision-maker in applications, it should be tasked with the duty of consulting and accommodating Indigenous people's whose existing or potential indigenous rights or interests may be impacted by Board decisions.

The Act should explicitly articulate that the Crown duty to consult and accommodate is delegated to the Board. Specific consultation and accommodation requirements should be set out in the Act and a high standard for consultation and accommodation must be guaranteed.

Recommendation: *The Act should explicitly delegate the duty to consult and accommodate indigenous peoples impacted by NEB decisions to the Board.*

PART TWO: PROCEDURE

Legislative time limits are inappropriate for project assessments.

The NEB ought to be comprised of Members with sufficient competence to manage application review processes fairly. It is not appropriate to apply template legislative time limits for projects that are often vastly different. Setting 15-month time limits for the review process is arbitrary, unfair to parties and creates legislative pressures that undermine the integrity or the review process.

Panels may feel pressured to meet legislative time limits, resulting in process decisions that deprive the Board of the information it requires to make sound determinations. Project proponents are entitled to a review and determination of their applications without undue delay; however, what constitutes "undue delay" will vary from one application to another. The benefit of arbitrary timelines is far outweighed by the burden on fair process and, therefore, such time limits are inappropriate in applications such as those that come before the NEB.

> ***Recommendation:*** *Sections of the NEB Act setting time limits for review processes and affording the Chairperson with the authority to take actions in the face of unmet time limits should be repealed.*

Project review processes should guarantee oral cross-examination in oral hearings.

While oral cross-examination is not a procedural entitlement required for fairness in all tribunal processes, providing enhanced guarantees for procedural fairness in NEB processes will go a long way in re-establishing public confidence in Board decisions. Thus, where the Board has determined that a review is to include oral hearings, the right to oral cross-examination ought not to be dispensable.

Oral cross-examination is an important tool for testing the credibility of witnesses and their evidence. The Act should set an enhanced standard for procedural fairness, such as including a legislative right to oral cross-examination in oral hearings, to regain the confidence of the public in the legitimacy and fairness of NEB review processes.

> ***Recommendation:*** *The right to oral cross-examination ought to be guaranteed under the Act where the Board has determined that applications are to be dealt with by oral hearings.*

The Participant Funding Program must better facilitate interventions in the review process.

The Participant Funding Program (PFP) should ensure that interveners are provided with sufficient funding to make thorough and complete submissions, facilitate the provision of legal services, and compensate organizations for the cost of wages related to their participation in the review process.

The legitimacy and appropriateness of the NEB's conditions and recommendations for a project are dependent on the quality of evidence presented to the Board. Ameliorating the quality of Board decisions requires a greater facilitation of intervener participation in the review process.

Nature Canada has three main concerns with the PFP that, if resolved, would improve the capacity of interveners to introduce and test evidence. These concerns are:

1. **Sufficiency of funding**

The cost of gathering evidence for national energy project hearings can be considerable. While such costs can be burdensome for applicants, they are nonetheless essential to regulatory decision-making as well as fairness. The current standard for intervener status set out in section 55.2 of the *NEB Act* is that the Board have the opinion that a person is directly affected by the application or has relevant information or expertise.

An intervener directly affected by the project must be afforded some procedural guarantees and must be provided with sufficient funding to make adequate representations to the Board regarding the impact of the proposed project on their rights or interests. Expert witnesses and legal services cost tens of thousands of dollars and the PFP should objectively assess the true costs of meaningful participation when determining the level of participant funding that will be allocated to individual and group interveners.

2. **Organized Legal Services**

The NEB should play a role in assisting interveners access the legal services of lawyers engaged in NEB processes. A NEB Lawyer directory could assist participants, without conflicting interests, in retaining the services of legal professionals jointly. This could help reduce the cost of legal representation by eliminating redundancies of legal costs for the review of the application or submission of expert witnesses.

When parties with non-competing interests and without conflict work to coordinate their submissions by using the same lawyers and organizing expert evidence, the cost of legal services and expert witnesses can be reduced. When interveners are left to retain their own lawyers and prepare independent expert evidence, the cost of multiple lawyers reviewing the same application for the same or similar purposes drives up the cost of legal representation. This also increases the risk that the same or similar expert evidence will be submitted in duplicate because of a lack of coordination among interveners or that important evidence will not be presented to the Board because parties have to select a handful of issues and neglect others due to insufficient resources.

By helping to facilitate the retaining of legal services by participants the NEB could reduce the costs of legal services and expert evidence while ensuring that resources are appropriately distributed to hear important evidence on all the issues at hand.

3. **Intervener wages**

When organizations intervene in NEB review processes they invest a significant amount of their own resources in reviewing and analysing the applications of proponents. The wages interveners invest in the review of applications should be eligible costs in the PFP.

Non-governmental, particularly not-for-profit, organizations often have very constrained resources and distributing these resources to ensure the Board is provided with accurate and thorough evidence on applications that have national implications is burdensome. These projects have impacts on the economy, environment and public health and safety and it is the proponents that must be responsible for the cost of assessing those impacts.

Interveners must review NEB applications to determine the issues they will address and the evidence they will submit. Precluding the costs of wages of employees charged with these review and evidence-gathering functions externalizes the costs of assessing a project's impacts from the proponent onto civil society. The PFP should afford for a reasonable portion of the participant funding to compensate for the wage costs of an organization's review of the application.

> ***Recommendation:*** *The PFP should provide sufficient intervener funding for meaningful participation, play a facilitator role in connecting interveners with legal professionals to reduce cost redundancies, and permit a reasonable amount of organizational wages as eligible expenses for the review of project applications.*

Applications to the Board must be complete, coherent, and easily navigable/ searchable.

The public and parties to the review process have a right to know details of a proponent's application presented in comprehensible formats. Despite the requirement under the *National Energy Board Rules of Practice and Procedure* that applications be divided into consecutively numbered paragraphs within the portions of the application relevant to the subject-matter, applications are often voluminous, divided, scattered and unreadable.

National energy projects are, by their nature, complex and detailed; however, some members of the public may conclude that applicants are deliberately attempting to confuse, mislead or exhaust the public and interveners by making their applications available in inaccessible formats. Fundamentally, where members of the public are unable to understand the application, they cannot be expected to understand the project's impacts on themselves, their communities or their country.

Applicants should be required, by legislation, to present applications that are complete, coherent, accurate, and comprehensible. This should include making the application available in a variety of formats including: complete, single document PDFs with consecutively numbered pages; online databases that are easily searchable; and geographical information systems (GIS) which allow the public to search interactive maps that include relevant information of the project for specific locations and regions.

> ***Recommendation:*** *The Act should include specific format and accessibility requirements of applications submitted to the Board in order to facilitate public understanding of projects and participation in review processes.*

The Board must be required to respect indigenous rights articulated in the UNDRIP, including self-determination, self-governance, and FPIC.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) articulates positive and negative indigenous rights under international law, some of which are different from indigenous rights guaranteed under domestic law. In particular, the rights of peoples to self-determination, self-governance and free, prior and informed consent (FPIC) must be respected by all state actors.

On 10 May 2016 Canada's Minister of Indigenous and Northern Affairs made a unilateral declaration on behalf of Canada at the UN Permanent Forum on Indigenous Issues, that Canada would "adopt and

implement the declaration in accordance with the Canadian Constitution." Whether or not the rights articulated in UNDRIP now constitute binding law, the government has made a commitment to respect those rights and, therefore, the national energy regulator must also respect those rights.

Nature Canada strongly opposes interpretations of the UNDRIP that suggest existing constitutional or treaty rights are sufficient to satisfy Canada's obligations under the Declaration. Consultation and accommodation must not be conflated with consent. Designing decision-making processes that respect indigenous rights under domestic and international law without conceding a veto on national projects to one societal group will be an enormous challenge; however, Nature Canada is confident that, by working with First Nations, Métis and Inuit peoples and the provinces, the Government of Canada can create a tri-governance model that ensures that all indigenous peoples impacted by government decision-making are involved as decision-makers in such a way that respects the indigenous rights of self-governance, self-determination and FPIC.

> ***Recommendation:*** *The Act should explicitly state that it is to be interpreted in conformity with the UNDRIP and it should set out decision-making processes that include affected indigenous peoples in decision making panels where their rights or interests are impacted with the requirement of respecting the indigenous rights to self-determination, self-governance and FPIC.*