

Declaration on the Rights of Indigenous Peoples Act

THE LEGISLATION

The Government of British Columbia has passed legislation that confirms the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) as the framework for reconciliation in B.C.

Implementing the UN Declaration through the new Declaration on the Rights of Indigenous Peoples Act will establish a path forward that respects and upholds the human rights of Indigenous peoples while introducing additional transparency and predictability in the work the B.C. government and Indigenous peoples do together.

With the legislation, the B.C. government, Indigenous peoples, businesses and local governments will have additional tools to build effective relationships, clear processes and a robust and sustainable economy together.

The legislation supports transparent, co-operative, staged approaches through which the B.C. government will work collaboratively with Indigenous peoples, and engage with business and local governments, on programs, policies, legislation and decisions affecting Indigenous peoples and their rights. It will help all parties work together to invest in building a stronger B.C., including creating economic opportunities for Indigenous peoples, businesses, communities and families throughout the province.

The provincial government also recognizes that many companies in British Columbia have already embraced the principles of the UN Declaration and have built solid relationships with Indigenous peoples.

The B.C. government is committed to transparency as it moves forward with this work and develops the action plan required under the new legislation.

ENVIRONMENTAL ASSESSMENT

Fair, transparent and timely process with robust decisions are essential for an effective environmental assessment. Decisions need to be founded in comprehensive assessments that reflect public interest and respect Indigenous human rights and the decision-making of Indigenous nations. This reflects the constitutional rights of Indigenous peoples. Recognition of Indigenous rights to be part of decisions about activities on their territory is a key aspect of the United Nations Declaration on the Rights of Indigenous Peoples and the B.C. government's commitments to reconciliation, and has been upheld in successive court decisions.

The Province introduced a new *Environmental Assessment Act* (EAA) in 2018 which is designed to:

- enhance public confidence, transparency and meaningful participation;
- advance reconciliation with Indigenous nations; and
- protect the environment while offering clear pathways to sustainable project approvals.

The EAA seeks to provide clarity of process, consistency and predictability for all participants in environmental assessments. Advancing reconciliation with Indigenous nations through meaningful participation in the environmental assessment process also provides project proponents and potential investors with early awareness of key interests and areas for collaboration and resolution.





The EAA sets out a collaborative decision-making process that includes:

- the addition of an early engagement phase designed to ensure all parties can understand the proposal from the early stages of the regulatory process;
- consensus-seeking requirements throughout the process on key process steps with Indigenous nations; and
- a new dispute resolution opportunity during key phases of the assessment process to promote consensus seeking.

It is anticipated that Indigenous nations participating in an environmental assessment process will choose to make a decision on whether the project should receive a certificate either through an expression of consent or withholding of consent. Ministers must take these decisions into consideration, but retain final decision-making. They must provide reasons if their decision does not align with the decision of participating Indigenous nations.

If agreements developed within the framework of the new *Declaration on the Rights of Indigenous Peoples Act* contain a requirement for consent regarding environmental assessment projects, the new EAA includes an enacting legal mechanism. Section 7 of the EAA enables the requirement

for Indigenous nation consent regarding projects in the environmental assessment process, where the Province and Indigenous nation have established a consent requirement over a particular geographic area, for example through a treaty or other comprehensive agreement mandated by Cabinet and identified in a regulation. This provides clarity and due process in decision-making.

The new *Declaration on the Rights of Indigenous Peoples Act* provides clarity and transparency around the process and requirements for the Province and Indigenous nations to enter into agreements that may clarify this consent requirement. This includes the mandating process, public consultation requirements and the clear administrative structures required for robust and durable decisions.

To ensure that these agreements are implementable from a practical perspective, the Environmental Assessment Office will provide advice to the negotiating ministry to support and inform government-to-government negotiations.

Negotiation of such consent agreements is expected to take time, and would involve stakeholder engagement, as well as engagement with local governments and any Nations with shared or overlapping territories.

