



2017 Legislative Review – *Safe Drinking Water for First Nations Act*

Regional Engagement Session

June 20, 2017 – Prince George

June 22, 2017 – Vancouver-Richmond



INAC·AANC





Introduction

- This deck provides an overview of the partnership initiative for the review of the *Safe Drinking Water for First Nations Act* (the Act), and is intended as a reference for you in preparation for and during the engagement session(s) that will take place in your region
- This Act has been in force since 2013 and remains in effect today. This is an opportune time to review if and how it supports the goal of ensuring that residents on First Nation lands have access to levels of protection for water and wastewater similar to those enjoyed by other Canadians
- This is the beginning of renewed discussions on the Act





Drivers for a Legislative Review

Commitment for a Review of Law Based on a Nation-to-Nation Relationship

- In 2015, the Government of Canada committed to a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, cooperation and partnership
- The Minister of Indigenous and Northern Affairs Canada is now undertaking a review of laws, policies, and operational practices in full partnership and consultation with First Nations; this review includes the *Safe Drinking Water for First Nation Act*





Drivers for a Legislative Review

First Nations' Concerns with the Act

- Many First Nations have identified a need for water and wastewater standards. However, concerns have been expressed with the current Act and its development process. The following concerns have been voiced:
 - **Meaningful consultation** was lacking in the development of the Act;
 - **Non-derogation article** is unsatisfactory as it does not provide full protection for Indigenous rights;
 - **No legal provision foreseeing funding** for infrastructure and operations management capacity; and
 - The **2006 Expert Panel on safe drinking water for first nations recommendations** have not been reflected in the Act (See Annex)



Regional approach for the engagement

- The review of the *Safe Drinking Water for First Nations Act* will be conducted through region-by-region engagement sessions
- Each session is designed by Indigenous and Northern Affairs Canada, with the involvement of a lead First Nation organization and Health Canada
- The objectives of the sessions are to:
 - seek First Nations' input, considerations, and reflections about the current Act; and
 - jointly determine how to move forward with the review of the Act





Background

The Safe Drinking Water for First Nations Act

- All provinces and territories have regulations governing drinking water, wastewater management and source water protection. These regulations do not apply on First Nation lands, and there is no federal equivalent regulatory regime
- The *Safe Drinking Water for First Nation Act* was introduced to close the regulatory gap existing on First Nation lands.
- The Act applies to all First Nation communities with reserve lands that are subject to the *Indian Act* or the *First Nations Land Management Act*
- The Act is an enabling piece of legislation that allows for **the development** of regulations to ensure protections for:
 - access to safe, clean, and reliable drinking water;
 - the effective treatment of wastewater; and
 - the protection of sources of drinking water on First Nation lands



For Discussion

Non-derogation clause to protect Aboriginal or treaty rights (Section 3 of the Act)

- A non-derogation clause in legislation is a clause that states that the legislation does not nullify or detract from protected Aboriginal and treaty rights. What would be a satisfactory non-derogation clause ?

The method of incorporation by reference of regulations (Section 5(3) of the Act)

- The Act allows for regulations developed under the Act to incorporate by reference laws of a province, with any adaptations as needed. Are there any emerging challenges with the method of incorporation by reference with adaptation?

Other

- Are there other considerations or concerns on the existing Act that should be discussed?





Next steps

- Provide engagement sessions summary report(s) to Chiefs and Councils, and regional Indigenous Representative Organizations for validation (November – December 2017)
- Present summary report(s) to the Ministers of Indigenous and Northern Affairs Canada, Health Canada, and Environment and Climate Change Canada for information and discussion on next steps (January - February 2018)
- Potential recommendations resulting from engagement sessions may include:
 - Amendment of the legislation
 - Repeal of the existing legislation and recommendation for the development of an alternative legislative framework
 - No changes to the existing legislation



Further comments

You are also invited to provide your input on the review of the *Safe Drinking Water for First Nations Act* in writing

How to contact us

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Annex

The 2006 Report of the Expert Panel On Safe Drinking Water for First Nations

- The Expert Panel on Safe Drinking Water for First Nations was established in 2006 by the Minister of Indian and Northern Affairs with the support of the Assembly of First Nations to examine options for a legislative framework and regulatory regime for First Nation communities
- The mandate of the Panel was to:
 - *Review examples of regulatory frameworks and regimes from other jurisdictions and countries;*
 - *Collect suggestions from stakeholders, through public hearings and written submissions; and*
 - *Draft a report for the Minister of Indian and Northern Affairs that would examine options for a regulatory framework; analyze the benefits and drawbacks of each option; indicate issues outside the mandate of the expert panel that would need to be addressed to implement the option; and provide a comparative analysis of all options*
- The Report of the Expert Panel identified 5 possible routes to creating a regulatory regime for First Nations: (only the last 3 options were considered to be workable by the Panel):
 - *Existing provincial regimes could be used as “laws of general application”;*
 - *Regulations might be passed by Orders in Council under existing federal statutes;*
 - *Parliament could enact a new statute referencing existing provincial regulatory regimes;*
 - *Parliament could enact uniform federal standards and requirements; or,*
 - *First Nations could develop a basis of customary law that could then be enacted in a new federal statute*
- The Report of the Expert Panel made a number of recommendations for the development of a legislative framework, including:
 - *The uniform implementation of the act with a national framework of water-quality requirements and enforcement;*
 - *The possibility for a one-way opting-in process for certain sections of the act*

