# MLRC_cover2_blank.pngDISCUSSION PAPER: MANITOBA’S ENVIRONMENTAL ASSESSMENT AND LICENSING REGIME

# COMMENTS FORM

Please provide your comments in the spaces below and return to mail@manitobalawreform.ca on or before **April 25, 2014***.* The Manitoba Law Reform Commission assumes that written comments are
not confidential. You may submit anonymous written comments, or you may identify yourself but request that your comments be treated confidentially. If you do not comment anonymously, or request confidentiality, the Manitoba Law Reform Commission may quote from or refer to your comments
in its Report for Consultation or Final Report.

***You can press the “tab” key to move from one question to the next.***

## Chapter 3: Environmental Assessment and Sustainable Development

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| **Issue 1:** Should *The Environment Act* be amended to establish more direct links between the environmental assessment process and principles and guidelines of sustainability provided in *The Sustainable Development Act*? Are there particular developments for which sustainability principles are most relevant? How would this change affect your participation in Manitoba’s environmental assessment process?  |
| **Answer:**       |

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| **Issue 2:** Should a consideration of the need for, and alternatives to, a development (“NFAT”) be a requirement for some or all proposed developments? Are there types of development for which NFAT is more or less appropriate? What legislative and policy supports are necessary for meaningful consideration of the need for, and alternatives to, a development?  |
| **Answer:**       |

## Chapter 4: Cumulative Effects and Strategic Environmental Assessment

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| **Issue 3:** Should a consideration of cumulative effects be mandatory for all environmental assessments conducted in Manitoba? What legislative and policy supports are needed for meaningful cumulative environmental assessment at the individual development level?  |
| **Answer:**       |

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| **Issue 4:** Strategic environmental assessment is considered an effective method for considering the need for and alternatives to development, and cumulative environmental effects. How, if at all, should strategic environmental assessment be reflected in Manitoba’s environmental assessment framework?  |
| **Answer:**       |

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| **Issue 5:** How can the legislative framework support more effective regional strategic environmental assessment (“RSEA”)? Options for reform include authorizing the minister to require RSEA and proponent engagement in RSEA processes, maintaining a database of cumulative regional environmental information, developing criteria for the application of RSEA at the individual development level and establishing guidelines for the consistent collection of environmental data.  |
| **Answer:**       |

## Chapter 5: Public Participation

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| **Issue 6:** The Discussion Paper identifies five procedural stages at which public participation might be effective: pre-filing, scoping, review of the environmental assessment report, establishing terms of reference for a public hearing, and post-licensing follow-up. At what stages in the environmental assessment process is public participation most valuable?  |
| **Answer:**       |

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| **Issue 7:** How can the legislative framework strengthen public engagement in Manitoba? Options for reform include publishing guidelines on effective public engagement, providing for TAC involvement before public notification, requiring notice to directly affected members of the public, and including appeal information in the public registry. How would these reforms affect your participation in the process?  |
| **Answer:**       |

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| **Issue 8:** The Discussion Paper identifies several measures for reform that may enhance engagement with First Nations and other Aboriginal groups in the context of environmental assessment and licensing. These include: requiring that the EAP describe how the proposed development will affect First Nations and other Aboriginal groups, recognizing Aboriginal traditional knowledge in the legislation, and publishing best practice guidelines for the collection and use of Aboriginal traditional knowledge. How would these measures affect your participation in the environmental assessment process? |
| **Answer:**       |

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| **Issue 9:** The Discussion paper identifies four areas of possible reform in connection with the Clean Environment Commission (“CEC”). These are: clarifying the role of CEC experts, formalizing the CEC’s authority to review environmental assessment documents, encouraging a larger variety of CEC proceedings, and clearly distinguishing the regulatory and the hearing processes. How would these reforms affect your participation in the environmental assessment process? |
| **Answer:**       |

## Chapter 6: Balancing Certainty and Flexibility

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| **Issue 10:** The Discussion Paper identifies a need for more concrete rules and criteria in the legislation. What aspects of Manitoba’s environmental assessment and licensing regime are most in need of clearer legislative criteria?  |
| **Answer:**       |

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| **Issue 11:** What are the most important factors in a significance determination? Should proponents be required to explain their significance determinations with reference to published guidelines, distinguishing between pre-mitigation and residual effects? |
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| **Issue 12:** Written reasons for decision can enhance process certainty and fulfill the objectives of public participation and transparency. What environmental assessment and licensing decisions should be supported by written reasons? |
| **Answer:**       |

## Chapter 7: Specific Procedural Steps

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| **Issue 13:** Should the Act expressly provide the minister with authority to require environmental assessment of an activity not contemplated in the *Classes of Development Regulation*? What factors should guide this exercise of discretion?  |
| **Answer:**       |

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| **Issue 14:** Should unlicensed activities, and those licensed under other regulatory regimes, be brought into the environmental assessment process established under *The Environment Act*? Are there activities that should not be subject to environmental assessment under the Act?  |
| **Answer:**       |

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| **Issue 15:** Should the Act allow for staged licensing? In what circumstances is staged licensing useful? What provisions are needed to ensure that all aspects of a development and their aggregate effects are adequately addressed in the environmental assessment process? |
| **Answer:**       |

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| **Issue 16:** How effective is the scheme for determining levels of assessment established by *The Environment Act* and *Classes of Development Regulation*? Are you in favour of a system of basic notification for some or all proposed developments to aid in early, open and interactive scoping?  |
| **Answer:**       |

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| **Issue 17:** What improvements might be made to Manitoba’s system for statutory appeals? Options for reform include prescribed time frames for decision-making and the involvement of standing or ad hoc appeal panels. |
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| **Issue 18:** What changes to *The Environment Act* might help to improve compliance and enforcement? Options for reform include mandatory monitoring and publication of monitoring information, the power to order audits, routine program evaluations and enhanced enforcement techniques. |
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## Additional Comments

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| Please identify any additional issues relevant to the reform of Manitoba’s environmental assessment and licensing regime.  |
| **Answer:**       |