Review of Environmental Assessment Processes: Expert Panel Draft Terms of Reference
Manitoba Metis Federation (MMF) Assessment of Comments and Concerns:
July 20, 2016

The following is a summary of preliminary comments that the MMF has identified within the *Review of environmental assessment processes: Expert Panel Draft Terms of Reference* associated with the *Canadian Environmental Assessment Act, 2012.*

Context

Subsection: "The Minister is establishing an Expert Panel (the Panel) to conduct a review of environmental assessment processes associated with the *Canadian Environmental Assessment Act, 2012*."

- Comment: Please clarify on how the Minister will select the Panel members. Will members be nominated or will they apply to participate on the Panel? Will there be specific criteria the Panel members must meet in order to be selected by the Minister? Furthermore, will it be a requirement of Panel members to have extensive knowledge working with Indigenous groups? Furthermore, will there be representation from each of the three Constitutionally-recognized Aboriginal peoples (Metis, First Nations and Inuit)? A transparent selection process will aid in building public trust and demonstrate to participants that the Government of Canada wants to build trust from the outset.

Complementary Mandates

Subsection: "In addition to the Minister's mandate to review environmental assessment processes, other Ministers have also been mandated to carry out reviews and propose reforms to matters that intersect with environmental assessment."

- Comment: The MMF would appreciate clarity on the expectations for participants who are participating in each of the complementary mandates. Is it in the best interests of the participants to provide duplicate information to each mandated Panel to ensure all relevant information is presented? Or will there be a process established for information sharing to avoid participants' duplicate efforts?

Scope of Review

Subsection: "In doing so, the Panel shall consider how environmental assessment processes are conducted by the three responsible authorities under CEAA (Canadian Environmental Assessment Act) 2012, namely the Canadian Environmental Assessment Agency, the Canadian Nuclear Safety Commission or the National Energy Board. This will include the practices and procedures associated with the conduct of environmental assessment, such as Indigenous consultation..."

- Comment: Please clarify how this review will work in conjunction with the NEB Modernization complementary mandate, since this Panel will also review the NEB's role and authority in environmental assessments. Furthermore, how will these parallel processes work collaboratively to address matters such as Indigenous consultation?

Subsection: "In assessing the practices and procedures associated with the conduct of environmental assessments, the Panel shall consider the relationship between environmental assessment processes and the Aboriginal and treaty rights of Indigenous peoples and reflect the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples."

- Comment: The MMF acknowledges and supports ensuring the principles of UNDRIP are properly reflected throughout this and all Aboriginal consultation processes being carried out by Canada.

The Review Process: The Panel

Subsection: "The Panel will consist of at least three members, including one Chairperson. In the event that a Panel member resigns or is unable to continue to work, the remaining members shall constitute the Panel unless the Minister determines otherwise. In such circumstances, the Minister may choose to replace the Panel member."

- Comment: Please provide further clarity on the make-up of the Panel. The Terms of Reference indicate that that the Panel will consist of at least three members but there is no maximum number of members identified. In the scenario that there is only three Panel members and one resigns from their position, is it reasonable to proceed with only two Panel members? It may be suggested to raise the minimum number of Panel members to ensure a richly diverse Panel that should not have an issue proceeding in the scenario that a Panel member resigns.

Subsection: "The Panel shall continue with its review to the extent possible while waiting for a response from the Minister in order to comply with the timelines of these Terms of Reference."

- Comment: The MMF would like to suggest that a timeframe is established in the scenario that the Chairperson writes to the Minister to request clarification or an amendment to the Terms of Reference. Although the Terms of Reference identify that the Panel shall continue with its review to the extent possible, awaiting a response from the Minister may cause serious delay in the process. If a timeframe for correspondence is established, it will provide further assurance that the process will remain within the timeframe identified in the Terms of Reference.

Subsection: "By way of letter from the Chairperson, the Panel may request an amendment to its Terms of Reference from the Minister."

- Comment: Please provide clarity on how amendments to the Terms of Reference will be warranted and what the participants' role is for reviewing any amendments. The Terms of Reference are currently going through a public review process but this process may be viewed as non-genuine if the Panel has the ability to unilaterally make amendments. Please provide clarity on how public trust will be managed in this scenario.

Conduct of the Review: Indigenous Engagement and Consultation

Subsection: "The Panel shall ensure that a record of any Indigenous in-person engagement event is created and posted on the Panel's website."

- Comment: Please provide clarity on what the record would entail, such as event transcripts, etc.

Subsection: "The Panel shall take into account the timing of traditional activities in the local regions and communities when setting the time and location of Indigenous in-person consultation activities."

- Comment: Due to a lack of internal capacity, it is challenging to prepare detailed and comprehensive responses within a short period of time. For this reason, the MMF would like to ensure that there is adequate notice prior to any consultation activities and that funding capacity to undertake these consultations are received in advance.

Multi-Interest Advisory Committee

Subsection: "A Multi-Interest Advisory Committee with representatives of Indigenous organizations, industry associations and environmental groups will be established by the Minister to provide advice to the Panel."

- Comment: Please provide clarity on how the members of the Multi-Interest Advisory Committee will be selected. Will there be a minimum or maximum number of members that may sit on the Committee? How will representatives of Indigenous groups be determined to ensure the views of all Indigenous groups are included? A large issue of concern for the MMF is the mistaken notion that as long as there is First Nations representation then that is sufficient for the purposes of Indigenous representation. The MMF wholly disagrees with this position as the Metis are a culturally distinct Indigenous people, with different perspectives and concerns from other Indigenous groups. First Nation input is not representative of the Metis Nation.

Subsection: "The Panel will identify a select number of issues which may benefit from discussion by the Multi-Interest Advisory Committee."

- Comment: Please provide clarity on how the issues for discussion will be determined.