



# **Environmental Planning and Assessment Caucus**

Reactions to and comments on the  
Environmental and Regulatory Reviews  
Discussion Paper  
August 28, 2017

# Key Contributors

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# Introduction: Framing the DP

- ▶ Liberal Party of Canada policy:

- ▶ “We will **make environmental assessments credible again**”

Canadians must be able to trust that government will engage in appropriate regulatory oversight, including credible environmental assessments, and that it will respect the rights of those most affected, such as Indigenous communities. While governments grant permits for resource development, only communities can grant permission.

- ▶ Mandate Letter to Minister of Environment and Climate Change:

- ▶ Restore **robust oversight and thorough environmental assessments** of areas under federal jurisdiction, while also working with provinces and territories to avoid duplication;
  - ▶ Ensure that **decisions are based on science, facts, and evidence**, and serve the public’s interest;
  - ▶ Provide ways for Canadians to express their views and opportunities for experts to **meaningfully participate**; and
  - ▶ Require project advocates to choose the **best technologies available** to reduce environmental impacts

# Introduction: Framing the DP cont'd

## ▶ General remarks:

- ▶ Notwithstanding efforts to interpret the Discussion Paper as positively as possible, it falls considerably short in numerous respects:
  - ▶ High level of generality makes feedback difficult;
  - ▶ Feedback further inhibited by lack of specific/detailed responses to various Panel and Committee (where applicable) recommendations, or public comments;
  - ▶ Key substantive elements missing (as further set out in this deck).

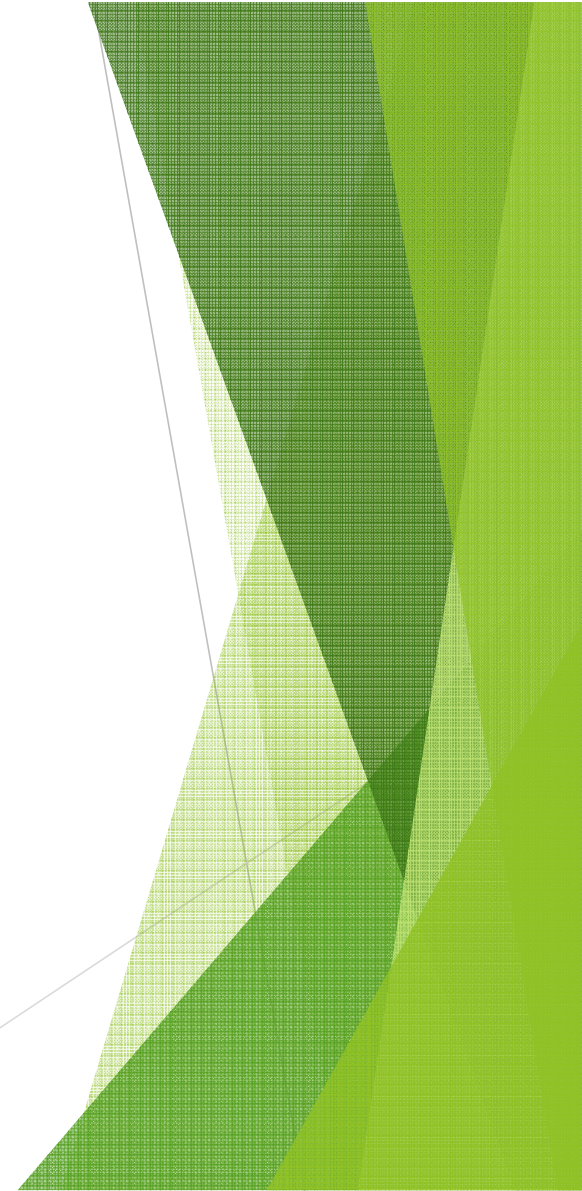
## Key Outstanding Issues Missing or Concerning in Discussion Paper (DP)

- ▶ Sustainability approach
- ▶ Triggering, registration and assessment scales
- ▶ Legislated regional and strategic assessment
- ▶ Governance, transparency and decision-making
- ▶ Legislated climate test
- ▶ Participation and the early planning phase

# Overarching Considerations

- ▶ **Lasting environmental and human well-being** should be drivers of the process;
- ▶ **Need for legislative basis** for majority of elements discussed in DP (as well as those elements missing);
- ▶ **Governance is key.** Some examples:
  - ▶ Independence;
  - ▶ Credibility;
  - ▶ Assessment planning committee;
  - ▶ Appeals;
  - ▶ Post-project processes;
  - ▶ Learning;
  - ▶ Robust evidentiary foundation
  - ▶ Transparency

# Addressing Cumulative Effects





# Addressing Cumulative Effects

## ▶ The Good:

- ▶ Great to see cumulative effects (both assessment and management) mentioned in the DP, and on centre-stage;
- ▶ Acknowledgement of the challenge to address CE at the project level in the absence of regional assessments;
- ▶ Recognition of need for strategic impact assessments (SIAs) to explain application of national environmental frameworks;

# Addressing Cumulative Effects cont'd

## ▶ The Concerns and Gaps:

- ▶ No mention of a legislative basis for regional impact assessment (RIA) and SIA;
- ▶ No mention of cumulative effects assessment at the project level (no link from the strategic level frameworks to regulatory decisions [e.g., if CEA suggests limits]);
- ▶ Limited mention of SIA – no mention of replacing Cabinet Directive;
- ▶ SIA and RIA should not be exclusively focused on cumulative effects;
- ▶ SIA of the Pan-Canadian Framework would be too limited – need to think ahead;
- ▶ Climate change only mentioned in context of SIA;

# Addressing Cumulative Effects cont'd

## ▶ The Upshot:

- ▶ RIA and SIA needs legislative basis, including
  - ▶ when required/triggered, assessment requirements, and tiering/application to project impact assessment and regulatory phase
- ▶ Legislation needs clarity re: regional cumulative effects management and co-governance;
- ▶ Legislation needs clarity on cumulative effects assessment at the project level;
- ▶ SIA of climate should include all international commitments and longer term decarbonization goals;
- ▶ Legislation needs to set out a climate test;
- ▶ Legislation should require registration of all undertakings within federal jurisdiction

# Early Engagement and Planning



# Early Engagement and Planning

## ▶ **The Good:**

- ▶ Requirement for early engagement and planning phase;
- ▶ Direct engagement with Indigenous peoples;
- ▶ Making public and seeking feedback on an initial list of issues;

# Early Engagement and Planning cont'd

## ▶ The Concerns and Gaps

- ▶ Early assessment planning phase appears to be led by proponent?
- ▶ No mention of decision points, who makes decisions, or planning committee;
- ▶ No mention of when early assessment planning phase and assessment begin;
- ▶ No mention of requirements regarding proponent's early registration of projects;
- ▶ No mention of the design of assessment processes being iterative (e.g., scope, scale, alternatives, etc) throughout the assessment (not just planning phase);
- ▶ No mention of early planning phase for RIA and SIA;
- ▶ Content of the early planning phase is not clear;
  - ▶ E.g. No mention of public participation and peer review process in early planning phase
- ▶ Lack of clarity regarding scales of assessment

# Early Engagement and Planning cont'd

## ▶ The Upshot:

- ▶ Legislation should clearly:
  - ▶ Establish that the EA authority will lead the early assessment planning phase;
  - ▶ Identify decision points and who makes decisions;
  - ▶ Require proponents to register projects early, with a basic (not detailed) project description;
  - ▶ Enable the appointment of assessment planning committees;
  - ▶ Require early assessment planning phases for RIA and SIA;
  - ▶ Require that the tenets of meaningful public participation and peer review are applied in the early assessment planning phase;
- ▶ Clarity is needed on different 'levels' or 'streams' of assessment fit for purpose (commensurate with the scale and magnitude of the project);
- ▶ Ongoing assessment processes need to be interactive and iterative;
- ▶ Interested jurisdictions, organizations and individuals need to play a role in designing the assessment;
- ▶ Early assessment planning phase should identify policy gaps and assign responsibility for filling them;
- ▶ Early assessment should also identify the range of cumulative effects and alternatives to be addressed by the proponent and broader cumulative effects and alternatives to be addressed by government bodies.

# Transparency and Public Participation

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. The shapes are layered, creating a sense of depth and movement. The overall aesthetic is clean and modern.



# Transparency and Public Participation

## ▶ The Good:

- ▶ User-friendly on-line public access;
- ▶ Open opportunities for meaningful public participation for all (no standing test);
- ▶ Improving the participant funding program;
- ▶ Transparency on reasons for environmental assessment and regulatory decisions;
- ▶ Two-way dialogue with feedback on how public input was considered;

## Transparency and Public Participation cont'd

### ▶ **The Concerns and Gaps:**

- ▶ No consideration of innovative and accessible means of accessing and sharing information;
- ▶ No mention of providing information in appropriate languages;
- ▶ No definition or guidance on what “meaningful” means;
- ▶ No direction on two-way dialogue – meaning and opportunities;
- ▶ More detail required on inclusive monitoring and compliance activities;
- ▶ No mention of requirements for formal hearings where appropriate/required;

# Transparency and Public Participation cont'd

## ► The Upshot:

- All information should be available unless explicitly excluded pursuant to clear and narrow legislative test, with burden on proponent to establish;
- Legislation should entrench principles of meaningful public participation;
- Legislation should require convenient and timely access to all information and documentation;
- Legislation needs to require all information to be provided in appropriate languages;
- Legislation must set out requirements for providing deliberative dialogue (non-hearing participatory) opportunities;
- Legislation should provide for hearing process to allow the public to test evidence, and ADR processes for addressing disputes;

# Science, Evidence and Indigenous Knowledge



# Science, Evidence and Indigenous Knowledge

## ▶ **The Good:**

- ▶ Open science and data platform;
- ▶ Peer-reviews of science and evidence in the assessment phase;
- ▶ Making science accessible;
- ▶ Emphasizing the importance of Indigenous Knowledge as evidence

# Science, Evidence and Indigenous Knowledge

## ▶ The Concerns and Gaps:

- ▶ No indication of peer reviews independent of (or in addition to) government;
- ▶ No mention of who is providing and overseeing the science, or the rigour of that oversight;
- ▶ Lack of clarity that monitoring/follow-up results from previous assessments will link back to assessments;
- ▶ No discussion of how public testing of evidence will be enabled (e.g., cross-examination)
- ▶ What are the principles that will guide decision-making?
- ▶ No mention of reliance in EA on projections, and the related issues of uncertainty;
- ▶ No mention of the critical need to bolster government science capacity

# Science, Evidence and Indigenous Knowledge

## ▶ The Upshot:

- ▶ Needs to establish a rigorous transparent peer review system using scientists and experts both inside and outside government to test evidence, assumptions, conclusions, etc.
- ▶ Legislation needs to allow cross-examination in addition to public-friendly, deliberative participation options;
- ▶ There should be legislated principles and strict rules of accountability, independence, transparency and competency regarding the provision of proponent information;
- ▶ Legislation should acknowledge uncertainty and need for precaution;
- ▶ There needs to be adequate public and Agency resourcing to ensure the necessary expertise is at the table;
- ▶ Evidence and decisions need to be traceable and transparent;

# Impact Assessment

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. The shapes are primarily triangles and polygons, some with a fine grid or stippled texture. The overall composition is modern and clean, with the text centered on a white background.



# Impact Assessment

## ▶ The Good:

- ▶ Broadening the scope of assessment (if done right);
- ▶ GBA +
- ▶ Single Agency (sort of);
- ▶ Clear criteria and transparent process for updating and reviewing the project list;
- ▶ Maintaining authority for enforceable conditions;
- ▶ Ability to designate projects not on the project list;
- ▶ Establishing advisory committees;

# Impact Assessment cont'd

## ▶ The Concerns and Gaps:

- ▶ **Lack of sustainability framework;**
- ▶ Lack of accountability, independence and transparency in decision-making (decisions by Minister or Cabinet);
- ▶ Decisions based on public interest – too nebulous a term;
- ▶ Lack of mention of a right of appeal and mechanism for appeal;
- ▶ Joint assessments with regulators and offshore boards;
- ▶ Legislated project-level assessment timelines;
- ▶ Lack of mention of mechanisms to ensure timely RIA and SIA;
- ▶ Lack of mention of automatic triggers of projects not on the list;
- ▶ Lack of mention of assessment streams for addressing smaller projects;
- ▶ Lack of commitment to **immediately review** and expand the project list, in addition to periodic reviews;
- ▶ Lack of mention of criteria and process for designating projects not on the list or triggered;

## Impact assessment cont'd

### ▶ The Upshot:

- ▶ Legislation needs to clearly set out sustainability test, purpose, principles, mandatory decision-making criteria and trade-off rules;
- ▶ Decision-making should be by an independent tribunal, or at the highest level, at the Ministerial level, based on sustainability framework;
- ▶ Legislation must set out a right of appeal on final and interim/process decisions, including standing requirements and the relevant appellate body;
- ▶ Timelines should not be legislated – must be flexible and assessment-specific;
- ▶ Legislation needs to assign sole authority over EAs/IAs to assessment authority – regulators should be brought in as expert advisors;
- ▶ Legislation needs more automatic triggers than just project list and power to designate (e.g., federal proponent projects, projects on federal lands, that receive federal funding, that are in protected areas, that have implications on species at risk, that have significant climate implications, etc...);
- ▶ Clear legislative provisions for the application of adaptive management required (e.g., preparation of plans, transparency in implementation, public participation);
- ▶ The legislation must establish (“shall”) scientific, multi-interest, and indigenous advisory committees.

## Partnering with Indigenous peoples

- ▶ We fully support the meaningful implementation of UNDRIP, a nation-to-nation relationship, and the TRC Calls to Action, and defer to Indigenous peoples to provide their input on this section of the Discussion Paper.

# Cooperation with Jurisdictions



# Cooperation with Jurisdictions

## ▶ The Good:

- ▶ Emphasis on cooperative assessment, with the goal of **one-project-one rigorous assessment**;
- ▶ Recognition of Indigenous jurisdiction;
- ▶ Working with provinces, territories and Indigenous peoples to guide planning and management of cumulative effects;

## ▶ The Concerns and Gaps:

- ▶ Substitution



# Cooperation with Jurisdictions

## ▶ **The Upshot:**

- ▶ Provide incentives for provincial governments to cooperate in assessments (PEA, REA, SEA);
- ▶ Cooperation should be to the highest standard;
- ▶ Substitution to provinces should not be an option;
- ▶ Cooperation with active involvement of jurisdictions should occur throughout processes;

**Fin.**

