



New South Wales

Accreditation Scheme for the Application of the Biodiversity Assessment Method 2017

under the

Biodiversity Conservation Act 2016

I, the Minister for the Environment, in pursuance of section 6.10 of the *Biodiversity Conservation Act 2016*, do, by this Order, make the following scheme for the accreditation by the Environment Agency Head of persons for the purposes of the application of the biodiversity assessment method.

Dated this [DAY]th day of [MONTH] 2017.

GABRIELLE UPTON

Minister for the Environment

Explanatory note

This Order is made under section 6.10 of the *Biodiversity Conservation Act 2016*.

The object of this Order is to adopt a Scheme which provides for the Environment Agency Head to accredit certain persons to apply the Biodiversity Assessment Method which is part of the Biodiversity Offsets Scheme.

A person whom the Environment Agency Head accredits pursuant to the Scheme adopted by this Order is an accredited person for the purpose of the *Biodiversity Conservation Act 2016*.

A draft of this scheme was prepared by the Environment Agency Head. The Minister for the Environment considers it appropriate to adopt that scheme.

Accreditation Scheme for the Application of the Biodiversity Assessment Method Order 2017

1 Name of Order

This Order is the *Accreditation Scheme for the Application of the Biodiversity Assessment Method Order 2017*.

2 Commencement

This Order commences on [DAY MONTH YEAR].

Note. In accordance with section 6.10 of the Act, this Order will continue to have effect unless and until it is amended or replaced by the Minister administering the Act.

3 Adoption of the Scheme

This Order adopts the *Accreditation Scheme for the Application of the Biodiversity Assessment Method* contained within Schedule 1.

Schedule 1 Accreditation Scheme for the Application of the Biodiversity Assessment Method

Part 1 Preliminary

1 Nature and status of this Scheme

- (1) This Schedule is the *Accreditation Scheme for the Application of the Biodiversity Assessment Method*.
- (2) This Scheme is adopted pursuant to section 6.10 of the Act.
- (2) This Scheme is a scheme for the accreditation of persons by the EAH to apply the BAM.
- (3) A person whom the EAH accredits is an ‘accredited person’ within the meaning of that term as defined at section 1.6 of the Act and for the purpose of the Act.
- (4) This Scheme generally deals with the matters set out in section 6.10 of the Act.

2 Interpretation

- (1) Words and expressions that are defined in the Dictionary to this Scheme have the meaning set out in the Dictionary.
- (2) Unless otherwise defined in this Scheme, words and expressions that are defined in the Act or in the Regulation made under the Act have the same meaning in this Scheme.
- (3) The Dictionary to this Scheme forms part of this Scheme.
- (4) Notes in the text of this Scheme do not form part of this Scheme.

Part 2 Accreditation of certain persons

3 The EAH may accredit certain persons

- (1) The EAH may, in accordance with this Scheme, accredit certain persons for the purposes of applying the BAM.
- (2) A person whom the EAH accredits under this clause is, within the meaning of the definition of that term at section 1.6 of the Act and for the purposes of the Act, an accredited person.

4 Accreditation may be conditional

- (1) Accreditation may be granted unconditionally or subject to conditions.
- (2) The conditions which may be imposed upon an accreditation may include but are not limited to:
 - (a) compliance with relevant standards or practices, and
 - (b) professional development obligations, and
 - (c) the provision of information including but not limited to records of surveys and assessments, and
 - (d) the keeping of records and information related to accreditation and the exercise of the functions of an accredited person, and
 - (e) the period of accreditation where the EAH determines to confer accreditation for a period of less than three years pursuant to clause 5, and
 - (f) a requirement to hold a licence under Part 2 of the Act which authorises the carrying out of plant and animal surveys, and
 - (g) any other condition as determined by the EAH.

5 Term of accreditation

An accreditation shall be for a term of three years from conferral or such other period of time not exceeding three years as is determined by the EAH in respect of a given application.

Part 3 Applications for accreditation

Division 1 New applications for accreditation

6 Eligibility of persons to be accredited

- (1) A person is only eligible to be accredited where, in the opinion of the EAH, they:
 - (a) have undertaken and completed relevant training in biodiversity assessment, and
 - (b) are a fit and proper person, and
 - (c) have knowledge, skills or experience that are appropriate to exercise the functions of an accredited person.

- (2) In considering whether a person has appropriate knowledge, skills and experience to carry out the functions of an accredited person, the EAH may have regard to:
 - (a) a person's relevant academic qualification, being:
 - (i) relevant tertiary education in the natural sciences including subjects that relate to the observation and description of terrestrial biodiversity and landforms, or
 - (ii) such other qualifications as are, in the opinion of the EAH, relevant to exercising the functions of an accredited person.
 - (b) a person's relevant work experience in environmental science or environmental management or environmental impacts assessment or preparation of conservation management plans, being:
 - (i) experience that includes:
 - (A) conducting plant and animal surveys, and/or
 - (B) identification of plant community types, and/or
 - (C) identification of ecological communities
 - (ii) in the case of a person possession relevant academic qualification, at least three years experience within the last seven years.
 - (iii) in any other case, at least five years experience that has been gained within

the last seven years.

7 Procedure for applying for accreditation

- (1) Any person who meets the eligibility requirements prescribed in clause 6 of this Scheme may make an application.
- (2) An application is to be made by way of electronic lodgement with the EAH in accordance with any requirements described on a website maintained by the EAH.
- (3) An application is, for the purpose of this clause, a duly made application where it complies with clause 9 and is accompanied by the fee prescribed at clause 10.
- (4) A duly made application shall be determined within 60 days from receipt of the application by the EAH.
- (5) The EAH may extend the period of 60 days referred to in clause 7(4) by a further 21 days.
- (6) The EAH may, in respect of an application, request such further information as is required by the EAH to determine the application, including requiring the person applying for accreditation to attend an interview.
- (7) An extension of the period within which an application is to be determined under clause 7(5) or request for further information under clause 7(6) is to be made by a notice in writing provided to the applicant.
- (8) A request for information under clause 7(5) of this Scheme shall have the effect of halting the counting of time for the purposes of clause 7(4) until such information is provided to the EAH to enable the application to be determined.
- (9) At the expiry of the 60 days prescribed at clause 7(4), taking into account any extension of time under clause 7(5) and the effect of clause 7(8), the application shall be deemed to be refused.

8 Accreditation advisory panels

The EAH may, in respect of an application, convene an accreditation advisory panel for the purpose of reviewing an application and making a recommendation to the EAH concerning the determination of that application.

9 Form of an application

An application is to consist of:

- (1) A completed Accredited BAM Assessor Application Form, and
- (2) A completed Accredited BAM Assessor Code of Conduct Declaration, and
- (3) A completed Accredited BAM Assessor Experience and Qualification Report, and
- (4) Two completed Accredited BAM Assessor Referee Reports, and
- (5) Certified copies or originals of relevant academic transcripts.

10 Application fees

- (1) The relevant fee for an application for BAM Assessor Accreditation is 5 fee units.
- (2) Clause 1.5 of the Regulation has effect with respect to the fee prescribed by this clause of the Scheme.

Note. Clause 1.5 of the Regulation provides for the indexing of a fee unit by the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in each financial year following financial year 2017/18. Under clause 1.5 of the Regulation the EAH is required to give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year.

11 Determination of an application

- (1) The EAH may determine any application by accrediting a person either unconditionally or subject to conditions or by refusing to accredit the person.
- (2) If a person fails to meet the eligibility criteria at clause 6(1), then the EAH must determine the application by refusing to accredit the person.

12 Matters for consideration

In determining an application the EAH must consider:

- (1) The eligibility of a person as prescribed by clause 6, and
 - (2) Any further information requested by the EAH under clause 7, and
 - (3) Any recommendation of an accreditation advisory panel that was convened under clause 8 in relation to the application, and
 - (4) The contents of the application as prescribed by clause 9, and
 - (5) Any other matter that is, in the opinion of the EAH, a relevant matter.
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Division 2 Renewal of an application

13 Renewal applications

- (1) An accredited person may, within 12 months from the expiry of the term of their accreditation, make a renewal application.
- (2) Clauses 3, 4, 5, 6, 7, 8, 11 and 12 apply to a renewal application as if it were an application, subject to the modification of the operations of those clauses to the extent that it is relevant to give effect to the provisions of this Division.

14 Form of a renewal application

A renewal application is to consist of:

- (1) A completed Accredited BAM Assessor Renewal Application Form, and
- (2) A completed Accredited BAM Assessor Code of Conduct Declaration, and
- (3) A completed Accredited BAM Assessor Log of Continuing Professional Development, and
- (4) Any such other information as may be required by the EAH including but not limited to evidence of compliance with conditions of accreditation.

15 Renewal application fee

- (1) The relevant fee for a renewal application is 3 fee units.
- (2) Clause 1.5 of the Regulation has effect with respect to the fee prescribed by this clause of the Scheme.

Note. Clause 1.5 of the Regulation provides for the indexing of a fee unit by the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in each financial year following financial year 2017/18. Under clause 1.5 of the Regulation the EAH is required to give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year.

Part 4 Conduct of accredited persons

16 Accredited persons to provide information

- (1) The EAH may, by notice published on a website maintained by the EAH, require accredited persons to provide certain information to the EAH from time to time.
- (2) The notice may specify the manner in which information is to be provided.

Note. Information that the EAH may require to be provided may include information collected during the application of the BAM such as site specific survey data.

17 Compliance with accreditation and conditions

An accredited person must comply with any obligation or requirement imposed by the accreditation, including any conditions of the accreditation.

Note. Failure to comply with an accreditation or any conditions thereof may result in the EAH exercising the power to vary, suspend or cancel that accreditation under Part 5 of this Scheme.

18 Accredited BAM Assessor Code of Conduct

- (1) The EAH is to make an Accredited BAM Assessor Code of Conduct.
- (2) An accredited person must comply with the Accredited BAM Assessor Code of Conduct when preparing biodiversity assessment reports.

Note. Failure to comply with the Accredited BAM Assessor Code of Conduct may result in the EAH exercising the power to vary, suspend or cancel that accreditation under Part 5 of this Scheme.

19 Accredited person to apply the BAM

- (1) An accredited assessor must ensure that in exercising the functions of an accredited assessor that the accredited assessor applies the BAM.
- (2) An accredited assessor who prepares a biodiversity assessment report must ensure that the biodiversity values described in that report were assessed in accordance with the BAM.

Note. Failure to assess biodiversity values in accordance with the BAM may result in the EAH exercising the power to vary, suspend or cancel an accreditation under Part 5 of this Scheme.

20 Auditing of biodiversity assessment reports and conduct

The EAH may carry out or cause to be carried out an audit of:

- (1) compliance with by an accredited assessor with the conditions of their accreditation, or
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- (2) compliance by an accredited assessor with the Accredited Assessor Code of Conduct,
or
- (3) biodiversity assessment reports prepared by an accredited person, or
- (4) the application of the BAM by an accredited assessor, or

Note. Where an audit establishes a failure to comply with the requirements of the Act, the Regulation, this Scheme or an accreditation then the EAH has a power to vary, suspend or cancel that accreditation under Part 5 of this Scheme.

Part 5 Variation, suspension or cancellation of accreditation

21 Accredited person may seek variation

- (1) An accredited person may, by way of written notice, request a variation of an accreditation.
- (2) Such a request is taken to be an application in accordance with Part 3 of this Scheme.

22 EAH may vary, suspend or cancel an accreditation

- (1) The EAH may vary, suspend or cancel an accreditation at any time by written notice.
- (2) The power to vary contained in this clause is in addition to the power to vary in response to an application by an accredited person under clause 21.
- (3) If, in the opinion of the EAH, an accredited person has or is likely to breach the Act, the Regulation, this Scheme or a condition of their accreditation, then the EAH may serve on the accredited person a notice proposing variation, suspension or cancellation of the accreditation.
- (4) A person served with a notice referred to in clause 17(3) will have 21 days to respond to such a notice.
- (5) In varying, suspending or cancelling an accreditation, the EAH must consider any submissions made under clause 17(4).

23 Variation may extend an accreditation

- (1) A variation of an accreditation made by the EAH pursuant to clause 22(1) may extend the term of an accreditation notwithstanding clause 5.
- (2) Such a variation may not extend the term of the accreditation beyond four years from when the accreditation was conferred or last renewed, whichever is the latter.

Note. The EAH may impose a condition on an accreditation such that the accreditation has effect for less than three years, which is the period otherwise provided for in clause 5. This power to vary allows the EAH to extend the term of an accreditation up to four years from when the person was first accredited or last renewed their accreditation. A person cannot be accredited for more than four years without seeking a renewal of their accreditation.

Dictionary

Note. Unless otherwise defined in this Scheme, words and expressions that are defined in the Act or in the Regulation have the same meaning in this Scheme.

Accreditation means accreditation to apply the BAM conferred by the EAH pursuant to this Scheme.

Accreditation advisory panel means an accreditation advisory panel convened by the EAH pursuant to clause 7(7) of this Scheme.

Accredited BAM Assessor Application Form means the document of that name as made available from time to time on a website maintained by the EAH.

Accredited BAM Assessor Code of Conduct means the document of that name as made available from time to time on a website maintained by the EAH.

Accredited BAM Assessor Code of Conduct Declaration means the document of that name as made available from time to time on a website maintained by the EAH.

Accredited BAM Assessor Experience and Qualification Report means the document of that name as made available from time to time on a website maintained by the EAH.

Accredited BAM Assessor Log of Continuing Professional Development means the document of that name as made available from time to time on a website maintained by the EAH.

Accredited BAM Assessor Referee Reports means the document of that name as made available from time to time on a website maintained by the EAH.

Accredited BAM Assessor Renewal Application Form means the document of that name as made available from time to time on a website maintained by the EAH.

Accredited person has the same meaning as in section 1.6 of the Act.

Act means the *Biodiversity Conservation Act 2016* (NSW).

Application means an application for accreditation that is made under Part 3 Division 1 of this Scheme.

BAM means the ‘biodiversity assessment method’ as defined in section 1.6 of the Act.

Biodiversity assessment report has the same meaning as in section 1.6 of the Act.

EAH means the ‘environment agency head’ as defined in section 1.6 of the Act.

Fee unit has the same meaning as in clause 1.5 of the Regulation.

Order means the *Accreditation Scheme for the Application of the Biodiversity Assessment Method Order 2017*.

Regulation means the *Biodiversity Conservation Regulation 2017* (NSW).

Renewal application means an application for renewal of an accreditation that is made under Part 3 Division 2 of this Scheme.

Scheme means the *Accreditation Scheme for the Application of the Biodiversity Assessment Method* adopted by the Order.