



## Accreditation Scheme for the Application of the Biodiversity Assessment Method

This part of the submission provides feedback on the proposed *Accreditation Scheme for the Application of the Biodiversity Assessment Method Order 2017 (Draft Order)*.

EDO NSW has long supported the accreditation of consultants to undertake biodiversity assessments. As indicated by the number of inquiries and concerns received by EDO NSW, the independence and integrity of biodiversity assessors is fundamental to an effective regulatory regime. We therefore welcome the proposed accreditation scheme and recommend changes that will help to ensure the scheme is transparent, robust and includes sufficient penalties for consultants who do not comply with the scheme.

We note that there are currently a number of industry organisations who run either accreditation or professional development schemes. It is unclear how the Biodiversity Assessment Method (**BAM**) accreditation and compliance requirements will interact with these schemes. We recommend that further targeted consultation occur with bodies such as ECA and EIANZ.

EDO NSW has also previously submitted that in order to increase objectivity, independent assessors should be allocated to proponents by Office of Environment and Heritage (**OEH**) from a pool of accredited assessors to work on proposed projects. This would break the nexus between developers and consultant and ensure independence and objectivity in assessments. Accreditation of assessors provides an opportunity to implement this system.

This part addresses:

- Part 2 - Accreditation of certain persons  
*4 Accreditation may be conditional*
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*6 Eligibility of persons to be accredited*  
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- Part 4 - Conduct of accredited persons
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- Drafting errors

## Part 2 - Accreditation of certain persons

### *4 Accreditation may be conditional*

The Draft Order states that conditions which **may** be imposed include “the provision of information including but not limited to records of surveys and assessments.” Having this data, linked to data on credit trading, in a central repository will be vital to the effective implementation and management of the offsets system. The Environment Agency Head (**EAH**) must be able to review the information being provided by accredited persons to ensure both compliance with the BAM and the accreditation process. This data is also fundamental to understanding whether the BAM is operating effectively and meeting its goal of no net loss of biodiversity. Accordingly, we **recommend** that records of surveys and assessments *must* be provided to the EAH to maintain accreditation, and the order should be amended to require this.

To ensure that the proposed scheme is transparent, we **recommend** that a list of accredited consultants *must* be made available on a public register that includes any accreditation conditions, the term of the accreditation and any variations, suspensions or cancellations that have been applied to that accreditation.

## Part 3 – Applications for accreditation

### *6 Eligibility of persons to be accredited*

Accreditation requires “relevant training in biodiversity assessment”. This training is not currently defined and there has been previous concern from the industry that there is a single monopoly training provider.

Appropriate implementation of the BAM will require skills in botany, ecology and mapping, particularly given that the BAM has been expanded to include consideration of impacts on threatened species or ecological communities associated with karst, caves, crevices, cliffs and other features of geological significance; human made structures; water quality, water bodies and hydrological processes; and vehicle strike (amongst others). We **recommend** that any accreditation scheme *must* ensure that each BAM assessment is completed by an individual or individuals with the appropriate range of skills.

Regarding the definition of a fit and proper person, see our comments on clause 5.3 of the Regulation that includes some criteria that could be relevant here also.

### *8 Accreditation advisory panel*

It is unclear who the membership of any accreditation advisory panel would be. We **recommend** that Panel members should include at a minimum representation from the OEH, local government, ecological consultants, independent academic scientists with expertise in threatened species, and a specialist in environmental law. Furthermore, we note that there is no obligation on the EAH to follow the recommendation of any panel. There needs to be transparency around the reasoning behind any decisions not to follow panel recommendations.

### *9 Form of an application*

We **recommend** that the Code of Conduct Declaration should be available for public consultation prior to finalisation.

The application is to consist of (amongst other things) two completed Accredited BAM Assessor Referee Reports. We understand that currently accredited assessors have been contacted regarding training in the new method but transitional arrangements remain unclear. Given that BAM Assessor training has not been undertaken, the proposed implementation date of 25 August 2017 is highly concerning.

#### **Part 4 - Conduct of accredited persons**

We **support** the mechanism for auditing of reports and for random audits, and **recommend** that it is essential that audits be conducted by an independent auditor.

#### **Part 5 – Variation, suspension or cancellation of accreditation**

We **support** the provisions allowing for the EAH to vary, suspend or cancel an accreditation and **recommend** that they should be expanded to allow third parties to trigger a review of any assessor accreditation. There should be clear deadline for the EAH to respond to any properly made complaint.

Penalties should apply for actions that are not consistent with the conduct of accredited persons and should be of a scale that ensures an individual is not profiting from poor conduct. We **recommend** that the Order make clear that any person whose accreditation is cancelled should be debarred from re-applying for accreditation for a period of time sufficient to act as a deterrent. Provisions similar to section 57 of the *Contaminated Lands Management Act 1997* should apply, whereby an individual cannot claim to be accredited whilst their accreditation is suspended.

#### **Drafting errors**

EDO NSW has identified the following drafting errors:

- Part 3, Division 1, section 6(2)b(ii) possession should be possessing
- Part 5, section 22(4) reference to clause 17(3) should be a reference to clause 22(3)
- Part 5, section 22(5) reference to clause 17(4) should be a reference to clause 22(4)