



New South Wales

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

under the

Biodiversity Conservation Act 2016

I, Gabrielle Upton, the Minister for the Environment, in pursuance of section 6.10 of the *Biodiversity Conservation Act 2016*, make the following order adopting a scheme for the accreditation by the Environment Agency Head of persons for the purposes of the application of the biodiversity assessment method.

Dated this 24th day of August 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 25 August 2017 and is required to be published on the NSW legislation website.

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 following Accreditation Scheme for the Application of the Biodiversity Assessment Method:

Accreditation Scheme for the Application of the Biodiversity Assessment Method

Part 1 Preliminary

1 Nature and status of this Scheme

- (1) This 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.
- (3) This Scheme is a scheme for the accreditation of persons by the EAH for the purposes of applying the BAM.
- (4) A person who is accredited in accordance with this Scheme is an ‘accredited person’ within the meaning of that term as defined in section 1.6 of the Act and for the purpose of the Act.
- (5) 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

The EAH may, in accordance with this Scheme, accredit certain persons for the purposes of applying the BAM.

4 Accreditation to be in writing

The EAH shall accredit a person by issuing a written certificate, setting out, or referring to, any conditions to which the accreditation is subject, and the term of the accreditation (where that is not exceeding three years in accordance with clause 5).

5 Term of accreditation

An accreditation is for a term of three years from the date specified on the certificate of accreditation, or for such other period of time not exceeding three years as is determined by the EAH in respect of a given application.

6 Accreditation may be conditional

- (1) Accreditation may be granted unconditionally or subject to conditions.
- (2) Part 4 of this Scheme sets out conditions that apply to all accreditations unless otherwise provided on the certificate of accreditation.
- (3) The conditions which may be imposed upon an accreditation may address any of the following matters (without limitation):
 - (a) compliance with relevant standards or practices,
 - (b) professional development obligations,
 - (c) the provision of information including (without limitation) records of surveys and assessments,
 - (d) the keeping of records and information related to accreditation and the exercise of the functions of an accredited person,
 - (e) a requirement to hold a licence under Part 2 of the Act which authorises the carrying out of plant and animal surveys.

Part 3 Applications for accreditation

Division 1 New applications for accreditation

7 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 successfully 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.

Note. Successful completion of relevant training will be evidenced by the applicant passing the relevant testing conducted by or on behalf of OEH.

- (2) The EAH may consider the following matters (without limitation) when determining whether a person is a fit and proper person:
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- (a) whether the applicant has contravened any relevant legislation, or has held a licence, accreditation or other authority under relevant legislation that has been suspended or revoked under the relevant legislation,
 - (b) whether the applicant was a director or other person concerned in the management of a corporation that has contravened any relevant legislation or any licence or other authority under relevant legislation,
 - (c) whether in the opinion of the EAH the person is of good repute, having regard to character, honesty and integrity,
 - (d) whether the applicant is a partner or other associate of a person whom the EAH considers is not a fit and proper person to be an accredited person,
 - (e) whether (if the applicant is currently or has previously been an accredited person) the applicant has, in the opinion of the EAH, previously falsely claimed that they are an accredited person, or made false claims as to the scope of their accreditation,
 - (f) whether (if the applicant is currently, or has previously been an accredited person) the applicant has certified a biodiversity assessment report under section 6.15 of the Act, which in the opinion of the EAH contained false or misleading information,
 - (g) whether the applicant has in the opinion of the EAH, provided false or misleading information to the EAH in connection with their application.
- (3) In considering whether a person has appropriate knowledge, skills and experience to carry out the functions of an accredited person, the EAH may consider the following matters (without limitation):
- (a) a person's competency as determined by reference to:
 - (i) the results of any relevant testing of the applicant's knowledge and skills in relation to biodiversity assessment, or
 - (ii) any references provided by the applicant, or

- (iii) any other information held or obtained by the EAH,
- (b) a person's relevant academic qualifications, 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,
- (c) 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 the following:
 - (A) conducting plant and animal surveys,
 - (B) identification of plant community types,
 - (C) identification of ecological communities, and
 - (ii) in the case of a person possessing relevant academic qualification, at least three years of experience within the last seven years, and
 - (iii) in any other case, at least five years of experience, two of which have been gained within the last seven years.
- (4) Where an applicant has been accredited under section 142B of the *Threatened Species Conservation Act 1995*, the EAH may consider any of the matters set out in this clause, including under clause 7 (2), having regard to their performance during their accreditation under that section, and surveys and reports prepared by them in that capacity.

8 Procedure for applying for accreditation

- (1) Any person who meets the eligibility requirements prescribed in clause 7 (1) of this Scheme may make an application.
 - (2) An application is to be made by way of electronic lodgement with the EAH in
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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 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 subclause (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 subclause (5) or request for further information under clause 8(6) is to be made by a notice in writing to the applicant.
- (8) A request for information under subclause (6) will halt the counting of time for the purposes of subclauses (4) and (5) until such information is received by the EAH.
- (9) If the EAH has not advised the applicant of the determination of their application by the expiry of the period determined under clauses 8(4), 8(5) and 8(8), the application shall be deemed to be refused.
- (10) A later determination made by the EAH after the date determined in accordance with subclause (9) does not prejudice or affect the continuance or determination of any request for review made under clause 16 in respect of any deemed refusal.
- (11) If a later determination is made by the EAH accrediting a person after the date determined in accordance with subclause (9), the EAH is entitled, with the consent of the applicant that submitted a request for review made under clause 16, to have a request for review withdrawn at any time prior to the determination of that request.

9 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.

10 Making an application

- (1) An application is to be made by submitting a completed Accredited Person Application Form, which must be accompanied by the following:
 - (a) a completed Accredited Person Code of Conduct Declaration,
 - (b) a completed Accredited Person Experience and Qualification Report,
 - (c) two completed Accredited Person Referee Reports,
 - (d) certified copies or originals of relevant academic transcripts,
 - (e) payment of the Application Fee, and
 - (f) payment of the Accreditation Term Fee.
- (2) If the EAH refuses an application, it must refund any Accreditation Term Fee that was paid by the applicant in connection with the application.

11 Fees

- (1) The Application Fee is 2 fee units.
- (2) The Accreditation Term Fee is 3 fee units.
- (3) The EAH may reduce the Accreditation Term Fee where the term of the accreditation is, at the time of accreditation less than three years, provide that the fee payable must be a multiple of one fee unit, for each year or part thereof of the term.
- (4) 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.

12 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 7 (1), then the EAH must
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determine the application by refusing to accredit the person.

13 Matters for consideration

- (1) In determining an application the EAH must consider:
 - (a) eligibility of a person as prescribed by clause 7, and
 - (b) information provided by the applicant in connection with their application, and
 - (c) the response to any further information requested by the EAH under clause 8, and
 - (d) any recommendation of an accreditation advisory panel that was convened under clause 9 in relation to the application, and
 - (e) any other matter or information that is, in the opinion of the EAH, relevant.

Division 2 Renewal of an accreditation

14 Renewal applications

- (1) An accredited person may not submit a renewal application any later than 3 months after the expiry date of the term of their accreditation.
- (2) Where a renewal application is granted by the EAH, the term of the renewed accreditation will commence on the day after the expiry date of the previous accreditation, or such later date as is determined by the EAH.
- (3) Clauses 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13 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 the EAH considers appropriate to give effect to the provisions of this Division.

15 Making a renewal application

- (1) A renewal application is to be made by submitting a completed Accredited Person Renewal Application Form, accompanied by:
 - (a) a completed Accredited Person Code of Conduct Declaration, and
 - (b) a completed Accredited Person Log of Continuing Professional Development, and
 - (c) any other information as may be required by the EAH in relation to renewal applications by notice published on a website maintained by the EAH including

- (without limitation) evidence of compliance with conditions of accreditation, and
- (d) payment of the Accreditation Term Fee for the new term of the accreditation.
- (2) No application fee is payable in respect of a renewal application.
- (3) If the EAH refuses an application for renewal of accreditation, it must refund any Accreditation Term Fee that was submitted by the applicant in connection with the renewal application.

Division 3 Review

16 Reviewing application determinations

- (1) If an applicant for accreditation, or renewal of accreditation, is dissatisfied with:
- (a) a decision by the EAH that an application has not been duly made, or
- (b) a decision of the EAH to refuse to grant or renew accreditation, or
- (c) a decision as to the conditions on which the accreditation is granted or renewed,
or
- (d) the deemed refusal of the application,
- the person may, request that the EAH review the decision.
- (2) Any request under subclause (1) must be made in writing to the EAH within 90 days of the date on which the applicant receives notice of the decision of the EAH, or the date on which the decision was deemed to be refused.
- (3) The EAH must, on a request made in accordance with subclause (2), conduct a review.
- (4) As a consequence of the review, the EAH may confirm its decision or proceed to make a new determination.

Part 4 Conduct of accredited persons

17 Accredited Person Code of Conduct

The EAH is to make an Accredited Person Code of Conduct.

18 Compliance with accreditation conditions

An accredited person must comply with 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.

19 Conditions applying to all accredited persons

The following are conditions of all accreditations granted under the Scheme (unless otherwise provided on a certificate of accreditation):

- (1) An accredited person must prepare Biodiversity Assessment Reports (and conduct surveys and other activities in connection with the preparation of such reports) in accordance with the following:
 - (a) the Biodiversity Assessment Method Manual,
 - (b) the Credit Calculator Operational Manual,
 - (c) Accredited Person Code of Conduct.
 - (d) this Scheme,
 - (e) any guidance materials published by the Office of Environment and Heritage in connection with preparation of Biodiversity Assessment Reports or the application of the BAM,
 - (f) any accreditation requirements notified by the Office of Environment and Heritage to the accredited assessor from time to time.
- (2) An accredited person must maintain a detailed and up to date working knowledge of, and comply with, all relevant legislation.
- (3) An accredited person must maintain records of surveys and assessments, including field data sheets and targeted flora and fauna surveys, undertaken and used as part of the preparation of a Biodiversity Assessment Report, for at least ten years after

certification of the relevant Biodiversity Assessment Report.

- (4) All records required kept by an accredited person must be in legible form, or in a form that can be readily be reduced to a legible form.
- (5) An accredited person must provide to the Office of Environment and Heritage any information related to biodiversity assessment reports required to be provided by all accredited persons, or by a group of accredited persons, by way of a notice specified on a website maintained by it, in the form and within the time frames required in that notice.
- (6) An accredited person must comply with any scientific licence conditions relating to survey records.

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.

Note. In addition to the conditions above, accredited persons must comply with obligations under the BC Act and regulations, including Part 6 Division 3 of the BC Act. Failure to comply with any of the conditions above may result in the EAH exercising the power to vary, suspend or cancel that accreditation under Part 5 of this Scheme.

20 Auditing of biodiversity assessment reports and conduct

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

- (1) compliance with by an accredited person with the conditions of their accreditation, or
- (2) biodiversity assessment reports prepared by an accredited person, or
- (3) the application of the BAM by an accredited person.

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) The application must set out in writing the proposed variation, and the reasons for the request.
- (3) Where the EAH receives such an application, clauses 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13 apply as if it were an application for accreditation, subject to the modification of the operations of those clauses to the extent that the EAH considers appropriate to give effect to the provisions of this clause.
- (4) Where an accreditation is varied in accordance with this clause, the EAH is not required to refund any Accreditation Term Fee previously paid in connection with the existing accreditation.

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 if:
 - (a) in the opinion of the EAH:
 - (i) the accredited person has contravened or is likely to contravene the Act or the Regulations, or
 - (ii) the accredited person has breached or is likely to breach a condition of their accreditation, or
 - (iii) the accredited person did not satisfy at the time of accreditation, or has ceased to satisfy, the eligibility requirements prescribed in clause 7 (1),
 - (b) an error was made in granting the accreditation, including in the conditions on which the accreditation was granted, or
 - (c) the accredited person has requested that their accreditation be cancelled or suspended.
 - (2) The power to vary contained in this clause is in addition to the power to vary in response
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to an application by an accredited person under clause 21.

- (3) If the EAH intends to vary, suspend or terminate the accreditation of a person under this clause, then the EAH must 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 22 (1) 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 22 (4).
- (6) The suspension or revocation of an accreditation takes effect on the day on which the notice is given or on a later day specified in the notice.
- (7) If the EAH suspends an accreditation in accordance with this clause, the period of the suspension will not affect the term of the accreditation.

23 EAH may extend term of accreditation

- (1) The EAH may, with the consent of an accredited person, extend the term of an accreditation notwithstanding clause 5.
- (2) Such a variation may not extend the term of the accreditation beyond a total of four years from when the accreditation was conferred or last renewed, whichever is the latter.

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 Term Fee means a fee in the amount determined in accordance with clause 11 (2).

Accreditation advisory panel means an accreditation advisory panel convened by the EAH pursuant to clause 8 of this Scheme.

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

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

Accredited Person 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 Person 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 Person 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 Person Referee Reports means a document of that name in the form, and addressing the information specified in the form, made available from time to time on a website maintained by the EAH.

Accredited Person 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.

Application Fee means a fee in the amount determined in accordance with clause 11 (1).

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.

Certificate of accreditation means a certificate issued by the EAH under clause 4.

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).

Relevant legislation means any of the following:

- (a) the Act,

- (b) the Regulation or any other statutory instrument made under the Act,
- (c) any Act repealed by the Act and any regulations or relevant statutory instrument made under any such repealed Act,
- (d) Part 5A of the *Local Land Services Act 2013* and any regulations or relevant statutory instrument made under that Part of that Act,
- (e) the *Protection of the Environment Operations Act 1997*, and any regulations or relevant statutory instrument made under that Act,
- (f) the *Environment Protection Biodiversity Conservation Act 1999 (Cth)* and any regulations and relevant instruments made under that Act,
- (g) any other Act or statutory instrument of the State, the Commonwealth, any other State or Territory or any other country that relates to the protection of the environment, the conservation of biodiversity, threatened species, threatened ecological communities, or their habitats.

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.