



DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT

Accredited Assessors Complaints and Feedback Management Policy

Biodiversity Assessment Method



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1. Background

The Biodiversity Offsets Scheme (BOS) is established under section 6.2 of the NSW *Biodiversity Conservation Act 2016* (BC Act). The scheme creates a transparent, consistent and scientifically based approach to biodiversity assessment, and the offsetting of biodiversity impacts of development, where a development is likely to have a significant impact on biodiversity. If the BOS applies to a development or activity, the proponent must retain an accredited assessor to apply the Biodiversity Assessment Method (BAM) to the proposal and prepare a Biodiversity Assessment Report (BAR).

The Department of Planning, Industry and Environment Biodiversity and Conservation Division (the Department) administers the BOS and is responsible for accrediting assessors.

The accreditation scheme is designed to ensure the BAM is applied by people with appropriate ecological skills, knowledge and experience, and a demonstrated understanding of the method.

Application of the BAM includes the collection of field data, the use of published datasets, analysis of data in the Biodiversity Assessment Method Calculator (BAM-C), case management in the Biodiversity Offsets and Agreement Management System (BOAMS), the interpretation of site context and impacts, and the preparation of assessment reports.

Accredited assessors are also required to have knowledge of the BOS to provide a competent source of information to clients, including identifying entry thresholds for the BOS. Accredited assessors are expected to behave in a professional way and not bring the BOS into disrepute.

The accreditation scheme is defined by the Accreditation Scheme for the Application of the Biodiversity Assessment Method Order 2017 (PDF 868KB).

Conditions of accreditation, the code of conduct and the fit and proper person criteria are all key elements that require assessors to maintain a current working knowledge of legislation, behave professionally, ensure quality control of their projects, provide truthful information, and keep appropriate records that support their findings.

2. Policy context and purpose

2.1 Quality assurance framework for accredited assessors

This policy represents one part of an overall framework to manage accredited assessor work quality and behaviour. The framework is represented in Figure 1 and further described below.

The first two quality control measures are external to the Department:

Level 1 – All accredited assessors are responsible for the quality of any work that is certified under their name. They are also required to self-regulate their behaviour in accordance with the code of conduct.

Level 2 – A government agency that receives a Biodiversity Assessment Report (BAR) has the power to review, or have reviewed, the content of the BAR, and seek clarification or modifications before approving (or otherwise) the proposal to which the BAR relates.

Three further levels of quality control are managed by the Department, the first of which is the subject of this policy:

Level 3 – The complaints and feedback management policy detailed in this document addresses BAM-related issues that have already undergone the two primary levels of quality control above. The Department evaluates the relevance and significance of any information received and determines if and what accreditation action is warranted or required, or if referral to Level 4 or 5 is required.

Level 4 – An audit involving detailed review of BAM data and an assessor’s reports may be done to investigate a complaint or conduct a targeted campaign. The BOS audit team works closely with relevant local councils when doing the audit, and has access to information obtained under Level 3, provided it is within the scope of this policy.

Level 5 – When a complainant alleges false or misleading information has been provided by an accredited BAM assessor, or other potential breaches of the BC Act have occurred, a formal compliance investigation may be initiated. The compliance team will have access to all necessary information. Such an investigation may result in an accreditation outcome and monetary fines.



Figure 1 Framework to manage accredited assessor work quality and behaviour
Levels 1 and 2 are managed external to the Department. Levels 3 to 5 are managed by the Department.

2.2 Purpose of the complaints and feedback management policy

Receiving complaints and feedback is integral to the assurance of quality in the work being carried out by assessors in applying the BAM. This policy aims to inform assessors and potential complainants of the Department’s settings to ensure the BOS is supported by meaningful and strategic processes.

The Department will use feedback and complaints to improve the quality of individual assessors’ work, as well as improve outputs from the scheme as a whole. Feedback and complaints can highlight the need for additional training requirements, common misunderstandings, topics needing improved advice or support through webinars or other means, FAQs, and a potential need for procedural or policy changes.

3. Policy settings

3.1 Policy scope

The scope of this policy includes the processes for:

- **making** complaints or providing feedback about the conduct and/or work of an assessor as it relates to BAM assessments and reports and their role in the Biodiversity Offsets Scheme (BOS)
- **managing** complaints or feedback about the conduct and/or work of an assessor as it relates to BAM assessments and reports, and their representation of the BOS.

The policy uses the terminology of the Department's complaint management policy (OEH 2018a).

The policy does **not** cover complaints or feedback about:

- an accredited assessor that are not related to a BAM assessment or BAR
- an accredited assessor's reputation
- an accredited assessor's business practices such as providing quotes and the charging of fees for services
- the BAM itself or its support systems and tools
- the accreditation processes and procedures.

Box 1: Complaints must relate to the BAM

A complaint or feedback about an accredited assessor's work or behaviour should only be made in relation to their work on BAM assessments and reports and their role in the Biodiversity Offsets Scheme (BOS). Other complaints or feedback about an assessor are outside the scope of this policy.

3.2 Common themes of complaints and feedback

The following are common themes relevant to this policy:

- poor quality work, or documentation of work, in relation to field data collection, data analyses or BARs (see Box 2 below)
- repeated poor quality work in relation to field data collection, data analyses or BARs
- lack of, or inappropriate response to reviews of BAM assessments and BARs provided by government agencies (including local councils, the Biodiversity Conservation Trust (BCT) and the Department)
- poor quality control by the accredited assessor and any team members
- conduct inconsistent with the accredited assessors' code of conduct
- changes in status of a fit and proper person
- concerns over false and misleading information.

Box 2: Quality of work in BAM assessments and BARs (Level 2 quality control)

Questions about work quality in BAM assessments and BARs should always be addressed by the government agency approving the report. That agency may seek review from another accredited assessor (including relevant officers in the Department); however, it is the responsibility of the government approval agency to ensure BAM reports meet or preferably exceed minimum standards prior to approval.

The complaints and feedback management policy is focused on receiving feedback about an assessor, usually at the conclusion of a BAM assessment. It is not a reactive process for government decision-makers (including consent authorities) to manage individual assessments. It is expected that government decision-makers will try to resolve any issues that arise during the review of individual BARs.

The relevant government decision-maker should give the assessor time and opportunity to resolve or fix identified matters. If the matter is resolved in a professional manner, a complaint or feedback will not be necessary.

The Assessor Complaints and Feedback form (see section 3.4) highlights the need for the complainant to record what actions they took to resolve any matters.

3.3 Who can provide a complaint or feedback?

The key stakeholders who will be able to provide the information required to support a complaint or feedback are:

- a government decision-maker who has reviewed a BAM assessment and BAR
- clients; that is, people who have contracted an assessor to carry out BAM assessment work
- members of the general public and other consultants may give feedback provided they have the appropriate supporting information
- consultants may provide feedback about a government reviewer who is an accredited assessor.

A person making a complaint/feedback should have first-hand experience of the incident being complained about or be able to provide clear evidence.

Lodging complaints based on reputation or third party comments does not fit the requirements of the process.

Anonymous complaints are not encouraged but will be accepted. Without knowing who the complainant is we are unable to verify or request additional information, which may limit our ability to investigate (refer to section 3.5 for details about privacy).

3.4 Assessor Complaints and Feedback form

The Department encourages the use of the **Assessor Complaints and Feedback form** found on the Department's website.

Verbal complaints or feedback can be made; however, the form will be used to guide the content of any complaints/feedback.

All the information provided must be true, accurate and complete.

When lodging a complaint/feedback the complainant must:

- provide complete and factually correct information
- write complaints in a respectful manner
- not include false or misleading information
- not lodge frivolous, vexatious or malicious complaints.

The complainant must include what steps they have taken to resolve the matter. For example, council officers should include relevant history; or clients reporting unprofessional behaviour should provide any written evidence relating to the matter (e.g. email exchanges, a police report).

3.5 Privacy

The Department handles all information provided in connection with complaints and feedback in accordance with the *Privacy and Personal Information Protection Act 1998*, including keeping complainants' identities confidential. All files and information being used to manage complaints have restricted access within the Department. The Department will not provide the assessor with the name of any complainant.

We will take all reasonable steps to ensure that people making honest complaints are not adversely affected because a complaint has been made by them or on their behalf (OEH 2018a).

4. Complaints/feedback management process

4.1 Roles in the complaints and feedback review process

Complaints and Feedback Administrator

The Complaints and Feedback Administrator (**the Administrator**) oversees and makes process decisions relating to incoming complaints/feedback, case logging, reporting, briefing the Environment Agency Head (EAH) or delegate, and any approval process. The Administrator will not be an accredited person, to avoid any related conflict of interest.

Case manager

The **case manager** prepares any initial review and may coordinate any subsequent steps such as seeking additional information. The case manager will not be an accredited person, to avoid any conflict of interest.

Subject matter experts

Subject matter experts (SMEs) may provide input into the review of any complaint or feedback. An SME may be an accredited assessor in the Department's Biodiversity and Conservation region-based teams, or the wildlife licensing unit, the BioNet data team or the Department's legal team.

Complaints advisory panels (internal)

Complaints advisory panels (CAPs) review cases and make recommendations where the Administrator recommends higher level accreditation actions (see Section 4.6).

A CAP will be an internal three-member panel consisting of the Administrator and two others. It will not include the case manager. Membership of the CAP will include one member with detailed knowledge of the BAM.

Environment Agency Head

The **Environment Agency Head (EAH) (or delegate)** makes decisions about accreditation and will consider any advice provided by the Administrator, the CAP or the accreditation appeal panel. The EAH (or delegate) approves all accreditation actions.

Accreditation appeal panels

Accreditation appeal panels (AAPs) may be convened by the EAH (or delegate) to review accreditation actions when an assessor appeals a decision in relation to varying, suspending or cancelling accreditation. An AAP will only review cases where the appeal is in response to a complaint managed using this policy and is separate to any formal compliance action. The AAP may include up to three people and may include external people. It will include one member with detailed knowledge of the BAM and will not include anyone previously involved in the accreditation action or related cases.

4.2 Generalised steps taken in managing complaints and feedback

The generalised steps in managing complaints and feedback are provided in Table 1.

Each complaint/feedback is considered on a case-by-case basis and may vary from the following steps.

Table 1 Generalised steps in managing complaints and feedback

Step number	Description
0	Complaint/feedback is received by the Department. An email notification is sent to the complainant to acknowledge receipt.
1	Consideration of complaint/feedback to determine if it is within the scope of the policy. If it is out of scope no further action is taken. The complainant will be notified.
2	A case is opened if the complaint/feedback is within the scope of the policy. It is allocated a reference number.
3	An initial review is undertaken to understand the extent of the complaint/feedback. This may include seeking additional information from the complainant to verify or to further understand the context. It may also involve searching online databases.
4	Consideration of the initial review by the Administrator may result in the following outcomes: <ol style="list-style-type: none"> closing the case with no accreditation action required (that is, the complaint is not justified) seeking more detailed additional information to further understand the complexities of the open case (see Step 6). Determining if a case is justified is described in section 4.3.
5	Assessors will be notified of any complaint/feedback relating to them after the initial review. This may include a request for additional information from the assessor (natural justice) (see Step 6).

Step number	Description
6	<p>More detailed additional information sought may include (but is not limited to):</p> <ol style="list-style-type: none"> additional information from the assessor to allow them to provide their perspective on the circumstances of the case further advice from within the Department about the circumstances or matters of the case advice from a subject matter expert (SME) about the application of the BAM legal clarification about matters relating to the fit and proper person criteria or the code of conduct.
7	After receipt of the additional information the Administrator will consider the significance of the case (see section 4.4).
8	<p>After considering the significance of the case, the Administrator will make recommendations about the outcome decisions (findings) of the case (see section 4.5) to the EAH (delegate) and recommend any accreditation actions (see section 4.6). The Administrator may consider referring the case for a formal compliance investigation. The compliance team will then manage the case.</p> <p>If higher/highest level accreditation actions are recommended, the EAH will refer the case to a complaints advisory panel (CAP). The CAP will provide advice to the EAH (delegate) about the case and the proposed accreditation actions.</p>
9	<p>The EAH (delegate) will consider and approve accreditation actions. The Administrator will implement any approved accreditation actions.</p> <p>If required, the EAH (or delegate) will issue a notice of intention to vary, suspend or de-accredit to the assessor in writing, notifying them of any appeal rights (see section 4.7).</p>
10	The case is closed once the accreditation actions are complete.

4.3 Deciding if a complaint/feedback is justified

A justified complaint/feedback is one that relates to an assessor's application of the BAM or their role in applying the BOS, and whether the facts of the matter can be demonstrated.

An example of a justified complaint is one that relates to a non-compliant Biodiversity Development Assessment Report (BDAR) for which a detailed review of the BDAR is presented as evidence. [Note: A relevant government decision-maker should give the assessor time and opportunity to resolve or fix identified matters (see Box 2).]

An example of an unjustified complaint is one where a third party has reported poor quality survey work however no evidence is presented to substantiate the claim.

4.4 Factors used to assess the significance of complaints/feedback

The following factors are used, among others, to assess the significance of the complaint or feedback.

Whether the complaint/feedback involves:

- false or misleading information on an accreditation application or renewal form, and whether it was knowingly provided
- false or misleading information on a biodiversity assessment report, and whether it was knowingly provided
- false or misleading information that caused an incorrect consent authority decision

- a breach of the accredited assessor scheme, i.e. conditions or requirements of accreditation; compliance with the code of conduct; not carrying out assessments in accordance with the BAM; or whether the alleged breach was accidental, careless or deliberate.

In addition, the following are considered:

- the possible impact of the alleged non-compliant behaviour; for example, the impact on the integrity of the BOS, correct decisions or BAM calculations, or direct environmental impact
- whether multiple reports/feedback have been received and verified from different sources about the same incident or the same assessor
- whether multiple complaints/feedback have been received about the same type of repeated mistake by the same assessor, particularly if they have previously been sent an official reminder letter about that same issue
- whether there are other factors, e.g. acting contrary to Department advice, or records of previous non-compliances with the BC Act or BOS.

Note: 'Closed' cases may be taken into consideration when considering the significance of a new case where a complaint is received about the same assessor.

4.5 Complaint/feedback outcome decisions (findings)

There are three possible outcome decisions for complaint/feedback cases:

1. Complaint not justified – no accreditation action required.
For example: there is no suitable evidence to demonstrate inappropriate conduct or poor quality work in relation to an assessor's work in applying the BAM.
2. Complaint justified – accreditation actions required.
For example: the complaint relates to demonstrated inappropriate conduct, or ongoing poor quality work with the intention of circumventing approval processes, by repeating the same mistake even after an official reminder letter or support has been given.
3. Complaint justified – matter to be referred for a formal compliance review.

4.6 Standard accreditation actions

The following is a list of standard accreditation actions. One or more actions can be applied, and this is determined on a case-by-case basis. The EAH (or delegate) may require additional actions (not listed here), dependant on the details of individual cases.

Minimum level accreditation actions

Minimum level accreditation actions are used to provide a record for future investigation or provide intelligence for the broader management of the BOS.

Accreditation action	Further information
Record in complaints/feedback database and make available to the audit team	The Department will hold a register where complaints/feedback are recorded and available for the audit team. Only those that are considered in scope and where a case is open and justified will be included.

Moderate level accreditation actions

Moderate level accreditation actions are most likely to be used in response to multiple complaints about BAM assessments and reports.

Accreditation action	Further information
Monitor BAM activity for quarterly reporting	Assessors may be added to the monitoring list for their BAM work.
Send an official reminder letter	These identify BAM-related issues and advise the assessor about how to manage the issue in the future.
Arrange face-to-face meetings to discuss BAM assessment or behaviour issues	These provide an opportunity for the assessor to put forward more detail about the context of the complaint.
Offer voluntary attendance at additional BAM-related training	As an outcome of a face-to-face meeting, an assessor may be offered one-on-one training where complaints relate to similar issues or mistakes by the same assessor.
Offer voluntary submission of BARs for detailed audit	As an outcome of a face-to-face meeting, an assessor may demonstrate compliance through submission of BARs for audit.

Higher level accreditation actions

Higher level accreditation actions are most likely to be used in response to more serious matters where an assessor appears to be knowingly providing poor quality or non-compliant work.

Accreditation action	Further information
Vary accreditation	Additional conditions may be placed on accreditation. An example might be the compulsory requirement to submit several BARs for compliance checks.
Suspend accreditation	Accreditation will be placed on hold pending the fulfilment of a set requirement or the passing of a set of circumstances. Examples might be the compulsory provision of field data or the conclusion of a court case relating to fit and proper person provisions.

Highest level accreditation actions

Accreditation action	Further information
Cancel accreditation	Accreditation of the assessor will be revoked.

4.7 Appeal rights

An accredited assessor can appeal any accreditation action that involves varying, suspending or cancelling their accreditation.

An accredited assessor will be notified in writing if this type of accreditation action is to occur, and the assessor will have 21 days to respond.

The EAH (or delegate) will convene an accreditation appeal panel (AAP) to review the initial evidence, any additional information gathered, and any submission received from the assessor in response to a notice to vary, suspend or cancel their accreditation.

The AAP will provide advice to the EAH (or delegate) in relation to the appropriateness of the accreditation action placed on the accredited assessor.

The EAH (or delegate) will make a final decision taking into consideration the recommendations of the AAP, and will respond in writing to the assessor.

5. What to expect from the Department

The Department manages complaints regarding accredited assessors as promptly as possible. Management of such complaints is done in line with this policy and associated internal standard procedures.

5.1 Process timelines

The Department will send an acknowledgment letter within five business days of receipt to the person who submitted a complaint or provided feedback.

The Department will review and assess accredited assessor complaints within 60 business days of initial receipt provided the issue is straightforward and well documented. Times will vary, to ensure procedural fairness.

Depending on the nature and complexity of the complaint, it may not be possible to conclude investigations and provide approval for any accreditation outcome within 60 days. For example, if additional information needs to be sought, or specific accreditation actions must be completed, the timeline will be extended.

5.2 Notification of complaint/feedback decision to the complainant

When the outcome of the accredited assessor complaint is approved the complainant will receive correspondence with a summary, including the final decision on the complaint and any accreditation action to be taken.

5.3 Accredited assessors made aware of complaints against them

An assessor will be notified of any complaints against them that are within the scope of the policy, and will be given the opportunity to respond. The nature of the complaint will be outlined to the assessor, but the details of the person who made the complaint will not be disclosed to them.

The Department does not consider it appropriate to notify an assessor about complaints that are out of scope, as this may cause undue stress. These matters will not be available to the auditors and will not reflect on the assessor.

5.4 Complaint withdrawal process

If the complainant wishes to withdraw a complaint, they can request this by contacting the Department.

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