



Environment Institute
of Australia and
New Zealand Inc.

30 August 2024

John Seidel
Director, Assurance & Biodiversity Stewardship
Nature Markets and Offsets
NSW Department of Climate Change, Energy, the Environment and Water

Dear Mr Seidel,

Thank you for the opportunity for the Environment Institute of Australia and New Zealand (EIANZ) to provide feedback on the Department's consultation draft, 'Ensuring compliance with the Code of Conduct (the Code) for Accredited Assessors'.

EIANZ supports the Biodiversity Offsets Scheme (BOS) and is committed to assisting the Department to make it run smoothly and efficiently for all stakeholders. As ecologists and environment professionals, our members and Accredited Assessors care deeply about the scheme's outcomes.

EIANZ's Biodiversity Offsets Community of Practice (CoP) appreciates the early engagement by the Department on the additional framework surrounding Code of Practice, which has allowed us to develop some detailed feedback on the draft Code in the attached document (**Attachment A**). The CoP currently represents approximately 85 accredited assessors within their respective companies – approximately 30% of the ~300 registered consultant AAs. We have provided more information about the group's vision and objectives below (**Attachment B**).

EIANZ is eager to collaborate with the Department to further improve the BOS and the training of all stakeholders, and so we would like to request a meeting to discuss the Code further. We would also be interested in discussing potential improvements to proposed changes to the *Biodiversity Conservation Act*.

EIANZ is supportive of strengthening the Code, which seeks to facilitate best practice within the BOS. Without the benefit of understanding the full context, the email of this revised code has generated some strong responses from our group, with members feeling unduly criticised by the tone and scope of some of the examples provided. However, we do understand there may be isolated examples of questionable conduct, and we welcome any means of strengthening of the Code to ensure all parties better understand expectations.

We provide the following high-level feedback, with a more detailed response in **Attachment A** on how the draft might be improved. **Our high-level feedback is as follows:**

1. The Code's overarching purpose requires additional clarification. Examples of non-compliance and additional points do not always clarify the intent of the Code of Conduct requirement. The Code should outline clear processes (such as dispute resolution) that will be in place to report, investigate or respond to perceived breaches of its guidelines. This will avoid confusion and ensure the Code can be used productively by all stakeholders.
2. We recommend the Code also include a process for how to approach matters that do not easily fit within existing guidelines or where following guidelines would produce perverse outcomes – given the complexity of ecology, these instances are highly likely to occur.

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3. In its current form, we are concerned that the language in the draft allows for a high degree of subjectivity, making breaches difficult to defend or prove. For example, the Code lists as an instance of non-compliance: 'providing professional advice on biodiversity assessments with no or insufficient justification or evidence'. Terms such as 'insufficient' should be clarified here to ensure the integrity of the Code.
4. We recommend the Code's language be reframed – rather than providing examples of non-compliance, we recommend providing clear examples of best practice and outlining in specific terms what assessors need to do to ensure compliance. This will assist with clarity and will also ensure the Code is as constructive as possible.
5. We require further guidance from the Department on determining perceived or actual conflicts of interest, how these should be managed (for example with a declaration register), and how they are managed by the Department itself. We believe this topic is the most significant risk to the integrity of the scheme and needs more explanation and training for all users of the BOS.
6. We note the Code's references to the importance of providing consistent advice and note that our group's members have found this difficult due to regularly changing guidelines and inconsistent advice from the Department. To resolve this issue, we recommend a collaborative and consultative process for developing guidelines prior to their release, with sufficient time allowed for feedback from accredited assessors.
7. We would like to see the Code apply to all BOS stakeholders to ensure fairness and transparency. For example, the Code should include guidelines for Nature Markets and Offsets assessors as well as accredited assessors.
8. Financial arrangements between assessors and clients are outside the scope of the Code and these references should be removed.
9. We seek further guidance on how to educate clients on the BOS process as EIANZ would be happy to assist or facilitate this.

We have attached an annotated version of the Draft Code to this letter with our detailed comments on specific items.

As discussed above, we are supportive of the Department producing the additional framework surrounding Code of Practice, however, as noted in our correspondence of February 2024, we feel there are several matters requiring more immediate attention. These include the Public Registers (we note the issue of an RFI which this group has made comment on), survey guidelines and inconsistent interpretations of the BAM by Agencies, and species credit classifications or methods to define species polygons (which we have provided specific detail on following our meeting in May 2024).

As noted, we would be pleased to meet with the Department to discuss our feedback further at a time convenient to you. We look forward to hearing from you.

Best regards,



Lucas McKinnon
Accredited Assessor number 17012
Chair
EIANZ Biodiversity Offsets Community of Practice



Kevin Roberts
Accredited Assessor number 17075
President
EIANZ NSW Division

Declaration

EIANZ's Biodiversity Offsets Community of Practice includes accredited assessors who regularly interact with the Department about the Scheme, have worked in Department, and in some cases interact on other matters. Members of our group have been subject to audit by the Department.



Attachment A

Ensuring compliance with the code of conduct for accredited assessors – consultation draft July 2024

The Department of Climate Change, Energy, Environment and Water (DCCEEW) has commenced work to strengthen the framework for accredited assessors under the Biodiversity Offset Scheme (BOS). Accredited assessors have a critical role in applying the biodiversity assessment method and preparing biodiversity assessment reports (BARs). In carrying out this role, it is crucial that accredited assessors understand and comply with each requirement of the Code of Conduct for accredited assessors. To help increase understanding of expectations, this document provides examples of behaviour that is non-compliant with the Code of Conduct. DCCEEW will use this in communicating expectations for accredited assessors and to improve responsiveness to complaints about accredited assessors.

Code of conduct requirement	Examples of non-compliance	Additional points	EIANZ Feedback
Comply with the conditions of accreditation	<ul style="list-style-type: none"> Note: EIANZ has provided suggestions for how this column might be reframed, as mentioned in our cover letter. Not <u>Always</u> following survey and assessment guidelines issued by the Department <u>where available and formally adopted</u> Not <u>Ensure timely submission of</u> ting BioNet records in accordance with your Scientific Licence 	<ul style="list-style-type: none"> Stay up to date on current survey and assessment guidelines (through BOS webinars and newsletters) Attend renewal training and actively maintain your continual professional development 	<ul style="list-style-type: none"> Some distinction could be made here between Statutory guidelines and other adopted guidelines/policies. It should also be made clear that some guidelines conflict with others and may be subject to interpretation. There should be a clear process outlined for instances where guidelines conflict with each other or where there is disagreement between stakeholders as to whether guidelines have been followed. We recommend a collaborative and consultative process for developing guidelines prior to their release with an appropriate time allowed for response, to ensure guidelines are based on accurate information, and to minimise potential for disagreement over their interpretation. Guidelines are generally focused on development sites and adequate survey to determine 'absence'. These guidelines are therefore not always relevant when determining 'presence'. We recommend providing links in the Code of Conduct to any external material referenced, such as a link to a webpage where all BOS webinars and newsletters/updates are stored. We suggest Scientific Licence requirements are outside the scope of the BOS. This reference should either be removed or clarified.

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Code of conduct requirement	Examples of non-compliance	Additional points	EIANZ Feedback
Notify the department in writing of any change circumstances affecting the fit and proper declaration submitted with an accreditation application	<ul style="list-style-type: none"> • Not informing the Department if you are declared bankrupt or your organisation has gone into administration • Not informing the Department if found to be dishonest or corrupt in a court of law 	<ul style="list-style-type: none"> • Ensure you understand the fit and proper person test and notify the department in writing of any changed circumstances 	<ul style="list-style-type: none"> • We recommend including a link to the fit and proper person test here for clarity and ease of reference. • We recommend expanding on the examples here – for example, would disqualification as a director or an adverse outcome of an inquiry affect the fit and proper person declaration?
Maintain high standards of professional conduct when providing independent, consistent and objective advice based on adequate knowledge	<ul style="list-style-type: none"> • Not providing independent, consistent and objective advice (eg prioritising a client's interests) • Always providing justification or evidence for professional advice on biodiversity assessments with no or insufficient justification or evidence 	<ul style="list-style-type: none"> • Consider yourself as independent of your client rather than representing your client • Always support your advice with scientific or survey information, references, or factually based information 	<ul style="list-style-type: none"> • EIANZ members agree to a Code of Ethics and Professional Conduct. We have attached this to our submission for your reference (Attachment C). • Phrases such as 'insufficient justification or evidence' are overly subjective and should be clarified. • We would like to see this clause explicitly applied to all BOS stakeholders.
Provide a truthful opinion on any matter submitted to them for advice or opinion, not give false or misleading information or statements and not conceal or omit information on any relevant conservation, market, environmental or scientific matter	<ul style="list-style-type: none"> • Not including justification to support BARs or other work undertaken as an accredited assessor • Providing false or misleading information (eg omit recording a threatened species found on a development site) • Not providing sufficient information to clients on biodiversity assessment to allow informed decisions and understand risks and issues 	<ul style="list-style-type: none"> • Consider yourself as independent of your client rather than representing your client • Be open to seeking advice if you do not have sufficient knowledge • Accredited assessors are not expected to be market experts and should refer clients to the BOS website for information on how to meet offset obligations 	<ul style="list-style-type: none"> • We suggest independence from clients is covered by the row above and does not need to be repeated here. • As above, 'justification' and 'sufficient' are subjective terms and need further clarification. • The meaning of the reference to 'market experts' is unclear here. Part of the role of accredited assessors is to provide guidance to clients on the BOS. • We are concerned that the information provided on the BOS website is not sufficient to assist with an understanding of how to meet offset obligations or to commercially engage in the market as an offset provider. This is the role of AAs, acknowledging that level of experience in this regard is not captured solely by virtue of being accredited. • We recommend providing a link to the relevant webpage here.

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Code of conduct requirement	Examples of non-compliance	Additional points	EIANZ Feedback
			<ul style="list-style-type: none"> Some modification to public registers or a tiered approach to accreditation may assist stakeholders to have confidence in advice on the BOS from AAs.
<p>Not state a fact to support a client that will not be capable of support by available data</p>	<ul style="list-style-type: none"> Including statements in a BAR not supported by evidence, factual data or scientific references 	<ul style="list-style-type: none"> Consider yourself as independent of your client rather than representing your client Provide sufficient justification for your advice Maintain records of your surveys and assessments for at least ten years after certification of the BAR 	<ul style="list-style-type: none"> As above – independence from clients has been covered earlier. This clause should include allowance for instances where there is uncertainty – for example, ‘Provide data wherever available, or where uncertainty exists provide a clear explanation of why you have provided certain advice’.
<p>Convey accurately to the client your formal qualifications, expertise and experience and not mislead or omit information</p>	<ul style="list-style-type: none"> Providing clients with incomplete information Providing insufficient scope to the project brief resulting in the client incurring additional costs and delays Not providing information to clients on surveys, timing, costs, species presence that may affect the assessment or increase the cost of offsetting 	<ul style="list-style-type: none"> Provide your qualifications to your clients Explain your experience and skills, including any limitations that may be material Be open if you do not know and suggest additional advice or expertise is obtained Provide clients with a clear scope of work, what is not included and identify risks for the client to consider Provide a scope of work that covers full delivery (to acceptance of the BAR by the decision maker) 	<ul style="list-style-type: none"> We suggest this clause should be applied to all BOS stakeholders. As accreditation requires formal qualifications to be assessed, a requirement to provide qualifications does not need to be stated here. Inaccurate scoping of a project is not necessarily misleading or omitting information. As such, the examples provided do not appear to fit the CoC requirement. It can be difficult to scope proposals, and it has been our experience that the inconsistency and regularity of change of the guidelines is what make it difficult to provide an accurate scope to clients. This could be addressed by engaging in a consultation process as suggested above. Ultimately, the onus should also be on the Department to provide guidelines that facilitate providing sufficient scope to a project brief. Providing a scope of work that covers the full delivery to acceptance by the decision maker is very difficult to do, given inconsistency between decision makers. For example, one group member has experienced an instance where one branch of BCD provided 5 dot

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			<p>point comments on a BDAR, while another branch provided 2 rounds of comments (17 pages, 26 pages) on another, both prepared by the same AA. Work to resolve these inconsistencies will help to better scope to acceptance.</p> <ul style="list-style-type: none"> This Code of Conduct requirement should not be relevant to the commercial arrangements between a consultant and their client.
Operate within the fields of their competence and engage with additional and appropriate expertise when required	<ul style="list-style-type: none"> Undertaking survey or assessments in geographical locations in which you are unfamiliar with ecology Undertaking survey or assessment of species which you do not have sufficient knowledge or experience Undertaking large complex projects without the expertise or experience 	<ul style="list-style-type: none"> Know your strengths, weaknesses and knowledge gaps as BAM accredited assessor and ecologist Be clear if you are asked to provide advice outside of your expertise or experience Partner with other assessors, ecologists or land managers that have the expertise needed and build your own experience over time Engage in professional development opportunities 	<ul style="list-style-type: none"> Ecological consultants have always had to operate and adapt to working outside their specific areas of expertise. We do this while acknowledging limitations and constraints (there are not enough specialists to cover the complexity of organisms we need to survey for and understand impacts on). Application of correct scientific process acknowledging limitations/constraints will provide transparency around this. As above, we suggest this clause should apply to all Scheme stakeholders, including NMO assessors. No individual can be expert in every topic, so transparency and acknowledging limits of knowledge is key to ensuring the Scheme functions as productively as possible.
Ensure that staff and/or contractors completing tasks under their directive are operating within their competencies	<ul style="list-style-type: none"> Using Ensure data collected by another person who does not have has appropriate expertise to collect that data, sufficient knowledge or experience 	<ul style="list-style-type: none"> Satisfy yourself about all the data that is collected for a project by others If you are not sure about data do not use it 	<ul style="list-style-type: none"> Another option is to determine a way in which you can be satisfied with the data, for example third party verification.
Not to undertake professional activities in a manner involving dishonesty, fraud, deceit, misrepresentation or bias	<ul style="list-style-type: none"> Providing incomplete BARs where the missing information could bias or misrepresent the work, project or site Providing clients with an insufficient scope of work or being selective in the information you provide that misrepresents the work needed to assess the project or site 	<ul style="list-style-type: none"> Make sure your clients know the expected full cost of assessment and options available at the time of fee preparation. And that it may be subject to change Always prepare quotes for clients based on the cost of applying the BAM and associated guidance 	<ul style="list-style-type: none"> These examples of non-compliance are not necessarily related to dishonesty, fraud, deception, bias or misrepresentation. As above – the ability to provide sufficient scope of work is compromised by inconsistency in the Department's requirements and changing guidelines.

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	<ul style="list-style-type: none"> Take inconsistent approaches to assessment on development and BSA sites to benefit clients Seek any form of payment from a client based on biodiversity credits you have been involved in assessing or obtaining approvals 		<ul style="list-style-type: none"> Commercial arrangements between AAs and clients would be more appropriately addressed in this Code through management of Conflicts of Interest. Standard contractual arrangement are largely outside the scope of this Code (and covered by other areas of this document). Members of our Community of Practice have received inconsistent advice between reviewers on BSAs, and advice that is contrary to the BAM and associated guidelines, due to either interpretation, inexperience or high turnover of personnel in the Department. As above, we suggest this clause apply to all Scheme stakeholders. This also needs to apply to consent authorities/NMO with regards to the application of the precautionary principle, e.g. in relation to identification of TECs - PCTs at an impact site will generally be identified as the associated TEC but within a stewardship site the burden of proof to 'justify' the TEC is much greater.
<p>Not advertise or conduct themselves in a manner that will bring disrepute to the Biodiversity Offsets Scheme or the Minister</p>	<ul style="list-style-type: none"> Criticise the BOS or components of the BOS (eg the BAM) either publicly or to clients Acting in a threatening or intimidating manner when interacting with government staff or clients 	<ul style="list-style-type: none"> Suggest improvements to the BOS, BAM, survey or assessment guidelines to the Department via accepted channels (eg BOS Help Desk) 	<ul style="list-style-type: none"> Ideally, public criticism of the BOS is not necessary because there is an open channel for EIANZ and individuals to discuss concerns and receive timely feedback. This has not always been the case in our experience. We are concerned that this clause could compromise our ability to provide advice to our clients. We must be allowed to have honest and frank discussions with clients. An appropriate dispute resolution process is required for instances where there is disagreement between an AA and the Scheme. We suggest implementing a consultative panel to avoid constant back and forth and iterations of the reports.

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Not act in circumstances where there is actual, perceived, or potential conflict of interest	<ul style="list-style-type: none"> • Operate as a broker in relation to credits you have been involved in creating or assessing • Not avoiding a conflict of interest (eg assessing or surveying land owned by a friend or family member or a business interest) 	<ul style="list-style-type: none"> • Seek independent advice (eg from a probity consultant) • Take action to avoid circumstances that create the actual, perceived or potential conflict of interest advice Recognise, address and avoid conflicts related to business interests within your organisation 	<ul style="list-style-type: none"> • 'Broker' needs defining here and various scenarios explained. • We would like to see more clarity on how a 'perceived' conflict of interest is determined and suggest more examples be provided. • We also seek more guidance on how to manage such conflicts as well as a clear outline of how the Department itself manages conflicts. • Guidance is needed on management of conflicts involving stakeholders other than AAs, including government operations and businesses that carry out work that may influence or have access to market information that the public do not have.
Cooperate with and provide the necessary and requested information to the Environment Agency Head during an audit or when otherwise requested	<ul style="list-style-type: none"> • Be argumentative or aggressive when responding to a request to provide information about work you have undertaken as an accredited assessor • Ignoring or not responding to requests for information within a reasonable timeframe 	<ul style="list-style-type: none"> • Always be professional in dealing with the Department or consent authorities 	<ul style="list-style-type: none"> • We support the need to provide requested information. • As above, we recommend this clause be applied to all BOS stakeholders including Departmental staff and NMO assessors. For context, members of group have waited as long as 6 weeks or more for data from the Department, and AAs who approach the Department for advice/approval of survey plans for large projects/BSAs or specific species often wait months for a response. Similarly, requests for consultation often go weeks or months without any acknowledgement of receipt or response from the Department.
Maintain ecological or equivalent fieldwork skills and maintain a truthful written record of continuing professional development (CPD) during the period of accreditation.	<ul style="list-style-type: none"> • Not maintaining your CPD log by updating it after each event • Not carrying out fieldwork at sufficient frequency to maintain ecological skills • 	<ul style="list-style-type: none"> • Read assessor newsletters to stay up to date on survey and assessment guidelines • Attend relevant webinars, workshops and conferences • Undertake field work at least annually • Be familiar with BAM-C and BOAMS • Keep your CPD log to date 	<ul style="list-style-type: none"> • We seek more clarity on what type of training is needed. • While good practice, there is no requirement to update a CPD log after each event. We do not see this as a form of non-compliance. • Training is industry-led but we would like to see the Department provide additional training also. Webinars are useful, but not

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			interactive. An annual in person debrief on changes to the BOS and Accreditation may be more useful than tri-annual weeklong training events.

EIANZ additional comments

As we have indicated above, we would like to see a Code of Conduct for other BOS stakeholders such as NMO assessors. This Code would include clauses such as:

1. Respond within a set timeframe to requests for consultation/advice on survey plan
2. Publish all guidelines and survey approaches, including for prescribed impacts and remove ambiguity around survey requirements for numerous species
3. Transparency around assessment process - publish the standards against which a BAR is assessed.
4. Engage people with sufficient experience and knowledge to perform the role of assessor.
5. Actively recruit species experts for commonly sought species.

Attachment B: About the EIANZ Biodiversity Offsets Community of Practice

- **Vision:** To maintain and improve standards regarding biodiversity offsets schemes by working collaboratively with policy makers to ensure that these schemes deliver practicable and robust outcomes.
- **Mission:** Establish a group of highly qualified ecological professionals to enhance and elevate the role of biodiversity offsets as an effective tool for managing impacts from development on biodiversity values.
- **Membership:** Currently experienced NSW biodiversity offset scheme (BOS) accredited assessors (AAs) or someone who brings specific useful knowledge to the group, but it is expected that this will expand over time to include those from other jurisdictions. The group will also collaborate with other parts of EIANZ, in particular the Ecology SIS, and with other areas of EIANZ, and areas of expertise where appropriate. The community of practice sits under the EIANZ Ecology Special Interest Section.



EIANZ CODE OF ETHICS & PROFESSIONAL CONDUCT

Compliance with this Code of Ethics and Professional Conduct is central to sound environmental practice and the credibility of the profession, and is required for persons who are members of the EIANZ and also for Certified Environmental Practitioners.

Environmental practitioners are committed to practice in accordance with this Code of Ethics and Professional Conduct, and accept personal accountability for professional conduct.

Environmental practitioners acknowledge and value the rights and interests of Indigenous Peoples* in the protection and management of environmental values through their involvement in decisions and processes, and the application of traditional Indigenous knowledge.

* the term 'Indigenous Peoples' includes First Nations, First Peoples, Aboriginal, Torres Strait Islander, tangata whenua (Māori and Moriori).

This Code commits environmental practitioners to:

PROMOTE ENVIRONMENTAL PRINCIPLES

- (a) Advocate the integrity of the cultural and natural environments, and the health, safety, values, and welfare of human communities and future generations as being central to environmental practice;
- (b) Advocate the protection of environmental values and the mitigation of environmental harm, using a multiple evidence base, that draws on science, Indigenous, and community knowledge;
- (c) Advocate and undertake environmental practice in accordance with principles of environmental stewardship, resilience and sustainability, with a view to achieving no net loss of environmental values and preferably a net gain, and to an appropriate standard.

DEMONSTRATE INTEGRITY

- (a) Be honest and trustworthy, avoid misrepresentation or obfuscation, distinguish between fact and opinion, and state opinions which are honestly held;
- (b) Respect obligations of confidentiality and privacy;
- (c) Be objective, seek peer review and other quality assurance of work as appropriate, and accept as well as give honest and fair criticism when required;
- (d) Avoid or manage conflicts of interest, and make all relevant parties aware when there is such a conflict.

REPRESENT AND PROMOTE THE PROFESSION

- (a) Promote and provide leadership in the adoption of high standards of environmental practice;
- (b) Contribute to the development and maintenance of knowledge about environmental practice and standards of professional competence;
- (c) Support others in their development as environmental practitioners;
- (d) Do not advertise or represent services, or those of another, in a manner that may bring discredit to the profession.

PRACTICE COMPETENTLY

- (a) Provide services at an appropriate standard as required to achieve or foster optimal environmental outcomes;
- (b) Only practice and offer services in functional areas and specialisations in which one is appropriately qualified, experienced and competent;
- (c) Comply with all applicable governing laws and statutory requirements, and actively discourage non-compliance by others;
- (d) Promote the involvement of Indigenous Peoples, stakeholders and the community in decisions and processes that may impact on environmental values;
- (e) Respect the contribution of other professionals and collaborate in multi-disciplinary approaches;
- (f) Be diligent in practice, providing accurate, up-to-date, objective, impartial and unbiased advice;
- (g) Acknowledge data and information sourced from others, and be accountable for data collected, analyses performed and conclusions drawn or plans developed as part of an assignment;
- (h) Be prepared to explain work and conclusions drawn, and provide the evidence on which the work is based;
- (i) Continuously update and develop skills through relevant professional development as a basis for competent practice.