

Queensland Government response to the **Statutory Review of the *Biodiscovery Act 2004***

April 2018



**Queensland
Government**

Front cover

Top row:

Left: Freehand traverse section of fresh leaf of *Panicum pygmaeum* showing unique vascular bundle configuration.

Photo © John Thompson, Queensland Herbarium

Right: Elizabeth Springs (Galilee Basin) like all Great Artesian Basin springs, are threatened by water extraction and feral animals. Elizabeth Springs is in the heart of the Desert Uplands bioregion. Photo © Adam Kereszy, Queensland Herbarium

Middle row:

Left: *Nelumbo nucifera*, lotus—an important food resource for Aboriginal people. Photo © Gordon Guymer, Queensland Herbarium

Right: *Acacia wickhami*, Petford area in the Einasleigh Uplands. Photo © KR McDonald, Queensland Herbarium

Bottom row:

Left: Pandanus Station waterhole in Far North Queensland, part of the Gulf Plains Bioregion, one of Queensland's 13 bioregions being mapped by the Queensland Herbarium. Photo © Chris Appelman, Queensland Herbarium

Right: *Grevillea robusta*, silky oak, South-East Queensland. Photo © Gordon Guymer, Queensland Herbarium

Back cover:

Top row:

Left: *Lichenostomus penicillatus* (White-plumed honey eater) Aqua Downs. Photo © Dan Ferguson, Queensland Herbarium

Right: Mangrove site, Short Island. Photo © Megan Prace, Queensland Herbarium

Middle row:

Left: Narrow-leaved gum, *Eucalyptus seeana*, grows to 40 m with smooth white or grey bark which sheds in large flakes and is a koala food tree. This tree was photographed in the Tingalpa Bushland Reserve. Photo © Glenn Leiper, Queensland Herbarium

Right: Great Barrier Reef, Photo © Queensland Tourism

Bottom row:

Left: The Northwest Highlands is a bioregion characterised by the spectacular exposure of ancient rock. This escarpment is at the edge of a sandstone plateau that is 1.5 billion years old. Photo © Dan Kelman, Queensland Herbarium

Right: Cracking clay, Diamantina River Channel. Photo © Queensland Herbarium

Prepared by: Science Policy and Evaluation Services, Department of Environment and Science © State of Queensland, 2017

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Foreword



Biodiscovery, being the collection and analysis of native biological material and the commercialisation of its products, makes a valuable contribution to the State's economy. The *Biodiscovery Act 2004* (the Act) regulates the take and use of native biological material on or in State land or Queensland waters for biodiscovery, and ensures any benefits arising from the discovery are shared in a fair and equitable way.

The Queensland Government is committed to stimulating and streamlining biodiscovery in Queensland, encouraging investment in the State's economy and improving opportunities for the communities in which the native biological material is taken.

A statutory review of the Act (the Review) was undertaken by Thomson Geer Lawyers in accordance with Terms of Reference set by the Queensland Government. The Review was informed by written submissions and face to face discussions with representatives from industry, biodiscovery entities, research institutions, Aboriginal and Torres Strait Islander groups and relevant government departments.

The Review contains 45 recommendations made in response to the Terms of Reference. The Queensland Government agrees with the majority (30) of the

recommendations contained in the Review. Those which the Queensland Government agree in principle to typically require further investigation, analysis and consultation with stakeholders.

About 15 recommendations relate primarily to Aboriginal and Torres Strait Islander peoples' land and knowledge. The Queensland Government is committed to consulting and negotiating with Aboriginal and Torres Strait Islander peoples about these recommendations. This commitment is reflected in the government response, which is that the Queensland Government agrees in principle, subject to further detailed policy analysis involving Aboriginal and Torres Strait Islander peoples.

The following information summarises the Queensland Government's response to each recommendation. Two recommendations (21 and 23) were identified as critical by industry and have already been implemented through a recent amendment to the Act. The recommendations comprise an important component and significant starting point for broader reform of the Act, to position Queensland as the preferred location for undertaking biodiscovery in Australia.

Honourable Leeanne Enoch MP

Minister for Environment and the Great Barrier Reef,
Minister for Science and
Minister for the Arts

Introduction

When the *Biodiscovery Act 2004* (the Act) commenced in 2004 following Commonwealth ratification of the international Convention on Biological Diversity (CBD), Queensland was the first jurisdiction to introduce best-practice biodiscovery legislation, which was important for attracting natural products research to the State. The CBD seeks to ensure the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the utilisation of genetic resources.

The Act regulates the take of native biological material on or in state land or Queensland waters for biodiscovery, and ensures any benefits arising from use are shared in a fair and equitable way. Queensland's strong position in biodiscovery is attributable to its unique biodiversity, its world-class research and commercialisation capabilities, and its commitment to efficient and effective regulation. The Department of Environment and Science regulates biodiscovery in Queensland.

In accordance with the requirements of the Act, an initial review was undertaken in 2009 (the 2009 Review). The 2009 Review considered whether the provisions of the Act were appropriate. It concluded that the legislation had achieved its purpose within that five-year period and that no amendments were necessary.

The 2009 Review also recommended that international developments with respect to biodiscovery and benefit-sharing models be monitored, the application of the Act to educational and training institutions be clarified, and that a further review of the Act should be undertaken to address international, national and industry development. As part of its response to the 2009 Review and recommendations, the Queensland Government agreed it would review the Act again in another five years.

Following the 2009 Review, a supplementary agreement to the CBD was adopted in 2010—the *Nagoya Protocol on Access to Genetic Resources and*

the Fair and Equitable Sharing of Benefits Arising from their Utilization (the Nagoya Protocol). Australia signed the Nagoya Protocol in 2012, committing Queensland to promote and safeguard the fair and equitable sharing of benefits arising from the utilisation of Queensland's genetic resources, including traditional knowledge associated with those resources. The Nagoya Protocol commenced in 2014, ten years after Queensland's Act commenced.

These matters were a key consideration for the Queensland Government in determining the Terms of Reference (TOR) for this statutory review of the Act (the Review). The TOR were compiled by a Government Reference Group (GRG) comprising representatives from 11 Queensland Government departments involved in the regulation and administration of the Act.

The TOR (Appendix 1) included examination of the Purpose of the Act, Operation of the Act, Regulatory Burden, Interface with Other Systems and Changes to the Legislation.

What is biodiscovery?



The *Biodiscovery Act 2004* regulates the take and use of native biological material from State land or in Queensland waters for the purpose of biodiscovery.

Biodiscovery under the Act is the collection of small quantities of native biological material and the subsequent analysis of the molecular, biochemical and/or genetic properties of the native biological material for commercial purposes (e.g. developing sunscreen, insecticide, food or pharmaceuticals).

Outcomes of the Review

The Review was undertaken in accordance with the TOR set by the Queensland Government. The Review comprises a broad scale analysis of the Act, taking into account the conclusions and recommendations of the 2009 Review, written submissions and face to face discussions with representatives from industry, biodiscovery entities, research institutions, Aboriginal and Torres Strait Islander groups and relevant government departments.

The Review contains 45 recommendations, which are set out in Appendix 2. The recommendations can be summarised under the following headings:

- 1. Purpose of the Act:** consider changes to key definitions including, but not limited to, biodiscovery, commercialisation, native biological material and native biological resource.
- 2. Compliance with the Act:** re-evaluate the compliance framework relating to the administration of collection authorities, biodiscovery plans and Benefit Sharing Agreements (BSAs).
- 3. Traditional knowledge:** consider incorporating the use of traditional knowledge and provisions relating to access to Aboriginal and Torres Strait Islander peoples' land.
- 4. Land tenure:** do not consider expanding the scope of the Act to cover native biological material collected on private land. However, private landowners may benefit from some guidance in relation to access and benefit-sharing.
- 5. Nagoya Protocol:** work with the Commonwealth Government to develop a nationally consistent approach to access and benefit sharing in relation to the Nagoya Protocol.
- 6. Licensing framework for benefit sharing:** amend the Act to allow a head biodiscovery entity to enter into its own contractual arrangements with subsequent users of biodiscovery, without the need for subsequent users to have a BSA with the State.

The Queensland Government agrees in full with the majority (30) of the recommendations contained in the Review. The remaining (15) recommendations relate primarily to Aboriginal and Torres Strait Islander peoples' land and knowledge. The Queensland Government is committed to consulting and negotiating with Aboriginal and Torres Strait Islander peoples about these recommendations.

Those recommendations that the Queensland Government agree in principle to require further investigation, analysis and consultation to properly understand the potential effects.

Progress has already been made on responding to stakeholder feedback and implementing two recommendations relating to the provision of a licensing framework for benefit sharing that is more consistent with typical commercial arrangements.



Moving forward

The Queensland Government is committed to best practice regulation of biodiscovery to ensure the take and use of native biological material is appropriately regulated, and biodiscovery entities are able to compete in the global market. Continual improvement of the biodiscovery framework will position Queensland as the preferred location for undertaking biodiscovery in Australia.

To ensure that any potential shift in the policy direction underpinning the Act is evidence-based and consistent with the aspirations of the Queensland Government and key stakeholders, reform of the Act will be undertaken in consultation and negotiation with stakeholders. This includes industry, biodiscovery entities, research institutions, Aboriginal and Torres Strait Islander peoples and other government jurisdictions.

The recommendations contained in the Review will be addressed through detailed policy analysis focussed on the following priority topics:

- Recognition of the importance and rights of Aboriginal and Torres Strait Islander peoples with respect to their traditional knowledge and the collection of native biological material from their land.
- Consideration of issues relating to land tenure and tenure entitlements.
- Opportunities to streamline (and potentially simplify) the regulatory framework.
- Clarification and refinement of key definitions within the Act, particularly the definition of biodiscovery.

The Queensland Government intends to progress the following over the next 12 months:

- Detailed policy analysis of the recommendations in consultation and negotiation with other jurisdictions.
- Consultation and negotiation with Aboriginal and Torres Strait Islander peoples in relation to their land and knowledge.
- Collaboration with biodiscovery stakeholders including communities, businesses, research institutions and private biodiscovery entities about legislative and administrative process improvements.
- Preparation of a discussion paper to test any reform strategies proposed.
- Improved engagement with biodiscovery entities to ensure they are properly informed and aware of their regulatory responsibilities and increase the level of compliance with the regulatory framework for biodiscovery.
- Improved monitoring and compliance activities to ensure the State's biodiversity is conserved and used sustainably for present and future biodiscovery activities.
- Improvements to administrative and operational systems that support the Act.

Appendix 1

Terms of Reference

Purpose of the Act

1. Review the purposes of the Act to determine whether the policy objectives remain valid, the purposes of the Act are being achieved and whether the regulatory framework stipulated in the Act is still appropriate:
 - (a) Consideration of whether the current legislation is the most efficient means to achieve the policy objectives and if not, options for other mechanisms to achieve the objectives. In considering other options, gather evidence of the impacts of the other options on the regulated community to allow comparison to the current legislation and if there were no regulation.
 - (b) Consideration of developments internationally and nationally in relation to the implementation of the Nagoya Protocol and Australia's Biodiversity Conservation Strategy (ABCS) since the commencement of the Act and alignment with and any impact on its application.
 - (c) Examination of developments in native title law, Indigenous knowledge and changes to IP law that may affect ownership of genetic resources.

Operation of the Act

2. Examine the overall structure and effectiveness of the Act including:
 - (a) Consideration of the effectiveness of the key features of the regulatory framework and opportunities to streamline the processes to reduce regulatory burden. In considering other options, gather evidence of the impacts of the other options on the regulated community to allow comparison to the current legislation and if there were no regulation.
3. Examine the structure and effectiveness of the permitting regime (Parts 3 and 4 of the Act) including:
 - (a) Consideration of whether the use of biodiscovery collection authorities compared to other types of environmental permits and authorities is effective and opportunities to streamline requests for access to Native Biological Material for biodiscovery.
4. Examine the structure and effectiveness of the contractual framework for benefit sharing (Part 5 of the Act) including:
 - (a) Consideration of whether the framework is sufficiently adaptable to the different types of biodiscovery activities and entities and the range of pathways for commercialisation.

5. Examine the definitions in the Act and the need for the definition of any other terms including:
 - (a) Consideration of whether the operation of the Act is affected by the definition of biodiscovery and biodiscovery research which limit the application of the Act to research that is undertaken for the purpose of commercialising the Native Biological Material.
6. Determine whether the powers of the Act allow enforcement of compliance which is effective and appropriate to the circumstances.

Regulatory burden

7. Examine whether compliance and administrative costs, including information requirements, for biodiscovery entities are reasonable and justified compared to benefits achieved and possible alternatives to legislation.
8. Review the system of approvals and consider whether the application of regulatory requirements is commensurate with the level of risk.

Interface with other systems

9. Examine the interface between the Act and other Acts and schemes (either Australian Government or State (including Qld) and Territory) that regulate biodiscovery and related activities. Identify any discrepancies including regulatory gaps and areas needing consistency and harmonisation of provisions.

Changes to the legislation

10. Recommend amendments to the Act, or alternatives to legislation, which improve the effectiveness, fairness, timeliness and accessibility of the regulatory system including any consequential amendments that are required such as repeal of s.119 due to the recent passing of the *Public Service and Other Legislation (Civil Liability) Amendment Act 2014*. In recommending other options, provide evidence of the impact of the recommended options on the regulated community to allow comparison to the current legislation and if there were no regulation. Guidance on this can be found in the Regulatory Impact Statement System Guidelines at: www.treasury.qld.gov.au/office/knowledge/docs/ris-system-guidelines/index.shtml.

The reviewer will be required to consult with key interest groups and affected parties, receive submissions and take into account overseas experience.

Appendix 2

Response to recommendations

The following provides a line-by-line response to the recommendations made in the Review. Note: reference made to indigenous people in the Recommendations has been updated to reflect preferred terminology—Indigenous peoples.

| Recommendation | Response |
|---|--|
| Purpose of the Act | |
| <p>1 The Review recommends that the purpose of the Act be updated to reflect the:</p> <ul style="list-style-type: none"> (a) special knowledge held by Indigenous persons about the State’s biological resources; and (b) rights of Indigenous persons in relation to providing access to Native Biological Material on Indigenous peoples’ land. <p>This change would reflect the amendments proposed to the Act in respect of this issue.</p> | <p>Agree in principle</p> <p>The Queensland Government supports the intent of this recommendation and will consider changes to the purpose of the Act in consultation and negotiation with Aboriginal and Torres Strait Islander peoples.</p> |
| <p>2 The objectives in Section 4 of the Act be updated to incorporate a reference to the Nagoya Protocol.</p> | <p>Agree</p> <p>The Queensland Government will propose amendments to the Act to reference the Nagoya Protocol.</p> |
| <p>3 The Review recommends that consideration be given to incorporating the biodiscovery related sections of the Code of Ethics into the Compliance Code, compliance with which is regulated under the Act. Should this recommendation be accepted, the objectives of the Act may be updated to reflect the new Updated Code.</p> | <p>Agree</p> <p>The Queensland Government will consider incorporating the biodiscovery related sections of the Code of Ethics into the Compliance Code.</p> |
| <p>4 Subject to the proposed changes to the legislation as recommended by the Review, the current legislation remains the most effective mechanism to achieve the policy objective of the Act.</p> | <p>Agree in principle</p> <p>The Queensland Government agrees in principle with the changes to the Act recommended in the Review and is committed to ensuring that the legislative framework supports the Queensland Government’s policy objectives regarding biodiscovery in Queensland.</p> |
| <p>5 The Review recommends consideration be given to providing (in an Updated Code or alternative administrative instrument) guidelines for access and benefit sharing with private landowners or parties negotiating with them (including access and use of Indigenous knowledge and on mutually agreed terms).</p> | <p>Agree</p> <p>The Queensland Government agrees that private landowners and biodiscovery entities would benefit from guidelines regarding property access and benefit-sharing.</p> <p>The Queensland Government will consult and negotiate with Aboriginal and Torres Strait Islander peoples regarding the provision of guidance relating to their land and knowledge.</p> |
| <p>6 The Review does not recommend any amendment to the definition of State Land to the extent it relates to native title.</p> | <p>Agree in principle</p> <p>The Queensland Government agrees in principle to retaining the existing definition of State land to the extent it relates to native title.</p> |
| <p>7 The Review recommends the State monitor the progress internationally and more importantly at a Commonwealth level regarding the protection of traditional and indigenous knowledge in the context of existing intellectual property regulation or by way of a sui generis system and the extent to which, once this occurs, consequential amendments to the Act are required.</p> | <p>Agree</p> <p>The Queensland Government will monitor the progress internationally and at a Commonwealth level regarding traditional and Indigenous knowledge in the context of intellectual property. The Queensland Government will consider consequential amendments to the Act if necessary.</p> |

| Recommendation | Response |
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| <p>8 The Review recommends:</p> <ul style="list-style-type: none"> (a) the State give consideration to amending the Act to recognise the importance and rights of Indigenous people including in respect of their Indigenous knowledge and access to Native Biological Material in indigenous peoples' land; and (b) except as set out below, the State adopt in general terms the approach of the Commonwealth Regulations regarding use of Indigenous knowledge and access to Native Biological Material from Indigenous peoples' land (including the requirement of prior informed consent on mutually agreed terms). <p>Adopting this approach may include the Act being amended as follows:</p> <ul style="list-style-type: none"> (a) recognising the importance and rights of Indigenous people including in respect of their Indigenous knowledge (wherever obtained) and access to Native Biological Material on Indigenous peoples' land in the objectives of the Act; (b) including a definition of 'Indigenous people'; (c) including a definition of Indigenous peoples' land (for example, State Land over which indigenous people have a claim but exclusive possession under the NTA has not been recognised); (d) incorporating a requirement for the giving of prior informed consent in relation to accessing Native Biological Material on land which is Indigenous peoples' land and any use of Indigenous knowledge; (e) the requirement for the giving of prior informed consent will be satisfied if a Statutory Declaration (or equivalent) confirming prior informed consent is provided in accordance with some accepted guidelines (for example the AIATSIS Guidelines). Entry into an ILUA under the NTA authorising the proposed action and providing the consent may be provided as an alternative to the statutory declaration; (f) the Department ought not be required to make its own assessment of whether the prior informed consent was satisfactory; and (g) incorporating a requirement that benefit sharing agreements include: a Statement regarding use of Indigenous knowledge including the source, e.g. scientific or public documents or another group of Indigenous persons and a Statement regarding benefits to be provided in return for use of the Indigenous knowledge. <p>Implementation may also involve including direction to relevant guidelines and government portals, provision of contact details of land councils or individual traditional owners (to facilitate engagement).</p> | <p>Agree in principle</p> <p>The Queensland Government supports the intent of this recommendation and recognises the importance and rights of Aboriginal and Torres Strait Islander peoples in respect of their knowledge and access to Native Biological Material in their land.</p> <p>More detailed policy analysis in consultation and negotiation with Aboriginal and Torres Strait Islander peoples will be undertaken to determine how this recommendation is best addressed.</p> |
| <p>9 The Review does not recommend any changes to the Act as a result of Intellectual property law.</p> | <p>Agree</p> <p>The Queensland Government will monitor intellectual property law to ensure that the Act is fit for purpose.</p> |
| <p>10 The Review does not recommend any changes to the Act as a result of gene technology legislation (with the exception of the proposed amendment to the definition of Native Biological Material—see Recommendation 33).</p> | <p>Agree</p> <p>The Queensland Government agrees that the Act does not require amendment as a result of gene technology legislation.</p> <p>The Queensland Government will monitor gene technology law to ensure that the Act is fit for purpose.</p> |

| Recommendation | Response |
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| <p>11 In the absence of a broader consideration of this issue, the Review does not recommend the scope of the Act be expanded to cover private land (with the effect that the State would be entitled to obtain Benefits of Biodiscovery from Native Biological Material collected from privately owned land).</p> | <p>Agree The Queensland Government agrees that the scope of the Act should not be expanded to cover private land.</p> |
| <h2>Operation of the Act</h2> | |
| <p>12 The Review recommends Biodiscovery Plans be removed from the regulatory framework of the Act and include relevant aspects previously contained in the Biodiscovery Plans in Collection Authorities and BSAs as appropriate.</p> | <p>Agree in principle The Queensland Government supports the intent of this recommendation to streamline regulatory processes under the Act. Further investigation and analysis is required in order to understand the potential effects of implementing this recommendation (e.g. when and where information currently provided as part of the Biodiscovery Plan might otherwise be obtained).</p> |
| <p>13 In making this Recommendation, the Review has relied on Recommendation 26—that the definition of Biodiscovery no longer has ‘commercialisation’ as a pre-requisite. The Review recommends the State give consideration to updating the permitting régime including the interaction between collection authorities and Benefit Sharing Agreements. Based on the alternatives considered by the Review, on balance the Review favoured an approach which is generally consistent with the process currently adopted by the Commonwealth:</p> <ul style="list-style-type: none"> • retaining the Collection Authority under the Act; and • requiring a Benefit Sharing Agreement (commercial purposes) and declaration (non-commercial purposes). <p>In order to meet the requirements of the Nagoya Protocol, the Review recommends the State Collection Authorities issued for non-commercial purposes also incorporate details of benefit sharing.</p> | <p>Agree in principle As outlined in the government response to Recommendation 26 of the Review, the Queensland Government will undertake further investigation and analysis of the implications and efficacy of removing commercialisation from the definition of biodiversity. This analysis will ensure the Act is fit for purpose and meets the requirements of the Nagoya Protocol.</p> |
| <p>14 The Review recommends consequential amendments be made to the Act as are likely to be required to reflect an alternative approach to the Collection Authority and benefit sharing regime including but not limited to the need to update the model BSA to reflect the new framework.</p> | <p>Agree in principle The Queensland Government supports the intent of this recommendation to streamline regulatory processes and make consequential amendments under the Act if necessary. Further investigation and analysis is required in order to understand the potential effects of implementing this recommendation (e.g. extent of updates to the model BSA).</p> |
| <p>15 If the Biodiscovery Entity is engaging in Commercialisation, key information requirements (with the exception of the Benefits of Biodiscovery to be provided, as this is included in the BSA) in section 37 of the Act (previously included in the Biodiscovery Plan) may form part of the Collection Authority application.</p> | <p>Agree in principle As outlined in the government response to Recommendation 12 of the Review, the Queensland Government supports the intent of this recommendation to streamline regulatory processes under the Act. Further investigation and analysis is required in order to understand the potential effects of implementing this recommendation (e.g. when and where information currently provided as part of the Biodiscovery Plan might otherwise be obtained).</p> |

| Recommendation | Response |
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| <p>16 Consistent with and in the manner noted in Recommendation 8, the Review recommends including as a pre-condition to the application for a Collection Authority the receipt of prior informed consent in relation to accessing Native Biological Material on land which is Indigenous peoples' land (falling within the Act).</p> | <p>Agree in principle The Queensland Government supports the intent of this recommendation and will consult and negotiate with Aboriginal and Torres Strait Islander peoples about making prior informed consent a pre-condition to the application for a Collection Authority to access Native Biological Material on their land.</p> |
| <p>17 The Review recommends an education process be adopted to inform industry in relation to the changes in the permitting regime which may include updating the relevant code with a detailed explanation of the process.</p> | <p>Agree The Queensland Government will develop and adopt an education process for industry relating to any future changes to the permitting regime.</p> |
| <p>18 The Review recommends that guidance notes (including contact persons and timeframes) setting out the Collection Authority pathway should be provided on the Department's website.</p> | <p>Agree As part of the education process adopted for Recommendation 17, the relevant Queensland Government websites will be updated with material regarding pathways to obtaining a Collection Authority.</p> |
| <p>19 The Review recommends that the State consider whether the method of storage of samples requires amendment to reflect changes in scientific technologies—if so, updated requirements may be implemented using the Compliance Code (or updated equivalent).</p> | <p>Agree The Queensland Government will consider the suitability of sample storage in consultation and negotiation with Queensland Herbarium, Queensland Museum and other relevant collection holders.</p> |
| <p>20 The Review recommends updating the section 34 list of content of benefit sharing agreements to reflect the recognition of Indigenous knowledge, access of Native Biological Material on indigenous peoples' land, and prior informed consent (see also Recommendation 8).</p> | <p>Agree in principle As outlined in the government response to Recommendation 8, the Queensland Government supports the intent of this recommendation and recognises the importance and rights of Aboriginal and Torres Strait Islander people in respect of their knowledge and access to Native Biological Material in their land. More detailed policy analysis in consultation and negotiation with Aboriginal and Torres Strait Islander people will be undertaken to determine how this recommendation is best addressed.</p> |
| <p>21 The Review recommends sections 35(2) and 54(2) and (3) be amended. The Review has determined that the State give consideration to adopting a licensing framework by which the head Biodiscovery Entity is permitted to enter into downstream arrangements in respect of the Commercialisation of Native Biological Material on certain conditions (as outlined in this report). A breach of these conditions should be included in the offence provisions of the Act.</p> <p>If the head Biodiscovery Entity (which has entered the BSA with the State) is not able to comply with the conditions—the downstream entity must enter into a separate BSA in relation to the use of the Native Biological Material with the State on the usual terms.</p> <p>If this recommendation is adopted, the Review further recommends consequential amendments to the Model Benefit Sharing Agreement.</p> | <p>Agree The Act has recently been amended to enable a biodiscovery entity with a BSA, to enter into Subsequent Use Agreements (SUAs) with biodiscovery entities down the commercial chain, subject to prescribed minimum terms.</p> |

| Recommendation | Response |
|---|---|
| 22 The Review recommends the change in the benefit sharing framework be supported by further explanation and examples to be included either on the department’s website or in the Updated Code accompanying the Act. | Agree The Queensland Government proposes to develop and implement an education program to assist biodiscovery entities in the transition to an enhanced benefit-sharing framework. The education program will include guidance material and examples on the website. |
| 23 The Review recommends the adoption of a contractual framework as described in Recommendation 21 (or similar), will enable the Act to be more adaptable to different types of biodiscovery activities, entities and pathways for commercialisation. | Agree As outlined in the government response to Recommendation 21, the Queensland Government has amended the Act to provide an alternative contractual arrangement called a SUA. |
| 24 The Review does not recommend any amendment to the Act in relation to Benefits of Biodiscovery to be provided by institutions (including those that are also subject to funding loan terms with the State). | Agree The Queensland Government agrees that no change is needed to the Act in relation to Benefits of Biodiscovery provided by institutions. |
| 25 The Review does not recommend any amendment to the definition of Benefits of Biodiscovery. | Agree The Queensland Government agrees that no change is needed to the Act in relation to the current definition of Benefits of Biodiscovery. |
| 26 The Review recommends delinking commercialisation from the definition of Biodiscovery. This may be achieved by deleting ‘for the purpose of commercialising the material’ from the definition of Biodiscovery Research. | Agree in principle As outlined in the government response to Recommendation 13 of the Review, the Queensland Government will undertake further investigation and analysis of the implications and efficacy of removing commercialisation from the definition of biodiscovery. This analysis will ensure the Act is fit for purpose and meets the requirements of the Nagoya Protocol. |
| 27 The Review does not recommend a specific exclusion for particular industries from the definition of biodiscovery. <i>However the State may wish to consider excluding ‘non-value-add’ activities by amending subparagraph (b) of the definition of Biodiscovery.</i> | Agree in principle The Queensland Government will consult and negotiate with stakeholders about the implications and efficacy of excluding ‘non value-add’ activities. |
| 28 The Review recommends that paragraph (2) of the definition of ‘Commercialisation’ be amended to also exclude private research grants. | Agree The Queensland Government will propose amendments to the Act to exclude private research grants from the definition of commercialisation. |
| 29 The Review recommends the State give consideration to extending the definition of Native Biological Material to cover underlying data, information or sequences of Native Biological Resources. | Agree The Queensland Government will consider extending the definition of Native Biological Material to cover underlying data, information or sequences. |
| 30 The Review recommends the State engage with providers of the underlying data, information or sequence to determine the most appropriate regulatory framework to permit and record the use of this information. | Agree The Queensland Government will consult and negotiate with stakeholders to determine appropriate regulatory frameworks. |

| Recommendation | Response |
|---|---|
| <p>31 The Review recommends the State give consideration to extending the definition of Native Biological Resource to include ‘<i>extracts from samples</i>’ in subparagraph (b) of that definition.</p> | <p>Agree The Queensland Government will consider extending the definition of Native Biological Resource to include ‘extracts from samples’.</p> |
| <p>32 The Review recommends the State give consideration to extending the definition of Native Biological Material to include Native Biological Resources ‘<i>maintained in an ex situ collection</i>’.</p> | <p>Agree The Queensland Government will consider extending the definition of Native Biological Resource to include ex-situ collections in consultation and negotiation with Queensland Herbarium, Queensland Museum and other relevant collection holders.</p> |
| <p>33 The Review recommends the State give consideration to excluding from the definition of Native Biological Material the following:</p> <ul style="list-style-type: none"> • A genetically modified organism for the purposes of section 10 of the <i>Gene Technology Act 2000</i> (Cth) or consistent state or territory legislation; or • A plant variety for which a plant breeder’s right has been granted under section 44 of the <i>Plant Breeder’s Rights Act 1994</i> (Cth). | <p>Agree As outlined in the government response to Recommendation 10 of the Review, the Queensland Government will consider excluding genetically modified organisms or plant varieties from the definition of Native Biological Material. The Queensland Government will monitor gene technology legislation and any implications it may have for Queensland’s biodiscovery framework.</p> |
| <p>34 The Review recommends the State give consideration to including some clear examples of the activities and material which would be covered by the Act in the Updated Code.</p> | <p>Agree The Queensland Government will consider including examples of activities and material covered by the Act in an Updated Code.</p> |
| <p>35 Consistent with the Commonwealth Regulations, the Review recommends the State give consideration to enabling the Minister to declare that the Act or part thereof not apply to specified Native Biological Material or a specified collection of Native Biological Material (including future additions to the collection) where use of the resources is required to be controlled under any international agreement or treaty to which Australia is a party.</p> | <p>Agree The Queensland Government will consider amending the Act to achieve greater consistency with Commonwealth Regulations and provide for the Minister to declare that the Act, or part thereof, not apply to specified Native Biological Material or a specified collection of Native Biological Material (including future additions to the collection) in certain circumstances.</p> |
| <p>36 As at the date of this Report, the powers of the Act allow enforcement of compliance which is effective and appropriate to the circumstances.</p> <p>However, the enforcement and monitoring provisions should be updated to ensure compliance with the broadening of the scope of the Act to cover Indigenous knowledge and access to Indigenous peoples’ land.</p> <p>For example, the powers of the Act may be expanded to cover:</p> <ul style="list-style-type: none"> • audit in relation to prior informed consent and benefit sharing in connection with the use of indigenous knowledge and access to Indigenous peoples’ land; • the right to request further information in relation to the provision of prior informed consent and benefit sharing in relation to the use of Indigenous knowledge and access to Indigenous peoples’ land; | <p>Agree in principle The Queensland Government acknowledges the efficacy of the Act in relation to enforcement. More detailed policy analysis in consultation and negotiation with Aboriginal and Torres Strait Islander peoples will be undertaken to determine how this recommendation is best addressed.</p> |

| Recommendation | Response |
|---|---|
| <ul style="list-style-type: none"> the right to request further information in relation to the provision of prior informed consent and benefit sharing in relation to the use of Indigenous knowledge and access to Indigenous peoples' land; the use of Indigenous knowledge and access to Indigenous peoples' land other than with prior informed consent and benefit sharing to be an offence under the Act; and the giving of false and misleading information regarding prior informed consent and benefit sharing in connection with the use of Indigenous knowledge and access to Indigenous peoples' land. <p>These powers may facilitate further enquiries to confirm the accuracy of the information provided to the State for example in circumstances where the State, for various reasons, may consider the information provided to be unreliable.</p> <p>The Act may also be amended to include offence provisions in relations to compliance with the Biodiscovery Register and also the giving of false and misleading information in connection with the Biodiscovery Register.</p> | |
| <h3>Regulatory burden</h3> | |
| <p>37 Other than the changes recommended elsewhere in this Report which may impact on the administrative and compliance costs, the Review considers the current compliance and administrative costs are reasonable and justified.</p> | <p>Agree</p> <p>The Queensland Government will continue to evaluate compliance and administration costs to ensure the Act is fit for purpose.</p> |
| <h3>Changes to the legislation</h3> | |
| <p>38 The Review recommends the State engage with the Commonwealth to determine a consistent approach to compliance with Articles 15 and 16 of the Nagoya Protocol.</p> | <p>Agree</p> <p>The Queensland Government will engage with the Commonwealth to determine a consistent approach to compliance with Articles 15 and 16 of the Nagoya Protocol.</p> |
| <p>39 The Review recommends the State consider the following act as checkpoints (to establish provenance and prior informed consent on mutually agreed terms) for the purposes of compliance with the Nagoya Protocol.</p> <ul style="list-style-type: none"> At the time of application for Queensland Government funding for research using Native Biological Material (including if accessed from Indigenous peoples' land) and/or associated indigenous knowledge (consistent with the proposed Commonwealth approach); Issuing of Certificates of Compliance (from information lodged on Biodiscovery Register). <p>In order to comply with the Nagoya Protocol, these checkpoints should also apply to Native Biological Material and genetic resources obtained outside the scope of the Act (nationally and internationally).</p> | <p>Agree</p> <p>The Queensland Government will consider establishing checkpoints, and consult and negotiate with the Commonwealth and Aboriginal and Torres Strait Islander peoples about compliance with the Nagoya Protocol.</p> |
| <p>40 The Review recommends the State closely monitor any checkpoints implemented by the Commonwealth.</p> | <p>Agree</p> <p>The Queensland Government will closely monitor checkpoints implemented by the Commonwealth.</p> |

| Recommendation | Response |
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| <p>41 The Review confirms that subject to the extension of compliance with respect to indigenous peoples' land and Indigenous knowledge (see Recommendation 8), the Review notes that the Collection Authority is likely to meet the standards required by the Nagoya Protocol. The Review recommends the State continue to engage with the Commonwealth in relation to the requirement for any standardised permits.</p> | <p>Agree in principle The Queensland Government supports the intent of this recommendation and will continue to engage with the Commonwealth in relation to standardised permits.</p> <p>The Queensland Government notes that the Collection Authority may be the most suitable way to implement the Nagoya Protocol.</p> <p>More detailed policy analysis in consultation and negotiation with Aboriginal and Torres Strait Islander people will be undertaken to determine how this recommendation is best addressed.</p> |
| <p>42 The Review recommends the State further examine (i) the viability of the implementation of a Biodiscovery Register as outlined in this Report with supporting enforcement provisions, (ii) the regulatory implications of establishing a Biodiscovery Register including, collecting information on the Biodiscovery Register and issuing International Certificates of Compliance to persons/entities covered by and outside the scope of the Act.</p> | <p>Agree The Queensland Government will examine the viability and regulatory implications of a Biodiscovery Register in terms of data collection and compliance with the Nagoya Protocol.</p> |
| <p>43 The Review recommends the State maintain close consultation with the Commonwealth so that the State may assess and appropriately implement any regulatory structure, policy or administration required in Queensland with respect to trusted collections.</p> | <p>Agree The Queensland Government will consult with the Commonwealth about trusted collections.</p> |
| <p>44 The Review recommends the State maintain close and consistent engagement with the Commonwealth with respect to the implementation of the Nagoya Protocol and its impact on implementation or regulatory and administrative frameworks and policies in Queensland.</p> | <p>Agree The Queensland Government will continue to engage with the Commonwealth in respect to the Nagoya Protocol and the mechanisms required for its implementation in Queensland.</p> |
| <p>45 The Review recommends the State repeal section 119 of the Act.</p> | <p>Agree in principle The Queensland Government will undertake further investigation and analysis before proposing to repeal section 119 of the Act.</p> |

