

Biodiscovery Regulation 2021

Explanatory notes for SL 2021 No. 131

made under the

Biodiscovery Act 2004

General Outline

Short title

Biodiscovery Regulation 2021

Authorising law

Sections 9C and 123 of the *Biodiscovery Act 2004*.

Policy objectives and the reasons for them

In Queensland, biodiscovery is the take and use of minimal quantities of native biological material from State land or Queensland waters for molecular, biochemical or genetic analysis for commercial purposes (e.g. pharmaceuticals or bioplastics). Protections for the use of traditional knowledge about native biological material apply to material collected from anywhere in Queensland.

The primary objective of the *Biodiscovery Regulation 2021* (the Regulation) is to support changes made to the *Biodiscovery Act 2004* (the Act) by the *Biodiscovery and Other Legislation Amendment Act 2020*, which commenced on 30 September 2020. Amendments to the Act introduced protections for the use of traditional knowledge in biodiscovery for improved alignment with international standards, through the ‘traditional knowledge obligation’.

The Regulation approves the Traditional Knowledge Code of Practice (the Code of Practice) in accordance with section 9C of the Act, to assist a person to meet the traditional knowledge obligation under section 9B of the Act. To meet the traditional knowledge obligation a person must take all reasonable and practical measures to ensure the person does not use the traditional knowledge for biodiscovery other than under an agreement with the custodians of the knowledge.

The Explanatory Notes for the *Biodiscovery and Other Legislation Amendment Act 2020* include the policy background for the introduction of the traditional knowledge obligation, and the Code of Practice to assist a person meet the obligation.

Achievement of policy objectives

The policy objective will be achieved by making the Regulation to approve the Code of Practice to assist a person (i.e. a biodiscovery entity) to meet the traditional knowledge obligation under the Act, for the use of traditional knowledge in biodiscovery. Biodiscovery entities include universities, research institutions and commercial research companies.

The Code of Practice:

- describes the circumstances under which the traditional knowledge obligation applies, and what is meant by using traditional knowledge; and
- outlines the principles, performance outcomes and minimum requirements for the use of traditional knowledge. This includes practical steps for identifying the custodians of the traditional knowledge; obtaining free, prior and informed consent from custodians to use this knowledge; and establishing benefit-sharing agreements with custodians on mutually agreed terms. It also outlines specific requirements for use of publicly accessible traditional knowledge.

The Code of Practice will be published on the Department of Environment and Science's (DES) website along with supporting resources such as best practice guidelines and capacity strengthening material for biodiscovery entities and First Nations peoples.

The best practice guidelines will facilitate compliance with the Code of Practice by supporting industry engagement with First Nations peoples, such as identifying culturally appropriate ways to negotiate free and prior informed consent and mutually agreed benefits arising from a biodiscovery project. The additional capacity strengthening materials will support collaboration between industry and First Nations peoples, and assist First Nations people to participate in and/or initiate biodiscovery projects.

Consistency with policy objectives of authorising law

The Regulation is consistent with the purpose of the Act (section 3), which is to encourage biodiscovery entities to only use traditional knowledge for biodiscovery with the agreement of the custodians of that traditional knowledge, where the custodians are the Aboriginal or Torres Strait Islanders to whom the traditional knowledge relates.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Code of Practice outlines the minimum requirements for how to comply with the traditional knowledge obligation under the Act. As such, the Code of Practice will provide greater certainty about how to comply with the traditional knowledge obligation, reducing administrative costs for the Queensland Government. The costs to the government of implementing the Code of Practice are minimal and can be met from within existing government resources. Any costs will be offset by economic benefits to the State through an

advancing biodiscovery industry and new employment opportunities for First Nations peoples and regional communities. The Code of Practice does not limit how a biodiscovery entity can meet the obligation. The principles and performance outcomes in the Code of Practice provide guidance for an alternative course of action to meet the obligation.

The Code of Practice supports collaborations between biodiscovery entities and First Nations peoples by aiming to ensure there are adequate protections for the use of traditional knowledge in biodiscovery, with closer alignment to international standards such as the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*. The Nagoya Protocol provides a framework for the fair and equitable sharing of benefits arising from the utilisation of genetic resources and including the use of traditional knowledge associated with genetic resources. Access and benefit sharing in accordance with the Nagoya Protocol acknowledges and involves the contributions of Indigenous peoples and local communities.

As partners in biodiscovery, First Nations peoples will have more opportunities to connect to Country and culture, create jobs, and to develop new skills. The Code of Practice will also support biodiscovery entities to collaborate internationally and access markets, supporting First Nations people to benefit in the process and in a way that supports First Nations peoples' cultural rights and self-determination.

Where a biodiscovery entity seeks to use traditional knowledge in biodiscovery, potential costs associated with complying with the traditional knowledge obligation are likely to be offset by the ability to expedite research processes due to insights provided by traditional knowledge, and to demonstrate compliance with the Nagoya Protocol, giving the biodiscovery entity access to international markets. Inability to demonstrate compliance with the Nagoya Protocol represents a serious risk to Queensland-based biodiscovery businesses and creates uncertainty around future investment in biodiscovery.

The Code of Practice permits an entity to find the most cost-effective way to comply with the traditional knowledge obligation, as they may comply in a way other than following the Code of Practice provided they are able to demonstrate they have satisfied the traditional knowledge obligation. Compliance with the Code of Practice provides increased regulatory certainty and confidence that international standards are met for both biodiscovery entities and First Nations peoples.

Consistency with fundamental legislative principles

The Regulation is considered consistent with the fundamental legislative principles outlined in Section 4 of the *Legislative Standards Act 1992*.

Consultation

No specific stakeholder consultation was undertaken on the Regulation as the making of the Regulation itself is machinery in nature, to approve the Code of Practice.

The Explanatory Notes for the *Biodiscovery and Other Legislation Amendment Act 2020* outline the consultation undertaken by DES since 2018 on the traditional knowledge obligation and related Code of Practice. This includes consultation with biodiscovery entities

and the Ministerial established Traditional Knowledge Roundtable comprising First Nations representatives and experts in traditional knowledge and biodiscovery. The Traditional Knowledge Roundtable was established by the former Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts.

Consultation on the development of the Code of Practice (and supporting guidelines) included four workshops with the Traditional Knowledge Roundtable and key biodiscovery entities and other experts in the field of biodiscovery. This included Myuma Group and Dugalunji Aboriginal Corporation, Chuulangun Aboriginal Corporation, BioCultural Consulting, Griffith University (including Griffith Enterprise), University of Queensland (including Queensland Alliance for Agriculture and Food Innovation and UniQuest), Queensland University of Technology, University of the Sunshine Coast, James Cook University, University of New South Wales, QIMR Brehoffer, CSIRO, Thomson Geer Lawyers, the Queensland Herbarium and the Queensland Museum.

Consultation has also been undertaken with other First Nations peoples and biodiscovery entities through public consultation on the Code of Practice from 16 April 2021 for a six-week period, with 10 submissions received. Consultation with key biodiscovery entities and the Traditional Knowledge Roundtable also occurred during the public consultation period.

Submissions on the Code of Practice through public consultation were received from Chuulangun Aboriginal Corporation; Dugalunji Aboriginal Corporation; Bulganunna Aboriginal Corporation (on behalf of the Jangga Traditional Owners); Yirendali Traditional Owners; CQUniversity; Griffith University; University of Canterbury; University of Queensland; NRM Regions Queensland; and Thomson Geer Lawyers.

Stakeholder submissions made through workshops and public consultation support the objectives of the Traditional Knowledge Code of Practice, so that adequate protections for the use of traditional knowledge in biodiscovery are applied and minimum requirements are outlined for how to comply with the traditional knowledge obligation.

In accordance with the *Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation (OBPR) was consulted on a Preliminary Impact Assessment for the Code of Practice. OBPR confirmed that the proposal is unlikely to result in significant adverse impacts associated with implementation of the Code of Practice, and as such, no further regulatory impact assessment was required.