



Queensland

Biodiscovery and Other Legislation Amendment Act 2020

Act No. 27 of 2020

An Act to amend the Biodiscovery Act 2004 and the Right to Information Act 2009 for particular purposes

[Assented to 20 August 2020]



Queensland

Biodiscovery and Other Legislation Amendment Act 2020

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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Biodiscovery and Other Legislation Amendment Act 2020*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Biodiscovery Act 2004

3 Act amended

This part and schedule 1 amend the *Biodiscovery Act 2004*.

4 Amendment of long title

Long title, ‘State native biological resources’—
omit, insert—

native biological material

5 Amendment of s 3 (Purposes of Act)

(1) Section 3(1)(a)—

omit, insert—

[s 6]

- (aa) to ensure biodiscovery entities act appropriately when accessing or using traditional knowledge for biodiscovery; and
 - (a) to facilitate access by biodiscovery entities to minimal quantities of native biological material for biodiscovery on or in State land or Queensland waters; and
- (2) Section 3(1)(aa) to (d)—
renumber as section 3(1)(a) to (e).
- (3) Section 3(2), before paragraph (a)—
insert—
 - (aa) the measures to be taken by persons accessing or using traditional knowledge for biodiscovery; and
- (4) Section 3(2)(a)(i) and (ii), ‘State native biological resources’—
omit, insert—
 - native biological material
- (5) Section 3(2)(aa) to (c)—
renumber as section 3(2)(a) to (d).

6 Amendment of s 4 (Why this Act was enacted)

- (1) Section 4(1), ‘the ‘Convention on Biological Diversity’,’—
omit, insert—
 - the Convention on Biological Diversity,
- (2) Section 4(2) and (3), ‘convention’—
omit, insert—
 - Convention on Biological Diversity
- (3) Section 4(4) and (5)—
omit, insert—

- (4) The Nagoya Protocol is a supplementary agreement implementing Article 15 of the Convention on Biological Diversity that includes principles aimed at ensuring—
- (a) traditional knowledge associated with genetic resources is accessed with free, prior and informed consent; and
 - (b) agreements are negotiated with Indigenous peoples for the fair and equitable sharing of benefits arising from the use of traditional knowledge associated with genetic resources.
- (5) This Act is intended to give effect to—
- (a) Article 15 of the Convention on Biological Diversity to the extent it relates to native biological material on or in State land or Queensland waters; and
 - (b) the principles of the Nagoya Protocol mentioned in subsection (4) in relation to native biological material, instead of only genetic resources.
- (6) In this section—
- Convention on Biological Diversity*** means the agreement—
- (a) called the ‘Convention on Biological Diversity’; and
 - (b) opened for signature on 5 June 1992 at the United Nations Conference on Environment and Development (known as the ‘Rio de Janeiro Earth Summit’); and
 - (c) ratified by the Commonwealth on 18 June 1993; and
 - (d) entered into force on 29 December 1993.
- genetic resources*** see the Convention on

[s 7]

Biological Diversity, Article 2.

Nagoya Protocol means the agreement—

- (a) called 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’; and
- (b) adopted at the conference of the parties to the Convention on Biological Diversity on 29 October 2010; and
- (c) signed by the Commonwealth on 20 January 2012; and
- (d) entered into force on 12 October 2014.

7 Amendment of s 7 (Relationship with other Acts)

Section 7(2)—

omit, insert—

- (2) Despite the other Act, if a collection authority is issued to a person for taking native biological material under this Act, the person is not—
 - (a) required to obtain the licence, permit or other authority for taking the material under the other Act; or
 - (b) prohibited from taking the material under the other Act.
- (3) However, subsection (2) applies only to the extent the person taking the native biological material complies with this Act.

8 Insertion of new s 7A

After section 7—

insert—

7A Relationship with International food and agriculture treaty

- (1) This section applies to a person taking or using a plant if—
 - (a) the plant is listed in the International food and agriculture treaty, Annex 1; and
 - (b) the taking or using involves biodiscovery or using traditional knowledge for biodiscovery.
- (2) The person is exempt from the requirements of this Act to the extent the plant is taken or used—
 - (a) for a food or agriculture purpose; and
 - (b) in a way that is consistent with the International food and agriculture treaty.
- (3) In this section—

International food and agriculture treaty means the agreement—

 - (a) called the ‘International treaty on plant genetic resources for food and agriculture’; and
 - (b) adopted at the Conference of the Food and Agriculture Organization of the United Nations on 3 November 2001; and
 - (c) entered into force on 29 June 2004.

9 Amendment of s 9 (Extra-territorial application of Act)

- (1) Section 9, heading, ‘Extra-territorial’—

omit, insert—

Extraterritorial
- (2) Section 9(2), ‘, in relation to native biological resources,’—

omit.

[s 10]

10 Insertion of new pt 2A

After section 9—

insert—

Part 2A Using traditional knowledge for biodiscovery

Division 1 Preliminary

9A Application of part

This part applies in relation to taking and using native biological material for biodiscovery, regardless of whether or not the material is taken from State land or Queensland waters.

Division 2 Traditional knowledge obligation

9B Obligation about using traditional knowledge for biodiscovery

- (1) This section applies to a person who accesses traditional knowledge when engaging in biodiscovery or preparing to engage in biodiscovery.
- (2) The 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.

Maximum penalty—5,000 penalty units.

Note—

This provision is an executive liability provision—see section 115.

- (3) The requirement under subsection (2) is the ***traditional knowledge obligation***.
- (4) Without limiting how the person may comply with the traditional knowledge obligation, the person is taken to comply with the obligation if—
 - (a) the person complies with the traditional knowledge code of practice; or
 - (b) the person is employed or engaged by a biodiscovery entity that has complied with the traditional knowledge code of practice.

Division 3 Traditional knowledge code of practice

9C Making code of practice

- (1) The Minister may make a code of practice (the ***traditional knowledge code of practice***) about the following matters—
 - (a) the circumstances in which the traditional knowledge obligation applies;
 - (b) processes for identifying the custodians of traditional knowledge;
 - (c) reasonable and practical measures for obtaining the agreement of the custodians of traditional knowledge;
 - (d) another matter in relation to complying with the traditional knowledge obligation.
- (2) The traditional knowledge code of practice must be published on the department's website.
- (3) The traditional knowledge code of practice takes

[s 11]

effect when it is approved by regulation.

9D Consultation about code of practice

In preparing the traditional knowledge code of practice, the Minister must consult with—

- (a) Aboriginal and Torres Strait Islander groups in Queensland; and
- (b) biodiscovery entities.

11 Amendment of s 11 (Procedural requirements for application)

- (1) Section 11(1)(a), ‘EPA’—
omit.
- (2) Section 11(2) and (3)—
omit.
- (3) Section 11(4)—
renumber as section 11(2).

12 Amendment of s 12 (Content of approved form)

- (1) Section 12(1)—
insert—
 - (ea) a description of the proposed commercialisation activities for the material;
- (2) Section 12(1)(ea) and (f)—
renumber as section 12(1)(f) and (g).

13 Amendment of s 14 (Deciding application)

- (1) Section 14(1), ‘EPA’—
omit.

- (2) Section 14(4), ‘or approved biodiscovery plan’—
omit.

14 Amendment of s 28 (Public access to collection authority register)

- (1) Section 28(1)(a), editor’s note—
omit.
- (2) Section 28(1)(b), ‘EPA’—
omit.

15 Amendment of s 29 (Identifying native biological material)

- Section 29(1), penalty, ‘for subsection (1)’—
omit.

16 Amendment of s 33 (Power to enter into benefit sharing agreement)

- (1) Section 33(1)(a), ‘for biodiscovery’—
omit, insert—
- from State land or Queensland waters for
biodiscovery
- (2) Section 33(1) and (4), ‘DSDI’—
omit.
- (3) Section 33(2)—
omit, insert—
- (2) The Minister must not enter into a benefit sharing
agreement with a biodiscovery entity unless the
Minister is satisfied—
- (a) the entity has not accessed, and will not
access, traditional knowledge for the

[s 17]

biodiscovery the subject of the agreement;
or

- (b) the entity has complied with, and will continue to comply with, the entity's traditional knowledge obligation for the biodiscovery the subject of the agreement.

17 Amendment of s 34 (Content of benefit sharing agreement)

- (1) Section 34(2)—

insert—

- (i) that the biodiscovery entity—
- (i) has not accessed, and will not access, traditional knowledge for the biodiscovery the subject of the agreement; or
- (ii) has complied with, and will continue to comply with, the entity's traditional knowledge obligation for the biodiscovery the subject of the agreement.

- (2) Section 34(3), 'conditions mentioned in section 35(1) and (2)'—

omit, insert—

condition mentioned in section 35(1)

18 Amendment of s 35 (Conditions of benefit sharing agreement)

- (1) Section 35, heading, 'Conditions'—

omit, insert—

Statutory condition

- (2) Section 35(1)—

omit.

- (3) Section 35(2), from ‘also’ to ‘that the biodiscovery entity’—

omit, insert—

a condition of a benefit sharing agreement that a biodiscovery entity with whom the agreement is made

- (4) Section 35(2)—

renumber as section 35(1).

- (5) Section 35(3)—

omit, insert—

- (2) Subsection (1) does not limit any other conditions that may be included in the agreement under section 34(3).

19 Omission of pt 5, div 2 (Approval of biodiscovery plans)

Part 5, division 2—

omit.

20 Amendment of s 44 (Establishing compliance code)

Section 44(2)(a), ‘State native biological resources’—

omit, insert—

native biological resources on or in State land or Queensland waters

21 Amendment of s 52 (False or misleading information given by applicant)

- (1) Section 52(1), ‘EPA’—

omit.

- (2) Section 52(2)—

[s 22]

omit.

22 Amendment of s 53 (False or misleading documents given by applicant)

(1) Section 53(1), ‘EPA’—

omit.

(2) Section 53(2)—

omit.

(3) Section 53(3), ‘Subsection (1) or (2)’—

omit, insert—

Subsection (1)

(4) Section 53(3)—

renumber as section 53(2).

23 Amendment of s 61 (Appointment and qualifications)

(1) Section 61(1), from ‘EPA’ to ‘*appointing chief executive*’—

omit, insert—

chief executive

(2) Section 61(2), ‘appointing’—

omit.

24 Omission of pt 9, div 2 (Decisions of DSDI chief executive)

Part 9, division 2—

omit.

25 Amendment of s 109 (Appointments and authority)

Section 109(a) to (e)—

omit, insert—

- (a) the Minister;
- (b) the chief executive;
- (c) an inspector.

26 Amendment of s 111 (Evidentiary matters)

- (1) Section 111, ‘EPA chief executive or the DSDI’—
omit.
- (2) Section 111(a)—
insert—
 - (ia) the traditional knowledge code of practice;
- (3) Section 111(a)(ia) to (viii)—
renumber as section 111(a)(iii) to (ix).
- (4) Section 111(c), ‘or approved biodiscovery plan’—
omit.
- (5) Section 111(k)—
omit.
- (6) Section 111(l) to (n)—
renumber as section 111(k) to (m).

27 Amendment of s 115 (Liability of executive officer—particular offences committed by corporation)

Section 115(5), definition *executive liability provision*—
omit, insert—

executive liability provision means section 9B(2), 29(1) or (3), 32(1), 50(1), 51, 52 or 53(1).

[s 28]

28 Amendment of s 117 (Disclosure of information about collection authority, benefit sharing agreement, subsequent use agreement or biodiscovery plan)

(1) Section 117, heading, from ‘authority’—

omit, insert—

authority or agreements

(2) Section 117(1), from ‘sharing agreement’—

omit, insert—

sharing agreement or subsequent use agreement.

29 Replacement of s 119 (Protecting officials from liability)

Section 119—

omit, insert—

119 Protecting Minister from liability

(1) The Minister is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to the Minister, the liability attaches instead to the State.

Note—

For protection from civil liability in relation to State employees, see the *Public Service Act 2008*, section 26C.

30 Amendment of s 120 (Whistleblowers’ protection)

Section 120, ‘an official’—

omit, insert—

the Minister or chief executive

31 Omission of s 121 (Review of Act)

Section 121—

omit.

32 Replacement of s 122 (Approval of forms)

Section 122—

omit, insert—

122 Approval of forms

The chief executive may approve forms for use under this Act.

33 Replacement of pt 13, hdg (Transitional provisions)

Part 13, heading—

omit, insert—

Part 13 Repeal and transitional provisions

Division 1 Transitional provisions for Act No. 19 of 2004

34 Replacement of pt 15, hdg (Repeal of Year 2000 Information Disclosure Act 1999)

Part 15, heading—

omit, insert—

Division 2 Repeal

35 Insertion of new pt 13, div 3

Part 13—

insert—

**Division 3 Transitional provisions for
Biodiscovery and Other
Legislation Amendment
Act 2020**

137 Definition for division

In this division—

former, for a provision of this Act, means the provision as in force from time to time before the commencement of the *Biodiscovery and Other Legislation Amendment Act 2020*, part 2.

**138 Liability for traditional knowledge obligation
deferred until first code approved**

From the commencement, a person is not liable to be prosecuted for contravention of the traditional knowledge obligation until the first traditional knowledge code of practice is approved by regulation.

**139 Effect of traditional knowledge obligation on
existing biodiscovery**

- (1) This section applies if—
- (a) before the commencement, a person was engaging in biodiscovery (the *existing biodiscovery*)—
 - (i) under the former Act; or
 - (ii) in a way that was not prohibited under the former Act; and

- (b) from the commencement, the traditional knowledge obligation would, but for this section, apply to the person.
- (2) The person is not liable to be prosecuted for contravention of the traditional knowledge obligation to the extent the person—
 - (a) continues the existing biodiscovery; or
 - (b) engages in other biodiscovery contemplated by the existing biodiscovery.

140 Consultation about traditional knowledge code before commencement

- (1) This section applies if, before the commencement, the Minister consulted with the groups and entities mentioned in section 9D to prepare the first traditional knowledge code of practice.
- (2) The consultation is taken to satisfy the requirements of section 9D for the first traditional knowledge code of practice.

141 Existing applications for collection authorities

- (1) This section applies if—
 - (a) before the commencement, a person applied for a collection authority under former section 11; and
 - (b) immediately before the commencement, the application had not been decided.
- (2) The application is taken to be an application made under new section 11.
- (3) In this section—
new section 11 means section 11 as in force from the commencement.

[s 36]

36 Amendment of schedule (Dictionary)

- (1) Schedule, definitions *appointing chief executive*, *approved biodiscovery plan*, *biodiscovery plan*, *DSDI chief executive*, *DSDI Minister*, *EPA chief executive*, *EPA Minister*, *official* and *State native biological resource*—

omit.

- (2) Schedule—

insert—

custodians, of traditional knowledge, means the Aboriginal people or Torres Strait Islanders to whom the traditional knowledge relates.

traditional knowledge means information based on Aboriginal tradition or Island custom.

Note—

See the *Acts Interpretation Act 1954*, schedule 1 for the meaning of *Aboriginal tradition* and *Island custom*.

traditional knowledge code of practice see section 9C(1).

traditional knowledge obligation see section 9B(3).

- (3) Schedule, definition *native biological resource*, paragraph (a), ‘and sourced from State land or Queensland waters’—

omit.

Part 3 Amendment of Right to Information Act 2009

37 Act amended

This part amends the *Right to Information Act 2009*.

38 Insertion of new ch 7, pt 7

Chapter 7—

insert—

**Part 7 Transitional provision
for Biodiscovery and
Other Legislation
Amendment Act 2020**

**206D Continued exclusion for particular
biodiscovery documents**

(1) A document of a type mentioned in former schedule 1, section 11 is taken to be a document to which this Act does not apply, even if the document is created or amended after the commencement.

(2) In this section—

former schedule 1, section 11 means schedule 1, section 11 of this Act as in force immediately before the section was amended by the *Biodiscovery and Other Legislation Amendment Act 2020*, part 3.

39 Amendment of sch 1 (Documents to which this Act does not apply)

Schedule 1, section 11(f) to (h)—

omit, insert—

(f) a document identifying a person who gave a sample of native biological material to a receiving entity under section 30 of that Act.

Schedule 1 Minor and consequential amendments of Biodiscovery Act 2004

section 3

1 Particular references to EPA

Each of the following provisions is amended by omitting the word ‘EPA’—

- section 13(1)
- section 15(1)
- section 19(1)
- section 20(1)
- section 21(1)
- section 22
- section 23
- section 26(1)
- section 27(1)
- section 44(1)
- section 45(1)
- section 46(1)
- section 47
- section 49(1)
- section 83(2)
- section 85(1)
- section 95
- section 96(1)(a)(ii)
- section 97(1)

- section 98
- section 103
- schedule, definition *information notice*.

2 Particular references to DSDI

Each of the following provisions is amended by omitting the word ‘DSDI’—

- section 32
- section 42
- section 56
- section 57(1)
- section 58
- schedule, definition *reportable matter*.

3 Particular references to appointing

Each of the following provisions is amended by omitting the word ‘appointing’—

- section 62(3)
- section 63(1)
- section 66
- section 67.

4 Part 7, division 1, heading, ‘and biodiscovery plans’— *omit.*

5 Section 54(2), ‘section 35(2)(a)’— *omit, insert—*

section 35(1)(a)

6 Section 55, 'or (2)'—

omit.

7 Part 9, division 1, heading—

omit.

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