



Queensland

Biodiscovery and Other Legislation Amendment Bill 2019



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	25	

2019

A Bill

for

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

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Biodiscovery and Other
Legislation Amendment Act 2019*. 4
5

Clause 2 Commencement 6

This Act commences on a day to be fixed by proclamation. 7

**Part 2 Amendment of Biodiscovery
Act 2004** 8
9

Clause 3 Act amended 10

This part and schedule 1 amend the *Biodiscovery Act 2004*. 11

Clause 4 Amendment of long title 12

Long title, ‘State native biological resources’— 13

omit, insert— 14

native biological material 15

Clause 5 Amendment of s 3 (Purposes of Act) 16

(1) Section 3(1)(a)— 17

omit, insert— 18

-
- (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).

Clause 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—

[s 6]

- (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

	Biological Diversity, Article 2.	1
	<i>Nagoya Protocol</i> means the agreement—	2
	(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	3 4 5 6 7
	(b) adopted at the conference of the parties to the Convention on Biological Diversity on 29 October 2010; and	8 9 10
	(c) signed by the Commonwealth on 20 January 2012; and	11 12
	(d) entered into force on 12 October 2014.	13
Clause 7	Amendment of s 7 (Relationship with other Acts)	14
	Section 7(2)—	15
	<i>omit, insert—</i>	16
	(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—	17 18 19
	(a) required to obtain the licence, permit or other authority for taking the material under the other Act; or	20 21 22
	(b) prohibited from taking the material under the other Act.	23 24
	(3) However, subsection (2) applies only to the extent the person taking the native biological material complies with this Act.	25 26 27
Clause 8	Insertion of new s 7A	28
	After section 7—	29
	<i>insert—</i>	30

[s 9]

7A Relationship with International food and agriculture treaty	1 2
(1) This section applies to a person taking or using a plant if—	3 4
(a) the plant is listed in the International food and agriculture treaty, Annex 1; and	5 6
(b) the taking or using involves biodiscovery or using traditional knowledge for biodiscovery.	7 8 9
(2) The person is exempt from the requirements of this Act to the extent the plant is taken or used—	10 11
(a) for a food or agriculture purpose; and	12
(b) in a way that is consistent with the International food and agriculture treaty.	13 14
(3) In this section—	15
<i>International food and agriculture treaty</i> means the agreement—	16 17
(a) called the ‘International treaty on plant genetic resources for food and agriculture’; and	18 19 20
(b) adopted at the Conference of the Food and Agriculture Organization of the United Nations on 3 November 2001; and	21 22 23
(c) entered into force on 29 June 2004.	24

Clause 9 Amendment of s 9 (Extra-territorial application of Act)	25
(1) Section 9, heading, ‘Extra-territorial’—	26
<i>omit, insert—</i>	27
Extraterritorial	28
(2) Section 9(2), ‘, in relation to native biological resources,’—	29
<i>omit.</i>	30

Clause 10	Insertion of new pt 2A	1
	After section 9—	2
	<i>insert—</i>	3
	Part 2A	4
	Using traditional knowledge for biodiscovery	5
		6
	Division 1	7
	Preliminary	
	9A Application of part	8
	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.	9 10 11 12
	Division 2	13
	Traditional knowledge obligation	14
	9B Obligation about using traditional knowledge for biodiscovery	15 16
	(1) This section applies to a person who accesses traditional knowledge when engaging in biodiscovery or preparing to engage in biodiscovery.	17 18 19 20
	(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.	21 22 23 24 25
	Maximum penalty—5,000 penalty units.	26

[s 10]

<i>Note—</i>	1
This provision is an executive liability provision—see section 115.	2 3
(3) The requirement under subsection (2) is the <i>traditional knowledge obligation</i> .	4 5
(4) Without limiting how the person may comply with the traditional knowledge obligation, the person is taken to comply with the obligation if—	6 7 8
(a) the person complies with the traditional knowledge code of practice; or	9 10
(b) the person is employed or engaged by a biodiscovery entity that has complied with the traditional knowledge code of practice.	11 12 13
Division 3	14
Traditional knowledge code of practice	15
9C Making code of practice	16
(1) The Minister may make a code of practice (the <i>traditional knowledge code of practice</i>) about the following matters—	17 18 19
(a) the circumstances in which the traditional knowledge obligation applies;	20 21
(b) processes for identifying the custodians of traditional knowledge;	22 23
(c) reasonable and practical measures for obtaining the agreement of the custodians of traditional knowledge;	24 25 26
(d) another matter in relation to complying with the traditional knowledge obligation.	27 28
(2) The traditional knowledge code of practice must be published on the department’s website.	29 30
(3) The traditional knowledge code of practice takes	31

	effect when it is approved by regulation.	1
	9D Consultation about code of practice	2
	In preparing the traditional knowledge code of practice, the Minister must consult with—	3 4
	(a) Aboriginal and Torres Strait Islander groups in Queensland; and	5 6
	(b) biodiscovery entities.	7
Clause 11	Amendment of s 11 (Procedural requirements for application)	8 9
	(1) Section 11(1)(a), ‘EPA’— <i>omit.</i>	10 11
	(2) Section 11(2) and (3)— <i>omit.</i>	12 13
	(3) Section 11(4)— <i>renumber</i> as section 11(2).	14 15
Clause 12	Amendment of s 12 (Content of approved form)	16
	(1) Section 12(1)— <i>insert</i> —	17 18
	(ea) a description of the proposed commercialisation activities for the material;	19 20 21
	(2) Section 12(1)(ea) and (f)— <i>renumber</i> as section 12(1)(f) and (g).	22 23
Clause 13	Amendment of s 14 (Deciding application)	24
	(1) Section 14(1), ‘EPA’— <i>omit.</i>	25 26

[s 14]

- (2) Section 14(4), ‘or approved biodiscovery plan’— 1
omit. 2

Clause 14 Amendment of s 28 (Public access to collection authority register) 3
4

- (1) Section 28(1)(a), editor’s note— 5
omit. 6
- (2) Section 28(1)(b), ‘EPA’— 7
omit. 8

Clause 15 Amendment of s 29 (Identifying native biological material) 9
10

- Section 29(1), penalty, ‘for subsection (1)’— 11
omit. 12

Clause 16 Amendment of s 33 (Power to enter into benefit sharing agreement) 13
14

- (1) Section 33(1)(a), ‘for biodiscovery’— 15
omit, insert— 16
from State land or Queensland waters for 17
biodiscovery 18
- (2) Section 33(1) and (4), ‘DSDI’— 19
omit. 20
- (3) Section 33(2)— 21
omit, insert— 22
- (2) The Minister must not enter into a benefit sharing 23
agreement with a biodiscovery entity unless the 24
Minister is satisfied— 25
- (a) the entity has not accessed, and will not 26
access, traditional knowledge for the 27

	biodiscovery the subject of the agreement;	1
	or	2
	(b) the entity has complied with, and will	3
	continue to comply with, the entity's	4
	traditional knowledge obligation for the	5
	biodiscovery the subject of the agreement.	6
Clause 17	Amendment of s 34 (Content of benefit sharing agreement)	7
		8
	(1) Section 34(2)—	9
	<i>insert—</i>	10
	(i) that the biodiscovery entity—	11
	(i) has not accessed, and will not access,	12
	traditional knowledge for the	13
	biodiscovery the subject of the	14
	agreement; or	15
	(ii) has complied with, and will continue to	16
	comply with, the entity's traditional	17
	knowledge obligation for the	18
	biodiscovery the subject of the	19
	agreement.	20
	(2) Section 34(3), 'conditions mentioned in section 35(1) and	21
	(2)'—	22
	<i>omit, insert—</i>	23
	condition mentioned in section 35(1)	24
Clause 18	Amendment of s 35 (Conditions of benefit sharing agreement)	25
		26
	(1) Section 35, heading, 'Conditions'—	27
	<i>omit, insert—</i>	28
	Statutory condition	29
	(2) Section 35(1)—	30

[s 19]

omit. 1

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

omit, insert— 3

a condition of a benefit sharing agreement that a 4

biodiscovery entity with whom the agreement is 5

made 6

(4) Section 35(2)— 7

renumber as section 35(1). 8

(5) Section 35(3)— 9

omit, insert— 10

(2) Subsection (1) does not limit any other conditions 11

that may be included in the agreement under 12

section 34(3). 13

Clause 19 Omission of pt 5, div 2 (Approval of biodiscovery plans) 14

Part 5, division 2— 15

omit. 16

Clause 20 Amendment of s 44 (Establishing compliance code) 17

Section 44(2)(a), ‘State native biological resources’— 18

omit, insert— 19

native biological resources on or in State land or 20

Queensland waters 21

Clause 21 Amendment of s 52 (False or misleading information given by applicant) 22
23

(1) Section 52(1), ‘EPA’— 24

omit. 25

(2) Section 52(2)— 26

omit.

1

Clause 22	Amendment of s 53 (False or misleading documents given by applicant)	2 3
	(1) Section 53(1), ‘EPA’—	4
	<i>omit.</i>	5
	(2) Section 53(2)—	6
	<i>omit.</i>	7
	(3) Section 53(3), ‘Subsection (1) or (2)’—	8
	<i>omit, insert—</i>	9
	Subsection (1)	10
	(4) Section 53(3)—	11
	<i>renumber</i> as section 53(2).	12
Clause 23	Amendment of s 61 (Appointment and qualifications)	13
	(1) Section 61(1), from ‘EPA’ to ‘ <i>appointing chief executive</i> ’—	14
	<i>omit, insert—</i>	15
	chief executive	16
	(2) Section 61(2), ‘appointing’—	17
	<i>omit.</i>	18
Clause 24	Omission of pt 9, div 2 (Decisions of DSDI chief executive)	19 20
	Part 9, division 2—	21
	<i>omit.</i>	22
Clause 25	Amendment of s 109 (Appointments and authority)	23
	Section 109(a) to (e)—	24

[s 26]

- omit, insert—* 1
- (a) the Minister; 2
 - (b) the chief executive; 3
 - (c) an inspector. 4

- Clause 26 Amendment of s 111 (Evidentiary matters) 5**
- (1) Section 111, ‘EPA chief executive or the DSDI’— 6
 - omit.* 7
 - (2) Section 111(a)— 8
 - insert—* 9
 - (ia) the traditional knowledge code of practice; 10
 - (3) Section 111(a)(ia) to (viii)— 11
 - renumber* as section 111(a)(iii) to (ix). 12
 - (4) Section 111(c), ‘or approved biodiscovery plan’— 13
 - omit.* 14
 - (5) Section 111(k)— 15
 - omit.* 16
 - (6) Section 111(l) to (n)— 17
 - renumber* as section 111(k) to (m). 18
- Clause 27 Amendment of s 115 (Liability of executive officer— 19**
particular offences committed by corporation) 20
- Section 115(5), definition *executive liability provision—* 21
 - omit, insert—* 22
 - executive liability provision*** means section 9B(2), 23
 - 29(1) or (3), 32(1), 50(1), 51, 52 or 53(1). 24

Clause 28	Amendment of s 117 (Disclosure of information about collection authority, benefit sharing agreement, subsequent use agreement or biodiscovery plan)	1 2 3
	(1) Section 117, heading, from ‘authority’—	4
	<i>omit, insert—</i>	5
	authority or agreements	6
	(2) Section 117(1), from ‘sharing agreement’—	7
	<i>omit, insert—</i>	8
	sharing agreement or subsequent use agreement.	9
Clause 29	Replacement of s 119 (Protecting officials from liability)	10
	Section 119—	11
	<i>omit, insert—</i>	12
	119 Protecting Minister from liability	13
	(1) The Minister is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.	14 15 16
	(2) If subsection (1) prevents a civil liability attaching to the Minister, the liability attaches instead to the State.	17 18 19
	<i>Note—</i>	20
	For protection from civil liability in relation to State employees, see the <i>Public Service Act 2008</i> , section 26C.	21 22 23
Clause 30	Amendment of s 120 (Whistleblowers’ protection)	24
	Section 120, ‘an official’—	25
	<i>omit, insert—</i>	26
	the Minister or chief executive	27

[s 31]

Clause 31	Omission of s 121 (Review of Act)	1	
	Section 121—	2	
	<i>omit.</i>	3	
Clause 32	Replacement of s 122 (Approval of forms)	4	
	Section 122—	5	
	<i>omit, insert—</i>	6	
	122 Approval of forms	7	
	The chief executive may approve forms for use under this Act.	8 9	
Clause 33	Replacement of pt 13, hdg (Transitional provisions)	10	
	Part 13, heading—	11	
	<i>omit, insert—</i>	12	
	Part 13	Repeal and transitional provisions	13 14
	Division 1	Transitional provisions for Act No. 19 of 2004	15 16
Clause 34	Replacement of pt 15, hdg (Repeal of Year 2000 Information Disclosure Act 1999)	17 18	
	Part 15, heading—	19	
	<i>omit, insert—</i>	20	
	Division 2	Repeal	21
Clause 35	Insertion of new pt 13, div 3	22	
	Part 13—	23	

insert—

**Division 3 Transitional provisions for
Biodiscovery and Other
Legislation Amendment
Act 2019**

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 2019*, 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

[s 35]

(b)	from the commencement, the traditional knowledge obligation would, but for this section, apply to the person.	1 2 3
(2)	The person is not liable to be prosecuted for contravention of the traditional knowledge obligation to the extent the person—	4 5 6
(a)	continues the existing biodiscovery; or	7
(b)	engages in other biodiscovery contemplated by the existing biodiscovery.	8 9
140	Consultation about traditional knowledge code before commencement	10 11
(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.	12 13 14 15 16
(2)	The consultation is taken to satisfy the requirements of section 9D for the first traditional knowledge code of practice.	17 18 19
141	Existing applications for collection authorities	20
(1)	This section applies if—	21
(a)	before the commencement, a person applied for a collection authority under former section 11; and	22 23 24
(b)	immediately before the commencement, the application had not been decided.	25 26
(2)	The application is taken to be an application made under new section 11.	27 28
(3)	In this section—	29
	<i>new section 11</i> means section 11 as in force from the commencement.	30 31

Clause 36	Amendment of schedule (Dictionary)	1
(1)	Schedule, definitions <i>appointing chief executive, approved biodiscovery plan, biodiscovery plan, DSDI chief executive, DSDI Minister, EPA chief executive, EPA Minister, official and State native biological resource</i> —	2
	<i>omit.</i>	3
(2)	Schedule—	4
	<i>insert</i> —	5
	<i>custodians</i> , of traditional knowledge, means the Aboriginal people or Torres Strait Islanders to whom the traditional knowledge relates.	6
	<i>traditional knowledge</i> means information based on Aboriginal tradition or Island custom.	7
	<i>Note</i> —	8
	See the <i>Acts Interpretation Act 1954</i> , schedule 1 for the meaning of <i>Aboriginal tradition</i> and <i>Island custom</i> .	9
	<i>traditional knowledge code of practice</i> see section 9C(1).	10
	<i>traditional knowledge obligation</i> see section 9B(3).	11
(3)	Schedule, definition <i>native biological resource</i> , paragraph (a), ‘and sourced from State land or Queensland waters’—	12
	<i>omit.</i>	13
Part 3	Amendment of Right to Information Act 2009	14
Clause 37	Act amended	15
	This part amends the <i>Right to Information Act 2009</i> .	16

[s 38]

Clause 38	Insertion of new ch 7, pt 7	1
	Chapter 7—	2
	<i>insert—</i>	3
	Part 7	4
	Transitional provision	5
	for Biodiscovery and	6
	Other Legislation	7
	Amendment Act 2019	7
	206D Continued exclusion for particular	8
	biodiscovery documents	9
	(1) A document of a type mentioned in former	10
	schedule 1, section 11 is taken to be a document	11
	to which this Act does not apply, even if the	12
	document is created or amended after the	13
	commencement.	14
	(2) In this section—	15
	<i>former schedule 1, section 11</i> means schedule 1,	16
	section 11 of this Act as in force immediately	17
	before the section was amended by the	18
	<i>Biodiscovery and Other Legislation Amendment</i>	19
	<i>Act 2019</i> , part 3.	20
Clause 39	Amendment of sch 1 (Documents to which this Act does	21
	not apply)	22
	Schedule 1, section 11(f) to (h)—	23
	<i>omit, insert—</i>	24
	(f) a document identifying a person who gave a	25
	sample of native biological material to a	26
	receiving entity under section 30 of that Act.	27

Schedule 1	Minor and consequential amendments of Biodiscovery Act 2004	1 2 3
	section 3	4
1	Particular references to EPA	5
	Each of the following provisions is amended by omitting the word ‘EPA’—	6 7
	• section 13(1)	8
	• section 15(1)	9
	• section 19(1)	10
	• section 20(1)	11
	• section 21(1)	12
	• section 22	13
	• section 23	14
	• section 26(1)	15
	• section 27(1)	16
	• section 44(1)	17
	• section 45(1)	18
	• section 46(1)	19
	• section 47	20
	• section 49(1)	21
	• section 83(2)	22
	• section 85(1)	23
	• section 95	24
	• section 96(1)(a)(ii)	25
	• section 97(1)	26

Schedule 1

	• section 98	1
	• section 103	2
	• schedule, definition <i>information notice</i> .	3
2	Particular references to DSDI	4
	Each of the following provisions is amended by omitting the word ‘DSDI’—	5 6
	• section 32	7
	• section 42	8
	• section 56	9
	• section 57(1)	10
	• section 58	11
	• schedule, definition <i>reportable matter</i> .	12
3	Particular references to appointing	13
	Each of the following provisions is amended by omitting the word ‘appointing’—	14 15
	• section 62(3)	16
	• section 63(1)	17
	• section 66	18
	• section 67.	19
4	Part 7, division 1, heading, ‘and biodiscovery plans’—	20
	<i>omit.</i>	21
5	Section 54(2), ‘section 35(2)(a)’—	22
	<i>omit, insert—</i>	23
	section 35(1)(a)	24

6	Section 55, ‘or (2)’—	1
	<i>omit.</i>	2
7	Part 9, division 1, heading—	3
	<i>omit.</i>	4

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