

# **Guideline for preparing a Benefit Sharing Agreement**

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## Introduction

This guideline is provided to assist biodiscovery entities negotiate a benefit sharing agreement in accordance with the Queensland *Biodiscovery Act 2004* (the Act).

Biodiscovery under the Act involves the collection and analysis of native biological material (e.g. plants, animals, fungi and microorganisms) from State land or Queensland waters to use for commercial purposes (e.g. a bioactive compound for pharmaceuticals). This includes native biological material obtained outside of its natural habitat (ex-situ) but originated from State land or Queensland waters (e.g. culturing bacteria collected from State land). The Act also regulates the use of Traditional Knowledge in biodiscovery, whether or not the material to which the knowledge is applied is taken from State land or Queensland waters.

A biodiscovery entity must have the correct approvals before biodiscovery can commence. This includes an approved collection authority and an executed benefit sharing agreement (BSA). A BSA ensures that the State obtains a fair and equitable share in the benefits of biodiscovery.

Where traditional knowledge is being used, an entity must also satisfy the Traditional Knowledge Obligation under the Act, before commencing biodiscovery. You can find more details on this obligation and guidance on how to comply on the [Business Queensland website](#).

As a formal legal agreement, BSAs can take time to negotiate and typically include legal review processes from both parties. It is strongly recommended that you contact [qldscience@des.qld.gov.au](mailto:qldscience@des.qld.gov.au) to start this process well in advance of when you intend to commence biodiscovery.

Much of the terminology used in this guideline is defined in the Act. This document does not purport to state the law. All applicants should be guided by their own legal advice and be familiar with the Act, available via the Office of Queensland Parliamentary Counsel website <http://www.legislation.qld.gov.au/>.

## Purpose of a benefit sharing agreement

A BSA provides the mechanism for the State and a biodiscovery entity to negotiate the right to use native biological material and share in the benefits of biodiscovery.

The Act regulates biodiscovery in a manner generally consistent with obligations set under the Convention on Biological Diversity (CBD), which Australia has ratified. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (the Nagoya Protocol) is a supplementary agreement to the CBD, which Australia has signed. The Nagoya Protocol implements a key objective of the CBD; to ensure the fair and equitable sharing of benefits arising from both the use of genetic resources and associated traditional knowledge.

Biodiscovery has many benefits, both private and public. Benefits of biodiscovery under the Act include economic, environmental and social benefits. A BSA formalises the nature of the benefits to be realised by the State and the way in which the State will receive them.

It is a serious offence under the Act to use native biological material for biodiscovery without a BSA. Offence provisions do not apply to use of native biological material for non-commercial purposes such as scientific classification or verification of research. See section 54 of the Act for full details.

The Minister will not enter into a BSA unless satisfied that the biodiscovery entity is compliant with the Traditional Knowledge Obligation, if applicable.

# Content of a benefit sharing agreement

BSAs are negotiated with the Department of Environment and Science (DES) on behalf of the responsible Minister. There are two key parts of a BSA - general content applicable to any project the biodiversity entity undertakes and project-specific content. This recognises that biodiversity entities may undertake more than one project and streamlines the agreement process for subsequent projects. A BSA is only complete once both parts are finalised and executed.

## General content

General content applicable to any project a biodiversity entity undertakes is detailed in the first part of a BSA as a series of clauses and schedules. This content is fixed based on a model benefit sharing agreement in order to ensure consistency with the Act and across BSAs entered into by the Minister. This content relates broadly to:

- general information including contact details of each entity and the term of the agreement
- the benefits of biodiversity to be provided by the biodiversity entity to the State and when the benefits are to be provided
- if the benefits agreed include royalties – the amounts (or agreed way of working them out)
- what matters are reportable matters for the purpose of the BSA, such as disposal of intellectual property
- the [prescribed minimum terms](#) that must be included in any subsequent use agreement
- a reporting template, to assist the entity to meet their reporting obligations under the Act
- standard clauses and conditions such as interpretation, right to undertake biodiversity, intellectual property, samples, records and accounts, reporting, confidentiality, notices, termination, dispute resolution, indemnity, insurance, warranties and force majeure.

## Project-specific content

Project-specific content is presented in the second part of a BSA as a memorandum. This content is developed through negotiation between the biodiversity entity and the State. The memorandum describes biodiversity activities particular to each individual project, consistent with the collection authority. This may include clauses or conditions tailored for a particular activity or entity, such as describing the provision of genetic material to another organisation for sequencing, collecting plant species to isolate antibiotic properties or exporting raw material internationally. It may also include non-financial benefits that are accepted in partial or complete fulfilment of royalty requirements.

The BSA may be amended at any time where agreed between the parties, such as when adding memoranda for additional biodiversity activities. Amendments to the memorandum may also be required when there are changes to the associated biodiversity activity or collection authority, to ensure that the BSA continues to meet the requirements of the Act. Biodiversity entities without an existing BSA are no longer required to submit a biodiversity plan, following reforms in September 2020.

## Further information

Please contact DES for further information regarding preparation of a BSA or other biodiversity enquiries via email [qldscience@des.qld.gov.au](mailto:qldscience@des.qld.gov.au) or 13 QGOV (13 74 68). It is preferred that entities meet with the Department for assistance prior to developing their BSA.

More information about biodiversity in Queensland such as guidelines for what biodiversity is, preparing a biodiversity plan and enforcement is available at [www.business.qld.gov.au](http://www.business.qld.gov.au).