



# Reform of Queensland's biodiscovery laws: key questions for **private landholders**

## What is biodiscovery?

Biodiscovery is the collection of native biological resources (e.g. plants, animals and microbes) for research and commercialisation. Examples include using native grasses to learn how to create more drought-resistant crops or collecting venom to produce antivenom.

In Queensland, biodiscovery activities are regulated under the *Biodiscovery Act 2004* (the Act). The main purposes of the Act are to:

- facilitate access to small amounts of native biological resources on State land or Queensland waters, for use in biodiscovery
- encourage the development of biodiscovery that adds value to the state and promotes conservation
- ensure that the benefits arising from biodiscovery are shared equitably with the State.

The Act only applies if the native biological resources are collected from State land or Queensland waters. 'State land' is defined as any land other than: freehold land, freeholding lease, or land where exclusive possession native title has been determined. In this fact sheet, we use the term 'private land' to refer to freehold land and freeholding lease land.

Examples of State land include leasehold properties, reserves and national parks, as well as roads and stock routes.

## What is the Queensland Government doing?

The Queensland Government is reforming the Act to ensure that it is contemporary and aligns with international agreements.

Having completed a statutory review of the Act, the government has released an options paper to learn more from stakeholders and partners in biodiscovery. The paper includes key reform questions such as:

- how to include the rights of Aboriginal and Torres Strait Islander people regarding the use of their resources and traditional knowledge for biodiscovery
- whether the Act should apply to private land, land with exclusive possession native title and/or non-commercial research
- how to simplify the regulatory framework for access and benefit sharing.

These topics are considered priorities for reform because of changes in international regulatory frameworks and growth in the biodiscovery industry since the Act was first introduced in 2004.

At the international level, new protocols require activities like biodiscovery to share benefits with Aboriginal and Torres Strait Islander people and local communities, and to secure landholders' prior informed consent on agreed terms before conducting biodiscovery.

Some of the options proposed in the options paper concern requirements for taking native biological resources from private lands. It's important we get your feedback on these issues, to design the best framework possible.

### Key questions for private landholders

This fact sheet focuses on whether the Act should apply to private land. Full detail on the other areas of reform is available on the Department of Environment and Science website ([www.qld.gov.au/BiodiscoveryActReform](http://www.qld.gov.au/BiodiscoveryActReform)).

### Should biodiscovery on private land be subject to the Act?

Currently, international agreements require that organisations obtain prior informed consent and agreed terms for access before beginning biodiscovery. Also, parties need to ensure there is fair and equitable sharing of the benefits arising from use of the native biological resources.

The *Biodiscovery Act 2004* does not completely align with these requirements, as it does not regulate biodiscovery on private land, or where exclusive possession native title has been determined.

The government has developed two options for requiring consent and benefit sharing with private landholders before biodiscovery begins, which are detailed below. A third option is to make no change.

#### OPTION 1: create legal requirements in Queensland's Biodiscovery Act

Amend the Act to create a legal requirement that organisations collecting native biological resources for biodiscovery must:

- obtain prior informed consent from the landholder prior to collecting resources; and
- if commercial activity is planned, enter into an agreement with the landholder about how benefits will be shared.

This means that government would not be involved in negotiations between landholders and biodiscovery organisations, nor share in the benefits of the biodiscovery project. However, prior to biodiscovery commencing, the government would require evidence that requirements for prior informed consent and benefit sharing with the landholder have been met. This would help landholders by making sure that the biodiscovery project only proceeds once all parties are in agreement, and it also facilitates collaboration on the biodiscovery project with overseas business partners.

Enforcement provisions would apply if requirements to obtain consent from the landholder and the sharing of benefits with them, were not met.

#### OPTION 2: provide guidance to support landholders

Release guidance material, like fact sheets and model agreements, so that biodiscovery organisations and private landholders are aware of the international requirements for prior negotiations informed consent and benefit sharing.

The government could also release materials to support private landholder negotiation with biodiscovery organisations. For example, the government could develop sample templates for recording consent to access the resources, and for an agreement about how benefits will be shared.

There would not be any requirement under the Act for biodiscovery organisations to follow the guidance, and no penalties if the guidelines are not followed.

#### OPTION 3: do not change anything

Queensland's Biodiscovery Act could remain as-is; the legal obligations of the Act would not cover biodiscovery undertaken on private land. The government would not issue any guidance or support for organisations or landholders about undertaking biodiscovery using resources collected from private land.



## Biodiscovery on State and private lands example: Using plant microbes to treat disease

A researcher wants to collect plants on a farmer's freehold land and also from a national park, which is State land. The researcher plans to take a sample of the plants to extract a fungi which could have a medical use. If the research is successful, the researcher intends to sign a deal with a pharmaceutical company to commercialise the new medicine.

The benefits of this project might include hiring local people to assist with the research (e.g. scientists or assistants to help find the plants and collect samples), improved conservation of the plant and fungi, and a share of the profits from any new medicine.

To meet the current requirements of Queensland's biodiscovery legislation, the researcher would have to obtain a permit to collect the plants from the national park, and negotiate with the Queensland Government about how the benefits would be shared with the state.

However, the researcher is not currently required (under domestic laws) to secure prior informed consent to collect the plant on private land, or to negotiate with landholders about how benefits will be shared with them. The researcher may choose to do these things voluntarily. The researcher would still be required to seek consent to access private lands so as not to trespass.

If the Act was amended to cover private lands, the researcher would need to secure prior informed consent and agree how to share any benefits prior to conducting biodiscovery. If they did not comply, they could be subject to penalties under the Act.

If guidance materials were developed, these could help both the landholder and researcher in negotiations, but there would not be a legal requirement (under domestic laws) for obtaining prior informed consent and agreeing to the sharing of benefits. No penalties would apply if the guidelines were not followed.

## Have your say

To design the best biodiscovery framework possible, we need your feedback on the areas of reform you view as most important.

We would particularly like to hear which options for protecting landholders' rights you prefer, and what impacts the options could have for you.

To have your say, you can:

- email [QldScience@des.qld.gov.au](mailto:QldScience@des.qld.gov.au)
- complete the survey at the Get Involved website ([www.getinvolved.qld.gov.au/gi/consultation/5504/view.html](http://www.getinvolved.qld.gov.au/gi/consultation/5504/view.html))
- send us a video or voice recording to [QldScience@des.qld.gov.au](mailto:QldScience@des.qld.gov.au) or 0436 622 321 (This recording does not need to be high quality, for example, it can be made using your phone)

- post your response to:  
**Biodiscovery Reform Team**  
Department of Environment and Science  
PO BOX 2454  
BRISBANE QLD 4001.

The Queensland Government may publish submissions received. For voice or video recordings, a transcript of the recording may be published. Please state in your submission if you do not agree to publication of all, or parts, of your submission.

For more details, you can read the full government options paper on the Department of Environment and Science website ([www.qld.gov.au/BiodiscoveryActReform](http://www.qld.gov.au/BiodiscoveryActReform)) and respond to those questions most relevant to you.

Consultation is open until midnight  
on Friday 1 February 2019