

Nationally consistent approach for access to and the utilisation of Australia's native genetic and biochemical resources

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Natural Resource Management Ministerial Council*



Australian Government
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Natural Resource Management Ministerial Council



Acknowledgements

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Foreword

For centuries people have utilised plants, animals and microorganisms (genetic and biochemical resources) to produce food, treat human disease, and in other ways deliver benefits to communities. Modern biotechnology can play a vital role in this process by enabling sophisticated research to be undertaken in relation to the genetic and biochemical resources.

Australia is rich in resources that could be used in scientific and technological research and that have the potential to be developed into commercial products – Australia's biodiversity is estimated to represent 10% of the total biodiversity of the planet.

As Australia is a signatory to the Convention on Biological Diversity, each jurisdiction recognises its responsibility to develop frameworks for access to and utilisation of genetic and biochemical resources consistent with this Convention. Accordingly, in providing opportunities for the ecologically sustainable and ethical use of its biological diversity it has a responsibility to ensure the fair and equitable sharing of the benefits arising from the use of those resources. Such frameworks must also respect Indigenous peoples' special knowledge of that biodiversity. It is important to ensure that Indigenous peoples have the choice and means to share their knowledge on fair and equitable terms.

Australia is now poised to take advantage of its substantial research infrastructure, its mega biodiversity and its stable, developed economy to expand into being a significant biotechnology

provider through the development of valuable bio-products including pharmaceuticals, agrochemicals, disease control and bioremediation products.

Recognising that biological resources do not respect jurisdictional boundaries, and the need to develop an efficient and equitable system for those seeking access, regardless of the jurisdiction, we are keen to ensure that our responses are consistent and compatible, while meeting our individual needs.

Accordingly, we have agreed to this set of principles, to underpin the development or review of legislative, administrative or policy frameworks in each jurisdiction. These principles are based upon world's best practice, through the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization adopted earlier this year in The Hague by the 6th Conference of the Parties of the Convention on Biological Diversity. They also deliver on important elements of the National Strategy for the Conservation of Australia's Biological Diversity.

All Australians will benefit from a nationally consistent approach for access to, and utilisation of, Australia's biological resources.



Introduction



This nationally consistent approach complements actions already taken by Australian Governments to conserve and protect biodiversity. It underpins future action by governments when developing, or reviewing, legislative, administrative or policy measures on access and benefit-sharing.



Australia ratified the Convention on Biological Diversity in 1993. The Convention has three primary objectives, the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising from the use of genetic resources. This nationally consistent approach, addresses that third objective of the Convention and in particular responsibilities set out at Articles 1, 3, 6, 8(j), 10(c) 15, 16 and 19.

Australia's governments have committed themselves to implementing the National Strategy for the Conservation of Australia's Biological Diversity (the National Strategy) as a matter of urgency. Objective 2.8 (Access to genetic resources) of that National Strategy states:

"Ensure that the social and economic benefits of the use of genetic material and products derived from Australia's biological diversity accrue to Australia."



This nationally consistent approach addresses that objective.

The work being undertaken at Commonwealth, State and Territory level recognises the need to foster biotechnology and capture its benefits for the Australian community, industry and the environment. An important outcome will be providing certainty to the industry and scientific communities that are seeking access to genetic and biochemical resources throughout Australia.

Additionally, the nationally consistent approach makes a significant contribution to achieving Objective 1.8.2 (Use and benefits of traditional biological knowledge) of the National Strategy, which states:

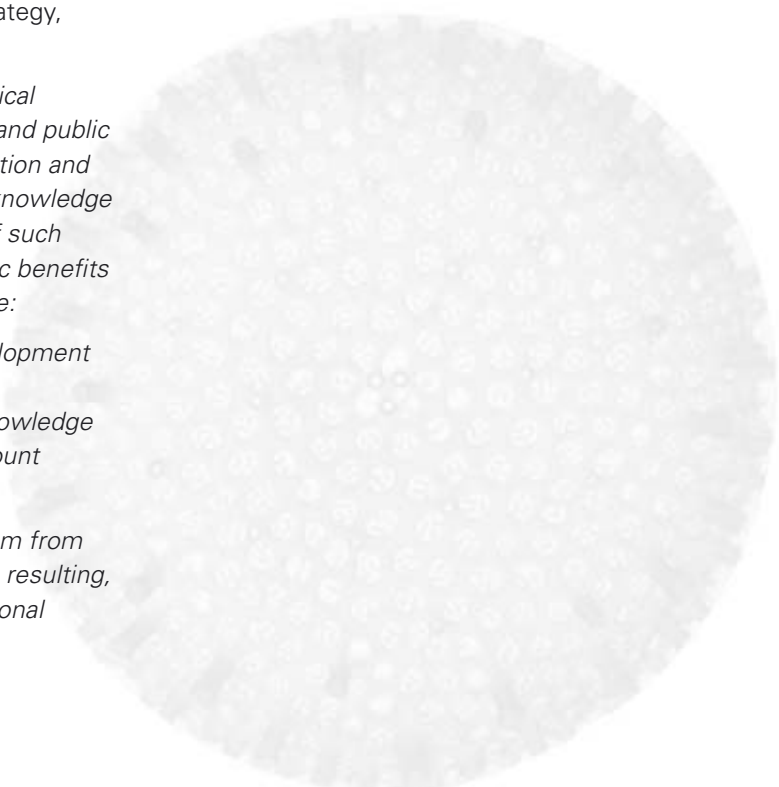
“Ensure that the use of traditional biological knowledge in the scientific, commercial and public domains proceeds only with the cooperation and control of the traditional owners of that knowledge and ensure that the use and collection of such knowledge results in social and economic benefits to the traditional owners. This will include:

- a. encouraging and supporting the development and use of collaborative agreements safeguarding the use of traditional knowledge of biological diversity, taking into account existing intellectual property rights;*
- b. establishing a royalty payments system from commercial development of products resulting, at least in part, from the use of traditional knowledge.”*

The National Strategy identifies the need to achieve greater consistency in approaches between governments. The nationally consistent approach exemplifies this by providing an integrated framework within which jurisdictions can develop measures that meet their needs.

Goal

To position Australia to obtain the maximum economic, social and environmental benefits from the ecologically sustainable use of its genetic and biochemical resources whilst protecting our biodiversity and natural capital.





The nationally consistent approach



Preamble

The Commonwealth, State and Territory Governments of Australia,

- respecting our responsibilities under the Convention on Biological Diversity;
- accepting the invitation of the Conference of the Parties to use the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization when developing measure on access and benefit-sharing;
- aware of our commitments under the National Strategy for Ecologically Sustainable Development;
- reiterating our commitment to work with stakeholders to provide ecologically sustainable access to native biota;
- declaring our intention to capture the benefits of biotechnology development for Australia through equitable benefit sharing;
- delivering on the objectives of the National Strategy for the Conservation of Australia's Biological Diversity;

endorse the General Principles underpinning development or review of legislative, administrative or policy frameworks or other mutually agreed arrangements in Australian jurisdictions for access to biological resources.



General Principles Underpinning Development or Review of Legislative, Administrative or Policy Frameworks in Australian Jurisdictions for Access to, and Utilisation of, Australia's Native Genetic and Biochemical Resources.

Such frameworks shall:

1. give effect to Australia's obligations under the Convention on Biological Diversity in relation to access to Australia's native biological resources;
2. be consistent with Australia's responsibilities and interests arising from other international agreements;
3. develop terms of access to resources that encourage local, national and international investment in Australia's biotechnology R&D capabilities, including, biodiscovery research, bioprocessing and product development;
4. be consistent with:
 - a. National Competition Policy;
 - b. the *Trade Practices Act 1974*;
 - c. the *Native Title Act 1993*;
 - d. the National Strategy for the Conservation of Australia's Biological Diversity; and
 - e. the Intergovernmental Agreement on the Environment.
5. facilitate the ecologically sustainable access and use of biological resources;
6. enable the fair and equitable sharing of benefits derived from the use of Australia's genetic and biochemical resources;
7. recognise the need to ensure the use of traditional knowledge is undertaken with the cooperation and approval of the holders of that knowledge and on mutually agreed terms;
8. enhance biodiversity conservation and the valuing of biodiversity by ensuring that, as appropriate, some of the benefits derived from all access to and use of the genetic and biochemical resources are, where possible, used for biodiversity conservation, in the area from which the resources were taken;
9. introduce terms and conditions of access to Australian resources that Australia would be prepared to meet if applied by other countries;
10. ensure that all applicants for access to resources are treated fairly and without prejudice, with all applications judged against transparent criteria and according to law;
11. be developed in consultation with stakeholders, Indigenous peoples and local communities;
12. facilitate continued access for non-commercial scientific research, particularly taxonomic research;
13. be integrated into biotechnology development policies and strategies to ensure the continued development of these industries in Australia; and
14. recognise the differences between commercial scientific research and non-commercial scientific research and their needs.



Common Elements of Access and Benefit-sharing Arrangements Established in Australian Jurisdictions

The following are elements to be taken into account, as far as is practical and appropriate, in the application of the General Principles when developing or reviewing access and benefit-sharing systems established within Australian jurisdictions.

1. Any person or organisation seeking access to the genetic or biochemical components of publicly owned or managed native biota would be required to seek permission from the relevant authority, or authorities, in the relevant jurisdiction/s.
2. The framework would require:
 - a. that the collection of native biological material is undertaken in an ecologically sustainable and ethical way; and
 - b. equitable sharing of benefits between access providers and applicants, examples include:
 - i. agreement to share research outcomes with the provider or to make research outcomes available to the public through publication or related activities; or
 - ii. negotiation of a legally binding benefit-sharing agreement between the access provider and the person, institution or corporation seeking access.



3. So as to facilitate biodiscovery and maximise certainty:
 - a. processing of applications for access should be timely;
 - b. transaction costs should be minimised;
 - c. model contracts and dictionaries of contractual terms for benefit-sharing agreements should be developed;
 - d. information should be provided in a clear, readily-accessible and reliable manner;
 - e. reassurance should be provided that arrangements do not alter existing property or intellectual property law;
 - f. access permissions should allow flexibility in their scope and duration; and
 - g. online application processing and information provision should be used where possible.
4. Certainty should be maximised by providing a legal basis for access and benefit sharing.
5. Transparency and accountability should be supported by:
 - a. disclosure of all criteria against which access is granted;
 - b. appropriate integration of decision making into administrative review systems; and
 - c. making public information about benefit-sharing agreements where consistent with commercial, privacy and cultural confidentiality.
6. To minimise duplication, frameworks should allow for possible exemption of public collections administered consistently with these Principles. This may include, for example, institutions such as botanic gardens or herbaria that are participating institutions in the international Common Policy Guidelines for implementation of the “Principles on Access to Genetic Resources and Benefit Sharing for Participating Institutions”.
7. That in granting access, the decision maker should be able to attach conditions aimed at ensuring ecological sustainability and such conditions may include the application of collection protocols.
8. In granting access and determining conditions, environmental assessment of possible impacts should be consistent with assessment systems established within jurisdictions. Regard should be given to the application of the precautionary principle, namely that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”.

Nationally Consistent Approach



9. In the development of model contracts consideration should be given to the *Suggested Elements for Material Transfer Agreements* found at Appendix 1 of the *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits arising out of their Utilization* together with Appendix II, *Monetary and Non-Monetary Benefits*.
10. That the scope of possible benefits available from access to, and the ecologically sustainable use of, genetic and biochemical resources as illustrated in Appendix II of the Bonn Guidelines should be made available to all stakeholders by way of explanatory documentation or other means, for example made available on the internet.
11. When seeking to maximise consistency with other Australian jurisdictions, regard should be given to the value of:
 - a. the use of common terms wherever possible;
 - b. agreement on appropriate deterrent penalty levels for similar offences;
 - c. collaboration in the development of model contracts and contractual terms;
 - d. establishing links between web based online information sites;
 - e. developing consistent public information material;
 - f. the use of joint benefit-sharing contracts where intended biodiscovery collection involves crossing jurisdictional borders;
 - g. the adoption of common collection protocols where possible;
 - h. sharing of common experience;
 - i. collaborating in the development of whole of government policy positions in relevant international fora;
 - j. collaborating when considering common issues such as the ownership of resources and the possible application of frameworks to private land; and
 - k. collaborating in the development of contract monitoring and access compliance procedures.

Natural Resource Management Ministerial Council



Contacts

For a list of State, Territory and Australian Government contacts:

<http://www.biodiv.org/doc/lists/nfp-abs-cna.pdf>

For more information about the management of genetic resources in Australia: <http://www.deh.gov.au/biodiversity/science/access/index.html>

Or contact the National Focal Point for Access and Benefit Sharing:

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