

# Operational policy

## Biodiscovery

### Issuing and administering biodiscovery collection authorities

*Operational policies provide a framework for consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of Environment and Heritage Protection (EHP). Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.*

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## Policy subject

This operational policy deals with the administration of collection authorities under the *Biodiscovery Act 2004* Department of Environment and Heritage Protection (EHP) in prescribed circumstances.

## Purpose

The purpose of this operational policy is to clarify the role of EHP in the administration of collection authorities (biodiscovery). It should be read in conjunction with the *Compliance code - taking native biological material under a collection authority* (the Code).

## Background

The *Biodiscovery Act 2004* (the Act) is jointly administered by the Department of Science, Information Technology and Innovation (DSITI), the Department of National Parks Sport and Racing (NPSR) and EHP.

By Queensland Government Gazette 40 of 19 June 2015, *Administrative Arrangements Amendment Order (No. 1) 2015* was made and took effect on 1 July 2015. As a consequence of that Order, in relation to the *Biodiscovery Act 2004*:

- EHP is responsible for the compliance code, collection protocols and the processing of applications for collection authorities other than with respect to the protected area estate and forest reserves, and
- NPSR is responsible for the compliance code, collection protocols and the processing of applications for collection authorities with respect to the protected area estate and forest reserves (excluding Nature Refuges).

The Code guides EHP (within its area of responsibility) in the environmental sustainability of proposals to collect for biodiscovery purposes.

## Policy statement

EHP will process applications for collection authorities submitted under the provisions of the Act with respect to the proposed collection of specimens at sites located outside of the protected area estate and outside of forest reserves.

Where applications are granted by EHP with respect to the above collection sites, EHP will issue and administer the collection authorities.

An application for a collection authority that is received by EHP and that proposes the collection of native biological material from site(s) located within the protected area estate and/or within a forest reserve will be referred to NPSR for processing.

## About Collection Authorities

A biodiscovery collection authority is required to collect native biological material for the purposes of biodiscovery.

An application for an authority can be refused even if a benefit sharing agreement or approved biodiscovery plan is in force.

An EHP delegate is not limited in the matters that may be considered in deciding an application.

A collection authority holder must comply with the Code unless the collection authority is issued with conditions allowing an alternative practice.

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A collection authority does not grant access rights to any place and the Code requires authority holders to negotiate access with the land or water manager.

Once a collection authority has been granted, no other Queensland authority is required to collect *at the authorised sites* and prohibitions on collecting biological material *with respect to those sites* no longer have effect. Commonwealth authorisation will be required in some instances.

### Granting a collection authority

A collection authority may be granted to a biodiscovery entity.

A collection authority will only be authorised for the minimum quantity necessary to undertake laboratory-based biodiscovery research.

A collection authority will be granted on the basis of taxa.

An agent or contractor may undertake the collection of native biological material on behalf of a biodiscovery entity that holds a valid collection authority.

A collection authority cannot be granted to a collector to enable the subsequent sale of the native biological material to a biodiscovery entity.

### Non-compliant authorities

The following statements relating to non-compliant authorities apply to the grant of collection authorities and the amendment of currently valid collection authorities.

A non-compliant collection authority may be granted where alternative practices are appropriate to the proposed location, organism or technique and will cause no more than a minor and inconsequential impact on biological diversity. To be clear, this applies to all components of the Code, including the collection of restricted taxa.

A quantity in excess of limits set by the Code will not be authorised unless it can be satisfactorily determined that:

- the quantity requested is the minimum necessary for laboratory based research; and,
- the level of take is sustainable; and
- the level of take will have no ongoing detrimental effect on the population of the target species.

Taking a number of samples in excess of the Code limits will only be authorised when:

- a biological resource has been identified but further laboratory analysis is necessary before the resource can be synthesised; or
- prior samples were compromised or are otherwise inappropriate for laboratory analysis; or
- the cumulative effect of additional sampling will not impact on the organism, its population or habitat, to an extent greater than the primary sample collection.

Authority to take samples in excess of the Code will not be given to reduce development, testing or marketing costs.

### Refusal of an application for a collection authority

An application will be refused:

- if it cannot be satisfactorily determined that the collection is for biodiscovery; or
- if it is non-compliant and there are no acceptable alternative practices; or
- if there is insufficient information on which to base a decision; or

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- if the applicant has breached conditions of a prior authority; or
- if the applicant has been convicted of an offence under the Act or another relevant act, such as the *Nature Conservation Act 1992*; or
- if it is for the collection of native biological material at the same location that is permitted by another authority for the purposes of biodiscovery.

### **Actions by EHP in relation to a collection authority granted by EHP**

To the extent that management and conservation objectives can be met, a currently valid collection authority that has been granted by EHP will not be amended due to the creation of a protected area over an authorised collection site.

An authority holder may at any time request an amendment to update contact details for the holder or corporation, or the identification details of the project. Requests from the authority holder to amend other authority conditions will be considered by EHP.

Where wildlife is reclassified to a higher level under the *Nature Conservation Act 1992*, a collection authority granted by EHP will be amended to remove that species from the authority unless sufficient information is received from the authority holder to establish that its removal is not warranted.

A collection authority may be suspended if land/water managers report breaches regarding the access agreement.

A collection authority may be suspended, or cancelled without first being suspended, if:

- there are reasonable grounds to believe that the authority was obtained because of false or misleading information;
- DSITI reports that the authority holder has failed to supply a material disposal report within the required period; or
- the holder has failed to meet requirements to provide material disposal reports; or
- a condition of the authority has been breached, resulting in tangible environment impact, a threat to human safety, or a breach of any legislation.

A collection authority will be cancelled if the authority holder is convicted of an offence under the *Biodiscovery Act*, or if a matter leading to the suspension of an authority cannot be resolved.

### **Authorities relevant to lands or waters**

The Act applies all State lands and Queensland waters. Under current native title work procedures, notification requirements differ between lands and waters, and for living and dead biological material. Notification will not normally be required to grant an authority for State lands. Notification will generally be required for Queensland waters, with some exceptions.

### **Are collection authorities transferable?**

No, collection authorities are not transferable between individuals or organisations.

### **Legislative authority**

*Biodiscovery Act 2004*

*Administrative Arrangements Amendment Order (No.1) 2015*

*Compliance code - taking native biological material under a collection authority*

## Further Information

### Reference documents

*Compliance code - taking native biological material under a collection authority*

*Information sheet – Biodiscovery collection*

### Definitions

A **benefit sharing agreement** is an agreement between the State and a biodiscovery entity under which the State gives the entity the right to use native biological material for biodiscovery, and the entity agrees to provide benefits of biodiscovery to the State. A **biodiscovery plan** outlining the proposed activities and their benefit to Queensland must be approved before an agreement can be entered into. DSITI has responsibility for both benefit-sharing agreements and biodiscovery plans.

**Biodiscovery** and **biodiscovery entity** have the meanings given in the Act.

**Biological diversity** has the meaning given in the Act, and includes the natural diversity of and functional relationships between species, communities, environmental conditions, landforms, soils and water.

**The Code** means the *Compliance code - taking native biological material under a collection authority*.

**Compliant** and **non-compliant**. Under the Code, compliant means that there are no variations from the Code, and non-compliant means that there are variations from the Code. A non-compliant authority is granted with conditions authorising the use of alternative practices to those set out in the Code.

**State land** has the meaning given in the *Biodiscovery Act, 2004*.

### Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Heritage Protection should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

### Approved By

G Clare
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Signature

30/03/2016
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Date of approval

Geoff Clare

**Acting Deputy Director-General**