

**Response to the Victorian "Land and biodiversity at a time of climate change" Green Paper**

**AusBiotech**  
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## Introduction

AusBiotech is the national industry organisation that represents one of the key industries of the future: biotechnology.

It is through a properly supported biotechnology industry that we will see solutions emerge to confronting global issues – whether they are in health, climate change, food or fuel. Biotechnology will be the 'enabler' to assist achievement of breakthroughs and drive wealth creation in Australia.

AusBiotech represents an industry that is the sixth largest of its kind in the world<sup>1</sup>. The organisation is the third largest biotechnology industry organisation in the world and runs the most successful international annual conference in the Asia-Pacific region.

AusBiotech represents 3000 members covering the human health, agricultural, medical device, environmental and industrial sectors in biotechnology. AusBiotech is dedicated to the development, expansion and prosperity of the Australian biotechnology industry by providing initiatives to drive sustainability and growth, outreach and access to markets, and representation and support for members nationally and around the world.

We agree with Minister Jennings forward I the Green Paper wherein he states that Victoria's biodiversity is fundamental to Victorians and that innovation, creativity and new knowledge will be critical to our future.

This submission from AusBiotech has addressed areas pertaining to BioDiscovery, an area of interest to members.

To compile this submission, AusBiotech sought a range of views from its members, including senior executives from large and small companies; as well as its advisory Board and staff.

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<sup>1</sup> Beyond Borders - Ernst & Young Global Biotechnology Report 2007

## Executive Summary

AusBiotech has responded to questions in the Green Paper that are of interest to members. Those questions are:

**1. Should the Government be a party to benefit-sharing agreements for access to biodiversity on private land and traditional Indigenous knowledge, or should it freely give approval for use of resources without retaining benefits?**

**1.1. Benefit-sharing agreements**

**1.1.1. Recommendation:**

As with other jurisdictions with legislation in place, the Victorian Government should not be party to benefit sharing agreements for access to biodiversity on private land or traditional Indigenous knowledge.

**1.1.2. Recommendation:**

In consultation with Industry, develop template benefit sharing agreements which could be drafted by the Government and placed on a website for public access and use by the company and the land holder.

**1.2. Administration of Collection Permits**

**1.2.1. Recommendation:**

A single Government agency should be responsible for the preparation of Collection Permits and such permits should cover all relevant legislation allowing BioDiscovery to take place.

**1.2.2. Recommendation:**

Costs for Collection Permits should be minimal, reflect the time required to prepare the permit and be equal for all parties.

- 1.2.3. Recommendation:**  
A statutory timeframe for processing the Collection Permit is required.
- 1.2.4. Recommendation:**  
Collection Permits should be for a defined period of time and renewal of permits should be allowable if the conditions of the original Collection Permit have not been breached.
- 1.2.5. Recommendation:**  
A statutory timeframe for processing the Collection Permit is required.
- 1.2.6. Recommendation:**  
In sensitive areas or with endangered species, collection activities may be undertaken by a Government Agent in the presence of the Permit Holder, or by the Permit Holder under supervision of a Government Agent at no additional cost to the Permit Holder.
- 1.2.7. Recommendation:**  
Permit Holders should report the number of samples collected and approximate weight/number of organisms, the location and the time and date of sampling. For confidentiality reasons, this information should not be made public in the context of BioDiscovery.
- 1.2.8. Recommendation:**  
Permit Holders must notify the Government Agent when a Benefit Sharing Agreement with a landholder has been reached. There is no need to include in the notification the details of the Agreement.
- 1.2.9. Recommendation:**  
Clarification on the legal ownership of organisms cultured from individuals is required.

**1.2.10. Recommendation:**

Due to the difficulties in dealing with micro-organisms and the likely low impact of sampling, an exempt status would be most appropriate for both a Permit system and in future legislation if it is required.

**1.2.11. Recommendation:**

Should it be deemed necessary to include micro-organisms in legislation surrounding BioDiscovery, the onus of proof as to whether a micro-organism is endemic or not should lie with the State rather than the organization working with that material.

**1.2.12. Recommendation:**

To facilitate identification of parties that would be involved in negotiations on a parcel of land, a Geographic Information System should be made available where researchers and companies can examine ownership of areas of interest.

## **2. What rules should apply for public land?**

### **2.1. Benefit-sharing agreements**

**2.1.1. Recommendation:**

The Victorian Government should have clear guidelines for benefit sharing agreements for access to biodiversity on State Managed Public land.

**2.1.2. Recommendation:**

Government Benefit-Sharing Agreements, should they be required, should be processed by the same Government Agent as the Collection Permit.

## **2.2. Administration of Collection Permits**

### **2.2.1. Recommendation:**

The same process, with the exception of the Government Benefit Sharing requirement, should be followed for Public land.

## **1. Should the Government be a party to benefit-sharing agreements for access to biodiversity on private land and traditional Indigenous knowledge, or should it freely give approval for use of resources without retaining benefits?**

### 1.1. Benefit-sharing agreements

Australia is a party to the Convention on Biological Diversity which details three 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. To address these objectives, all Australian Governments contributed to the development of the "Nationally consistent approach for access to and the utilisation of Australia's native genetic and biochemical resources". As such, due consideration should be given to legislation that has been enacted in other jurisdictions. To maintain a consistent approach, the Victorian Government should not be party to benefit sharing agreements for access to biodiversity on private land or traditional Indigenous knowledge as is the case with similar Acts in the Northern Territory and Queensland.

There is a concern that without Government intervention, such access agreements could favour the party desiring to access a particular biological resource as they have more knowledge about its potential worth than any one landowner or Indigenous community. This concern does not include the developmental cost of products derived from biological resources or the high likelihood of failure of biologically-derived therapeutic drugs. One mechanism for the Government to assist with this process would be to consult with industry and develop template benefit sharing agreements which could be drafted by the Government and placed on a website for public access and use by the company and the land holder.



## 1.2. Administration of Collection Permits

In Victoria, several Departments have an interest in BioDiscovery, for example the Department of Sustainability and Environment and the Department of Primary Industries. Additionally, future Governments may restructure Departmental portfolios to reflect their policy objectives. Government Departments administrate and operate under various Acts that apply to biological resources. AusBiotech advocates that a single Government agency should be responsible for the preparation of Collection Permits and such permits should cover all relevant legislation allowing BioDiscovery to take place. Such a system would ensure that appropriate legislative requirements were met while providing a clear avenue for obtaining Collection Permits.

As BioDiscovery activities have a high probability of not producing a commercial outcome, any costs for Collection Permit should be minimal and reflect the time required to prepare the permit. As it is likely that research institutes would undertake the majority of the work, if costs were associated with Permits, they should be equal for all parties so that companies do not subsidise research organisations.

To provide clarity of process, a statutory timeframe for processing the Collection Permit is required. Defined timeframes allow activities to be planned to occur at a time that suits the biological stage (for example the maturity or reproduction age) of resources and allow for project planning or research activities.

Collection Permits should be for a defined period of time and renewal of permits should be allowable if the conditions of the original Collecting Permit have not been breached. Such a system allows for the checking of validity of Collection Permits from an enforcement perspective while allowing a streamlined process for extending collection periods.

It may be that collection of species that are listed as protected or endangered in Victorian habitats, or sampling in sensitive areas may be requested. In sensitive areas or with endangered species, collection activities may be undertaken by a Government Agent in the

presence of the Permit Holder, or by the Permit Holder under supervision of a Government Agent at no additional cost to the Permit Holder. Such a system would allow BioDiscovery in areas that are considered to be sensitive under guidance of managers of those resources. However, the lack of Government resources to supervise collection activities should not be used as a mechanism to slow or prevent BioDiscovery.

BioDiscovery activities have the potential to provide valuable data on the organisms that have been sampled including population numbers, distribution and genetic variability that may prove too costly for Government Departments to generate. However, research institutions and companies may consider some information aspects to be intellectual property, to be proprietary information or business secrets. This need should be considered in the context of the data that may be advantageous for the protection of Victorian biota. To balance these conflicting positions, Permit Holders should report the number of samples collected and approximate weight/number of organisms, the location and the time and date of sampling. For confidentiality reasons, this information should not be made public in the context of BioDiscovery.

Permit Holders must notify the Government Agent when a Benefit Sharing Agreement with a landholder has been reached. There is no need to include in the notification the details of the Agreement. BioDiscovery may not take place until this notification has been sent to the Government Agent.

There has been some concern regarding the inclusion of micro-organisms in the scope of the Green Paper. The current understanding regarding micro-organisms is that they are exempt from requiring research permits and are not considered under existing interpretation of Legislation. Difficulties arise across the areas of agriculture, bioremediation and medicine where strains are isolated and used to increase food production and quality, improve the health of soils, or treat disease. If an endemic soil borne pathogen that produces an interesting therapeutic compound is cultured from an individual suffering from the disease caused by that organism, the current

understanding is that under Common Law, the individual is the owner of that organism. Clarification on the legal ownership of organisms cultured from individuals is required.

There is additional difficulty in demonstrating if a micro-organism is endemic to a locality or State. Due to the difficulties in dealing with micro-organisms and the likely low impact of sampling, an exempt status would be most appropriate for both a Permit system and in future legislation if it is required.

Should it be deemed necessary to include micro-organisms in legislation surrounding BioDiscovery, the onus of proof as to whether a micro-organism is endemic or not should lie with the State rather than the organization working with that material.

As Victoria has a patchwork of land and water that is held by various Government jurisdictions in addition to freehold land, an instrument that provides clarity would be welcomed. To facilitate identification of parties that would be involved in negotiations on a parcel of land, a Geographic Information System should be made available where researchers and companies can examine ownership of areas of interest. This system should also identify waterways and identify marine parks and jurisdiction ownership out to the boundary of Australian waters.

## **2. What rules should apply for public land?**

### **2.1. Benefit-sharing agreements**

As managers for Public Lands, the Victorian Government should have clear guidelines for benefit-sharing agreements for access to biodiversity on State managed Public land.

To allow ease of application, Government benefit-sharing agreements, should they be required, should be processed by the same Government Agent as the Collection Permit.

## 2.2. Administration of Collection Permits

To ensure consistency where possible in the Collection Permit system, the same process, with the exception of the Government Benefit Sharing requirement, as has been detailed for Private Land should be followed for Public land.

### **Summary**

BioDiscovery is an important part of biotechnology, possibly leading to new therapeutic agents for the treatment of various diseases. The ease of BioDiscovery must be tempered with the desire to protect biodiversity and our natural resources. By minimizing costs to research institutions and companies, the likelihood of compliance with any Permit system is higher without requiring significant resources from the Government to ensure enforcement or imposing significant costs that prevent or minimize BioDiscovery. One effective mechanism for minimizing costs is for the Government to not be party to benefit sharing agreements on Private Land, a position that is consistent across other jurisdictions. The advantage of this position is reduced costs to research institutes and companies while effectively charging private landholders to become custodians of biodiversity on their properties.