**CONVENTION ON BIOLOGICAL DIVERSITY (CBD) NOTIFICATION 2015-049**

Submission of views in preparation for the Expert Meeting on the need for and modalities of a global multilateral benefit-sharing mechanism

Submission by Australia

**NOTE**: **All information provided in this response has been drawn from Australian Government agency inputs only. No consultation with State and Territory governments was carried out.**

**Notification 2015-049: Views on the need for and modalities of a global multilateral benefit-sharing mechanism**

**Australia’s access and benefit sharing arrangements - Part 8A of the EPBC Act**

Australia is one of the few countries in the world that has an effective domestic access and benefit-sharing scheme in place, introduced in 2005 under Part 8A of the Environment Protection and Biodiversity Conservation Regulation 2000 [http://www.environment.gov.au/topics/science-and-research/australias-biological-resources/permits].

Australia has been operating this scheme for several years, which was explicitly designed to facilitate access and to encourage research. This is done through a very simple, legally binding declaration with an obligation to renegotiate terms should the user seek to commercialise the resource and/or results of their research.

Seeking permission for terms of access that are agreed including a provision for appropriate reporting ensures that a beneficial relationship between user and provider is established and more importantly maintained.

On implementing our legislation on mutually agreed terms (MAT) and prior informed consent (PIC), we found users increasingly insisted on documented evidence of both PIC and MAT to legally underpin their work. Having this legal certainty leads to improved practices and operating standards of users of genetic resources.

The Protocol itself provides the necessary framework for establishing these standards and change.

Australia would like to make the following observations, regarding the areas identified as requiring further consideration in paragraph 23 of the report of the Expert Meeting on Article 10 of the Nagoya Protocol.

* Duplication of ABS mechanisms or mechanisms already under negotiation should be avoided (for example in Antarctica and areas beyond national jurisdiction).
* It remains unclear when a GMBSM, if implemented, would apply. The vast majority of ABS situations would be subject to national obligations, legislation and/or regulations. Article 3 and subsequently Article 15 of the Nagoya Protocol limit the application of Article 10 to the use of genetic resources in accordance with the domestic legislative and regulatory requirements of that jurisdiction.

If a GMBSM is established it should only be applicable where appropriate national legislation or agreed bilateral/multilateral approaches (if there are agreements in place across countries for example) do not exist.

A requirement to adopt a GMBSM could potentially impact Australia’s existing national legislation and require modification of Australia’s current effective access and benefit sharing mechanism.

* Consideration is required for the possible impacts on sovereign rights to access genetic resources, and require PIC and MAT, if a global mechanism is implemented. This could also apply to the right for jurisdictions to waive PIC if they choose to - that is, would a mechanism for PIC under a GMBS where PIC requirements are not already in place in a jurisdiction, impose on their right to waive PIC? How would a GMBS apply in these circumstances without changing any current national requirements for ABS, PIC and MAT?
* The definition of a ‘transboundary situation’ needs to be clarified. A widely distributed species, for example, would not necessarily constitute a transboundary situation. The view that widely distributed species cannot be sourced from a single location and that they are ‘natural information’ seems inconsistent with the definition of a genetic resource under the Protocol. The Protocol defines genetic resources as ‘genetic material of actual or potential value’. As such, genetic resources are a taxonomic entity, which is for example a plant species sourced from a specific location. The user of the sample for research purposes would of course be subject to the ABS requirement for access in that location.