

Phase 2 Information Paper Proposed Model and Concepts

What is biodiscovery?

Biodiscovery is research and development on the genetic or biochemical composition of genetic resources, including through the application of biotechnology.

“Biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.

Genetic resources are any resources with functional units of heredity that are not of human origin and are native to Western Australia. This includes plants, animals, things that come from animals like venom, and microorganisms.

Biodiscovery can have a non-commercial or a commercial purpose.

Taxonomic research will be included in the remit of the Bill if it involves extraction of genetic or biochemical elements/material, even if this research is non-commercial in purpose.

What is not biodiscovery?

Under the WA Biodiscovery Bill, biodiscovery does not include:

- Research on resources that do not have functional units of heredity, such as rocks;
- Research that does not involve the genetic or biochemical composition of genetic resources, such as geological investigations;
- Research on resources that are of human origin; or
- Research on resources that are not native to WA, for example proteas or koalas which are introduced species.

Why is biodiscovery legislation needed in WA?

Genetic resources are an important and valuable asset. Researchers across the world investigate genetic resources and make important discoveries. Often these discoveries are used to make new products such as medicines, cosmetics and biotechnologies. A lot of money can be made from these new products.

WA is home to many unique genetic resources. Our State has some of the world’s most diverse plant and animal life and contains eight of Australia’s fifteen biodiversity hotspots.

Aboriginal people in WA hold traditional knowledge about genetic resources in our State and it is important that its use is appropriately consented to and acknowledged. Where the proposed use of traditional knowledge is commercial in purpose then arrangements to share in any future benefits should exist.

Biodiscovery legislation is needed in WA to protect the valuable genetic resources we have in WA, and ensure any commercial returns from its use are shared fairly.

What will biodiscovery legislation in WA do?

Currently there is no law in Western Australia for authorising biodiscovery which is consistent for all native genetic resources and compliant with Australia's international obligations. The State's resources are being used in biodiscovery activities, products are being developed and money is being made. There has also been feedback that traditional knowledge has been used, for example about the Gubinge (Kakadu Plum). However, despite all of this, benefits from these discoveries have not always been shared with the State or Aboriginal people.

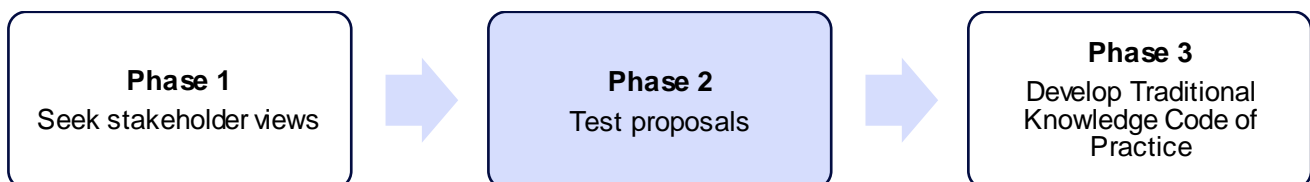
A Biodiscovery law will establish a certification system for accessing Western Australia's genetic resources for biodiscovery. This system is intended to protect the interests of the State and give rights to Aboriginal people to control use of their traditional knowledge when genetic resources are being used for biodiscovery.

The certification system is intended to provide that:

- The State shares benefits from commercialisation of biodiscovery using the State's genetic resources;
- Aboriginal people share benefits from commercialisation of biodiscovery using their traditional knowledge about the genetic resources;
- Aboriginal people have a say about the use of their traditional knowledge for biodiscovery on WA genetic resources because biodiscovery proponents must have their consent to use it; and
- Researchers and others can prove their environmental, social and governance credentials when carrying out biodiscovery activities using WA genetic resources.

This certification system is intended to be consistent with principles contained in the [Nagoya Protocol](#), which is an international agreement about sharing the benefits from using genetic resources in a fair and equitable way. The principles of the Nagoya Protocol include: lawful authorised access to resources with free prior and informed consent; access and use of resources on mutually agreed terms; the fair and equitable sharing of benefits; and recognition and protection of traditional knowledge.

Consultation phases



The steps for development of the Biodiscovery Bill include:

- Phase 1 of consultation to seek stakeholders' views on key concepts and mechanisms within the Bill. This happened in August – December 2022.
- Examine the responses from phase 1 of the consultation and develop proposals based on what was said. This happened in January – March 2023.
- Phase 2 of consultation to test the proposals with stakeholders. This will occur in April – May 2023.

- Examine the responses from phase 2 of the consultation and draft the Bill based on the findings from phases 1 and 2. This is planned to occur from June 2023 onwards.
- Introduce the Bill into Parliament. This is currently planned for later in 2023.
- Phase 3 of consultation to develop supporting resources for biodiscovery proponents and Aboriginal people for the use of traditional knowledge, for example a Traditional Knowledge Code of Practice or equivalent. This is currently planned to commence in late 2023 or early 2024.

Proposed Model for the Bill

It is proposed that anyone wanting to access WA genetic resources for the purpose of biodiscovery will need a Biodiscovery Collection Permit and can apply for a WA Biodiscovery Certificate.

Key terms

Term	Description
Central Agency	<p>The Central Agency is the WA Government agency that will be responsible for the biodiscovery law.</p> <p>The Central Agency will assess applications and issue Biodiscovery Collection Permits and WA Biodiscovery Certificates.</p> <p>They will negotiate benefit sharing agreements between proponents and the State. The Central Agency will be the central point in Government for proponents to contact.</p>
Biodiscovery Collection Permit	<p>A Biodiscovery Collection Permit gives permission from the State Government to take a WA genetic resource for biodiscovery, subject to other required permissions. Other permissions may include getting consent from private land holders or Exclusive Possession Native Title Holders to access relevant land or water areas.</p> <p>The Biodiscovery Collection Permit will also specify the entering into of a benefit sharing agreement with Traditional Knowledge Custodians when traditional knowledge is to be used, and the entering into of a benefit sharing agreement with the State, before the resources are taken.</p>
WA Biodiscovery Certificate	<p>A WA Biodiscovery Certificate can be applied for once all prior informed consent and mutually agreed terms required by the legislation have been met.</p> <p>The WA Biodiscovery Certificate is intended to show that the requirements of the Nagoya Protocol and WA Biodiscovery legislation have been satisfied.</p>

When will a Biodiscovery Collection Permit be needed?

Required	Not required
<ul style="list-style-type: none">Collecting genetic resources from WA lands and waters, including private land, Native Title Determined Land and WA Crown Land.Accessing samples held in WA Government libraries and specimen collections such as the WA Museum or WA Herbarium.	<ul style="list-style-type: none">Sourcing genetic resources from a privately owned collection (such as a university sample library).Purchasing specimens from a commercial supplier.Activities that do not relate to biodiscovery (existing Government permit/licence systems would continue to apply).

When a resource is to be collected for biodiscovery purposes, Biodiscovery Collection Permits will be applied for instead of existing access or taking permits and licences. This includes permits and licences issued by WA Government agencies such as the Department of Primary Industries and Regional Development (DPIRD), Department of Biodiversity, Conservation and Attractions (DBCA) and Department of Planning, Lands and Heritage (DPLH). Importantly though, these existing permits and licencing systems will continue to apply for activities that are not covered by the WA Biodiscovery Bill.

Why is a Biodiscovery Collection Permit needed?

A Biodiscovery Collection Permit is needed to make sure that processes under the Biodiscovery Bill are consistent with the Nagoya Protocol and other State and Commonwealth legislative requirements.

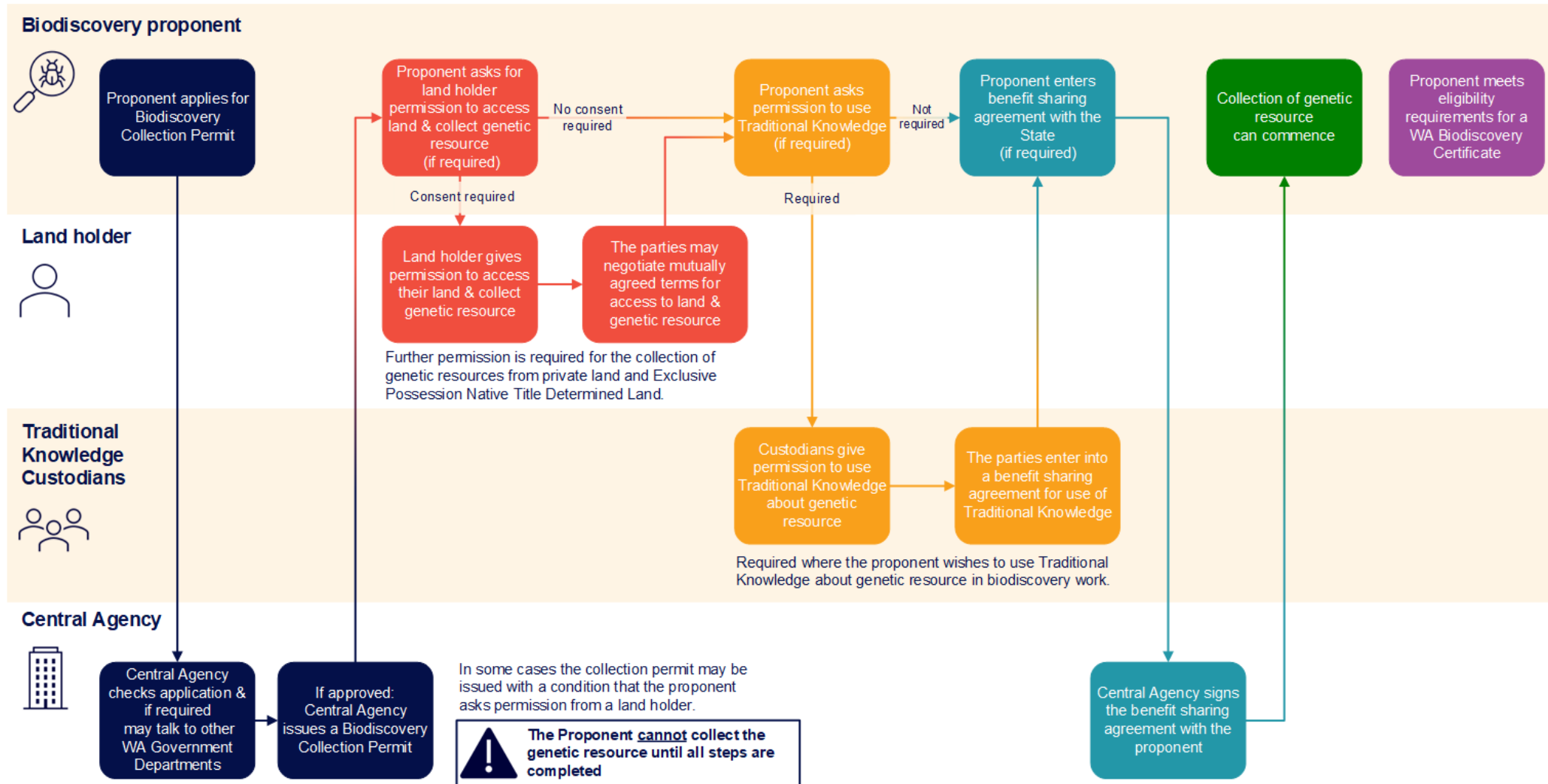
Keys steps in process



Explanation of the process

	<ul style="list-style-type: none"> The proponent applies to the Central Agency to get a Biodiscovery Collection Permit. The holder of a Biodiscovery Collection Permit will be required to carry out the following steps (where applicable) before they can take the relevant WA genetic resource.
	<ul style="list-style-type: none"> If the proponent wants to take the genetic resource from private land or Exclusive Possession Native Title Land they must get consent from the land holder to access the land and take the genetic resource. The land holder may decide that they want to negotiate mutually agreed terms with proponents wanting to access the land. If consent is not given, the researcher cannot collect the resource from that land.
	<ul style="list-style-type: none"> Where the proponent plans to use traditional knowledge about the genetic resource as part of their work they must: <ul style="list-style-type: none"> Get consent from the Traditional Knowledge Custodians to use the traditional knowledge; and Enter into mutually agreed terms for the use of traditional knowledge with the Traditional Knowledge Custodians. This may be a more detailed document if the biodiscovery activity is for a commercial purpose and should include agreement for sharing benefits. For non-commercial purposes where no benefits may ever arise, the proponent and Custodians could consider a simpler document including some standard benefit sharing terms, with an option to renegotiate arrangements, if the intent becomes commercial. If the Traditional Knowledge Custodian does not consent to their traditional knowledge being used or a benefit sharing agreement cannot be reached, the traditional knowledge cannot be used in the biodiscovery activity.
	<ul style="list-style-type: none"> The proponent negotiates a benefit sharing agreement with the State (where applicable). Depending on the circumstances, this may be a standard terms (Fast Track) agreement or a more detailed bespoke agreement.
	<ul style="list-style-type: none"> Once the above steps have been completed, the proponent can collect the genetic resource in accordance with the Biodiscovery Collection Permit and may apply for a WA Biodiscovery Certificate.

Map of the proposed model



What else is your input needed on?

Draft definitions

The Biodiscovery Bill will need definitions for traditional knowledge, Aboriginal tradition and Traditional Knowledge Custodian. Following the phase 1 consultation, draft definitions for these concepts were prepared for further testing with stakeholders. These draft definitions were prepared by the facilitator of the stakeholder workshops in phase 1 of consultation for the Bill and draw on definitions within the *Aboriginal Cultural Heritage Act 2021* and used by the World Intellectual Property Organization. These definitions were tested in roundtable meetings held in April 2023.

Your thoughts about these updated draft definitions would be helpful.

Proposal – Draft definitions

- **‘Traditional Knowledge’** means knowledge about the genetic resources that has its source in Aboriginal tradition and includes know-how, skills, innovations and practices relating to the genetic resources that have been developed and may continue to evolve in accordance with Aboriginal tradition.
- **‘Aboriginal tradition’** means the living, historical and traditional observances, practices, customs, beliefs, values, knowledge and skills of the Aboriginal people of the State generally, or of a particular group or community of Aboriginal people of the State.
- **‘Traditional Knowledge Custodian’** means an Aboriginal person who individually or collectively with others in accordance with Aboriginal tradition –
 - a) holds Traditional Knowledge; and
 - b) has cultural authority, interests and obligations in respect of the Traditional Knowledge.

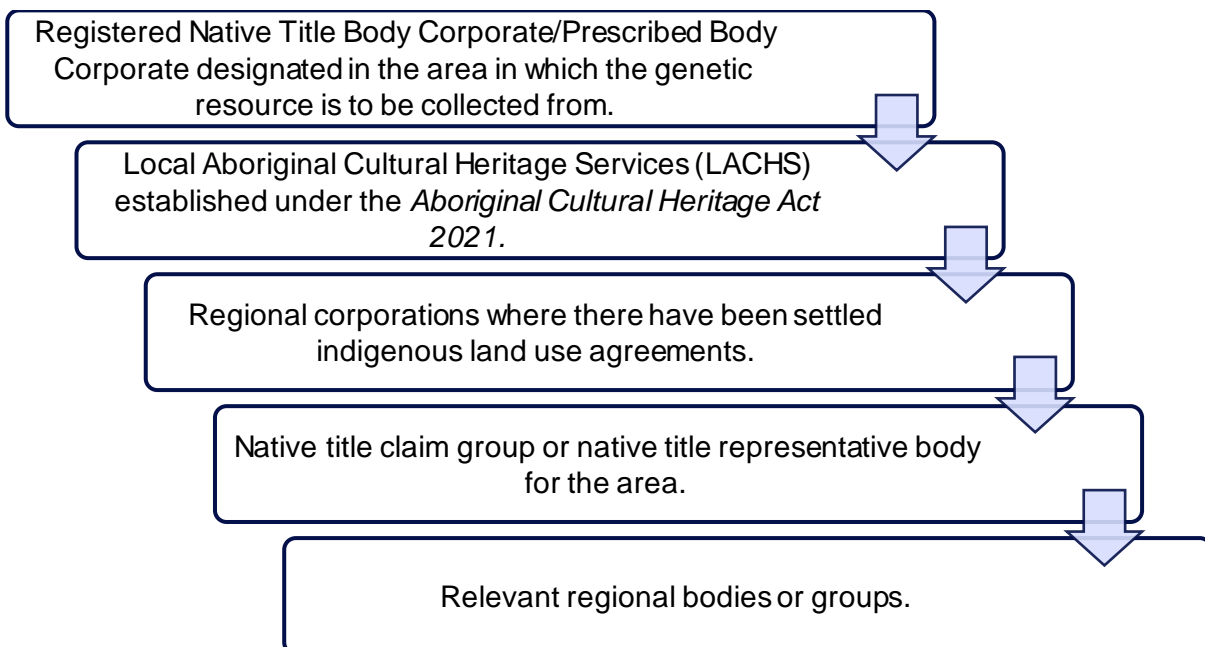


Proposed mechanism for identifying Traditional Knowledge Custodians

The Biodiscovery Bill will provide Aboriginal people with a say on the use of their traditional knowledge in biodiscovery and will make provision for Aboriginal people to share in the benefits when traditional knowledge about a WA genetic resource has been shared and will be used in a biodiscovery activity leading to a commercial result. When permission for use of traditional knowledge is to be sought and benefits are to be shared with Aboriginal people, researchers will need to identify the relevant Traditional Knowledge Custodians for benefit sharing. A mechanism to guide proponents on this will need to be specified. The Central Agency will not be involved in determining who the Traditional Knowledge Custodians are. This will be the responsibility of proponents with guidance from Aboriginal people and the mechanism to be developed.

In the phase 1 consultation, participants said that existing organisations could help proponents to identify the right Traditional Knowledge Custodians for consent and benefit sharing. Based on what was said, a hierarchy of organisations that proponents could go to has been developed for further testing with stakeholders and was discussed during the roundtable meetings held in April 2023. Some of the organisations in the proposed hierarchy may not be in the area where the resource is to be collected from and the traditional knowledge is held. In some situations, some of the organisations may not be able to help. The hierarchy includes a number of different organisations so that there are other places for proponents to go for help if some of the organisations are not in the area or are unable to assist. Your thoughts about this proposed hierarchy would be helpful.

Proposal – Potential hierarchy of organisations that may help proponents identify Traditional Knowledge Custodians



The Traditional Knowledge Code of Practice may provide for guidelines in relation to the use of traditional knowledge for biodiscovery. The Traditional Knowledge Code of Practice or equivalent is proposed to be developed in phase 3 of consultation for the Bill, however we seek your feedback on what the Code of Practice should deal with.

Traditional knowledge in the public domain

Some traditional knowledge has already been published or made public in some way and can be readily accessed in the public domain.

In the phase 1 consultation, stakeholders said that traditional knowledge that is in the public domain should be included within the Bill. This view was also expressed during roundtable meetings held in April 2023. The differences between secret traditional knowledge, narrowly diffused traditional knowledge and widely diffused traditional knowledge were also discussed. A proposal reflecting this feedback has been prepared for further testing with stakeholders. Your thoughts on this proposal would be helpful.

Proposal - Potential way for managing traditional knowledge in the public domain

It is proposed that traditional knowledge in the public domain will be included in the Bill and when a proponent would like to use traditional knowledge in a biodiscovery activity, they will need to make all reasonable efforts to find the Traditional Knowledge Custodian.

Three categories of traditional knowledge are suggested:

1. Secret traditional knowledge
2. Narrowly diffused traditional knowledge
3. Widely diffused traditional knowledge

It is proposed that consent will be sought from the Traditional Knowledge Custodian to use the traditional knowledge and agreeing mutually agreed terms for that use. This may involve benefit sharing.

The State would expect that mutually agreed terms would cover the possibility that non-commercial biodiscovery is later commercialised.

If the traditional knowledge that the proponent wants to use is so widely diffused that the Traditional Knowledge Custodian cannot be found, it is proposed that the proponent could acknowledge the traditional knowledge in their work and any products that come from their biodiscovery activity. Additionally, it is proposed that for commercial biodiscovery activities or activities that change from non-commercial in purpose to commercial, perhaps a percentage of any benefits that come from the biodiscovery activity could be directed by the biodiscovery proponent to the benefit of all Aboriginal people, for example to the conservation of Aboriginal land.

Phase 3 Consultation

In phase 3 of consultation, we would like to develop a Traditional Knowledge Code of Practice (or equivalent) and associated guidance materials, with input from Aboriginal people and biodiscovery proponents.

We are keen to hear what sorts of things you would like included in these discussions to help us to plan for the consultation phase ahead.

The Traditional Knowledge Code of Practice may include guidance for things like:

- Identifying Traditional Knowledge Custodians;
- Obtaining free, prior and informed consent;
- Benefit sharing on mutually agreed terms, including when traditional knowledge is held by multiple groups; and
- Acknowledging and using traditional knowledge.

Contact the Project Team

Phone: +61 8 6277 3000

Email: biodiscovery@jtsi.wa.gov.au

Webpage: www.wa.gov.au/biodiscoverybill

