



Department of
**Jobs, Tourism, Science
and Innovation**

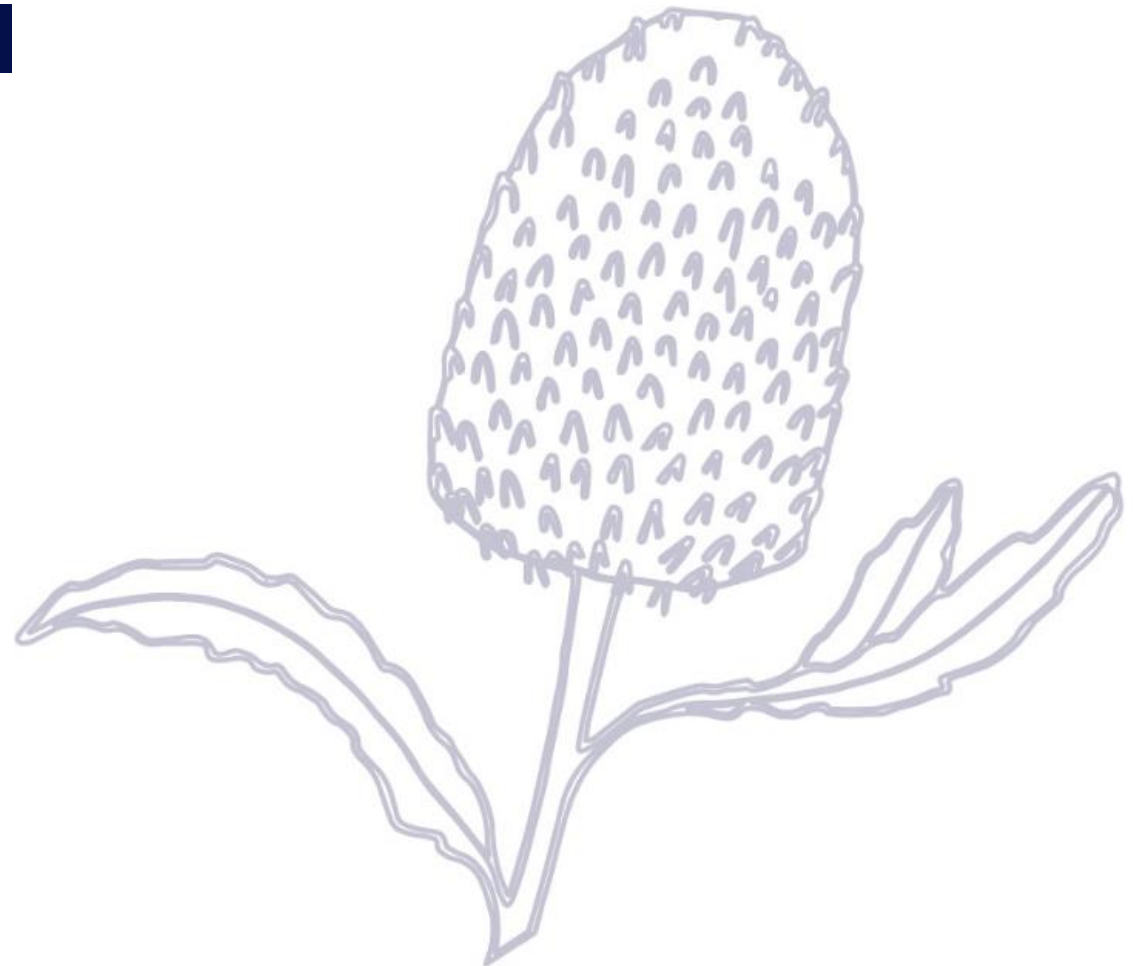
WA Biodiscovery Bill

Phase 2 consultation scenarios

During the second phase of consultation for the WA Biodiscovery Bill, the Department of Jobs, Tourism, Science and Innovation sought feedback on a possible model for how the Bill could function.

These scenarios were developed to help participants understand how the Bill could work in different situations.

Note: These scenarios are based on a proposed model for the Bill and were created to assist the consultation process. The process under the final legislation may be different.



Proposed model for the WA Biodiscovery Bill

It is proposed that anyone wanting to access WA biological resources for the purpose of biodiscovery will need a Biodiscovery Collection Permit. The Biodiscovery Collection Permit is the first step in the proposed process. A biodiscovery proponent cannot lawfully access land or take a biological resource until all of the required steps are completed.

What is a Biodiscovery Collection Permit?

The **Biodiscovery Collection Permit** will be issued by the Central Agency and gives permission from the State Government to:

- access a location for the purposes of taking a WA biological resource; and
- collect the WA biological resource for use in biodiscovery activities.

In some cases, the Biodiscovery Collection Permit may be issued subject to other required permissions such as getting consent from private landholders or Exclusive Possession Native Title Holders to access relevant land or water areas.

The permit holder may also need to enter into a benefit sharing agreement with the State or Traditional Knowledge Custodians, before they can collect the WA biological resource.

Streamlining initiative

Under the proposed model, when a proponent is undertaking a biodiscovery activity the Biodiscovery Collection Permit would be applied for in place of any existing land access and or taking permits/licences/exemptions.

This would include permits/licences/exemptions issued by WA Government agencies such as Department of Primary Industries and Regional Development (DPIRD), Department of Biodiversity, Conservation and Attractions (DBCA) and Department of Planning, Lands and Heritage (DPLH)¹.

When will a Biodiscovery Collection Permit be required?

Required

- Collecting WA biological resources from WA lands and waters, including:
 - WA Crown Land,
 - Native Title Determined Land and
 - Private land.
- Accessing samples held in WA Government libraries and specimen collections such as the WA Museum and WA Herbarium.

Not required

- Sourcing WA biological 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/exemption systems would continue to apply) or involve WA biological resources.

¹ Application processes for accessing threatened flora and fauna for biodiscovery remain under active consideration by Department.

* The proposed traditional knowledge obligations will continue to apply where a proponent intends to use traditional knowledge about biological resources sourced from private collections or commercial supplies

Actions completed before the application process

Prior to starting the formal application process it is anticipated a biodiscovery proponent will have:



Confirmed that the proposed activities are captured under the biodiscovery legislation.

Note: The existing permit/licencing/exemption systems will continue to apply for activities that are not covered by the WA Biodiscovery Bill.



Scoped and planned their work project.

As part of this process the proponent will need to determine whether the intent of the biodiscovery activity is for a non-commercial or commercial purpose. An activity will be considered commercial biodiscovery where the purpose is to develop a product using the biological resource that could be commercialised for monetary gain.



Identified the types of samples to be collected and their locations.

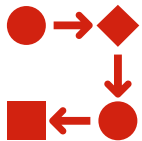


Conducted searches to identify the owners or managers of any land where further permissions will be required.

This is necessary for any proposed collections from private land and/or Exclusive Possession Native Title Land.



Identified the Traditional Knowledge Custodians if the use of Traditional Knowledge about the biological resource is proposed.



Commenced or completed any required due diligence and ethics approvals processes for the research.

Key steps in proposed process

Where a proponent wishes to undertake biodiscovery activities it is proposed that they will be required to:

Apply for and receive
Biodiscovery Collection
Permit

The proponent applies to the Central Agency for a Biodiscovery Collection Permit.

The permit holder will be required to carry out all the steps below (where applicable) **before** they can collect the relevant WA biological resources.

Obtain landholder consent
to access and collect
biological resource
(if required)

Required to collect from private land and Exclusive Possession Native Title Land.

Permit holder must get consent from the land holder to access the land and collect the resource. The proponent will need to keep evidence of this permission because it will be required to obtain a WA Biodiscovery Certificate. If consent is not given, the proponent cannot collect from that land or waters.

If traditional knowledge is
to be used, obtain
consent and enter
mutually agreed terms,
including sharing benefits,
with Traditional
Knowledge Custodians

Required when proponent plans to use traditional knowledge about WA biological resource as part of their work.

The permit holder must get consent from the Traditional Knowledge Custodians to use the traditional knowledge and enter into mutually agreed terms, including sharing benefits if the research is commercialised.

For non-commercial purposes where no benefits may ever arise, the proponent and the Custodians could consider a simpler document including some standard benefit sharing terms with an option to renegotiate arrangements if the intent becomes commercial. The proponent will need to keep evidence of this permission because it will be required to obtain a WA Biodiscovery Certificate.

If the Traditional Knowledge Custodian does not consent to their traditional knowledge being used or mutually agreed terms cannot be reached, the traditional knowledge cannot be used in the biodiscovery activity.

Enter into benefit sharing
agreement with the State
(where applicable)

In most cases the permit holder negotiates a benefit sharing agreement with the State for both commercial and non-commercial biodiscovery activities. Depending on the circumstances, this may be a standard terms (Fast Track) agreement or a more detailed bespoke agreement. While non-commercial biodiscovery does not usually result in a financial gain, an agreement must be in place to cover situations where the proponent's intent becomes commercial.

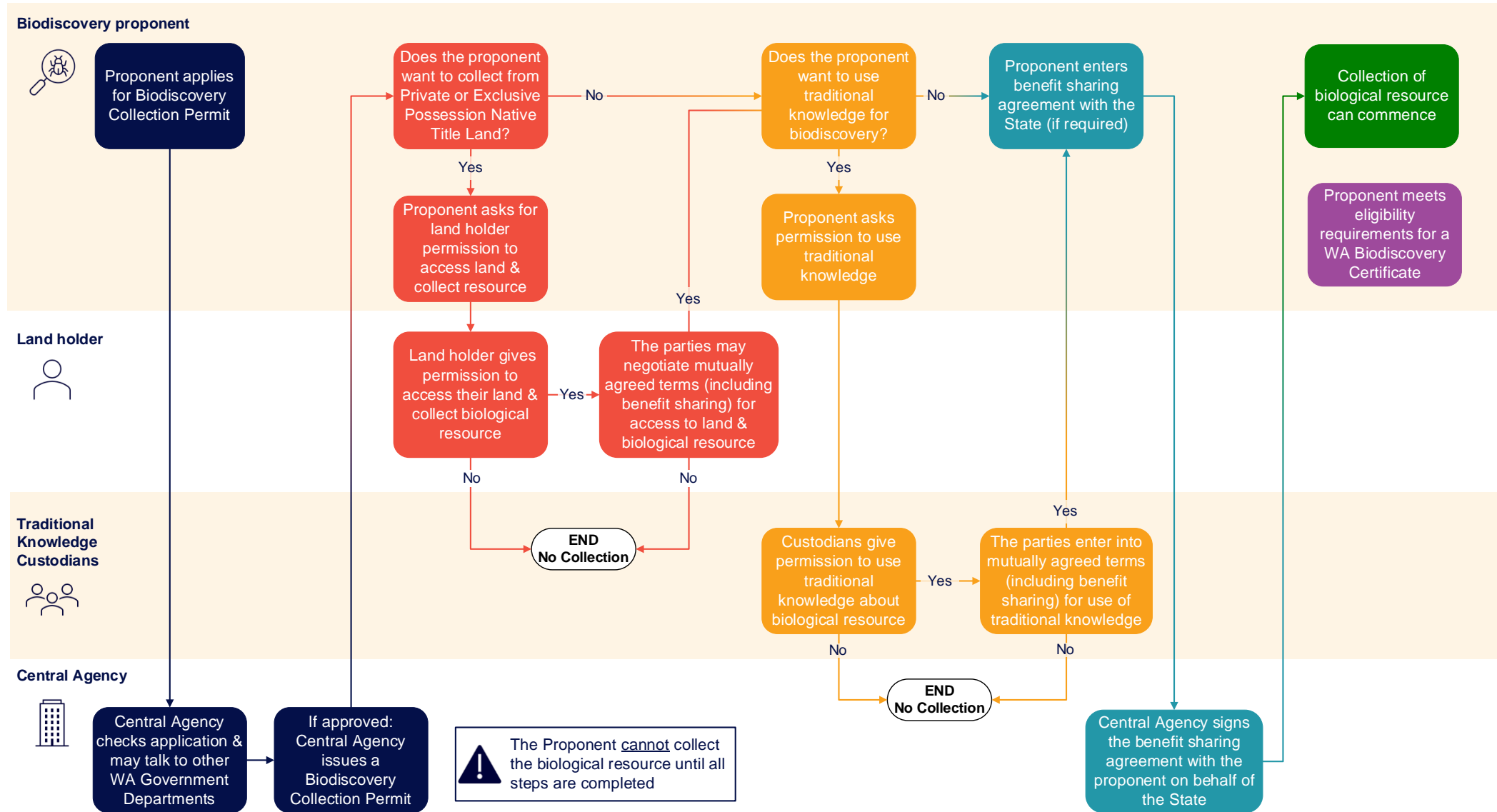
Collect biological
resources

Once the above steps have been completed, the proponent can collect the WA biological resource in accordance with the Biodiscovery Collection Permit.

Eligible for WA
Biodiscovery Certificate

A proponent who has completed all of the above steps (where applicable) will be eligible for a WA Biodiscovery Certificate. This certificate will verify that from a WA Government perspective, the biodiscovery proponent has satisfied the requirements of the WA Biodiscovery legislation and consistency with principles of the Nagoya Protocol.

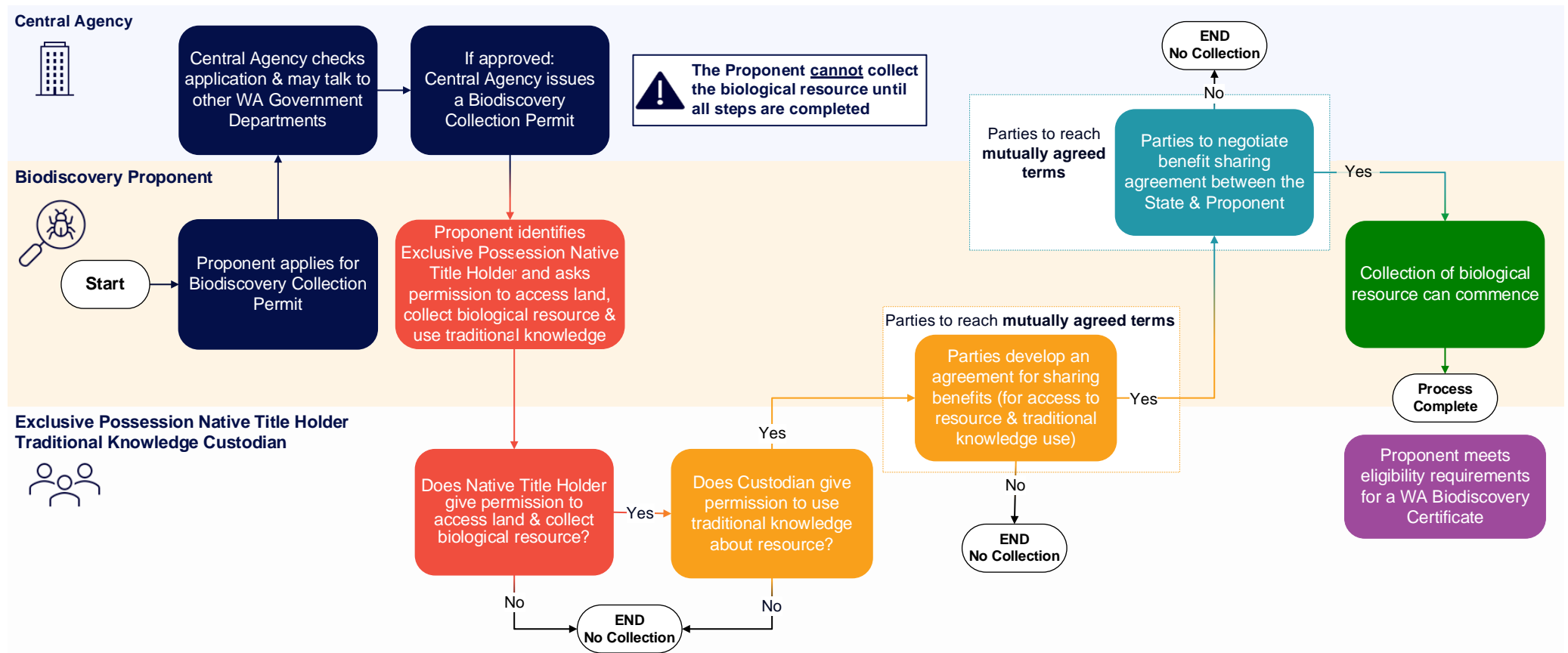
Map of the proposed model



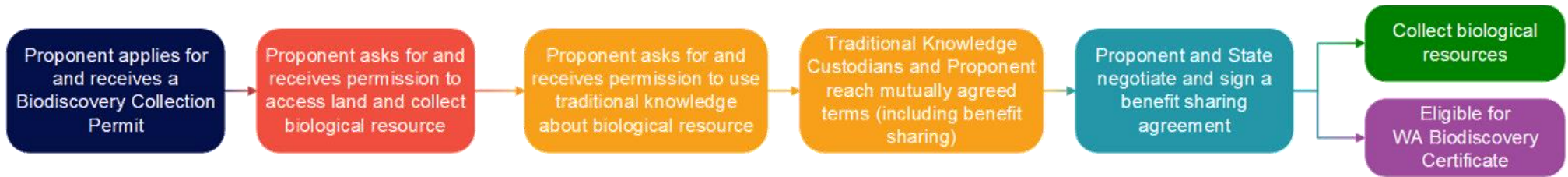
SCENARIO 1

A proponent wishes to collect a plant from land subject to Exclusive Possession Native Title, to use in a commercial biodiscovery activity. They would also like to use traditional knowledge about the plant as part of their research. In this case the Traditional Knowledge Custodian is also the Exclusive Possession Native Title Holder.

KEY STEPS IN PROPOSED PROCESS



EXPLANATORY NOTES FOR PROCESS



- The proponent applies to the Central Agency to obtain a Biodiscovery Collection Permit.
- The Central Agency will assess the application and check all the required information has been provided. If the application requirements have been met a Biodiscovery Collection Permit will be issued.
- The Biodiscovery Collection Permit holder will be required to obtain further consent from the Exclusive Possession Native Title Holder. If the proponent does not obtain this further permission, the rights granted under the Biodiscovery Collection Permit cannot be exercised



Important: The proponent cannot start collecting the biological resource until the steps below have been completed.

- The proponent must identify the Exclusive Possession Native Title Holder and seek their permission to access the land and take the biological resource. Obtaining consent to access the land and collect the biological resource may require the proponent to negotiate mutually agreed terms (including the consideration of any benefits) with the Exclusive Possession Native Title Holder. Any agreements entered into between the parties, for the purposes of accessing land and collecting the biological resource, would be private.
- If the Exclusive Possession Native Title Holder does not give their consent, the proponent will not be able to collect the biological resource from this land.
- The proponent must seek permission from the Traditional Knowledge Custodian to use traditional knowledge about the biological resource in their research. If the Traditional Knowledge Custodian does not give their consent, the proponent will not be able to use the traditional knowledge.
- The proponent is required to work with the Traditional Knowledge Custodians to develop mutually agreed terms for use of that knowledge, which may include a benefit sharing agreement. If the parties cannot reach mutually agreed terms, the proponent cannot proceed any further.
- The proponent returns to the Central Agency to negotiate a benefit sharing agreement with the State. As the biodiscovery activity is for a commercial purpose, the proponent may wish to negotiate a bespoke agreement with the State. Alternatively they could adopt a standard benefit sharing agreement (Fast Track).

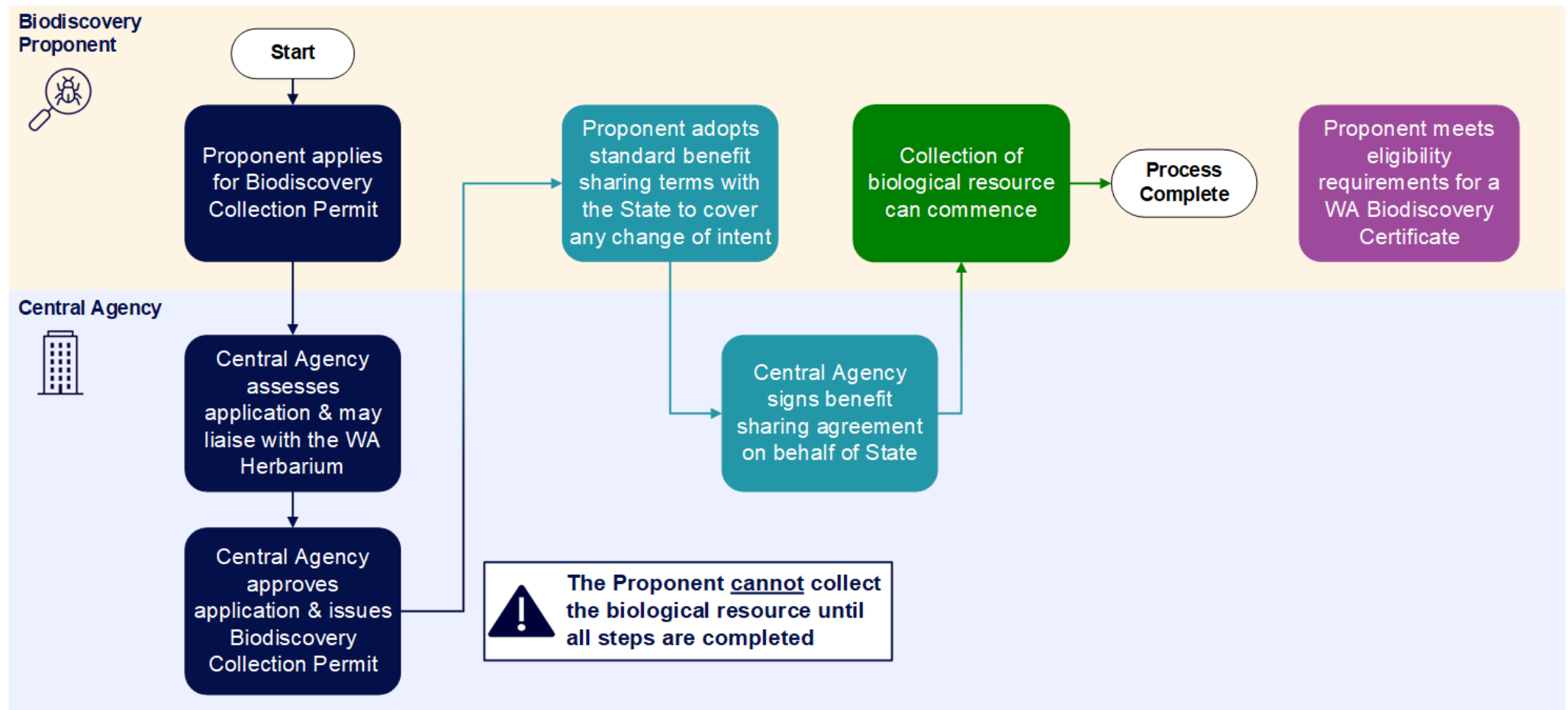
NOTE: The proponent cannot take the biological resource or obtain a WA Biodiscovery Certificate until all of the required steps are complete.

- Once the above steps are complete, the proponent can collect the WA biological resource and may apply for a WA Biodiscovery Certificate if required. An application for a WA Biodiscovery Certificate requires proof from the proponent that the steps above have been completed and will verify this has occurred.

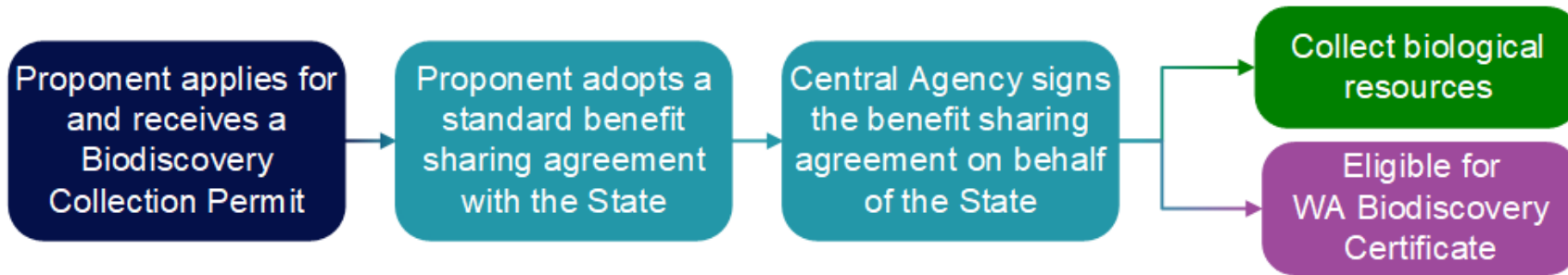
SCENARIO 2

A proponent wishes to use a sample from the WA Herbarium for non-commercial research. They will examine the biochemical composition of the sample and have no plans to incorporate any traditional knowledge about the biological resource in their work.

KEY STEPS IN PROPOSED PROCESS



EXPLANATORY NOTES FOR PROCESS



- The proponent applies to the Central Agency to obtain a Biodiscovery Collection Permit.
- The Central Agency will assess the application and check all the required information has been provided. The Central Agency may liaise with the Department of Biodiversity, Conservation and Attractions/WA Herbarium as part of its decision making process.
- If the application requirements have been met a Biodiscovery Collection Permit will be issued.



Important: The Proponent cannot take the biological resource from the WA Herbarium until the steps below have been completed.

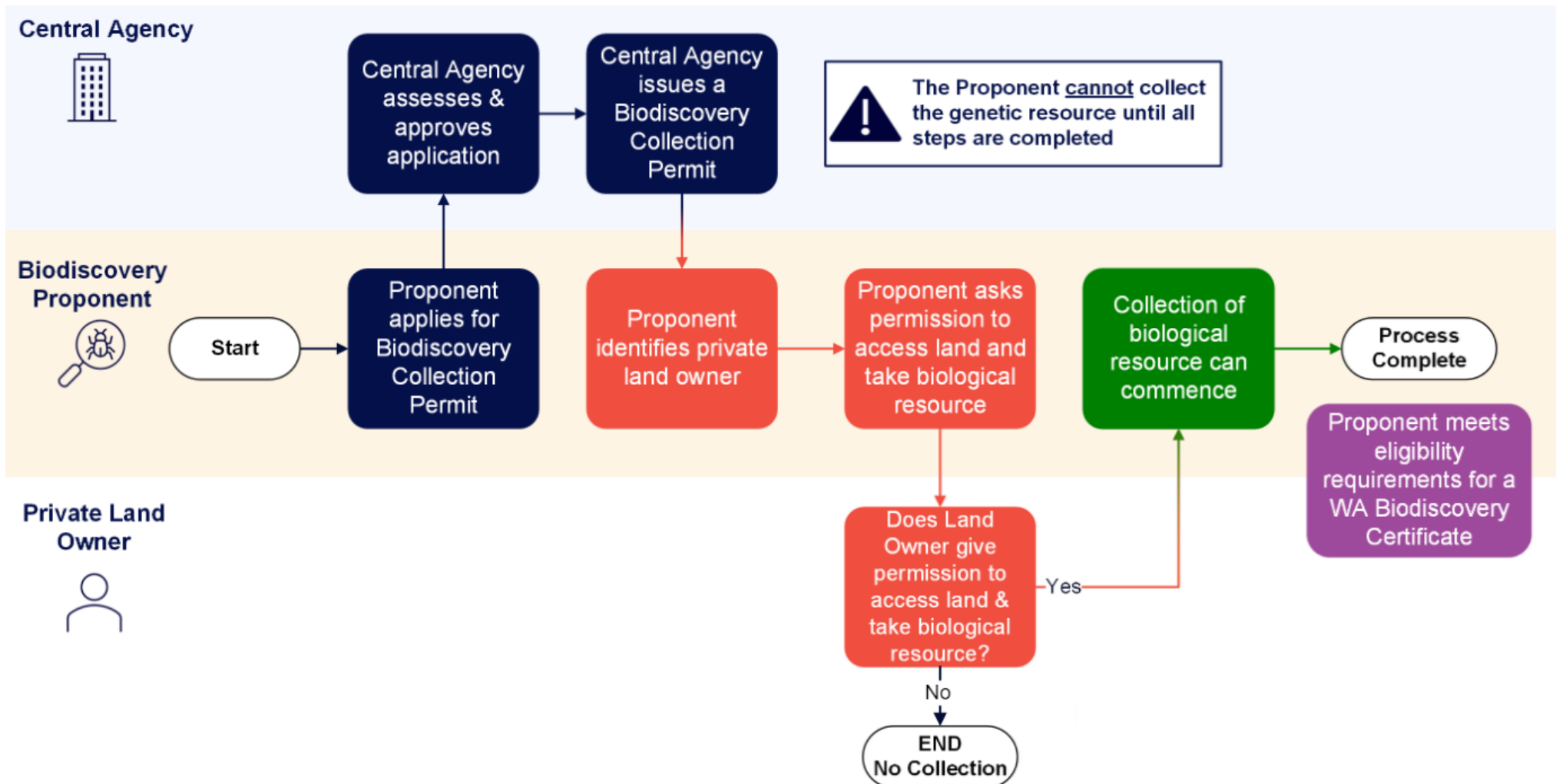
- The proponent is required to enter into a benefit sharing agreement with the State to provide for any change of intent in the biodiscovery activity from non-commercial to a commercial purpose. As the biodiscovery activity is for a non-commercial purpose, the proponent may wish to adopt a standard terms benefit sharing agreement. Alternatively they may negotiate a bespoke agreement with the State.
- The proponent returns to the Central Agency to enter into the benefit sharing agreement.
- Once the benefit sharing agreement with the State has been agreed, the proponent can collect the WA biological resource and may apply for a WA Biodiscovery Certificate if required.

NOTE: The Proponent cannot take the biological resource or obtain a WA Biodiscovery Certificate until all of the required steps are complete.

SCENARIO 3

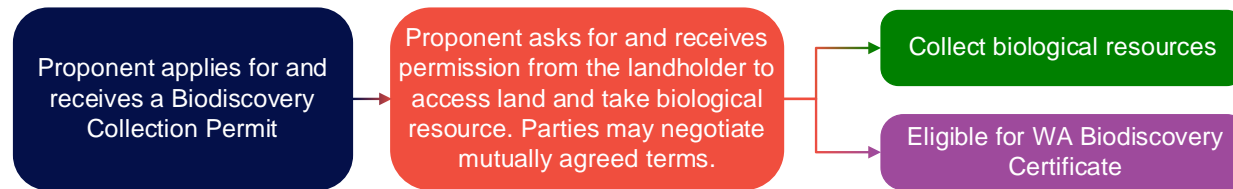
A proponent wishes to take flora from private land to use in a commercial biodiscovery activity. The proponent has no plans to incorporate any traditional knowledge about the biological resource in their work.

KEY STEPS IN PROPOSED PROCESS



Disclaimer: This scenario is based on a proposed process model for the WA Biodiscovery Bill and has been developed to assist in consultation activities. This information sheet does not reflect a final process and may be subject to change.

EXPLANATORY NOTES FOR PROCESS



- The proponent applies to the Central Agency to obtain a Biodiscovery Collection Permit.
- The Central Agency will assess the application and check all the required information has been provided. If the application requirements have been met a Biodiscovery Collection Permit will be issued.
- The Biodiscovery Collection Permit will include a condition requiring the proponent to obtain further consent from the private land owner. If the proponent does not obtain this further permission, the rights granted under the Biodiscovery Collection Permit cannot be exercised.



Important: The proponent cannot start collecting the biological resource until the steps below have been completed.

- The proponent must identify the private land owner/s and seek their permission to access the land and take the biological resource on mutually agreed terms. It is a matter for the Proponent and private land owner/s to determine whether there should be any consideration of mutually agreed terms, including sharing benefits, for that consent.
- If private land owner consent is not given, the proponent cannot collect the biological resource from this land.
- Once the private land owner consent is given the proponent holding the Biodiscovery Collection Permit can collect the biological resource.
- The proponent may also apply to the Central Agency for a WA Biodiscovery Certificate if required. As part of this application the proponent will be required to show evidence of the private land owner's consent to access the land and take the biological resource to receive a certificate.

NOTE: The proponent cannot take the biological resource or obtain a WA Biodiscovery Certificate until all of the required steps are complete.



Why isn't the proponent required to enter into a benefit sharing agreement with the State?

As the flora is on privately owned land a benefit sharing agreement with the State is not required. The Biodiscovery Collection Permit is required to manage broader policy issues relating to the flora. If the proponent wanted to collect fauna then a benefit sharing agreement with the State would be required (in accordance with the *Biodiversity Conservation Act 2016* WA section 146(1): the property in fauna is vested in the State).