



Consultation Paper for Researchers and Businesses

What is the WA Biodiscovery Bill about?

There is currently no legislation in Western Australia for authorising biodiscovery in a manner that is consistent with the Nagoya Protocol. To ensure the interests of the State and Aboriginal people are considered in biodiscovery activities, new legislation is being developed to provide consistency with principles contained in the Nagoya Protocol.

The main aims of the Biodiscovery Bill are to:

- set out a way to manage biodiscovery in WA in a manner that is consistent with the Nagoya Protocol;
- provide certification for proponents when biodiscovery is conducted using WA genetic resources;
- ensure that the State shares benefits when biodiscovery activities with a commercial purpose are conducted using WA genetic resources; and
- ensure that Aboriginal people share benefits when biodiscovery activities with a commercial purpose are conducted using WA genetic resources and traditional knowledge about the resource is used in the biodiscovery process.

What is biodiscovery?

Biodiscovery is research into genetic resources, such as native plants, animals and microorganisms. The outcomes that are produced by biodiscovery may have commercial or scientific value. For example, using natural compounds found in a native plant to create new medicines or cosmetics.

Why does Western Australia need biodiscovery legislation?

WA has some of the world's most diverse plant and animal life and contains eight of Australia's fifteen biodiversity hotspots. This presents opportunities for discoveries by researchers and businesses from around the world to develop products like new medicines, cosmetics and biotechnologies. However, it is important that biodiscovery is undertaken in a way that protects the interests of the State and the rights of Aboriginal people to control the use of their traditional knowledge.

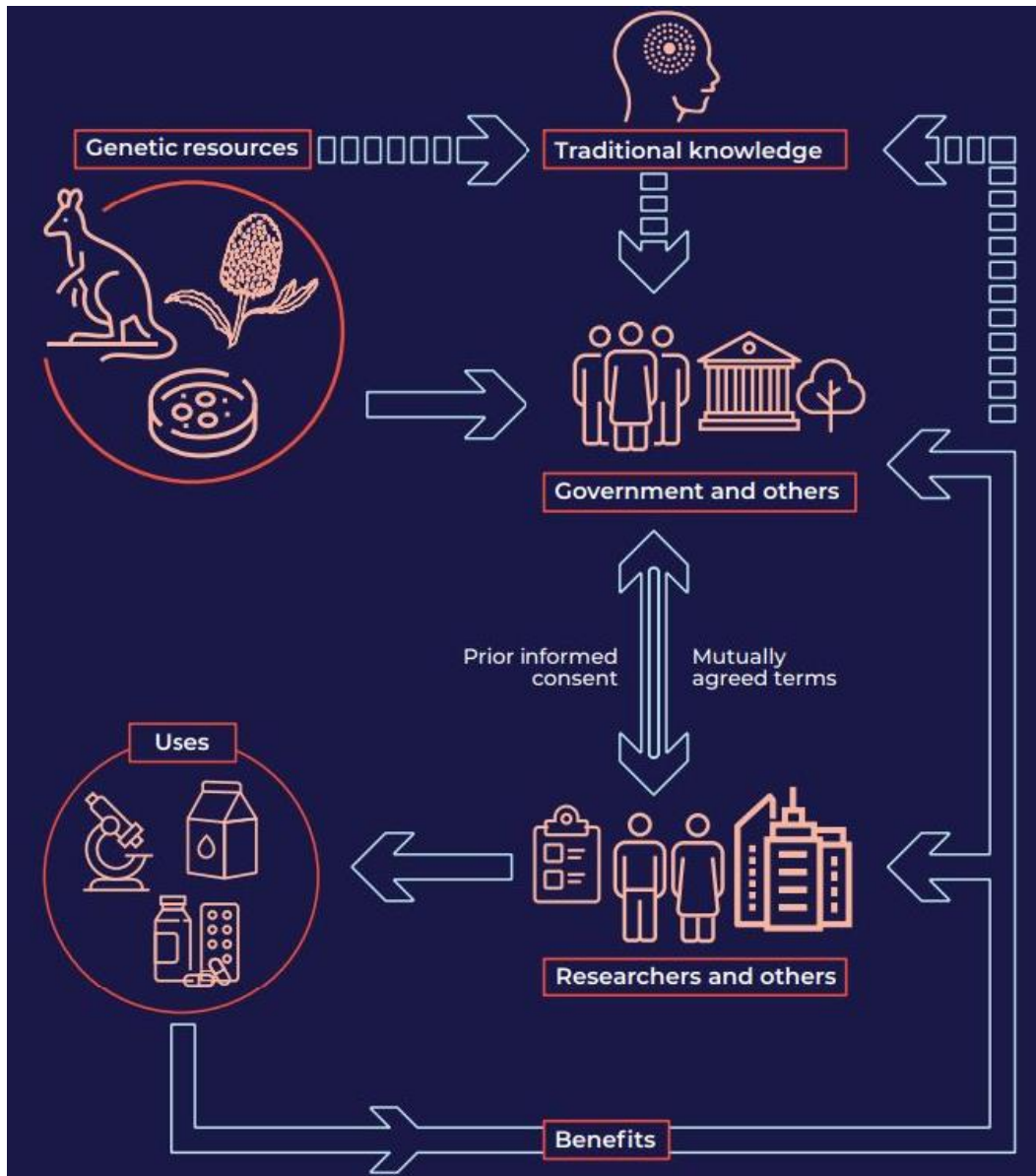
What are the principles behind the Bill?

Biodiscovery legislation in WA will set out processes for authorising biodiscovery activities using WA genetic resources and will be consistent with the [Nagoya Protocol](#).

The Nagoya Protocol is an international agreement which aims at sharing the benefits arising from the utilisation of genetic resources in a fair and equitable way. The key principles of the Nagoya Protocol are outlined below.

- Authorised access – Genetic resources from WA must be obtained lawfully, with free, prior and informed consent.
- Mutually agreed terms – Access and use of genetic resources must be on terms that have been mutually agreed between the owner of the genetic resources (and any shared traditional knowledge) and the person undertaking the biodiscovery activity.
- Benefit sharing – There should be fair and equitable sharing of benefits arising from the use of genetic resources. Benefits may be:
 - monetary (e.g. payment, research funding, joint ventures, intellectual property); or
 - non-monetary (e.g. collaboration in scientific research, education and training opportunities).

- Recognition and protection of traditional knowledge – Any use of traditional knowledge should be agreed, and in certain circumstances such as if the biodiscovery activity is for a commercial purpose, the Traditional Knowledge Holders should share in the benefits.



What does the Bill mean for biodiscovery proponents?

Biodiscovery proponents such as researchers, organisations and anyone else who would like to access a WA genetic resource to conduct biodiscovery activities will need to follow a series of processes which are being determined through consultation. Potential processes and considerations for discussion are outlined below.

Access

- Proponents seeking access to WA genetic resources (e.g. native plants, animals and microorganisms) for a biodiscovery activity for a commercial purpose in WA will need to apply to the WA Government for a WA Biodiscovery Certificate before the activity can begin. The WA Government agency that will be responsible for issuing these certificates is being determined.
- When applying for a WA Biodiscovery Certificate, proponents will need to demonstrate that they have legal access to the genetic resource. Legal access will depend on the land tenure from the area where the genetic resource is to be accessed. It is envisaged that for Crown/State owned

land, this will involve existing WA Government licensing, permitting and exemption requirements.

Benefit sharing

- Proponents will need to negotiate shared benefits with the State on mutually agreed terms. The process for this is being developed and will be as streamlined as possible.
- Proponents will be required to disclose details of the proposed biodiscovery activity, including any use of traditional knowledge about the genetic resource (e.g. traditional knowledge about the healing or nutritional properties of a native plant with the intention to use these to develop a new medicinal product).
- If traditional knowledge associated with a WA genetic resource is used by the proponent in a biodiscovery activity for a commercial purpose, the benefits must be shared with the Traditional Knowledge Holders. This must be set out in a benefit sharing agreement negotiated on mutually agreed terms with the Traditional Knowledge Holders.
- Evidence of a benefit sharing agreement between the proponent and Traditional Knowledge Holders must be provided to the WA Government before the biodiscovery activity can commence. The terms of the agreement will remain confidential between the proponent and the Traditional Knowledge Holders.

Identifying Traditional Knowledge Holders

- A mechanism is being developed to assist proponents to identify Aboriginal people they should talk to about traditional knowledge and enter into benefit sharing agreements with for commercial biodiscovery activities.
- There are organisations that already deal with other rights and interests relevant to Aboriginal people based on traditional law and custom, like native title and Aboriginal cultural heritage. These include but are not limited to: Prescribed Bodies Corporate (PBCs); Native Title Representative Bodies (NTRBs); Aboriginal Corporations that represent the community; ranger groups; and Local Aboriginal Cultural Heritage Services (LACHS) that will be established under the *Aboriginal Cultural Heritage Act 2021* (WA).

Certification

- The proposed WA Biodiscovery Certificate would enable proponents to show consistency with principles in the Nagoya Protocol and compliance with the Act. A WA Biodiscovery Certificate may also assist proponents in entering into international research partnerships and collaborations where consistency with the Nagoya Protocol is a prerequisite.
- WA Biodiscovery Certificates may be provided to the Access and Benefit-Sharing Clearing-House (ABSCH). The ABSCH has been developed as a tool to support the implementation of the Nagoya Protocol. It serves as a means for sharing of information related to access and benefit-sharing arising out of the utilisation of genetic resources. After the ABSCH receives a permit or equivalent, it issues an Internationally Recognised Certificate of Compliance (IRCC). This demonstrates that the biodiscovery activity is compliant with the Nagoya Protocol.
- The WA Government is currently working with the Australian Government to determine a mechanism to enable an IRCC to be issued given Australia has not yet ratified the Nagoya Protocol. Even if it is not possible to get an IRCC, it is proposed that biodiscovery proponents in WA will still have WA Biodiscovery Certificates, demonstrating that their biodiscovery activity is consistent with the Nagoya Protocol.
- As the proposed approach would only require a proponent to apply for a WA Biodiscovery Certificate for commercial biodiscovery activities, they would have no formal way to demonstrate



that non-commercial research has been conducted in accordance with principles of the Nagoya Protocol. One option to address this issue could be to include a process in the legislation for a proponent to apply for a non-commercial WA Biodiscovery Certificate.

Third party commercialisation

- Proponents may decide to sell a commercial outcome from their biodiscovery activity to a third party (e.g. a pharmaceutical company). It is intended that the legislation will include a mechanism to ensure that any third party also needs to share benefits with the State and Traditional Knowledge Holders if traditional knowledge was used in the biodiscovery activity.

How can you have your say about the Bill?

We want to hear your thoughts about how the Bill should be developed. There are a few different ways that you can participate in the consultation.

Online survey

You can have your say by completing the online survey for research and other stakeholders. The online survey is on the WA Biodiscovery Bill webpage www.wa.gov.au/biodiscoverybill

Written submissions

You can contribute by sending a written submission in a format of your choosing. The consultation questions in the section below could be used to guide what is included in your submission. Written submissions can be sent to biodiscovery@jtsi.wa.gov.au

Targeted discussions

Targeted discussions will be held with interested stakeholders. A University Panel, chaired by the Chief Scientist of WA, has also been established with representatives from WA's universities. Contributions related to biodiscovery can be provided to Panel members with a request that they share the contribution at an upcoming University Panel meeting.

What are the consultation questions?

Biodiscovery experiences

- Have you missed work opportunities because Australia or Western Australia does not have legislation to effect the Nagoya Protocol?
- Have you ever used traditional knowledge about a WA genetic resource in your work or research?

Identifying Aboriginal groups for consent and benefit sharing relating to traditional knowledge

- What do you think is the best way for researchers to identify the Aboriginal people that they should consult with about traditional knowledge, and share benefits with for biodiscovery activities?
- There are organisations that already deal with other rights and interests based on traditional law and custom, like native title and Aboriginal cultural heritage bodies. Do you think that these organisations could be involved in identifying the Aboriginal people that they should talk to and share benefits with for biodiscovery activities?
- What do you think should happen if more than one Aboriginal group have the same traditional knowledge?



Traditional Knowledge in the public domain

- Do you think that there should be a difference in how the Bill applies to traditional knowledge that is secret, compared with knowledge that is able to be accessed in the public domain?

WA Biodiscovery Certificates

- Do you think that having a WA Biodiscovery Certificate demonstrating consistency with principles of the Nagoya Protocol would be useful for your work?
- Do you think it would be useful to include a mechanism in the Bill to request a non-commercial WA Biodiscovery Certificate?

What is the process for development of the Bill?

- The Project team met with interested PBCs and NTRBs in August.
- Seven workshops with Aboriginal people were held in September and October.
- Targeted discussions with interested research and business stakeholders will be held in November.
- Online surveys are open and written submissions are being accepted.
- Consultation responses will be synthesised and analysed.
- A summary of findings will be distributed to stakeholders for further comment.
- The Bill will be drafted and a Cabinet submission will be prepared.
- The Bill will be introduced, debated and will hopefully be passed to become an Act of Parliament.
- Regulations, guidelines and supplementary materials will be prepared in consultation with stakeholders.

How do you contact the Project Team?

Phone: +61 8 6277 3050

Email: biodiscovery@jtsi.wa.gov.au

www.wa.gov.au/biodiscoverybill