

I acknowledge the traditional custodians of the land on which we have joined this meeting today. I would also like to pay my respects to Elders past, present and emerging.

Second Legal Workshop

Australian Biodiscovery Laws and Guidelines

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ARC Training Centre Workshop
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International legal background

- United Nations' Convention on Biological Diversity (CBD) 1993
- Nagoya Protocol on Access and Benefit Sharing 2014
- International Treaty on Plant Genetic Resources for Food and Agriculture (the Plant Treaty) 2004

A radical shift from the principles of unrestricted access and common heritage to the regime of States' sovereign rights, rights of the holders of biological and genetic resources resources, traditional knowledge, benefit sharing, prior informed consent, etc.

Australian biodiscovery laws

- 2004: Queensland Biodiscovery Act and relevant Regulations
- 2005: Environment Protection and Biodiversity Conservation Act and relevant Regulations
- 2006: Northern Territory Biological Resources Act and relevant Regulations

Training Centre Guidelines



Collecting Australian native plant materials from the Wild:
Guidelines on key legal issues



Collecting Australian native plant materials from Intermediaries:
Guidelines on key legal issues

Features of the Guidelines

- Discuss the meaning of native plant material and ways by which plant collections may occur (e.g., from the ‘wild’ and intermediaries)
- Cover all Australian States and Territories to describe plant collection and use issues
- Focus on the biodiscovery laws of Queensland, the Northern Territory and the Commonwealth
- Contain simple decision trees to clarify the applicability of the biodiscovery laws of Queensland, the Northern Territory and the Commonwealth

Biodiscovery

- **Queensland:** When you analyse molecular, biochemical or genetic information about native biological material for the purpose of commercialising the material.
- **Northern Territory:** When you research on samples of biological resources, or extracts from those samples, to discover and exploit genetic or biochemical resources of actual or potential value for humanity.
- **Commonwealth:** If you take biological resources of native species for research and development on any genetic resources or biochemical compounds that are contained in the biological resources.

Applicability of the QLD biodiscovery law

1. In cases where you obtain native biological material from State land or Queensland waters for biodiscovery.
 - In these cases, you must obtain: (1) a collection authority from the Government; and conclude (2) a benefit sharing agreement with the Government.
2. In cases where you ‘take and use native biological material for biodiscovery, regardless of whether or not the material is taken from State land or Queensland waters’ and ‘access traditional knowledge when engaging in biodiscovery or preparing to engage in biodiscovery’
 - In these cases, you must comply with the Traditional Knowledge Code of Practice (this is currently under development).

Decision tree for the collection of the material in QLD

Do you intend to collect native biological material that is indigenous to Australia?



Do you intend to collect the material on or in State land or waters in Queensland?



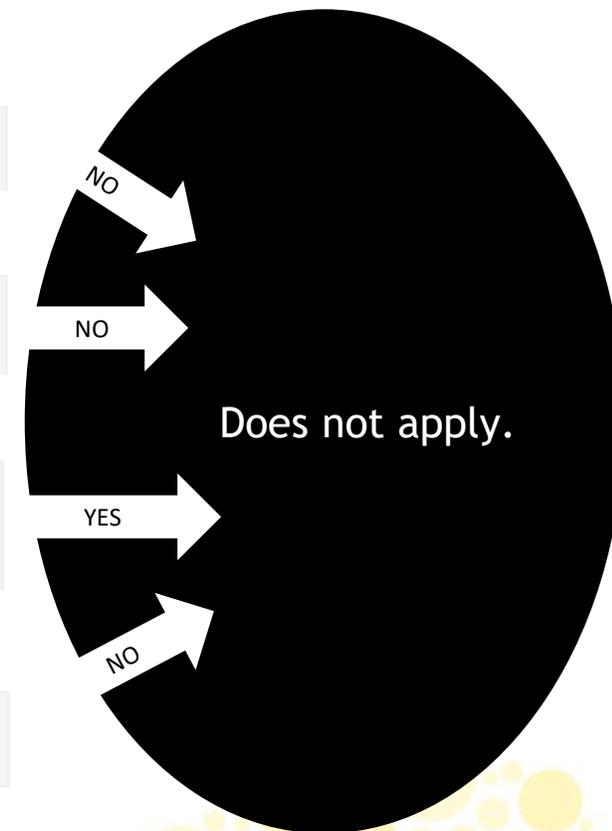
Does the material fall under the scope of Annex 1 of the Plant Treaty and will you use it for other than a food and agriculture purpose?



Do you intend to conduct biodiscovery research on the collected material?



1. A collection authority from the Government is required to collect the material.
2. A benefit sharing agreement with the Government is required.



Decision tree for the collection of the traditional knowledge in QLD

Do you intend to ‘take and use native biological material for biodiscovery, regardless of whether or not the material is taken from State land or Queensland waters’.

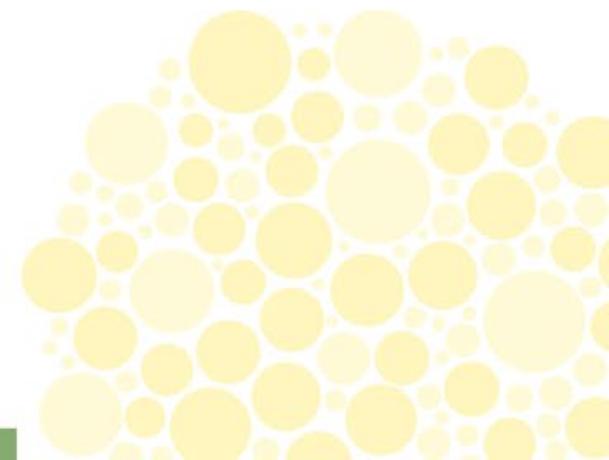
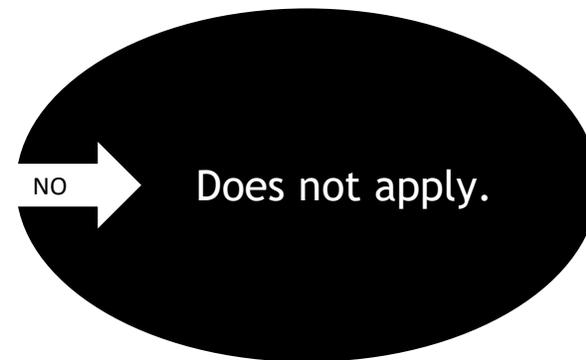
AND

‘access traditional knowledge when engaging in biodiscovery or preparing to engage in biodiscovery’.



You must take all reasonable and practical measures to ensure that you do not use the traditional knowledge for biodiscovery other than under an agreement with the custodians of the knowledge.

This obligation will be met if you comply with the Traditional Knowledge Code of Practice.



Applicability of the Commonwealth law

1. In cases where you take biological resources of native species (a) from Commonwealth areas and (2) for research and development (biodiscovery), you must obtain
 - a permit from the Commonwealth government.
2. The type of permit that you must obtain depends on whether your collection is for commercial or potential commercial uses or for non-commercial uses.

Decision tree for the collection of the material in Commonwealth areas

Do you intend to collect native biological material that is indigenous to Australia and that needs to be collected from Commonwealth land or waters?

YES

Is the material: (1) protected by plant breeder's rights? (2) genetically modified? (3) covered under the Plant Treaty? (4) covered by another Commonwealth, self-governing Territory, or State law that governs access? (5) in a Commonwealth run ex situ collection?

NO

Will the material be used for biodiscovery research?

YES

Does the biodiscovery research involve commercial or potential commercial use of the plant material?

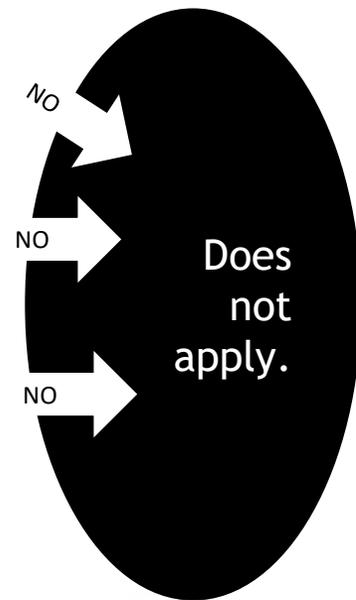
YES

1. A permit is required from the Commonwealth Department of Agriculture, Water and the Environment.
2. A benefit sharing agreement is required between the provider and the user of the plant material.

NO

Does the biodiscovery research involve non-commercial use of the plant material?

1. A permit is required from the Commonwealth Department of Agriculture, Water and the Environment.
2. Evidence of written permission from the provider of the plant material is required.
3. A Statutory Declaration is required to confirm that the user does not intend to use the plant material for commercial purposes.





Applicability of the Northern Territory law

1. When you intend to collect biological material in the Northern Territory, you must apply for a permit from the relevant 'permit issuing authority':
 - For collection on land, the Parks and Wildlife Commission within the Department of Tourism, Sport and Culture.
 - For collection in marine areas, the Fisheries division within the Department of Primary Industries and Resources.
2. In cases where your activity involves bioprospecting/biodiscovery, the relevant Department will decide whether or not you require a benefit sharing agreement.
3. This law applies to all of the Northern Territory, including State land, private land and Aboriginal land (excluding the commonwealth areas in the Northern Territory).

Applicability of the Northern Territory law

The NT law deals with the protection of Indigenous people's knowledge. For the law, knowledge

- (a) is indigenous person's knowledge if it is obtained from an indigenous person or indigenous persons; and
- (b) is not indigenous person's knowledge if it was obtained from scientific or other public documents, or otherwise from the public domain.

Decision tree for the collection of the material in the Northern Territory

Do you intend to collect biological material from the Northern Territory?

YES

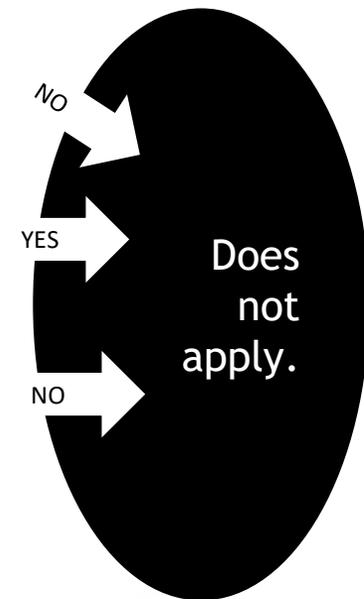
Is the material: (1) protected by plant breeder's rights? (2) genetically modified? (3) covered under the Plant Treaty? (4) in a Northern Territory run ex situ collection?

NO

Will the material be used for biodiscovery/bioprospecting?

YES

1. A permit is required from the Territory government.
2. A benefit sharing agreement between the provider and the user of the material is required.
3. The benefit sharing agreement will not be valid unless the provider of the material has given prior informed consent to the terms of the agreement.



Decision tree for the collection of the material from intermediaries



Do you intend to collect biological material from an intermediary such as a seed trader or a gene bank for biodiscovery research?

YES

Is the use of the material covered by:
(1) a benefit sharing agreement,
(2) the Standard Material Transfer Agreement of the Plant Treaty, (3) any other contract?

YES

The collection and use of the material will be subject to the terms of the relevant contract or agreement.

NO

Is the material protected in Australia by: (1) a patent, (2) plant breeder's rights, Or (3) both?

YES

The use of the material, including its production, reproduction, sale and export, will be subject to the relevant Australian intellectual property law(s). In some situations, exemptions may be available to use the protected material for research and/or breeding.

NO

Will the material or derivative product be exported to a Nagoya-compliant country?

YES

At the time of export, an internationally recognised certificate of compliance must show evidence of:

- (1) a permit from the government,
- (2) prior informed consent from the provider of the material, and
- (3) a benefit sharing agreement with the provider of the material.

NO

Questions and comments

Additional information

Other exceptions

The access and benefit sharing provisions of the Commonwealth legal framework do not apply when biological resources (including plant materials) are accessed for the following activities:

1. the collection of biological resources (including plant materials) by Indigenous peoples: a. for a purpose other than research and development on any genetic resources, or biochemical compounds, comprising or contained in the collected resources; or b. in the exercise of their native title rights and interests;
2. access to human genetic resources;
3. the taking of resources that have been cultivated or tended for a purpose other than research and development on any genetic resources, or biochemical compounds, comprising or contained in the collected resources;
4. fishing for commerce or recreation, game or charter fishing or collecting broodstock for aquaculture;
5. harvesting wildflowers;
6. taking wild animals or plants for food;
7. collecting peat or firewood;
8. taking essential oils from wild plants;
9. collecting plant reproductive material for propagation; and
10. commercial forestry.

Other exceptions

The Northern Territory Biological Resources Act 2006 does not apply when biological resources (including plant materials) are accessed in relation to the following activities:

1. where Indigenous Peoples who have traditionally used an area of land or water in accordance with Aboriginal tradition take biological resources from the area of land or water for hunting, food gathering (other than for sale) and for ceremonial and religious purposes;
2. access to human genetic resources;
3. the taking of resources that have been cultivated or tended for a purpose other than biodiscovery and where the samples are not to be used for biodiscovery;
4. taking aquatic life, within the meaning of the Fisheries Act 1988, that; a. has been caught, taken, or harvested under a licence or permit granted under that Act (other than a permit granted under section 17 of the Fisheries Act 1988 for bioprospecting); or b. comprises a managed fishery or part of a managed fishery within the meaning of that Act.
5. fishing for commerce or recreation, game or charter fishing or collecting broodstock for aquaculture;
6. harvesting wildflowers;
7. taking wild animals or plants for food;
8. collecting peat or firewood;
9. taking essential oils from wild plants;
10. collecting plant reproductive material for propagation; and
11. commercial forestry.