

The Legal Regulation of the Use of Traditional Knowledge in Queensland

Biodiscovery is the process of collecting biological resources (e.g., plants, animals, microorganisms) in the search of active compounds or genetic materials that can be developed into useful products. Examples of products derived from biological materials include Indian snakeroot (*Rauwolfia serpentina*) which is used in the drug Reserpine to treat hypertension, and the Cinchona bark (*Cinchona*) which yields the quinine used in the treatment of malaria.

Biodiscovery in Queensland is regulated by the 2004 *Biodiscovery Act*. The Act governs the use of native biological resources collected from State land or waters in Queensland for commercial purposes. The Queensland Government extended the Act in 2020 to include biodiscovery activities that involve the use of traditional knowledge associated with native biological resources collected from any area in Queensland.

In order to provide legal certainty about the use of traditional knowledge, in 2021 the Queensland Government brought into force a Traditional Knowledge Code of Practice and released Traditional Knowledge Guidelines. This fact sheet provides an overview of the regulation of the use of traditional knowledge in Queensland.

When does the Queensland *Biodiscovery Act* apply in relation to traditional knowledge?

The Queensland *Biodiscovery Act* applies when (1) traditional knowledge associated with (2) non-human biological resources and (3) native to Australia (4) are collected from Queensland and (5) used for biodiscovery research.

1. Traditional knowledge

The Queensland *Biodiscovery Act* applies to the use of traditional knowledge. The Act defines traditional knowledge as ‘information based on Aboriginal traditional or Island custom’.

2. Non-human biological resources

The Act only applies to the use of traditional knowledge associated with non-human biological resources, which includes plants, animals, seeds, germplasm, microorganisms, and viruses.

3. Native to Australia

The Act only applies to the use of traditional knowledge associated with biological resources that are native to Australia.

4. From any area in Queensland

The Act only applies to the use of traditional knowledge that is associated with native biological resources collected from Queensland,

including all State, private, freehold, and leasehold land, and all Queensland waters. The Act does not apply when native biological resources are collected from other States and Territories.

5. Used for biodiscovery research

The Act only applies when the traditional knowledge is used for biodiscovery research. Biodiscovery research means ‘the analysis of molecular, biochemical or genetic information about native biological material for the purpose of commercialising the material’. Accessing traditional knowledge for non-commercial research, education, or training does not fall within the scope of the Act.

What are the conditions for biodiscovery entities?

Prior to obtaining traditional knowledge associated with native biological resources collected from Queensland for commercial purposes, the Act requires biodiscovery entities to act in accordance with (1) the Traditional Knowledge Code of Practice and (2) the Traditional Knowledge Guidelines.

1. Traditional Knowledge Code of Practice

The Traditional Knowledge Code of Practice outlines the following six requirements before using traditional knowledge:

1. Identify the custodians of traditional knowledge.
2. Obtain free, prior and informed consent of the custodians of traditional knowledge.
3. Establish a benefit sharing agreement based on mutually agreed terms.
4. Where possible, obtain consent and a benefit sharing agreement before using publicly available traditional knowledge.
5. Provide the opportunity for custodianship claimants to consent and negotiate benefit sharing even after biodiscovery has commenced.
6. Provide evidence to the State of compliance with the Code.

2. Traditional Knowledge Guidelines

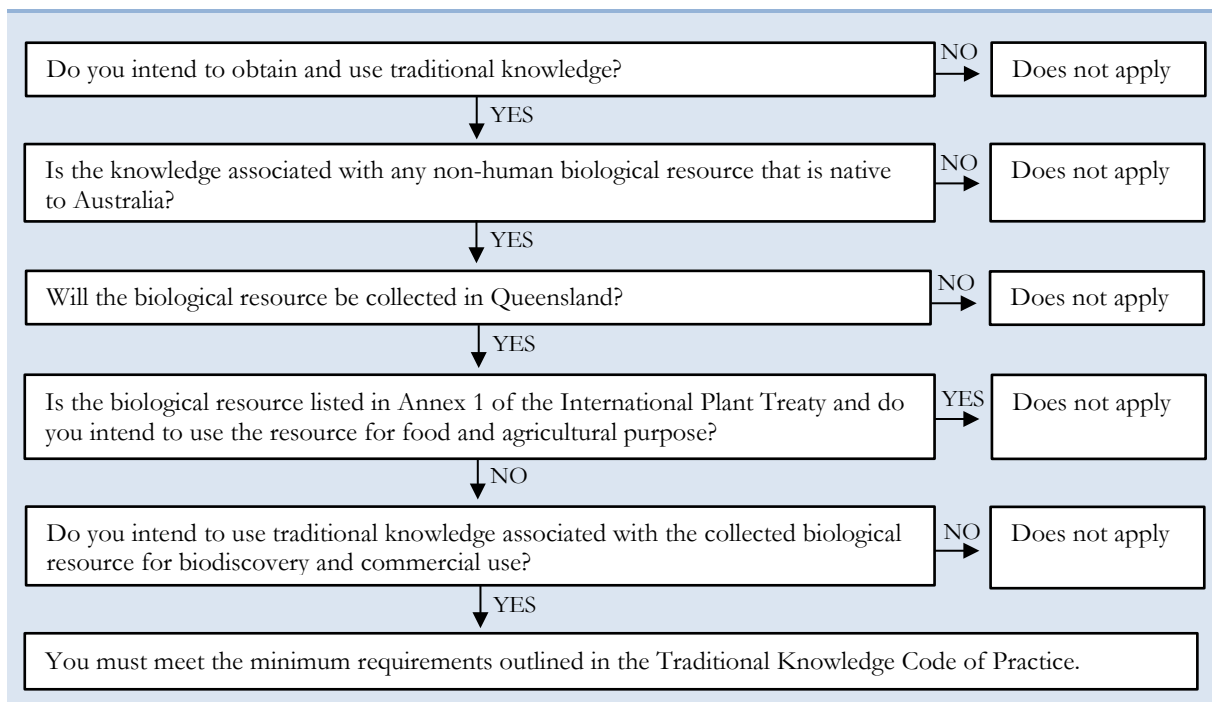
The Traditional Knowledge Guidelines provide practical information and best practice advice to help biodiscovery entities comply with the minimum requirements of the Traditional Knowledge Code of Practice.

Exemption

The Queensland *Biodiscovery Act* does not apply when traditional knowledge is associated with plant materials that are:

1. collected or used for food and agricultural purposes; and
2. listed in Annex 1 of the International Treaty on Plant Genetic Resources for Food and Agriculture.

The applicability of the Queensland *Biodiscovery Act* for the use of traditional knowledge



This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.

This research was conducted by the *ARC Industrial Transformation Training Centre for Uniquely Australian Foods* (IC180100045) and funded by the Australian Government.