



# Draft Traditional Knowledge in Biodiscovery Code of Practice

*Biodiscovery Act 2004*

Consultation draft



# Acknowledgement of Country

The Department of Environment and Science acknowledges the Country and people of Queensland’s First Nations. We pay our respect to Elders, past, present and emerging.

We acknowledge the continuous living culture of First Nations Queenslanders—their diverse languages, customs and traditions, knowledges and systems.

We acknowledge the deep relationship, connection and responsibility to land, sea and sky Country as an integral element of First Nations identity and culture.

This Country is sacred. Everything on the land has meaning and all people are one with it. We acknowledge First Nations peoples’ sacred connection as central to culture and being.

First Nations people speak to Country, listen to Country, sing up Country, dance up Country, understand Country and long for Country.

We acknowledge and thank First Nations people for the enduring relationship connecting people, Country and ancestors—an unbreakable bond that safely stewarded and protected the land, waters and sky for thousands of generations.

*The Department of Environment and Science is committed to co-developing this code in consultation with First Nations peoples, biodiscovery entities and other stakeholders.*

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# 1. Introduction

## Purpose

This code defines the minimum measures to be taken before traditional knowledge can be used for biodiscovery under the *Biodiscovery Act 2004* (the Act). Under the Act, any entity undertaking biodiscovery must take all reasonable and practical measures to ensure it does not use traditional knowledge for biodiscovery unless it has an agreement with the custodians of that knowledge. This code clarifies the circumstances under which a biodiscovery entity is subject to the Act's traditional knowledge obligation. It also outlines principles, performance outcomes and compliance measures to meet the obligation.

## Context

The Queensland Government has reformed the Act to recognise and protect the traditional knowledge of First Nations peoples and support the growth of the biodiscovery industry in Queensland. Biodiscovery involves the collection and analysis of native biological material for commercial purposes, such as the development of pharmaceuticals and insecticides. The Act's traditional knowledge obligation protects access to, and use of, the traditional knowledge of First Nations peoples in biodiscovery. It requires the consent of traditional knowledge custodians and provides for benefit-sharing from biodiscovery for First Nations peoples.

Under the Act, traditional knowledge custodians are the Aboriginal people or Torres Strait Islanders to whom the traditional knowledge relates. For the purposes of this code, custodians include Aboriginal people or Torres Strait Islanders of a particular clan, family group or individual/s who have inherited traditions, observances, customs or beliefs and who are responsible for speaking for Country about that traditional knowledge. This may include a person nominated by the custodian.

A biodiscovery entity is any entity engaged in biodiscovery research, or commercialisation of native biological material or biodiscovery research products.

By following the code, a biodiscovery entity will be taken to have complied with the traditional knowledge obligation under section 9B(4) of the Act. An entity may comply in another way as long as they are able to demonstrate they have satisfied the traditional knowledge obligation. Where the traditional knowledge obligation cannot be met, biodiscovery using traditional knowledge cannot proceed.

Definitions of terms commonly used in the code are listed in Section 4.

## How to use the code

There are five requirements for meeting the Act’s traditional knowledge obligation for biodiscovery:

1. Identify the custodians of traditional knowledge.
2. Obtain free, prior and informed consent (FPIC).
3. Establish a benefit-sharing agreement with mutually agreed terms.
4. Where possible, obtain consent and a benefit-sharing agreement prior to the use of publicly available traditional knowledge.
5. Provide evidence to the State of compliance with the code.

The code explains how each requirement can be met, with the following:

<b>Principles</b>	The foundational concepts and ideas that should be considered when meeting the traditional knowledge obligation.
<b>Performance outcomes</b>	The results to be achieved to satisfy the traditional knowledge obligation.
<b>Code compliance measures</b>	The minimum measures for complying with the code, reflecting what the Queensland Government, First Nations peoples and industry consider to be reasonable and practical measures.

The code is intended to be read with the Traditional Knowledge in Biodiscovery Guidelines. They provide practical information for meeting the requirements of the code and engaging effectively with First Nations peoples on traditional knowledge.

## Scope of the code

This code applies to biodiscovery entities that are subject to the traditional knowledge obligation under the Act. A biodiscovery entity that is not using traditional knowledge is not subject to the obligation, regardless of whether other provisions of the Act apply.

The Department of Environment and Science will provide guidance and assistance for First Nations peoples through separate measures.

The table below provides examples of activities within and outside the scope of the traditional knowledge obligation.

<b>Within scope</b>
Using traditional knowledge about native biological material collected from any area in Queensland (including State land and Queensland waters).
Using traditional knowledge held by a custodian outside Queensland about native biological material collected from Queensland.
Using traditional knowledge about native biological material from an off-site collection.
<b>Out of scope</b>
Using traditional knowledge associated with native biological material collected from outside Queensland.
Using traditional knowledge for non-commercial research activities.

Biodiscovery entities undertaking non-commercial research may wish to follow the code voluntarily, to comply with the Nagoya Protocol (which is not limited to commercial uses) and enable future compliance with the Act should a potential commercial use be identified later. The Nagoya Protocol can be found here <https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>.

The State Government is not a party to agreements between biodiscovery entities and the custodians of traditional knowledge. Where an entity is using native biological material for biodiscovery from State land or Queensland waters and accessing traditional knowledge, they may be required to hold separate agreements with the custodians and the State. Further information on benefit-sharing agreements with the State can be found at <https://www.business.qld.gov.au/industries/science-it-creative/science/biodiscovery/agreement>.

## Use of traditional knowledge

Under the Act, traditional knowledge means information based on Aboriginal tradition or Island custom. This includes the body of traditions, observances, customs and beliefs of Aboriginal peoples or Torres Strait Islanders generally, or of a particular community or group of Aboriginal peoples or Torres Strait Islanders. It includes any such traditions, observances, customs and beliefs relating to individual people, areas, objects or relationships.

‘Use’ of traditional knowledge means that the:

- biodiscovery entity either intentionally uses the traditional knowledge, or is wilfully ignorant as to the use of the traditional knowledge, and
- traditional knowledge forms the basis of, contributes to, or is deployed to create an advantage in the conduct of biodiscovery.

### Examples of traditional knowledge use

A biodiscovery entity spends time on Country, learns about traditional medicinal applications of a native plant and uses this knowledge to conduct biodiscovery.

A biodiscovery entity works with a First Nations community to learn about the traditional medicinal applications of a native plant. The entity uses this knowledge to explore the medicinal applications of another native plant and conduct biodiscovery with that plant.

A biodiscovery entity reads about traditional medicinal applications of a native plant in a journal article and uses this knowledge to conduct biodiscovery with that plant.

A biodiscovery entity reads about medicinal applications of a native plant in a book, and suspects from the context of the book that the information may be based on traditional knowledge but does not make inquiries to confirm the source of the knowledge. The biodiscovery entity uses the knowledge to conduct biodiscovery with that plant.

A biodiscovery entity uses traditional knowledge to narrow its survey of native species for desired bioactive compounds, thereby significantly accelerating the biodiscovery and delivery of products to market. This applies even if the traditional knowledge does not specifically relate to those compounds or the biodiscovery application.

### Examples that do not constitute use of traditional knowledge

A biodiscovery entity scans native species for desired bioactive compounds. Traditional knowledge also exists regarding the properties of the plants, but the knowledge is not accessed or used by the entity in their activities. The biodiscovery entity conducts biodiscovery with the identified plants.

A biodiscovery entity works with a First Nations community and learns about the traditional medicinal applications of a native plant. The biodiscovery entity decides not to undertake biodiscovery with that plant or any other native species using that knowledge.

A biodiscovery entity uses traditional knowledge for a purpose other than biodiscovery as defined in the Act.

## Authorisation and amendment of the code

Under section 9C of the Act, the Minister may make a code about:

- the circumstances in which the traditional knowledge obligation applies
- processes for identifying the custodians of traditional knowledge
- reasonable and practical measures for obtaining the agreement of the custodians of traditional knowledge
- another matter in relation to complying with the traditional knowledge obligation.

The code will take effect when it is approved by regulation. It will be tabled in the Legislative Assembly and published on the Department of Environment and Science website. From the date of commencement, the code will have effect until it is repealed or a new version is approved by regulation.

Future amendments to the code will require approval by regulation and tabling in the Legislative Assembly. The Department of Environment and Science proposes to review the code within five years of its commencement.

## 2. Requirements

**Table 1: Summary of code requirements**

Requirement	Performance outcome
<p><b>1. Identify the custodians of traditional knowledge</b></p>	<p><b>Performance outcome 1.1:</b> Biodiscovery entities identify the custodians of traditional knowledge in accordance with customary protocols. Biodiscovery entities that are unable to identify the custodians of traditional knowledge that is <b>not</b> publicly available do not use the traditional knowledge for biodiscovery.</p> <p><b>Performance outcome 1.2:</b> Custodians of traditional knowledge are provided the opportunity to negotiate benefit-sharing, even if use of the biodiscovery has already commenced.</p>
<p><b>2. Obtain free, prior and informed consent (FPIC)</b></p>	<p><b>Performance outcome 2.1:</b> Custodians are not pressured, manipulated, intimidated, coerced or unduly influenced into giving their consent and are free to decide consent.</p> <p><b>Performance outcome 2.2:</b> Consent is obtained before using traditional knowledge for biodiscovery.</p> <p><b>Performance outcome 2.3:</b> All relevant information is provided in a format that custodians can understand and use.</p> <p><b>Performance outcome 2.4:</b> Custodians grant approval to use traditional knowledge for biodiscovery.</p>
<p><b>3. Establish a benefit-sharing agreement with mutually agreed terms</b></p>	<p><b>Performance outcome 3:</b> The biodiscovery entity and custodians agree on terms for fair and equitable benefit-sharing from the use of traditional knowledge.</p>
<p><b>4. Where possible, obtain consent and a benefit-sharing agreement prior to the use of publicly available traditional knowledge</b></p>	<p><b>Performance outcome 4.1:</b> Publicly available traditional knowledge is used for biodiscovery only after: reasonable and practical measures are taken to identify the custodians of the knowledge; FPIC is obtained; and terms are agreed for its use.</p> <p><b>Performance outcome 4.2:</b> Where reasonable and practical measures have been taken but the custodians of the publicly available traditional knowledge cannot be identified, biodiscovery entities direct a fair portion of the proceeds of commercialisation to build the capacity of First Nations communities to engage in biodiscovery.</p>
<p><b>5. Provide evidence to the State of compliance with the code</b></p>	<p><b>Performance outcome 5:</b> Biodiscovery entities provide evidence to the State that they have complied with the traditional knowledge obligation prior to using traditional knowledge for biodiscovery, and they keep and maintain records of compliance.</p>



## Requirement 1: Identify the custodians of traditional knowledge

### Principles

- Engage in good faith with the ‘right people for right country’ when undertaking biodiscovery, consistent with international standards and the traditional knowledge obligation.
- Understand and respect traditional law, customs, protocols, systems of governance and the diversity of these across Queensland when identifying the custodians of traditional knowledge and forming an agreement with them.

### Performance outcome 1.1: Identify the custodians of traditional knowledge

Biodiscovery entities identify the custodians of traditional knowledge in accordance with customary protocols. Biodiscovery entities that are unable to identify the custodians of traditional knowledge that is **not** publicly available do not use the traditional knowledge for biodiscovery.

### Code compliance measures

The following process details the steps a biodiscovery entity must take to identify the custodians of traditional knowledge. This process is summarised in **Figure 1**.

#### Self-screen

If a biodiscovery entity **did not** gain access to the traditional knowledge directly from a traditional knowledge holder, start at **Step 1**.

If a biodiscovery entity gained access to the traditional knowledge directly from a traditional knowledge holder, start at **Step 2**.

If use of the traditional knowledge for biodiscovery has already commenced and there are late claims of custodianship to the traditional knowledge being used, proceed to **Performance outcome 1.2**.

#### Step 1: Attempt to identify custodians through First Nations organisations

Seek advice from registered and/or representative organisations on the identity of custodians, or how to identify custodians.

Focus on areas associated with the traditional knowledge, or where the native biological material associated with the traditional knowledge was, or will be, collected.

If a custodian is identified, proceed to **Step 3**.

If no custodian can be identified, but traditional knowledge holders (or other First Nations peoples or groups connected to the traditional knowledge) are identified, proceed to **Step 2**.

### **Step 2: Attempt to identify custodians through traditional knowledge holders**

Seek advice from traditional knowledge holders (or other First Nations people or groups connected to the traditional knowledge) on the identity of custodians, or how to identify custodians.

If a custodian is identified, proceed to **Step 3**.

If no custodian can be identified, but additional traditional knowledge holders (or other First Nations peoples or groups connected to the traditional knowledge) or additional registered and/or representative organisations are identified, repeat **Step 2**.

If no custodian can be identified, the biodiscovery entity cannot proceed with the biodiscovery.

### **Step 3: Check for additional custodians**

Ask the custodians of the traditional knowledge whether there are other custodians.

If not already completed through Steps 1 and 2, consult registered native title bodies corporate that might have rights over the traditional knowledge and an interest in negotiations.

If advised there are additional custodians, proceed to **Step 4**.

If a registered native title body corporate requests involvement in the negotiations, proceed to **Step 4** treating the registered native title body corporate as a custodian.

If advised there are no additional custodians or requests for involvement by registered native title bodies corporate, proceed to **Requirement 2**.

### **Step 4: Seek agreement of multiple custodians**

Support consultation between all identified custodians, to allow them to decide whether custodianship of the traditional knowledge is shared.

If agreement on custodianship can be reached, proceed to **Requirement 2** with the agreed custodians (not custodians who agree to be excluded from the negotiations).

If an agreement on custodianship cannot be reached, the biodiscovery entity **cannot** proceed with the biodiscovery.

Consider assisting the custodians to use dispute resolution processes to decide custodianship of the traditional knowledge.

## Performance outcome 1.2: Late claims of custodianship

Custodians of traditional knowledge are provided the opportunity to negotiate benefit-sharing, even if use of the biodiscovery has already commenced.

### Code compliance measures

If a biodiscovery entity receives additional claims of traditional knowledge custodianship after having already established terms of use with another custodian, the biodiscovery entity must do the following:

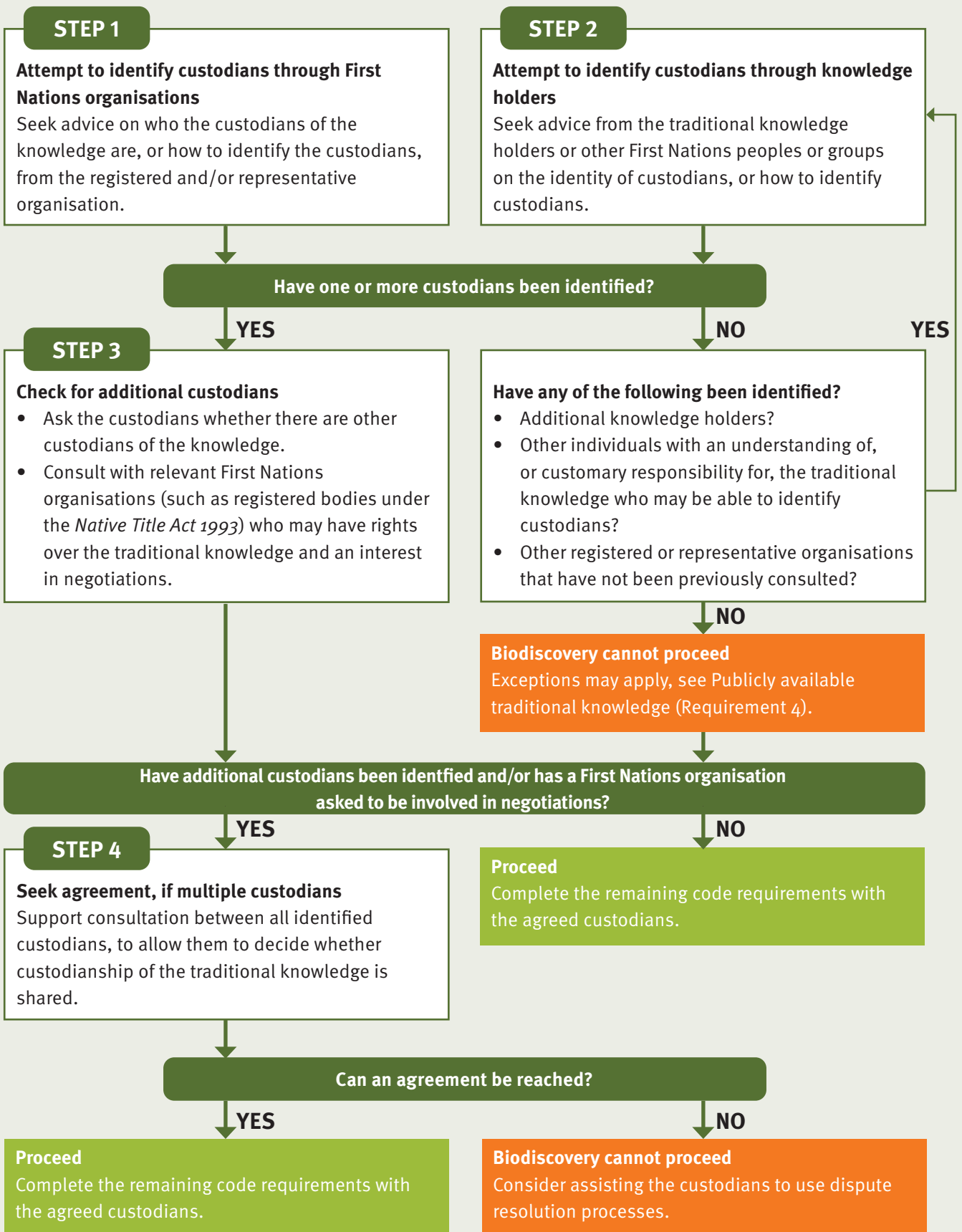
- Support consultation between the existing custodians and those seeking to join negotiations.
- Allow all custodians to determine whether they share custodianship of the traditional knowledge.
- If custodianship of the knowledge is shared, defer further biodiscovery until:
  - all custodians are included in the benefit-sharing agreement to the satisfaction of all parties in the agreement, or
  - a separate benefit-sharing agreement is entered into with the additional custodians, or
  - permission is obtained from the additional custodians to be excluded from negotiations.

**Figure 1: Performance outcome 1.1: Identify the custodians of traditional knowledge**

If a biodiscovery entity did not receive the traditional knowledge directly from a traditional knowledge holder, start at step 1.

If a biodiscovery entity received knowledge directly from a traditional knowledge holder, start at step 2.

*If use of the traditional knowledge has already commenced, proceed to Performance outcome 1.2.*



## Requirement 2: Obtain free, prior, and informed consent

### Principles

Free, prior and informed consent (FPIC):

- Must be obtained before using traditional knowledge for biodiscovery.
- Is continuing and iterative, aimed at building a series of good-faith engagements, empowering communities and fostering lasting relationships between the biodiscovery entity and custodians.
- Recognises the right of custodians to say ‘no’ to the proposed use of traditional knowledge in biodiscovery.
- Recognises the boundaries and conditions under which consent is given.
- Acknowledges that customary rights and enduring custodial obligations must be respected, in addition to existing legal rights.

FPIC requires that the institutions, representation and decision-making of First Nations peoples be fully respected (UN Declaration on the Rights of Indigenous Peoples article 19, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>)

### Performance outcome 2.1: Free consent

Custodians are not pressured, manipulated, intimidated, coerced or unduly influenced into giving their consent and are free to decide consent.

### Code compliance measures

A biodiscovery entity seeking to use traditional knowledge for biodiscovery must do the following:

- Confirm that the peoples engaging in the consent process are the custodians of the traditional knowledge and are willing to engage in this process.
- Notify the custodians of their right to say ‘no’ to all or parts of the biodiscovery.
- Notify the custodians and community members impacted by the biodiscovery about the planned consent process.
- Ensure custodians are not coerced or manipulated, and timeframes are not arbitrarily shortened.

## Performance outcome 2.2: Prior consent

Consent is obtained before using traditional knowledge for biodiscovery.

### Code compliance measures

A biodiscovery entity seeking to use traditional knowledge for biodiscovery must do the following:

- Give the custodians the information they need to make a decision and seek the custodian's consent **before** using the traditional knowledge for biodiscovery.
- In consultation with the custodians, agree on a process for deciding consent that recognises relevant customary law and community protocols, including decision-making timeframes.

## Performance outcome 2.3: Informed consent

All relevant information is provided in a format that custodians can understand and use.

### Code compliance measures

A biodiscovery entity seeking to use traditional knowledge for biodiscovery must do the following:

- Provide custodians with accurate, unbiased, clear, consistent and transparent information, including the scope, location, purpose, duration, benefits and risks of the biodiscovery and the personnel involved.
- Consult with custodians on the likely impact of the biodiscovery on their community, including social, cultural, economic and environmental aspects.
- Not exaggerate the possible economic benefits of the biodiscovery for custodians or First Nations communities.
- Agree on ways to manage confidential information disclosed in the consent process.
- Document key discussions and decisions and make these freely available to all relevant community members and stakeholders.
- Ensure information is provided in a format that is accessible to the community.

## Performance outcome 2.4: Consent granted

Custodians grant approval to use traditional knowledge for biodiscovery.

### Code compliance measures

A biodiscovery entity seeking to use traditional knowledge for biodiscovery must do the following:

- Ensure there is clear agreement with the custodians on the meaning, conditions and extent of consent, including points during the biodiscovery at which consent may need revisiting or re-negotiating.
- Document and keep evidence of consent in formats understood by all parties.
- Provide for the review of consent documents by custodians at agreed intervals.

## Requirement 3: Benefit-sharing on mutually agreed terms

### Principles

- Using traditional knowledge for biodiscovery is subject to fair and equitable benefit-sharing on mutually agreed terms (in line with the Nagoya Protocol).
- Mutually agreed terms can only be finalised once consent has been obtained, and are based on good faith and transparent negotiations that are free from intimidation, time constraints or coercion.
- Biodiscovery entities should approach benefit-sharing negotiations with an open mind, ready to adapt standard agreements to meet the needs of custodians.
- Updated information should be provided to custodians during negotiations, especially when it affects the mutually agreed terms (such as the emergence of a new commercial application of the traditional knowledge).

### Performance outcome 3: Benefit-sharing

The biodiscovery entity and custodians agree on terms for fair and equitable benefit-sharing from the use of traditional knowledge.

### Code compliance measures

A biodiscovery entity seeking to use traditional knowledge for biodiscovery must agree on the terms for its use with the custodian, including benefit-sharing arrangements. The terms must include:

- a description of the proposed biodiscovery, including:
  - its purpose
  - where relevant, the species, quantity and location (if known) of native biological material to be collected
  - the traditional knowledge being used.
- the term of the agreement.
- benefit-sharing arrangements, including:
  - types of benefits to be shared
  - timing of benefits to be shared
  - mechanisms for sharing benefits
  - the parties who will receive benefits.
- any intellectual property rights generated through the biodiscovery.
- any third-party use or disposal, including obligations and benefit-sharing from third parties.
- circumstances for revisiting the mutually agreed terms.
- confidentiality of information shared between parties to the agreement.
- arrangements for either party terminating the agreement.



- a dispute resolution process including, at minimum:
  - a method for either party to give notice about a dispute
  - a requirement that the parties confer at least once to try and resolve the dispute, or agree on a method to resolve the dispute.
  - a requirement that all parties attempt to settle the dispute using a culturally appropriate mediator, before recourse to arbitration or litigation.

## Requirement 4: Publicly available traditional knowledge

### Principles

- The traditional knowledge obligation applies to all traditional knowledge, including that which is publicly available.
- Protection of publicly available traditional knowledge is vital, to acknowledge that the knowledge may have been shared without the consent of custodians, and to ensure that the benefits of using traditional knowledge are shared fairly and equitably with First Nations peoples.
- Biodiscovery entities that make agreements with the custodians of publicly available traditional knowledge can demonstrate compliance with international standards (such as the Nagoya Protocol) and benefit from greater commercial opportunities and reduced legal risk.

### Performance outcome 4.1: Custodians can be identified

Publicly available traditional knowledge is used for biodiscovery only after: reasonable and practical measures are taken to identify the custodians of the knowledge; FPIC is obtained; and terms are agreed for its use.

### Code compliance measures

A biodiscovery entity seeking to use publicly available traditional knowledge for biodiscovery must do the following:

- Follow the steps in **Requirement 1** to identify the custodians of the traditional knowledge.
- Where custodians are identified, comply with **Requirements 2 and 3**.
- Where custodians cannot be identified, proceed to **Performance outcome 4.2**.

## Performance outcome 4.2: Custodians cannot be identified

Where reasonable and practical measures have been taken but the custodians of the publicly available traditional knowledge cannot be identified, biodiscovery entities direct a fair portion of the proceeds of commercialisation to build the capacity of First Nations communities to engage in biodiscovery.

### Code compliance measures

If a biodiscovery entity seeking to use publicly available traditional knowledge for biodiscovery has followed the steps in **Requirement 1** but cannot identify a custodian, the biodiscovery entity may use the traditional knowledge for biodiscovery.

If the biodiscovery entity chooses to use the traditional knowledge, the entity must do the following:

- Document and retain evidence of the measures undertaken to find the custodians.
- At a minimum, retain the percentage of gross commercialisation receipts set out in **Appendix 1** each year to build the capacity of First Nations peoples to use, or negotiate the use of, their traditional knowledge for the benefit of their communities. This can be achieved by directing these funds to capacity-building projects demonstrated to achieve the desired outcomes through projects identified by:
  - the Queensland Government, or
  - the biodiscovery entity and endorsed by the Queensland Government.
- If, at any point, a person identifies themselves as a custodian of the traditional knowledge being used for biodiscovery, the biodiscovery entity must comply with the code compliance measures for **Performance outcome 4.1**.

## Requirement 5: Evidence of compliance with the code

### Principles

Biodiscovery entities provide evidence to the State of a benefit-sharing agreement with custodians when using traditional knowledge for biodiscovery.

### Performance outcome 5: Evidence of compliance

Biodiscovery entities provide evidence to the State that they have complied with the traditional knowledge obligation prior to using traditional knowledge for biodiscovery, and keep and maintain records of compliance.

### Code compliance measures

Prior to using traditional knowledge for biodiscovery, a biodiscovery entity must do the following:

#### **EITHER**

- Provide the State with a document co-signed by the biodiscovery entity and the custodians of the traditional knowledge confirming:
  - the biodiscovery entity has made reasonable and practical efforts to confirm they are engaging with the custodians of the knowledge
  - FPIC has been obtained from the custodians
  - mutually agreed terms for benefit-sharing have been negotiated with the custodians.

#### **OR**

- If using publicly available traditional knowledge, that the custodians of which cannot be identified, provide the State with evidence of the measures taken to identify the custodians of that knowledge.

In addition, an entity using traditional knowledge for biodiscovery must keep, and provide to the State upon request, documentation on (where applicable):

- the identities of the custodians of the traditional knowledge and how they were identified.
- the process undertaken to obtain FPIC to use the traditional knowledge.
- the mutually agreed terms for use of the traditional knowledge.
- if retaining commercialisation receipts from the use of publicly available traditional knowledge:
  - information on the amounts retained and used to benefit First Nations peoples
  - governance and administrative arrangements in place to manage the retention and use of commercialisation receipts to benefit First Nations peoples.

### 3. Relevant legislation and international standards

*Aboriginal Cultural Heritage Act 2003*

*Biodiscovery Act 2004*

*Biodiscovery and Other Legislation Amendment Act 2020*

*Forestry Act 1959*

*Human Rights Act (Qld) 2019*

Nagoya Protocol on Access and Benefit Sharing

*Native Title Act (Qld) 1993*

*Native Title Act (Cwlth) 1993*

*Nature Conservation Act 1992*

*Torres Strait Islander Cultural Heritage Act 2003*

United Nations Declaration on the Rights of Indigenous Peoples

## 4. Definitions

<b>Biodiscovery</b>	Under the <i>Biodiscovery Act 2004</i> , biodiscovery includes biodiscovery research or the commercialisation of native biological material or a product of biodiscovery research.
<b>Biodiscovery entity</b>	Under the <i>Biodiscovery Act 2004</i> , a biodiscovery entity is an entity that engages in biodiscovery.
<b>Custodians of traditional knowledge</b>	<p>Under the <i>Biodiscovery Act 2004</i>, custodians of traditional knowledge are the Aboriginal people or Torres Strait Islanders to whom the traditional knowledge relates.</p> <p>For the purposes of this code, custodians includes Aboriginal people or Torres Strait Islanders of a particular clan, family group or individual/s who have inherited traditions, observances, customs or beliefs and who are responsible for speaking for Country about that traditional knowledge.</p> <p>They include a person nominated by a custodian.</p>
<b>Customary rights</b>	Rights established under customary laws that define custodianship, responsibilities or other obligations over traditional knowledge and the preservation, use and passing on of that knowledge to future generations. These rights are not limited to, but include rights for how traditional knowledge is managed.
<b>First Nations peoples</b>	A collective term for Aboriginal people and Torres Strait Islanders. Under the <i>Acts Interpretation Act 1954</i> , Aboriginal people are people of the Aboriginal race of Australia, and a Torres Strait Islander is a person who is a descendant of an Indigenous inhabitant of the Torres Strait Islands.
<b>Mutually agreed terms</b>	Terms agreed between a biodiscovery entity and a custodian, which form the basis of a benefit-sharing agreement. Under the agreement, a custodian confers upon a biodiscovery entity the right to use their traditional knowledge for biodiscovery with agreed terms for its use.
<b>Nagoya Protocol</b>	<i>Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity</i> (also known as the Nagoya Protocol on Access and Benefit-Sharing).
<b>Native biological material</b>	<p>Under the <i>Biodiscovery Act 2004</i>, native biological material is:</p> <ul style="list-style-type: none"> <li>• a native biological resource, or</li> <li>• a substance sourced, whether naturally or artificially, from a native biological resource, or</li> <li>• soil containing a native biological resource.</li> </ul>
<b>Publicly available</b>	Information that has been published, broadcast or otherwise made accessible for public consumption or is accessible to the public on request.

<b>Registered and/or representative organisation</b>	<p>May include but is not limited to a:</p> <ul style="list-style-type: none"> <li>• registered native title body corporate</li> <li>• prescribed body corporate</li> <li>• representative Aboriginal or Torres Strait Islander body</li> <li>• officially identified party or exclusive possession native title holder (such as native title body or cultural heritage body)</li> <li>• representative body (such as a non-government organisation, council or corporation)</li> <li>• community interface panel</li> <li>• non-exclusive possession native title holder (through their representative body)</li> <li>• registered native title claimant</li> <li>• previous native title claimant or holder.</li> </ul>
<b>Registered native title bodies corporate</b>	<p>A prescribed body corporate whose name and address are registered on the National Native Title Register under paragraph 193(2)(e) or subsection 193(4); or a body that is recognised under section 203AD <i>Native Title Act (Cwlth) 1993</i>.</p>
<b>Representative Aboriginal or Torres Strait Islander body</b>	<p>A body that is recognised under section 203AD <i>Native Title Act (Cwlth) 1993</i>.</p>
<b>Traditional knowledge</b>	<p>Under the <i>Biodiscovery Act 2004</i>, traditional knowledge means information based on Aboriginal tradition or Island custom.</p> <p>Under the <i>Acts Interpretation Act 1954</i>, Aboriginal tradition means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.</p> <p>Under the <i>Acts Interpretation Act 1954</i>, Island custom means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.</p>
<b>Traditional knowledge holder</b>	<p>A First Nations person who is aware of particular aspects of traditional knowledge but is not a custodian.</p>
<b>Traditional knowledge obligation</b>	<p>Under the <i>Biodiscovery Act 2004</i>, a person engaging in biodiscovery or preparing to engage in biodiscovery must take all reasonable and practical measures to ensure the person does not use the traditional knowledge for biodiscovery other than under an agreement with the custodians of the knowledge.</p>

# Appendix 1: Commercialisation receipts and payments

Purpose of product	Gross commercialisation receipts received by the biodiscovery entity in one calendar year (\$AUD)	Payment (% of gross commercialisation receipts)
Pharmaceutical, nutraceutical or agricultural	< 500,000	0
	500,000–5,000,000	2.5
	> 5,000,000	5.0
Chemical and diagnostic	<b>Option 1:</b> >200,000 or	1.5
	<b>Option 2:</b> < 100,000	0
	100,000–3,000,000	1.0
	> 3,000,000	2.0
Other research	<b>Option 1:</b> >200,000 or	2.5
	<b>Option 2:</b> < 100,000	0
	100,000–3,000,000	1.0
	> 3,000,000	3.0





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