



Our Ref: GEN-033

Your Ref:

Office: Perth

Date: 21 November 2022

To: Department of Jobs, Tourism, Science and Innovation
1 William Street, Level 11
Perth WA 6000

By email: biodiscovery@jtsi.wa.gov.au

To Whom It May Concern

RE: WA Biodiscovery Bill – Consultation Paper for First Nations People

1. Yamatji Marlpa Aboriginal Corporation (**YMAC**) is the Native Title Representative Body (**NTRB**), delivering native title and other services across the Pilbara, Mid West, Murchison and Gascoyne regions of Western Australia. YMAC is run by a First Nations board of directors, representing several native title groups, each of whom have their own language, culture, traditions and protocols. YMAC services include native title claim and future act representation; heritage services; executive office, community, and economic development assistance; land administration, and natural resource management support.
2. Please find following: YMAC's submission regarding the 'Consultation Paper for Aboriginal People – WA Biodiscovery Bill'.
3. YMAC has previously provided comments and suggestions on a similar consultation held in 2019 (our letter of 9 November 2019, in reply to your reference J1307/201702), where a number of questions were answered using the best of our knowledge. The next sections focus more specifically on the questions asked in your recent consultation paper.

4. Identifying First Nations groups for benefit-sharing

'What do you think is the best way for researchers to identify the Aboriginal people that they should 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

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heritage. Do you think that these organisations could help researchers identify the Aboriginal people that they should share benefits with for biodiscovery activities?’

We will respond to these two questions together as they are intrinsically linked. YMAC recommends using the following mechanism to identify First Nations peoples who should share the benefits of biodiscovery activities:

- Registered Native Title Bodies Corporate (RNTBCs), in the case of groups who have native title determinations.
- Native title claim groups (where a claim has been made but a determination not yet given).
- Native Title Representative Bodies (or local Aboriginal corporations), in the case of groups who do not have native title claims or determinations.
- To the extent there is a body with which to do the negotiation (i.e. the suggested options above), the legislation needs to make adequate provision so the proponent of an activity resources a group’s participation in the negotiation.
- The legislation should make it clear the biodiscovery proponent will cover reasonable costs of the Traditional Owners.

A potential issue we can see is that many RNTBCs – in our region in particular – are new and still learning in this space. Their resources are limited but they are dealing with a growing volume of native title-related matters. The *Aboriginal Cultural Heritage Act 2021* will also place additional responsibilities on many RNTBCs, through the establishment of Local Aboriginal Cultural Heritage Services, which will often be provided by the RNTBCs themselves. This would most likely worsen the bottleneck for many corporations; something that would prove challenging in the context of the implementation of a future Biodiscovery Bill.

‘What do you think should happen if more than one Aboriginal group have the same traditional knowledge?’

The same process, as described above, should be followed in the case of traditional knowledge shared by several groups, such as when they neighbour each other. Groups would be approached individually in the first place then, ideally, a coordination mechanism be put in place, leading to a collective negotiation for benefit-sharing.

5. Traditional knowledge that is published

‘How do you think the Bill should deal with traditional knowledge that is already published, like in a book or research paper?’

This question relates to the critical concept of “public domain”, which needs to be clearly defined in the future Biodiscovery Bill. Several First Nations groups and communities have produced reports or books that contain information on bush foods and bush medicine, as part of collective traditional ecological knowledge. Those documents are typically part of the overall process of “passing down” the knowledge from generation to generation, such as from Elders to rangers, or to schoolchildren. The information is sometimes used in the context of cultural tourism activities, targeting the broader public interested in knowing more about traditional customs and practices. In these cases, ownership of the knowledge and its

copyrights are explicitly with the group or community of Traditional Owners – but that knowledge is also, to some extent, in the public domain.

On the other hand, a number of older publications describe traditional medicinal uses of genetic resources such as plants and animals, without necessarily acknowledging particular Knowledge Holders or custodians. The future Bill will have to recognise this scenario and perhaps introduce some kind of cut-off date for historical publications and research papers.

6. On a separate note, we encourage the WA Government to ensure there is proper alignment between legislations:
 - across jurisdictions: there is potential that traditional knowledge with prospective benefit-sharing will straddle borders between states and territories, so it would make sense for the biodiscovery processes to be standard across the various jurisdictions. For example, the *Queensland Biodiscovery Act 2004*, recently amended, currently offers mechanisms and guidelines that are probably the most up-to-date in Australia. It is hoped legislations elsewhere will eventually be consistent at the national level.
 - across legislations in WA: the future Bill will have to be consistent with existing legislation in Western Australia or any existing legislation will need to be amended to avoid confusion. For instance, the *Biodiversity Conservation Act 2016* doesn't refer to "biodiscovery" but rather uses the term "bioprospecting". The future Biodiscovery Bill will need to clarify the terminology and whether those two terms are interchangeable or not.
7. It is our understanding the next step will entail the development of a draft position by the Government. It will be critical for YMAC to see this position paper and, subsequently, the draft Biodiscovery Bill itself well ahead of time, to enable a proper consultation process with our members and other First Nations entities such as Registered Native Title Body Corporates and peak First Nations organisations in our regions.
8. If there are any questions or concerns with YMAC's submission, please do not hesitate to contact me via Executive Assistant Dionne Lamb (P: 08 9268 7000; E: dlamb@ymac.org.au).

Yours sincerely,



Simon Hawkins

Chief Executive Officer