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Cystotrama asparatum, photographer and copyright Paul George
1. Policy overview

Victoria has many natural biological resources, some of which are endemic. There is an increasing interest worldwide in conducting research into the genetic and biochemical makeup of these biological resources, with the view of developing commercial products. In this document this is termed ‘biodiscovery’. Others use the term ‘bioprospecting’.

The Victorian Government supports the sustainable use of its natural resources including for biodiscovery purposes. This commitment is reflected in this document, *Biodiscovery in Victoria – A framework for managing access to and use of our native biological resources*, which seeks to provide a framework for ensuring that there are appropriate standards and processes in place to provide for access to the State’s biological resources and that equitable benefit-sharing arrangements are in place.

This policy demonstrates the Government’s commitment to manage the biodiscovery industry in Victoria consistently with international and national agreements and in a manner that does not adversely impact on the sustainability of our diverse biological resources.

This policy is consistent with the Victorian Biodiversity Strategy, which recognises that biodiversity is essential to the wellbeing of all people and that any use of biological resources must be in a sustainable manner.

The Victorian Government recognises the importance of sustainable use and management to Indigenous people and the rights of Indigenous Victorians with respect to their traditional ecological knowledge and any potential benefits which may flow to them from the utilisation of such knowledge.
2. International and national context

The need to manage our natural resources in a sustainable manner and their essential role in maintaining life on this planet are well known. The Convention on Biological Diversity (CBD), which came into operation in Australia in 1993, is particularly significant to this policy. As Australia is a signatory to the Convention, Victoria is obligated to meet the commitment to the Convention and its three objectives.

These objectives are:
- the conservation of biological diversity;
- sustainable use of its components; and
- fair and equitable sharing of the benefits arising from that use.

In order to meet our commitments under the Convention, the National Strategy for the Conservation of Biological Diversity was developed and adopted by all Australian Governments. The Victorian Biodiversity Strategy is consistent with the national strategy.

Following the development of the CBD’s Guidelines on Access to Genetic Resources and Fair Equitable Sharing of the Benefits arising out of their Utilization to provide best practice for biodiscovery, all Australian Governments were involved in the development of the Nationally consistent approach for access to and the utilisation of Australia’s native genetic and biochemical resources. These were endorsed in October 2002 by the National Resource Management Ministerial Council, of which Victoria is a member.

This document, Biodiscovery in Victoria – A framework for managing access to and use of our native biological resources, demonstrates the Victorian Government’s commitment to these international and national measures, by establishing the framework by which the biodiscovery industry in Victoria will be managed. It also provides clarity and certainty for those with an interest in biodiscovery and the opportunities and benefits it can offer.

*Phyllopteryx taeniatus*, weedy seadragon, photographer William Boyle
3. Benefits to Victoria

This policy establishes a framework to permit access to native biological resources for the purpose of biodiscovery and to ensure that benefits flow to the community from these activities.

A requirement under this policy is for parties to enter into a benefit-sharing agreement, with any benefits (monetary and non-monetary) stemming from the use of the State’s native biological and genetic resources being shared in a fair and equitable manner. In the case of any public lands or waters, such agreements will be between the Victorian Government and the applicant.

Where public lands or waters are currently leased by the Victorian Government to a third party or managed by a third party on behalf of the Government, the Government will retain the rights to enter into a benefit-sharing agreement for providing access to the biological resources on that land for the purposes of research into a commercial or industrial application of those resources, unless agreements are in place between the Government and a third party ceding these rights to the third party. In addition, the benefit-sharing agreement may make provision for benefits for these third parties.

Where the proposed arrangement involves private land or Indigenous traditional knowledge, such agreements will be between:
- the access provider, who has the authority to allow or prohibit access to particular lands or Indigenous traditional knowledge (e.g., private landholder, private leaseholder, Indigenous communities); and
- the applicant.

3.1 Types of benefit

Benefits can be either monetary or non-monetary. Monetary benefits may include but are not limited to:
- access fees for rights to use samples;
- royalty payments (generally a percentage of returns received by the organisation that undertook or benefited from the biodiscovery);
- milestone payments (generally payable at particular stages of research or product development);
- licence fees; and
- joint ventures or joint ownership of relevant intellectual property rights.

Non-monetary benefits may include but are not limited to:
- sharing of research to further scientific knowledge;
- management programs for rare and threatened species, both in situ and ex situ;
- strengthening scientific and research disciplines;
- funding and employment of research and support staff in Victoria; and
- creating new industries and employment opportunities.

The CBD’s Guidelines on Access to Genetic Resources and Fair Equitable Sharing of the Benefits arising out of their Utilization provide more examples of possible benefits.
4. Access in non-Victorian Government Areas

4.1 Commonwealth Areas
For areas owned or leased by the Commonwealth or its agencies in Victoria, access to native biological resources will be managed by the Commonwealth.

4.2 Indigenous land
For areas owned or managed by Indigenous people in Victoria, access to Indigenous traditional ecological knowledge arising from native biological resources will be managed by the representatives of the relevant community which owns or manages that land.
5. Definitions

In this policy, the following terms are defined as follows, and the use of these terms in this policy is consistent with the definitions provided below.

The term ‘biological resources’ has the same meaning as in the Convention on Biological Diversity Article 2: Use of terms. The Convention defines biological resources to include ‘genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity’. ‘Genetic resources’ are defined, under the Convention, as ‘any material of plant, animal, microbial or other origin containing functional units of heredity’. However, for the purposes of this policy, the definition of genetic resources excludes human genetics.

The terms ‘biodiscovery’ or ‘bioprospecting’ are used to describe the search for commercially valuable biochemical and/or genetic resources in plants, animals, micro-organisms or any other native biological resources.

The term ‘native’ in relation to biological resources includes those endemic to Australia that are present in Victoria, whether occurring naturally or as a result of translocation.

The term ‘private land’ does not include publicly owned land that may be leased by the Government to a third party or managed by a third party on behalf of the Government.

The term ‘significant damage’ means a change that reduces the capacity of the environment to sustain the use or causes detriment to the conservation status of any protected taxon in the habitats either subject to or affected by the use.

The term ‘sustainable use’ means using a resource in a manner that allows the resource to maintain itself for the foreseeable future without causing detriment to the overall conservation status of the harvested population and the community that supports it.

The term ‘traditional ecological knowledge’ has the same meaning as in the Convention on Biological Diversity. The Convention defines traditional knowledge to include the knowledge, innovations and practices of Indigenous and local communities embodying traditional lifestyles. Therefore, traditional ecological knowledge refers to knowledge, innovations and practices combining biological resources and traditional Indigenous environments.
1. The Victorian Government encourages research into and the potential development of Victorian biological resources, and will seek to provide the widest possible access to its resources if in a sustainable context.

2. Biodiscovery will be managed in Victoria to foster the growth and development of Victoria, and will be undertaken in a sustainable manner while respecting the property rights of the owners of the land on which the resources concerned are to be accessed from.

3. Biodiscovery involving any use of traditional ecological knowledge that is not currently in the public domain must:
   • be undertaken with the cooperation and approval of the holders of that knowledge;
   • include prior informed consent of the custodians of that knowledge; and
   • be on mutually agreed terms.

4. Where public lands or waters are currently leased by the Victorian Government to a third party or managed by a third party on behalf of the Government, the Government will retain the rights to enter into a benefit-sharing agreement for providing access to the biological resources on that land for the purposes of research into a commercial or industrial application of those resources, unless agreements are in place between the government and a third party ceding these rights to the third party. In addition, the benefit-sharing agreement may make provision for benefits for these third parties.

5. Any party seeking access to biological resources for the purposes of biodiscovery on Victorian land and in the waters of Victoria must apply for a collection permit from the Victorian Government. These will be on a non-exclusive basis unless otherwise agreed to.

6. In order to obtain a collection permit for biodiscovery, a benefit-sharing agreement between the applicant and the relevant access-providers must be entered into for the acquisition of biological resources. The agreement must be based on mutually agreed terms and should set out the terms, and conditions under which the biological resources will be acquired and used and any resulting benefits shared between potential beneficiaries. The benefit-sharing agreement will only take effect if a permit is issued.

7. The Government will seek to process applications for biodiscovery permits in a timely manner.

8. Any party using biological resources for the purpose of biodiscovery must ensure that it is undertaken in a manner that minimises impact on or damage to both:
   • the habitats that support those biological resources; and
   • to non-target organisms.

9. Access to terrestrial and aquatic resources for the purposes of biodiscovery will be subject to the relevant Commonwealth legislation such as:
   • Native Title Act 1993

10. Access to terrestrial and aquatic resources for the purposes of biodiscovery will be subject to the relevant Victorian legislation including, but not limited to:
   • Wildlife Act 1975
   • Fisheries Act 1995
   • Flora and Fauna Guarantee Act 1988
   • National Parks Act 1975

Prionace glauca, blue shark, photographer William Boyle
7. Policy implementation

This policy will be implemented upon endorsement of the Government under the ‘interim arrangements’ until supporting legislation has been enacted.

Applicants will be required to enter into benefit-sharing agreements on the terms outlined in this policy. Any biodiscovery legislation arising from the policy development process will give recognition to the terms of any benefit-sharing agreements developed under these interim arrangements.

Until legislation is enacted to provide for the issue of a biodiscovery permit, DSE will coordinate approval of permits as required under existing legislation.
8. Policy review

This policy will be reviewed within three years of its commencement, and then at no more than three-year intervals thereafter. Any review of this policy will be undertaken by the Victorian Biodiscovery Committee, and must take into account relevant national and international developments in relation to access to native biological resources for biodiscovery purposes. The timeliness of processing applications should also be part of the review.
Procedures for implementing the policy for access to and use of native biological resources in Victoria for biodiscovery purposes

1. Once legislation is in place, any party seeking access to Victorian biological resources for research into a commercial or industrial application must first apply for a collection permit by completing an Application for a permit to collect biological, genetic, and/or biochemical resources in plants, animals and/or micro-organisms in Victoria and pay any fee payable for the permit.

2. If a benefit-sharing agreement exists in relation to the proposed collection and use of the biological resources in the application, a copy of that agreement must be submitted with the application.

3. Benefit-sharing agreements shall be regarded as commercial-in-confidence, unless the parties specify otherwise.

4. The Government agency responsible for coordinating approvals for collection permits for the collection of biological resources for research into a commercial or industrial application is the Department of Sustainability and Environment (DSE).

5. Completed collection permit applications must be lodged with DSE.

6. Applications to collect Victorian biological resources for research into a commercial or industrial application will be directed to the Victorian Biodiscovery Committee (VBC) for assessment.

7. The initial assessment of the collection permit application will be to consider whether the collection can be undertaken:
   - without significant damage to the habitats that support the biological resources in question; and
   - in a manner that minimises the impact on or damage to collected and non-target organisms and is otherwise consistent with existing Victorian law.

8. If the application relates to privately owned (including leased) land or water, the VBC shall, on being satisfied that the granting of the permit will not cause significant damage, then recommend to the relevant Departmental Secretary that the permit be granted subject to settlement of a benefit-sharing agreement with the applicant.

9. If the application relates to publicly owned managed land or water, the VBC shall, on being satisfied that the granting of the permit will not cause significant damage, then recommend to the relevant Departmental Secretary that the permit be granted subject to settlement of a benefit-sharing agreement with the Victorian Government (or third party if applicable), if one is yet to be agreed.

10. The VBC shall assist the Victorian Government in negotiations with the applicant to determine an acceptable benefit-sharing agreement with the Victorian Government.

11. With respect to publicly owned or managed lands or waters, the Victorian Government maintains the right to collect biological resources for the applicant, by appointing an appropriate Government officer or nominee. This does not preclude a representative of the applicant working alongside the appointed Government officer or nominee.

12. Collection permits may be granted for up to a maximum of three years. However, until the first review of this policy has been completed, collection permits will only be issued for a maximum of twelve months at a time.

13. Conditions on collection permits will include consideration of means to minimise threats of spread of pests and diseases.

14. The price of the renewal fee will be fixed to reflect the administrative costs in issuing the permit, recognising the existence of a benefit-sharing agreement between the relevant parties and consequential benefits that will flow to the broader Victorian community.

15. All receipts provided to the Victorian Government shall be placed in the consolidated fund. The Government will give regard to any revenues raised when determining future allocations. The management of revenue will be reviewed at the first review of this policy.

16. Benefits from a benefit-sharing agreement between a private access provider and an applicant are as determined by the parties. The distribution and application of benefits are matters for the provider of access to the resource.

17. Any party granted a permit to collect biological, genetic, and/or biochemical resources in plants, animals and/or micro-organisms in Victoria must provide regular progress reports to DSE at intervals required in the permit.
Appendix 2
Terms of reference for the Victorian Biodiscovery Committee

1. The objectives of the Committee are to:
   a) Assess any application for a permit to collect biological resources, where the purpose is for research into a commercial or industrial application;
   b) Provide recommendations to the relevant Departmental Secretary for the granting of collection permits for access to native biological resources for the purposes of undertaking research into a commercial or industrial application;
   c) Assist the Victorian Government in negotiations with the applicant to determine an appropriate benefit-sharing agreement, where the Government is part of a benefit-sharing agreement; and
   d) Review performance reports of applicants, and report annually to the Secretary, Department of Sustainability and Environment (DSE).

2. The Committee’s objectives will be met by:
   a) Meeting at regular intervals or at such times required by the Chair, to assess any application for a permit to collect biological resources where the purpose is for research into a commercial or industrial application;
   b) Assessing all applications uniformly, taking into account the:
      • environmental, social and economic factors of the application;
      • professional credibility of the applicant;
      • interests of Indigenous people in the use and ownership of traditional knowledge, innovations and practices on Indigenous lands; and
      • requirements of this policy and relevant legislation.
   c) Ensuring that all applications are fairly dealt with and without prejudice, with all applications judged against transparent criteria and according to law;
   d) Assisting negotiations between the DSE and the applicant to determine an appropriate benefit-sharing agreement between the applicant and the Victorian Government, where the Government is part of a benefit-sharing agreement;
   e) Providing guidance and advice to Indigenous or private landholders (or lessees), when requested, on entering into a benefit-sharing agreement with the applicant; and
   f) Reviewing progress reports from parties granted permits for access to collect biological, genetic and/or biochemical resources in plants, animals and/or micro-organisms in Victoria, to determine whether they have complied with the terms and conditions of the benefit-sharing arrangement.

3. The Committee shall perform other duties as required by the Secretary, DSE to meet the objectives of the Committee.

4. The Committee shall comprise a representative of each of the following Government Departments as required:
   - Department of Innovation, Industry and Regional Development
   - Department of Sustainability and Environment
   - Department of Primary Industries
   - Department for Planning and Community Development – Aboriginal Affairs
   - Department of Treasury and Finance
   - Department of Premier and Cabinet.
Appendix 3
Flow chart of approvals process

Applicant for use of native biological resources for biodiscovery purposes

1. Submits Application

2. DSE

3. Victorian Biodiscovery Committee

4. Considers application

5. Recommends permit not be given

6. DSE

7. Advises applicant application is not approved, reasons why, and appeal process

8. Benefit-sharing agreement in place?

9. Yes

10. VBC negotiates and approves benefit-sharing agreement on behalf of Government with applicant

11. All required approvals provided to applicant

12. If on Public Lands

13. If on Private Lands or involves traditional ecological knowledge

14. Applicant negotiates benefit-sharing agreement for access to resource with private landholder or holder of traditional ecological knowledge
Appendix 4
Benefit-sharing

Applicant for use of native biological resources for biodiscovery purposes

- On Public Land
  - Victorian Government*
- On Private Land
  - Private Landowner
- To traditional Indigenous knowledge
  - Traditional Owners

Access sought
Who benefit-sharing agreement is required with

* Unless rights have been ceded to a third party as part of an agreement. In that case the third party will be able to enter into a benefit-sharing agreement.