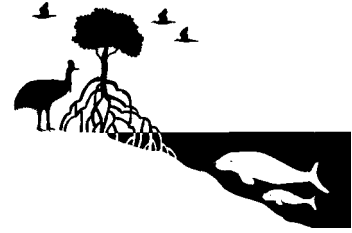


Environmental Defender's Office Of Northern Queensland Inc.



8 August 2003

Dermot Tiernan
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Biotechnology Policy and Regulation
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Dear Mr Tiernan

Re: Public submission on exposure draft of the *Biodiscovery Bill 2003*

We note the official closing date for public comments on the above Bill was 1 August 2003 however the writer was advised by your Tracy Marsden (on 31 July 2003) that EDO-NQ could have an additional week to provide comment. Thank you for allowing the extension of time.

EDO-NQ recognises the significance of this new legislation and the potential of a world-class biodiscovery industry to benefit both the Queensland economy and environment. Along with regional, state and national environmental groups such as the Australian Conservation Foundation and The Wilderness Society, EDO-NQ made a detailed submission last year to the Queensland Biodiscovery Discussion Paper. That submission sets out EDO-NQ's general position on biodiscovery regulation in Queensland and outlines the features we would like to see incorporated into any specific biodiscovery legislation. We will concentrate here on particular concerns regarding the Bill rather than repeat our earlier recommendations, though we invite you to revisit them.

We have three particular criticisms of the Bill

1. The Bill's approval processes with respect to collection authorities might fall short of ensuring that biodiscovery activities are ecologically sustainable.
2. Practically no opportunities for community participation and consultation (particularly for indigenous communities) in the Act's decision-making and enforcement processes.
3. General lack of transparency.

1. Ecological Sustainability

Currently, the *Nature Conservation Act and Regulations* (“NCA”) makes ecological sustainability a mandatory legal requirement of any decision to allow a person to take or interfere with biological resources protected under the Act. For example, Section 137 of the NCA provides:

137 Licences to be consistent with management principles, and management intent or plan

(1) A licence, permit or other authority issued or given under a regulation or another Act to take, use, keep or interfere with a cultural or natural resource of a [protected area](#) must be consistent with--

(a) the management principles for the area; and

(b) the interim or declared management intent, or management plan, for the area.

(2) A licence, permit or other authority issued or given under a regulation to--

(a) take, use or keep protected wildlife; or

(b) abandon, release, keep, use or introduce international or prohibited wildlife;

must be consistent with--

(c) the management principles for the wildlife; and

(d) the declared management intent, or [conservation plan](#), applicable to the wildlife.

By section 6, the Biodiscovery Act will operate to the exclusion of any other Act with respect to collection authorities. The justification given for this is to streamline and simplify the permit process and to encourage commercially focused scientific research in protected areas (currently prohibited under the NCA).

The effect will be to oust the prescriptions in section 137 of the NCA and authorise activities that are currently inconsistent with established management principles for protected areas and wildlife. That is a significant and potentially dangerous development from a conservation point of view, for two reasons. First, it might expose protected areas and wildlife to adverse impacts from the hitherto prohibited activities, e.g. “bioharvesting” in national parks. Second, commercial scientific research activities, facilitated by a streamlined permit process under the Biodiscovery Act, might gain priority over purely conservation (or nature-based) research, which unlike commercial research must also be compliant with NCA management principles for species and protected areas.

We note that the stated intention of the Bill (according to the supporting documentation and earlier policy paper) is to allow only ecologically sustainable access to biological

resources for commercial purposes. However nowhere in the Draft Bill or Code does there appear to be a mandatory requirement to refuse access to biological resources on sustainability grounds.

Section 8 purports to only authorise the collection of “minimal quantities” of biological resources. However the courts might interpret that section as directory rather than mandatory; subject to the specific requirements of section 12 where minimal quantities or ecological sustainability are not mentioned.

The situation could be addressed by the inclusion in section 12 of an express mandatory requirement for the chief executive to refuse a collection authority unless satisfied only “minimal quantities” (as defined in the Bill) will be collected and that any impacts of the collection will be “ecologically insignificant both to species and their ecosystem” as referred to in the Draft Code. Furthermore, there should also be an express mandatory requirement for the “precautionary principle”¹ to be applied by the chief executive in assessing the potential impact of proposed collection activities as is the case with the *Environmental Protection and Biodiversity Conservation Act 1999 (Cth)* and the *Integrated Planning Act*.

2. Community Participation

The Bill includes practically no public participation mechanisms at all. There are no public notification requirements with respect to collection authorities, biodiscovery plans or benefit sharing agreements. Unlike the EPBCA, IPA and other key environmental legislation there are no public enforcement provisions. In fact it appears to be an unstated purpose of the legislation (and a likely outcome of it) to prevent the general public from interfering in (or even knowing anything about) commercial biodiscovery activities. This can be contrasted with the situation under the EPBCA where information relating to permits and permit applications is published on the Environment Australia website.

Queensland indigenous communities are provided with no special recognition or opportunities to participate in or benefit from biodiscovery activities. The Bill only gives reference to holders of native title exclusive possession determinations who represent a very small proportion of the indigenous community in Queensland and the Bill gives no recognition to their interests beyond what they would get anyway as private land occupiers. This is despite Article 8(j) of the *Convention on Biodiversity*, which was referred to in the Queensland Biodiscovery Policy Discussion Paper (page 27):

“Each party shall, as far as possible and appropriate: subject to its national legislation, respect preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices

¹ “...lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment if there are threats of serious or irreversible environmental damage.” S. 1.2.3(2) *Integrated Planning Act (QLD)*

and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”

In Queensland and throughout the world there is community apprehension and skepticism concerning the biodiscovery industry. Take for example, the following statement on biodiscovery in India:

“80 percent of India takes care of its health needs through medicinal plants that grow around in back yards, that grow in the fields, in the forests, which people freely collect. No one has had to pay a price for the gifts of nature. Today every one of those medicines has been patented and within five years, ten years down the line we could easily have a situation in which the same pharmaceutical industry that has created such serious health damages and is now shifting to safe health products in the form of medicinal plant – based drugs, Chinese medicine, aromatic medicine from India, will prevent the use. They don’t even have to come and make it illegal because long before they take that step, they take over the resource base, they take over the plants, they take over the supply they take over the markets, and leave people absolutely deprived of access.”²

The Biodiscovery Act will give biotech and pharmaceutical companies exclusive access to Queensland’s national parks and wildlife for commercial purposes. Denying the community participation rights in decision-making processes with respect to such access is a recipe for conflict and controversy.

3. Transparency

This criticism is related to the preceding ones. Section 103 of the Bill excludes the application of the *Freedom of Information Act 1992* to ensure that various instruments and information relating to biodiscovery are not publicly available. Whilst we concede that some information relating to biodiscovery activities is highly sensitive and confidential, protection is already provided under divisions 2 and 3 of the *FOI Act*. We are hard pressed to understand why biodiscovery entities would need any greater secrecy than that already afforded them under, for example, section 45 - *FOI Act*. Special secrecy provisions will simply foster community suspicion and misapprehension about biodiscovery activities. We recommend that section 103 of the draft Bill be removed in its entirety from any final legislation.

Thankyou again for the opportunity to comment on the draft legislation. Please contact the writer if you want to discuss further any of these matters.

Yours faithfully,
EDO-NQ

Stephen Hall
Solicitor

² “An interview with Vandana Shiva” [http:// www.inmotionmagazine.com/shiva.html](http://www.inmotionmagazine.com/shiva.html), accessed 05/08/03

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