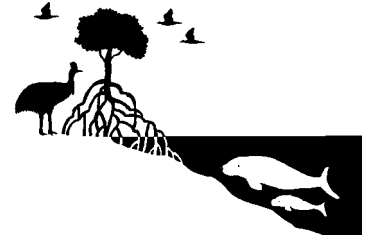


Environmental Defender's Office Of Northern Queensland Inc.



27 April 2005

Mr Geoff Burton
Director
Genetic Resources Management policy
Department of Environment and Heritage
GPO Box 787
Canberra ACT 2600

Dear Mr Burton,

RE: AMENDMENTS TO EPBC REGULATIONS

We refer to your letter dated 5 April 2005 inviting our office to discuss with you our concerns regarding the proposed amendments to the *Environmental Protection and Biodiversity Conservation Regulations 2000* (draft Regulations) dealing with access to biological resources in Commonwealth areas.

We are concerned that these draft Regulations may be a proposed model for National legislation enacted throughout Australia by relevant State Governments. We are concerned that in their current form they do not fully satisfy Australia's obligations as a party to the Convention on Biological Diversity. We have outlined below the areas where the proposed Regulations are deficient.

Article 15(7) of the Convention states that each contracting party shall take appropriate legislative, administrative or policy measures with the aim being the equitable sharing of the results of research and development and benefits from any commercial utilization on mutually agreed terms.

One of the purposes of the amendment, set out in section 8A.01 of the draft Regulations, is to ensure such equitable benefit-sharing arrangements between those seeking access to biological resources and access providers. Our concern is with the narrow definition of "access providers" adopted by the draft Regulations. In their current form, negotiation and participation in benefit sharing is limited to native title holders and indigenous people's land only. While the effect of this is fairly limited at present, due to the small area over which the Commonwealth has authority, our concern is should these Regulations be used as a model for State legislation, these issues would be magnified significantly. Most indigenous people in State areas would be excluded from benefit-sharing agreements, particularly in National Parks, as there has been little

resolution of native title rights in these areas. There needs to be a wider definition of “access providers” which allows all those who could assert native title over an area to benefit.

Another concern is with the wording of section 8A.08 of the draft Regulations which deals with benefit-sharing arrangements. This section only requires agreements to provide for “reasonable benefit-sharing” between those seeking and those providing access to biological resources. This falls short of the “equitable benefit-sharing” arrangements as stated in both the Convention and the objectives of the draft Regulations. In particular it provides little benefit to the wider community who are not technically access providers. More thought needs to be given to how this can be achieved.

There are also issues about whether the draft Regulations promote and encourage customary use of biological resources in accordance with traditional practices as set out in Article 10 of the Convention. Other than the exclusion of traditional activities of indigenous people, they do little to encourage those seeking access to biological resources to in turn provide benefits to indigenous people for sharing their knowledge, such as providing opportunities for employment and training with the companies that are developing the resources.

Yours faithfully
EDO-NQ

Kirsty Ruddock
Solicitor