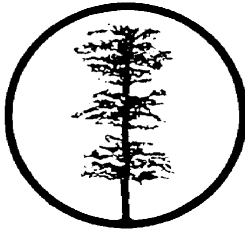
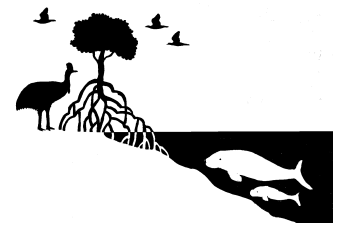


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26 August 2009

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SUBMISSION ON THE INDEPENDENT REVIEW OF THE *BIODISCOVERY ACT 2004* (Qld)

The Environmental Defenders Office (Qld) Inc. ("EDO(Qld)") and Environmental Defender's Office of Northern Queensland Inc. ("EDO-NQ") ("EDOs") welcome the opportunity to provide comments on the independent review of the *Biodiscovery Act 2004* ("the Act").

The EDOs are community legal centres which specialise in public interest environmental law in Queensland. We frequently advise community member clients on their rights to engage with the assessment processes under both the EPBC Act and Queensland legislation. Should you have any queries about any part of this submission please do not hesitate to contact us.

Yours faithfully

Environmental Defenders Office (Qld) Inc. and
Environmental Defender's Office of Northern Queensland Inc.

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SUBMISSION ON REVIEW OF THE *BIODISCOVERY ACT 2004* (Qld)**Table of contents**

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1. Introduction

The EDOs recognise the potential for a world-class biodiscovery industry, however generally submit that:

1. it is vital to ensure that such an industry is properly and transparently regulated in order for it to benefit both the Queensland economy and the environment; and
2. it is also vital to ensure that a system which allows and regulates access to native biological resources is not only underpinned by principles of justice, equity and ecological sustainability, but adequately encourages and ensures proper environmental protection, conservation and management together with community participation.

We therefore welcome the opportunity to make submissions on the review of the *Biodiscovery Act 2004* (Qld) (“the Act”)¹.

The EDOs’ submissions and recommendations will generally address and touch upon most of the review’s Terms of Reference (“ToR”), with particular attention being paid to the following:

1. Purpose of the Act (*ToR 1*)
2. Achieving the Act’s purposes (*ToR 2*)
3. Operation of the Act (*ToR 3, 4 & 5*)
4. Changes to the Act (*ToR 10*)

The EDOs’ main concerns with the Act are generally that:

1. the Act does not give high enough priority to ecological sustainability or conservation of biological diversity; and
2. the Act does not contain adequate public notification requirements, or any public consultation requirements.

These submissions address those main concerns in some detail.

These submissions also contain a number of recommendations which the EDOs submit will resolve their main concerns with the Act. Those submissions are repeated on the next page under the heading “Key recommendations” for your convenience and ease of reference.

¹ Section references in this submission are references to the Act unless otherwise stated.

2. Key recommendations

1. *The Act must be amended, consistent with the Convention on Biological Diversity, to include the following in the Act's purposes:*
 - a. *conservation of biological diversity; and*
 - b. *sustainable use of the components of biological diversity.*

2. *The Act must be amended to provide that any act or omission done to achieve or attempt to achieve the Act's purposes must not compromise Queensland's ecological sustainability or threaten biodiversity conservation in Queensland.*

3. *Section 14 of the Act must be amended to include a mandatory requirement for the chief executive to refuse to issue a collection authority unless satisfied that:*
 - a. *only "minimal quantities" (as defined in the Act) will be collected; and*
 - b. *the collection will be done in a manner which:*
 - i. *is ecologically sustainable; and*
 - ii. *will not compromise biodiversity conservation.*

4. *Given the expressed purpose of the Compliance Code, there must be a clear expression in the Act itself that:*
 - a. *biodiscovery activities authorised under the Act must only be conducted in an ecologically sustainable manner;*
 - b. *any applications for permission to conduct biodiscovery activities will be refused if they those activities are not ecologically sustainable or compromise ecological sustainability; and*
 - c. *any authorities issued by to conduct biodiscovery activities will be revoked if it is shown that they are not ecologically sustainable or compromise ecological sustainability.*

5. *The Act must be amended to:*
 - a. *ensure that the chief executive can only impose conditions which are not inconsistent with, or contrary to, the Compliance Code;*
 - b. *provide that any conditions imposed by the chief executive will only apply to the extent to which they are consistent with the Compliance Code and any relevant protocols; and*
 - c. *provide that where there is any inconsistency between a condition attaching to a collection authority pursuant to the Compliance Code or any relevant protocol, and a condition imposed by the chief executive then the relevant Compliance Code or protocol condition will prevail to the extent of that inconsistency.*

6. *The Act must be amended to require that the chief executive give public notice of all of the following in addition to the current public notification requirements in relation to a new or amended Compliance Code:*
 - a. *new or amended collection authorities;*
 - b. *new or amended biodiscovery plans; and*
 - c. *new or amended benefit sharing arrangements.*

7. *The Act must be amended to require that the chief executive give public notification of the above matters in both:*
 - a. *the government gazette as presently required; and*
 - b. *a newspaper which is distributed throughout Australia.*

8. *The Act must be amended to:*
 - a. *require that the public (particularly affected communities) is properly notified of applications for collection authorities under the Act;*
 - b. *provide mechanisms for public consultation (particularly with affected communities) on the proposed access ensuring that:*
 - i. *public notification takes place through national, relevant local newspapers and the internet; and*
 - ii. *all relevant information is available to the public to provide for informed comment (including proper consultation with indigenous communities recognising that public notification through conventional forms of media is inadequate);*
 - iii. *the public is given adequate opportunity to lodge submissions in relation to such applications; and*
 - iv. *the chief executive must consider and take into account any such submissions when deciding whether or not to issue a collection authority;*
 - c. *provide mechanisms for any submitters in response to the public notification of such applications to seek a merits review by the Planning and Environment Court of Queensland of any grant of a collection authority which they do not agree with; and*
 - d. *provide that each party to such merits review should bear their own costs, unless one or more of the following circumstances exists:*
 - i. *the court considers the proceeding was instituted merely to delay or obstruct;*
 - ii. *the court considers the proceeding (or part of it) to have been frivolous or vexatious; or*
 - iii. *a party has incurred costs because another party has defaulted in the court's procedural requirements.*

9. *The Act must be amended to:*

 - a. *ensure that nothing contained in the Act or any benefit sharing agreement excludes, prevents, hinders or otherwise restricts use of native biological material, whether such use be traditional or contemporary use, by any Australian citizen (and particularly indigenous Australians in relation to traditional use(s)); and*
 - b. *the State will not enter into a benefit sharing agreement which will exclude, prevent, hinder or otherwise restrict use of native biological material, whether such use be traditional or contemporary use, by any Australian citizen (and particularly indigenous Australians in relation to traditional use(s)).*

10. *In addition to the above, the Act must be amended to require that every benefit sharing agreement entered into must contain a mandatory clause to the following effect:*

In the event that any intellectual property rights vest in a biodiscovery entity as a result of any biodiscovery activities carried out by the biodiscovery entity pursuant to the relevant benefit sharing agreement, then those intellectual property rights cease to exist in favour of the relevant biodiscovery entity (i.e. they become 'public' intellectual property rights) at the expiration of ten (10) years after the relevant benefit sharing agreement is entered into.

11. *The Act (in particular section 42(3)) must be amended to require that the particulars required to be kept in the benefit sharing agreement register referred to in section 42 of the Act include any benefits provided by the State to the biodiscovery entity.*

EDO-NQ has previously made submissions in relation to biodiscovery regulation in Queensland, and we invite you to revisit those submissions in addition to those contained in this document.

3. Submissions

Purposes of the Act

The Act provides that its main purposes are:

- (a) *to facilitate access by biodiscovery entities to minimal quantities of native biological resources on or in State land or Queensland waters (State native biological resources) for biodiscovery; and*
- (b) *to encourage the development, in the State, of value added biodiscovery; and*
- (c) *to ensure the State, for the benefit of all persons in the State, obtains a fair and equitable share in the benefits of biodiscovery; and*
- (d) *to ensure biodiscovery enhances knowledge of the State's biological diversity, promoting conservation and sustainable use of native biological resources.*²

The EDOs' main concerns with the purposes of the Act are that neither ecological sustainability nor biodiversity conservation are expressed to be central parts of them.

The objectives of the Convention on Biological Diversity³ (which was ratified by the Commonwealth of Australia) include:

1. the conservation of biological diversity; and
2. the sustainable use of its components.

Section 4 of the Act acknowledges that the Convention on Biological Diversity contains those objectives⁴, and goes on to acknowledge that the Convention on Biological Diversity requires signatory countries (of which Australia is one) to develop and implement strategies for the conservation of biological diversity and the sustainable use of its components⁵.

Despite the objects of the Convention on Biological Diversity, and despite the above acknowledgements in the Act, the Act fails to develop and implement strategies for the conservation of biological diversity and the sustainable use of its components in that it fails to ensure that the purposes of the Act expressly include those matters (conservation of biological diversity and the sustainable use of its components).

Whilst section 1.2 of the *"Compliance code for taking native biological material under a collection authority"* (the "Compliance Code")⁶ provides that *"The purpose of the code is to ensure that all native biological resources collected for biodiscovery are obtained in an ecologically sustainable way..."*, the Act does not properly reflect this purpose or contains provisions which will ensure that it is achieved.

² s.3(1)

³ The convention which opened for signature at the United Nations Conference on Environment and Development (referred to as the Rio de Janeiro Earth Summit) on 5 June 1992, and which came into force on 29 December 1993.

⁴ s.4(1)

⁵ s.4(2)

⁶ Referred to in Part 6 of the Act

Given the expressed purpose of the Compliance Code, there must be a clear expression in the Act itself that:

1. biodiscovery activities authorised under the Act must only be conducted in an ecologically sustainable manner and in a manner which conserves biodiversity;
2. any applications for permission to conduct biodiscovery activities will be refused if those activities are not ecologically sustainable, or compromise ecological sustainability; and
3. any authorities issued to conduct biodiscovery activities will be revoked if it is shown that they may compromise ecological sustainability or threaten biodiversity conservation.

Whilst the main purposes of the Act currently make reference to facilitating access to “minimal quantities of native biological resources... ..for biodiscovery”⁷ and ensuring that “biodiscovery enhances knowledge of the State’s biological diversity, promoting conservation and sustainable use of native biological resources”⁸, both of these purposes fall short of what is required:

- There may be a difference between “minimal quantities” and those which are ecologically sustainable. Despite the Act’s main purposes including a restriction of access to “minimal quantities” of native biological resources, it may still be possible that even the least amount required for some commercial purposes may be more than what can be taken in an ecologically sustainable way, or more than what can be taken in a way that will not compromise biodiversity conservation.

Having said that, the EDOs support the definition of “minimal quantity” for native biological material including “...the quantity of the material that... ..will cause no more than a minor and inconsequential impact on the biological diversity of the State land or Queensland waters from which the material was taken”⁹.

- The Act’s purposes as currently drafted do not take into account the full scope of environmental impacts that may be caused by collection activities.

In addition to the above, we note that there is no reference whatsoever in the Act to the precautionary principle¹⁰, and no requirement for it to be applied whether during the decision-making process or otherwise.

⁷ s.3(1)(a)

⁸ s.3(1)(d)

⁹ Schedule to the Act

¹⁰ The *Integrated Planning Act 1997* (Qld) defines the precautionary principle to be “...that 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.”

Recommendations 1 to 4:

1. *The Act must be amended, consistent with the Convention on Biological Diversity, to include the following in the Act's purposes:*
 - a. *conservation of biological diversity; and*
 - b. *sustainable use of the components of biological diversity.*

2. *The Act must be amended to provide that any act or omission done to achieve or attempt to achieve the Act's purposes must not compromise Queensland's ecological sustainability or threaten biodiversity conservation in Queensland.*

3. *Section 14 of the Act must be amended to include a mandatory requirement for the chief executive to refuse to issue a collection authority unless satisfied that:*
 - a. *only "minimal quantities" (as defined in the Act) will be collected; and*
 - b. *the collection will be done in a manner which:*
 - i. *is ecologically sustainable; and*
 - ii. *will not compromise biodiversity conservation.*

4. *Given the expressed purpose of the Compliance Code, there must be a clear expression in the Act itself that:*
 - a. *biodiscovery activities authorised under the Act must only be conducted in an ecologically sustainable manner;*
 - b. *any applications for permission to conduct biodiscovery activities will be refused if they those activities are not ecologically sustainable or compromise ecological sustainability; and*
 - c. *any authorities issued by to conduct biodiscovery activities will be revoked if it is shown that they are not ecologically sustainable or compromise ecological sustainability.*

Operation of the Act

The EDOs' submissions in relation to the operation of the Act in general are that:

1. the Act inadequately addresses issues of ecological sustainability or biodiversity conservation; and
2. the Act does not provide provision for adequate public notification or consultation.

Ecological sustainability and biodiversity conservation

The EDOs acknowledge and support the powers contained in the Act for the chief executive to attach environmental conditions upon code compliant authorities.

Sections 44 and 45 of the Act allow the Environmental Protection Agency (now the Department of Environment and Resource Management, or "DERM") to establish a compliance code and collection protocols for taking native biological material. The current *Compliance code for taking native biological material under a collection authority* (the "Compliance Code") contains detailed conditions which may apply to any collection authorities issued by the chief executive under the Act¹¹.

However, we are concerned that this is the only mechanism for ensuring that collection activities are conducted in an ecologically sustainable manner, and repeat our observations and concerns above under the heading "Purposes of the Act". Section 14 of the Act sets out the factors the chief executive is required to consider before granting a collection authority, and it makes no mention of environmental conditions apart from the Compliance Code.

In addition, we are concerned that the Act allows collection authorities to be issued which do not comply and conform with the Compliance Code. Provisions in the Compliance Code which are applicable to activities carried out under a collection authority become conditions of that collection authority in so far as they are relevant to those activities¹². The EDOs support this arrangement, however do not support the circumstances provided for in the Act which allow collection authorities to be issued which do not comply or conform with the Compliance Code.

In the dot-points below we have attempted to illustrate those circumstances in which the chief executive may issue collection authorities which do not comply or conform with the Compliance Code or protocols (which the EDOs do not support):

- Section 14(1)(a) provides the chief executive with the power to grant an application for a collection authority either with or without conditions. *The EDOs support the chief executive having that power.*
- Section 14(2)(a)(ii) provides that the chief executive may grant an application for a collection authority "only if the chief executive is satisfied... ..(2) the proposed taking and use of the native biological material... ..(ii) conforms with the compliance code and any applicable collection protocols...". *The EDOs supports that arrangement.*

¹¹ s.17

¹² s.17(2)

- However, section 14(2)(a)(ii) goes on to provide that the proposed taking and use must only conform to the Compliance Code and any protocols *to the extent to which the Compliance Code and protocols are consistent with the conditions which the chief executive proposes imposing under section 14(1)(a)*.

This situation essentially gives the chief executive power to pick and choose which provisions (if any) of the Compliance Code or any protocols will apply to any collection authority, and to do so without there being any requirement to ensure that the relevant biodiscovery activities are ecologically sustainable. *The EDOs do not support this situation, and submit that it is unacceptable.*

- Further, whilst section 17(2) provides that provisions of the Compliance Code and any protocols are conditions of any collection authority to the extent that those provisions are applicable to the activities carried out under the collection authority (an arrangement which the EDOs support), section 17(4) provides that if there is an inconsistency between a such a condition and a specific condition imposed by the chief executive under section 14(1), then the chief executive's specific condition (under section 14(1)) will prevail to the extent of the inconsistency.

This situation essentially gives the chief executive power to pick and choose which provisions of the Compliance Code or any protocols will apply (if any) to any collection authority, and to do so without there being any requirement to ensure that the relevant biodiscovery activities are ecologically sustainable. *The EDOs do not support this situation, and submit that it is unacceptable.*

The EDOs submit that:

1. the problems identified in the dot-points immediately above must be rectified; and
2. in order to rectify those problems the Act must be amended to:
 - a. ensure that the chief executive can only impose conditions which are not inconsistent with, or contrary to, the Compliance Code;
 - b. provide that any conditions imposed by the chief executive will only apply to the extent to which they are consistent with the Compliance Code and any relevant protocols; and
 - c. provide that where there is any inconsistency between a condition attaching to a collection authority pursuant to the Compliance Code or any relevant protocol, and a condition imposed by the chief executive then the relevant Compliance Code or protocol condition will prevail to the extent of that inconsistency.

Recommendation 5:

5. *The Act must be amended to:*
- a. *ensure that the chief executive can only impose conditions which are not inconsistent with, or contrary to, the Compliance Code;*
 - b. *provide that any conditions imposed by the chief executive will only apply to the extent to which they are consistent with the Compliance Code and any relevant protocols; and*
 - c. *provide that where there is any inconsistency between a condition attaching to a collection authority pursuant to the Compliance Code or any relevant protocol, and a condition imposed by the chief executive then the relevant Compliance Code or protocol condition will prevail to the extent of that inconsistency.*

Public notification and consultation

The EDOs are concerned that the Act does not contain adequate provisions for public notification, or indeed any provisions whatsoever for public consultation throughout the entire biodiscovery regulation process.

In relation to public notification At present, the Act only requires the chief executive to give public notice of a new or amended Compliance Code or collection protocols.¹³ No public notification is required for new collection authorities, biodiscovery plans or benefit sharing arrangements.

When giving public notification, the chief executive is only required to publish a notice in the government gazette¹⁴.

By contrast, the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth) (“EPBC Regulations”) requires that the Commonwealth Minister for the Environment give public notification of applications for permits to access biological resources if the proposed access is likely to have more than negligible environmental impact.¹⁵ In addition, the Commonwealth Minister for the Environment must also keep a register of information about permits issued.¹⁶

In addition, the *Nationally consistent approach for access to and the utilisation of Australia’s native genetic and biochemical resources*, published by the Commonwealth Government (the “Nationally Consistent Approach”) supports public notification of benefit sharing agreements where such notification is consistent with considerations of commercial, privacy and cultural confidentiality.¹⁷

¹³ s.47

¹⁴ s.47

¹⁵ r.8A.16(2): *EPBC Regulations*

¹⁶ r.8A.18(1): *EPBC Regulations*

¹⁷ General Principle 5.c., p.7 in the *Nationally Consistent Approach*

The EDOs recommend that to move the operation of the Act closer to best practice disclosure requirements and those found in other legislation, the Act must be amended to require full public notification of applications for new and amended collection authorities, biodiscovery plans and benefit sharing arrangements.

The EDOs submit that in addition to the broadening of the public notification requirements above, the chief executive should be required to give public notice in a manner wider than merely publishing a notice in the government gazette.

Recommendations 6 & 7:

6. *The Act must be amended to require that the chief executive give public notice of all of the following in addition to the current public notification requirements in relation to a new or amended Compliance Code:*
 - a. *new or amended collection authorities;*
 - b. *new or amended biodiscovery plans; and*
 - c. *new or amended benefit sharing arrangements.*
7. *The Act must be amended to require that the chief executive give public notification of the above matters in both:*
 - a. *the government gazette as presently required; and*
 - b. *a newspaper which is distributed throughout Australia.*

We confirm that the EDOs are concerned that the Act has no requirement for any public consultation whatsoever at any stage of the biodiscovery regulatory process.

The lack of such public consultation is inconsistent with the EPBC Regulations which, we confirm, require the Commonwealth Environment Minister to invite public comments on the likely environmental impacts of proposed access to biological resources in cases where this access is likely to have more than negligible environmental impact.¹⁸

Other pieces of legislation in Australia, both at the Commonwealth and State level in Queensland, also require that the public be given opportunities to comment on a number proposals which may have an environmental impact which is anything more than negligible.

For example:

- The Commonwealth's EPBC Act, amongst other things:
 - provides for a public consultation period for all proposals referred to the Commonwealth Environment Minister which may, will or are likely to

¹⁸ r.8A.16 (2) & (3)(c): *EPBC Regulations*

have a significant impact on matters of national environmental significance (“NES”)¹⁹.

- requires that the Commonwealth Environment Minister:
 - must invite the public to make comments about proposed recovery plans, threat abatement plans and wildlife conservation plans²⁰;
 - must consider those comments²¹; and
 - must not adopt a proposed recovery plan, threat abatement plan or wildlife conservation plan unless satisfied that an appropriate level of consultation has been undertaken in making the plan²².
- Queensland’s *Integrated Planning Act 1997* (Qld) (“IPA”):
 - provides for a public notification and consultation period for development applications which require “impact assessment”²³. ‘Impact assessment’ is the highest level of assessment under the IPA, and a category of assessment which local government authorities usually reserve for classes or types of development which they appreciate and accept the community will want the opportunity to comment on (for example, proposals which may have environmental impacts which are anything more than negligible).
- Even Queensland’s legislation for facilitating major projects, the *State Development and Public Works Organisation Act 1971* (Qld) requires public notification and consultation in relation to environmental impact statements which may be required under that Act by the Coordinator-General²⁴.

The EDOs submit that a number of amendments are required to the Act to ensure that proper public notification and consultation is conducted; in particular:

1. the Act should be amended to:
 - a. require that the public (particularly affected communities) is properly notified of applications for collection authorities under the Act;
 - b. provide mechanisms for public consultation (particularly with affected communities) on the proposed access ensuring that:
 - i. public notification takes place through national, relevant local newspapers and the internet; and
 - ii. all relevant information is available to the public to provide for informed comment (including proper consultation with indigenous communities recognising that public notification through conventional forms of media is inadequate);

¹⁹ s.74(3) & 131A: *EPBC Act*

²⁰ ss.275 & 290: *EPBC Act*

²¹ ss.276 & 291(a): *EPBC Act*

²² ss.277(1)(a) & 292(1)(a): *EPBC Act*

²³ Chapter 3, Part 4: *IPA*

²⁴ s.33: *EPBC Act*

- c. the public is given adequate opportunity to lodge submissions in relation to such applications; and
- d. the chief executive must consider and take into account any such submissions when deciding whether or not to issue a collection authority;

In addition, it equitably follows that:

- 1. any submitters in response to the public notification of such applications should be afforded the right to seek a merits review of any grant of a collection authority which they do not agree with;
- 2. any such merits review be conducted in the Planning and Environment Court of Queensland; and
- 3. each party to such merits review should bear their own costs, unless one or more of the following circumstances exists:
 - a. the court considers the proceeding was instituted merely to delay or obstruct;
 - b. the court considers the proceeding (or part of it) to have been frivolous or vexatious; or
 - c. a party has incurred costs because another party has defaulted in the court's procedural requirements.

The EDOs further submit that such amendments would be consistent with:

- 1. the philosophy of public consultation in other pieces of legislation in Australia (some of which are referred to above), particularly the EPBC Regulations in relation to applications for access to biological resources under the EPBC Act regime;
- 2. the principles of justice and equity which the Act is ostensibly based; and
- 3. the Nationally Consistent Approach.

Recommendation 8:

- 8. *The Act must be amended to:*
 - a. *require that the public (particularly affected communities) is properly notified of applications for collection authorities under the Act;*
 - b. *provide mechanisms for public consultation (particularly with affected communities) on the proposed access ensuring that:*
 - i. *public notification takes place through national, relevant local newspapers and the internet; and*
 - ii. *all relevant information is available to the public to provide for informed comment (including proper consultation with*

- indigenous communities recognising that public notification through conventional forms of media is inadequate);*
- iii. the public is given adequate opportunity to lodge submissions in relation to such applications; and*
 - iv. the chief executive must consider and take into account any such submissions when deciding whether or not to issue a collection authority;*
- c. provide mechanisms for any submitters in response to the public notification of such applications to seek a merits review by the Planning and Environment Court of Queensland of any grant of a collection authority which they do not agree with; and*
 - d. provide that each party to such merits review should bear their own costs, unless one or more of the following circumstances exists:*
 - i. the court considers the proceeding was instituted merely to delay or obstruct;*
 - ii. the court considers the proceeding (or part of it) to have been frivolous or vexatious; or*
 - iii. a party has incurred costs because another party has defaulted in the court's procedural requirements.*

No restriction on traditional or contemporary use of biodiversity

We note that:

1. section 10 of the Act provides that “a collection authority authorises its holder to take minimal quantities of stated native biological material... ..for biodiscovery.”;
2. “biodiscovery” is defined in the Schedule to the Act to mean:
 - a. “biodiscovery research”; or
 - b. “the commercialisation of native biological material or a product of biodiscovery research.”

Whilst we appreciate that:

1. parties who conduct biodiscovery activities under a collection authority would usually, and understandably, seek to gain some financial gain from their activities; and
2. a “benefit sharing agreement” concerning the native biological material the subject of the collection authority must be entered into within a year after the collection authority is issued²⁵, and before any native biological material which it concerns is taken²⁶;

the EDOs are strenuously opposed to any agreements, arrangements or other measures, whether under the Act or any benefit sharing agreement or otherwise,

²⁵ s.16(4)

²⁶ s.17(1)

which would in any way exclude, prevent, hinder or otherwise restrict use of the native biological material, whether such use be traditional or contemporary use, by any Australian citizen (and particularly indigenous Australians in relation to traditional use(s)).

We submit that, in any event, every benefit sharing agreement entered into must contain a mandatory clause which stipulates that any intellectual property rights which may vest in a biodiscovery entity as a result become *public* intellectual property rights at the expiration of ten (10) years after the relevant benefit sharing agreement is entered into.

We submit that, in any event, every benefit sharing agreement entered into must contain a mandatory clause to the following effect:

In the event that any intellectual property rights vest in a biodiscovery entity as a result of any biodiscovery activities carried out by the biodiscovery entity pursuant to the relevant benefit sharing agreement, then those intellectual property rights cease to exist in favour of the relevant biodiscovery entity (i.e. they become 'public' intellectual property rights) at the expiration of ten (10) years after the relevant benefit sharing agreement is entered into.

Recommendations 9 & 10:

9. *The Act must be amended to:*

- a. *ensure that nothing contained in the Act or any benefit sharing agreement excludes, prevents, hinders or otherwise restricts use of native biological material, whether such use be traditional or contemporary use, by any Australian citizen (and particularly indigenous Australians in relation to traditional use(s)); and*
- b. *the State will not enter into a benefit sharing agreement which will exclude, prevent, hinder or otherwise restrict use of native biological material, whether such use be traditional or contemporary use, by any Australian citizen (and particularly indigenous Australians in relation to traditional use(s)).*

10. *In addition to the above, the Act must be amended to require that every benefit sharing agreement entered into must contain a mandatory clause to the following effect:*

In the event that any intellectual property rights vest in a biodiscovery entity as a result of any biodiscovery activities carried out by the biodiscovery entity pursuant to the relevant benefit sharing agreement, then those intellectual property rights cease to exist in favour of the relevant biodiscovery entity (i.e. they become 'public' intellectual property rights) at the expiration of ten (10) years after the relevant benefit sharing agreement is entered into.

We submit that the amendments to the Act proposed above are not only consistent with, but actively pursue, the principles of justice and equity which the Act is ostensibly based.

Benefits given to biodiscovery entities to be publicly declared

Further in the same vein as the above, the EDOs submit that the particulars contained in the benefit sharing register which is required to be kept under the Act²⁷ include any benefits provided by the State to the biodiscovery entity. Such details are required to be included in a biodiscovery entity's biodiscovery plan²⁸, and are therefore readily available.

Recommendation 11:

- 11. The Act (in particular section 42(3)) must be amended to require that the particulars required to be kept in the benefit sharing agreement register referred to in section 42 of the Act include any benefits provided by the State to the biodiscovery entity.*

In support of this recommendation we once again submit that the amendments to the Act proposed above are not only consistent with, but actively pursue, the principles of justice and equity which the Act is ostensibly based.

²⁷ s.42

²⁸ s.37

4. Conclusion

The EDOs recognise the potential for a world-class biodiscovery industry, however submit that the *Biodiversity Act 2004* (Qld) as it is presently drafted and operates:

1. does not give high enough priority to ecological sustainability or conservation of biological diversity;
2. does not contain adequate public notification requirements, or any public consultation requirements;
3. does not adequately ensure that the intellectual property which may exist in native biological resources is protected and available for traditional or contemporary use by Australian citizens; and
4. generally fails to adequately reflect the principles of justice and equity which the Act is ostensibly based.

We submit further that the recommendations included in this submission will, if accepted:

1. address the concerns which we have articulated in this submission; and
2. better ensure that:
 - a. Queensland's biodiscovery industry is properly and transparently regulated in order for it to benefit both the Queensland economy and the environment; and
 - b. such a regulatory system allows and regulates access to native biological resources in a manner which is not only underpinned by principles of justice, equity and ecological sustainability, but adequately encourages and ensures proper environmental protection, conservation and management together with community participation.

We thank you in advance of your consideration of and attention to these submissions.

Of course, if you would like to discuss any aspect of this submission or its recommendations, then please do not hesitate to contact Adam Millar at EDO-NQ.