

Serial 69
Biological Resources Bill 2006
Mr Henderson

**A BILL
for
AN ACT**

to provide for and regulate bioprospecting in the Territory and for related purposes

NORTHERN TERRITORY OF AUSTRALIA
BIOLOGICAL RESOURCES ACT 2006

Act No. [] of 2006

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2006

AN ACT

to provide for and regulate bioprospecting in the Territory and for related purposes

[Assented to [] 2006]
[Second reading [] 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY MATTERS

1. Short title

This Act may be cited as the *Biological Resources Act 2006*.

2. Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3. Object of Act

- (1) The object of this Act is to facilitate bioprospecting in the Territory.
- (2) The object is to be achieved by the following:
 - (a) promoting the conservation of biological resources in the Territory and the ecologically sustainable use of those biological resources;

- (b) establishing an access regime designed to give certainty and minimise administrative cost for persons seeking to engage in bioprospecting in the Territory;
- (c) establishing a contractual framework for benefit-sharing agreements to be entered into between bioprospectors and resource access providers for the use of Territory biological resources to ensure the equitable sharing of benefits arising from the use of those biological resources for biodiscovery;
- (d) recognising the special knowledge held by indigenous persons about those biological resources;
- (e) seeking to ensure that social, economic and environmental benefits arising from the use of Territory biological resources for biodiscovery accrue to the Territory;
- (f) contributing to a nationally consistent approach to bioprospecting in Australia.

4. Interpretation

(1) In this Act:

"Aboriginal land", see section 3(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth);

"biodiscovery" means research on samples of biological resources, or extracts from those samples, to discover and exploit genetic or biochemical resources of actual or potential value for humanity;

"biodiversity", see section 7;

"biological resources" includes genetic resources, organisms, parts of organisms, populations and any other biotic component of an ecosystem with actual or potential use or value for humanity;

"bioprospecting", see section 5;

"bioprospector" means a person engaged in bioprospecting;

"CEO" means the Chief Executive Officer (within the meaning of the *Public Sector Employment and Management Act*) of the Agency administering this Act;

"certificate of provenance", see section 36;

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"ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

"genetic resources" means any material of plant, animal, microbial or other origin that contains functional units of heredity and has actual or potential value for humanity;

"Land Council", see Part III of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth);

"Land Trust", see Part II of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth);

"organism" includes:

- (a) a virus; and
- (b) the reproductive material of an organism; and
- (c) an organism that has died;

"permit issuing authority" means any of the following:

- (a) the Agency responsible for issuing permits under the *Territory Parks and Wildlife Conservation Act*;
- (b) the Agency responsible for issuing permits under the *Fisheries Act*;
- (c) any other body as prescribed;

"register" means the register maintained by the CEO under section 33;

"resource access provider", see section 6.

(2) A person is an indigenous person if the person is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an indigenous inhabitant of the Torres Strait Islands.

(3) A resource has value for humanity if an extract or compound derived from the resource is used, directly or indirectly, with advantage in any field of human endeavour, whether agricultural, industrial, veterinarian, pharmaceutical or other.

5. Meaning of bioprospecting

(1) Bioprospecting is the taking of samples of biological resources, existing *in situ* or maintained in an *ex situ* collection of such resources, for research in relation to any genetic resources, or biochemical compounds, comprising or contained in the biological resources.

(2) However, the following activities do not constitute bioprospecting:

- (a) taking biological resources from an area of land or water by indigenous people who have traditionally used the area of land or water in accordance with aboriginal tradition for hunting, food gathering (other than for sale) and for ceremonial and religious purposes;
- (b) dealing with any biological material of human origin;
- (c) taking samples of biological resources that have been cultivated or tended for a purpose other than biodiscovery and where the samples are not to be used for biodiscovery;
- (d) taking samples of biological resources specified in a declaration under section 10;
- (e) taking samples of biological resources that are available to the public on an unrestricted basis (whether on commercial or non-commercial terms);
- (f) taking samples of a biological resource that is:
 - (i) a genetically modified organism for the purposes of section 10 of the *Gene Technology Act 2000* (Cth); or
 - (ii) a plant variety for which a Plant Breeder's Right has been granted under section 44 of the *Plant Breeder's Rights Act 1994* (Cth);
- (g) taking aquatic life, within the meaning of the *Fisheries Act*, that:
 - (i) has been caught, taken or harvested under a licence or permit granted under that Act (other than a permit granted under section 17 of the *Fisheries Act* for bioprospecting); or
 - (ii) comprises a managed fishery or part of a managed fishery within the meaning of that Act.

(3) The following activities, if undertaken for a purpose other than biodiscovery, also do not constitute bioprospecting:

- (a) fishing for commerce or recreation, game or charter fishing or collecting broodstock for aquaculture;
- (b) harvesting wildflowers;
- (c) taking wild animals or plants for food;
- (d) collecting peat or firewood;
- (e) taking essential oils from wild plants;
- (f) collecting plant reproductive material for propagation;
- (g) commercial forestry.

(4) In subsection (1):

"*ex situ* collection" means a collection of physical samples of genetic resources that have been previously obtained from an *in situ* location and which are preserved or maintained in a location external to the *in situ* location;

"*in situ*" means the location in which genetic resources exist within ecosystems and natural habitats within the Territory.

6. Resource access provider

(1) Resource access provider, for biological resources in the Territory to which this Act applies, means the following:

- (a) for freehold land – the owner of the fee simple (including where the land is subject to a lesser interest such as a lease or licence);
- (b) for Aboriginal land – the owner of the fee simple (the Aboriginal Land Trust established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth));
- (c) for an Aboriginal community living area – the owner of the fee simple (an association within the meaning of the *Associations Act* or an Aboriginal association within the meaning of the *Aboriginal Councils and Associations Act 1976* (Cth));
- (d) for land subject to Native Title (exclusive possession) – the registered native title body corporate;

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- (e) for land held under Park freehold title – the owner of the fee simple (the relevant Park Land Trust established under the *Parks and Reserves (Framework for the Future) Act*);
- (f) for Crown land (including land subject to a Crown term lease or Crown perpetual lease) – the Territory;
- (g) for land subject to a lease under the *Special Purposes Lease Act* – the Territory;
- (h) for land subject to a pastoral lease under the *Pastoral Land Act* – the Territory;
- (i) for Territory waters – the Territory.

(2) A bioprospector must make any necessary arrangements for physical access to the resource with the person who controls the physical access.

Example for subsection (2)

If the land is the subject of a pastoral lease under the Pastoral Lease Act, the resource access provider for the purposes of bioprospecting is the Territory, but physical access must be arranged with the lessee.

7. Meaning of biodiversity

Biodiversity means the natural diversity of biological resources, together with the environmental conditions necessary for their survival, and includes the diversity of:

- (a) the landforms, soils and water of a region, and the functional relationships that affect environmental conditions within ecosystems (called "regional diversity"); and
- (b) the different types of communities formed by living organisms and the relations between them (called "ecosystem diversity"); and
- (c) species (called "species diversity"); and
- (d) genes within each species (called "genetic diversity").

PART 2 – APPLICATION OF ACT

8. Act binds Crown

This Act binds the Crown in the right of the Territory and, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

9. Where Act applies

(1) This Act applies throughout the Territory (including the air above, the water and the seabed or riverbed below the water).

Note for subsection (1)

Part 8A of the Environment Protection and Biodiversity Conservation Regulations 2000 (Cth) applies to "Commonwealth areas" in the Territory.

"Commonwealth areas" is defined in section 525 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and, so far as is relevant to the Territory, includes the following:

- (1) *Each of the following, and any part of it, is a Commonwealth area:*
 - (a) *land owned by the Commonwealth or a Commonwealth agency and airspace over the land;*
 - (b) *an area of land held under lease by the Commonwealth or a Commonwealth agency and airspace over the land;*
 - (d) *the coastal sea of Australia or an external Territory;*
 - (e) *the continental shelf, and the waters and airspace over the continental shelf;*
 - (f) *the waters of the exclusive economic zone, the seabed under those waters and the airspace above those waters;*
 - (g) *any other area of land, sea or seabed that is included in a Commonwealth reserve.*
- (3) *Despite paragraphs (1)(d), (e) and (f), none of the following areas (or parts of them) are Commonwealth areas:*
 - (b) *the seabed vested in the Northern Territory under section 4 of the Coastal Waters (Northern Territory Title) Act 1980; and*
 - (c) *the subsoil under the seabed described in paragraph (b); and*
 - (d) *any water and airspace over seabed described in paragraph (b).*

(2) This Act also applies outside the Territory, to the extent of the extraterritorial legislative competence of the Legislative Assembly, in relation to biological resources of Territory origin.

10. Exemption for specified biological resources or collections

(1) The Minister may declare that this Act does not apply to specified biological resources or a specified collection of biological resources (including future additions to the collection).

Examples for subsection (1)

1. *The resources are held away from their natural environment (whether in a collection or otherwise) by an Agency or other body and there are reasonable grounds to believe that bioprospecting of the biological resources is administered by the Agency or body in a manner that is consistent with this Act.*
2. *Use of the resources (including by way of bioprospecting) is required to be controlled under any international agreement to which Australia is a party.*

Note for subsection (1)

Samples of biological material from plants are held by the Northern Territory Herbarium. Samples of biological material from fish and animals are held by the Northern Territory Museum of Arts and Science.

(2) A holder of biological resources mentioned in subsection (1) may, in writing, request the Minister to make a declaration.

(3) A declaration under subsection (1) may provide that this Act does not apply to the biological resources in specified circumstances.

(4) A declaration under subsection (1) must be published in the *Gazette*.

PART 3 – PROCESS

Division 1 – Application to take biological resources

11. Application for permit

A person who wishes to engage in bioprospecting in the Territory must apply to the appropriate permit issuing authority for a permit.

Note

A permit to take aquatic life is issued by the Agency responsible for administering the Fisheries Act. A permit to take indigenous flora or fauna is issued by the Agency responsible for administering the Territory Parks and Wildlife Conservation Act.

12. Process in relation to permit

- (1) Subsection (2) applies if a permit issuing authority:
 - (a) receives an application for a permit to take biological material; and
 - (b) is satisfied, in terms of the authority's regulatory role, it would be appropriate to issue the permit; and
 - (c) considers the applicant's proposed activity may comprise bioprospecting.
- (2) The authority must:
 - (a) refer the application to the CEO; and
 - (b) advise the applicant:
 - (i) the application is approved in-principle by the authority; and
 - (ii) the application has been referred to the CEO for consideration in relation to bioprospecting matters.

13. CEO to consider application

(1) If a permit issuing authority refers an application to the CEO, the CEO must consider the application.

(2) The CEO must advise the permit issuing authority whether the CEO considers the proposed activity comprises bioprospecting or not.

(3) If the CEO considers the proposed activity comprises bioprospecting, Division 2 applies.

14. Assessment of applications

(1) In considering an application, the CEO may consult any Department, Agency or body of the Commonwealth or the Territory, or any other body or person that may have information relevant to the application.

(2) A person or body giving information for subsection (1) in good faith is not civilly or criminally liable for the giving of the information.

15. CEO may require further information

If the CEO considers the activities proposed in an application for a permit to take biological resources may comprise bioprospecting, the CEO may require further information from the applicant, including:

- (a) the biodiscovery activities the applicant proposes carrying out or that is proposed by a person who has engaged the applicant to collect biological resources; and
- (b) a proposed timetable for carrying out the activities; and
- (c) other details the CEO considers appropriate.

Division 2 – If proposed activity comprises bioprospecting

16. If resource access provider is Territory

If the resource access provider is the Territory, the CEO is the person responsible for entering into a benefit-sharing agreement with the applicant on behalf of the Territory.

Note

Part 4 sets out matters relating to benefit-sharing agreements.

17. Matters CEO may consider

(1) The CEO must not enter into a benefit-sharing agreement unless the CEO is satisfied the terms of the agreement are fair to the Territory.

(2) The CEO may consider the reputation of the applicant in relation to the following matters when deciding to enter into a benefit-sharing agreement on behalf of the Territory:

- (a) compliance with recognised standards of operation;

- (b) commitment to ecological sustainability;
- (c) compliance with conditions imposed in relation to permits and approvals (for example, approval by an ethics committee);
- (d) honouring commitments under benefit-sharing agreements.

18. If no agreement is entered into

(1) If the CEO and the bioprospector do not enter into a benefit-sharing agreement:

- (a) the CEO must advise the permit issuing authority of that fact; and
- (b) the authority must decline to issue a permit.

(2) The CEO must record in the register the reason no agreement was entered into.

19. If resource access provider is not Territory

(1) If the resource access provider is not the Territory, the resource access provider and the applicant must confirm to the CEO that a benefit-sharing agreement that meets the requirements of this Act has been negotiated and is in place.

(2) When confirming that a benefit-sharing agreement is in place, the parties must certify that the requirements of section 29 have been met.

20. CEO to notify permit issuing authority

When the CEO is satisfied that a benefit-sharing agreement, addressing the required criteria, is in place, the CEO must advise the permit issuing authority of that fact.

21. Permit issuing authority may issue permit

(1) On receiving advice from the CEO under section 20, the permit issuing authority may issue the applicant with a permit to take the specified biological resources, under the conditions the authority considers appropriate.

(2) The CEO may advise the permit issuing authority of conditions the CEO considers appropriate for the permit.

Example for subsection (2)

A requirement that voucher specimens, identical to samples taken for the purpose of biodiscovery, be lodged with the Northern Territory Herbarium or the Northern Territory Museum of Arts and Sciences.

22. Permit details to CEO

The permit issuing authority must:

- (a) provide the CEO with full details, or a copy, of the permit and conditions; or
- (b) if the authority declines to issue the permit – advise the CEO of that fact and the reason for declining.

Note for paragraph (b)

Despite approving the application for a permit in-principle, a permit issuing authority could decline to issue the permit because, for example, an intervening cyclone, bushfire or other natural disaster may have affected the sustainability of the biological resources in the area proposed for taking samples.

23. Permit details in register

(1) The CEO must record in the register information about permits issued (or declined to be issued) for this Act.

(2) Information must not be included on the register if the CEO believes the information:

- (a) is culturally sensitive; or
- (b) if disclosed, could:
 - (i) unwarrantedly damage a person's commercial interests; or
 - (ii) result in a risk to the environment; or
 - (iii) harm the national interest.

(3) The register must contain the following particulars in relation to each permit issued:

- (a) the name of the bioprospector to whom the permit was granted;
- (b) the date it was granted;
- (c) its term;
- (d) other particulars both the CEO and the bioprospector agree may be disclosed to the public under section 34.

(4) If a permit issuing authority declines to issue a permit, the register must also contain the reason for declining.

Division 3 – Process after samples taken

24. When samples taken

(1) When the bioprospector has taken the biological resource samples, the bioprospector must report to the permit issuing authority in accordance with the conditions of the permit under which the samples were taken.

(2) The report must contain the following details of the samples to which the report relates:

- (a) the date each sample was taken;
- (b) the location from which the sample was taken (by GPS coordinates using WGS84 datum);
- (c) the species of each sample;
- (d) the quantity of the sample taken.

(3) If it is a condition of the permit, the bioprospector must lodge samples of the biological resources taken with the Territory Herbarium or Museum of Arts and Sciences, as appropriate.

(4) The bioprospector must advise the permit issuing authority of the date on which the samples were lodged.

25. Information to CEO

(1) The permit issuing authority must provide the CEO with details of the samples taken.

(2) The permit issuing authority must also inform the CEO if the authority has any concerns the bioprospector has not complied with any of the conditions under which the permit was issued.

26. CEO to enter details in register

The CEO must enter in the register the details provided by the permit issuing authority.

PART 4 – BENEFIT-SHARING AGREEMENTS

27. Benefit-sharing agreement required

(1) A bioprospector must enter into a benefit-sharing agreement with each resource access provider in relation to the resources to be taken under a permit.

(2) The Minister may publish in the *Gazette* a model benefit-sharing agreement as a guide.

(3) A benefit-sharing agreement is not valid unless the resource access provider has given prior informed consent to the terms of the agreement.

28. Informed consent

(1) If a resource access provider is not the Territory or a statutory corporation, the CEO must be satisfied the resource access provider has given prior informed consent to the terms of a benefit-sharing agreement.

(2) In considering whether a resource access provider has given informed consent, the CEO must consider the following matters:

- (a) whether the resource access provider had adequate knowledge of this Act and was able to engage in reasonable negotiations with the applicant for the permit about the benefit-sharing agreement;
- (b) whether the resource access provider was given adequate time:
 - (i) to consult with relevant people; and
 - (ii) if the biological resources are in an area that is Aboriginal land and a resource access provider for the resources is a Land Trust – for the responsible Land Council to consult with the traditional owners for the land; and
 - (iii) to negotiate the benefit-sharing agreement;
- (c) whether the resource access provider has received independent legal advice about the application and requirements of this Act.

29. Benefit-sharing agreements

(1) A benefit-sharing agreement must provide for reasonable benefit-sharing arrangements, including protection for, recognition of and valuing of any indigenous people's knowledge to be used, and must include the following:

- (a) full details of the parties to the agreement;
- (b) if the resource access provider is the person granting physical access to the area – details regarding the time and frequency of entry to the area that has been agreed to be granted;
- (c) the resources (including the name of the species, or lowest level of taxon, to which the resources belong, if known) to which access has been agreed to be granted;

- (d) the quantity of the resources that has been agreed can be removed from the area;
 - (e) the purpose of the access, as disclosed to the resource access provider;
 - (f) a statement setting out the proposed means of labelling samples;
 - (g) the agreed disposition of ownership in the samples, including details of any proposed transmission of samples to third parties;
 - (h) a statement regarding any use of indigenous people's knowledge, including details of the source of the knowledge, such as, for example, whether the knowledge was obtained from the resource access provider or from other indigenous persons;
 - (i) a statement regarding benefits to be provided or any agreed commitments given in return for the use of the indigenous people's knowledge;
 - (j) the details of any proposals of the applicant to benefit biodiversity conservation in the area if access is granted;
 - (k) details of the benefits that the resource access provider will receive in return for the taking of the resources.
- (2) In subsection (1), knowledge:
- (a) is indigenous person's knowledge if it is obtained from an indigenous person or indigenous persons; and
 - (b) is not indigenous person's knowledge if it was obtained from scientific or other public documents, or otherwise from the public domain.

30. Retrospectively entering into benefit-sharing agreement

- (1) This section applies if:
 - (a) a sample of biological resources has been taken, not in accordance with this Act; or
 - (b) a sample of biological resources, initially taken for a purpose other than biodiscovery, is later used for biodiscovery.

(2) The person who holds the sample can legitimise the sample for this Act by:

- (a) advising the CEO of the approximate date on which, and location from where, and by whom, the sample was taken; and
- (b) providing the CEO with a unique identifier for the sample; and
- (c) advising the CEO of the nature and scientific details of the sample (if required, providing a portion of the sample for identification by the Territory Herbarium or Museum of Arts and Sciences); and
- (d) entering into a benefit-sharing agreement with the resource access provider and providing the CEO with the details required under section 29 (as appropriately modified) in relation to the benefit-sharing agreement.

(3) The effect of legitimising a sample of biological resources for this Act is that the CEO, if satisfied it is appropriate, may issue a certificate of provenance in relation to the sample.

(4) The legitimising of a sample does not prevent a prosecution for a breach of the Act.

31. Details of benefit-sharing agreements in register

(1) If an agreement is negotiated on behalf of the Territory, the CEO must keep a copy of the agreement in the register.

(2) If an agreement is negotiated with a resource access provider who is not the Territory, the CEO must keep the following information in the register:

- (a) full details of the parties to the agreement;
- (b) details of the time and frequency of entry to the area that has been agreed to be granted;
- (c) the resources (including the name of the species, or lowest level of taxon, to which the resources belong, if known) of which samples have been agreed may be taken;
- (d) the quantity of the resources that has been agreed can be removed from the area;
- (e) the purpose of the taking of the resources, as disclosed to the resource access provider;
- (g) the agreed disposition of ownership in the samples, including details of any proposed transmission of samples to third parties.

32. When benefit-sharing agreement comes into effect

(1) A benefit-sharing agreement has no effect unless a permit is issued in relation to the biological resources in relation to which the benefit-sharing agreement was entered into.

(2) A benefit-sharing agreement comes into effect when a permit is issued and samples are taken under the permit.

(3) If the resource access provider is not the Territory, the bioprospector must:

- (a) give the resource access provider a copy of the permit when issued; and
- (b) advise the resource access provider when samples have been taken under the permit.

PART 5 – REGISTER AND CERTIFICATES OF PROVENANCE

Division 1 – Register

33. CEO to maintain register

The CEO must maintain a register of information about:

- (a) permits, relating to biodiscovery, issued (or declined to be issued) by permit issuing authorities; and
- (b) samples taken under those permits and details of samples being lodged under section 24 or transferred to other parties; and
- (c) benefit-sharing agreements; and
- (d) certificates of provenance.

34. CEO to make some details from register available

(1) For reporting to the Legislative Assembly or for providing statistics in relation to biodiscovery in the Territory, the CEO may make available certain information from the register.

(2) Confidential information must not be divulged under subsection (1).

Division 2 – Certificates of provenance

35. Holder of rights to sample may request certificate

(1) A person who takes a sample of biological resources in accordance with this Act, or a successor in title to such a sample or extract from the sample, may request from the CEO a certificate of provenance in relation to the sample.

(2) An application for a certificate must be in writing and include the following:

- (a) the unique identifier allocated to the sample;
- (b) proof the applicant has the right to title in relation to the sample or extract.

36. Certificate of provenance

(1) On receiving an application under section 35, accompanied by the prescribed fee, the CEO may issue a certificate of provenance in relation to an identified sample of biological resources.

(2) A certificate of provenance is an original document issued by the Territory and stating that, consistent with Australia's international obligations at time the sample was taken:

- (a) the specified biological resources, or extracts from a named organism were taken:
 - (i) under a permit scheme intended to minimise negative impacts on biodiversity; and
 - (ii) with the informed consent of resource access providers; and
- (b) a benefit-sharing agreement had been negotiated and was in place.

(3) A certificate of provenance must, in addition to the statement mentioned in subsection (2), contain the following details:

- (a) a unique identifier of the certificate;
- (b) the date of issue of the certificate;
- (c) a description of the sample, and the unique identifier of the sample, to which the certificate relates;
- (d) the general geographic region from where the sample was taken, as advised by the bioprospector;
- (e) the date the sample was taken, as advised by the bioprospector;

- (f) the quantity of the sample taken, as advised by the bioprospector;
 - (g) the identifying number of the permit under which the sample was taken and the following information about the permit:
 - (i) the period of validity of the permit;
 - (ii) the general geographic area for which the permit was granted;
 - (iii) the species in relation to which the permit was granted and the quantity that was authorised to be taken.
- (4) The CEO must record the details of a certificate of provenance in the register.

37. Revocation of certificate of provenance

(1) If a certificate of provenance is issued in relation to a sample of biological resources and it later appears that circumstances are such that, if known, the certificate would not have been issued, the CEO may revoke the certificate.

(2) If a certificate is revoked, the CEO must publish a notice of the revocation in the *Gazette*, and may publish the notice in any other manner the CEO considers appropriate.

PART 6 – OFFENCES

38. Bioprospecting without permit

(1) A person must not engage in bioprospecting except in accordance with a permit registered with the CEO.

Maximum penalty: 500 penalty units.

(2) A person is taken to engage in bioprospecting if there is a reasonable prospect that biological resources taken by the person will be subject to research and development on any genetic resources, or biochemical compounds, comprising or contained in the biological resources.

39. Giving false information

A person, in making an application to a permit issuing authority, or in providing information to the CEO under section 15, must not knowingly give information that is false or misleading in a material particular.

Maximum Penalty: 500 penalty units.

40. Breach of permit conditions

A bioprospector must not breach the conditions of a permit relating to bioprospecting and registered with the CEO.

Maximum penalty: 500 penalty units.

41. Breach of benefit-sharing agreement

A person who is bound by the terms of a benefit-sharing agreement under this Act must not breach a condition of the agreement.

Maximum penalty: 500 penalty units.

PART 7 – MISCELLANEOUS MATTERS

42. Bioprospector to keep records

(1) A bioprospector issued a permit in relation to bioprospecting must keep the following records for each sample taken:

- (a) for each record about a sample – a unique identifier for the sample that is also on a label attached to the sample or its container;
- (b) the date the sample was taken;
- (c) the location from which the sample was taken;
- (d) an indication of the quantity or size of the sample (for example, approximate weight or physical dimensions of the sample);
- (e) the scientific name of, or given to, the sample;
- (f) the location of the sample when first entered in the record;
- (g) the details of any subsequent disposition of the sample, including the names and addresses of others having possession of the sample or a part of the sample.

Maximum penalty: 100 penalty units.

(2) A copy of the records must be sent to each relevant resource access provider, the permit issuing authority and the CEO within a reasonable time after the sample is taken.

Maximum penalty: 100 penalty units.

(3) A record mentioned in subsection (1) for a sample must be retained by the bioprospector while the sample is in the bioprospector's possession.

Maximum penalty: 100 penalty units.

43. Disposal of samples

(1) If a bioprospector does not intend to keep a sample for which the bioprospector has a record of the type mentioned in section 42(1), the bioprospector must offer the sample and record to each resource access provider.

Maximum penalty: 100 penalty units.

(2) If no resource access provider agrees to take the sample and record, the bioprospector may dispose of the sample and, at that time, must send the record and details of the disposal of the sample to the CEO.

Maximum penalty: 100 penalty units.

44. No exclusive rights to biological resources

(1) No exclusive rights, or access, to a biological resource arises merely from:

- (a) the issue of a permit by a permit issuing authority; or
- (b) the entering into a benefit-sharing agreement by a resource access provider.

(2) The CEO cannot purport to grant exclusive rights or access to biological resources in relation to which the Territory is the resource access provider.

(3) A term of a benefit-sharing agreement that purports to grant exclusive rights or access in contravention of subsection (2) is void.

45. Pre-existing benefit-sharing agreements

(1) This section applies to a benefit-sharing agreement entered into between the Territory and a bioprospector before the commencement of this Act under which:

- (a) the Territory gave the bioprospector the right to use, for biodiscovery, biological resources:
 - (i) taken from Territory land or waters; or
 - (ii) sourced from biological resources from Territory land or waters; and

- (b) the bioprospector agreed to provide benefits to the Territory arising from biodiscovery.

(2) On and from the commencement, the agreement is taken to be a benefit-sharing agreement entered into under section 16(1) and the CEO must enter the agreement in the register.

46. Delegation

The CEO may delegate in writing to an employee within the meaning of the *Public Sector Employment and Management Act* any of the CEO's powers and functions under this Act or the Regulations.

47. Regulations

- (1) The Administrator may make regulations for this Act.
- (2) The regulations may:
 - (a) deal with the disposition of ownership in samples of biological resources, including details of any proposed transmission of samples to third parties; and
 - (b) prescribe fees payable under this Act; and
 - (c) for an offence against the regulations, prescribe a fine not exceeding 200 penalty units; and
 - (d) provide for an offence against the Regulations to be a regulatory offence; and
 - (e) provide for the enforcement of a code of practice, including by providing that a contravention of the code is an offence against the regulations; and
 - (f) provide for:
 - (i) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act; and
 - (ii) the service of a notice relating to payment of the amount on a person alleged to have committed the offence; and
 - (iii) the particulars to be included in the notice; and

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- (g) apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time.
