



Queensland

# **Biodiscovery Act 2004**

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## Queensland

# Biodiscovery Act 2004

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# Biodiscovery Act 2004

## An Act about taking and using native biological material for biodiscovery, and for other purposes

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Biodiscovery Act 2004*.

#### 2 Commencement

This Act commences on a day to be fixed by proclamation.

#### 3 Purposes of Act

(1) The main purposes of this Act are—

- (a) to ensure biodiscovery entities act appropriately when accessing or using traditional knowledge for biodiscovery; and
- (b) to facilitate access by biodiscovery entities to minimal quantities of native biological material for biodiscovery on or in State land or Queensland waters; and
- (c) to encourage the development, in the State, of value added biodiscovery; and
- (d) 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

*Note—*

See the definition of *benefits of biodiscovery* in the schedule.

- (e) to ensure biodiscovery enhances knowledge of the State's biological diversity, promoting conservation and sustainable use of native biological resources.
- (2) The purposes are achieved mainly by providing for—
  - (a) the measures to be taken by persons accessing or using traditional knowledge for biodiscovery; and
  - (b) the following streamlined frameworks—
    - (i) a regulatory framework for taking and using native biological material, in a sustainable way, for biodiscovery;
    - (ii) a contractual framework for benefit sharing agreements, and subsequent use agreements under those agreements, to be entered into with biodiscovery entities for the use, for biodiscovery, of native biological material; and
  - (c) a compliance code and collection protocols for taking native biological material; and
  - (d) the monitoring and enforcement of compliance with this Act.

#### **4 Why this Act was enacted**

- (1) The Commonwealth has ratified the Convention on Biological Diversity, the objects of which are—
  - (a) the conservation of biological diversity; and
  - (b) the sustainable use of its components; and
  - (c) the fair and equitable sharing of benefits arising from the use of genetic resources.
- (2) The Convention on Biological Diversity requires countries to develop and implement strategies for the conservation of biological diversity and the sustainable use of its components.
- (3) Article 15 of the Convention on Biological Diversity recognises the sovereign rights of the States over their natural resources and the States' authority to decide access to genetic

resources, including the fair and equitable sharing of benefits gained from the access.

- (4) The Nagoya Protocol is a supplementary agreement implementing Article 15 of the Convention on Biological Diversity that includes principles aimed at ensuring—
  - (a) traditional knowledge associated with genetic resources is accessed with free, prior and informed consent; and
  - (b) agreements are negotiated with Indigenous peoples for the fair and equitable sharing of benefits arising from the use of traditional knowledge associated with genetic resources.
- (5) This Act is intended to give effect to—
  - (a) Article 15 of the Convention on Biological Diversity to the extent it relates to native biological material on or in State land or Queensland waters; and
  - (b) the principles of the Nagoya Protocol mentioned in subsection (4) in relation to native biological material, instead of only genetic resources.
- (6) In this section—

***Convention on Biological Diversity*** means the agreement—

- (a) called the ‘Convention on Biological Diversity’; and
- (b) opened for signature on 5 June 1992 at the United Nations Conference on Environment and Development (known as the ‘Rio de Janeiro Earth Summit’); and
- (c) ratified by the Commonwealth on 18 June 1993; and
- (d) entered into force on 29 December 1993.

***genetic resources*** see the Convention on Biological Diversity, Article 2.

***Nagoya Protocol*** means the agreement—

- (a) called the ‘Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity’; and

- (b) adopted at the conference of the parties to the Convention on Biological Diversity on 29 October 2010; and
- (c) signed by the Commonwealth on 20 January 2012; and
- (d) entered into force on 12 October 2014.

## **5 Definitions**

The dictionary in the schedule defines particular words used in this Act.

# **Part 2                      Operation of Act**

## **6 Act binds all persons**

- (1) This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State, the Commonwealth or another State liable to be prosecuted for an offence.

## **7 Relationship with other Acts**

- (1) This section applies in relation to any other Act to the extent the other Act—
  - (a) requires a person to obtain a licence, permit or other authority to take native biological material for which a collection authority may be issued under this Act; or
  - (b) prohibits the taking of native biological material for which a collection authority may be issued under this Act.
- (2) Despite the other Act, if a collection authority is issued to a person for taking native biological material under this Act, the person is not—

- (a) required to obtain the licence, permit or other authority for taking the material under the other Act; or
- (b) prohibited from taking the material under the other Act.
- (3) However, subsection (2) applies only to the extent the person taking the native biological material complies with this Act.

## **7A Relationship with International food and agriculture treaty**

- (1) This section applies to a person taking or using a plant if—
  - (a) the plant is listed in the International food and agriculture treaty, Annex 1; and
  - (b) the taking or using involves biodiscovery or using traditional knowledge for biodiscovery.
- (2) The person is exempt from the requirements of this Act to the extent the plant is taken or used—
  - (a) for a food or agriculture purpose; and
  - (b) in a way that is consistent with the International food and agriculture treaty.
- (3) In this section—

*International food and agriculture treaty* means the agreement—

- (a) called the ‘International treaty on plant genetic resources for food and agriculture’; and
- (b) adopted at the Conference of the Food and Agriculture Organization of the United Nations on 3 November 2001; and
- (c) entered into force on 29 June 2004.

## **8 Operation of Act**

This Act is intended to operate to its full effect despite any adverse effect its operation may have on the existence or exercise of any private rights, including proprietary rights.

## **9 Extraterritorial application of Act**

- (1) This Act applies both within and outside Queensland.
- (2) Subject to the Commonwealth Constitution, this Act applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.
- (3) A person commits an offence that is defined in a provision of this Act, other than this provision, if—
  - (a) the person does an act, or makes an omission, outside the State in relation to native biological material; and
  - (b) the act or omission would constitute the offence if it were done or made by the person within the State.
- (4) This section does not limit the Criminal Code, sections 12 to 14.

# **Part 2A                      Using traditional knowledge for biodiscovery**

## **Division 1                      Preliminary**

### **9A                      Application of part**

This part applies in relation to taking and using native biological material for biodiscovery, regardless of whether or not the material is taken from State land or Queensland waters.

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## Division 2                      Traditional knowledge obligation

### 9B            **Obligation about using traditional knowledge for biodiscovery**

- (1) This section applies to a person who accesses traditional knowledge when engaging in biodiscovery or preparing to engage in biodiscovery.
- (2) The person must take all reasonable and practical measures to ensure the person does not use the traditional knowledge for biodiscovery other than under an agreement with the custodians of the knowledge.

Maximum penalty—5,000 penalty units.

*Note—*

This provision is an executive liability provision—see section 115.

- (3) The requirement under subsection (2) is the ***traditional knowledge obligation***.
- (4) Without limiting how the person may comply with the traditional knowledge obligation, the person is taken to comply with the obligation if—
  - (a) the person complies with the traditional knowledge code of practice; or
  - (b) the person is employed or engaged by a biodiscovery entity that has complied with the traditional knowledge code of practice.

## Division 3                      Traditional knowledge code of practice

### 9C            **Making code of practice**

- (1) The Minister may make a code of practice (the ***traditional knowledge code of practice***) about the following matters—

[s 9D]

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- (a) the circumstances in which the traditional knowledge obligation applies;
  - (b) processes for identifying the custodians of traditional knowledge;
  - (c) reasonable and practical measures for obtaining the agreement of the custodians of traditional knowledge;
  - (d) another matter in relation to complying with the traditional knowledge obligation.
- (2) The traditional knowledge code of practice must be published on the department's website.
- (3) The traditional knowledge code of practice takes effect when it is approved by regulation.

## **9D Consultation about code of practice**

In preparing the traditional knowledge code of practice, the Minister must consult with—

- (a) Aboriginal and Torres Strait Islander groups in Queensland; and
- (b) biodiscovery entities.

# **Part 3 Collection authorities**

## **Division 1 Preliminary**

### **10 What collection authority authorises**

Subject to section 17, a collection authority authorises its holder to take minimal quantities of stated native biological material from, on or in, State land or Queensland waters, and keep the material, for biodiscovery.

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## **Division 2                      Application for collection authority**

### **11            Procedural requirements for application**

- (1) An application for a collection authority must be—
  - (a) made to the chief executive in the approved form; and
  - (b) supported by sufficient information to enable the chief executive to decide the application; and
  - (c) accompanied by each of the following—
    - (i) the application fee prescribed under a regulation;
    - (ii) the registration fee prescribed under a regulation;
    - (iii) any other document, identified in the approved form, the chief executive reasonably requires for deciding the application.
- (2) Information in the application must, if the approved form requires, be verified by a statutory declaration.

### **12            Content of approved form**

- (1) The approved form for the application must provide for the inclusion of each of the following—
  - (a) the applicant's name and, if the applicant is not an individual, the applicant's ACN or ABN;
  - (b) the applicant's place of business;
  - (c) an appropriate description of the State land or Queensland waters to which the application relates;  
*Example—*  
the real property description or geographic coordinates of the land or waters
  - (d) a description of the type of material, proposed to be taken under the collection authority, of sufficient detail to enable the material to be identified for deciding the application;

- (e) the material's scientific classification, to the extent known by the applicant;
  - (f) a description of the proposed commercialisation activities for the material;
  - (g) the period for which the collection authority is sought.
- (2) The approved form may include requirements for the description mentioned in subsection (1)(d).

### **13 Chief executive's powers before deciding application**

- (1) Before deciding the application, the chief executive may, by written notice given to the applicant, ask for any further information or document the chief executive reasonably requires to decide the application.
- (2) The notice must state a reasonable period of at least 20 business days after it is given (the *stated period*) within which the information or document must be given.
- (3) The chief executive may require the information or document to be verified by a statutory declaration.
- (4) The applicant is taken to have withdrawn the application if the applicant does not comply with the requirement within the stated period.
- (5) A notice under subsection (1) must be given to the applicant within 20 business days after the chief executive receives the application.

### **14 Deciding application**

- (1) The chief executive must consider the application and decide—
  - (a) to grant the application, with or without conditions decided by the chief executive; or

*Note—*  
See section 17 for other conditions of the collection authority.

  - (b) to refuse the application.

- 
- (2) The chief executive may grant the application only if the chief executive is satisfied of each of the following—
- (a) the proposed taking and use of the native biological material—
    - (i) is for biodiscovery only; and
    - (ii) conforms with the compliance code and any applicable collection protocols, to the extent the code and protocols are consistent with the conditions the chief executive proposes imposing under subsection (1)(a);
  - (b) other matters prescribed under a regulation for achieving the purposes of this Act.
- (2A) Also, if the application relates to State land that is a State plantation forest under the *Forestry Act 1959*, the chief executive must consult with any plantation licensee for a licence area in the State plantation forest when considering the application.
- (3) Subsection (2) does not limit the matters to which the chief executive may have regard in deciding the application.
- (4) The chief executive may refuse the application even if a benefit sharing agreement is in force concerning the material the subject of the application.
- (5) In this section—

*licence area*, in a State plantation forest, see the *Forestry Act 1959*, schedule 3.

*plantation licensee*, for a licence area in a State plantation forest, see the *Forestry Act 1959*, schedule 3.

## 15 Steps to be taken after application decided

- (1) If the chief executive decides to grant the application, the chief executive must, as soon as practicable after making the decision, issue a collection authority to the applicant.

- (2) If the chief executive decides to grant the application with conditions, or to refuse the application, the chief executive must as soon as practicable after making the decision—
  - (a) give the applicant an information notice about the decision; and
  - (b) for a refusal to grant the application—refund the registration fee paid by the applicant.

## **16 Term of collection authority**

- (1) A collection authority is given for the term stated in the authority.
- (2) The term must not be more than 3 years.
- (3) The authority expires at the end of the term.
- (4) Despite subsections (1) and (3), the authority lapses 1 year after it is issued if a benefit sharing agreement concerning the native biological material the subject of the authority is not entered into within the 1 year period.

## **17 Conditions of collection authority**

- (1) It is a condition of a collection authority that the holder, or a person acting for the holder, must not take native biological material under the authority unless a benefit sharing agreement concerning the material is in force.
- (2) To the extent the provisions of the compliance code or a collection protocol are applicable to the activities carried out under a collection authority, the provisions are conditions of the authority.
- (3) The conditions imposed by the chief executive under section 14(1)(a) (the *section 14 conditions*) are conditions of the authority.
- (4) If there is an inconsistency between a condition mentioned in subsection (2) and a section 14 condition, the section 14 condition prevails to the extent of the inconsistency.

## **18 Collection authority**

A collection authority must be in the approved form and state each of the following—

- (a) its number;
- (b) its issue date;
- (c) its expiry date;
- (d) the section 14 conditions for the authority;
- (e) the holder's name and, if the holder is not an individual, the holder's ACN or ABN;
- (f) the holder's place of business;
- (g) the type of native biological material that may be taken;
- (h) the material's scientific classification, to the extent known by the applicant;
- (i) the area from which the material may be taken.

## **19 Failure to decide application**

- (1) The chief executive is taken to have decided to refuse an application if the chief executive—
  - (a) under section 13, required the applicant to give the chief executive further information or a document; and
  - (b) fails to decide the application within 40 business days after receiving the information or document.
- (2) If subsection (1) does not apply, the chief executive is taken to have decided to refuse an application if the chief executive fails to decide the application within 40 business days after receiving it.
- (3) As soon as practicable after the chief executive is taken to have made the decision, the chief executive must refund the registration fee paid by the applicant.

## **Division 3                      Amending, suspending, cancelling or surrendering collection authority**

### **20            Amending, suspending or cancelling collection authority**

- (1) The chief executive may amend, suspend or cancel a collection authority if—
  - (a) the chief executive reasonably believes—
    - (i) the authority was obtained because of incorrect or misleading information; or
    - (ii) the holder has contravened section 32 or a condition of the authority; or
    - (iii) the amendment, suspension or cancellation is necessary because of an emergency, including for example, a bushfire or other natural disaster; or
  - (b) the holder is convicted of an offence against this Act.
- (2) Also, the chief executive may amend the authority—
  - (a) if section 24 or 25 applies to the authority; or
  - (b) at the holder's request, if the chief executive is satisfied it is appropriate to make the amendment.
- (3) Despite any other Act or law, no compensation is payable by the State to any person because of the operation of subsection (1) or (2).

### **21            Procedure for amendment, suspension or cancellation**

- (1) The chief executive may take action (the *proposed action*) under section 20(1) or (2)(a), by giving the holder of the collection authority a written notice stating each of the following—
  - (a) the proposed action;
  - (b) the ground for the proposed action;

- (c) an outline of the facts and circumstances forming the basis for the ground;
  - (d) if the proposed action is amendment of the authority—the proposed amendment;
  - (e) if the proposed action is suspension of the authority—the proposed suspension period;
  - (f) an invitation to make written submissions, within a stated period of at least 20 business days, about why the proposed action should not be taken.
- (2) If, after considering any written submissions made within the stated period, the chief executive still considers the ground to take the proposed action exists, the chief executive may decide—
  - (a) if the proposed action was to amend the authority—to amend it in the way stated in the notice; or
  - (b) if the proposed action was to suspend the authority for a stated period—to suspend it for not longer than the proposed suspension period; or
  - (c) if the proposed action was to cancel the authority—either to cancel it or to suspend it for a period.
- (3) The chief executive must inform the holder of the decision by written notice.
- (4) If the chief executive decides to amend, suspend or cancel the authority, the notice must be a QCAT information notice about the decision.
- (5) A decision to amend, suspend or cancel the authority takes effect on the later of—
  - (a) the day the QCAT information notice is given to the holder; or
  - (b) the day of effect stated in the QCAT information notice.
- (6) The effect of an amendment does not depend on the amendment being noted on the authority.

## **22      Returning collection authority on cancellation**

If the chief executive cancels a collection authority, the holder must, within 10 business days after receiving a QCAT information notice about the cancellation, return the authority to the chief executive, unless the holder has a reasonable excuse.

Maximum penalty—20 penalty units.

## **23      Surrendering collection authority**

The holder of a collection authority may surrender the authority by returning it and giving written notice of surrender to the chief executive.

# **Division 4                      Effect of particular statutory changes on collection authority**

## **24      Collection authority concerning land in new national park, special wildlife reserve or marine park**

(1) This section applies if—

- (a) land is dedicated as a national park or national park (scientific), or declared a special wildlife reserve, under the *Nature Conservation Act 1992*; and
- (b) immediately before the dedication or declaration, a person held a collection authority that is inconsistent with the management principles under the *Nature Conservation Act 1992* for the park or reserve.

(2) This section also applies if—

- (a) land or water is declared under the *Marine Parks Act 2004* as a marine park or the zoning of a marine park is changed; and
- (b) immediately before the declaration or zoning change, a person held a collection authority that is inconsistent with that Act.

- (3) On and from the dedication, declaration or zoning change, the collection authority continues, subject to this Act, for the period of its term that is unexpired.

## **25 Collection authority concerning wildlife**

- (1) This section applies if—
  - (a) the classification prescribed under the *Nature Conservation Act 1992* for particular wildlife, within the meaning of that Act, is changed to a higher level; and
  - (b) immediately before the change, a person held a collection authority authorising the taking of the wildlife.
- (2) On and from the change, the collection authority continues, subject to this Act, for the period of its term that is unexpired.

## **Division 5 Miscellaneous**

### **26 Replacement collection authority**

- (1) The holder of a collection authority may apply to the chief executive for a replacement authority.
- (2) The application must be—
  - (a) made in the approved form; and
  - (b) accompanied by the fee prescribed under a regulation.

### **27 Collection authority register**

- (1) The chief executive must keep a register of collection authorities.
- (2) The register may be kept in the way the chief executive considers appropriate, including, for example, in an electronic form.

- (3) The publicly available part of the register must contain, for each authority, only the following particulars—
  - (a) the person to whom the authority was issued;
  - (b) the date the authority was issued;
  - (c) the term of the authority.
- (4) The register, other than its publicly available part, must include, for each authority—
  - (a) an appropriate description of the land or waters the authority concerns; and  
*Example—*
    - the real property description or geographic coordinates of the land or waters
  - (b) any section 14 conditions for the authority.

## **28 Public access to collection authority register**

- (1) A person may—
  - (a) free of charge, inspect the details contained in the publicly available part of the collection authority register at the department's head office during normal business hours; and
  - (b) on payment of any fee decided by the chief executive, obtain a copy of the details from the chief executive.
- (2) The fee decided by the chief executive must not be more than the reasonable cost of producing the copy.
- (3) The chief executive may publish details contained in the publicly available part of the register at the times and in the way decided by the chief executive.

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## **Part 4                      Other matters about collection authorities**

### **Division 1                      Identifying native biological material and giving samples of material to State**

#### **29            Identifying native biological material**

- (1) The holder of a collection authority must, as soon as practicable after taking native biological material for biodiscovery under the authority—

- (a) label the material in an appropriate way, complying with subsection (2); and

*Example of appropriate way—*

bar coding

- (b) keep the material labelled as required by subsection (2) while the material is held by or for the holder.

Maximum penalty—50 penalty units.

*Note—*

This provision is an executive liability provision—see section 115.

- (2) The label must provide the following information—
- (a) the number, or other identification, of the authority under which the material was taken;
- (b) the date on which it was taken;
- (c) the material's scientific classification, to the extent known by the holder;
- (d) the geographic location from which the material was taken, including, for example, by reference to geographic coordinates.
- (3) The holder of the authority must ensure any sample of, or substance sourced from, the material and held by or for the

holder is sufficiently identified to enable its source to be tracked.

Maximum penalty—50 penalty units.

*Note—*

This provision is an executive liability provision—see section 115.

### 30 Giving samples of material to State

- (1) The holder of a collection authority must, as soon as practicable after taking native biological material for biodiscovery under the authority, give a sample of the material, complying with subsection (3), to the following—
  - (a) for animal material—the Queensland Museum (the *receiving entity*);
  - (b) for plant material or fungi—the Queensland Herbarium (also the *receiving entity*);
  - (c) for another organism—an entity (also the *receiving entity*) stated in the benefit sharing agreement concerning the material.

Maximum penalty—50 penalty units.

- (2) However, subsection (1) does not apply if the sample is held by the holder for the State under an agreement between the holder and the State.
- (3) The sample must be—
  - (a) of a sufficient size and quality to enable scientific classification of the material; and
  - (b) fixed and preserved in a way approved by the receiving entity; and
  - (c) labelled in an appropriate way, including, for example, by bar coding, stating—
    - (i) the number, or other identification, of the authority under which the material was taken; and
    - (ii) the date on which it was taken; and

- (iii) if the holder is reasonably able to classify the material by using current scientific nomenclature—its classification to the lowest taxonomic level reasonably possible; and
  - (iv) the geographic location from which the material was taken, including, for example, by reference to geographic coordinates.
- (4) If the sample is not labelled as required by subsection (3)(c)(iii), the receiving entity may—
  - (a) classify the material to the lowest possible taxonomic level; and
  - (b) recover from the holder, as a debt, the costs reasonably incurred by the entity in carrying out the classification.

### **31 Restriction on receiving entity's use of samples**

- (1) A receiving entity must not use, for biodiscovery, a sample of material given to it by the holder of a collection authority under section 30.
- (2) Subsection (1) does not apply to biodiscovery—
  - (a) involving only the classification of the material under section 30(4); or
  - (b) carried out with the holder's consent.

## **Division 2 Material disposal report**

### **32 Giving material disposal report to chief executive**

- (1) The holder of a collection authority must give to the chief executive, within 15 business days after each 30 June and 31 December, a material disposal report about all native biological material—
  - (a) taken under the authority; and
  - (b) given to someone else, whether or not for gain; and

- (c) for which the holder has not previously given a material disposal report to the chief executive.

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 115.

- (2) Subsection (1) does not apply if the holder has a reasonable excuse for not giving the report as required under the subsection.

## Part 5                      Benefit sharing

### Division 1                Agreements

#### 33            Power to enter into benefit sharing agreement

- (1) The Minister may, for the State, enter into an agreement (a *benefit sharing agreement*) with a biodiscovery entity under which—
  - (a) the State gives the entity the right to use native biological material from State land or Queensland waters for biodiscovery; and
  - (b) the entity agrees to provide benefits of biodiscovery to the State.
- (2) The Minister must not enter into a benefit sharing agreement with a biodiscovery entity unless the Minister is satisfied—
  - (a) the entity has not accessed, and will not access, traditional knowledge for the biodiscovery the subject of the agreement; or
  - (b) the entity has complied with, and will continue to comply with, the entity's traditional knowledge obligation for the biodiscovery the subject of the agreement.

- (3) The parties to a benefit sharing agreement may, at any time, amend the agreement.
- (4) The Minister may delegate the Minister's powers under this section to the chief executive.

### **34 Content of benefit sharing agreement**

- (1) A benefit sharing agreement must be consistent with this Act.
- (2) The agreement must state each of the following—
  - (a) the date the agreement is entered into;
  - (b) the agreement's term;
  - (c) the benefits of biodiscovery to be provided by the biodiscovery entity to the State;
  - (d) when the benefits are to be provided;
  - (e) if the benefits include the payment of amounts of money to the State—the amounts, or a way of working out the amounts;
  - (f) if native biological material, the subject of the agreement, is to be taken under a collection authority—the number, or other identification, of each authority under which the material is to be taken;
  - (g) what matters are reportable matters for the agreement;
  - (h) the biodiscovery entity's place of business;
  - (i) that the biodiscovery entity—
    - (i) has not accessed, and will not access, traditional knowledge for the biodiscovery the subject of the agreement; or
    - (ii) has complied with, and will continue to comply with, the entity's traditional knowledge obligation for the biodiscovery the subject of the agreement.
- (3) The agreement must also include any conditions, other than the condition mentioned in section 35(1), of the agreement.

- (4) The agreement must also state the terms (the *prescribed minimum terms*) that must be included in any subsequent use agreement entered into under the agreement.
- (5) The prescribed minimum terms must include a requirement for a subsequent user to provide benefits of biodiscovery, by way of the biodiscovery entity, to the State.

### **35 Statutory condition of benefit sharing agreement**

- (1) It is a condition of a benefit sharing agreement that a biodiscovery entity with whom the agreement is made must not allow another entity to use any of the native biological material the subject of the agreement for biodiscovery, unless the other entity is—
  - (a) an entity that is engaged by the biodiscovery entity to assist it with biodiscovery in relation to the material and that, under the engagement, is not—
    - (i) entitled to any gain from use of the material other than a fee for providing the assistance that is not calculated by reference to the results of commercialisation of the material; and
    - (ii) required to provide any benefits of biodiscovery to the State; or

*Example—*

a biotechnology research entity that conducts a toxicology test on a product derived from native biological material for a fixed fee

- (b) an entity mentioned in section 54(2)(a) or (b) or (3); or
  - (c) a party to a benefit sharing agreement concerning the material; or
  - (d) a party to a subsequent use agreement concerning the material.
- (2) Subsection (1) does not limit any other conditions that may be included in the agreement under section 34(3).

### **35A Subsequent use agreements**

- (1) This section applies if a benefit sharing agreement (the *head agreement*) is in force between the State and a biodiscovery entity (the *primary user*).
- (2) The primary user may enter into an agreement (a *subsequent use agreement*) with another biodiscovery entity (a *subsequent user*) allowing the subsequent user to use the native biological material the subject of the head agreement for biodiscovery if the subsequent use agreement includes the prescribed minimum terms required under the head agreement.
- (3) A subsequent user may enter into an agreement (also a *subsequent use agreement*) with another biodiscovery entity (also a *subsequent user*) allowing the other subsequent user to use the native biological material the subject of the head agreement for biodiscovery if each subsequent use agreement includes the prescribed minimum terms required under the head agreement.
- (4) A subsequent use agreement ceases to have effect if the head agreement or subsequent use agreement under which it was entered into ends.

## **Division 3 Register and other records about benefit sharing agreements**

### **42 Benefit sharing agreement register**

- (1) The chief executive must keep a register of benefit sharing agreements.
- (2) The register may be kept in the way the chief executive considers appropriate, including, for example, in an electronic form.
- (3) The register must contain, for each agreement, only the following particulars about the agreement—

- (a) the name of the biodiscovery entity with whom it was entered into;
  - (b) the date it was entered into;
  - (c) its term;
  - (d) other particulars both the Minister and the entity agree, in writing, may be disclosed to the public under subsection (4).
- (4) The chief executive may publish details contained in the register at the times and in the way decided by the chief executive.

#### **43 Records to be kept by biodiscovery entity**

- (1) A biodiscovery entity that has entered into a benefit sharing agreement must keep each record or document evidencing the results of biodiscovery research carried out under the agreement for 30 years after the record or document is created.

Maximum penalty—50 penalty units.

- (2) The entity must also keep each record or account necessary for working out amounts of money payable by the entity to the State under the agreement for 30 years after the record or account is created.

Maximum penalty—50 penalty units.

- (3) In this section—

*biodiscovery entity*, that has entered into a benefit sharing agreement, includes the entity's successors and assigns.

## Part 6 Compliance code and collection protocols

### 44 Establishing compliance code

- (1) The chief executive may establish a written code (the ***compliance code***) for taking native biological material under a collection authority.
- (2) Without limiting subsection (1), the code may provide for all or any of the following—
  - (a) minimum standards for taking the material to ensure the sustainability of native biological resources on or in State land or Queensland waters;
  - (b) appropriate measures for minimising the impact of taking the material;
  - (c) regulating activities engaged in for taking the material.

*Example for paragraph (c)—*

the use of motor vehicles, boats or hovercraft, on or in State land or Queensland waters from which the material is taken

- (3) The code is a statutory instrument within the meaning of the *Statutory Instruments Act 1992*, but is not subordinate legislation.
- (4) However, the *Statutory Instruments Act 1992*, sections 49 to 51 apply to the code as if it were subordinate legislation.

*Note—*

These provisions deal with the tabling in, and disallowance by, the Legislative Assembly of subordinate legislation.

### 45 Establishing collection protocols

- (1) The chief executive may establish written protocols (***collection protocols***) for all or any of the following concerning the taking of native biological material under a collection authority—
  - (a) taking particular native biological material;

- (b) taking native biological material from a particular area;
  - (c) using a particular collection technique.
- (2) Without limiting subsection (1)(b), a collection protocol may provide for appropriate ways of taking the material to ensure the sustainability of native biological material in the area.
- (3) A collection protocol is a statutory instrument within the meaning of the *Statutory Instruments Act 1992*, but is not subordinate legislation.
- (4) However, the *Statutory Instruments Act 1992*, sections 49 to 51 apply to the protocol as if it were subordinate legislation.

#### **46 Consultation for compliance code and collection protocols**

- (1) Before establishing or amending the compliance code or a collection protocol, the chief executive must consult with, and have regard to the views of—
  - (a) if the code or protocol concerns the wet tropics area—the Wet Tropics Management Authority; or
  - (b) if the code or protocol concerns land or waters contiguous with the Great Barrier Reef Region—the Great Barrier Reef Marine Park Authority.
- (2) This section does not limit the entities the chief executive may consult with or obtain advice from in establishing or amending the code or protocol.

#### **47 Public notice of establishment of compliance code and collection protocols**

As soon as possible after establishing or amending the compliance code or a collection protocol, the chief executive must publish a notice in the gazette stating that—

- (a) the code or protocol has been established or amended, as the case may be; and

- (b) copies of the code or protocol, or amendment, are available—
  - (i) during normal business hours at the department's head office and each regional office of the department; and
  - (ii) on the department's stated website on the internet.

#### **48 When compliance code and collection protocols have effect**

- (1) The compliance code, or an amendment of it, has effect on and from—
  - (a) the day the notice about the code or amendment is published under section 47; or
  - (b) a later day stated in the notice.
- (2) A collection protocol, or an amendment of it, has effect on and from—
  - (a) the day the notice about the protocol or amendment is published under section 47; or
  - (b) a later day stated in the notice.

#### **49 Access to compliance code and collection protocols**

- (1) The chief executive must keep a copy of the compliance code and each collection protocol, and each document applied, adopted or incorporated by the code or protocol, available for inspection, without charge—
  - (a) during normal business hours at the department's head office and each regional office of the department; and
  - (b) on the department's website on the internet.
- (2) On payment of the fee decided by the chief executive, a person may obtain a copy of the code or a protocol from the chief executive.

- (3) The fee decided by the chief executive must not be more than the reasonable cost of producing the copy.

## Part 7 Offences

### Division 1 Offences about collection authorities

#### 50 Offence to take without a collection authority

- (1) A person must not, unless authorised by a collection authority, take native biological material for biodiscovery from State land or Queensland waters.

Maximum penalty—

- (a) for NCA material—3,000 penalty units or 2 years imprisonment; or  
(b) otherwise—2,000 penalty units.

*Note—*

This provision is an executive liability provision—see section 115.

- (2) In this section—

***NCA material*** means—

- (a) native biological material that is, or is sourced from, protected wildlife within the meaning of the *Nature Conservation Act 1992*; or  
(b) native wildlife mentioned in section 97 of that Act.

#### 51 Contravening a condition of a collection authority

A person must not contravene a condition of a collection authority, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 115.

## **52 False or misleading information given by applicant**

A person, in making an application for a collection authority, must not state anything to the chief executive that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 115.

## **53 False or misleading documents given by applicant**

- (1) A person, in making an application for a collection authority, must not give the chief executive a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

*Note—*

This provision is an executive liability provision—see section 115.

- (2) Subsection (1) does not apply to a person who, when giving the document—
- (a) informs the chief executive, to the best of the person's ability, how it is false or misleading; and
  - (b) gives the correct information to the chief executive if the person has, or can reasonably obtain, the correct information.

## Division 2                      Offences about agreements

### 54            **Using native biological material for biodiscovery without particular agreements**

- (1) A person must not, unless the person is a party to a benefit sharing agreement or subsequent use agreement, use native biological material for biodiscovery, if the material was taken from—

- (a) State land or Queensland waters; or
- (b) a State collection, if the material was taken or sourced from State land or Queensland waters.

Maximum penalty—the amount equal to the greater of the following—

- (a) 5,000 penalty units;
  - (b) the full commercial value of any commercialisation of the material.
- (2) However, subsection (1) does not apply to a person who uses the material for carrying out only 1 or more of the following activities—
- (a) classifying the material scientifically;
  - (b) verifying research results concerning the material;
  - (c) biodiscovery to which a benefit sharing agreement concerning the material applies, carried out for a biodiscovery entity by another entity under an engagement mentioned in section 35(1)(a).
- (3) Also, subsection (1) does not apply to the use by an educational institution, or a person at the institution, for educational or training activities not involving commercialisation of the material.
- (4) In this section—

***educational institution*** means—

- (a) a school; or

- (b) a registered higher education provider under the *Tertiary Education Quality and Standards Agency Act 2011* (Cwlth); or
- (c) a registered training organisation under the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

**55 Contravening a condition of a benefit sharing agreement**

A biodiscovery entity must not contravene a condition of a benefit sharing agreement imposed under section 35(1).

Maximum penalty—100 penalty units.

**55A Contravening prescribed minimum terms of a subsequent use agreement**

A subsequent user who is a party to a subsequent use agreement must not contravene a prescribed minimum term of the agreement.

Maximum penalty—100 penalty units.

**56 False or misleading information given by person seeking benefit sharing agreement**

A person, in seeking a benefit sharing agreement, must not state anything to the Minister that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

**57 False or misleading documents given by person seeking benefit sharing agreement**

- (1) A person, in seeking a benefit sharing agreement, must not give the Minister a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving the document—
- (a) informs the Minister, to the best of the person's ability, how it is false or misleading; and
  - (b) gives the correct information to the Minister if the person has, or can reasonably obtain, the correct information.

## **58 False or misleading information about reportable matters**

A person must not state anything about a reportable matter to the Minister that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

## **Division 3 Other offence provisions**

### **59 Claims by persons about holding a collection authority**

A person who is not the holder of a collection authority must not claim to hold, or hold himself or herself out as holding, the authority.

Maximum penalty—100 penalty units.

### **60 Collection authority to be available for immediate inspection**

The holder, or a person acting for the holder, of a collection authority must have a copy of the authority available for immediate inspection under part 8 while the holder or other person is taking native biological material under it.

Maximum penalty—20 penalty units.

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## Part 8 Monitoring and enforcement

### Division 1 Inspectors

#### 61 Appointment and qualifications

- (1) The chief executive may appoint any of the following persons as an inspector—
  - (a) a public service employee;
  - (b) a local government employee;
  - (c) a person holding an appropriate accreditation by the National Association of Testing Authorities, Australia ABN 59 004 379 748;
  - (d) another person prescribed under a regulation.
- (2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

#### 62 Appointment conditions and limit on powers

- (1) An inspector holds office on any conditions stated in—
  - (a) the inspector's instrument of appointment; or
  - (b) a signed notice given to the inspector; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers under this Act.
- (3) In this section—

***signed notice*** means a notice signed by the chief executive.

### **63 Issue of identity card**

- (1) The chief executive must issue an identity card to each inspector the chief executive appoints.
- (2) The identity card must—
  - (a) contain a recent photo of the inspector; and
  - (b) contain a copy of the inspector's signature; and
  - (c) identify the person as an inspector under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **64 Production or display of identity card**

- (1) In exercising a power under this Act in relation to a person, an inspector must—
  - (a) produce the inspector's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 68(1)(b) or (2).

### **65 When inspector ceases to hold office**

- (1) An inspector ceases to hold office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the inspector ceases to hold office;

- (c) the inspector's resignation under section 66 takes effect.
- (2) Subsection (1) does not limit the ways an inspector may cease to hold office.
- (3) In this section—  
*condition of office* means a condition on which the inspector holds office.

## **66 Resignation**

An inspector may resign by signed notice given to the chief executive.

## **67 Return of identity card**

A person who ceases to be an inspector must return the person's identity card to the chief executive within 21 days after ceasing to be an inspector unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

# **Division 2 Powers of inspectors**

## **Subdivision 1 Entry of places**

### **68 Power to enter places**

- (1) Subject to section 74(2), an inspector may enter a place if—
  - (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the entry is authorised by a warrant; or
  - (d) it is a person's place of business stated in the person's collection authority and is—

- (i) open for carrying on the business; or
  - (ii) otherwise open for entry; or
  - (iii) required to be open for inspection under the authority; or
- (e) it is a biodiscovery entity's place of business stated in a benefit sharing agreement to which the entity is a party and is—
  - (i) open for carrying on the business; or
  - (ii) otherwise open for entry; or
  - (iii) required to be open for inspection under the agreement.
- (2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) For subsection (1)(d), a place of business does not include a part of the place where a person resides.

## **Subdivision 2 Procedure for entry**

### **69 Entry with consent**

- (1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 68(1)(a).
- (2) Before asking for the consent, the inspector must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.

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- (3) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.
  - (4) The acknowledgement must state—
    - (a) the occupier has been told—
      - (i) the purpose of the entry; and
      - (ii) that the occupier is not required to consent; and
    - (b) the purpose of the entry; and
    - (c) the occupier gives the inspector consent to enter the place and exercise powers under this division; and
    - (d) the time and date the consent was given.
  - (5) If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.
  - (6) If—
    - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
    - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **70 Application for warrant**

- (1) An inspector may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

the magistrate may require additional information supporting the application to be given by statutory declaration

## **71 Issue of warrant**

- (1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
  - (b) the evidence is at the place, or, within the next 7 days, may be at the place.
- (2) The warrant must state—
  - (a) that a stated inspector may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry; and
    - (ii) exercise the inspector's powers under this division; and
  - (b) the offence for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours of the day or night when the place may be entered; and
  - (e) the date, within 14 days after the warrant's issue, the warrant ends.

## **72 Special warrants**

- (1) An inspector may apply for a warrant (a *special warrant*) by phone, fax, radio or another form of communication if the inspector considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) Before applying for the special warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

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- (3) The inspector may apply for the special warrant before the application is sworn.
  - (4) After issuing the special warrant, the magistrate must immediately fax a copy (a *facsimile warrant*) to the inspector if it is reasonably practicable to fax the copy.
  - (5) If it is not reasonably practicable to fax a copy to the inspector—
    - (a) the magistrate must tell the inspector—
      - (i) what the terms of the special warrant are; and
      - (ii) the date and time the special warrant was issued; and
    - (b) the inspector must complete a form of warrant (a *warrant form*) and write on it—
      - (i) the magistrate's name; and
      - (ii) the date and time the magistrate issued the special warrant; and
      - (iii) the terms of the special warrant.
  - (6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the special warrant issued.
  - (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
    - (a) the sworn application; and
    - (b) if the inspector completed a warrant form—the completed warrant form.
  - (8) On receiving the documents, the magistrate must attach them to the special warrant.
  - (9) If—
    - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and

(b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

## **73 Warrants—procedure before entry**

- (1) This section applies if an inspector named in a warrant issued under this division for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector's identity card or other document evidencing the inspector's appointment;
  - (b) give the person a copy of the warrant or if the entry is authorised by a facsimile warrant or warrant form mentioned in section 72(6), a copy of the facsimile warrant or warrant form;
  - (c) tell the person the inspector is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

## **Subdivision 3 Other powers**

### **74 Power to stop and search vehicles etc.**

- (1) This section applies if an inspector suspects on reasonable grounds that—

- (a) a vehicle, boat or aircraft is being, or has been, used in the commission of an offence against this Act; or
  - (b) a vehicle, boat or aircraft, or anything on or in, a vehicle, boat or aircraft may afford evidence of the commission of an offence against this Act.
- (2) The inspector may, with necessary and reasonable help and force, and without consent or a warrant—
  - (a) enter or board the vehicle, boat or aircraft; and
  - (b) exercise the powers set out in section 75(3).
- (3) If—
  - (a) the vehicle or boat is moving or about to move; or
  - (b) the aircraft is moving, or about to move, on the ground;the inspector may signal the driver or the person in command or control, or who appears to be in command or control, of the vehicle, boat or aircraft, to stop or not to move the vehicle, boat or aircraft.
- (4) A person must not, without reasonable excuse, disobey a signal under subsection (3).

Maximum penalty—165 penalty units.
- (5) It is a reasonable excuse for the person to fail to stop or to move the vehicle, boat or aircraft if—
  - (a) to immediately obey the signal would have endangered, or damaged the property of, the person or another person; and
  - (b) the person obeys the signal as soon as it is practicable to obey the signal.
- (6) The inspector may require the driver or the person in command or control, or who appears to be in command or control, of the vehicle, boat or aircraft—
  - (a) to give the inspector reasonable help to enable the vehicle, boat or aircraft to be entered or boarded under subsection (2); or

- (b) to bring the vehicle, boat or aircraft to a specified place and remain in control of the vehicle, boat or aircraft at the place for a reasonable time to enable the inspector to exercise the inspector's powers in relation to the vehicle, boat or aircraft.
- (7) A person must not, without reasonable excuse, contravene a requirement under subsection (6).  
Maximum penalty—165 penalty units.
- (8) If, while searching the vehicle, boat or aircraft, the inspector finds a thing the inspector believes, on reasonable grounds, will afford evidence of the commission of an offence against this Act, sections 79 to 87 apply to the thing.

## **75 General powers after entering places**

- (1) This section applies to an inspector who enters a place under section 68.
- (2) However, if an inspector enters a place to get the occupier's consent to enter premises, this section applies to the inspector only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring and enforcing compliance with this Act, the inspector may do all or any of the following—
  - (a) search any part of the place;
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
  - (c) take an extract from, or copy, a document at the place;
  - (d) take into or onto the place any person, equipment and materials the inspector reasonably requires for exercising a power under this division;
  - (e) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (d);

- (f) require the occupier of the place, or a person at the place, to give the inspector information to help the inspector ascertain whether this Act is being complied with.
- (4) When making a requirement mentioned in subsection (3)(e) or (f), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

## **76 Failure to help inspector**

- (1) A person required to give reasonable help under section 75(3)(e) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

## **77 Failure to give information**

- (1) A person of whom a requirement is made under section 75(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

# **Subdivision 4 Power to seize evidence**

## **78 Seizing evidence at place that may only be entered with consent or warrant**

- (1) This section applies if—

- (a) an inspector is authorised to enter a place under this division only with the consent of the occupier of the place or a warrant; and
  - (b) the inspector enters the place after obtaining the necessary consent or warrant.
- (2) If the inspector enters the place with the occupier's consent, the inspector may seize a thing at the place if—
  - (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the inspector enters the place with a warrant, the inspector may seize the evidence for which the warrant was issued.
- (4) The inspector also may seize anything else at the place if the inspector reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

## **79 Seizing evidence at other places**

- (1) This section applies if an inspector enters a public place when the place is open to the public, or enters or boards a vehicle, boat or aircraft, without consent or a warrant, as authorised under section 68 or 74.
- (2) The inspector may seize a thing at the place, or on or in the vehicle, boat or aircraft, if the inspector reasonably believes the thing is evidence of an offence against this Act.

## **80 Securing seized things**

Having seized a thing, an inspector may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or

- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- sealing the thing and marking it to show access to it is restricted
- sealing the entrance to a room where the seized thing is situated and marking the entrance to show access to the room is restricted

## **81 Tampering with seized things**

If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an inspector's approval.

Maximum penalty—50 penalty units.

## **82 Receipt for seized things**

- (1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

## **83 Disposal of native biological material**

- (1) This section applies to native biological material that has been seized under this subdivision as evidence of an offence against this Act.

- (2) Despite any other provision of this Act, if the chief executive is satisfied that it is necessary to do so—
  - (a) in the interests of the welfare of the material; or
  - (b) for the protection of the material;the chief executive may direct that the material be disposed of in a way the chief executive considers appropriate.
- (3) Subsection (2) applies even though a proceeding has not been taken for, or a person convicted of, the offence.

#### **84 Forfeiture of things not owned by the State**

- (1) A thing that is not already the property of the State and has been seized under this subdivision is forfeited to the State if the inspector who seized the thing—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.
- (4) In this section—

*owner*, of a thing, includes the person in possession or control of it.

## **85 Dealing with forfeited things**

- (1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the State as the chief executive considers appropriate.
- (2) Without limiting subsection (1), the State may destroy or otherwise dispose of the thing.

## **86 Return of seized things**

- (1) If a seized thing is not disposed of under section 83 or forfeited under section 84, the inspector must return it to the person from whom it was seized—
  - (a) at the end of 6 months; or
  - (b) if proceedings involving the thing are started within 6 months, at the end of the proceedings and any review or appeal from the proceedings.
- (2) Despite subsection (1), unless a thing that has been seized as evidence is disposed of or forfeited as mentioned in the subsection, the inspector must immediately return it to the person from whom it was seized if the inspector stops being satisfied its continued retention as evidence is necessary.

## **87 Access to seized things**

- (1) Until a seized thing is disposed of, forfeited or returned, an inspector must allow the person from whom it was seized to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## Division 3                      General investigation matters

### 88            **Inspector's obligation not to cause unnecessary damage**

An inspector must take all reasonable steps to ensure the inspector does not cause any unnecessary damage to property in exercising a power under division 2.

### 89            **Notice of damage**

- (1) This section applies if—
  - (a) an inspector damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction of an inspector damages property.
- (2) The inspector must immediately give notice of particulars of the damage to the person who appears to the inspector to be the owner of the property.
- (3) If the inspector believes the damage was caused by a latent defect in the property or circumstances beyond the inspector's or other person's control, the inspector may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the inspector reasonably believes is trivial.
- (6) In subsection (2)—

*owner*, of property, includes the person in possession or control of it.

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**90 Compensation**

- (1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under division 2, subdivision 1, 3 or 4.
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.
- (3) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (4) A court may order compensation to be paid only if it is satisfied it is fair to make the order in the circumstances of the particular case.

**91 False or misleading information given to inspector**

A person must not state anything to an inspector the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

**92 False or misleading documents given to inspector**

- (1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
  - (a) tells the inspector, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

### **93      Obstructing an inspector**

- (1) A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an inspector and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—

(a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and

(b) the inspector considers the person's conduct is an obstruction.

- (3) In this section—

*obstruct* includes hinder and attempt to obstruct or hinder.

### **94      Impersonating an inspector**

A person must not pretend to be an inspector.

Maximum penalty—50 penalty units.

## **Part 9                      Internal reviews**

### **95      Application for internal review**

- (1) A person who is given, or is entitled to be given, an information notice about a decision of the chief executive under section 14 to refuse an application for a collection authority, or to grant it on conditions, may apply for an internal review of the decision.

- (2) Also, a person whose application for a collection authority the chief executive is taken, under section 19, to have decided to refuse may apply for an internal review of the decision.

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## 96 How to apply for internal review

- (1) An application for internal review of a decision must be—
  - (a) made—
    - (i) in the approved form; and
    - (ii) to the Minister; and
  - (b) supported by enough information to enable the Minister to decide the application.
- (2) The application must be made within 20 business days after—
  - (a) the day the person is given the information notice about the decision; or
  - (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.

## 97 Review decision

- (1) The Minister must, within 30 business days after receiving the application—
  - (a) review the decision (the *original decision*); and
  - (b) make a decision (the *review decision*) to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision; and
  - (c) give the applicant notice (the *review notice*) of the review decision.
- (2) If the review decision is not the decision sought by the applicant, the review notice must also state the reasons for the review decision.
- (3) If the Minister does not comply with subsection (1), the Minister is taken to have made a decision confirming the original decision.

## **98      Restriction on external review**

- (1) Other than as provided by section 95, a person can not appeal, under any Act, against a decision of the chief executive mentioned in the section.
- (2) A person can not appeal, under any Act, against a decision of the Minister made under this division.
- (3) This section has no effect on the *Judicial Review Act 1991*.

# **Part 10                      External reviews**

## **103      Review of decision by QCAT**

A person who is given a QCAT information notice about a decision of the chief executive under section 21 may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

# **Part 11                      Legal proceedings**

## **Division 1                      Evidence**

### **108      Application of div 1**

This division applies to a proceeding under this Act.

### **109      Appointments and authority**

It is not necessary to prove the appointment of any of the following persons, or their authority to do anything under this Act—

- (a) the Minister;
- (b) the chief executive;
- (c) an inspector.

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## **110 Signatures**

A signature purporting to be the signature of a person mentioned in section 109 is evidence of the signature it purports to be.

## **111 Evidentiary matters**

A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—

- (a) a stated document is 1 of the following things made, given, issued or kept under this Act—
  - (i) an appointment, approval or decision;
  - (ii) a direction, requirement or notice;
  - (iii) the traditional knowledge code of practice;
  - (iv) a collection authority;
  - (v) a benefit sharing agreement;
  - (vi) the compliance code;
  - (vii) a collection protocol;
  - (viii) a record or an extract from a record;
  - (ix) a register or an extract from a register;
- (b) a stated document is another document kept under this Act;
- (c) a stated document is a benefit sharing agreement;
- (d) a stated document is a copy of a thing mentioned in paragraph (a), (b) or (c);
- (e) on a stated day, or during a stated period, a stated person was or was not the holder of a collection authority;
- (f) on a stated day, or during a stated period, a collection authority—
  - (i) was or was not in force; or

- (ii) was or was not subject to a stated condition;
- (g) on a stated day, a collection authority was cancelled;
- (h) on a stated day, or during a stated period, a collection authority was suspended;
- (i) on a stated day, or during a stated period, a stated biodiscovery entity was or was not a party to a benefit sharing agreement;
- (j) on a stated day, or during a stated period, a stated benefit sharing agreement was or was not in force;
- (k) on a stated day, or during a stated period, an appointment as an inspector was or was not in force for a stated person;
- (l) on a stated day, a stated person was given a stated notice under this Act;
- (m) on a stated day, a stated requirement was made of a stated person.

## **Division 2                      Proceedings**

### **112      Summary proceedings for offences**

- (1) Proceedings for an offence against this Act are to be taken in a summary way under the *Justices Act 1886*.
- (2) A proceeding for an offence against section 54 must start—
  - (a) within 5 years after the commission of the offence; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 7 years after the commission of the offence.
- (3) A proceeding for another offence against this Act must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

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**113 Allegations of false or misleading information or documents**

It is enough for a complaint for an offence against this Act involving false or misleading information, or a false or misleading document, to state the statement made, or document given, was ‘false or misleading’ to the person’s knowledge, without specifying whether it was false or whether it was misleading.

**114 Responsibility for acts or omissions of representatives**

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

***representative*** means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

***state of mind***, of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and

- (b) the person's reasons for the intention, opinion, belief or purpose.

## **115 Liability of executive officer—particular offences committed by corporation**

- (1) An executive officer of a corporation commits an offence if—
  - (a) the corporation commits an offence against an executive liability provision; and
  - (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

Maximum penalty—the penalty for a contravention of the executive liability provision by an individual.

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
  - (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against the executive liability provision; and
  - (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and
  - (c) any other relevant matter.
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision.
- (4) This section does not affect—
  - (a) the liability of the corporation for the offence against the executive liability provision; or
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the executive liability provision.

(5) In this section—

*executive liability provision* means section 9B(2), 29(1) or (3), 32(1), 50(1), 51, 52 or 53(1).

## Part 12 Miscellaneous

### Division 1 Protection of confidentiality

#### 117 Disclosure of information about collection authority or agreements

(1) This section applies to a person who, in performing functions under this Act, acquires or acquired information about a collection authority, benefit sharing agreement or subsequent use agreement.

(2) The person must not disclose the information to anyone else, unless the disclosure is permitted under subsection (3).

Maximum penalty—100 penalty units.

(3) The person may disclose the information to someone else—

- (a) to the extent necessary to perform the person's functions under this Act; or
- (b) if the disclosure is authorised under an Act; or
- (c) if the disclosure is otherwise required or permitted by law; or
- (d) if each party to the agreement consents, in writing, to the disclosure; or
- (e) if the information is, or has been, accessible to the public, including, for example, because it is or was recorded in a publicly available register.

## **Division 2                      Protection from liability**

### **118      Liability of State**

The State is not legally liable for an act or omission merely because—

- (a) a collection authority has been issued; or
- (b) a benefit sharing agreement or subsequent use agreement has been entered into.

### **119      Protecting Minister from liability**

- (1) The Minister is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to the Minister, the liability attaches instead to the State.

*Note—*

For protection from civil liability in relation to State employees, see the *Public Service Act 2008*, section 26C.

### **120      Whistleblowers' protection**

- (1) A person is not liable, civilly, criminally or under an administrative process, for disclosing to the Minister or chief executive information about a person's conduct that breaches this Act, a benefit sharing agreement or a subsequent use agreement.
- (2) Without limiting subsection (1)—
  - (a) in a proceeding for defamation, the discloser has a defence of absolute privilege for publishing the disclosed information; and
  - (b) if the discloser would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice, the discloser—

- (i) does not contravene the Act, oath, rule of law or practice for disclosing the information; and
  - (ii) is not liable to disciplinary action for disclosing the information.
- (3) A person's liability for the person's own conduct is not affected only because the person discloses it to the Minister or chief executive.

## **Division 3                      Other miscellaneous provisions**

### **122      Approval of forms**

The chief executive may approve forms for use under this Act.

### **123      Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may—
  - (a) prescribe fees payable under the Act; and
  - (b) provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

## **Part 13                      Repeal and transitional provisions**

### **Division 1                      Transitional provisions for Act No. 19 of 2004**

#### **124      Existing benefit sharing agreements with State**

- (1) This section applies to an agreement entered into between the State and a biodiscovery entity before the commencement of this section under which—
  - (a) the State gave the entity the right to use, for biodiscovery, native biological material—
    - (i) taken from State land or Queensland waters; or
    - (ii) sourced from native biological material taken from State land or Queensland waters; and
  - (b) the entity agreed to provide benefits of biodiscovery to the State.
- (2) On and from the commencement, the agreement is taken to be a benefit sharing agreement entered into under section 33.
- (3) However, section 35(1) does not apply to the agreement until the end of 1 year after the commencement.
- (4) Also, subsection (2) is not effective to impose criminal liability, before the commencement, under section 43.
- (5) Despite subsections (2) to (4), section 50 applies to the entity on and from the commencement.

#### **125      Existing permits, licences or other authorities**

- (1) Subsection (2) applies—
  - (a) if the holder of a corresponding authority complies with the Act under which the authority was issued; and
  - (b) until the authority expires or is sooner cancelled.

- (2) On and from the commencement of this section—
  - (a) despite section 50, the holder may continue to take the native biological material authorised to be taken under the authority; and
  - (b) the authority is taken to be a collection authority.
- (3) In this section—

*corresponding authority* means a permit, licence or other authority—

  - (a) issued, for the purpose of biodiscovery, under another Act; and
  - (b) authorising the taking of native biological material from State land or Queensland waters.

## Division 2                      Repeal

### 136      Repeal

The *Year 2000 Information Disclosure Act 1999* is repealed.

## Division 3                      Transitional provisions for Biodiscovery and Other Legislation Amendment Act 2020

### 137      Definition for division

In this division—

*former*, for a provision of this Act, means the provision as in force from time to time before the commencement of the *Biodiscovery and Other Legislation Amendment Act 2020*, part 2.

**138 Liability for traditional knowledge obligation deferred until first code approved**

From the commencement, a person is not liable to be prosecuted for contravention of the traditional knowledge obligation until the first traditional knowledge code of practice is approved by regulation.

**139 Effect of traditional knowledge obligation on existing biodiscovery**

- (1) This section applies if—
  - (a) before the commencement, a person was engaging in biodiscovery (the *existing biodiscovery*)—
    - (i) under the former Act; or
    - (ii) in a way that was not prohibited under the former Act; and
  - (b) from the commencement, the traditional knowledge obligation would, but for this section, apply to the person.
- (2) The person is not liable to be prosecuted for contravention of the traditional knowledge obligation to the extent the person—
  - (a) continues the existing biodiscovery; or
  - (b) engages in other biodiscovery contemplated by the existing biodiscovery.

**140 Consultation about traditional knowledge code before commencement**

- (1) This section applies if, before the commencement, the Minister consulted with the groups and entities mentioned in section 9D to prepare the first traditional knowledge code of practice.
- (2) The consultation is taken to satisfy the requirements of section 9D for the first traditional knowledge code of practice.

## **141 Existing applications for collection authorities**

- (1) This section applies if—
  - (a) before the commencement, a person applied for a collection authority under former section 11; and
  - (b) immediately before the commencement, the application had not been decided.
- (2) The application is taken to be an application made under new section 11.
- (3) In this section—

*new section 11* means section 11 as in force from the commencement.

## Schedule Dictionary

### section 5

***applicable collection protocol***, for taking native biological material, means a collection protocol about taking the material.

***approved form*** means a form approved under section 122.

***benefit sharing agreement*** see section 33(1).

***benefits of biodiscovery*** include—

- (a) any economic, environmental or social benefits for the State, including the following—
  - (i) investment in any of the following—
    - (A) State-based biotechnology industry;
    - (B) State-based entities;
    - (C) research and development infrastructure in the State;
  - (ii) the transfer of technology to State-based entities;
  - (iii) the creation of employment in the State;
  - (iv) the formation of collaborative agreements with State-based entities;
  - (v) the conduct of biodiscovery research involving field and clinical trials in the State;
  - (vi) the undertaking of commercial production, processing or manufacturing of native biological material in the State;
  - (vii) the creation of alternative crops or industries in the State;
  - (viii) improved knowledge of the State's biological diversity or natural environment; and
- (b) the payment of amounts of money to the State.

***biodiscovery*** means—

- (a) biodiscovery research; or
- (b) the commercialisation of native biological material or a product of biodiscovery research.

***biodiscovery entity*** means an entity that engages in biodiscovery.

***biodiscovery research*** means the analysis of molecular, biochemical or genetic information about native biological material for the purpose of commercialising the material.

***biological diversity*** means the natural diversity of native biological resources, together with the environmental conditions necessary for their survival, and includes—

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

***collection authority*** means a collection authority issued under section 15(1).

***collection authority register*** means the register established under section 27.

***collection protocol*** see section 45(1).

***commercialisation***, of native biological material—

- 1 *Commercialisation*, of native biological material, means using the material in any way for gain.
- 2 The term does not include using the material to obtain financial assistance from a State or the Commonwealth, including, for example, a government grant.

***commercialisation activities*** means activities carried out for commercialising native biological material.

***compliance code*** see section 44(1).

***corresponding authority*** see section 125.

***custodians***, of traditional knowledge, means the Aboriginal people or Torres Strait Islanders to whom the traditional knowledge relates.

***executive officer***, of a corporation, means a person who—

- (a) is a member of the governing body of the corporation; or
- (b) is concerned with, or takes part in, the corporation's management, whatever the person's position is called and whether or not the person is a director of the corporation.

***Great Barrier Reef Marine Park Authority*** means the Great Barrier Reef Marine Park Authority established under the *Great Barrier Reef Marine Park Act 1975* (Cwlth).

***Great Barrier Reef Region***, means the Great Barrier Reef Region established under the *Great Barrier Reef Marine Park Act 1975* (Cwlth).

***holder*** means—

- (a) for a collection authority—the person recorded in the collection authority register as the holder of the authority; and
- (b) for a corresponding authority—the person to whom the authority was issued.

***information notice***, about a decision of the chief executive under section 14, means a written notice stating each of the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person to whom the notice is given may, within 20 business days after the day the notice is given, ask the Minister to review the decision;

- (d) how the person may apply for the review.

**inspector** means a person holding office as an inspector under part 8.

**land** includes—

- (a) the airspace above land; and
- (b) land that is, or is at any time, covered by water.

**material disposal report**, about native biological material, means a written report stating the following details about the disposal of the material—

- (a) the name and contact details of each person to whom the material was given;
- (b) when the material was given;
- (c) a description of the type of material, of sufficient detail to enable the material to be identified;
- (d) the volume or amount of the material.

**minimal quantity**, for native biological material, means the quantity of the material that—

- (a) is the minimum amount reasonably required for laboratory-based biodiscovery research; and
- (b) 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; and
- (c) for vulnerable wildlife within the meaning of the *Nature Conservation Act 1992*—will not impact on the ability of the wildlife population to expand; and
- (d) for endangered wildlife within the meaning of the *Nature Conservation Act 1992*—will not prevent the wildlife individual from producing viable offspring.

**native biological material** means—

- (a) a native biological resource; or
- (b) a substance sourced, whether naturally or artificially, from a native biological resource; or

- (c) soil containing a native biological resource.

***native biological resource*** means—

- (a) a non-human living organism or virus indigenous to Australia; or
- (b) a living or non-living sample of the organism or virus.

***place*** includes the following—

- (a) land;
- (b) premises;
- (c) a vehicle, boat or aircraft.

***prescribed minimum terms*** see section 34(4).

***QCAT information notice*** means a notice complying with the QCAT Act, section 157(2).

***receiving entity***, for a sample of native biological material, see section 30(1).

***reportable matter*** means any of the following matters about which a biodiscovery entity is required, under a benefit sharing agreement, to report to the Minister—

- (a) the results of biodiscovery research carried out by or for the entity under the agreement;
- (b) the commercialisation activities carried out by or for the entity under the agreement;
- (c) the amount or value of the total consideration given or to be given to the entity, or someone else at the entity's direction, for the commercialisation activities carried out under the agreement.

***section 14 conditions***, for a collection authority, see section 17(3).

***sourced***, from native biological material, means—

- (a) produced by, or extracted or otherwise derived from, the material; or
- (b) synthesised from the material.

***State-based*** means based in the State.

**State collection** means a collection owned by the State.

**State land** means all land in Queensland that is not—

- (a) freehold land owned by a person other than the State or an entity representing the State or owned by the State; or
- (b) land, including land in a freeholding lease as defined under the *Land Act 1994*, contracted to be granted in fee-simple by the State to a person other than the State or an entity representing the State or owned by the State; or
- (c) land subject to a native title determination granting rights of exclusive possession.

**subsequent use agreement** see section 35A.

**subsequent user** see section 35A.

**traditional knowledge** means information based on Aboriginal tradition or Island custom.

*Note—*

See the *Acts Interpretation Act 1954*, schedule 1 for the meaning of *Aboriginal tradition* and *Island custom*.

**traditional knowledge code of practice** see section 9C(1).

**traditional knowledge obligation** see section 9B(3).

**wet tropics area** means the wet tropics area within the meaning of the *Wet Tropics World Heritage Protection and Management Act 1993*.

**Wet Tropics Management Authority** means the Wet Tropics Management Authority established under the *Wet Tropics World Heritage Protection and Management Act 1993*.