

The Legal Regulation of Biodiscovery in the Northern Territory

Biodiscovery refers to the process of collecting biological resources (e.g., plants, animals, microorganisms) in the search of active compounds or genetic materials that can be developed into useful products. Examples of products derived from biological resources include Indian snakeroot (*Rauwolfia serpentine*) which is used in the drug Reserpine to treat hypertension, and the Cinchona bark (*Cinchona*) which yields the quinine used in the treatment of malaria.

Biodiscovery in the Northern Territory is regulated by the 2006 *Biological Resources Act*. This fact sheet provides an overview of when the NT *Biological Resources Act* applies and what requirements and exceptions exist under this Act for the collection and use of biological resources.

When does the NT *Biological Resources Act* apply?

The NT *Biological Resources Act* applies when (1) non-human biological resources (2) are collected from the Northern Territory and (3) used for biodiscovery.

1. Non-human biological resources

The Act only applies to the collection of non-human biological resources, which include plants, animals, seeds, germplasm, microorganisms, and viruses.

2. From the Northern Territory

The Act only applies to biological resources collected from the Northern Territory, including the air above, the water and the seabed or riverbed below the water.

3. Used for biodiscovery

The Act only applies when biological resources are used for biodiscovery. The Act defines biodiscovery as 'research on samples of biological resources, or extracts from those samples, to discover and exploit genetic or biochemical resources of actual or potential value for humanity'.

What are the conditions for biodiscovery?

Prior to collecting non-human biological resources from the Northern Territory for biodiscovery, a permit is required from the relevant permit issuing authority:

- For collection on land, the permit should be obtained from the Parks and Wildlife Commission within the Department of Tourism, Sport and Culture.
- For collection in marine areas, the permit should be obtained from the Fisheries division within the Department of Primary Industries and Resources.

When the permit application is assessed, the relevant authority must determine whether the activity involves biodiscovery. If the activity involves biodiscovery, the Department of Primary Industry and Resources must determine whether a benefit sharing agreement is required. If required, this agreement must be made with either:

- the Territory Government (if the biological resources are obtained from the Territory land); or
- other relevant resource providers (if the resources are obtained from private land or Indigenous land).

The benefit sharing agreement must be based on the prior informed consent from the resource providers and include:

- full details of the parties to the agreement;
- details regarding the time and frequency of entry to the area where the biological resource is located;
- name and other details of the resources to be collected, including the quantity to be collected;

- the purpose for collection;
- the agreed ownership of the samples, including details of any proposed transmission of samples to third parties;
- a statement disclosing any use of Indigenous knowledge, including details of the source of the knowledge, such as whether the knowledge was obtained from the resource access provider or from other Indigenous persons;
- a statement regarding benefits to be provided or any agreed commitments given in return for the use of the Indigenous knowledge;
- details of the benefits that the resource access provider will receive in return for the taking of the resources.

Exceptions

There are a number of situations where the NT *Biological Resources Act* does not apply.

(i) Where the resources are covered by the International Plant Treaty

A permit for access to certain plant genetic resources is not required when the relevant Minister has declared that the use of the plant material is controlled by the International Treaty on Plant Genetic Resources for Food and Agriculture.

(ii) Where the plant materials are protected by plant breeder's rights

The Act does not apply to the collection of a plant that is protected by plant breeder's rights.

(iii) Where resources are from a genetically modified organism

The Act does not apply to the collection of 'genetically modified' plant material included within the scope of Article 10 of the *Gene Technology Act 2000*.

(iv) Where the resources are held as *ex situ* specimens

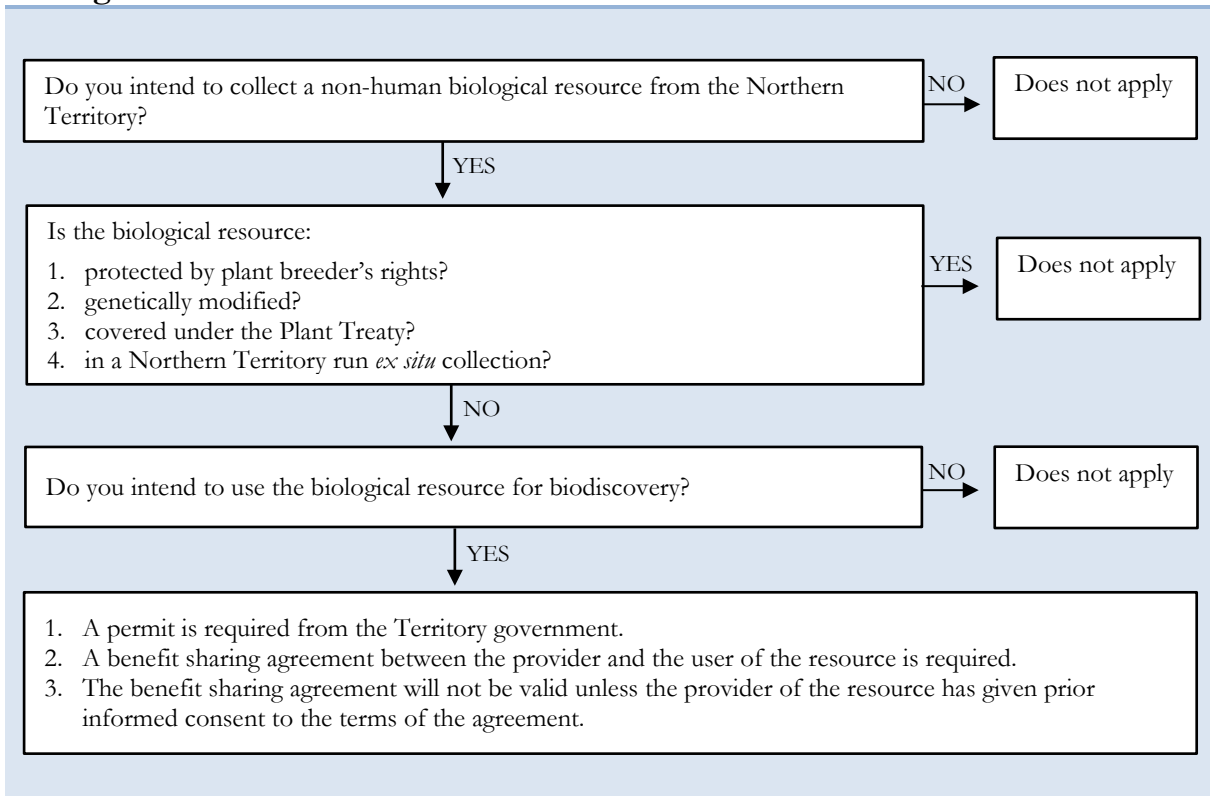
The Act does not apply where the resources are 'held away from their natural environment (whether in a collection or otherwise) by an Agency or other body.'

(v) Other exceptions

The Act does not apply when biological resources are accessed in relation to the following activities:

1. where Indigenous Peoples who have traditionally used an area of land or water in accordance with Aboriginal tradition take biological resources from the area of land or water for hunting, food gathering (other than for sale) and for ceremonial and religious purposes;
2. the taking of resources that have been cultivated or tended for a purpose other than biodiscovery and where the samples are not to be used for biodiscovery;
3. taking aquatic life, within the meaning of the *Fisheries Act 1988*, that;
 - a. has been caught, taken, or harvested under a licence or permit granted under that Act (other than a permit granted under section 17 of the *Fisheries Act 1988* for bioprospecting); or
 - b. comprises a managed fishery or part of a managed fishery within the meaning of that Act.
4. fishing for commerce or recreation, game or charter fishing or collecting broodstock for aquaculture;
5. harvesting wildflowers;
6. taking wild animals or plants for food;
7. collecting peat or firewood;
8. taking essential oils from wild plants;
9. collecting plant reproductive material for propagation; and
10. commercial forestry.

The applicability of the NT *Biological Resources Act* for the collection of biological resources



This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.

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