

*Draft 3 (13/6/8)*

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

No.      of 2008.

**A BILL**

for

**AN ACT**

entitled

***PAPUA NEW GUINEA INSTITUTE OF BIODIVERSITY ACT 2008.***

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

No. of 2008.

*Papua New Guinea Institute of Biodiversity Act 2008.*

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**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

No.        of 2008.

**A BILL**

for

**AN ACT**

entitled

*Papua New Guinea Institute of Biodiversity Act 2008,*

Being an Act to establish the Papua New Guinea Institute of Biodiversity to-

- (a) coordinate access to the biological resources of the country; and
  - (b) coordinate the implementation of benefits derived from the sustainable utilization of biological resources; and
  - (c) monitor access to biological resources and their benefits derived from the sustainable utilization and management of biological resources; and
  - (d) to provide a means for carrying into effect obligations under the Convention on Biological Diversity or any other treaty or convention relating to biodiversity to which Papua New Guinea is a party,-
- and for related purposes.

MADE by the National Parliament to come into operation upon certification by the Speaker of the National Parliament.

**PART 1. – PRELIMINARY.**

*Division 1. - Compliance with Constitutional Requirements.*

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

- (1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C of the *Constitution* (Qualified Rights), namely-
- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
  - (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
  - (c) the right to privacy conferred by Section 49 of the *Constitution*; and
  - (d) the right to stand and vote for public office conferred by Section 50 of the *Constitution*; and
  - (e) the right to freedom of information conferred by Section 51 of the *Constitution*; and
  - (f) the right to the freedom of movement conferred by Section 52 of the *Constitution*,

is a law that is made for the purpose of giving effect to the national interest, and public safety and public welfare.

(2) For the purposes of Section 53 (*protection from unjust deprivation of property*) of the Constitution, the purpose of protecting, maintaining and strengthening the ecological integrity of the environment and biological diversity is a public purpose.

(3) For the purposes of Section 41 of the ***Organic Law on Provincial Governments and Local-level Governments***, it is hereby declared that this Act relates to a matter of national interest.

## **2. INTERPRETATION.**

In this Act unless the contrary intention appears -

“biological diversity” means the natural variability of live organisms of any source, including the terrestrial, marine ecosystems and other aquatic ecosystems and the ecological complexes of which they form part, comprises the diversity within species, among the species and of the ecosystems;

“biological material” means a material derived from a living or non-living organism; “biological resources” includes genetic resources, organisms or parts thereof, populations

“Committee” means a committee established under Section 16;

“custom” means the customs and usages of indigenous inhabitants of the country existing in relation to land or the use of land at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial;

“customary land” means land that is owned or possessed by an automatic citizen or community of automatic citizens by virtue of rights of a proprietary or possessory kind that belong to that citizen or community and arise from and are regulated by custom;

“customary rights” means rights of a proprietary or possessory kind in relation to land that arise from and are regulated by custom;

“ecological integrity” means the ecosystems’ capacity to continue its ongoing change and development with limited restraint by human interferences and the

abilities to regenerate themselves under normal stresses especially nonanthropogenic stress;

“environment” means the ecosystems and their constituent parts, and includes-

- (a) all natural and physical resources; and
- (b) human beings; and
- (c) cultural values which are embedded in customary knowledge and practices; and
- (d) social, economic and aesthetic values;

“land” means customary land, and includes-

- (a) a reef or foreshore; and
- (b) a house or other structure built on land or over the water; and
- (c) things growing on land or in water over land, earths and minerals on or under land; and
- (d) an interest in land;

“local communities” means a village, settlement or hamlets where Papua New Guineans usually reside;

“permit” means a permit issued under Section 39;

“recipient” means a person or organization that receives a biological material from a provider;

“socio-economic impact” means the direct or indirect effects to the economy, social or cultural practices, livelihoods, customary knowledge systems, or indigenous technologies as a result of activities or dealings involving large scale industrial activities and natural resource development projects;

“sustainable development” under the Act means the wise use and management of the environment and natural resources for the collective benefit of the people and protecting and strengthening the capacity of the natural ecosystems to meet the needs of future generations;

“this Act” includes the Regulations;

“the principles of sustainable development” are-

- (a) decision-making processes must effectively integrate both long-term and short-term economic, environmental, social and equitable considerations; and
- (b) decision-making processes must be transparent and enable the people to have access to vital public information to ensure their full and active participation in development; and
- (c) the protection and maintenance of ecological integrity should be a fundamental consideration in decision-making; and
- (d) the precautionary approach to human health, natural resources and ecosystems is a vital element of decision-making processes and if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation; and
- (e) the principle of inter-generational equity - that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations; and



- (f) the traditional knowledge and values which support ecological integrity and the rights of local communities must be strengthened and improved.

**3. APPLICATION OF ACT.**

- (1) This Act applies to-
  - (a) the State; and
  - (b) all natural persons, whether resident in the country or not; and
  - (c) all corporations, whether incorporated or carrying on business in the country or not.

(2) The provisions of this Act shall apply to all matters relating to the people, villages, communities, customary land and biological resources in Papua New Guinea.

*Division 2. - Objectives and Principles.*

**4. OBJECTIVES OF THE ACT.**

The objectives of this Act are–

- (a) to protect the environment and conserve biological diversity; and
- (b) to ensure that proper weight is given to both the long-term and short-term social, economic, environmental and equity considerations in deciding all matters relating to access to, use and management of the country's unique biological resources; and
- (c) to protect and sustain the potential of biological and physical resources against threats posed by bio-piracy and other related illegal activities to meet the reasonably foreseeable needs of future generations, and safeguard the life-supporting capacity of air, water, land and eco-systems; and
- (d) to avoid, or mitigate any adverse effects of activities on the environment by regulating in an integrated, cost-effective and systematic manner, access to, sustainable utilization and management of the country's biological resources; and
- (e) to ensure that access to, sustainable utilization and management of the country's biological resources are regulated in a way that is consistent with Papua New Guinea's national interests.

**5. PRINCIPLES RELEVANT TO THE OBJECTIVES OF THE ACT.**

To achieve the objectives of the Act, all persons exercising functions, powers, and duties under the Act shall recognize and take into account the following principles-

- (a) the protection and conservation of the ecosystem and the life-supporting capacity of air, water and soil; and
- (b) the strengthening and enhancement of the social, economic and cultural wellbeing of the people and future generations; and
- (c) the maintenance and strengthening of traditional knowledge and practices that contribute and promote sustainable development and the capacity of people and local communities; and
- (d) the application of the precautionary principle; and

- (e) the sustainable use of biological resources; and
- (f) the ecological integrity of ecosystems; and
- (g) the economic and related benefits to be derived from the use of a particular genetically modified organism or product.

## **PART 2. – ADMINISTRATION.**

### ***Division 1. - Functions and Powers of Minister.***

#### **6. FUNCTIONS AND POWERS OF THE MINISTER.**

- (1) The Minister has the following powers and functions-
  - (a) to recommend the appointment of the Director of the Papua New Guinea Institute of Biodiversity; and
  - (b) to recommend to the National Executive Council the appointment of members of the National Biodiversity Council in accordance with Section 10; and
  - (c) to recommend biodiversity Regulations for approval by the National Executive Council in accordance with Section 73; and
  - (d) such other powers and functions as are provided for in this Act, or any other Act or Law.

(2) The Minister may, by instrument in writing, delegate all or any of his powers under this Act (except his power of delegation and power to appoint Council members) to the Institute.

### ***Division 2. - Papua New Guinea Institute of Biodiversity.***

#### **7. PAPUA NEW GUINEA INSTITUTE OF BIODIVERSITY.**

The Papua New Guinea Institute of Biodiversity is hereby established.

#### **8. INCORPORATION OF THE INSTITUTE.**

- (1) The Institute-
  - (a) is a body corporate with perpetual succession; and
  - (b) may acquire, hold and dispose of property; and
  - (c) may sue and be sued in its corporate name.

(2) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Institute affixed to a document and shall presume that it was duly affixed.

#### **9. FUNCTIONS AND POWERS OF THE INSTITUTE.**

- (1) The Institute has the following functions-

- (a) to act as the agency responsible for matters relating to biological resources; and
  - (b) to administer this Act; and
  - (c) to receive, compile and coordinate all applications under this Act; and
  - (d) to coordinate periodical reviews of any decisions made in relation to or under this Act; and
  - (e) to provide advice and make available any information to, and receive comments from the public as is provided for under this Act; and
  - (f) to provide technical advice relating to biological resources to the relevant department responsible for environment and conservation and
  - (g) to establish, coordinate and monitor relevant programmes relating to biodiversity; and
  - (h) to establish mechanisms to facilitate the collection, storage and dissemination of data on local conditions, such as agronomic, epidemiological, logistic and environmental data; and
  - (i) to establish mechanisms for the exchange of information with other countries, particularly those in the region; and
  - (j) to develop draft policy guidelines in relation to access to and benefit sharing arising from the sustainable utilization of biological resources; and
  - (k) to provide advice to other regulatory agencies about biological resources; and
  - (l) to promote the harmonization of effective and meaningful risk assessments relating to access to and sustainable utilization and management of biological resources by regulatory agencies; and
  - (m) to monitor international best practice in relation to access and benefit sharing in connection to biological resources; and
  - (o) to maintain links with international organizations that deal with the regulation of access to, sustainable use and management of biological resources in countries outside Papua New Guinea.
- (2) The Institute has the following powers-
- (a) to appoint such persons who are members of the National Public Service and who are officers of the Department responsible for environment and conservation matters, as necessary, and furnish them with appropriate facilities and resources to act as the Secretariat to the Council established under Section 10 of the Act; and
  - (b) to issue technical guidelines relating to the access, use, management and monitoring of traditional knowledge and scientific knowledge and data on biological resources; and
  - (c) to issue technical and procedural guidelines in relation to management of biological resources; and

- (d) to issue guidelines relating to the access to biological resources and the management of benefits under this Act; and
  - (e) to do all that may be deemed necessary to implement the policy and provisions of this Act.
- (3) The Institute may in writing delegate all or any of its powers and functions under this Act (except the power of delegation and any power or function delegated to the Institute by the Minister under Section 6(2)) to-
- (a) the Director; or
  - (b) a competent government department or agency or institution; or
  - (c) an appropriately qualified officer of the National Public Service; or
  - (d) a Provincial Administrator.

***Division 3. - Papua New Guinea Institute of Biodiversity Council.***

**10. ESTABLISHMENT AND APPOINTMENT OF MEMBERS OF THE PAPUA NEW GUINEA INSTITUTE OF BIODIVERSITY COUNCIL.**

(1) There shall be established a Papua New Guinea Institute of Biodiversity Council consisting of 12 members.

(2) A person appointed as a member of the Council must have skills or experience in one or more of the following areas-

- (a) marine biology; or
- (b) ecology; or
- (c) plant, microbial, animal or human genetics; or
- (d) forestry; or
- (e) zoology; or
- (f) agricultural or aquaculture systems; or
- (g) genetic engineering; or
- (h) economics; or
- (i) sociology; or
- (j) environmental science; or
- (k) clinical medicine; or
- (l) microbiology; or
- (m) pharmacy; or
- (n) botany; or
- (o) public administration; or
- (p) environmental policy and law.

(3) In appointing the members of the Council, the National Executive Council must ensure that, as far as practicable, that among the members as a whole there is a broad range of skills and experience in the areas mentioned in Subsection (2).

(4) The members of the Council shall be appointed by the National Executive Council by notice in the National Gazette from a list of not less than 20 persons recommended by the Minister.

(5) The list referred to in Subsection (4) is to be prepared after applications have been publicly invited by the Institute from among citizens of Papua New Guinea.

- (6) The members of the Council-
- (a) shall be appointed for a period of three years; and
  - (b) are eligible for re-appointment.

(7) The Chairperson of the Council shall be appointed by the National Executive Council.

## **11. FUNCTIONS AND POWERS OF THE COUNCIL.**

(1) In the carrying out of its functions and powers under this Act, the Council shall pursue the following objectives-

- (a) carrying into effect the objects of this Act; and
- (b) maximizing Papua New Guinean participation in the access to and the sharing of benefits arising from the sustainable utilization of biological resources; and
- (c) protect, manage and utilize the nation's biological resources and the environment in such a way as to ensure the maintenance of the ecological integrity of the country's ecosystems for the benefit of present and future generations and the sustainable development of the country.

(2) The functions and powers of the Council are-

- (a) to advise the Minister on any matters relating to the objectives of this Act; and
- (b) to monitor, review and control negative impacts of access to biological resources on human health, the environment and biological diversity; and
- (c) to promote awareness on lawful access to the country's biological resources and the sharing of benefits that arise from the utilization of these resources; and
- (d) to ensure that benefits of access to and sustainable utilization of biological resources are maximized for the posterity and well being of the people of Papua New Guinea; and
- (e) to ensure the maintenance of ecological integrity; and
- (f) to maintain links with international organizations that deal with the regulation of biological resources and with agencies that regulate access to an utilization of biological resources in other countries; and

- (g) to promote and strengthen traditional knowledge and practices relating to the research and development and use of biological resources; and
- (h) to keep such registers relating to biological resources as required under the Act or as may be necessary to administer the Act; and
- (i) to periodically review any decision made in relation to a under the Act; and
- (j) to establish mechanisms to facilitate the collection, storage and dissemination of data on local conditions, such as agronomic, epidemiological, logistic and environmental data; and
- (k) to issue technical and procedural guidelines in relation to access to, sustainable utilization and management of biological resources; and
- (l) to develop guidelines and codes of practices relating to access to, sustainable utilization and management of biological resources; and
- (m) to promote and monitor research in relation to biological resources; and
- (n) to protect the rights of local communities over their biological resources where an activity relating to a biological resources is directly or indirectly connected to their land; and
- (o) to ensure the equitable distribution of benefits arising from the sustainable utilization and management of biological resources; and
- (p) to carry out any powers, functions and duties on it by or under the Act or any other enactment.

(3) The Council has the power to do all things necessary to be done in connection with the performance of its functions, powers and duties under the Act.

## **12. LEAVE OF ABSENCE OF MEMBERS.**

(1) The Chairperson may grant leave of absence to a member of the Council on such terms and conditions as the Minister determines.

(2) The Minister may grant leave of absence to the Chairperson of the Council on such terms and conditions as the Minister determines.

## **13. VACATION OF OFFICE.**

(1) A member of the Council may resign his office by writing signed by him and delivered to the Chairperson.

- (2) If a member of the Council other than the Chairperson-
  - (a) becomes permanently incapable of performing his duties; or
  - (b) resigns his office in accordance with Subsection (1); or
  - (c) is absent, except with the written consent of the Chairperson, for three consecutive meetings of the Council; or

(d) fails to comply with Section 14; or  
(e) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment for their benefit; or  
(f) is convicted of an offence punishable under a law for a term of imprisonment of one year or longer or by death, and, as a result of that conviction, is sentenced to imprisonment or death; or  
(g) ceases to be ordinarily resident in the country,  
the Minister shall in principle terminate his appointment.

(3) The Minister, acting on advice, may, at any time, by written notice, advise a member that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehavior.

(4) Within 14 days of the receipt of a notice under Subsection (3), the member may reply in writing to the Minister who shall consider the reply and, where appropriate, in principle terminate the appointment.

(5) Where the member does not reply in accordance with Subsection (4), his appointment is terminated.

(6) Where the Minister makes a decision to terminate the appointment of a member, he shall make a recommendation to the National Executive Council to terminate the appointment, and the National Executive Council shall terminate the appointment.

#### **14. DISCLOSURE OF INTEREST.**

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Council shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the meeting of the Council and the member-

- (a) shall not take part, after disclosure, in any deliberation or decision of the Council in relation to the matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Council for any such deliberation or decision.

#### **15. COUNCIL'S QUORUM AND PROCEDURES.**

(1) The Council shall meet as often as practicable and at such times and places as the Chairperson directs, but in any event not less frequently than three times in every year.

(2) At the meeting of the Council-

- (a) half of the total number of members for the time being constitute a quorum; and

- (b) the Chairperson, or in his absence the Deputy Chairperson, shall preside, and if both Chairperson and Deputy Chairperson are absent, the members present shall appoint, from their own number, a Chairperson for that meeting; and
- (c) matters arising shall be decided by a majority of the votes of the members present and voting; and
- (d) the Chairperson presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(3) Subject to this Act, the procedures of the meetings of the Council are as determined by the Council.

#### **16. COMMITTEES OF THE COUNCIL.**

(1) Where the Minister has referred a matter to the Council and the Council considers that the matter requires specialist advice, the Council may, establish Committees of the Council to advise the Council on such matters as the Council considers necessary.

- (2) In establishing a Committee under Subsection (1), the Council may-
  - (a) appoint such persons (including members) as it considers necessary; and
  - (b) specify the functions and procedures of the Committee.

(3) A member of a Committee, who is not a member of the Council, may receive fees and allowances under the *Boards (Fees and Allowances) Act* (Chapter 299).

#### **17. EXPERT ADVISERS TO THE COUNCIL.**

(1) The Minister may upon the advice of the Council appoint a person (an expert adviser) to give expert advice to the Council to assist it in the performance of its functions.

(2) A person that has had any connection or interest (financial or otherwise) with a regulated entity under this Act at any time during the previous two years immediately prior to appointment, may not serve as an expert adviser to the Council.

(3) If the person appointed as an expert adviser is not a member of the Council, he may receive fees and allowances as the Minister from time to time determines.

#### **18. PROTECTION FROM PERSONAL LIABILITY.**

A member of the Council, or of a Committee, or an expert appointed under Section 17 or an inspector appointed under Section 57 is not personally liable for any act or default of himself done or omitted to be done in good faith.

#### **19. PREPARING AND MAINTAINING THE REGISTER.**

- (1) The Institute shall keep a Register of all applications made to the Council.



- (2) The Register shall specify-
  - (a) the name and address of the applicant; and
  - (b) a sufficient description of the activity being undertaken relating to the biological resource; and
  - (c) the purpose and status of the application.

(3) The Register shall also record the details of any biological resources approved for access and utilization by the Council.

(4) Any decision by the Council to approve the exportation for further research or development shall also be included in the Register.

## **20. FEES AND CHARGES.**

- (1) The Council may from time to time fix the charges-
  - (a) on a scale of charges for exercising or performing any function or power; and
  - (b) based on the time involved in exercising or performing any function, power or duty; and
  - (c) specify the persons liable to pay the charges.

(2) Before any fees and charges fixed by the Council pursuant to Subsection (1) come into force, the Council shall publicly notify the fees and charges it has fixed-

- (a) in the National Gazette; and
- (b) in a national or local newspaper that is distributed regularly throughout the country; and
- (c) through the national and provincial radio networks; and
- (d) in such other manner as the Council deems appropriate.

## **21. REPORTS.**

(1) The Council shall, by 31 March each year, furnish to the Minister a report on the progress and performance of the Council in relation to its functions for the year ending 31 December previously.

- (2) The annual report shall include-
  - (a) the extent to which the Council has met the objects of the Act; and
  - (b) information showing the number of applications for access to the country's biological resources and approvals or rejections made by the Council in the year; and
  - (c) information showing the number and type of incidents caused by inadequate management of biological resources; and
  - (d) the strategies the Council has adopted or intends to adopt to achieve the objects of the Act in the succeeding year; and
  - (e) any other matters that the Council may decide to incorporate in the report.

(3) As soon as practicable, after he has received a report under Subsection (1), the Minister shall forward the report to the Speaker for presentation to the National Parliament.

### **PART 3. - STAFF OF THE INSTITUTE.**

#### **22. EXECUTIVE DIRECTOR.**

(1) There shall be an Executive Director of the Institute who shall be appointed by the Head of State acting with and in accordance with advice of the National Executive Council.

- (2) The Executive Director is-
- (a) the Chief Executive of the Institute; and
  - (b) the head of the staff of the Institute.

#### **23. FUNCTIONS OF THE EXECUTIVE DIRECTOR.**

- (1) The Executive Director shall-
- (a) manage the Institute in accordance with the policy and directions of the Institute; and
  - (b) advise the Institute on any matter concerning the Institute referred to him by the Institute.
- (2) The Executive Director-
- (a) shall carry out and perform the duties required of him under this Act and his contract of employment; and
  - (b) has such other functions as the Institute may, from time to time, determine.

#### **24. OFFICERS.**

(1) The Council may appoint to be officers and employees of the Institute such persons as he considers necessary for the purposes of this Act.

(2) The Executive Director and the officers appointed under Subsection (1), constitute the staff of the Institute.

#### **25. CONTRACTS OF EMPLOYMENT.**

The Executive Director, and such other officers and employees of the Institute as the Council may approve, shall be employed under, and, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, hold office in accordance with the terms and conditions of written contracts of employment.

#### **26. CONDITIONS OF EMPLOYMENT.**

Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, an officer or employee, other than the Executive Director referred to in Section 24, holds office on such terms and conditions as the Institute determines.

**27. PUBLIC SERVICE RIGHTS.**

Where an officer or employee of the Public Service is appointed to be the Executive Director or an officer or employee of the Institute, his service on the staff of the Institute shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of-

- (a) leave of absence on grounds of illness; and
- (b) furlough or pay instead of furlough (including pay to dependants on the death of the officer or employee).

**28. LIABLE TO TAXATION.**

Income, property and operations of the Institute are subject to the provisions of the *Income Tax Act 1959*.

**PART 4. - ACCESS TO BIOLOGICAL RESOURCES  
AND MANAGEMENT OF BENEFITS.**

*Division 1.- Access to Biological Resources.*

**29. ACCESS TO BIOLOGICAL RESOURCES.**

(1) Subject to Subsection (5), a person who intends to access the country's biological material for biological research shall obtain a permit from the Council.

(2) A permit shall not be issued for access to biological resources unless the consent of the owners of the biological resource has first been obtained by the Institute under a benefit sharing agreement.

(3) The Director shall determine, by instrument, and upon the advice of the District Administrator-

- (a) the persons (other than local-level governments or affected provincial governments) who shall receive the access benefits under the Act; and
- (b) the incorporated land groups or, if recognized by another law, any other persons or entities who shall represent and receive the benefit on behalf of the grantees of the benefit.

(4) The Institute shall maintain a register of owners of biological resources that have consented to allow access to their biological resources under this Act.

(5) Where the biological research will involve the use of modern biotechnology leading to the development of a genetically modified organism, the applicant shall comply with the requirements of the *Biosafety and Biotechnology Act*.

**30. ACCESS TO TRADITIONAL KNOWLEDGE ON BIOLOGICAL RESOURCES.**

(1) Subject to Subsection (4), a person who intends to access traditional knowledge on biological material for biological research, shall obtain a permit from the Council.

(2) A permit shall not be issued for access to the traditional knowledge on biological resources unless the consent of the traditional knowledge owner has first been obtained by the Institute under a benefit sharing agreement.

(3) The Institute shall maintain a register of owners of traditional knowledge on biological resources that have consented to allow access to that traditional knowledge under this Act.

(4) Where the traditional knowledge on the biological resource will involve the use of modern biotechnology leading to the development of a genetically modified organism, the applicant shall comply with the requirements of the *Biosafety and Biotechnology Act*.

### **31. ACCESS TO SCIENTIFIC INFORMATION AND DATA ON BIOLOGICAL RESOURCES**

(1) The Institute shall create or develop, maintain and monitor a body of scientific information and data on biological resources.

(2) The Institute shall enter into an agreement with the recipients of funds from the Institute specifying-

- (a) the ownership of intellectual property; and
- (b) the sharing of benefits arising out of the arrangement; and
- (c) the use and management of the scientific information and data; and
- (d) any other matters relevant to the parties.

(3) A person who intends to access the information and data under Subsection (1) shall pay the prescribed fee.

(4) Where the information or data accessed under this section will be used for the development of a new product or process for commercial purpose, the person shall pay the prescribed fee and enter into a benefit sharing agreement with the Institute.

(5) Where the biological information or data under this section will be used in modern biotechnology leading to the development of a genetically modified organism, the applicant shall comply with the requirements of the *Biosafety and Biotechnology Act*.

### **32. PRINCIPLES OF ACCESS.**

Where prior informed consent is to be obtained for the purposes of this Act, the principles set out in Schedule 1 shall be observed.

#### ***Division 2.- Management of Benefits.***

**33. INSTITUTE TO MANAGE BENEFITS.**

(1) Subject to Subsection (3), the Institute shall collect, manage and monitor all benefits arising from the access to biological resources under this Act.

(2) The Institute may establish trust funds as prescribed by the *Public Finances (Management) Act 1995* for managing financial benefits of landowners, local-level governments and provinces for the required purposes under this Act.

(3) Subject to Subsection (4) the Institute shall endeavour to enter into a memorandum of understanding with-

- (a) the provincial governments; and
- (b) relevant local-level governments; and
- (c) customary landowners where appropriate,

that will specify the manner in which the Institute will obtain access to biological resources and manage and monitor the benefits under this Part.

(4) The absence of a memorandum of understanding in this section shall not be relied on as a ground in any legal proceedings against the Institute.

**34. ACCESS BENEFITS.**

(1) The following principles shall be taken into account by the Council when negotiating benefit sharing agreements-

- (a) the percentage of monetary benefits negotiated as payments might vary depending on the relationship between the biological material and the product; and
- (b) it is understood that the biological material has the potential to be developed as a commercial product that involves a long term process which may require 10 to 15 or more years.
- (c) benefit sharing must be on an equitable basis, whether the biological material is based on synthetic or semi-synthetic variations of compounds or structurally based natural products; and
- (d) all scientists and individuals who contribute to the identification and discovery of a new product such as chemotherapeutics, pharmaceuticals, industrial products or molecular probes should be compensated in terms of royalties arising from patent agreements; and
- (e) compensation will include milestone payments at key stages of product development; and
- (f) if a natural product, isolated from a Papua New Guinea source material is developed as a commercial agent, and is required for semi-synthesis of such, then Papua New Guinea should be the first source of the raw material, unless the quality and quantity of material is insufficient for such use; and
- (g) if prior indigenous knowledge is involved in the collection of samples or development of a product, then suitable recognition

- should be given to this intellectual property in terms of appropriate compensation and patent inventorship status; and
- (h) should any product eventually be licensed to a commercial enterprise for further development or production and marketing, the interests of Papua New Guinea and the local communities must be adequately taken into account.
- (2) Benefits under this Act may take the following forms-
- (a) monetary:-
- (i) access or collection fees; or
  - (ii) milestone payments; or
  - (iii) payment of royalties; or
  - (iv) fees in case of commercialization; or
  - (v) special fees to support conservation and sustainable use; or
  - (vi) research funding; or
  - (vii) joint ownership of relevant intellectual property rights; or
  - (viii) joint venture; and
- (b) non-monetary:-
- (i) sharing of research and development results; or
  - (ii) collaboration, cooperation and contribution in scientific research, publication and development programs; or
  - (iii) participation in product development; or
  - (iv) contribution in education and training; or
  - (v) admittance to *ex-situ* facilities of biological resources and databases; or
  - (vi) technology and knowledge transfer; or
  - (vii) institutional and human capacity-building; or
  - (viii) strengthening human capacities for administration and enforcement regulations; or
  - (ix) training related to biological resources; or
  - (x) contributions to local economy; or
  - (xi) social recognition; or
  - (xii) strengthening partnership and networking; or
  - (xiii) achieving national development needs.

## **PART 5. – PERMITS.**

### ***Division 1. – Intention to Apply for Permit.***

#### **35. NOTICE OF INTENTION TO APPLY FOR A PERMIT.**

(1) Prior to submitting an application under Section 36, the potential applicant shall submit its request to apply for a permit to conduct an activity relating to biological resources, in writing to the Institute.

(2) The request to apply for a permit must list the matters to be covered by the application.

- (3) The Institute shall within 30 days of the lodgment of the request-
- (a) where he is satisfied that the request lists all the relevant matters relating to the biological resource including; names of proponent, location of activity, purpose of access, methodology of activity, proposed benefit distribution if access relates to sustainable utilization of biological resource, proposed management rules relating to the biological resource – approve the request; or
  - (b) refer the matter back to the potential applicant for amendment and re-lodgment.

***Division 2. – Application for Permits.***

**36. APPLICATION FOR A PERMIT.**

(1) A person who intends to conduct an activity relating to biological resources, must submit a Research Proposal to the Institute for a permit authorizing such an activity.

- (2) The Research Proposal must include-
- (a) details of the location or locations where the activity will be conducted; and
  - (b) a management plan relating to the collection, management and use of the biological resource; and
  - (c) a proposal setting out benefit sharing arrangement with the national, provincial and local-level governments, and local communities; and
  - (d) a proposal on how intellectual property rights that may arise will be registered and managed; and
  - (e) a draft Material Transfer Agreement; and
  - (f) such other information as prescribed by this Act; and
  - (g) such other information as is required by the Institute or the Council.
- (3) The applicant may apply for a permit authorizing such activities by-
- (a) a specified person or persons; or
  - (b) a specified class of persons; or
  - (c) all persons.
- (4) The Research Proposal shall be submitted together with the prescribed fee.

**37. REQUIREMENT FOR FURTHER INFORMATION.**

(1) The Institute or the Council may, by notice in writing, require the applicant for a permit, to provide such further information in relation to the Research Proposal as the Institute or Council requires.

(2) The applicant for a permit is required to submit such further information to the Institute or Council within 30 days upon the receipt of the notice.

**38. REFERRAL OF THE RESEARCH PROPOSAL TO THE COUNCIL.**

(1) Subject to Subsection (2), the Institute shall upon receipt of a Research Proposal refer the application with all the relevant documents to the Council for consideration.

- (2) The Council shall not consider the application if-
- (a) the application does not contain the information required by the Institute; or
  - (b) the application is not accompanied with a draft Material Transfer Agreement; or
  - (c) the application is not accompanied by the application fee prescribed by the Council; or
  - (d) the applicant did not provide further information required by the Institute pursuant to Section 37; or
  - (e) the Institute is satisfied that to issue the would be inconsistent with the Regulation.

*Division 3. – Material Transfer Agreement.*

**39. MATERIAL TRANSFER AGREEMENT.**

(1) A person applying for a permit under this Act shall enter into a Material Transfer Agreement with the Council, in relation to the activity proposed to be authorized by the permit.

(2) A Material Transfer Agreement shall cover the matters set out in Schedule 1.

(3) A draft Material Transfer Agreement shall be submitted together with the Research Proposal.

**40. CONSIDERING MATERIAL TRANSFER AGREEMENT.**

In considering the Material Transfer Agreement, the Council shall take into account the matters set out in Schedule 1 to this Act, in particular-

- (a) the types of benefits that will be shared between the applicant, the biological resource owners, the local and provincial governments and the Institute; and



- (b) whether the proposed activity will contribute to and further promote the principles of sustainable development; and
- (c) all socio-economic impacts; and
- (d) whether the proposed activity conforms with ethical, cultural and traditional values and norms of the people of Papua New Guinea; and
- (e) any advice in relation to the Material Transfer Agreement provided to the Council by a Committee or an expert appointed for the purpose under Section 16 and Section 17; and
- (f) any advice the Council may request and receive from relevant governmental authorities.

**41. STATUS OF MATERIAL TRANSFER AGREEMENT.**

(1) A Material Transfer Agreement executed under this Act is enforceable in any court of law.

(2) A permit holder who breaches a fundamental term of the Material Transfer Agreement may have his permit revoked and all biological resources within his possession shall be returned to the Institute.

**42. PUBLIC ACCESS TO CERTAIN DOCUMENTS.**

(1) Subject to Section 31 a person may request the Institute to provide the person with a copy of the following documents-

- (a) a Research Proposal to which this Part applies; and
- (b) a Material Transfer Agreement executed under Section 39 of the Act.

(2) Any confidential commercial information contained in the documents as determined by the Institute shall not be released to the public.

(3) A request made under Subsection (1) must be lodged with the prescribed fee.

(4) A request made under Subsection (1) without the accompaniment of the prescribed fee shall be rejected by the Institute.

*Division 4. – Approval and Conditions of Permits.*

**43. CRITERIA FOR GRANT AND CONDITIONS ON PERMITS.**

(1) On receipt of a Research Proposal the Institute shall cause the Research Proposal and Material Transfer Agreement to be assessed.

(2) The Institute shall within 30 days after the receipt of the Research Proposal, notify the applicant in writing, the period of time required to assess the

Research Proposal and to decide whether or not to accept the Research Proposal under Section 36 of the Act.

(3) At any time during the period notified to the applicant under Subsection (2), the Institute may notify the applicant in writing that the Council requires a further period, such period and the reasons necessitating such a period to be specified in the notice, in which to assess and make a decision regarding the Research Proposal.

#### **44. ACCEPTANCE OF APPLICATION.**

(1) Subject to Subsection (2), where the Council is satisfied that-

- (a) the Research Proposal satisfies all the requirements under this Act; and
- (b) the precautionary principle has been adequately covered in the biological resource management plan; and
- (c) the activity will promote and strengthen relevant national policies,

it shall accept the Research Proposal and make a recommendation to the Minister to approve the Research Proposal and specify the conditions to which the proposed activity should be subject to if it is approved.

(2) Where the activity is not in the national interest, the Council shall reject the Research Proposal.

(3) In making a recommendation to the Minister pursuant to Subsection (1), the Council shall have regard to-

- (a) the objects of the Act; and
- (b) the matters of national interest; and
- (c) the benefits to the country; and
- (d) the Biodiversity Policy; and
- (e) any submissions received from the public, a Committee or an expert or a relevant government authority; and
- (f) the public interest in the proposed activity; and
- (g) any relevant obligations under any international treaty, convention or instrument to which Papua New Guinea is a party; and
- (h) the suitability of the applicant to hold the permit.

(3) A decision by the Council under this section shall be in writing and specify the reasons for the decision.

#### **45. PROCEDURE FOR THE ISSUE OF PERMITS.**

(1) Subject to this section, where the Minister has received a recommendation from the Council under Section 44 in relation to the Research Proposal, he shall within 30 days of such a receipt, either-

- (a) issue approval for the activity; or
- (b) in any other circumstance – refuse to approve the activity.

(2) A decision of the Minister under Subsection (1)(a) or (b) shall be in writing and shall give reasons for the decision.

(3) Where the Minister refuses to approve the activity, he shall immediately require the Council to appoint a Committee or an expert in accordance with Section 16 or Section 17 to provide advice to the Council on the Research Proposal.

(4) The Council shall after receiving advice from the Committee or expert recommend to the Minister to either approve or reject the Research Proposal.

#### **46. CONDITIONS OF A PERMIT.**

(1) The Council may impose such conditions it considers are necessary or desirable, including-

- (a) the scope of activities authorized by the permit; and
- (b) the purpose for which the activities may be undertaken; and
- (c) variations to the scope or purposes of the activities; and
- (d) documentation and record-keeping requirements; and
- (e) the respect for cultural and traditional values of local communities; and
- (f) the relevant ethical values to be observed; and
- (g) data collection, including studies to be conducted; and
- (h) auditing and reporting; and
- (i) the geographic area in which the activities authorized by the permit may occur; and
- (j) conditions requiring compliance with the Regulation; and
- (k) conditions relating to the supervision and monitoring by relevant government authorities.

(2) Notwithstanding Subsection (1) a permit is subject to the following conditions-

- (a) the conditions set out in Sections 47, and 53; and
- (b) any conditions prescribed by the Regulation; and
- (c) any conditions imposed by the Council at the time of issuing the permit; and
- (d) any conditions imposed by the Director under Section 51 after the permit is issued.

#### **47. CONDITIONS ABOUT MONITORING AND AUDIT.**

(1) It is a condition of a permit that any person authorized by the to deal with a biological resource allow the Institute, the Director or a person authorized by the Institute to enter premises where the activity is being undertaken, for the purpose of auditing or monitoring the activity.

(2) Subsection (1) does not limit the monitoring powers under Section 59 and any conditions that may be imposed by the Council or prescribed by the Regulation.

- (3) It is a condition of a permit that a holder must-
  - (a) monitor and evaluate, on a continuing basis after the permit is issued, any risks associated with the activities relating to the biological resource that is subject to the permit; and
  - (b) submit complete and accurate annual reports to the Institute in respect of monitoring and audits carried out under this section.

(4) All information gathered as a result of monitoring or audits shall be made available to the public and must be kept on a register of permits.

**48. PERIOD OF PERMITS.**

- (1) A permit continues in force-
  - (a) if the is expressed to be in force for a particular period – until the end of that period; or
  - (b) until it is cancelled or surrendered.

(2) A permit is not in force throughout any period of suspension.

(3) A permit is valid for a period as determined by the Council and may be renewed every three years thereafter.

**49. RESTRAINT ON APPROVAL BY OTHER GOVERNMENT AUTHORITIES.**

(1) Other governmental authorities shall be restrained from issuing licences or permits for activities involving biological resources (other than existing activities) which would authorize the holder to carry out an activity which would not be beneficial to the country and the environment where to do so would be a breach of this Act until a permit in relation to the activity has been granted according to this Act.

(2) Subsection (1) does not apply to approvals under the *Investment Promotion Act* 1992 and the *Biosafety and Biotechnology Act*.

(3) Where a person applies for another kind of approval in respect of an activity relating to biological resource under the provisions of other legislation, the other governmental authority shall refer the application to the Institute.

*Division 5. – Administration of Permits.*

**50. PROCEDURES FOR THE ADMINISTRATION OF PERMITS.**

The Regulation shall prescribe-

- (a) procedures for renewal of permits; and
- (b) procedures for transfer and surrender of permits; and
- (c) procedures for amendments of permits; and
- (d) annual fees in relation to permits; and
- (e) reporting by permit holders; and

- (f) the effect on the validity of a permit for failure to lodge an annual return or pay annual fees.

**51. AMENDMENT OF PERMIT.**

(1) Subject to Subsection (3) the Director may at any time, by notice in writing to the permit holder vary the permit.

- (2) The Director may-
  - (a) impose additional permit conditions; or
  - (b) remove or vary permit conditions that were originally imposed by the Council; or
  - (c) extend or reduce the authority granted by the permit.

**52. SUSPENSION AND CANCELLATION OF PERMIT.**

(1) The Director may by notice in writing, suspend or cancel a permit in accordance with this section.

- (2) Where-
  - (a) the Director believes on reasonable grounds that a condition of the permit has been breached, whether by the permit holder or a person covered by the permit; or
  - (b) the Director believes on reasonable grounds that the permit holder or a person covered by the permit has committed an offence against this Act or the Regulation; or
  - (c) the permit was issued because of a materially false or misleading representation or declaration in writing; or
  - (d) the permit holder has failed to perform an obligation required under this Act in relation to an activity carried out pursuant to the permit,

the Director may serve a notice on the permit holder requiring him to show cause within 30 days why the permit should not be suspended or cancelled.

- (3) Where-
  - (a) a notice under Subsection (2) has been served on the permit holder; and
  - (b) the permit holder has failed to satisfy the Director that there are good reasons for the failure,

the Director may suspend the permit for a specified period or cancel the permit.

(4) The Director shall inform the permit holder of the decision by written notice and state the reasons for the decision.

**53. OFFENCES IN RELATION TO PERMITS.**

(1) A person who carries out an activity to which a permit has been issued while that permit is suspended or cancelled, is guilty of an offence.

Penalty: Where the person convicted of an offence is-

- (a) corporation – a fine not exceeding K100,000.00; and
  - (b) other than a corporation – a fine not exceeding K20,000.00 or imprisonment for a term not exceeding five years, or both.

Default penalty: A fine not exceeding K5,000.00
  
- (2) A person who breaches a condition of a permit, is guilty of an offence.
 

Penalty: Where the person convicted of an offence is-

  - (a) corporation – a fine not exceeding K100,000.00; and
  - (b) other than a corporation – a fine not exceeding K20,000.00 or imprisonment for a term not exceeding five years, or both.

Default penalty: A fine not exceeding K5,000.00

**54. REVIEW OF PERMITS.**

The Council is required to review each permit at intervals not exceeding two years after the issue of the permit.

**PART 6. - ENFORCEMENT.**

*Division 1. – Directions and Injunctions.*

**55. DIRECTOR TO GIVE DIRECTIONS.**

- (1) This section applies if-
  - (a) the Director believes, on reasonable grounds, that a permit holder, or a person covered by a permit, is not complying with the Act or Regulation in respect of a biological material; and
  - (b) the Director believes that it is necessary to exercise powers under this section in order to protect the interest of the biological resource owners, or the State, or the environment.
  
- (2) The Director may-
  - (a) give written directions to the permit holder, or to the person covered by the permit, requiring the permit holder or the person to take such steps in relation to the biological material as the Director considers necessary for the person to comply with the Act or the Regulation; or
  - (b) if the Director considers it necessary in order to protect the biological resource owners or to protect the biological material from being misused-take such steps in relation to the biological material as the Director considers appropriate.

(3) A person commits an offence if he does not take the steps specified in a notice under Subsection (2)(a) within the time specified in the notice.

Penalty: Where the person convicted of an offence is-

- (a) a corporation – a fine not exceeding K50,000.00; and
- (b) other than a corporation – a fine not exceeding K10,000.00 or imprisonment for a term not exceeding five years, or both.

(4) If the permit holder or the person does not take the steps specified in the notice within the time specified in the notice, the Director may arrange for those steps to be taken.

(5) If the Institute incurs costs because of-

- (a) steps taken under Subsection (2)(b); or
- (b) arrangements made by the Director under Subsection (4),

the permit holder or the person is liable to pay to the Institute an amount equal to the cost, and the amount may be recovered by the Director as a debt due to the Institute in a court of competent jurisdiction.

## **56. INJUNCTIONS.**

(1) The Director or any other person, may apply to the National Court to obtain an injunction restraining a person who has engaged, is engaging, or is about to engage in any conduct that is or would be an offence against this Act or the Regulation.

(2) Where-

- (a) a person has refused or failed, is refusing or failing, or is about to refuse or fail, to do a thing; and
- (b) the refusal or failure is, or would be, an offence against this Act,

the Court may, on the application of the Director or any other person, grant an injunction requiring the person to do the thing.

(3) The Court shall grant an injunction-

- (a) whether or not it appears to the Court that the person intends to engage, or to continue to engage, in a conduct of that kind; and
- (b) whether or not the person has previously engaged in a conduct of that kind.

(4) The Court may discharge or vary an injunction granted under this section.

(5) The Court may grant an interim injunction pending a determination of an application under Subsection (1).

(6) The powers granted by this section are in addition to, and not in derogation of, any other powers of the Court.

*Division 2. – Inspections and Monitoring.*

**57. INSPECTORS.**

(1) The Director may, by instrument in writing, designate a person or body or body of persons separate and independent from the Institute as inspectors for the purposes of this Act.

(2) In exercising powers or performing functions as an inspector, an inspector must comply with any directions of the Director.

**58. MONITORING.**

(1) For the purpose of enforcing this Act or the Regulation, an inspector may-

- (a) enter any premises; and
- (b) exercise the monitoring powers set out in Section 59.

(2) An inspector is not authorized to enter a premises under Subsection (1) unless-

- (a) the occupier of the premises has consented to the entry; or
- (b) the entry is made under a warrant issued by a court of competent jurisdiction; or
- (c) the occupier of the premises is a permit holder, or a person covered by a permit, and the entry is at a reasonable time; or
- (d) exigent circumstances warrant the immediate entry.

**59. MONITORING POWERS.**

(1) The monitoring powers that an inspector may exercise under Section 58(1)(b) are as follows-

- (a) to search the premises and any thing on the premises; and
- (b) to inspect, examine, take measurements of, conduct tests on, or take samples of, any thing on the premises that relates to a biological resource; and
- (c) to take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises; and
- (d) if the inspector was authorized to enter the premises by a warrant - to require any person in or on the premises to:-
  - (i) answer any questions put by the inspector; and
  - (ii) produce any book, record or document requested by the inspector; and
- (e) to inspect any book, record or document on the premises; and
- (f) to take extracts from or make copies of any such book, record or document; and



- (g) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises; and
- (h) to secure a thing:-
  - (i) that the inspector finds during the exercise of monitoring powers on the premises; and
  - (ii) that the inspector believes on reasonable grounds is evidential material,

until a warrant is obtained to seize the thing.

(2) For the purposes of this Part, monitoring powers include the power to operate equipment at the premises to see whether-

- (a) the equipment; or
- (b) a disk, tape or other storage device that:-
  - (i) is at the premises; and
  - (ii) can be used with the equipment or is associated with it,

contains information that is relevant to determining whether there has been compliance with the Act.

(3) If the inspector, after operating the equipment at the premises, finds that the equipment, or that a tape, disk, CD, DVD or other storage device at the premises, contains information of that kind, the inspector may-

- (a) operate facilities at the premises to put the information in documentary form and copy the document so produced; or
- (b) if the information can be transferred to a tape, disk or other storage device that:-
  - (i) is brought to the premises; or
  - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises,

operate the equipment or other facilities to copy the information to the storage device, and remove the storage device from the premises.

## **60. SEARCH AND ENTRY.**

(1) This section applies if an inspector has reasonable grounds for suspecting that there may be evidential material on any premises.

- (2) The inspector may-
  - (a) enter the premises, with the consent of the occupier or under a warrant; and
  - (b) exercise the powers set out in Subsection (3) and Section 61; and
  - (c) if the entry is under a warrant-seize the evidential material, if the inspector finds it on the premises.

- (3) Where-

- (a) in the course of searching, in accordance with a warrant, for a particular thing, an inspector finds another thing that the inspector believes on reasonable grounds to be evidential material; and
- (b) the inspector believes, on reasonable grounds, that it is necessary to seize that other thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating an offence against this Act or the Regulation,

the warrant is taken to authorize the inspector to seize that other thing.

**61. SEARCHING POWERS.**

The powers an inspector may exercise under Section 60(2)(b) are as follows-

- (a) to search the premises and any thing on the premises for the evidential material; and
- (b) to inspect, examine, take measurements of, conduct tests on, or take samples of the evidential material; and
- (c) to take photographs, make video or audio recordings or make sketches of the premises or the evidential material; and
- (d) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises.

**62. EMERGENCY POWERS.**

(1) Where-

- (a) an inspector has reasonable grounds for suspecting that there may be on any premises a particular thing in respect of which this Act or Regulation have not been complied with; or
- (b) the inspector considers that it is necessary in the interests of the biological resource owners, or the country, or to protect the environment,

the inspector may do any of the following-

- (c) enter the premises; and
- (d) search the premises for the biological material; and
- (e) secure the biological material, if the inspector finds it on the premises, until a warrant is obtained to seize the biological material; and
- (f) if the inspector has reasonable grounds for suspecting that a person has not complied with this Act or the Regulation in respect of the biological material—require the person to take such steps that the inspector considers necessary for the person to comply with this Act or Regulation.

(2) The inspector may exercise the powers in Subsection (1) only to the extent that it is necessary for the purpose of protecting the interests of the biological resource owners, the country and the environment.

**63. OBSTRUCTION.**

A person who-

- (a) hinders or obstructs an inspector in the execution of his duties; or
  - (b) fails to comply with a lawful requirement made by an inspector; or
  - (c) refuses an inspector entry to premises which the inspector may lawfully enter; or
  - (d) impersonates an inspector,
- is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years, or both.

### *Division 3. – Offences.*

#### **64. ENGAGING IN OR DEALING IN BIOLOGICAL RESOURCES WITHOUT A PERMIT.**

(1) No biological resource shall be exported, imported or processed, or released otherwise than in accordance with an approval under this Act.

(2) A person who engages in an activity relating to biological resources without a permit is guilty of an offence.

Penalty: Where the person convicted of an offence is-

- (a) a corporation – a fine not exceeding K50,000.00; and
- (b) other than a corporation – a fine not exceeding K25,000.00 or imprisonment for a term not exceeding five years, or both.

#### **65. LIABILITY OF PERMIT HOLDERS.**

A permit holder or a person covered by the permit who takes an action or omits to take an action and the action or omission contravenes the permit is guilty of an offence.

Penalty: Where the person convicted of an offence is-

- (a) corporation – a fine not exceeding K100,000.00; and
- (b) other than a corporation – a fine not exceeding K25,000.00 or imprisonment for a term not exceeding five years, or both.

#### **66. CIVIL LIABILITY.**

(1) A person who carries out any activity relating to a biological resource shall be strictly liable for any harm, injury or loss caused directly or indirectly by such activity.

(2) The harm, injury or loss referred to in Subsection (1) includes personal injury, damage to property, financial loss and damage to the environment or to biological diversity.

(3) Civil liability shall attach to the permit holder, the person responsible for the activity which results in the damage, injury or loss, as well as the provider, supplier or developer of the biological resource.

(4) Where liability under this section is incurred by a body corporate, any director, manager, secretary or similar officer of the body corporate shall be similarly liable unless he can show that he did everything in his power to prevent the harm which caused the damage in question.

(5) If there is more than one person responsible for the damage, injury or loss, then the liability shall be joint and several.

(6) Where proceedings are brought against more than one person it shall not be a requirement for the person bringing the proceedings to identify the person who caused the damage in question, provided that he can prove that one or more of the persons so proceeded against could have caused the damage.

(7) Liability shall also extend to harm or damage caused directly or indirectly by the activity to the economy, social or cultural practices, livelihoods, traditional knowledge systems, or traditional technologies and such harm includes the following-

- (a) disruption or damage to production systems; and
- (b) damage to agricultural systems; and
- (c) reduction in yields; and
- (d) damage to the economy of an area or local community.

(8) A permit holder shall indemnify-

- (a) any other person who deliberately causes harm; and
- (b) any person who obtains, possesses, transports, handles, contains, manufactures or processes the biological resource for scientific or commercial purposes,

against any civil liability where the biological resource in question was first obtained, possessed, handled, contained, manufactured or processed by the applicant.

(9) The right to bring any action to redress a harm shall lapse only after a reasonable period from the date on which the affected person or local community could reasonably be expected to have learnt of the harm, taking due account of-

- (a) the time the harm may take to manifest itself; and
- (b) the time that it may reasonably take to co-relate the harm to an activity permitted under this Act, having regard to the situation or circumstance of the person or local community affected.

(11) It shall not be a defence to any claim for compensation or damage that the activity had been consented to by the Council or the Director.

**67. CONDUCT OF DIRECTORS, EMPLOYEES AND AGENTS IN THE COMMISSION OF AN OFFENCE.**

(1) If, in proceedings for an offence against this Act or the Regulation, or an ancillary offence in relation to this Act or the Regulation, it is necessary to establish the state of mind of a body corporate in relation to a particular conduct, it is sufficient to show-

- (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his actual or apparent authority; and
- (b) that the director, employee or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his actual or apparent authority is taken, for the purposes of a prosecution for-

- (a) an offence against this Act or the Regulation; or
- (b) an ancillary offence relating to this Act or the Regulation,

to have been engaged in also by the body corporate, unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) If, in proceedings for an ancillary offence relating to this Act or the Regulation, it is necessary to establish the state of mind of a person other than a body corporate in relation to a particular conduct, it is sufficient to show-

- (a) that the conduct was engaged in by an employee or agent of the person within the scope of his actual or apparent authority; and
- (b) that the employee or agent had the state of mind.

**68. GENERAL PENALTY.**

A person who fails to comply with a requirement under this Act applicable to him in respect of which a specific penalty is not provided, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

*Division 4. – Proceedings.*

**69. INSTITUTION OF PROCEEDINGS.**

(1) An offence against this Act shall be prosecuted-

- (a) before a District Court where the offence provides for a maximum monetary penalty of K50,000.00 or less in the case of a person other than a corporation; or
- (b) in the National Court in any other case.

(2) The Institute may, after consultation with the Public Prosecutor, lay information and institute prosecution for offences under the Act.

(3) Subject to Subsection (4), a person may, on his own behalf or on behalf of a group or class of persons representing that group or class or the public as a whole, take proceedings—

- (a) where an alleged offence against this Act or Regulation has occurred or is likely to occur; or
- (b) where there is an alleged failure to perform an act or duty under this Act or the Regulation that is not discretionary,  
in a court against-
- (c) the State; or
- (d) a government body; or
- (e) a holder of a permit issued under the Act; or
- (f) another person,  
or all or any of them jointly.

(4) Proceedings under Subsection (3) shall not be commenced-

- (a) where the State or a government body is proceeding in an action in a court for the same offence or failure to perform an act or duty; or
- (b) in any other case before the expiry of 60 days from the service of written notice of the alleged offence or failure to perform an act or duty to-
  - (i) the Minister; and
  - (ii) the Institute; and
  - (iii) the party responsible for the alleged offence or failure to perform an act or duty.

(5) Where an action is commenced under Subsection (4)(a), any person may intervene as a matter of right.

(6) In an action under this section, the court may, in making any order-

- (a) award such costs; and
- (b) make an order as to the lodging of a bond or equivalent security,  
as it thinks fit.

(7) This section does not restrict any right that a person or class of persons may have under any other law.

(8) No costs shall be awarded against a person under Subsection (3) who fails in any action as aforesaid if the action was instituted reasonably out of concern for the public interest or in the interest of protecting the environment or biological diversity.

## **70. FORFEITURE.**

(1) Where a court convicts a person of an offence against this Act or the Regulation, the court may order forfeiture to the State of any substance or thing used or otherwise involved in the commission of the offence.

(2) A substance or thing ordered by a court to be forfeited under this section

becomes the property of the State and may be sold or otherwise dealt with in accordance with the directions of the Minister.

## **PART 7. - MISCELLANEOUS.**

### **71. CONFIDENTIALITY.**

(1) Information disclosed under this Act to the Minister, to a member of the Council, or a Committee, or an expert, or to any employee of the Institute shall not be disclosed to any person who is not a member of the Council or a Committee or an employee of the Institute without the prior written approval of the person who provided that information, except-

- (a) to the extent that disclosure is authorized or required under this Act or any other law; and
- (b) to the extent that the person providing the information authorized its disclosure at the time of providing the information; or
- (c) to the extent necessary to enable the Institute to publish statistical information concerning the subject matter of the functions of the Council; or
- (d) to the extent necessary to enable the Council or the Minister to give advice to the National Executive Council, Departments, or the Central Bank.

(2) A member of the Council, or a Committee, or an expert, or an employee of the Institute who uses, for the purpose of his personal gain, any information disclosed under this Act that comes to his knowledge in the course of, or by reason of, his membership of the Council, or a Committee, or his employment as an expert or an employee of the Institute, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding two years, or both.

### **72. TRANSITIONAL PROVISION.**

(1) Where, on the commencement date, a person has obtained approval for an activity relating to access to and collection of biological resources, that permit shall continue in force and shall be deemed for all purposes under this Act to be a permit approved under **Part 5.4** of this Act, as applicable, commencing on the date on which such permit was issued under another Act.

(2) The Institute shall, within twelve months after the commencement of this Act, give written direction to a permit holder referred to in Subsection (1) to take measures to comply with the requirements of this Act.

The permit holder referred to Subsection (1) shall comply with the requirements of the Act within 12 months from the date of receipt of the requisition from the Institute.

**73. REGULATIONS.**

The Head of State, acting on advice, may make Regulations not inconsistent with this Act, prescribing all matters and things that by this Act are required or permitted to be prescribed for carrying out or giving effect to this Act.



## **Schedule 1**

### **Access Principles**

*Papua New Guinea Institute of Biodiversity Act 2007*

Act, Sec. 32

The following principles shall be observed when obtaining permission for access to biological resources-

1. Granting access is the sovereign right of the State but is exercised through the biological resource owners who are customary landowners;
2. Prior informed consent must be obtained first from the customary resource owners, their local-level government and their provincial government;
3. Access fees must be paid to the customary resource owners for access to the biological resource;
4. Fees must be paid for access to traditional knowledge;
5. Fees must be paid for access to scientific knowledge;
6. Respect for custom and cultural values is imperative;
6. Customary resource owners must be fully acknowledged and be part owners of IPR;
7. Access benefits can either be monetary or non monetary or a combination of both;
8. Commercialization of a process or product derived from genetic material obtained from customary resource owners depends on its compliance with existing SPS and TBT standards for the process or product to be traded in the market.

## **Schedule 2**

### **Material Transfer Agreement**

*Papua New Guinea Institute of Biodiversity Act 2007*

Act, Sec. 39(2)

The following matters shall be included in a Material Transfer Agreement-

1. Type and quantity of genetic resources, and the geographical/ ecological area of activity
2. Any limitation on the possible use of the biological resource
3. Recognition that the biological resource belongs to Papua New Guinea
4. Capacity-building
5. Review of agreement
6. Transfer of genetic resource (whether the genetic resources will be transferred to third parties and conditions to be imposed in such cases);
7. Utilization of traditional knowledge and practices in relation to the genetic resources
8. Protection of the knowledge, innovations and practices of local communities
9. Treatment of confidential information
10. Benefit sharing
11. Method of benefit distribution
12. Monitoring of agreement
13. Relationship to the Biosafety and Biotechnology Act
14. Dispute Settlement
15. Remedies