

Queensland Government Native Title Work Procedures

Module AB: Dealings that may proceed without further reference to native title

Commonwealth Native Title Act 1993

February 2020

Version history

Version	Comments	Date published
1		August 2017
2	Table 1 - Category D	September 2019
2.1	Table 1 – Category D – Notice of Entry is no longer required per section 390N of the <i>Land Act 1994</i>	February 2020

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Introduction

In certain circumstances, a particular dealing may proceed without further reference to native title. These dealings can be divided into five categories -

- Emergency action
- Native title does not exist
- Dealings that don't affect native title
- Physical activities
- Advice received from Land and Native Title Services (LNTS)

If the proposed dealing is caught by this module, you must complete the Native Title Assessment Form (Annexure 7.1) unless it is an emergency action, see table below.

Application of module

For this module to apply your proposed dealing must fall within one of the categories listed in Table 1.

Effect on native title

Whether or not native title exists over your proposed dealing area, the dealings captured by this module can proceed without further reference to native title.

Procedural rights

There are no procedural rights under this module.

Categories of dealings that can proceed

If your proposed dealing falls within one of the categories set out in the following table, then Module AB applies.

Table 1 - Dealings that can proceed

Category	Sub-category	Consideration
A - An emergency action	Any emergency action required to be undertaken immediately to protect life, property or the environment.	<p>The proposed dealing must take place immediately or without delay, e.g.</p> <ul style="list-style-type: none">• creation of a firebreak to control immediate threat of bushfire• sandbagging of a riverbank to protect against rising flood waters• Immediate measures necessary to mitigate the effects of oil or chemical spills. <p>This Category should not to be used for administrative convenience.</p>
B - Native title does not exist	A determination that native title does not exist.	<ol style="list-style-type: none">1. Check QNTIME which links to the National Native Title website.2. Read Register Extract to determine if native title is determined not to exist and if so you will need to

Category	Sub-category	Consideration
	NB: This includes determinations under appeal but still registered on the National Native Title Register (dealings receive section 24FA protection).	check if your proposed dealing area is within this determined area. If not, continue.
	A QNTIME Conclusion covers the proposed dealing area.	A conclusion in QNTIME reflects an assessment that native title has been extinguished over the area covered by the conclusion boundary. 1. A Conclusion Report is required. 2. You must consider Module BB if the conclusion is based on a Module BA assessment. NB: A determination that native title exists over an area will override a conclusion.
	Native title has been surrendered over the proposed dealing area under a registered ILUA.	1. Check QNTIME which links to the National Native Title website. 2. Read the ILUA Extract to determine if there are native title surrender clauses and if so you will need to obtain a copy of the ILUA. If no surrender clause, continue. NB: For more information on registered ILUAs, refer to Module AC .
	Native title compulsorily acquired on or after 30 September 1998. The compulsory acquisition of native title on or after this date has the effect of extinguishing native title.	You will need to obtain a copy of: Proclamation or Taking of native title rights and interests notice published in the Government Gazette.
	Native title extinguished by the grant of a tenure which was a pre-existing right based act.	For more information see Module IB . If still unsure contact LNTS via your Native Title Contact Officer.
C - The proposed dealing does not affect native title	Dedication of a Protected Area under the <i>Nature Conservation Act 1992</i> .	The dedication will affect native title if there is a binding conservation agreement/covenant or regulation giving effect to a management plan consented to under a registered ILUA.

Category	Sub-category	Consideration
	Grant of freehold under the <i>Aboriginal Land Act 1992</i> (ALA) or the <i>Torres Strait Islander Land Act 1991</i> (TSILA).	This applies to the grant only and not any subsequent dealings.
	Mutual exchange of boundaries under s.360A of the <i>Land Act 1994</i> .	Land does not revert to unallocated State land (USL) at any stage. Exchange merely occurs by registration of new plans. NB: The leases in question must be valid with respect to native title. Refer to Helpful tips.
	An activity already authorised under a lease, license, permit or authority.	Provided the activity is already authorised under a lease, license, permit or authority and which is valid with respect to native title, then it can proceed without further reference to native title - <ul style="list-style-type: none"> • Performing irrigation activities under valid water licence under the <i>Water Act 2000</i>. • Prospecting under a valid permit under the <i>Mineral Resources Act 1989</i>
	Sublease of a lease, or sub-licence of a licence.	The head lease or head licence must be valid with respect to native title. Refer to Helpful tips.
	Change of trustee for a reserve.	
	the transfer of existing interest.	eg. the transfer of a licence from one person to another
D - Physical activities	Maintenance of existing structures regardless of tenure.	Any maintenance must not have the effect of expanding the existing footprint of the structures - e.g. replacing existing roof tiles, damaged weatherboards, and rusted guttering. Replacement of structures is not maintenance even if within the same footprint.
	Land management activity on USL under the <i>Land Act 1994</i> . Land management activity under the <i>Nature Conservation Act 1992</i> .	Native title holders can not exclude the State from entering and carrying out land management activities on USL or on the Queensland Parks and Wildlife Services estate. Land management activities may include:

Category	Sub-category	Consideration
		<p>Carrying out actions necessary to effect an interest in the land, i.e. surveying</p> <p>Maintaining and removing any equipment, structures, etc</p> <p>Clearing vegetation</p> <p>Inspecting the condition and the uses made of the land</p> <p>Controlling pests, weeds or wildlife</p> <p>Conducting activities to prevent a hazard, e.g. fire management (non-emergency action)</p> <p>Constructing and removing boundary fences</p> <p>Protecting the land against intruders</p> <p>Removing abandoned property; and</p> <p>Taking samples of or from anything on the land.</p> <p>Check QNTIME for determination details.</p>
E - Advice received from LNTS	Follow advice received.	Seek advice from LNTS via your NTCO to confirm if your proposed dealing is captured by this module.

Helpful tips

No.	Category	Tip
1	Valid with respect to native title.	<p>Where the lease, etc., was granted pre 1 January 1994, then it will be valid with respect to native title.</p> <p>Where the lease, etc., was granted between 1 January 1994 and 23 December 1996, the lease, etc., will be 'validated' if a part or whole of the lease was at some point prior to 1 January 1994 covered by one of the following:</p> <ul style="list-style-type: none"> A valid freehold estate A valid lease (other than a mining lease) A valid public work <p>Where the lease, etc., was granted after 23 December 1996, then the lease, etc., will be valid with respect to native title if the future act provisions of the NTWP were followed or native title is extinguished or surrendered.</p>
2	Government Gazettes.	<p>Queensland Government Gazettes from 2003 can be accessed from the Queensland Government Publication Website.</p> <p>The State Library of Queensland holds editions of the Queensland Government Gazettes from December 1859 onwards.</p>

Finalising your assessment

If all the requirements of Module AB are met, finalise your Native Title Assessment using **Annexure 7.1**.