

Queensland Government Native Title Work Procedures

Module F: Protection for future acts arising from a non-claimant application

Commonwealth Native Title Act 1993: s.24FA to s.24FE

August 2017

Version history

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Introduction

A person who holds a non-native title interest in relation to the proposed dealing area, or the State, can make a non-claimant application to the Federal Court to ascertain whether native title exists in order to give them certainty when doing acts in relation to the proposed dealing area (s.61(1) of the *Native Title Act 1993* (NTA)).

Definition 'non-native title interest':

	Definition	Examples
1	A legal or equitable estate or interest in the proposed dealing area; or	A lease, permit to occupy, an enforceable agreement (arising from an in principle offer for lease, the applicant's acceptance of offer and performance of certain offer requirements).
2	Any other right (including a right under an option and a right to redemption), charge, power or privilege over, or in connection with (i) the area; or (ii) an estate or interest in the proposed dealing area; or	A development approval from the local Council.

Module F ensures validity of future acts done before a determination on the non-claimant application has been made, but only where certain conditions apply (s.24FA of the NTA).

Where Module F applies, subject to certain conditions being met, future acts can validly proceed in relation to native title over an area covered by a non-claimant application.

Application of module

S.24FA protection can arise as the result of:

- a non-claimant application by a government party (subject to specific conditions); or
- a non-claimant application by a non-government party (subject to specific conditions); or

Module F asks you to address some initial threshold issues to find out if s.24FA protection could apply to your proposed dealing area. Based upon your answers, you may be asked to send all the details of your proposed dealing to Aboriginal and Torres Strait Islander Land Services (ATSILS) via your Native Title Contact Officer.

Important: As lead agency for native title matters in Queensland, the Department of Natural Resources and Mines does not rely on this module (i.e. s.24FA protection) to progress land and resource dealings. If a government agency is considering relying on this module to finalise any proposed dealing, it is recommended that in the first instance, the matter is discussed with ATSILS.

Effect on native title

The proposed future act will extinguish any native title rights and interests to the extent of any inconsistency at common law. For example if your proposed future act is the grant of freehold, then native title will be wholly extinguished over the area covered by the grant.

Important: Where the effect of the proposed dealing on native title is extinguishment, then this will be recorded in QNTIME as a conclusion layer.

Compensation

Compensation for the effect of the proposed dealing on native title rights and interests is payable under this module if there is a successful application for compensation.

This means that if there is a determination at some future time that native title existed, the native title holders are entitled to recover any compensation from the State. The State cannot pass on this liability to another person.

However, no compensation is payable where there is a determination that native title does not exist.

Compensation may be something that ultimately decides on whether to rely on s.24FA protection for the proposed dealing or not. For instance, where the proposed dealing is the grant of a freehold estate under the *Land Act 1994*, then the compensation payable for the extinguishment of any native title rights and interests will be higher than any compensation payable for the grant of a sales permit under the *Forestry Act 1959*.

Any queries regarding compensation should be referred to ATSILS via your Native Title Contact Officer.

Requirement 1: Proposed dealing area covered by a current non-claimant application

To find out whether the proposed dealing area is covered by a current non-claimant application, a search will need to be carried out in QNTIME and on the National Native Title Tribunal website. Refer to helpful tips.

If Requirement 1 has been met, go to Requirement 2.

If Requirement 1 has not been met, Module F does not apply. Go to **Module GB**.

Requirement 2: Notification period ended

The three month notification period commencing from the notification day must have ended.

Refer to National Native Title Tribunal screenshot in helpful tips.

However, the notification period may in effect be longer if a native title claim is lodged, but not registered, within three months. This will arise where:

- The claimant application is accepted for registration but hasn't yet been registered within the three month period.
- Where the claimant application has not been accepted for registration but the Federal Court after review has decided that it should be accepted.
- Where the claimant application has not been accepted for registration but the National Native Title Tribunal has reconsidered the matter and decided that it should be accepted (s.24FE of the NTA).

To find out whether the notification period has ended, a search will need to be carried out in QNTIME and/or on the National Native Title Tribunal website. Refer to helpful tips.

If the notification period has not ended, either:

- (1) Wait for the notification period to end; or
- (2) Go to **Module GB**.

If the notification period has ended, go to Requirement 3.

Requirement 3: No claimant applications registered within notification period

If no native title claim was registered during the notification period, Module F **may** apply to the proposed dealing. Send all details of the proposed dealing to ATSILS via your Native Title Contact Officer.

If a native title claim was registered during the notification period, the effect will depend on whether the non-claimant application was made by the government or a non-government party.

Government non-claimant application

If a native title claim was registered over the whole or any part of a government non-claimant application, Module F does not apply. Go to **Module GB**.

Non-government non-claimant application

If a native title claim was registered over the whole of the non-government application, Module F does not apply. Go to **Module GB**.

If a native title claim was registered over part of the non-government non-claimant application:

- Module F only applies to the area of the non-claimant application not covered by the native title claim and the proposed dealing may proceed in respect of that area only. Send all details of the proposed dealing to ATSILS via your Native Title Contact Officer.
- Module F does not apply to that part of the non-claimant application which is covered by the native title claim. Go to **Module GB** for this part of the area.

To find out whether a native title claim was registered or lodged within the notification period, a search will need to be carried out in QNTIME and on the National Native Title Tribunal website. Refer to helpful tips.

Important:

1. The Federal Court is not required to make a determination as to whether or not native title exists before s.24FA protection applies. Therefore, once the proposed dealing is done and the need for the protection ceases, it is a matter for the applicant if they wish to continue with the non-claimant application. Applicants should advise your department/ATSILS when the notification period has ended and what their intention is i.e. after the proposed dealing is completed, do they intend to proceed to determination or withdraw their non-claimant application?
2. If the non-claimant application is withdrawn before the dealing is completed, s.24FA protection will not apply. It is important to wait until after the dealing is completed before withdrawing the non-claimant application, otherwise a non-claimant application will have to be made again if s.24FA protection is required.

Note: Once a dealing has received s.24FA protection and has been completed, applications which are withdrawn or discontinued are no longer shown as a boundary in QNTIME.

A QNTIME conclusion should be recorded for any dealings where the effect is extinguishment.

Helpful tips

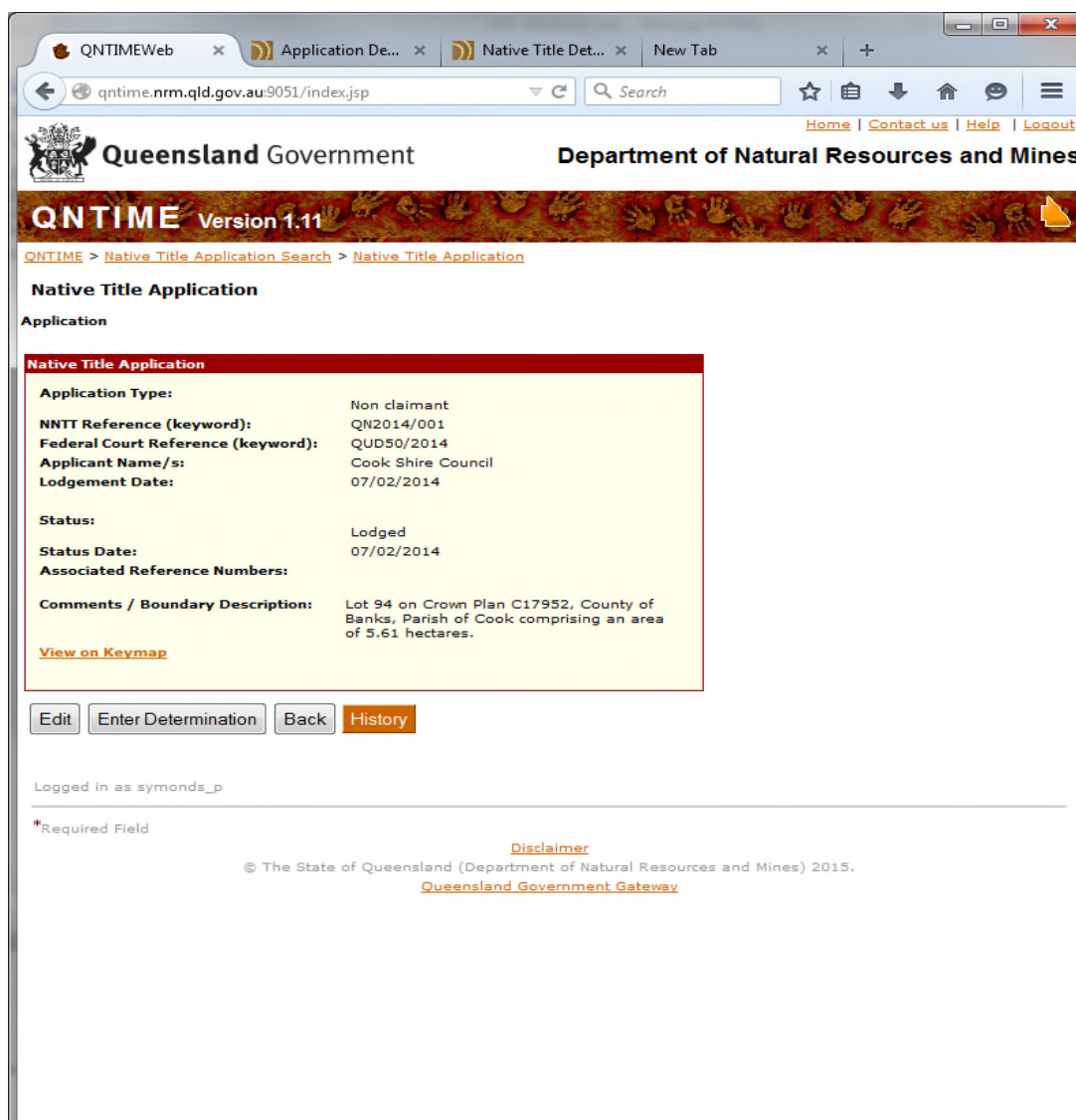
QNTIME search

NOTE: Whilst QNTIME makes all attempts to ensure the data it receives is uploaded as soon as possible, there may be instances when there is a delay in having the non-claimant details put into the system.

Non-claimant application details can be accessed either from the main menu on the home page or via the interactive keymap.

QNTIME will identify:

1. The name of the non-claimant applicant.
2. The non-claimant application status and date.
3. In most cases, a description of the land or waters covered by the non-claimant application.
4. Whether a native title claim was registered or lodged with the NNTT within the notification period - see Requirement 3.
5. A link to the determination details on the National Native Title Tribunal website.



The screenshot shows a web browser window with the following details:

- Browser tabs: QNTIMEWeb, Application De..., Native Title Det..., New Tab
- Address bar: qntime.nrm.qld.gov.au:9051/index.jsp
- Page header: Queensland Government, Department of Natural Resources and Mines
- Breadcrumbs: QNTIME > Native Title Application Search > Native Title Application
- Section: Native Title Application
- Application details table:

Native Title Application	
Application Type:	Non claimant
NNTT Reference (keyword):	QN2014/001
Federal Court Reference (keyword):	QUD50/2014
Applicant Name/s:	Cook Shire Council
Lodgement Date:	07/02/2014
Status:	Lodged
Status Date:	07/02/2014
Associated Reference Numbers:	
Comments / Boundary Description:	Lot 94 on Crown Plan C17952, County of Banks, Parish of Cook comprising an area of 5.61 hectares.

Buttons: Edit, Enter Determination, Back, History

Logged in as symonds_p

*Required Field

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[Queensland Government Gateway](#)

National Native Title Tribunal

Non-claimant application details can be accessed by searching the National Native Title Tribunal website and searching for:

- Registers and Applications/Applications and Determinations.

The content will provide:

1. A summary of the non-claimant application.
2. Extracts and attachments to the non-claimant application.
3. Dates for the notification period (see requirement 2).

The National Native Title Tribunal website will also provide a link to the Native Title Vision tool.

This tool includes mapping for non-claimant and claimant applications. By searching this, you can work out whether a claimant application has been registered with the National Native Title Tribunal within the notification period (see Requirement 3).

National Native Title Tribunal

Application Details

[Back to search results](#)

Cook Shire Council (QN2014/001)

Application name	Cook Shire Council
Tribunal file no.	QN2014/001
Federal Court file no.	QUD50/2014
Application type	Non-Claimant
Date filed	07/02/2014
State or Territory	Queensland
Area description	The application area covers about 5.6 ha approx. 3.3 km west of Cooktown See Map (Registration/login required)
Approximate area size (sq km)	0.0562
Local government area(s)	Cook Shire Council
Representative A/TSI body area(s)	Cape York Region
Applicant's representative	Preston Law
Notification status	Notification Complete
Notification date(s)	26/03/2014 to 25/06/2014
Application status	Active More information on Federal Court website

Schedule extract and attachments

Schedule extract	SNTAExtract_QN2014_001.pdf
Schedule extract attachment/s	QN2014_001 Attachment B - Map of Boundary Area.pdf

Registration Decision(s)

No Registration Decision for this Native Title Claim

Determination(s)

No determinations of native title have been made for this application

http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/details.aspx?NTDA_FileNo=QN2014/001 1/07/2015

Notification day
(Requirement 2)

End of
notification period
(Requirement 2)

Notification status
says 'complete'
then period has
ended. Closing
date is when the
notification period
ended.
(Requirement 2).

Finalising your Assessment

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