

# **Queensland Government Native Title Work Procedures**

**Module IC - Renewal, re-grant, re-make, extension of the term of the lease, licence, permit or authority**

*Commonwealth Native Title Act 1993: s.24IC & s.24ID*

**August 2017**

## Version History

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## Introduction

Module IC applies to proposed dealings that are the renewal, re-grant, re-make or extension of the term of a valid lease, licence, permit or authority.

## Application of module

Your proposed dealing is caught by this module if it is either -

1. A renewal
2. A regrant
3. A remake
4. An extension of the term.

of a valid lease, licence, permit or authority.

## Effect on native title

The non-extinguishment principle applies. This means that while the dealing exists, those native title rights and interests that are inconsistent with the dealing are not able to be exercised or enjoyed.

## Compensation

Compensation for the effect of the dealing on native title rights and interests is payable under Module IC if there is a successful claim for compensation. Compensation is payable by the State where the act is attributable to the State.

## Requirement 1: The proposed dealing is a renewal, regrant, remake, extension of the term of a lease, licence, permit or authority

The legislation under which the proposed dealing is being done (not the NTA) must allow for one of the dealings listed in the Requirement 1 Dealings Table.

If the proposed dealing is listed in the Requirement 1 Dealings Table, go to Requirement 2.

If the proposed dealing is not listed in the Requirement 1 Dealings Table, Module IC does not apply. Go to **Module JAA**.

Please also refer to helpful tips.

**Table 1 - Requirement 1 Dealings**

Dealings allowed under the relevant legislation		Examples
1	Renewal of a lease, licence, permit or authority	S.156 of the <i>Transport Operations (Marine Safety) Regulation 2004</i> allows an authority (eg. a buoy mooring authority) to be renewed.  There is a power under the <i>Land Act 1994</i> to renew a term lease provided the renewal application is made after 80% of the term has run (s.158) and the renewal occurs before expiry of the current lease (s.157).

Dealings allowed under the relevant legislation		Examples
		Replacing a single lease, licence, permit or authority with two or more leases etc (subdivide).
		Replacing two or more leases, licences, permits or authorities with a single lease etc (amalgamate).
2	Re-grant of a lease, licence, permit or authority	Section 50 of the <i>Marine Park Regulation 2006</i> provides that a permit shall remain in force past its expiry date (until a decision is made on a new permit) where the permittee applies for a new permit (of the same kind, in the same area) before the expiry of the old one. In this case, if a new permit is issued, it will be a regrant of the permit.
3	Re-make of a lease, licence, permit or authority	See Helpful tips.
4	Extension of the term of a lease, licence, permit or authority	Under s.434B of the <i>Land Act 1994</i> , if it appears a lease will expire before a renewal application has been finalised, the Minister may extend the term of the lease (i.e. the current lease) for periods of no longer than two years until the application is finalised.

## Helpful tips

### What is meant by the terms renewal, re-grant or re-make?

The following may provide further guidance when considering whether the proposed dealing will satisfy Requirement 1. Please ensure that you read the accompanying Notes.

- (a) Renewal - the grant of a new lease etc. for the same period and on the same terms. When compared to the analysis of the term 're-grant', any renewal action would need to occur before the term of the lease, licence, permit or authority has expired.
- (b) Re-grant - the grant of a new lease etc. to replace an expired lease etc. Depending on the relevant legislation, there may be scope for the new lease etc. to be on different terms. However, there must be a 'sufficient connection' to the previous lease to say that the lease is being granted again. It is imperative that you consider the relevant legislation and your agencies policies to determine if there is scope for this category to be applied to your proposed dealing.
- (c) Re-make - this term is to have a different meaning than renewal or re-grant. To re-make a lease etc. may be used in relation to leases etc. whose terms have not expired but where a new contractual arrangement has been made. However, there must be a 'sufficient connection' to the previous lease to say that the lease etc. is being remade. It is imperative that you consider the relevant legislation and your agencies policies to determine if there is scope for this category to be applied to your proposed dealing. Contact Aboriginal and Torres Strait Islander Land Services (ATSILS) via your Native Title Contact Officer (NTCO) to seek further guidance if you have assessed your proposed dealing as a remake.

## Requirement 2: The proposed dealing must not be an excluded dealing

The proposed dealing must not have the effect of doing any of the things listed in the Requirement 2 Excluded Dealings Table.

If the proposed dealing does not fall within the Requirement 2 Excluded Dealings Table, Requirement 2 is satisfied. Go to Requirement 3.

If the proposed dealing falls within the Requirement 2 Excluded Dealings Table, Requirement 2 is not satisfied and Module IC does not apply. Go to **Module JAA**.

**Table 2 - Requirement 2 Excluded Dealings**

Excluded Dealings Are Those That:	
1	Increase the area covered by the current lease, licence, permit or authority.
2	Creates a greater proprietary interest in the area than the interest created by the lease, licence, permit or authority. Refer to Notes 1 and 2 below.
3	Increase the volume of take. E.g. Water or quarry material. Refer to Note 3.
4	Confer a right of exclusive possession.
5	Remove any condition or reservation for the benefit of Aboriginal or Torres Strait islanders.
6	Allow mining where the current lease, licence, permit, or authority does not.
7	Go outside the boundaries of the lease etc area. Refer to Note 4 below.
8	Creates a right to mine for the first time after 23 December 1996.

### Note 1: Proprietary interest

A proprietary interest is a right of control over property. This may include the right of ownership and/or possession. The Requirement 2 Proprietary Interest Examples Table gives examples of proprietary interests and an example of what is not a proprietary interest.

**Table 3 - Requirement 2 Proprietary Interest**

Proprietary interest	Not a proprietary interest
If you are the owner of land you have a proprietary interest in that land because you control what happens on that land.	A right to use an area. The holder of a fishing licence does not have the right to control or exclude others from the area where he/she is fishing, i.e. the licence holder does not have a proprietary interest but only a right to use a specified area to take particular fish.
A lessee may have certain proprietary interests as they have a right of possession over the property and control to an extent what occurs on that property in accordance with their lease. (Therefore, the lessee has a lesser proprietary interest than an owner of land.)	

### Note 2: Greater proprietary interest

The Requirement 2 Greater Proprietary Interests Table gives examples of what is and what is not a greater proprietary interest.

**Table 4 - The Requirement 2 Greater Proprietary Interests**

Greater proprietary interest		Not a greater proprietary interest	
1	The conferral of a right of exclusive possession, i.e. possession against the rights of all others, where there was no right of exclusive possession before, creates a greater proprietary interest.	1	If the term of the proposed lease, licence, permit or authority is greater than the term of the lease, licence, permit or authority you wish to renew, re-grant, re-make, or extend, there is no greater proprietary interest created.
		2	The re-grant of a lease as two or more separate leases does not create a greater proprietary interest.
		3	There is no greater proprietary interest created, if the renewal of a non-exclusive pastoral or agricultural lease permits the <i>addition</i> of a primary production activity or activity associated with or incidental to a primary production activity (provided the majority of the lease is being used for primary production activities).

**Note 3: Increase in take**

A change in the quantity allowed to be taken from the area covered by the earlier right to mine may constitute a new right depending upon the wording of the relevant term in the earlier right to mine. E.g. If a sales permit for quarrying stated a maximum or exact quantity (eg. 10,000 cubic metres within the 12 month term), then a new right would be created if the quantity was increased for the extension (eg. 20,000 cubic metres within the extended 12 month term).

In contrast, if the earlier right to mine only stated a minimum quantity, then no new right would be created if the quantity allowed to be taken was increased for its extension or renewal.

**Note 4: The proposed dealing area is smaller**

The proposed dealing area can be **smaller** than the area covered by the lease, licence, permit or authority **provided** the proposed dealing area is within the **'boundaries'** of the lease, licence, permit or authority.

If Requirement 2 is satisfied, go to Requirement 3.

If Requirement 2 is not satisfied, Module IC does not apply. Go to **Module JAA**.

**Requirement 3: The lease, licence, permit or authority must be valid in relation to native title**

Unless there is evidence to the contrary, the grant of a lease, licence, permit or authority will be considered to be valid under State legislation.

Whether the lease, licence, permit or authority that is being renewed etc is valid in relation to native title, will be dependent on the date period it was granted or created in and if it satisfies any corresponding tests.

To satisfy Requirement 4, you must firstly identify the relevant criterion and date period, then apply any necessary 'validity' tests.

## Criterion 1: The lease etc was granted or created pre 1 January 1994

Any lease etc granted or created in this period is valid with respect to native title. Go to Requirement 4.

## Criterion 2: The lease etc was granted or created between 1 January 1994 and 23 December 1996 (the intermediate period)

The following table sets out the rules to establish if any lease etc granted or created in this date period is valid in relation to native title.

**Table 5 - Requirement 4 Validity**

Grant/creation date of lease etc	Validation requirements
Between 1 January 1994 and 23 December 1996	The lease etc will be validated if a <b>part</b> or <b>whole</b> of the lease etc was at some point <b>prior</b> to 1 January 1994, covered by one of the following: a) freehold estate b) lease (other than a mining lease) c) valid public work.

### Helpful tips

When trying to validate a lease etc that was granted in the intermediate period:

1. Check the Specific Parcel Report in QNTIME for your proposed dealing area under the Tenure Administration System heading. This may indicate if there was a tenure prior to the existing lease etc.
2. Look at the survey plan to see if there is a reference to a previous tenure.
3. Look at the instrument of lease to see if it makes reference to a previous tenure.

### Does the lease being relied on to validate the intermediate period lease etc have to be a previous exclusive possession act (PEPA)?

No. Provided the lease is not a mining lease and was granted prior to 1 January 1994, it could be any other type of lease. E.g. a pastoral holding.

### Examples of how to validate an intermediate period lease

#### Option 1

Identify if any part of the lease etc was at some point prior to 1 January 1994 previously a validly dedicated road in accordance with Module CB.

If **yes**, then it does not matter where that dedicated road sits within the lease etc area, it will validate all of the lease etc as the dedication of the road is the establishment of a public work.

#### Option 2

Was any part of that area prior to 1 January 1994 previously held as a freehold estate or a lease?

If **yes**, then it does not matter where that freehold or lease sits within the lease etc area, it will validate all of the lease etc.



### Criterion 3: The lease etc was granted or created post 23 December 1996

For a lease etc that was granted or created in this date period to be valid in relation to native title, the grant or creation of the lease etc must fall within one of the future act Modules listed in Table 6 Future Act Modules.

If it does fall within one of the future act Modules, go to Requirement 4.

If it does not, Module IC does not apply. Go to **Module JAA**.

**Table 6 - Future Act Modules**

Modules	Title
GB	Primary production activities on non-exclusive pastoral leases
GD	Off-farm activities that are directly connected to primary production activities
GE	Granting rights to take timber and quarry materials on non-exclusive pastoral leases
H	Management or regulation of water or airspace
IB	Pre-existing right based acts
IC	Renewals, re-grants, re-makes, extensions of the term of the lease, licence, permit or authority

If your current lease etc is a mining interest granted post - 23 December 1996 under the right to negotiate you will need to go to Module M and N.

### Requirement 4: Consider the proposed dealing and whether there are any procedural rights

Requirement 4 asks you identify your proposed dealing in the following table and apply the relevant Procedural Rights (if any).

**Table 7 - Procedural rights table**

Category	Examples of lease, licence, permit or authority	Proposed dealing	Does Module IC apply?	Procedural rights
1 Mining interest	<ul style="list-style-type: none"> <li>• Mining lease</li> <li>• Petroleum lease</li> <li>• Authority to prospect for petroleum and gas</li> <li>• Prospecting permit</li> <li>• Mining claim</li> <li>• Exploration permit</li> </ul>	Renewal, re-grant or re-making, or extension of the term, of a right to mine that <b>does not</b> extend the area or increase the term or creates additional rights.	Yes.	No procedural rights apply.

Category	Examples of lease, licence, permit or authority	Proposed dealing	Does Module IC apply?	Procedural rights	
	<ul style="list-style-type: none"> <li>Mineral development licence</li> <li>Sales permit which allows the getting of quarry materials (where the quarrying goes beyond the natural surface of the land).</li> </ul>				
2	Mining interest	As above	Renewal, re-grant or re-making, or extension of the term, of a right to mine that does extend the area or increase the term or creates additional rights.	Yes.	Options 1. Right to negotiate (not option for sales permit). Go to <b>Module P</b> 2. Registered ILUA. Go to <b>Module Q</b> 3. Non-claimant application. Go to <b>Module R</b> .
3	Licence, permit or authority	<ul style="list-style-type: none"> <li>Buoy mooring authority</li> <li>Occupation licence</li> <li>Marine park permit</li> <li>Sales permit for harvesting trees.</li> </ul>	N/A.	Yes.	No procedural rights apply.
4	Non-exclusive agricultural lease		The proposed dealing involves the term of the lease being increased.	Refer to ATSILS through your Native Title Contact Officer for advice.	Section 24MD(6B) process
5	Non-exclusive agricultural lease		The proposed dealing does <b>not</b> involve the term of the lease being increased.	Yes.	No procedural rights apply.

Category		Examples of lease, licence, permit or authority	Proposed dealing	Does Module IC apply?	Procedural rights
6	Non-exclusive pastoral lease		The proposed dealing involves the term of the lease being increased.	Refer to ATSILS through your Native Title Contact Officer for advice.	Section 24MD(6B) process
7	Non-exclusive pastoral lease		The proposed dealing does <b>not</b> involve the term of the lease being increased and  The area of the lease is <b>not</b> more than 5,000 hectares.	Yes.	No procedural rights apply.
8	Non-exclusive pastoral lease		The proposed dealing does <b>not</b> involve the term of the lease being increased and  The area of the lease is more than 5,000 hectares <b>and</b> the renewal, etc, has the effect of allowing a majority of the lease to be used for non-pastoral purposes.	No. Go to <b>Module JAA.</b>	N/A.
9	Non-exclusive pastoral lease		The proposed dealing does <b>not</b> involve the term of the lease being increased <b>and</b>  The area of the lease is more than 5,000 hectares <b>and</b> the renewal, etc, does <b>not</b> have the effect of allowing a majority of the lease to be used for non-pastoral purposes.	Yes.	No procedural rights apply.
10	Any other lease	Any other lease that is not a PEPA (Module BA).	N/A.	Yes.	No procedural rights apply.

## **Finalising your assessment**

If the relevant requirements for Module IC are satisfied, finalise your Native Title Assessment using **Annexure 7.1**.