

Queensland Government Native Title Work Procedures

Module GB: Primary production activities on non-exclusive pastoral lease

Commonwealth Native Title Act 1993: s.24GB

October 2019

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Introduction

Section 24GB of the *Native Title Act 1993* (NTA) deals with a finite set of future acts that allow primary production activities to validly occur provided certain requirements are met.

Typically for Queensland, these future acts are ones which permit or require primary production activities or farm tourism on non-exclusive pastoral leases.

It is important to note that the existence of native title over the proposed dealing area does not prevent primary production activities from being carried on.

Application of module

If the dealing falls within the tables in Requirements 1 and 2, this module does not apply. Go to **Module GD**.

If Requirements 3 to 5 are met, this module applies.

Effect on native title

For any dealing that is assessed in accordance with Module GB, the effect on native title will be non-extinguishment.

Procedural rights

This will depend on the category of the proposed dealing. Refer to table 7.

Compensation

Compensation for the effect of the future act on native title rights and interests is payable under Module GB if there is a successful claim for compensation. Compensation is payable by the State where the act is attributable to the State, unless a law provides that another person is liable to pay the compensation.

Requirement 1: Proposed dealing area is not listed in the excluded tenure table

Module GB will only apply where your proposed dealing area is a non-exclusive pastoral lease.

If your proposed dealing area falls within the table below, Module GB does not apply. Go to **Module GD**.

Table 1 - Requirement 1 excluded tenure

Tenure	
1	A tenure that is not a lease. E.g. a permit to occupy or an occupational licence.
2	A lease that's purpose is not pastoral or grazing.
3	A lease that was granted for the first time post 23 December 1996.

Requirement 2: Proposed dealing is not listed in the excluded dealing table

Module GB will only apply to a particular set of dealings.

If your proposed dealing falls within the table below, Module GB does not apply. Go to **Module GD**.

Table 2 - Requirement 2 excluded dealing

Dealing	
1	An activity that permits tourism that includes observing activities or cultural works of Aboriginal people or Torres Strait Islanders.
2	A dealing which permits or requires the majority of a non-exclusive pastoral lease covering an area greater than 5,000 hectares to be used for purposes other than pastoral purposes .
3	An activity which permits or requires mining.

Definition of mine includes:

- (a) explore or prospect for things that may be mined (including things covered by that expression because of paragraphs (b) and (c) below); or
 - (b) extract petroleum or gas from land or from the bed or subsoil under waters
 - (c) quarry
- but does not include extract, obtain or remove sand, gravel, rocks or soil from the natural surface of the land, or of the bed beneath waters, for a purpose other than:
- (d) extracting, producing or refining minerals from the sand, gravel, rocks or soil; or
 - (e) processing the sand, gravel, rocks or soil by non-mechanical means.

Requirement 3: Tenure test - Proposed dealing area is a non-exclusive pastoral lease

The proposed dealing area must be a non-exclusive pastoral lease validly granted on or before 23 December 1996 which is still in force (including as renewed one or more times).

A lease is a non-exclusive pastoral lease if it:

- (a) permits the lessee to use the land or waters covered by the lease solely or primarily for:
 - (i) maintaining or breeding sheep, cattle or other animals; or
 - (ii) any other pastoral purpose
- or
- (b) contains a statement to the effect that it is solely or primarily a pastoral lease or that it is granted solely or primarily for pastoral purposes
- and
- (c) does not give a right of exclusive possession to the lessee or is not a Scheduled Interest.

The table below provides some guidance on tenures which would satisfy the definition of a non-exclusive pastoral lease.

Table 3 - Requirement 3 Tenure

Tenure	
1	Pastoral holding
2	Preferential pastoral holding
3	Pastoral development holding
4	Stud holding
5	Special lease/term lease for grazing purposes
6	Special lease for business (grazing) purposes
7	Special/term lease for grazing purposes over a state forest

If your proposed dealing area is not a non-exclusive pastoral lease, Module GB does not apply. Go to **Module GD**.

Requirement 4: Validity test - Non-exclusive pastoral lease must be valid

Unless there is evidence to the contrary, the non-exclusive pastoral lease in question will be considered to be valid under State legislation. However, this lease must be valid in relation to native title.

In this regard, the following table sets out the establishment rules.

Table 4 - Requirement 4 Validity

Grant/creation date	Validation requirements
Pre-1 January 1994	The non-exclusive pastoral lease is valid.
Between 1 January 1994 and 23 December 1996	The non-exclusive pastoral lease will be validated if a part or whole of the non-exclusive pastoral lease was at some point prior to 1 January 1994, covered by one of the following: <ul style="list-style-type: none"> a) freehold estate b) lease (other than a mining lease) c) valid public work.
Post-23 December 1996	The non-exclusive pastoral lease will be valid if the requirements of Module IC were satisfied in respect of the renewal etc. If not, Module GB does not apply. Go to Module GD . <p>Important: If there had been a 'gap in time' between the expiry of the previous non-exclusive pastoral lease and the grant of the current lease, you will need to establish whether there was a power under the relevant legislation to still renew, re-grant or re-make the current lease in order to satisfy the requirements of Module IC.</p>

Helpful tips

When trying to validate a non-exclusive pastoral lease that was granted in the intermediate period:

- 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 non-exclusive pastoral lease.
- Look at the survey plan to see if there is a reference to a previous tenure.
- 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 tenure 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 validate an intermediate period lease

Option 1

Identify if any part of the lease 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 area, it will validate all of the non-exclusive pastoral lease 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 area, it will validate all of the lease.

Requirement 5: Dealing test - Proposed dealing must be a primary production activity

The proposed dealing must be a primary production activity or an activity associated with or incidental to a primary production activity being carried out on the lease.

Table 5 - Requirement 5 primary production activities

Activities		Definition/examples
(a)	Any activity that falls within the ordinary meaning of primary production.	Ordinary meaning: of or relating to the production of naturally occurring foods as meat, grains, fish, etc., or of naturally occurring things as wool, cotton, etc..
(b)	Any activity involved in the growing, producing, maintaining or extracting of natural resources.	Example: natural resources would include all naturally occurring materials, such as plants and other living organisms, which are capable of economic exploitation.
(c)	Cultivating land.	Definition: the preparation and use (including watering, fertilising or spraying) of soil for crops, animal pasture and market gardening and the raising and production of plants, including harvesting.

(d)	Maintaining, breeding animals.	Definition of maintaining, breeding: maintaining and breeding animals could be for a number of purposes, such as selling them or their bodily produce (including natural increase) or maintaining them for tourism purposes. Example: Beekeeping for the production of honey.
(e)	Agisting animals.	Definition of agistment: taking in and feeding or pasturing animals for a fee.
(f)	Animals	Definition of animals: includes reptiles, birds and insects, e.g. crocodiles, poultry, emus and bees.
(g)	Taking or catching fish or shellfish.	Definition of shellfish: includes oysters and crustacea (such as crabs and yabbies).
(h)	Forest operations.	Definition: the planting or tending, in a plantation or forest, of trees intended for felling; or the felling of such trees.
(i)	Horticultural activities.	Definition of horticulture: includes propagation or maintenance, as well as cultivation; or propagation, maintenance or cultivation of seeds, bulbs, spores or similar things, or fungi; or propagation, maintenance or cultivation in environments other than soil, whether natural or artificial.
(j)	Aquacultural activities.	Definition of aquaculture: breeding, keeping and harvesting fish or shellfish and the propagation, maintenance, cultivation and harvesting of aquatic plants.
(k)	Leaving fallow or de-stocking any land in connection with the doing of any thing that is a primary production activity.	This recognises that primary production may require land to be left uncultivated or de-stocked for periods of time.

Associated with or incidental to a primary production activity

The activity which is associated with or incidental to a primary production activity needs to be related to the primary production activity, and not separate or divided from it.

An activity is associated with or incidental to a primary production activity, if both requirements in the table below are satisfied.

Table 6 - Requirement 5 Associated or incidental to primary production

Requirements to be associated with or incidental to a primary production activity	
1	The activity must be associated with or incidental to a primary production activity.
2	The majority of the non-exclusive lease area must continue to be used for primary production activities whilst the associated or incidental activity is being carried out.

Examples of activities that are associated with or incidental to a primary production activity:

Examples	
1	The construction and use of housing by leaseholders and other persons working on or visiting a farm.
2	Recreational activities by leaseholders and other persons working on or visiting a farm.
3	In connection with the running of a pastoral operation, the construction and use of an airstrip, a power supply, a water supply, fencing, roads, dams, embankments and soil conservation works.
4	The sale and transport of livestock.
5	The storage of material for use in conducting primary production activities.
6	The operation of machine shops to make or repair equipment used in cultivating land or maintaining animals.
7	Pasture management.
8	Culling of wildlife and control of feral animals.
9	The running of a general store (station store) in a remote area.

Dealing categories

Whilst the non-exclusive pastoral lease is in force, your proposed dealing must be one that is listed in the following table.

Table 7 - Requirement 5 Dealing

Dealing category		Criteria	Notification required
1	Grant of a development approval under the <i>Planning Act 2016</i> in relation to operational works for taking or interfering with water.	Must be an activity that is incidental to or associated with a primary production activity.	Only if the activity is incidental to or associated with: <ul style="list-style-type: none"> • Forest operations • A horticultural activity • An aquacultural activity • An agricultural activity.
2	Grant of a development approval under the <i>Planning Act 2016</i> in relation to operational works for clearing of native vegetation.	Must be an activity that is incidental to or associated with a primary production activity.	Only if the activity is incidental to or associated with: <ul style="list-style-type: none"> • Forest operations • A horticultural activity • An aquacultural activity • An agricultural activity.
3	Grant of a licence, permit or allocation under the <i>Water Act 2000</i> .	Must be an activity that is incidental to or associated with a primary production activity.	Only if the activity is incidental to or associated with: <ul style="list-style-type: none"> • Forest operations

			<ul style="list-style-type: none"> • A horticultural activity • An aquacultural activity • An agricultural activity.
4	Grant of a sales permit under the <i>Forestry Act 1959</i> for the harvesting of timber (where the timber remains on the lease) N.B. Proceed to Module GE if the timber will be taken off the lease.	Must be an activity that is either: <ul style="list-style-type: none"> • Forest operations • Incidental to or associated with a primary production activity. 	Only if the activity is to do with forest operations.
5	Approval for a farm tourism activity as the addition of another purpose/use to the lease under the <i>Land Act 1994</i> .	The activity must not permit tourism that includes observing activities or cultural works of Aboriginal people or Torres Strait Islanders.	No
6	Approval of the addition of another purpose/use to the lease under the <i>Land Act 1994</i> .	<ul style="list-style-type: none"> • Additional purpose/use must be associated with or incidental to a primary production activity; and • Majority of the area covered by the lease must continue to be used for primary production activities. 	Only if the additional purpose/use is to do with: <ul style="list-style-type: none"> • Forest operations • A horticultural activity • An aquacultural activity • An agricultural activity.

Definition of farm tourism: is not confined to farmstay tourism but extends to any tourism that takes place in relation to a farm operation. E.g. day tours of a farming operation; overnight stays on a farm; observing or becoming involved in primary production activities; observing and enjoying the natural environment and non-Indigenous cultural activities or sites; and observing natural objects (rock formations, landscapes, vistas) or wildlife, etc.

If your proposed dealing is not listed, Module GB does not apply. Go to **Module GD**.

Finalising your assessment

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