

Queensland Government Native Title Work Procedures

Module GD: Off-farm activities directly connected to primary production activities (including as renewed one or more times)

Commonwealth Native Title Act 1993: s.24GD

October 2019

Version history

Version	Comments	Date published
1		August 2017
2	Updating Requirement 3 and Introduction section	October 2019

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Introduction

Section 24GD is aimed at certain dealings directly connected to primary production activities.

Application of module

This module will only apply if the proposed future act is one which **permits** or **requires** the following:

(1) grazing

or

(2) an activity consisting of, or relating to, gaining access to or taking water.

Additionally, the applicant must hold a freehold estate, a pastoral lease or an agricultural lease that is valid in relation to native title (see Requirement 2). The proposed future act must be directly connected to a primary production activity which will take place on the applicant's land.

Important: If there is a determination that exclusive native title rights and interests exist over the proposed dealing area, Module GD does not apply. Go to Module GE.

Effect on native title

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

Procedural rights

The relevant native title parties are entitled to notification and an opportunity to comment.

Compensation

Compensation for the effect of the future act on native title rights and interests is payable under Module GD 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 of the State provides that another person is liable to pay the compensation.

Requirement 1: Proposed dealing or proposed dealing area is not listed in the exclusions table

The table lists a number of tenures and a type of dealing area not captured in Module GD.

If the proposed dealing or proposed dealing area is listed in the table, Module GD does not apply. Go to **Module GE**.

Table 1 - Requirement 1 Exclusions

Exclusions	
1	The proposed dealing permits an activity other than <ul style="list-style-type: none">• Grazing; or• Accessing or taking water.
2	The proposed dealing is the grant or issue of a lease or freehold.

3	The proposed dealing area is covered by an exclusive determination of native title rights and interests. Check QNTIME; or National Native Title Tribunal website at www.nntt.gov.au
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Requirement 2: Applicant tenure test - Applicants tenure is a valid freehold estate, pastoral lease or agricultural lease

The applicant must currently hold one of the following tenures **adjoining** or **near** the proposed dealing area:

- freehold estate; or
- pastoral lease; or
- agricultural lease.

granted **on or before 23 December 1996** (including as renewed one or more times) and is valid in relation to native title.

Table 2 - The applicant tenure test

Tenure examples	
1	Freehold estate
2	Grazing homestead perpetual lease
3	Pastoral holding
4	Preferential pastoral holding
5	Pastoral development holding
6	Stud holding
7	Special lease/term lease for grazing purposes
8	Special lease for business (grazing) purposes
9	Special/term lease for grazing purposes over a state forest

Valid in relation to native title

Unless there is evidence to the contrary, the freehold estate or lease in question will be considered to be valid under State legislation. However, the freehold estate or lease must be valid in relation to native title. In this regard, the following table sets out the rules in order to establish if the freehold estate or lease is valid in relation to native title.

Table 3 - Valid in relation to native title

Grant/creation date of freehold estate or lease	Validation requirements for a freehold estate or lease
Pre-1 January 1994	The freehold estate or lease is valid.

Between 1 January 1994 and 23 December 1996	The freehold estate or lease will be validated if a part or whole of the freehold estate or 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	Please refer to helpful tips in Requirement 2 for further guidance on tenures granted in this period.

Helpful tips

Valid in relation to native title

When trying to validate a freehold estate or lease that was granted/created 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 freehold estate or lease.
- Look at the survey plan to see if there is a reference to a previous tenure.

Examples of how to validate an intermediate period freehold estate or lease

Option 1

Identify if any part of the freehold estate or 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 freehold estate or 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.

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

If you are unable to satisfy this requirement, Module GD does not apply. Go to **Module GE**.

Tenures granted post-23 December 1996

Freehold

If the applicant's tenure is a freehold estate that was created post-23 December 1996, you must be able to prove that there has been a continuity of freehold tenure going back to pre-1 January 1994.

Example

Certificate of Title 50564376 over Lot 1 on SP182529 was created on 20 July 2005. The new title was created as a consequence of the subdivision of the original Deed of Grant, Titles Ref 18819218, over Lot 29 on WV1429, which was granted on 15 December 1993.

Therefore, there is a continuity of freehold.

Leasehold

If the applicant's tenure is leasehold, was the lease validly renewed in accordance with Module IC?

Example

Special Lease No. 99999 was granted in 1985 under the *Land Act 1962* for grazing purposes for a term of 30 years.

In 2014, the Special Lease was renewed as a term lease under the *Land Act 1994* for a further term of 20 years and which satisfied the requirements of Module IC.

As the grant of the term lease occurred within the term of the previous special lease (i.e. there was no expiry of the previous lease), this would constitute a valid renewal.

Important: If there had been a 'gap in time' between the expiry of the special lease and the grant of the term lease, you will need to establish whether there was a power under the relevant legislation to still renew, re-grant or re-make the term lease in order to satisfy the requirements of Module IC.

Requirement 3: Dealing test

The proposed dealing must permit or require the carrying on of a gazing activity or permit or require an activity consisting of, or relating to, gaining access to, or taking water.

The proposed dealing must be directly connected to the carrying on of any primary production activity being undertaken on the applicant's tenure which is identified in Requirement 2.

Table 4 lists example dealings which meet Requirement 3. This list is not exhaustive.

Table 4 - Requirement 3 Dealings

Dealings	
1	Issue of a permit to occupy under the <i>Land Act 1994</i> for grazing purposes.
2	The grant of a stock grazing permit under the <i>Forestry Act 1959</i> to graze cattle on part of a State Forest.
3	Issue of a permit to occupy for pump site purposes under the <i>Land Act 1994</i> .
4	Grant of a development approval under the <i>Planning Act 2016</i> in relation to operational works for taking or interfering with water.
5	Grant of a licence, permit or allocation under the <i>Water Act 2000</i> .
6	Grant of a development approval under the <i>Planning Act 2016</i> in relation to operational works for clearing of native vegetation.

Helpful tips

Table 5 - Gaining access to or taking water

Examples	
Gaining access to water	The grant of a development approval under the <i>Planning Act 2016</i> to establish facilities associated with an aquaculture project where the operation is located on freehold land and the facilities to be approved are located in the adjoining river.
Taking water	<p>The grant of a development approval under the <i>Planning Act 2016</i> to construct works to take water from an area adjoining or near a pastoral lease to water stock grazing on that pastoral lease.</p> <p>The conferral of rights to construct a water pipeline to take water from an area that is near a freehold estate, where the water is required for the irrigation of crops on the freehold estate.</p>

Requirement 4: Proposed dealing area is adjoining or near to the applicants land

The proposed future act must take place on an area adjoining or near the applicant's tenure which is identified in Requirement 2.

If you are unable to satisfy this requirement, Module GD does not apply. Go to **Module GE**.

Helpful Tips

Adjoining:

The definition includes bordering; contiguous.

The land or waters should share a common boundary with the freehold estate or pastoral lease.

Near:

The definition includes 'close; nearby; at, within, or to a short distance.'

Common sense must guide whether the area can be said to be *near* to the freehold estate or pastoral lease. e.g. what is near in a rural area may be different from what is near in a town area.

Finalising your assessment

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