

# **Queensland Government Native Title Work Procedures**

**Module GE: Granting rights to take timber and quarry materials  
on non-exclusive pastoral leases**

*Commonwealth Native Title Act 1993: s.24GE*

**August 2017**

## Version history

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## Introduction

Section 24GE specifically relates to two classes of activities to occur on a non-exclusive pastoral lease.

Whilst these activities must take place on a non-exclusive pastoral lease the activity does not have to be connected to the pastoral activity.

## Application of module

This module will only apply if the proposed future act is one which **permits** any person (including the lessee) to:

(1) cut **and** remove timber

or

(2) extract, obtain or remove sand, gravel, rocks, soil or other quarry materials **provided** this activity is not mining under the *Native Title Act 1993*.

on a non-exclusive pastoral lease granted on or before 23 December 1996 and which is still in force (including one which has been validly renewed).

**Important:** If the proposed dealing is being done under legislation other than the *Forestry Act 1959* or the *Water Act 2000*, Module GE will not apply. Go to Module H.

## Effect on native title

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

## Procedural rights

The relevant native title parties are to be notified and provided with an opportunity to comment.

## Compensation

Compensation for the effect of the future act on native title rights and interests is payable under Module GE 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 dealings that are not captured by Module GE.

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

**Table 1 - Requirement 1 Exclusions**

1	<p>The proposed dealing is a mining activity.</p> <p><b>mine</b> includes:</p> <p>(a) explore or prospect for things that may be mined (including things covered by that expression because of paragraphs (b) and (c) below); or</p> <p>(b) extract petroleum or gas from land or from the bed or subsoil under waters</p> <p>(c) quarry</p> <p>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:</p> <p>(d) extracting, producing or refining minerals from the sand, gravel, rocks or soil; or</p> <p>(e) processing the sand, gravel, rocks or soil by non-mechanical means</p> <p>This means that quarrying is 'mining' under the <i>Native Title Act 1993</i> where:</p> <p>(a) it goes beyond the natural surface of the land</p> <p>or</p> <p>(b) it does not go beyond the natural surface of the land but is done for the purpose of extracting, etc., minerals or processing the material by non-mechanical means.</p>
2	<p>The proposed dealing is the grant of a lease.</p>
3	<p>The proposed dealing involves the cutting of timber without the removal of the timber from the lease area.</p> <p>(a) <b>cut</b> includes:</p> <ul style="list-style-type: none"> <li>• to penetrate with a sharp-edged instrument</li> <li>• to divide with a sharp-edged instrument; sever; carve</li> <li>• to hew or saw down; fell: to cut timber</li> <li>• to detach with a sharp-edged instrument; lop off</li> <li>• to hollow out; excavate; dig: cut a trench.</li> </ul> <p>(b) <b>remove</b> includes:</p> <ul style="list-style-type: none"> <li>• to move from a place or position; take away; take off</li> <li>• to move or shift to another place or position</li> <li>• to move from one place to another, esp. to another locality or residence.</li> </ul>
4	<p>The proposed dealing area is a non-exclusive pastoral lease granted for the first time <b>post-23 December 1996</b>.</p>

## **Requirement 2: Tenure test - Proposed dealing area is a non-exclusive pastoral lease**

The proposed dealing must take place on a non-exclusive pastoral lease which was granted on or before 23 December 1996 (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 2 - Requirement 2 Tenure**

Tenure examples	
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
8.	Term lease for grazing purposes

If you are unable to satisfy Requirement 2, Module GE does not apply. Go to **Module H**.

## Requirement 3: 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 3 - Requirement 3 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 <b>part</b> or <b>whole</b> of the non-exclusive pastoral lease was at some point <b>prior</b> to 1 January 1994, covered by one of the following: <ul style="list-style-type: none"> <li>a) freehold estate</li> </ul>

	<p>b) lease (other than a mining lease)</p> <p>c) valid public work.</p>
Post-23 December 1996	<p>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 GE does not apply. Go to <b>Module H</b>.</p> <p><b>Important:</b> 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; or
- look at the survey plan to see if there is a reference to a previous tenure; or
- 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.

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

## Requirement 4: Dealing test - Proposed dealing is listed in the dealings table

The proposed dealing must be the grant of a licence, permit or authority, over any area covered by the non-exclusive pastoral lease that provides a right to:

(a) cut and remove timber

or

(b) extract, obtain or remove sand, gravel, rocks, soil or other quarry materials (provided it is not mining under the *Native Title Act 1993*).

Note: other quarry materials includes clay, stones and earth.

If the proposed dealing is listed in the table or is similar to the dealings listed, **Module GE** applies.

**Table 4 - Requirement 4 Dealings**

Example	Comments
The grant of a sales permit under the <i>Forestry Act 1959</i> to the lessee or a third party for the sale of timber from a non-exclusive pastoral lease which will involve the cutting and removing of timber from the lease area.	Timber must be removed from lease area.  <b>timber</b> includes standing or fallen trees/branches but would not include wildflowers or foliage.
The grant of a sales permit under the <i>Forestry Act 1959</i> to a person to remove gravel and soil from a non-exclusive pastoral lease which is the leftover spoil from the excavation of a dam on his non-exclusive pastoral lease.	1. Dealing must not permit mining. 2. There is no requirement to have material removed from the proposed dealing area. The material can remain or be removed.
The grant of a sales permit to a landscaping business to permit the collection of stones and rocks which are lying on the surface of the land within a pastoral holding.	1. Dealing must not permit mining. 2. There is no requirement to have material removed from the proposed dealing area. The material can remain or be removed.
The grant of a Quarry Material Allocation Notice under the <i>Water Act 2000</i> .	1. Dealing must not permit mining. 2. There is no requirement to have material removed from the proposed dealing area. The material can remain or be removed.

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

## Finalising your assessment

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