

# Queensland Government Native Title Work Procedures

## Module L: Low impact future acts

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

August 2020

## Version history

Version	Comments	Date published
1		August 2017
2	Simplified the flow of requirement 1	August 2020

This publication has been compiled by Land and Native Title Services, Department of Natural Resources, Mines and Energy

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## Introduction

Module L applies to proposed dealings that are known as low impact future acts and designed to provide guidance on what is not a low impact future act rather than what is a low impact future act.

In a lot of situations, a proposed dealing will be of a low impact nature, however, this is not actually a requirement under Module L.

Some examples of low impact future acts are:

Examples of low impact future acts
the grant of a permit to occupy for a television production company to film in an area
placing reference markers in an area for survey purposes
the grant of a licence to collect firewood
the grant of a temporary permit to conduct bee-keeping
the construction of a building that is not a fixture, e.g. a demountable shed
the establishment of walking track signs
the construction of fencing

**Important:** One of the major requirements when considering Module L is that a low impact future act must not continue after a determination that native title continues to exist. This in itself suggests that these types of future acts should be of a temporary or intermittent nature.

## Application of module

Where the proposed dealing does not involve the issue of any tenure, then Module L is relatively straightforward. However, where the proposed dealing is the grant of a licence, permit or authority you will need to include the following or similar wording as a condition of the licence, permit or authority:

‘Should it be determined at some future date by any Court that native title exists over the subject land or waters, this [insert licence, permit or authority] may be terminated and the [insert licensee, permit holder or authority holder] (or any subsequent [insert licensee, permit holder or authority holder]) may be required to remove any works established under this [insert licence, permit or authority] at the [insert licensee’s, permit holder’s or authority holder’s] (or any subsequent [insert licensee’s, permit holder’s or authority holder’s]) own cost, expense and risk. In that event, no compensation for works, development costs or loss of income shall be payable to the [insert licensee, permit holder or authority holder] (or any subsequent [insert licensee, permit holder or authority holder]) by the State of Queensland.’

**Note:** Check your agency’s policies/procedures on whether it is appropriate to grant a licence, permit or authority given that it will have to cease upon a future determination that native title exist over the relevant area.

## Effect on native title

The non-extinguishment principal will apply for any dealing that Module L is assessed to apply to.

## Procedural rights

Notification is not required for an assessment under Module L.

## Compensation

No compensation is payable under Module L for the effect of the dealing on native title rights and interests.

## Requirement 1: There must not be a determination that native title exists

If there is a determination that native title exists over the proposed dealing area, Module L does not apply. Go to **Modules M and N**. The proposed dealing must take place before and must not continue after an approved determination of native title.

All low impact future acts must be capable of being cancelled prior to the date of a determination that native title exists over the dealing area.

Some examples of dealings which may satisfy Requirement 1 are set out in the table below.

**Table 1 - Requirement 1 Examples**

Example	Capable of being cancelled
Permit to occupy under the <i>Land Act 1994</i> for grazing purposes	Yes
Trustee permit on post-Wik national parks	Yes; only valid up to a determination that native title exists
Apiary site permit under the <i>Forestry Act 1959</i> for beekeeping	Yes; one month's notice required

**Important:** If you are aware that a determination of native title is imminent, you should not consider using Module L. If you wish to consider using Module L in these instances, you must refer all details to Land and Native Title Services (LNTS) via your Native Title Contact Officer.

If you are unable to satisfy this requirement. Module L does not apply. Go to **Module M and N**.

### Helpful tips

1. If a dealing has been progressed under Module L and at a later date there is a determination that native title exists, then prior to cancelling that dealing, a check should be made to see if an assessment should have been made under an earlier Module instead. In those circumstances, the dealing may not have to be cancelled. If you think an earlier module should have applied, refer the matter to LNTS via your Native Title Contact Officer.
2. If there has been a determination made that native title does not exist over an area on which a dealing was previously assessed under Module L, then that dealing continues. However, Module AB will apply to any future dealing in relation to that area.
3. Check whether an Indigenous Land Use Agreement covers your proposed dealing area. In some instances a registered Indigenous Land Use Agreement may authorise the proposed dealing. Refer to Module AC.

## Requirement 2: Proposed dealing is not listed in the exclusions table

The Requirement 2 Exclusions table lists those categories of dealings that are generally not captured by Module L.

In certain circumstances, there will be exceptions to that rule.

**Table 2 - Requirement 2 Exclusions**

	<b>Exclusions under Module L (i.e. Module L will not apply)</b>	<b>Exceptions to the rule (i.e. Module L will apply)</b>
1	Grant of a freehold estate over any land or waters	None
2	Grant of a lease over any land or waters	None
3	The conferral of a right of exclusive possession over any land or waters (e.g. vesting of exclusive possession)	None
4	Excavation or clearing	<ul style="list-style-type: none"> <li>• An excavation or clearing that is reasonably necessary for the protection of public health or public safety</li> <li>• Tree lopping</li> <li>• Clearing of noxious or introduced animal or plant species</li> <li>• Foreshore reclamation</li> <li>• Regeneration or environmental assessment or protection activities.</li> </ul>
5	Mining	<ul style="list-style-type: none"> <li>• Fossicking using hand held implements.</li> </ul>
6	Construction or placing on the land or in the waters: <ul style="list-style-type: none"> <li>• building</li> <li>• structure</li> <li>• any other thing that is a fixture.</li> </ul> <p><i>Definition</i></p> <p>A fixture is an item attached to the ground other than under its own weight. An item which is a fixture ceases to be the personal property of the person who attached it to the land as the item becomes part of the land.</p>	<ul style="list-style-type: none"> <li>• Fencing</li> <li>• Gate</li> <li>• Demountable that is not fixed.</li> </ul>
7	Disposal or storing on the land or in the waters, of any garbage or any poisonous or toxic or hazardous substance.	None

If the proposed dealing is not listed in the Requirement 2 Exclusions table, go to Requirement 3.

If it is listed in the Requirement 2 Exclusions table and an exception applies, go to Requirement 3.

If the proposed dealing is listed in the Requirement 2 Exclusions table and there are no exceptions, Module L does not apply. Go to **Module M and N**.

If your proposed dealing involves the creation of a reserve, refer to Requirement 3.

## Requirement 3: Creation or dedication of certain reservations

Requirement 3 only applies if the proposed dealing is the creation or dedication of certain categories of reservations.

### Can a reserve be created as a low impact future act?

The answer to this question depends on the category and purpose of the reserve.

#### 1. State forests

Dedicating an area of land as a state forest is not a temporary activity but is more long-term in nature. E.g. In order to revoke such dedications, a resolution must be passed by the Legislative Assembly (having been given a specified number of days' notice) requesting the Governor in Council to revoke the dedication. The Governor-in-Council then must decide whether the dedication should be revoked and if so this must be done by regulation.

Therefore, Module L may not be the most appropriate way to assess a dedication, even though the dedication would not fall into one of the exclusions set out in the Requirement 1 Exclusions table.

#### 2. Reserves under *the Land Act 1994*

Certain categories of reserves can be created as low impact future acts on the basis that the use of the reserve is restricted under the *Land Act 1994*.

The types of reserves that fall into this category are:

- Beach protection and coastal management
- Environmental
- Natural resource management
- Open space
- Buffer zones
- Strategic land management
- Scenic.

If you consider that there are similar categories of reservations that can be created as low impact future acts under other legislation, please contact LNTS via your Native Title Contact Officer.

### Can a subsequent dealing be done over a low impact future act reserve?

Yes, provided the subsequent dealing falls within one of the future act modules. E.g. If a resource management reserve has been created as a low impact future act, an easement may be able to be granted to an electricity provider under Module K.

## Finalising your assessment

If you meet all the requirements for Module L, finalise your Native Title Assessment using **Annexure 7.1**.