

Queensland Government Native Title Work Procedures

Module O: Your proposed future act is not covered by the preceding modules - how can it be done validly?

Commonwealth Native Title Act 1993: s.240A

August 2017

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Introduction

If you have reached this Module, it means that you are of the view that your proposed dealing:

- could be a future act, ie. an act that affects native title
- and
- is not covered by any of the preceding modules.

This means that if you proceed with your proposed dealing without further considering native title your proposed dealing could be **invalid to the extent it affects native title**.

The following parts consider -

- options to ensure that your dealing is valid in relation to native title (Part 1)
- what is invalidity in relation to native title (Part 2)
- addressing invalidity in relation to native title (Part 3).

Part 1: Options to ensure the proposed dealing is valid in relation to native title

If you have reached this module, two options remain that may be applicable to ensure that your proposed dealing is valid in relation to native title -

- the negotiation and registration of an Indigenous Land Use Agreement (ILUA) under which the native title parties consent to the doing of the proposed future act.

Please refer to **Module Q**.

or

- the filing of a **non-claimant application** in the Federal Court in relation to the proposed dealing area for which **section 24FA protection** is gained or a determination is made by the Federal Court that native title does not exist.

Please refer to **Module R** and **Module F**.

Part 2: What is invalidity in relation to native title?

Before a dealing can be assessed as being **valid** or **invalid** in relation to native title, the dealing must firstly be a future act, ie. an act that affects native title.

For a dealing to **affect** native title, it must be otherwise wholly or partly inconsistent with its continued existence, enjoyment or exercise or be an act that extinguishes native title rights and interests.¹

However, it is not until there is a determination of native title by the Federal Court that the State can be sure that its land and resource dealings are in fact future acts. Unless native title has been wholly extinguished over a particular area, the State as a general rule will assume that a dealing is a future act.

For a dealing to affect native title it must be -

- valid in itself, eg. there is power under State legislation to do the dealing

¹ Sections 24AA(1) and section 227, NTA

and

- valid in relation to native title².

A dealing is **valid in relation to native title**³ where it is -

- covered by one of the future act provisions, ie. sections 24FA, 24GB, 24GD, 24GE, 24HA, 24IA, 24JAA, 24JA, 24KA, 24LA, 24MD or 24NA. In addition, certain acts covered by sections 24IC and 24MD must also satisfy the requirements of Subdivision P (the right to negotiate) to be valid

or

- covered by a registered ILUA under which the native title parties consent to the dealing.

Therefore, a dealing is **invalid** in relation to native title where it is not covered by one of the future act provisions or a registered ILUA.⁴

A dealing that is invalid in relation to native title does not suppress or extinguish native title over the dealing area and the native title holders' enjoyment and exercise of their native title rights and interests are not in any way impacted by the dealing.

Example

The State carries out a native title assessment for the proposed dealing area and concludes that native title has been wholly extinguished. Based upon that assessment, a freehold title is granted over the proposed dealing area. However, the assessment was incorrect. The grant of the freehold title is invalid in relation to native title as none of the future act provisions applied and the dealing was not covered by a registered ILUA.

As the freehold grant is invalid in relation to native title, the native title holders are otherwise able to exercise their native title rights and interests over the proposed dealing area.

Part 3: Can invalidity in relation to native title be addressed if you have already done the dealing?

If you think you already have a dealing that could be invalid in relation to native title, provide all details to Aboriginal and Torres Strait Islander Land Services through your Native Title Contact Officer.

² Section 233, *Native Title Act 1993*

³ Section 24AA(2)-(5), *Native Title Act 1993*

⁴ Section 24AA(2), *Native Title Act 1993*.