

Chapter 5

Future Acts

1. Introduction

This chapter explains the current native title law and policy governing the doing of future acts in Queensland. It provides clear explanations, answers to commonly asked questions, easy-to-follow steps and comprehensive flowcharts.



If you have assessed that native title has been extinguished over the whole of your proposed dealing area then this Chapter is **not** relevant to your proposed dealing.

2. What is a future act?

A future act is defined under the NTA as **any act** that–

- (a) (i) consists of the making, amendment or repeal of **legislation** and takes place on or after **1 July 1993**;
or
(ii) is done on, or after, **1 January 1994**;

AND

- (b) is not a past act (refer to **Module E**);

AND

- (c) **validly affects native title** in relation to the land or waters to any extent¹.

This means the act needs to be done in accordance with the future act provisions of the NTA.

A future act affects native title by either –

- extinguishing the native title rights and interests;
or
- being wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests.²

¹ Section 233, NTA;

² Section 227, NTA; section 13A, *Acts Interpretation Act 1954*;

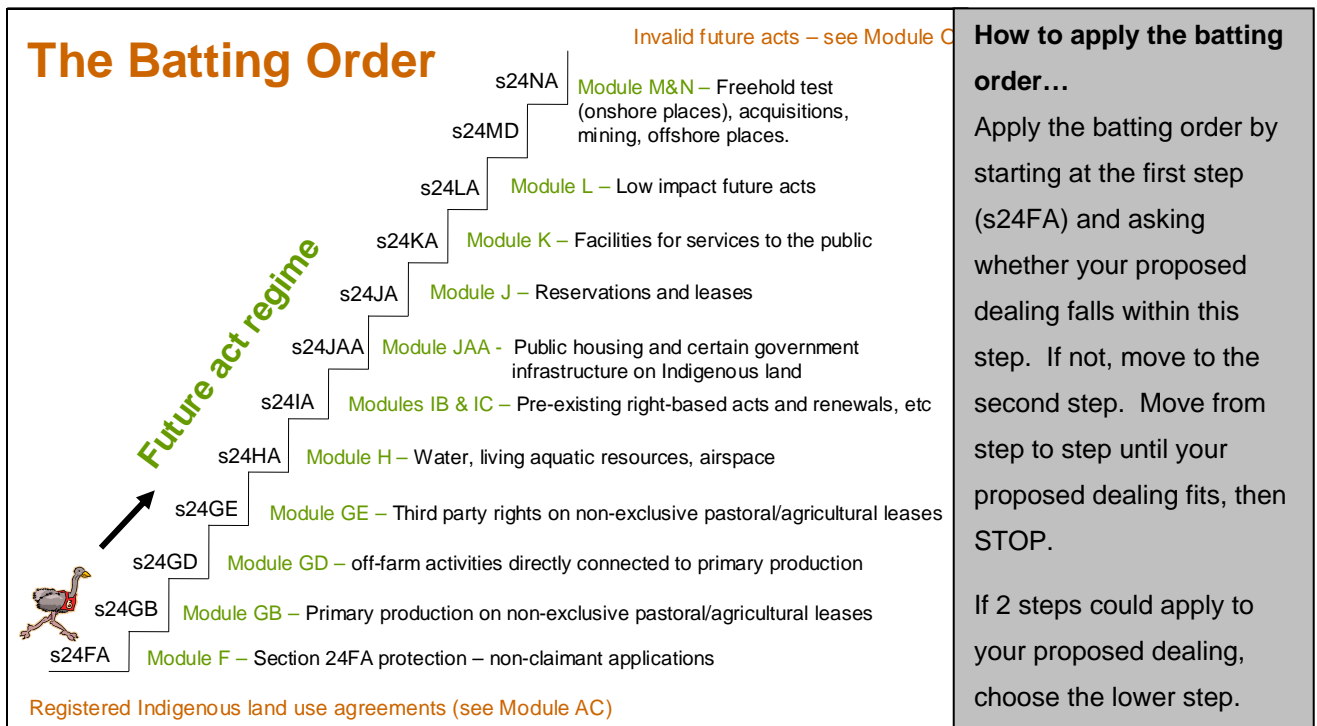
3. What is the future act regime?

The NTA sets out a regime for dealing with future acts over land or waters where native title has not been extinguished.

The future act regime consists of a number of different provisions within section 24 of the NTA that deal with a range of subject matters from primary production to offshore places. This regime prescribes that certain procedural rights are provided to native title parties.

4. How do I work through this Chapter?

The NTA provides a “batting order” from section 24FA to section 24NA for the future act regime. Each Module within this Chapter must be considered in its order so that the correct decision is made. If you do not apply this batting order, you may provide the wrong procedural rights to the native title parties as each step has different procedural rights and some steps have no procedural rights.



5. What does a determination that native title exists mean in relation to doing future acts?

A determination that native title *exists* does NOT prevent the doing of future acts over the determination area. Any future acts must still be done in accordance with the future act regime of the NTA and the appropriate procedural rights must be afforded to the registered native title body corporate.

IMPORTANT

One of the requirements of an approved determination of native title is that the native title holders must establish a registered native title body corporate. If a registered native title body corporate has not yet been established, then the procedural rights should be provided to the determined native title holders, ie. the people who were the registered native title claimants.

However, there are three future act sections which cannot be used where there has been a determination that native title exists over the proposed dealing area –

- **section 24FA** of the NTA (Module F) cannot be used where there has been a determination that native title *exists* over the proposed dealing area;
- **section 24GD** of the NTA (Module GD) cannot be used where -
 - (a) a determination that native title *exists* has been made in relation to the land *adjoining or near* a freehold estate, agricultural lease, or pastoral lease (the proposed dealing area), that recognises **exclusive possession** in relation to those lands or waters;
 - AND
 - (b) the proposed activity will be **inconsistent with the exercise of native title rights and interests**; and

NB. If exclusive possession has NOT been recognised or the activity is NOT inconsistent with the exercise of native title rights and interests, then section 24GD can be used.

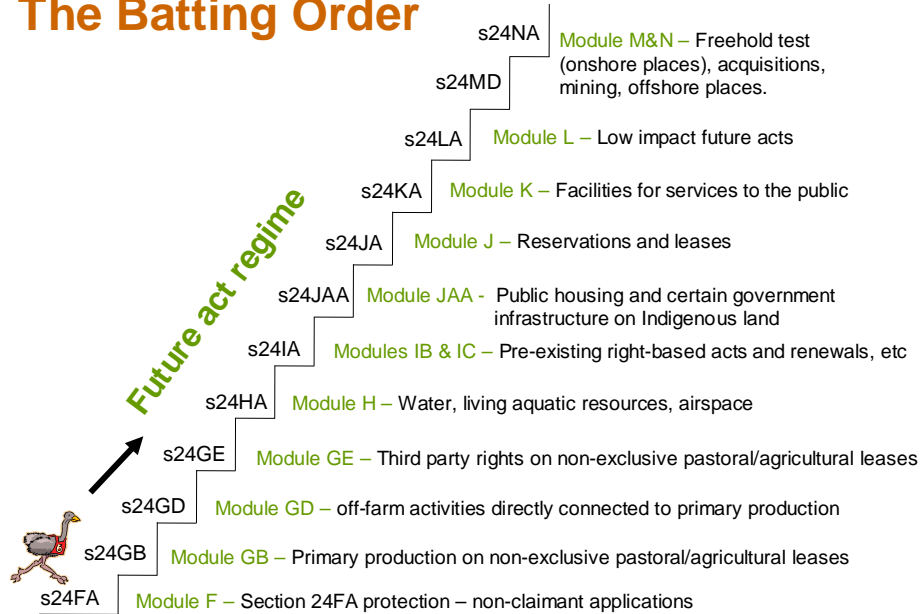
- **section 24LA** of the NTA (Module L) cannot be used for acts that are future acts as a low impact future act must take place before and must not continue after an approved determination of native title.

A determination that native title exists over the proposed dealing area may also affect the type of procedural rights given to the Native Title Representative Body. For example, under section 24KA where there has been a determination of native title, the Native Title Representative Body is not provided with any procedural rights. Before the determination, the Native Title Representative Body was entitled to a notification or a notification and opportunity to comment.

Now you may begin ... proceed to and consider Module F.

The Batting Order

Invalid future acts – see Module O



Registered Indigenous land use agreements (see Module AC)