

# Module BB

*Sections 47, 47A and 47B of the NTA*

*Can the extinguishing effect of the PEPA be relied upon to address native title for my proposed dealing?*

**CAN YOU RELY UPON THE EXTINGUISHING EFFECT OF YOUR PEPA?**


This Module considers whether you can rely upon the extinguishing effect of a PEPA.

You are reading this Module because you have found a PEPA under **Module BA** or there is a non-public work **conclusion** in QNTIME you wish to rely upon (**Module AB**).

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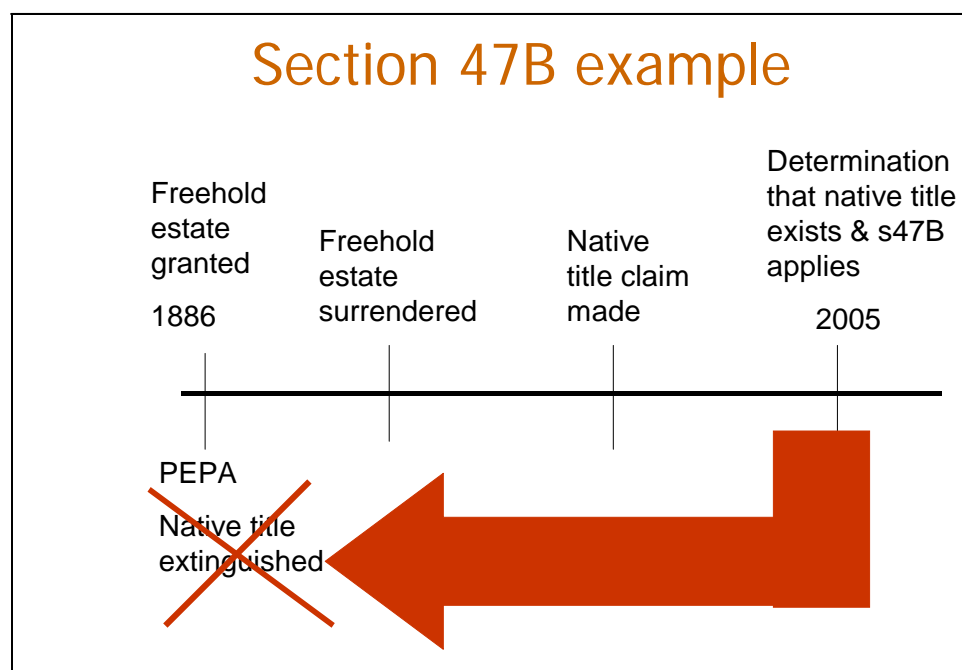
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## Part 1 Introduction

In some circumstances, upon a determination that native title exists, the NTA requires that the extinguishing effect of the PEPA you identified in **Module BA** or identified in a non-public work **QNTIME conclusion**  must be ignored or disregarded. This means, at the time of the determination, that native title rights and interests extinguished by the PEPA are in effect revived in relation to the PEPA area. Because of this possible revival, and subject to certain requirements being satisfied, you may now not be able to proceed with your dealing in relation to native title by relying upon the PEPA.

Sections 47, 47A and 47B of the NTA (sometimes called the section 47 suite) are the exception to the general rule that native title once extinguished is always extinguished.

The following diagram provides an example of how section 47B of the NTA can operate to disregard the extinguishing effect of an historical freehold grant.



## Part 2 Summary - two key questions

If you have identified in **Module BA** that there is a current or historical PEPA or there is a non-public work QNTIME conclusion<sup>1</sup> over your proposed dealing area, there are two key questions you must ask before relying upon the PEPA.

<sup>1</sup> This means a QNTIME conclusion based upon a PEPA that was the grant of a tenure or a vesting.





Once you have answered these questions below, use the table below to determine what action you can take based on your answer combination, i.e. whether you can rely upon the extinguishing effect of the PEPA.

**Question 1**

Is the proposed dealing area currently covered by a native title claim? Refer to **Part 3** for more detail.

**Question 2**

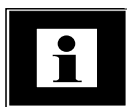
When the native title claim was made was the proposed dealing area at that point in time a particular tenure status? Refer to **Part 4** for more detail.

Answer to Question 1	Answer to Question 2	Action
NO	N/A	Rely upon your PEPA  <i>Return to page 13 of Module BA.</i>
YES	NO	Rely upon your PEPA  <i>Return to page 13 of Module BA.</i>
YES	UNSURE	Forward all details of your proposed dealing to IS through your NTCO.  Remember to first enter your research into QNTIME. 
YES	YES	Forward all details of your proposed dealing to IS through your NTCO.  Remember to first enter your research into QNTIME. 

### Part 3 Is the proposed dealing area currently covered by a native title claim?

The first question you need to answer is -

#### Is the proposed dealing area currently covered by a native title claim?



##### What is a native title claim for the purposes of this Module?

This term refers both to a registered native title claim and an unregistered native title claim. It does not include a determined native title claim (ie. there has been a native title determination for the claim).



If there is a determination of native title over your proposed dealing area, go back and consider **Module AB**. The extinguishing effect of any PEPAs over that area may have already been disregarded and therefore native title exists or the Court may have determined that native title does not exist.

##### How do I find out if there is a native title claim or determination over the proposed dealing area?



Search **QNTIME** to see if there is a native title claim or determination covering your proposed dealing area

### Part 4 When the native title claim was made, was the proposed dealing area at that point in time ...

The second question you may need to answer is -

#### When the native title claim was made, was the proposed dealing area at that point in time ...

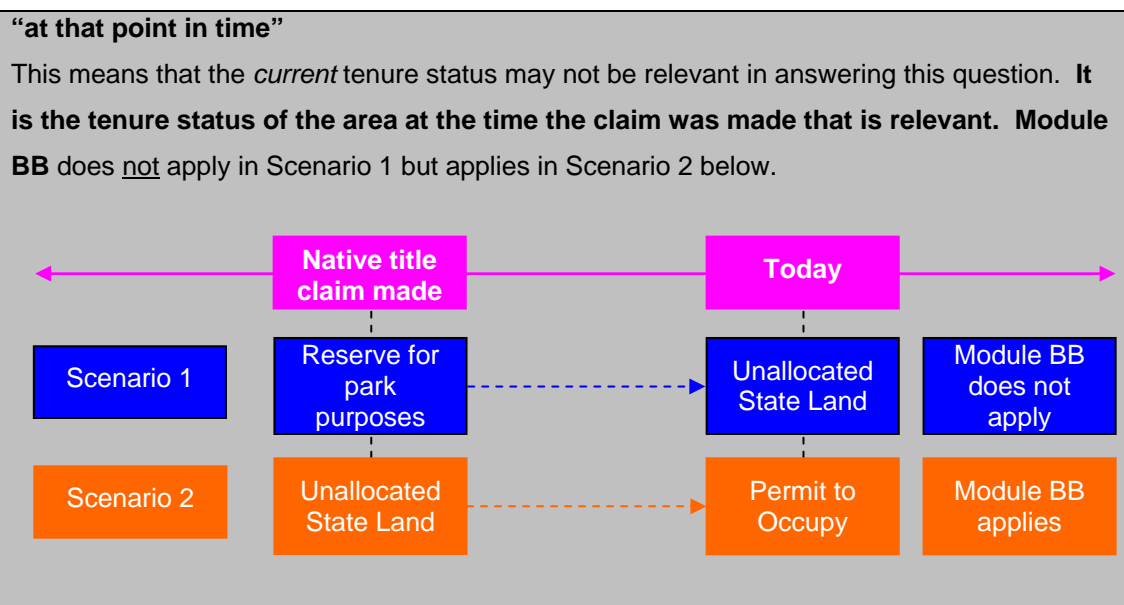


##### “made”

The native title claim was made on the day the claimant application (or pre-combined application for a combined claimant application) was lodged in the National Native Title Tribunal (applications before 30.9.98) or filed in the Federal Court (applications from 30.9.98).



Search QNTIME to find the date the native title claim was made.



- a **pastoral lease** (s47) held by –
  - (a) the native title claimants (ie. the applicants on the claimant application) or other persons claiming to hold native title with those native title claimants;
  - (b) a trustee, on trust for any of the above persons; or
  - (c) a company whose only shareholders are any of those persons?

**OR**

- a **freehold estate**, a **lease** or the area is **vested** in any person under legislation that makes provision for such grants or vestings to, in or for the **benefit of Aboriginal peoples and Torres Strait Islanders** OR the area is held expressly for the benefit of, or is **held on trust**, or **reserved**, expressly for the **benefit of Aboriginal peoples or Torres Strait Islanders** (s47A)?

**Examples**

- a freehold estate granted under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*;
- Aurukun Shire lease land and Mornington Island Shire lease land under the *Local Government (Aboriginal Lands) Act 1978*;
- a deed of grant in trust for Aboriginal purposes or Torres Strait Islander purposes under the *Land Act 1962* or the *Land Act 1994*;
- an Aboriginal reserve under the *Land Act 1962* or a reserve for Aboriginal or Torres Strait Islander purposes under the *Land Act 1994*.

**OR**

- **unallocated State land** (s47B)?

**“unallocated State land”** for the purposes of section 47B means that the proposed dealing area was NOT covered by a freehold estate, lease, reservation, proclamation, dedication, condition, permission or authority, made or conferred by the Crown in any capacity, or by the making, amendment or repeal of legislation of the Commonwealth or the State, under which the whole or part of the land or waters in the area is to be used for public purposes or for a particular purpose.

*Examples of where Module BB **cannot** apply*

The whole of the proposed dealing area was covered by, for example –

- a reserve under land legislation;
- a marine park;
- an occupation licence;
- a permit to occupy;
- exploration permit;
- a mining lease;
- the *Wet Tropics Management Plan 1998*.

**OR**

- **NOT** subject to a **resumption** process (s47B)?

**“subject to a resumption process”**

An area is subject to a resumption process when the native title claim was made if:

- (a) all interests (including native title interests) last existing in relation to the area before the native title claim was made were acquired, resumed or revoked by, or surrendered to, the Crown in any capacity; and
- (b) when that happened, the Crown had a *bona fide* intention of using the area for public purposes or for a particular purpose; and
- (c) the Crown still had a *bona fide* intention of that kind in relation to the area at the time the native title claim was made.

**Example**

The Department of Natural Resources and Water wishes to establish a museum of mapping and surveying on Lot 1 and Lot 2 on SP123658. Lot 1 is freehold land and Lot 2 is covered by a permit to occupy for grazing purposes.

In 2003, to get the museum project underway, the department compulsorily acquired –

- the freehold interest over Lot 1 under the *Acquisition of Land Act 1967*. Lot 1 reverted to unallocated State land; and
- native title rights and interests over Lot 2 and revoked the permit to occupy. Lot 2 reverted to unallocated State land.

Since the acquisition in 2003, the department has continued with its planning and design of the museum and has gone through a tendering process for its construction. Construction of the museum is scheduled to commence on 1 February 2008.

A native title claim was made over Lot 1 and Lot 2 in 2004.

Module BB would not apply in this case as Lot 1 and Lot 2 were subject to a resumption process (which met the above definition) at the relevant times.

## **Part 5 Who makes the decision whether this module applies?**

There are no actual delegations to make decisions in relation to native title under the Native Title Work Procedures, the NTA or the NTQA.

The native title assessment process is just one part of your decision-making process when making a decision under legislation, eg. a decision to grant a lease. By carrying out a native title assessment, you are ensuring your decision complies with the NTA. **However, please ensure that, where requested in the table in Part 2 of this Module, you provide all details to IS through your NTCO.**

If you are unsure how to proceed, your NTCO must be contacted for advice. If the NTCO is unsure how to proceed, IS must be contacted for advice.