

Module F

Section 24FA – Section 24FE

Protection for future acts arising from a non-claimant application

DOES THE PROPOSED FUTURE ACT FIT WITHIN THIS MODULE?

This Module helps you assess whether section 24FA protection applies to the proposed dealing area.

Only consider this Module if the proposed dealing area is –

- (a) covered by a **non-claimant application**; and
- (b) NOT covered by a determination of native title,

otherwise proceed to **Module GB**.

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Part 1 What is section 24FA protection?

Section 24FA protection was included in the future act regime to allow people with existing interests in land to ascertain whether native title exists in order to give them certainty when doing acts in relation to that land. A major purpose of this future act provision is to ensure validity of future acts done before a determination has been made, but only where certain conditions apply.¹

Where section 24FA protection applies, subject to certain conditions, future acts can validly proceed in relation to native title over an area covered by a non-claimant application.

Section 24FA protection is the result of –

- a non-claimant application by a government party (subject to specific conditions); or
- a non-claimant application by a non-government party (subject to specific conditions).

“non-claimant application”

A non-claimant application is an application filed, by a person who neither claims to hold native title nor is acting on behalf of those who do, in the Federal Court seeking a determination by the Federal Court as to whether native title exists in relation to an area.² A person includes a government party or a non-government party.

Government party

A government party includes a Minister of the State, the Crown in any capacity, or a statutory authority.

Examples – The State of Queensland, Brisbane City Council.

Non-government party

A non-government party is a party other than a government party who has a non-native title interest in the whole of the area.

Example - The lessee of a non-exclusive pastoral lease.

Example of section 24FA protection

The State has made a non-claimant application over unallocated State land it wishes to freehold. The application has been notified and after waiting the required timeframe the section 24FA requirements are satisfied, eg. there was no native title claim registered at a particular time. The State is able to freehold the unallocated State land as it is now subject to section 24FA protection.

¹ Paragraph [8.4] and [8.2], *Explanatory Memorandum to the Native Title Amendment Bill 1997*

² Paragraph [8.22], *Explanatory Memorandum to the Native Title Amendment Bill 1997*

The requirements for section 24FA protection are very complex and vary depending upon whether the non-claimant application is made by a government party or non-government party. The requirements are stricter in relation to government parties.

This Module asks you to answer some initial threshold questions to find out if section 24FA protection could apply to your proposed dealing area. Based upon your answers to the questions in Division B, you may be asked to send all the details of your proposed future act to Aboriginal and Torres Strait Islander Land Services through your NTCO.

This Module is divided into the following four divisions –

- A. Does this Module apply to my proposed future act?
- B. When the State relies upon section 24FA protection?
- C. What does it mean if section 24FA protection applies? and
- D. Effect on native title, compensation and decision-making.

A. Does this Module apply to my proposed future act?

Part 2 Some threshold questions

Following the instructions, answer the questions below to find out if this Module MAY apply to your proposed future act, ie. could section 24FA protection apply to your proposed dealing area?

Question 1

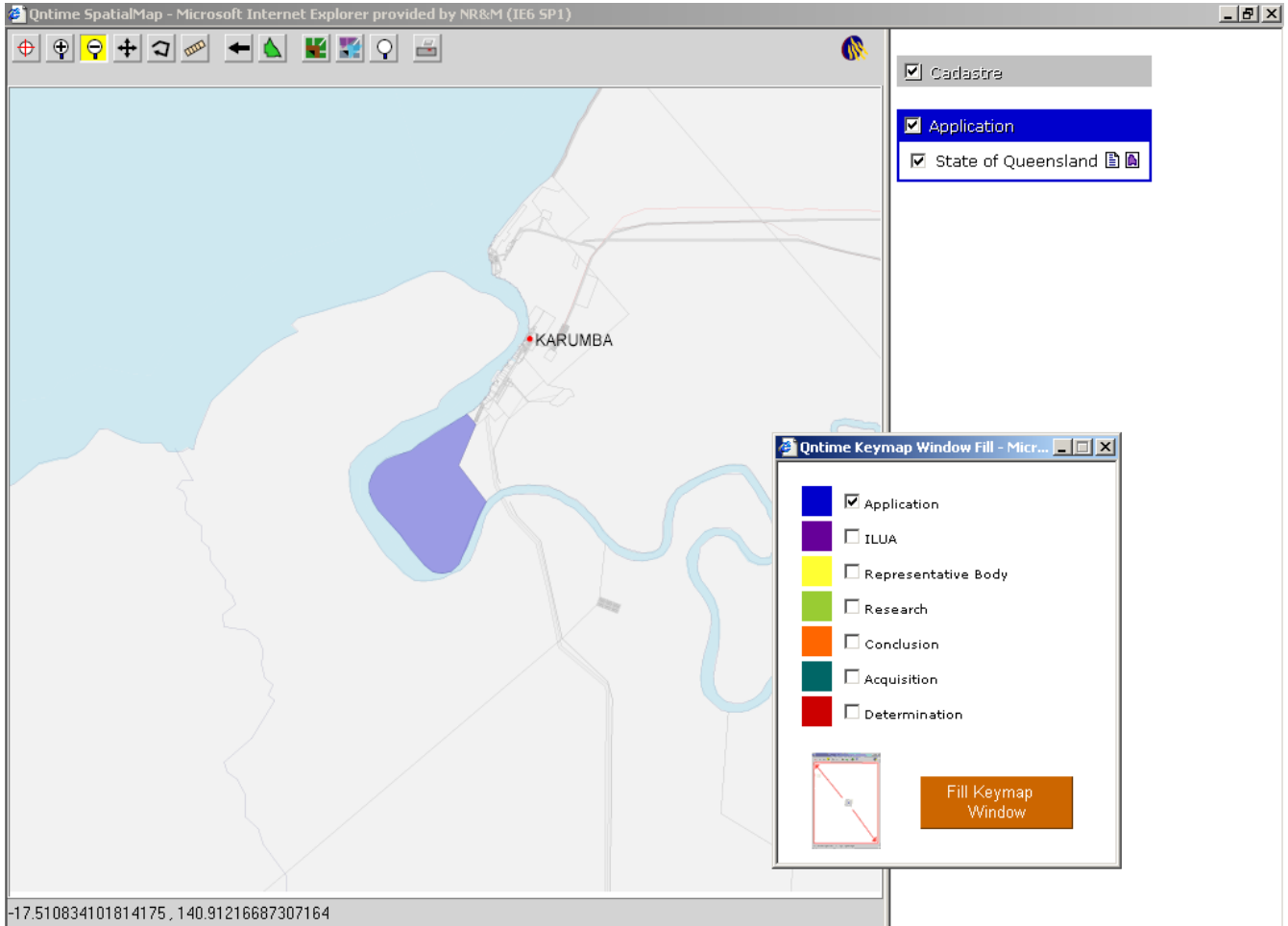
Is the proposed dealing area covered by a current non-claimant application?

Instructions

Carry out a search in QNTIME (using the native title fill button) to find out whether your proposed dealing area is covered by a non-claimant application.



Search the **application** layer in **QNTIME** for your proposed dealing area.



Queensland Government

QNTIME

[QNTIME](#) > [Native Title Application Search](#) > [Native Title Application](#)

Native Title Application

Application

Native Title Application	
Application Type:	Non claimant
NNTT Reference (keyword):	QN98/3
Federal Court Reference (keyword):	QUD6302/98
Applicant Name/s:	State of Queensland
Lodgement Date:	04/11/1998
Status:	Lodged
Status Date:	04/11/1998
Associated Reference Numbers:	
Comments / Boundary Description:	Notification status: Notification Complete
	Notification closing date: 06/09/1999

[View on Keymap](#)

Answers

If **YES**, proceed to Question 2.

If **NO**, proceed to **Module GB** as this Module does not apply.

Question 2

Has the notification period ended or about to end for the non-claimant application?



Under the NTA, the NNTT must notify that a non-claimant application has been filed with the Federal Court. The notification period is **3 months** (starting on the notification day).

Instructions

Click on the following link <http://www.nntt.gov.au/Applications-And-Determinations/Search-Applications/Pages/Search.aspx> to go to the NNTT application search page. Enter the NNTT file number (ie. the QN number in QNTIME) for the non-claimant application to go to the non-claimant application summary page. Look at the entries for the *notification status* and *notification closing date*.



Applications and Determinations

Non-claimant application summary

Application name:	State of Queensland
Application type:	Non-claimant application
State/Territory:	Queensland
Date filed:	04/11/1998
Federal Court file no.:	QUD6302/98
Tribunal file no.:	QN98/3
Status:	Active
Approx area size:	10.83863 sq km
Area description:	Karumba, Burketown region, Gulf of Qld
ATSIC region(s):	Gulf & West Queensland Indigenous Regional Council
Representative A/TSI Body area(s):	Carpentaria Land Council Aboriginal Corporation
Local government region(s):	Carpentaria Shire Council
Applicants' representative:	Crown Law
Notification status:	Notification Complete
Notification closing date:	06/09/1999
In mediation:	No
Case manager:	Rosemary Pearse

If the notification status says "complete" this means that the notification period has ended. The notification closing date is the date on which the notification period ends.

Answers

If **YES**, this Module MAY apply to your proposed future act. Please send all details of your proposed dealing to Aboriginal and Torres Strait Islander Land Services via your NTCO.

If **NO**, this Module MAY apply to your proposed future act. However, it is not until the notification period has ended that the requirements necessary to assess whether section 24FA protection applies to the proposed dealing area can be considered. You will need to make a decision either to –

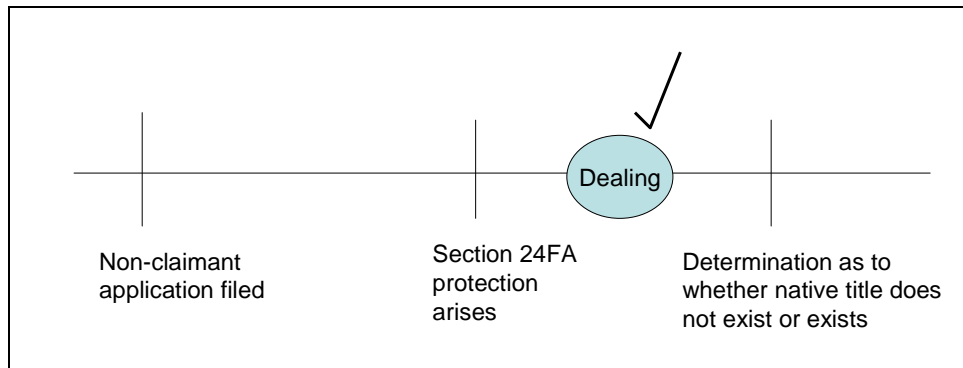
- (1) wait for the notification period to end; or
- (2) continue to work through the batting order in this Chapter and proceed with your proposed future act under another Module.

B. When the State relies upon section 24FA protection?

Part 3 When the State relies upon section 24FA protection

As noted in Part 1, a major purpose of section 24FA is to ensure the validity of future acts prior to a determination being made.

Once the section 24FA protection arises, the State may rely upon the protection to progress a land or resource dealing (future act). That is, the State does not require the Federal Court to make a determination.



Therefore, once the future act is done and the need for the protection ceases, it is a matter for the applicant if they wish to continue with the non-claimant application.

Where the effect of the future act on native title is extinguishment, a conclusion is entered into QNTIME.

C. What to do if section 24FA protection applies

Part 4 Aboriginal and Torres Strait Islander Land Services has advised that section 24FA protection applies to the proposed dealing area

If you are reading this Part, you have received advice from Aboriginal and Torres Strait Islander Land Services, through your NTCO, that section 24FA protection applies to the proposed dealing area.



Section 24FA protection applies in relation to the proposed dealing area at a particular time only if ALL of the relevant requirements are satisfied at that time. These requirements may be satisfied on one day but not the next day. **Therefore Aboriginal and Torres Strait Islander Land Services' advice is only good as at the date of the advice. On the day that you do the dealing, you will need to check with Aboriginal and Torres Strait Islander Land Services that the requirements are still satisfied.**

For example, one of the requirements of section 24FA protection is that the non-claimant application upon which it is based has not been dismissed, withdrawn or discontinued. On the day Aboriginal and Torres Strait Islander Land Services provides the advice the non-claimant application may be current but it may have been subsequently dismissed or withdrawn which affects the outcome of the advice and your ability to rely upon this Module.



If your proposed dealing area is subject to section 24FA protection, your proposed future act will be valid in relation to native title.

There are **no** procedural rights that must be provided to the native title parties. You should now complete your Native Title Assessment Form – **Annexure 7.1**.



If your proposed dealing area is NOT subject to section 24FA protection proceed to **Module GB**.

D. Effect on native title, compensation and decision-making

Part 5 What is the effect on native title of an act done under section 24FA protection?

The proposed future act will extinguish any native title rights and interests to the extent of any inconsistency at common law. For example, if your proposed future act is the grant of freehold, then native title will be wholly extinguished over the area covered by the grant.

Part 6 Compensation

Compensation for the effect of the future act on native title rights and interests is payable under section 24FA of the NTA if there is a successful application for compensation. Compensation is payable by the State where the act is attributable to the State.

Part 7 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 this Module, you provide all details about your proposed future act to Aboriginal and Torres Strait Islander Land Services 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, Aboriginal and Torres Strait Islander Land Services must be contacted for advice.

