

Module GD

Section 24GD

Future acts permitting off-farm activities that are directly connected to primary production activities

DOES THE PROPOSED FUTURE ACT FIT WITHIN THIS MODULE?

This Module applies if your proposed future act is an act that permits off-farm activities that are directly connected to primary production activities on a freehold estate, agricultural lease or pastoral lease.

Off-farm activities involve the carrying on of **grazing** or gaining of access to or taking of **water**.

For this Module to apply, your proposed future act must not fall within a preceding Module.

If your proposed future act does not permit the carrying on of grazing or gaining access to or taking water, then this Module does **not** apply. Proceed to **Module GE**.

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Part 1 What is section 24GD?

Section 24GD applies to your proposed future act if it **permits** or **requires** the carrying on of -

- **grazing;**

OR

- an activity consisting of, or relating to, gaining access to or taking **water**,

on an **area adjoining or near** the area covered by a **freehold estate, agricultural lease or pastoral lease** granted on or before 23 December 1996.



However, your proposed future act must be **directly connected to a primary production activity** currently carried out on the freehold estate, agricultural lease or pastoral lease.

Part 2 Steps for using this Module

Step 1

If there is a determination of native title over your proposed dealing area that recognises that the native title holders have **exclusive possession** of the land and/or waters, this Module does NOT apply.



You will now need to consider whether your proposed future act falls within Module GE. Proceed to **Module GE**.



QNTIME

Check **QNTIME** to see if there is a determination that native title exists over the proposed dealing area, ie. the near or adjoining area. You will need to read the determination to see if it recognises exclusive possession over your proposed dealing area.

If you are not sure if the determination recognises exclusive possession over your proposed dealing area, provide all details to Indigenous Services through your NTCO.

IF there is no determination of native title go to Step 2.

IF there is a determination but it does not recognise exclusive possession over the proposed dealing area go to Step 2.

Step 2

Proceed to **Part 3** to consider whether your proposed future act meets all the requirements for this Module to apply.

This Module is divided into the following 3 divisions –

- A. Future acts permitting off-farm activities;
- B. Definitions; and
- C. Effect on native title, compensation and decision-making.

Division A. Future acts permitting off-farm activities

Part 3 Is my proposed future act an act that permits off-farm activities?

For your proposed future act to be an act permitting off-farm activities under section 24GD it must satisfy ALL of the following requirements -

Requirement 1

The proposed future act must take place on an area **adjoining** or **near** the area covered by –

- a **freehold estate** whilst that estate exists;
- OR
- an **agricultural lease** or a **pastoral lease** which is still in force (including as renewed on one or more occasions),

validly granted **on or before 23 December 1996**.



“freehold estate”, “agricultural lease” or “pastoral lease”

Refer to **Part 4** for definitions of these terms.

“adjoining” or “near”

Refer to **Part 5** for definitions of these terms.

“validly granted”

The grant of the lease or freehold estate must be valid under State legislation and in relation to native title.

- the carrying on of **grazing**;



“grazing”

Refer to **Part 6** for a definition of grazing.

OR

- an activity consisting of, or relating to, gaining access to or taking **water**.



“gaining access to or taking water”

Refer to **Part 7** for a definition of gaining access to or taking water.

AND

Requirement 3

The proposed future act is **directly connected to the carrying on of any primary production activity** on the area covered by the freehold estate, agricultural lease or pastoral lease.



“primary production activity”

Refer to **Part 8** for a definition.

Examples

Mrs Sally Somercote is the lessee of a pastoral lease on which she carries out grazing. Sally has applied to the State for a permit to occupy to graze cattle over an area adjoining her lease, as she would like to increase her herd of cattle. This is an off-farm activity directly connected to the primary production activity being undertaken on the pastoral lease.

Mr James McFly is the lessee of an agricultural lease on which he grows crops. James needs an alternative water supply to ensure that his crops are well watered. James has approached the State to find out whether he can apply for a licence to take water from a nearby watercourse. This is an off-farm activity directly connected to the primary production activity being undertaken on the agricultural lease.

AND

Requirement 4

The proposed future act does not prevent native title holders in relation to land or waters in the area in which the activity will be carried on from having reasonable access to the area.

AND

Requirement 5

The proposed future act is NOT –

(a) the grant of a **lease**;

OR

(b) an act that confers a right of **exclusive possession** (ie. possession against the rights of all others) over the land or waters.



If your proposed future act does not satisfy ALL of the above requirements you must consider whether your future act falls within **Module GE**. Proceed to **Module GE**.



If your future act satisfies ALL of the above requirements then it may proceed under section 24GD of the NTA and will be valid in relation to native title.

You will now need to take the following steps –

Step 1

Complete your Native Title Assessment Form – **Annexure 7.1**.

Step 2

Provide a notification and an opportunity to comment to the relevant native title parties, in accordance with **Annexure 7.2 and Annexure 7.3**.

B. Definitions

Part 4 What is a freehold estate, agricultural lease or pastoral lease?

Freehold estate

A freehold estate includes an estate in fee simple, a deed of grant of land, etc.

Agricultural lease or pastoral lease

Agricultural and pastoral leases are leases that are granted for agricultural or pastoral purposes, respectively. For the purposes of section 24GD, it does not matter whether the lease is a non-exclusive lease or an exclusive lease, ie. a PEPA.

Agricultural lease

A lease is an agricultural lease if it –

- (a) permits the lessee to use the land or waters covered by the lease solely or primarily for agricultural purposes (which includes the planting and growing in the land of trees, vines or vegetables) NB. An agricultural lease also includes a lease that permits the lessee to use the land or waters covered by the lease solely or primarily for aquacultural purposes¹;

OR

- (b) contains a statement to the effect that it is solely or primarily an agricultural lease or that it is granted solely or primarily for agricultural purposes.

Example

Agricultural leases

- an agricultural farm

Pastoral lease

A lease is a pastoral lease if it –

- (a) permits the lessee to use the land or waters covered by the lease solely or primarily for:
- (i) maintaining or breeding sheep, cattle or other animals; or
 - (ii) any other pastoral purpose;

OR

- (b) contains a statement to the effect that it is solely or primarily a pastoral lease or that it is granted solely or primarily for pastoral purposes.²

Examples

Pastoral Leases

- Term lease for pastoral purposes
- Pastoral holding
- Grazing Homestead Perpetual Lease
- Special lease for grazing purposes

¹ Section 247, NTA

² Section 248, NTA

Part 5 What is a near or adjoining area?

Your proposed future act must be done on an area **adjoining or near** a freehold estate, pastoral lease or agricultural lease.

Adjoining

The Macquarie Dictionary defines **adjoining** as “bordering; contiguous”.

The land or waters should share a common boundary with the freehold estate, agricultural lease or pastoral lease.

Please refer to Diagram 1 in **Part 6**.

Near

The Macquarie Dictionary defines **near** as including “close; near by; at, within, or to a short distance.”

Common sense must guide whether the area can be said to be *near* to the freehold estate, agricultural lease or pastoral lease. For example, what is near in a rural area may be different to what is near in a town area.

Please refer to Diagram 2 in **Part 7**.

Part 6 What is carrying on a grazing activity?

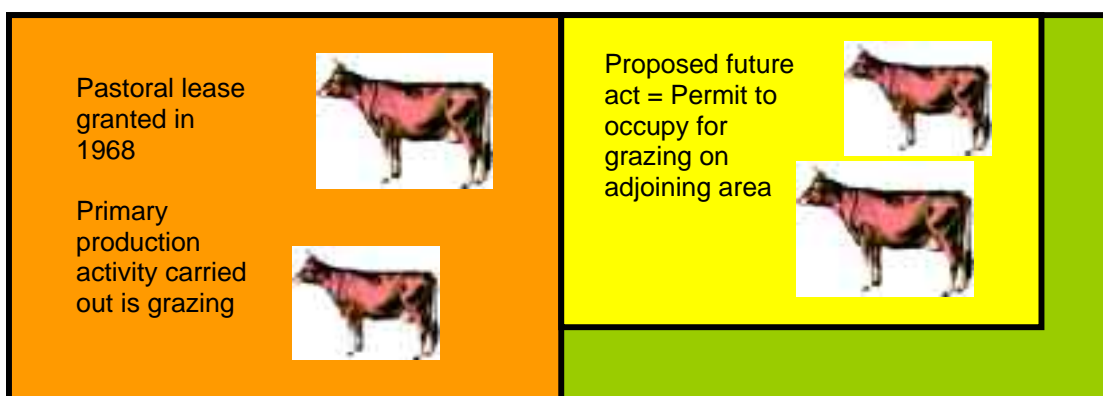
Your proposed future act must permit or require the carrying on of a grazing activity.

Examples

The grant of a permit to occupy under the *Land Act 1994* to graze cattle in an area adjoining a pastoral lease where cattle are also grazed. Please see **Diagram 1** below.

The grant of stock grazing permit under the *Forestry Act 1959* to graze cattle on part of the adjoining State Forest.

Diagram 1



Part 7 What is gaining access to or taking water?

Your proposed future act must permit or require an activity consisting of, or relating to, gaining access to, or taking water.

Examples

Gaining access to water

The grant of a development approval under the *Integrated Planning Act 1997* to establish facilities associated with an aquaculture project where the operation is located on freehold land and the facilities to be approved are located in the adjoining river.

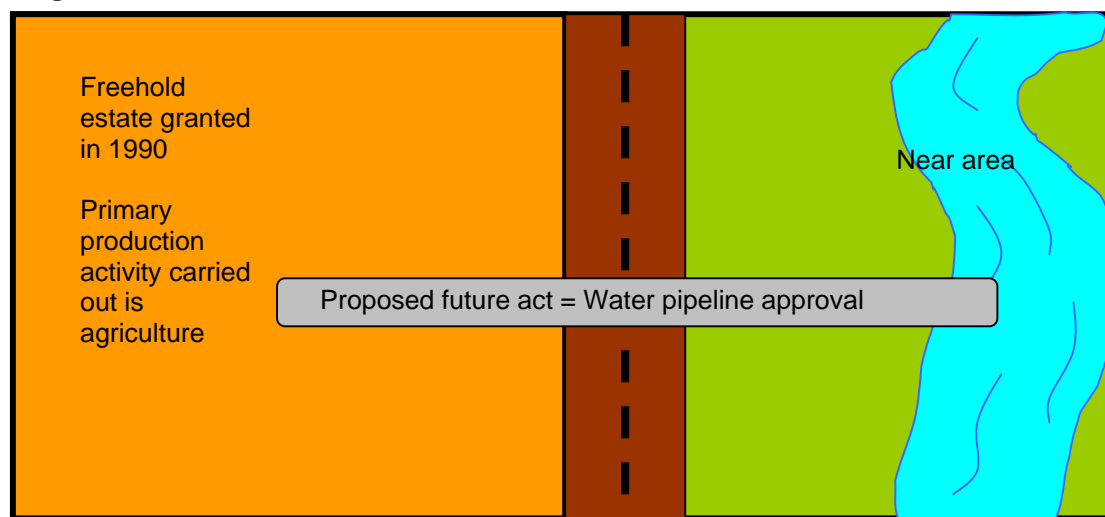
Taking water

The grant of a development approval under the *Integrated Planning Act 1997* to construct works to take water from an area adjoining or near a pastoral lease to water stock grazing on that pastoral lease.

The conferral of rights to construct a water pipeline to take water from an area that is near a freehold estate, where the water is required for the irrigation of crops on the freehold estate.

Please see **Diagram 2**.

Diagram 2



Part 8 What is a primary production activity?

Ordinary meaning of primary production

In addition to the below definitions, “primary production activity” also includes activities that fall within the ordinary meaning of primary production.

A primary production activity can be described as any activity involved in the growing,

producing, maintaining or extracting of natural resources.³ For example, natural resources would include all naturally occurring materials, eg. all plants and other living organisms, which are capable of economic exploitation.⁴

IMPORTANT

The definition of primary production activity specifically **excludes mining**. In most cases quarrying will be mining under the definition of “mine” under the NTA. Please refer to **Annexure 8.6**.

A primary production activity is defined to include the following –

(a) cultivating land;

Definition under the Explanatory Memorandum

The preparation and use (including watering, fertilising or spraying) of soil for crops, animal pasture and market gardening and the raising and production of plants, including harvesting.

(b) maintaining, breeding, agisting animals;

Definitions under the Explanatory Memorandum

▪ *Animals*

The word “animals” includes reptiles, birds and insects (eg. crocodiles, poultry, emus and bees).

▪ *Maintaining, breeding*

Maintaining and breeding animals could be for a number of purposes, such as selling them or their bodily produce (including natural increase) or maintaining them for tourism purposes.

▪ *Agistment*

Agistment of animals would ordinarily mean taking in and feeding or pasturing animals for a fee.

(c) taking or catching fish or shellfish;

Definitions under the Explanatory Memorandum

Shellfish include oysters and crustacea (such as crabs and yabbies).

(d) forest operations;

Definition under section 253 of the NTA

- the planting or tending, in a plantation or forest, of trees intended for felling; or
- the felling of such trees.

³ Paragraph 9.13, Explanatory Memorandum to the *Native Title Amendment Bill 1997*

⁴ Paragraph 9.14, Explanatory Memorandum to the *Native Title Amendment Bill 1997*

(e) horticultural activities;

Definition under section 253 of the NTA

This includes -

- propagation or maintenance, as well as cultivation; or
- propagation, maintenance or cultivation –
 - of seeds, bulbs, spores or similar things; or
 - of fungi; or
 - in environments other than soil, whether natural or artificial.

(f) aquacultural activities; and

Definition under the Explanatory Memorandum

Aquaculture means breeding, keeping and harvesting fish or shellfish and the propagation, maintenance, cultivation and harvesting of aquatic plants.

(g) leaving fallow or de-stocking any land in connection with the doing of any thing that is a primary production activity.

Definitions under the Explanatory Memorandum

This recognises that primary production may require land to be left uncultivated or de-stocked for periods of time.

Division C. Effect on native title, compensation and decision-making

Part 9 Does the non-extinguishment principle apply?

Yes. The non-extinguishment principle applies to all future acts done under section 24GD.

This means that native title rights and interests affected by the doing of the future act continue to exist and are not extinguished. However, while the future act exists, those native title rights and interests inconsistent with the future act are not able to be exercised or enjoyed.

Part 10 Is compensation payable for the doing of the future act?

Compensation for the effect of the future act on native title rights and interests is payable

under section 24GD if there is a successful application for compensation. Compensation is payable by the State where the act is attributable to the State.

Part 11 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 permit to occupy for grazing. By carrying out a native title assessment, you are ensuring your decision complies with the NTA.

If the decision-maker is unsure how to proceed, your NTCO must be contacted for advice. If the NTCO is unsure how to proceed, the NTCO must contact Indigenous Services for advice.

If this Module does not apply to the proposed future act,
please proceed to the next Module.

The Batting Order

