

Module GE

Section 24GE

Granting rights to take timber and quarry materials on non-exclusive pastoral leases and non-exclusive agricultural leases

DOES THE PROPOSED FUTURE ACT FIT WITHIN THIS MODULE?

This Module applies if your proposed future act permits any person (including the lessee) to –

- (a) cut and remove timber; OR
- (b) extract, obtain or remove sand, gravel, rocks, soil or other quarry materials,

from the area covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease.

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

If your proposed future act is NOT taking place on a non-exclusive agricultural lease or a non-exclusive pastoral lease, then this Module cannot apply. Proceed to **Module H**.

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Part 1 What is section 24GE?

Section 24GE of the NTA applies to your proposed future act if it permits any person (including the lessee) to -

- cut *and* remove **timber**;

OR

- extract, obtain or remove **sand, gravel, rocks, soil or other quarry materials** (provided this is not mining under the NTA),

on a **non-exclusive agricultural lease** or a **non-exclusive pastoral lease** granted on or before 23 December 1996 and still in force (including as renewed on one or more occasions).

This Module is divided into the following three divisions –

- A. Acts permitted under section 24GE;
- B. Definitions; and
- C. Effect on native title, compensation and decision-making.

Division A. Acts permitted under section 24GE

Part 2 Is my proposed future act an act permitted under section 24GE?

For your proposed future act to be an act permitted under section 24GE of the NTA it must satisfy ALL of the following requirements –

Requirement 1

The proposed future act will take place on a **non-exclusive agricultural lease** or a **non-exclusive pastoral lease** (the lease).



“non-exclusive pastoral lease” and “non-exclusive agricultural lease”
Refer to Part 3 for their definitions.

AND

Requirement 4

The proposed future act is the grant of a licence, permit or authority, over the area covered by the lease, that provides a *right* to –

- (a) cut **and** remove timber;

“cut and remove timber”

Refer to **Part 4** to assess whether your proposed future act is the cutting and removing of timber.

OR

- (b) extract, obtain or remove sand, gravel, rocks, soil or other quarry materials (provided it is not mining under the NTA);

Refer to Part 5 to assess whether your proposed future act is one of the above acts.



IMPORTANT

Your proposed future act must **not** satisfy the definition of ‘mine’ under the NTA.

AND

Requirement 5

The proposed future act is **NOT** the grant of a lease.



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



If your future act satisfies ALL of the above requirements then it may proceed under section 24GE of the NTA and is 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**.

Division B. Definitions

Part 3 What is a non-exclusive agricultural lease or non-exclusive pastoral lease?

Non-exclusive agricultural lease

A lease is a non-exclusive agricultural lease if it –

- (a) (i) 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). N.B. 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

- (ii) 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;

AND

- (b) does **not** give a right of exclusive possession on the lessee or is **not** a Scheduled Interest.²

Non-exclusive pastoral lease

A lease is a non-exclusive pastoral lease if it –

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

OR

- (ii) 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 purposes³;

AND

¹ Section 247, NTA.

² s247A and s247B, NTA

³ s248, NTA

(b) does **not** give a right of exclusive possession on the lessee or is **not** a Scheduled Interest.⁴

Examples of non-exclusive pastoral leases

- Term lease for pastoral purposes
- Special lease for grazing purposes
- Pastoral holding




Part 4 What does it mean to cut and remove timber?

Your proposed future act must give both a *right* to cut timber **AND** a right to remove timber.

If there is only removal of timber without cutting or the cutting without removal, this Module does not apply. For example, the collection of deadwood lying on the ground does NOT fall within this Module as this is the removal of timber without cutting.



The following pictures are examples of cutting (pictures A and B) and removal of timber (picture C).

		
<p>A. Cutting of a standing tree</p>	<p>B. Cross cutting of a previously fallen/dead tree or branch</p>	<p>C. Removal of the cut timber from the lease area</p>

Other Examples

A government grant to a commercial operator of an authority to take a specified amount of forest product from a non-exclusive pastoral lease.⁵

The grant of a sales permit under the *Forestry Act 1959* to the lessee or a third party for the sale of timber from a non-exclusive pastoral lease which will involve the cutting and removing of timber from the lease area.

⁴ s248A and s248B, NTA

⁵ Paragraph 9.35, Explanatory Memorandum to the *Native Title Amendment Bill 1997*.

What does the term “timber” mean?

The Macquarie Dictionary defines **timber** as including -

- *wood, especially when suitable for building houses, ships, etc or for use in carpentry, joinery, etc;*
- *the wood of growing trees suitable for structural uses;*
- *the trees themselves.*

The Macquarie Dictionary includes the following in its definition for “**tree**” - *a perennial plant having a permanent, woody, self-supporting main stem or trunk, usually growing to a considerable height, and usually developing branches at some distance from the ground; any of various shrubs, bushes, and herbaceous plants, as the banana, resembling a tree in form or size.*

Therefore, **timber** includes standing or fallen trees/branches but would not include wildflowers or foliage.

What does “cutting and removing” mean?

The Macquarie Dictionary defines –

(a) **cut** as including–

- *to penetrate with a sharp-edged instrument;*
- *to divide with a sharp-edged instrument; sever; carve;*
- *to hew or saw down; fell: to cut timber;*
- *to detach with a sharp-edged instrument; lop off;*
- *to hollow out; excavate; dig: cut a trench.*

(b) **remove** as including –

- *to move from a place or position; take away; take off;*
- *to move or shift to another place or position;*
- *to move from one place to another, esp. to another locality or residence.*



For this Module to apply “remove” means to physically remove the timber off the lease area, and not moving it to another location within the lease area.

Part 5 What does it mean to extract, obtain or remove sand, gravel, rocks, soil or other quarry materials?

Your proposed future act must give a right to **extract, obtain or remove sand, gravel, rocks, soil or other quarry materials**.

“other quarry materials”

This term would include clay, stones and earth.

Examples

The grant of a sales permit under the *Forestry Act 1959* to Mr Jim McTavish to remove gravel and soil from a non-exclusive pastoral lease which is the leftover spoil from the excavation of a dam on his non-exclusive pastoral lease.

The grant of a sales permit to a landscaping business to permit the collection of stones and rocks which are lying on the surface of the land within a pastoral holding.



The activity authorised must NOT constitute mining under the NTA.

To help you assess whether the activity will be considered mining for the purposes of the NTA, you need to consider **Annexure 8.6** of these Procedures.

“**Mine**” is defined in the NTA to include –

(a) explore or prospect for things that may be mined (including things covered by that expression because of paragraphs (b) and (c)); or

(b) extract petroleum or gas from land or from the bed or subsoil under waters;

(c) quarry;

but does not include extract, obtain or remove sand, gravel, rocks or soil from the natural surface of the land, or of the bed beneath waters, for a purpose other than:

(d) extracting, producing or refining minerals from the sand, gravel, rocks or soil; or

(e) processing the sand, gravel, rocks or soil by non-mechanical means.

In summary, this means that quarrying is “mining” under the NTA where –

(a) it goes beyond the natural surface of the land;

or

(b) it does not go beyond the natural surface of the land but is done for the purpose of extracting etc minerals or processing the material by non-mechanical means is also “mining” under the NTA.

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

Part 6 Does the non-extinguishment principle apply?

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

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 7 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 this section if there is a successful claim for compensation. Compensation is payable by the State where the act is attributable to the State.

Part 8 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 sales permit to cut and remove timber. By carrying out a native title assessment, you are ensuring your decision complies with the NTA.

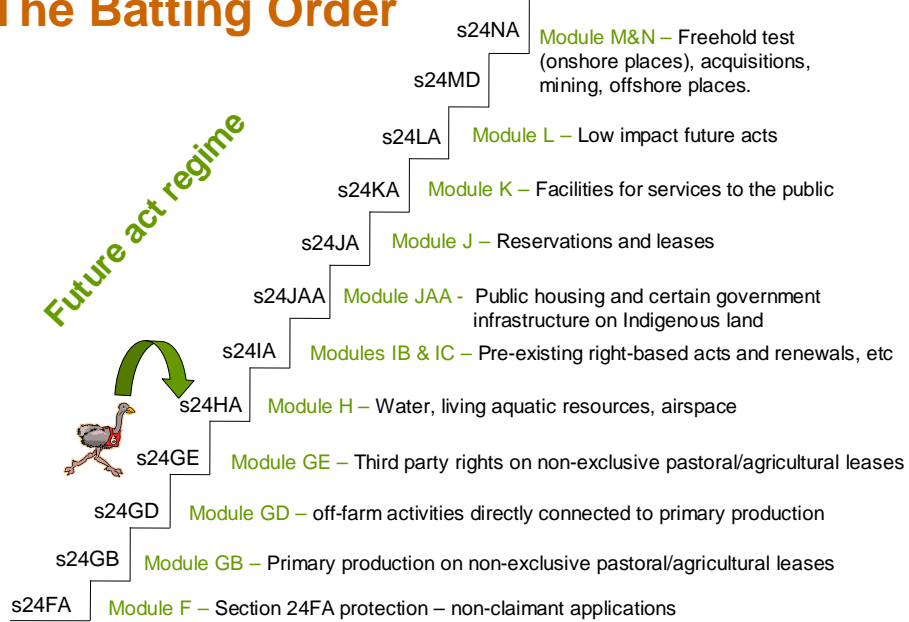
If the decision-maker is unsure how to proceed, your NTCO must be contacted for advice. If the NTCO is unsure how to proceed, the NTCO must contact Aboriginal and Torres Strait Islander Land Services for advice.

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

The Batting Order

Invalid future acts – see Module O

Future act regime



Registered Indigenous land use agreements (see Module AC)