

Module IC

Sections 24IC and 24ID

Renewals, regrants, extensions of the term of a lease, licence, permit or authority

DOES THE PROPOSED FUTURE ACT FIT WITHIN THIS MODULE?

This Module applies if your proposed future act is a renewal, regrant or extension of the term of a valid lease, licence, permit or authority.

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

If your proposed future act is not a renewal, regrant or extension of the term of a valid lease, licence, permit or authority then proceed to **Module J**.

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Part 1 What is section 24IC?

Section 24IC applies to future acts that are the renewal, regrant or extension of the term of a valid lease, licence, permit or authority.

Your proposed future act is caught by section 24IC if it is either –

1. a renewal;
2. a regrant; or
3. an extension of the term,

of a valid lease, licence, permit or authority.



The ability to use this Module wholly depends upon whether the relevant State legislation allows the lease, licence, permit or authority to be renewed or regrant or its term extended.

Examples

1. Section 156 of the *Transport Operations (Marine Safety) Regulation 2004* allows an authority (eg. a buoy mooring authority) to be renewed.
2. Section 57 of the *Fisheries Act 1994* provides that a permit cannot be renewed, but that the holder may apply for the issue of another permit. In this case, section 24IC would not apply as the legislation specifically excludes permit renewals. Therefore, the future act is the grant of a new fisheries permit, not its renewal, and you would need to go back and consider **Module H**.
3. There is no power under the *Land Act 1994* to renew a permit to occupy but there is a power to renew a term lease provided the renewal application is made after 80% of the term has run (section 158) and the renewal occurs before expiry of the current lease (section 157).

Where the lease, licence, permit or authority has **expired**, been **cancelled** or **surrendered** then this ordinarily prevents a renewal, regrant or extension of the term, unless the legislation specifically provides otherwise as shown in the following examples –

Examples

1. Section 56(2) of the *Fisheries Act 1994*, provides that an authority can be renewed if an application is made within three months after its expiry.

2. Section 50 of the *Marine Park Regulation 2006* provides that a permit shall remain in force past its expiry date (until a decision is made on a new permit) where the permittee applies for a new permit (of the same kind, in the same area) before the expiry of the old one. In this case, if a new permit is issued, it will be a regrant of the permit.

This Module is divided into the following divisions –

- A. Requirements for a renewal, regrant or extension of the term of a lease, licence, permit or authority.
- B. Is your proposed future act a renewal, regrant or extension of the term?
- C. Effect on native title, compensation and decision-making.

A. Requirements for a renewal, regrant or extension of the term of a lease, licence, permit or authority

Part 2 Categorising your proposed future act

In order to apply this Module you need to “categorise” your proposed future act. Are you renewing, regranting or extending the term of -

Category	Description
1	<p>A non-exclusive pastoral/agricultural lease?</p> <p>Examples</p> <ul style="list-style-type: none">▪ pastoral holding▪ term lease for grazing purposes
2	<p>A mining interest?</p> <p>Examples</p> <ul style="list-style-type: none">▪ a mining lease▪ a petroleum lease

Category	Description
	<ul style="list-style-type: none"> ▪ authority to prospect for petroleum and gas ▪ a prospecting permit ▪ a mining claim ▪ an exploration permit ▪ a mineral development licence ▪ a sales permit which allows the getting of quarry materials (where the quarrying goes beyond the natural surface of the land)¹
3	<p>A non-exclusive lease that neither falls into Category 1 or Category 2?</p> <p>Examples</p> <ul style="list-style-type: none"> ▪ a lease that would otherwise be a PEPA but for a special condition that stops you assessing it as a PEPA, eg. the lessee can use the lease for grazing purposes only ▪ a lease that you have assessed as not a PEPA
4	<p>A licence, authority or permit?</p> <p>Examples</p> <ul style="list-style-type: none"> ▪ buoy mooring authority ▪ occupation licence ▪ marine park permit ▪ sales permit for harvesting trees

Having now categorised your proposed future act, check the table below to see which requirements in **Part 3** you must satisfy so that your renewal, regrant or extension of the term can proceed under this Module.



You must satisfy ALL of the below requirements that are ticked for your particular category.

¹ See definition of “mine” in section 253 of the NTA.

Requirements in Part 3	Category 1	Category 2	Category 3	Category 4
1	✓	✓	✓	✓
2	✓		✓	✓
3		✓		
4	✓	✓	✓	✓
5	✓	✓	✓	✓
6	✓	✓	✓	
7	✓			
8	✓	✓	✓	✓
9	✓		✓	✓

Part 3 What are the requirements that must be satisfied for the renewal, regrant or extension of the term of a lease, licence, permit or authority?

Requirement 1

The proposed future act is the **renewal, regrant or extension of the term** of a lease, licence, permit or authority.

Refer to Division B for the rules as to when your proposed future act is a renewal, regrant or extension of the term.

Requirement 2

The lease, licence, permit or authority must meet **one** of the following conditions –



This is the lease, licence, permit or authority you now wish to renew, regrant or extend the term.

(a) it was granted on or before **23 December 1996**;

OR

(b) it was a **pre-existing right-based act** (“PERBA”) under section 24IB of the NTA (including because of the transitional provisions²). Refer to **Module IB**;

OR

(c) it is itself a **renewal, regrant or extension of the term** which proceeded under **section 24IC** (including because of the transitional provisions)³;

Example

A lease was granted in 1990. In 2000, the department renewed it for a term of 5 years. This renewal proceeded in relation to native title under section 24IC of the NTA. In this case the renewal then fell within Requirement 2(a) above as the lease being renewed was granted before 23 December 1996.

The lessee has now applied for another 5 year renewal. In this case, the renewal falls under Requirement 2(c) and not 2(a), as the lease the department now wishes to renew was itself a renewal under section 24IC of the NTA.

OR

(d) the lease, licence, permit or authority was created by an act covered by **sections 24GB, 24GD, 24GE or 24HA**. This means that the lease, licence, permit or authority was either–

(i) granted on or after 30 September 1998 AND sections 24GB, 24GD, 24GE or 24HA applied to the grant of the lease, licence, permit or authority;

² See footnote 4.

³ See footnote 4.

Example

A lease below the high water mark was granted under section 15(2) of the *Land Act 1994* on 30 January 2000 after notification and an opportunity to comment was provided to the native title parties under section 24HA. The renewal of that lease can proceed under this Module as section 24HA applied to the lease being renewed.

OR

- (ii) granted after 23 December 1996 and before 30 September 1998 AND would have fallen within sections 24GB, 24GD, 24GE or 24HA if those sections had formed part of the original NTA.⁴

Example

A water licence to take water from Emu Creek was granted on 20 January 1997, which was associated with an aquacultural activity on the adjoining agricultural lease. It was granted during the time the original NTA operated. If granted now, the permit would have fallen within the current section 24GD of the amended NTA and therefore is considered to be an act covered by section 24GD. The renewal of this licence can proceed under this Module.

Requirement 3

The earlier right to mine was created **on or before 23 December 1996**.



Earlier right to mine

The “earlier right to mine” means the original grant, ie. the first grant, of the right to mine. For example –

- (a) a mining lease was granted in 1974 and was renewed in 2004 for 30 years in accordance with section 24IC of the NTA. When it is due to be renewed in 2034, the “earlier right to mine” for the purpose of this requirement is the 1974 grant;
- (b) a sales permit for quarrying was granted in 1994 for five years after the right to negotiate process had been complied with. Each time its term is extended (eg. in 2001 it was extended for a further five years, and in 2006 it was extended another five years), the “earlier right to mine” for the purpose of this requirement is the 1994 grant.

⁴ This is the time period for which the transitional provisions of the amended NTA applies. The transitional provisions (Table A – Schedule 5, Part 2, section 3) provide that the original NTA applies to future acts that took place after 23 December 1996 but before 30 September 1998 as if -

- subdivisions G to K of the NTA (disregarding paragraph 24GE(1)(f)), and any related provisions of the NTA, were included in the original NTA; and
- acts to which those Subdivisions apply were permissible future acts.

The original NTA is the NTA that commenced on 1 January 1994 and before it was amended on 30 September 1998.



If the right to mine you wish to renew, regrant or extend was first granted after 23 December 1996, then this Module does not apply. Unless Modules J, K or L apply, your proposed dealing will fall within Module M.

Requirement 4

The lease, licence, permit or authority (that you are renewing, regranting or extending the term) is **valid**.

“valid”

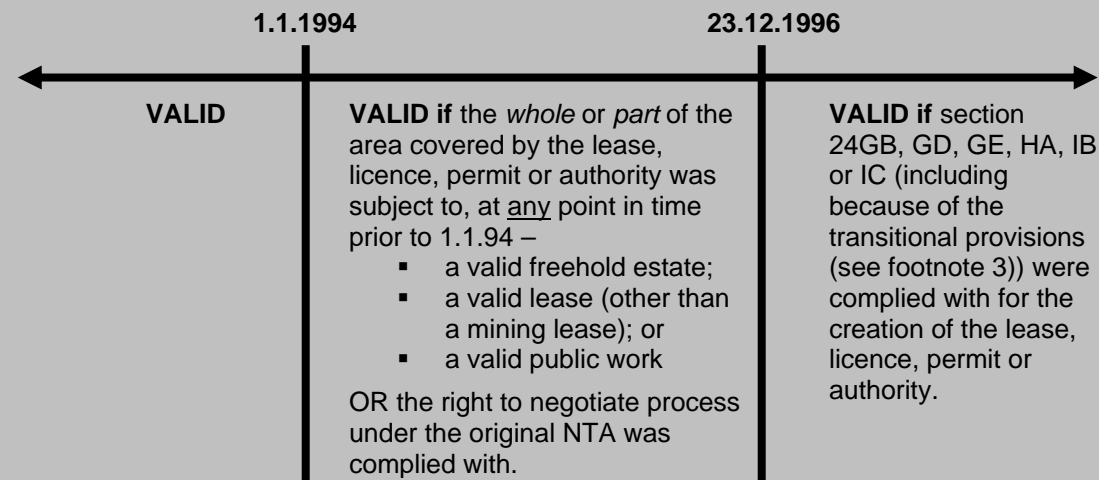
The lease, licence, permit or authority must be valid under State legislation and in relation to native title.

Valid under State legislation

It will not be valid under **State legislation** if there was no power under legislation to grant it.⁵

Valid in relation to native title

In relation to whether it is valid in relation to **native title**, consider the following timeline. It is based upon the date it was created (ie. the date of grant and for **Requirement 2(c)** the date of renewal, regrant or extension of the term).



Requirement 5

The proposed dealing area must be an **area that is or was covered by the lease, licence, permit or authority**.

⁵ However, an act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate an act that fails to comply with the condition – McHugh, Gummow, Kirby and Hayne JJ in *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at [91] cited in *Neowarra v State of Western Australia* [2003] FCA 1402 at [436].



The proposed dealing area can be **smaller** than the area covered by the lease, licence, permit or authority PROVIDED the proposed dealing area is within the '**boundaries**' of the lease, licence, permit or authority.



This Module does not allow the **amalgamation/consolidation** of two or more leases, licences, permits or authorities by granting one lease, licence, permit or authority over the same or smaller area.

Requirement 6

The renewal, regrant or extension of the term does **NOT** create a **greater** proprietary interest in the land/waters than the interest created by the lease, licence, permit or authority you wish to renew, regrant or extend.

What is a proprietary interest?

A proprietary interest is a right of control over property. This may include the right of ownership and/or possession. For example, if you are the owner of land you have a proprietary interest in that land as you control what happens on that land. A lessee may have certain proprietary interests as they have a right of possession over the property and control to an extent what occurs on that property in accordance with their lease. Thus, the lessee has a lesser proprietary interest than an owner of land.

A proprietary interest can be contrasted with a right to use an area. The holder of a fishing licence does not have the right to control or exclude others from the area where he/she is fishing, ie. the permit holder does not have a proprietary interest but only a right to use a specified area to take particular fish. A person who buys a ticket for the bus has the right to use a seat on that bus but does not have a right of possession or ownership over that seat.

Examples

- (a) The conferral of a right of exclusive possession, ie. possession against the rights of all others, where there was no right of exclusive possession before, creates a greater proprietary interest.
- (b) If the term of the proposed lease, licence, permit or authority is greater than the term of the lease, licence, permit or authority you wish to renew, regrant or extend, there is no greater proprietary interest created.
- (c) The regrant of a lease as two or more separate leases does not create a greater proprietary interest.
- (d) The renewal of a mining lease permitting the mining of an additional mineral (where not permitted under the original lease) would create a greater proprietary interest.

(e) There is no greater proprietary interest created, if the renewal of a non-exclusive pastoral or agricultural lease permits the *addition* of a primary production activity or activity associated with or incidental to a primary production activity (provided the majority of the lease is being used for primary production activities) (see **Module GB** for definitions and examples).

Requirement 7

IF the lease you wish to renew, regrant or extend –

- (i) is a non-exclusive **pastoral lease**; and
- (ii) covers an **area greater than 5000 hectares** of which the majority must be or have been used for pastoral purposes,

the renewal, regrant or extension must NOT have the effect that the majority of the lease area is to be used for **non-pastoral** purposes.

Requirement 8

If the lease, licence, permit or authority you wish to renew, regrant or extend contained a **reservation or condition** for the **benefit of Aboriginal peoples or Torres Strait Islanders**, that reservation or condition must be repeated in the renewal, regrant or extension.

Requirement 9

If the lease, licence, permit or authority you wish to renew, regrant or extend did NOT permit **mining**, the renewal, regrant or extension must also NOT permit mining.



Step 1 Have you satisfied all the requirements for your category of proposed future act?

IF YES, go to **Step 2** for the procedural rights (if any) that apply.

IF NO, you must consider whether your proposed future act falls within **Module J**. Proceed to **Module J**.



Step 2

The following table sets out the procedural rights (if any) that apply to each category.

Category	Subcategory	Procedural rights	Actions
1	(a) The term of the lease is being extended (ie. it is longer than the preceding term) or the new term is perpetual	<p>Option 1 - The section 24MD(6B) process applies.</p> <p>The process is as follows-</p> <p><i>Notification</i></p> <p>The required notification is given by the State to:</p> <ul style="list-style-type: none"> ▪ any native title representative body in the area; ▪ all registered native title bodies corporate (“RNTBC”); and ▪ all registered native title claimants (“RNTC”). <p><i>Objection period</i></p> <p>Any RNTBC or RNTC has 2 months to object to the doing of the act in so far as it affects their interests.</p> <p><i>Consultation</i></p> <p>The State must then consult with all objectors in order to try to minimise the impact of the act on native title and access to the land or waters concerned.</p> <p><i>Hearing by an independent body – Land Court</i></p> <p>The objector can require the objection be determined by the Land Court. The Court’s determination can only be disregarded if -</p> <ul style="list-style-type: none"> ▪ the State Minister who has responsibility for Indigenous Affairs is consulted and that Minister’s views are taken into account; and ▪ it is in the interest of the State not to comply with the determination. 	<p>You will need to provide all details to Aboriginal and Torres Strait Islander Land Services through your NTCO.</p> <p>Remember to first enter a research boundary and any relevant research items into QNTIME (Annexure 7.11)</p>
		<p>Option 2 - If you do not wish to proceed under Module IC, you could consider the options of a registered ILUA (Module Q) or the making of a non-claimant application (Module R).</p>	<p>Read Module Q and Module R.</p>

Category	Subcategory	Procedural rights	Actions
	(b) If (a) does not apply	No procedural rights	Complete your native title assessment form and proceed with the dealing under Module IC .
2	(a) The term of the proposed right to mine is longer than the term of the earlier right to mine AND / OR additional rights are created in connection with the proposed right to mine that were not created in connection with the earlier right to mine	Option 1 - The right to negotiate process applies – Proceed to Module P .	You will need to provide all details to Aboriginal and Torres Strait Islander Land Services through your NTCO. Remember to first enter a research boundary and any relevant research items into QNTIME (Annexure 7.11)
		<p>IMPORTANT A change in the quantity allowed to be taken from the area covered by the earlier right to mine may constitute a new right depending upon the wording of the relevant term in the earlier right to mine.</p> <p>For example, if a sales permit for quarrying stated a maximum or exact quantity (eg.10 000 cubic metres within the 12 month term), then a new right would be created if the quantity was increased for the extension (eg.20 000 cubic metres within the extended 12 month term). In contrast, if the earlier right to mine only stated a minimum quantity, then no new right would be created if the quantity allowed to be taken was increased for its extension or renewal.</p>	
		Option 2 - If you do not wish to proceed under Module IC, you could consider the options of a registered ILUA (Module Q) or the making of a non-claimant application (Module R).	Read Module Q and Module R .

Category	Subcategory	Procedural rights	Actions
	(b) If (a) does not apply	No procedural rights	Complete your native title assessment form and proceed with the dealing under Module IC .
3	Not applicable	No procedural rights	Complete your native title assessment form and proceed with the dealing under Module IC .
4	Not applicable	No procedural rights	Complete your native title assessment form and proceed with the dealing under Module IC .

B. Is your proposed future act a renewal, regrant or extension of the term?

Part 4 Test for whether your proposed future act is a renewal, regrant or extension of the term

The test for whether your proposed future act is a renewal, regrant or extension of the term is –



Does the relevant State legislation specifically provide that the lease, licence, permit or authority can be renewed, regranted or the term extended?

IF NO, you have NOT satisfied Requirement 1 of **Part 3** of this Module.

Example

Section 57 of the *Fisheries Act 1994* provides that a permit cannot be renewed, but that the holder may apply for the issue of another permit. In this case, the proposed future act is the grant of a new permit and not its renewal.

IF YES and there will be **NO gap in time** between the expiry/surrender/cancellation of the lease, licence, permit or authority and its renewal, regrant or extension of the term, you have satisfied **Requirement 1** of **Part 3** of this Module.

Examples

- A pastoral lease was granted to Harold Holiday in 1964 for a term of 40 years. In April 2004, Harold applied, under section 158 of the *Land Act 1994*, for the renewal of the lease. Harold knew that if the lease was not renewed before it expired, his right to possession of the land would end on the day the lease expires. On 24 September 2004, before the lease was due to expire, the lease was renewed.
- The cancelling of a licence to replace it with the same (but new) interest. For example, where new legislation cancels licences and replaces them automatically with the equivalent licence under the new legislation. In this case, **Requirement 1** of **Part 3** of this Module is satisfied as this action constitutes a regrant.

IF YES and there will be a **gap in time** between the expiry/surrender/cancellation of the lease, licence, permit or authority and its renewal, regrant or extension of the term, you need to consider whether the State legislation allows for a gap in time -

- If the State legislation does NOT ALLOW a gap in time or is SILENT on whether a gap in time is allowed, then this Module does NOT apply.

Example – no gap in time allowed

The *Land Act 1994* provides that –

- (a) unless a lease is renewed before it expires, the right of the lessee to possession of the land ends on the day the lease expires (section 157); and
- (b) if it appears the lease will expire before a renewal application has been finalised, the Minister may extend the term of the lease (ie. the current lease) for periods of no longer than one year until the application is finalised (section 164). N.B. The extension may be able to proceed under Module IC.

Examples – silent on whether a gap in time is allowed

Section 156 of the *Transport Operations (Marine Safety) Regulation 2004* allows an authority (eg. a buoy mooring authority) to be renewed but is silent when that renewal must take place.

Under section 35 of the *Forestry Act 1959*, the Chief Executive may from time to time extend the term of a stock grazing permit which has been fixed for a term of less than seven years, as long as the fixed term and the extended terms do not exceed seven years.

- If the State legislation ALLOWS a gap in time, then you have satisfied **Requirement 1 of Part 3** of this Module.

Examples - gap in time allowed

Section 56(2) of the *Fisheries Act 1994* provides that an authority (other than a permit) can be renewed if an application is made within 3 months after its expiry.

The Minister is able to cancel a licence or permit or forfeit a lease for non-payment of rent under sections 196 and 234 of the *Land Act 1994*. However, the Minister is subsequently able to reinstate (regrant) the cancelled licence or permit or forfeited lease if all the rent is paid or there was a reasonable excuse for the non-payment of the rent under sections 198 and 237 of the *Land Act 1994*.



Parties

The applicant for the renewal, regrant or extension of the term will need to be the lessee, licensee, permittee or holder of the authority of the lease, licence, permit or authority to be renewed, regranted or term extended.

Conditions

The **conditions** of the renewal, regrant or extension of the term (“the new grant”) do not necessarily need to be exactly the same as under the lease, licence, permit or authority you wish to renew, regrant or extend. For example –

- the amount charged for rent may be different under the new grant;
- the new grant may be over a smaller area (but not a larger area); or
- the new grant may be for a longer term.

Purpose

The general **purpose** of the grant must stay the same, ie. if the lease you wish to renew is a lease for pastoral purposes then the new grant cannot be a lease for residential purposes.

Example

A pastoral lease was granted to Harold Holiday in 1961 for a term of 40 years. In 1953, the lease was transferred to Giovani Foresta. Giovani has applied for the renewal of the lease but has requested that the new lease be transferred into his grandson’s name, Anthony Foresta. Giovani was advised by the department that the rent would be increased if the lease was renewed. On expiry of the old lease, the lease was renewed in Anthony’s name on the same terms and conditions, except that the rent charged was at a higher rate.

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

Part 5 Does the non-extinguishment principle apply?

Yes, the non-extinguishment principle applies to all future acts that proceed under this Module. 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 that are inconsistent with the future act are not able to be exercised or enjoyed.

Part 6 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 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 renew a licence. 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.

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

The Batting Order

