



Applying for Registration of a Body Corporate Agreement— Explanatory Notes

Any party to a proposed indigenous land use (body corporate) agreement may, if all of the other parties agree, apply in writing to the Native Title Registrar (Registrar) for the agreement to be registered on the Register of Indigenous Land Use Agreements (Register).

As long as your application is in writing and contains all relevant information you do not need to use any specific form. Information must be provided which complies with the requirements of the:

- *Native Title Act 1993* (Cth) (NTA)
- Native Title (Indigenous Land Use Agreements) Regulations 1999 (ILUA Regulations) and
- Native Title (Prescribed Body Corporate) Regulations 1999 (PBC Regulations).

The application form available on the National Native Title Tribunal's (Tribunal) website has been developed to assist applicants in applying for registration of a body corporate agreement. Whilst completion of this form is not compulsory, it is preferred.

These explanatory notes contain:

- General information regarding the registration of body corporate agreements—Section 1
- Notes to assist completing the application form—Section 2.



Section 1—General Information

When to use the body corporate agreement application form

Only use this form to apply for registration of a **body corporate agreement**.

- Section 24BG of the NTA sets out the requirements for an application for registration of a body corporate agreement.
- Regulation 6 of the ILUA Regulations sets out the information and the documents which must accompany an application for registration.
- The the PBC Regulations sets out the prescribed body corporate's statutory obligations in relation to entering into an ILUA.

When filling in the application please reference relevant clauses in the agreement.

Body corporate agreements may be appropriate where:

- there are registered native title bodies corporate (RNTBC) in relation to all of the land and waters in the agreement area.

When not to use the body corporate application form

A body corporate agreement must not be made unless there is one or more RNTBC for **all** of the agreement area (s 24BC). If, for at least some of the agreement area, there is **no** determination that native title exists **and** therefore **no** body corporate has been registered on the National Native Title Register (NNTR), an 'area agreement' must be made not a body corporate agreement. If a determination that native title exists has been made in relation to the whole of the agreement area, but a body corporate has not yet been registered on the NNTR a body corporate agreement cannot be made until such time as a body corporate is registered. Separate forms are available on the Tribunal website for area agreements and alternative procedure agreements.

How your application should be set out

Please provide the information and answer the questions on the form provided.

If you need to use attachments, please make it clear which part of the application the attachments relate to.

For example: give each page of the attachment a heading which includes the ILUA name, a reference to the relevant 'PART' and question number, what the attachment is about, a page number and the total number of pages in the attachment (e.g. 'Application for Registration Burya Exco EPL63 Agreement: Attachment to PART F (30): Area description; page 2 of 3').

Assistance to prepare applications

The Registrar encourages parties to provide draft applications and accompanying documentation (including the agreement) for the purpose of providing comments in relation to the application/ agreement prior to lodgement (pre-lodgement comments).

The minimum requirement for providing pre-lodgement comments is the provision of a draft agreement and 'complete' area description, however it is preferable that a written application for registration, together with all prescribed documents/information (see below) also be provided.

Applicants are ultimately responsible for ensuring that their applications fulfil the statutory criteria by carefully examining their application, agreement and attachments in the context of the NTA and associated regulations.

If you wish to request pre-lodgement comments, please do so in writing.

Lodgement

The application form and attachments, including a **copy** of the executed agreement (the original agreement is not required) and any maps, should be addressed to the Registrar and sent to the relevant office, listed on page 5, by email, post or fax or lodged in person between 8.30am and 5.00pm.

The Registrar will assess the application and applicants will be given an opportunity to address any deficiencies identified.

Notification

Valid applications for registration of body corporate agreements will be notified for a period of one month (s 24BH). Body corporate agreements are not publicly notified.

Information: Privacy and Confidentiality

Except where required to by law, the Registrar will only use the information you provide in order to process your application for registration.

Circumstances where the Registrar is required to disclose information include where details of your application must be disclosed in a notice and to certain other parties specified by the NTA. Certain details of a registered agreement must also be entered on the Register and be available for public inspection.

Principles of procedural fairness may also require that any information or material you provide in relation to a draft application, an application, or separately to the Registrar (e.g. in relation to the registration of a related claimant application) may be given to other relevant persons or organisations for comment.

Information provided by you may also be relevant to the registration of other ILUAs and application of the registration test to claimant applications. Therefore, the information provided by you can only be kept confidential in so far as the law allows.

Representative Aboriginal and Torres Strait Islander Bodies

Any reference to Representative Aboriginal and Torres Strait Islander Bodies (RATSIBs) in this application form should be read to include any other person/s or body/bodies that may be funded under s 203FE of the NTA to perform some or all of the functions of a RATSIB—commonly referred to as ‘Native Title Service Providers’ (NTSPs).

Note: where a NTSP is performing functions ordinarily performed by a RATSIB (e.g. certification of an application), it is important to ensure that they are funded under s 203FE to perform that function.

Further Information

The following information (available on the Tribunal website) may also be of assistance:

- Body corporate agreements—guidelines for registration
- Short guide to ILUA registration
- Steps to an Indigenous Land Use Agreement
- ILUA indicative timeframe—lodgement to registration
- Requesting assistance

Tribunal contact details

Brisbane Office

Level 5, Harry Gibbs Commonwealth Law Courts
119 North Quay Brisbane Qld 4000
GPO Box 9973
Brisbane Qld 4001
Telephone: (07) 3307 5000
Freecall: 1800 640 501
Fax: (07) 4046 9050
Email: enquiries@nntt.gov.au

Cairns Office

Level 14, Cairns Corporate Tower
15 Lake Street
Cairns Qld 4870
GPO Box 9973
Cairns Qld 4870
Telephone: (07) 4046 9000
Freecall: 1800 640 501
Fax: (07) 4046 9050
Email: enquiries@nntt.gov.au

Melbourne Office

** The Melbourne Office serves clients in Victoria, Tasmania and Northern Territory.*
Level 6, Commonwealth Law Courts
305 Williams Street
Melbourne VIC 3000
GPO Box 9973
Melbourne VIC 3001
Telephone: (03) 9920 3000
Freecall: 1800 640 501
Fax: (08) 9425 1193
Email: enquiries@nntt.gov.au

Perth Office

Level 5, Commonwealth Law Courts
1 Victoria Ave
Perth WA 6000
GPO Box 9973
Perth WA 6848
Telephone: (08) 9425 1000
Freecall: 1800 640 501
Fax: (08) 9425 1193
Email: enquiries@nntt.gov.au

Sydney Office

** The Sydney Office serves clients in New South Wales, the Australian Capital Territory and South Australia.*
Level 16, Law Courts
Queens Square
Sydney NSW 2000
GPO Box 9973
Sydney NSW 2001
Telephone: (02) 9227 4000 Freecall:
1800 640 501
Facsimile: (08) 9425 1193
Email: enquiries@nntt.gov.au



Section 2—Notes to Application Form

| Part A | Application details |
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| 1. Short name of agreement | <p>Please give the agreement a short name (no more than five words) to aid future reference.</p> <p>Such a name might include the name of a party (or parties) to the agreement and/or a geographical name identifying the area covered, e.g. Burya Exco EPL63 Agreement.</p> <p>If registered, the short name will be included on the Register.</p> |

| Part B | Party details |
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| <p>2. Parties' details (s 24DH(1) NTA and Reg 6(3)(a) ILUA Regulations)</p> | <p>Print the name, address, telephone, email and facsimile number (if available) of all of the other parties to the agreement. If the party is a company/organisation, please also provide a contact name. If a party is represented, please also provide the representative's details (including the company name and a contact name where appropriate).</p> <p>Please indicate which party (or parties) is applying for registration of the agreement (the applicant). There may be more than one applicant.</p> <p>If there are more than three parties, please include their details as an attachment to the application.</p> <p>Note: the full name and contact address of each party will appear in the notice and, if the agreement is accepted for registration, on the Register. Please specify whether or not the representatives' contact details should be used for notification and appear on the Register entry.</p> |

| Part C | Mandatory parties |
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| <p>3. RNTBC/s/ (s 24BD(1) NTA)</p> | <p>The agreement must not be made unless there is a RNTBC/s in relation to all of the agreement area. All RNTBCs in relation to the agreement area must be parties.</p> |
| <p>4. Government parties (ss 24BD(2), 24EBA(1)(a)(i) and (ii), (b) and (c), 24EBA(2)–(4) NTA and Reg 6(3)(c) ILUA Regulations)</p> | <p>If the agreement makes provision for the extinguishment of native title rights and interests by surrender to government then the relevant Commonwealth, State or Territory government (relevant government) must be a party to the agreement. If they are not, the agreement cannot be registered (s 24BD(2)).</p> <p>If the agreement provides for the validation of the purported past extinguishment of native title rights and interests by surrender to government, the relevant government/s must be a party to the agreement.</p> |

| Part D | Other parties |
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| <p>5. RATSIBs or NTSPs for the area (s 24BD(4) NTA and Reg 6(3)(b) ILUA Regulations)</p> | <p>Identify any recognised RATSIB (refer s 203AD) or NTSP (refer s 203FE) that is a party.</p> |
| <p>6. Government parties (Reg 6(3)(c) ILUA Regulations)</p> | <p>If the agreement does not make provision for the extinguishment of native title rights and interests by surrender to government, the Commonwealth, State or Territory governments may still be a party to the agreement. The relevant government/s should be a party in the following circumstances:</p> <p>Validation of previous future acts</p> <p>If the agreement provides for the validation of future acts (not involving the surrender of native title) which have already been done, the relevant government/s should be party to the agreement. Once the agreement is registered on the ILUA Register:</p> <ul style="list-style-type: none"> • acts done by the Commonwealth are validated • the relevant State or Territory governments may legislate to validate the relevant acts and if they have done so the acts are valid. <p>If the relevant government/s is not party to the agreement, the intended validation may not be effective (refer ss 24EBA(1)(a)(i) and (ii), (b) and (c) and 24EBA(2), (3) and (4) NTA).</p> <p>Changing the effect on native title of an intermediate period act</p> <p>If the agreement changes the effect on native title of the validation of intermediate period acts by the Commonwealth or a State or Territory government, the relevant government/s should be party to the agreement? Intermediate period acts can only be validated under Division 2A of the NTA or relevant state/territory legislation but the effect of their validation on native title can be changed using an ILUA. If the relevant government/s is not party to the agreement, the intended altered effect on the relevant intermediate period act/s may not be effective (refer ss 24EBA(1)(a)(iii), (b) and (c) and 24EBA(6) NTA).</p> <p>Compensation</p> <p>If any person other than the relevant government is liable to pay compensation under the agreement, that person should be party</p> |

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| | to the agreement. Otherwise, the provisions in relation to compensation may not be effective. |
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| Part E Informing RATSIBs/NTSPs of intention to enter agreement | |
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| <p>7. Informing RATSIBs or NTSPs of intention to enter agreement (s 24BD(4) NTA and Reg 6(4) ILUA Regulations)</p> | <p>If there is one or more RATSIB/s or NTSP/s for any of the agreement area and none are parties to the agreement one such body must be informed by the RNTBC of its <i>intention to enter</i> into the agreement. The relevant RATSIB/s or NTSP/s may also be consulted about the agreement.</p> <p>Useful information to include in your response would be:</p> <ul style="list-style-type: none"> • whether any party that is a RNTBC has informed at least one RATSIB/s or NTSP/s of its intention to enter into the agreement • when and by which means the RATSIB/NTSP was informed (see Part J). |

| Part F | Agreement area |
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| <p>8. Complete description of agreement area (s 24BG(2) NTA and Reg 6(2)(c) and 5 ILUA Regulations)</p> | <p>External boundary</p> <p>Provide a ‘complete description’ identifying:</p> <ul style="list-style-type: none"> • the external boundaries of the agreement area, and • any areas within those boundaries that are not included in the agreement area. <p>A map of the area showing geographic coordinates must also be provided. ‘Complete description’ is defined at Reg 5 of the ILUA Regulations. If the description and map is located within the agreement itself, please indicate where the information can be found.</p> |
| <p>9. Complete description of surrender area (s 24BG(2) NTA and Reg 6(2)(d) and 5 ILUA Regulations)</p> | <p>Surrender areas</p> <p>If the agreement provides for the surrender of native title that is intended to extinguish native title rights and interests in the area, a complete description of that area, together with a map showing geographical coordinates, must also be provided.</p> <p>Lengthy written descriptions not contained in the agreement may be attached separately to the application form.</p> <p>The information provided in the section labelled <i>Agreement Area</i> will appear in the notice and, if registered, on the Register.</p> |

| Part G | Operating period |
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| <p>10. Operating period (Reg 6(3)(d) ILUA Regulations)</p> | <p>If applicable, refer to the relevant clauses in the agreement which specify the period during which the agreement will operate.</p> <p>If registered, information provided in the section labelled <i>Operating Period</i> will be included on the Register.</p> |

| Part H | Statements in the agreement |
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| <p>11. Consent to future acts (s 24EB(1)(b) NTA and Reg 6(5)(a) ILUA Regulations)</p> | <p>If the agreement contains any statements consenting to the doing of a future act or class of future acts please give the location in the agreement of the relevant statements.</p> <p>The information provided in the section labelled <i>Statements in the agreement</i> will appear in the notice and, if registered, on the Register.</p> |
| <p>12. Acts excluded from the right to negotiate (s 24EB(1)(c) NTA and Reg 6(5)(b) ILUA Regulations)</p> | <p>If the agreement contains any statements to the effect that the right to negotiate provisions of the NTA (Part 2, Division 3, Subdivision P of the NTA) will not apply to any or all of the future acts included in the agreement, please give the location in the agreement of the statement/s that provides for this.</p> <p>The information provided in the section labelled <i>Statements in the agreement</i> will appear in the notice and, if registered, on the Register.</p> |
| <p>13. Surrender intended to extinguish native title (s 24EB(1)(d) NTA and Reg 6(5)(c) ILUA Regulations)</p> | <p>If the agreement contains any statement/s to the effect that the surrender of native title under the agreement is intended to extinguish native title rights and interests, please give the location in the agreement of the statement(s) that provides for this.</p> <p>Note: the relevant government/s to which native title has been, or is to be, surrendered must be a party. If they are not, the agreement cannot be registered.</p> <p>The information provided in the section labelled <i>Statements in the agreement</i> will appear in the notice and, if registered, on the Register.</p> |

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| <p>14. Validation of future acts that have already been done invalidly (s 24EBA(1)(a)(i)–(ii) NTA and Reg 6(5)(d)–(e) ILUA Regulations)</p> | <p>If the agreement provides for the validation of future acts, or class of acts (other than intermediate period acts and the surrender of native title), whether or not subject to conditions, that have already been done invalidly, please give the location in the agreement of each statement in the agreement that provides for this.</p> <p>The information provided in the section labelled <i>Statements in the agreement</i> will appear in the notice and, if registered, on the Register.</p> |
| <p>15. Intermediate period acts affected (s 24EBA(1)(a)(iii) NTA and Reg 6(5)(f) ILUA Regulations)</p> | <p>Intermediate acts are defined in s 232A of the NTA and can only be validated under Division 2A or relevant state/territory legislation. However, the effect of their validation on native title can be changed using an ILUA.</p> <p>If the agreement provides for changing the effect on native title of the validation of an intermediate period act or class of acts please give the location in the agreement of each statement that provides for this. The information provided in the section labelled <i>Statements in the agreement</i> will appear in the notice and, if registered, on the Register.</p> |
| <p>16. Validation of the previous purported surrender of native title (s 24EBA(1) and (4) NTA and Reg 6(5)(g) ILUA Regulations)</p> | <p>If the agreement contains a statement to the effect that the surrender of native title is intended to have extinguished the native title rights and interests, please give the location in the agreement of the statement/s that provide for this.</p> <p>The information provided in the section labelled <i>Statements in the agreement</i> will appear in the notice and, if registered, on the Register.</p> |

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| 17. Any other comments about required statements in the agreement? | If necessary, use this section to provide any other comments in relation to required statements. |
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| Part I | Parts of the Register to be kept confidential |
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| 18. Confidential information (s 199E (1)–(2) NTA) | <p>Some of the details provided in the application and the agreement must appear in the notice and on the Register (refer s 24CH(2) and s 199B(1)). This information cannot be kept confidential. The Registrar may also enter any other details of the agreement onto the Register that she considers appropriate (s 199B(2)).</p> <p>If you would like any other information or documents to be kept confidential, please indicate which documents or information and where in the agreement or application they can be found. The Registrar can only keep the information confidential to the extent that the law allows.</p> |

| Part J | Document checklist |
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| <p>Documents that must accompany the application (s 24BG(2) NTA, Reg 6(2) ILUA Regulations and Reg 9(1) PBC Regulations)</p> | <p>Please note that all required documents and information must be submitted with the application. Use the checklist at Part J of the form to make sure all the required documents and information have been provided.</p> |