Your objection to a certified Area Agreement

Fact sheet 10: A guide to assist objectors who have made a ‘valid objection’

What happens now that you have made a ‘valid objection’ to an Area Agreement?

- your objection must be given to the representative body who certified the registration application. This is part of a process called procedural fairness.
- generally, the parties will also be given a copy of your objection and the chance to provide comments or information.
- the practice leader will outline the process and the timeframe for providing any information.

See also our Fact sheet No 9 Objecting to a certified Area Agreement

Procedural fairness is about giving persons, who may be affected by a decision, the chance to have their say about registration of the ILUA. As an objector you are owed procedural fairness.

You should provide all of the information that you have as early as possible in the procedural fairness process.

What is involved in the procedural fairness process?

The procedural fairness process gives:
- you the chance to provide any information about your objection;
- you the chance to see any information that is about the certification of the registration application. This would include a copy of the certification (commonly called the certificate) given by the representative body; and
- the representative body and the parties the chance to respond to your objection and any information you have provided about your objection.
Fact sheet about Indigenous Land Use Agreements

What information should you provide about the grounds of your objection?
You should provide any information or documents that support the grounds of your objection.

This may include any information that you have about the identification of persons who hold or may hold native title in the area and the authorisation of the making of the agreement.

If you consider that the information you provide is confidential, you must explain why you say this is the case. It is not enough to simply state that all or any information is confidential. The information must in fact be of a confidential nature for the delegate to treat it as such.

If the delegate agrees that your information is confidential, the delegate will ask those who are to receive a copy to keep the information confidential.

What if you need more time to provide information?
If you need more time to prepare information about your objection, you should contact the practice leader and make a request. The delegate will make a decision about your request and the practice leader will call you or write to you.

What are the conditions of registration when a valid objection is made and not withdrawn?
There are two conditions, which must be considered:

The first condition:
Whether the person making the objection has satisfied the delegate that the registration application was not properly certified.

The second condition:
This condition is about who must be a party to the agreement before it is registered. For more information about this condition see our Fact sheet No 12 The conditions for registration of Area Agreements.

The delegate must also decide if the agreement is an Area Agreement ILUA. For more information about the requirements for Area Agreements see our Fact sheet No 3 Making an Area Agreement and applying for Registration.

What issues may be relevant to the decision about the first condition? In making a decision about the first condition, the delegate may consider:

- the efforts made to identify all persons who hold or may hold native title in the agreement area and why were they reasonable;
- the decisions made by the representative body about who holds or may hold native title in the area and whether those decisions were reasonably based;
- the forum for the authorisation of the making of the agreement and whether this was appropriate;
- whether persons identified were given notice of the authorisation and whether this notice was appropriate;
- whether all the persons identified were given a reasonable chance to take part in authorising the making of the agreement;
- if authorisation occurred at a meeting, what the material says and reveals about the conduct of the persons at the meeting; and
- the decision-making process that was used to authorise the making of the agreement and whether this meets the requirements of the Act.

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**What information must and may be taken into account?**

When making a decision about registration, the delegate must take into account any information that he or she is given by the objector where a valid objection is made, and any information the certifying representative body has provided. Typically (but not always), the delegate will also take into account any information provided by the parties.

**Who can appeal the decision?**

Under s. 5 of the *Administrative Decisions (Judicial Review) Act 1977* a person adversely affected (i.e. aggrieved) by such a decision may appeal on certain grounds.

You should seek legal advice if you decide you want to appeal the decision.

**What does being ‘aggrieved’ by the decision mean?**

It means that you are affected in an adverse way by the decision.

**When will a decision be made about registration?**

After the procedural fairness process has ended, the practice leader will write to the certifying representative body, parties and the objector to inform them when the registration decision will be made.

If this date changes, the practice leader will let you know.

**Will you be told about the decision?** Yes.

The practice leader for the matter will write to you and tell you whether the agreement has been registered or not.

**Can you get a copy of the reasons for the decision?**

If you are a person ‘aggrieved’ by the decision you can get a copy of the reasons for the decision.

You must make a request to the Registrar in writing. Your request should explain why you are a person aggrieved by the decision.

Your request may be refused. If this happens the delegate will write to you setting out the reasons why.