The conditions for registration of Area Agreements

Fact sheet 12: A guide to the conditions for registration of Area Agreements

Are the conditions for registration the same for all Area Agreements?
No. The conditions differ for Area Agreements that are certified and Area Agreements that are not certified.

When can the Registrar make a decision about registration of an Area Agreement?
The law says that the Native Title Registrar (Registrar) or the delegate can only make a decision after the public and other people are notified of the agreement and the notification period ends.

Certified Area Agreements:
For Area Agreements that are certified, the delegate must wait until the end of the notification period. If no objection has been made in this period (or an objection has been made, but withdrawn), the delegate can proceed to make a decision.

Area Agreements not certified:
For Area Agreements that are not certified, where an application for a determination of native title (a native title claim) is made over any part of the agreement area during the notice period, the delegate cannot make a decision until after the native title claim has been considered for registration (this is referred to as the Registration Test). If the native title claim passes the Registration Test, the registered native title claimant for the claim must become a party to the agreement before it can be registered (see below).
What are the conditions for registration of a certified Area Agreement when there is no objection to be considered?

Whilst there are two conditions set out in the Act, the first condition is simply about the delegate being satisfied that there has been no objection made or, if one has been made, that it has been withdrawn.

The second condition is that if there is a registered native title body corporate (RNTBC) for any of the agreement area, that body must be a party to the agreement.

The delegate must also decide whether the agreement has all the necessary features of an Area Agreement ILUA. This includes deciding whether the agreement is about native title matters, whether it meets the requirements for an Area Agreement, whether it has all the necessary parties and ensuring that it does not contravene any law.

For information on the first condition of registration where an objection is made, see Fact sheet No 7 Objections to your certified Area Agreement.

What matters must be taken into account?

When there is no objection to registration, the delegate is only required to consider if there is a RNTBC in relation to the agreement area who must be a party, and whether the agreement is an ILUA.

What is a Registered Native Title Body Corporate (RNTBC)?

A RNTBC is a body that holds native title rights and interests on trust, or acts as agent for the persons who the Court decides are the common law holders of that native title. A RNTBC comes into existence after a determination of native title is made.

There will only be a RNTBC where a determination of native title has been made by the Federal Court.

When a determination occurs, the Court orders whether the native title rights and interests will be held on trust for the native title holders and if so, by whom. The Court can order that the native title rights and interests be held on trust by a RNTBC.

What happens when a RNTBC comes into existence before registration of the agreement and it is not a party to the agreement?

Sometimes, a RNTBC may not exist, either at the time the agreement is entered into or at the time when the application for registration of the agreement is lodged with the Registrar. After the agreement is lodged, however, a determination of native title may be made over part of the agreement area.

If the determination occurs before registration of the agreement and there is a RNTBC, the RNTBC will need to become a party to the agreement. This could be done by the ILUA parties entering into a deed that adds the RNTBC as a party to the agreement.

Parties should seek legal advice on the nature of the deed or any other action that may be necessary to effectively add the RNTBC as a party to the agreement.
**What are the conditions for registration of an Area Agreement that is not certified?**

There are two conditions. They are:

**The first condition:**
The following must be parties to the agreement if they exist in relation to the agreement area:
- any registered native title claimant;
- any RNTBC;
- any person, who after the notice period ends, becomes a registered native title claimant (where the application containing the claim was made during the notice period).

**The second condition:**
The delegate considers that the following requirements have been met:
- all reasonable efforts have been made (including by consulting all representative bodies) to ensure that all persons who hold or may hold native title in the agreement area have been identified; and
- all of the persons identified have authorised the making of the agreement.

Like certified Area Agreements, the delegate must also decide whether the agreement has all the necessary features of an Area Agreement ILUA.

**Who is the registered native title claimant?**
The person or persons who are the applicant for the registered claim. Their names will appear as the applicant on the Register of Native Title Claims.

At the time of registration, the delegate will consider who the registered native title claimant is, and whether they are a party to the agreement. The delegate will also be informed of any native title claims made over the agreement area during the notice period.

**What if a person becomes a registered native title claimant after the notice period?**

If a native title claim is made during the notice period and is accepted for registration, the registered native title claimant for the new claim must be a party to the agreement.

The delegate cannot make a decision about the registration of the Area Agreement before deciding whether the native title claim is accepted for registration.

**What information could be provided about the second condition?**

Information/documents about:
- what steps were taken to consult the representative bodies for the agreement area;
- what was the outcome of consulting the representative bodies, i.e. information, advice or opinions they provided;
- what other efforts were made to ensure that all persons who hold or may hold native title in the agreement area were identified;
- who were identified as persons who hold or may hold native title in the agreement area; and
- authorisation of the agreement including details of who was notified about authorisation and how, who attended the authorisation, what was the decision-making process used to authorise the making of the agreement, what was the outcome recorded and any supporting documents (public notices, attendance lists, meeting minutes etc.).

**Did you know?**

*When making a decision about registration, the delegate must take into account any information:*
- in the statements made in the application;
- provided by the representative body; and
- any information provided by any other body or person.*
What information could be provided by any representative body and/or any other body or person?

Information about:

- whether they consider that they were consulted about the persons who hold or may hold native title in the agreement area; and
- any information, advice or opinions that the representative body or other person/body may have about the persons who hold or may hold native title in the agreement area and whether the agreement was authorised in accordance with the Act.

When the Registrar considers whether all reasonable efforts have been made, what may be relevant?

The following may be relevant:

- the outcome of consulting all representative bodies for the area, including to what extent any advice/opinions/research given by the representative body were taken into account;
- the nature and extent of the efforts made to identify persons;
- who was identified as a result of such efforts as persons who hold or may hold native title in the agreement area and why; and
- actions taken and decisions made in the identification process.

What may the Registrar consider when assessing whether all the persons have authorised the making of the agreement?

The following may be considered:

- the way in which authorisation occurred and whether the process used was appropriate in the circumstances;
- whether persons were given sufficient notice of the intended authorisation and how notice was given;
- whether persons were given a reasonable opportunity to participate in the decision to authorise the making of the agreement;
- if authorisation occurred at a meeting, what the material says and reveals about the conduct of persons at the meeting; and
- the decision-making process that was used to authorise the making of the agreement and whether it meets the requirements of the Act.

For more information see our Fact sheet No 11 Authorisation of Area Agreements.

You can contact the National Native Title Tribunal (NNTT) office in your region for any further information about the matters discussed in this factsheet:

National Native Title Tribunal,
GPO Box 9973 in your region. The NNTT has offices in Brisbane, Cairns, Melbourne, Perth and Sydney.

Freecall 1800 640 501.

Information also available at www.nntt.gov.au

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All references to the Act are to the Native Title Act 1993 (Cth). References to the regulations are to either the Native Title (Indigenous Land Use Agreements) Regulations 1999 (Cth) or Native Title (Prescribed Body Corporate) Regulations 1999 (Cth).