

# Making an Area Agreement & applying for registration

## Fact sheet 3: A guide to the Native Title Act and regulations



*This factsheet is provided for general information only and on the understanding that neither the Native Title Registrar nor the Commonwealth of Australia is providing legal or any other professional advice. Appropriate professional advice relevant to your circumstances should be sought.*

### **What is an Area Agreement?**

An Area Agreement is an agreement about native title matters (and can include non native title matters) between the native title group for the agreement area and other parties.

An Area Agreement can be made even where there is no registered native title claimant for, or where no determination of native title has been made over, the agreement area.

### **Who comprises the native title group?**

*Depending on the area covered, the Native Title Group can include a registered native title claimant(s), a Registered Native Title Body Corporate(s) (RNTBC(s)) and/or persons who claim to hold native title over the agreement area and/or any representative body for the agreement area.*

### **What are the requirements for an agreement to be an Area Agreement?**

The Native Title Act (the Act) sets out requirements for Area Agreements relating to the:

- subject matter;
- area covered;
- parties; and
- legal consideration and conditions.

### **Did you know?**

*An Area Agreement cannot be made if there is a RNTBC over the entire agreement area. In these circumstances the correct agreement is a Body Corporate Agreement.*

## ***What do you need to think about before making an Area Agreement?***

Some considerations before beginning the process of making an Area Agreement are:

- What area is to be covered by the agreement?
- Is an Area Agreement the correct type of agreement to make over the proposed agreement area?
- Is there likely to be a determination of native title over the agreement area in the near future?
- Who comprises the native title group for the agreement area?
- Does the Commonwealth, State or Territory government (relevant government) have to be a party to the agreement?
- Who is the representative body for the agreement area? Can they provide you with assistance?
- How will you negotiate the agreement? Who may assist you?
- Will the registration application be certified?
- Has a party that is a member of the native title group informed the representative body of its intention to enter into the agreement?
- Who will assist you with the process of authorising the making of the agreement?

### ***Did you know?***

***The Tribunal can assist you in negotiating an ILUA. See our website for more information on negotiation assistance or call the Tribunal office in your region.***

## ***What must an Area Agreement be about?***

An Area Agreement must be about at least one of the matters provided for under the Act. Generally, Area Agreements are about one or more of the following:

- future acts that are to be done;
- future acts already done;
- the surrender of native title rights and interests;
- the manner of exercise of native title rights and interests or other rights and interests;
- the relationship between native title rights and interests and other rights and interests;
- compensation; or
- any other native title matters.

## ***Are there mandatory parties to an Area Agreement?***

Yes. The Act sets out certain persons/bodies which must be a party to an Area Agreement. The native title group must always be a party. In certain circumstances, the relevant government must also be a party. More information is provided on the next page about the persons and bodies who must be a party to an Area Agreement.

## ***Who comprises the native title group for your agreement area?***

We can assist you to understand who the native title group for the agreement area is by providing you with information kept on our Registers and databases of claimant applications, ILUAs and determinations. This information may include application schedules and register extracts about the agreement area.

## Who must be a party to an Area Agreement?

The following must be a party to an Area Agreement:

- where the agreement area is covered by a registered claim, the registered native title claimant;
- where the agreement area is covered by a determination of native title, the RNTBC;
- where the agreement area is *not wholly* covered by either a registered claim or a determination of native title, any person who claims to hold native title over that part of the unclaimed/ undetermined area and/or any representative body for that area;
- where the agreement area is *not at all* covered by a registered claim or a determination of native title, any person who claims to hold native title over, and/or any representative body for, the agreement area;
- where the agreement provides for the extinguishment of native title rights and interests by surrender or is to have the effect of validating future acts already done invalidly, the relevant government must be a party.

## Who may be a party to an Area Agreement?

In addition to the above mandatory parties, the following may be a party to an Area Agreement:

- any person who claims to hold native title in the agreement area;
- any representative body for the agreement area;
- the State, Territory or Commonwealth government; or
- any other person.

## Who is the registered native title claimant?

A search of the Register of Native Title Claims will identify the registered native title claimant/s for the area.

The registered native title claimant is the person or persons whose name appears as the applicant on the Register Extract for the Register of Native Title Claims.

We can assist by providing you with a copy of the Register Extract at your request.

### Did you know?

*The law says that at least one of the persons whose name appears on the Register of Native Title Claims must be named as a party to the agreement.*



### ***Is the agreement about future acts to be done?***

If the agreement is about future acts to be done, the terms of the agreement should include the parties' consent to those acts, not just the native title group's consent.

If the future acts consented to would be subject to the right to negotiate, the agreement must also include a statement that the right to negotiate provisions are not intended to apply.

### ***Is the agreement about future acts already done?***

If the agreement provides for the validating of future acts that have been done invalidly, the terms of the agreement should include the parties' agreement to those acts, not just the native title group's. Further, the relevant government must be a party to the agreement for the validation of the future acts to be effective.

### ***Is the agreement about the surrender of native title?***

If the agreement provides for the surrender of native title, the agreement must include a statement to the effect that the surrender is intended to extinguish native title rights and interests. The relevant government to which native title is surrendered must be a party to the agreement.

### ***How is a registration application for an Area Agreement made?***

A registration application must be in writing to the Native Title Registrar (Registrar) at the Tribunal.

A template registration application form for Area Agreements can be downloaded from the Tribunal's website.

### ***Who can make a registration application for an Area Agreement?***

Any of the parties to the agreement, with the consent of all the other parties.

### ***What documents/information must accompany the registration application?***

A registration application must be accompanied by a copy of the Area Agreement and a:

#### Signed statement from the parties

The registration application for an Area Agreement must always be accompanied by a statement from the parties that they agree to the registration application being made. The statement must be signed by or for each of the parties to the agreement. It can be included in the agreement or can be provided as a separate statement.

#### Complete description of the agreement area

A complete description of the agreement area is one that includes a:

- written description that enables identification of the boundaries of the area covered and any areas within the boundaries that are not covered; and
- map of the agreement area that contains geographic coordinates.

The description and map can be included in the agreement or in a separate document.

#### Copy of the certification or authorisation statement

A copy of the certification by all representative bodies for the agreement area or a copy of the authorisation statement must accompany your application. More information about these documents is provided later in this factsheet.



## ***What documents/information may need to accompany the registration application?***

In certain circumstances, the registration application must be accompanied by a:

Complete description of any 'surrender area' When the agreement provides for the surrender of native title rights and interests that is intended to extinguish native title, a complete description of that area (the surrender area) must be provided.

A complete description of the surrender area is one that includes a written description that enables the identification of the boundaries of the surrender area and a map of the surrender area that contains geographic coordinates.

### Copy of a Register Extract

When a registered native title claimant is a party to the agreement the registration application will need to be accompanied by a copy of the Register Extract for the registered native title claim.

### Copy of any determination(s) of native title over the agreement area

When a RNTBC is a party to the agreement, the registration application will need to be accompanied by a copy of the determination of native title made over the agreement area.

Document evidencing consultation and consent When a RNTBC is a party to the agreement, the registration application will need to be accompanied by this document.

This document is referred to as a Regulation 9 Certificate. It must contain a statement that the common law holders have been consulted about, and have consented to, the proposed decision to make the Area Agreement. It must be signed in accordance with the relevant regulations. A template of this document is included in the application form for Area Agreements, which can be downloaded from our website.

## ***Does a representative body have to be informed of the native title group's intention to enter into the agreement?***

Where a representative body is not a party to the agreement, yes. Any person that is a member of the native title group must inform at least one of the representative bodies for the agreement area of their intention to enter into the agreement. This must be done before entering into the agreement.

A registration application must be accompanied by a statement from a member of the native title group that they informed the representative body, even if the representative body is the legal representative for the native title group.

The statement can be contained in the agreement or can be provided in a separate document.

## ***Is the application certified or not certified?***

All registration applications for Area Agreements must be either certified by all representative bodies for the agreement area or accompanied by an authorisation statement. Both the certification and authorisation statement relate to the efforts made to identify all persons who hold or may hold native title in the agreement area and the decision of those persons to make the agreement.



## ***What is required for a certified Area Agreement?***

If the application for registration is certified, then all of the representative bodies for the agreement area must certify the application, i.e. if there is more than one representative body, each has to certify.

The document that is to be provided with the registration application is called the 'certificate.'

The certificate must include statements of opinion from the representative body about the efforts made to identify all persons who hold or may hold native title and about authorisation, and must set out brief reasons for stating those opinions.

The Registrar or the delegate will not test the validity of the certificate unless a person puts information before them challenging the certificate. This occurs when a person makes a valid objection to registration of a certified application for registration. For more information about this see our fact sheets on objections to Area Agreements.

## ***What is required for an Area Agreement that is not certified?***

If the application is not certified, then it must be accompanied by a statement about the efforts made to ensure that all persons who hold or may hold native title in the agreement area have been identified and have authorised the making of the agreement.

This statement must also briefly set out the grounds on which the Registrar or the delegate should be satisfied that the requirements have been met.

Whether the authorisation statement is sufficient to satisfy the Registrar or the delegate for the purpose of registration will depend on their assessment of the statement and whether information challenging the statement is put before them.

If the Registrar or the delegate forms a preliminary view that the statement may not be sufficient to satisfy the conditions of registration, the applicant will be notified of this before the application proceeds to notification.

The applicant may be asked to provide more information about the making of all reasonable efforts to ensure that all persons who hold or may hold native title have been identified and have authorised the making of the agreement.

More information about this can be found in our **Fact sheet No 11 Authorisation of Area Agreements**.

You can contact the Tribunal 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 National Native Title Tribunal has offices in Brisbane, Cairns, Melbourne, Perth and Sydney.

**Freecall 1800 640 501.**

Information also available at [www.nntt.gov.au](http://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).*