

The registration process for Body Corporate Agreements

Fact sheet 5: A guide to assist parties to understand the Native Title Registrar's processes



What are the first steps when a registration application for a Body Corporate Agreement is made?

- a case manager is appointed to manage the application and to be your point of contact;
- a delegate of the Native Title Registrar (Registrar) is appointed;
- a geospatial assessment of the map and description of the area is undertaken;
- a preliminary assessment of the registration application, the agreement and the accompanying documents is undertaken by the delegate to identify whether there are any problems; and
- a draft notice for notification of the Body Corporate Agreement is prepared by the delegate for the applicant's consideration.

What does a preliminary assessment involve?

The delegate will check that the:

- registration application includes all statements and documents;
- map and description of the agreement area are correct;
- agreement meets the requirement for it being a Body Corporate ILUA, including that the agreement is about native title, that it has all the necessary parties and that it does not contravene any law.

The Registrar can provide pre-lodgement comments and assistance to parties on their draft registration application and/or draft agreement. See our website for more information on pre-lodgement assistance or call the Tribunal office in your region.

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.

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What will happen if there are problems with the registration application and agreement?

The applicant will be informed of any problems so that they can be addressed before notification occurs.

Common problems include where:

- the application is not accompanied by the required documents or statements; and/or
- the map and description of the agreement area are not accurate and need amending. The Tribunal's Geospatial Services are able to assist with correcting any errors.

To avoid these problems, when preparing your application for registration, you should use our template application form for Body Corporate Agreements, which contains a checklist of the statements and documents that must accompany your application. The form can be downloaded from the Tribunal's website.

Also, you can seek assistance from the Tribunal's Geospatial Services to prepare your map and description of the agreement area.

Generally, the applicant will be given a short period of time to deal with problems that the delegate identifies.

If problems are identified, will the registration application be notified?

The delegate's decision in relation to notification will depend on the type of problems identified. For instance, if the problem identified is with the map and description, it is unlikely that the agreement can be notified until these are corrected. That is because the Registrar would not be able to notify the area covered by the agreement.

Who is notified?

The Registrar must give personal written notice to certain persons who are not parties to the agreement. These could include:

- the Commonwealth Attorney General;
- the relevant State or Territory Minister;
- all representative bodies for the agreement area;
- all local government bodies for the area; and
- any other person whom the Registrar considers appropriate.

The Registrar must also give notice to the parties of the start date of the notice period (the notification date) that is in the notice.

The Registrar is not required to notify the public of a Body Corporate Agreement.

What information is in the notice?

The notice:

- contains information that identifies the parties, the agreement area and relevant statements/terms of the agreement; and
- must state the notice date.

Did you know?

The Native Title Act (the Act) sets out certain statements that have to be notified to particular persons and the public. These statements are about the consent to future acts, the right to negotiate, surrender of native title that is intended to extinguish native title rights and interests and the validation of future acts already done invalidly.



Preparation of the notice

Generally, the draft notice will be prepared by the delegate within 2-4 weeks of receiving the registration application.

When the delegate prepares the draft notice, a copy will be sent to the applicant for consideration and comment. The applicant will also be informed of when the notice will be sent to the persons who are not parties to the agreement and the proposed notification start date.

How is the notice date decided?

The delegate decides the start date of the notice period (the notice date). The date of the notice must be a day by which the delegate can reasonably assume that all notices will have been received by the relevant persons and parties. As notices are sent by post, generally the notification date chosen will be seven (7) days after the notice is posted.

The length of notice for a Body Corporate Agreement is one (1) month.



What may happen during the notice period?

During the notice period one or more of the parties may advise the Registrar that the party does not wish the agreement to be registered. Also, a representative body may advise the Registrar that they were not informed of the intention to enter into the agreement. This must occur during the notice period.

How long before a registration decision is made once the notice period has ended?

If the notice period has ended, and no advice preventing registration has been received from a party or the representative body, then a registration decision should be made within two (2) business days after the end of notification.

Did you know?

Generally, a registration decision for a Body Corporate Agreement is made within three (3) months from the lodgement date.

When is a Body Corporate Agreement not registered?

The Registrar or the delegate cannot register a Body Corporate Agreement if:

- it does not meet the requirements of being an ILUA; and/or
- a party advises the Registrar during the notice period that the party does not wish the agreement to be registered; and/or
- a representative body advises the Registrar during the notice period that the registered native title body corporate did not inform at least one of the representative bodies for the agreement area of the intention to enter into the agreement and the Registrar is satisfied of this.

What is the Register of Indigenous Land Use Agreements?

The Registrar maintains a number of registers, including the Register of ILUAs. Once an agreement is registered, details of the agreement are included on this Register.

You can access a copy of the Register Extract (but not the agreement itself) via the Tribunal's website. The Register Extract is the document that contains the details of the agreement on the Register of ILUAs.

What details of the agreement does this Register contain?

Upon registration of the agreement, the Register of ILUAs will record the following:

- name of the agreement;
- name and contact details of the parties to the agreement;
- map and description of the area covered by the agreement;
- time period (if any) of the agreement; and
- relevant statements/terms of the agreement. These are about the consent to future acts or the validation of previous acts done invalidly, the right to negotiate and the surrender of native title rights and interests intended to extinguish native title, if covered in your agreement.

Will you get a draft copy of the Register Extract before registration?

The applicant will be provided with a draft copy of information to be included on the Register of ILUAs. You may have feedback that you wish to provide about the draft Register extract.

A copy of the Registrar Extract from the Register of ILUAs for your agreement will also be provided to you at registration.

Will this Register contain confidential details?

The Register of ILUAs will only contain information required by law. This includes terms of the agreement that are relevant statements. You should identify any information that is confidential in your registration application.

What effect does registration of a Body Corporate Agreement have?

Once entered on the Register of ILUAs:

- an ILUA binds not only the parties, but all persons holding native title in the area covered who are not already parties;
- any future acts consented to in the agreement can be validly done;
- any validation of future acts agreed to takes effect; and
- any surrender consented to extinguishes native title rights and interests.

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

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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).*