Objections to an Area Agreement that you certified

Fact sheet 8: A guide to assist representative bodies to understand the objection processes

When can an objection to registration of an Area Agreement be made?

For Area Agreements that are certified, any person who claims to hold native title in the agreement area can make an objection on the grounds that the registration application was not properly certified.

What happens when the Registrar receives an objection to registration?

A delegate of the Native Title Registrar (Registrar) at the National Native Title Tribunal (NNTT) will first assess whether the objection is valid.

What is a valid objection?

A valid objection is one that is:

- given to the Registrar during the three (3) month notice period;
- made in writing;
- made by a person who claims to hold native title in the agreement area; and
- made on the grounds that the application for registration was not properly certified by the representative body.

Why are you informed when a valid objection is made?

Under the Act, when a valid objection is made, the Registrar must take into account any information given to the Registrar by the persons making the objection and by the representative bodies that certified the ILUA application. You are informed so that you can respond to the objection.

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 happens if the delegate’s view is that the objection is not valid?
The practice leader will write to the objector telling them why the objection is not valid. If the person wants to make a further objection they can do so, provided the 3 month notice period has not ended.

Will you be given a copy of an objection if it is not valid? Generally you will only be informed if a valid objection is made.

Did you know?
A valid objection does not necessarily mean that the ILUA will not be registered, but it does mean that the delegate has to consider the objection when making a decision about registration unless the objection is withdrawn.

Can you request assistance from the NNTT to have the objection withdrawn?
If you (as the certifying representative body) are also a party to the agreement, yes. See our website for more information on negotiation assistance or call the NNTT office in your region.

For an objection to be valid, does the objector have to provide evidence about the grounds for their objection?
No. The objection can be valid even if no evidence in support of the objection is provided. The objection must simply state the grounds for the objection.

What happens after a valid objection is made?
- The representative bodies who certified the registration application will be given a copy of the objection. This is part of procedural fairness.
- Each of the parties to the agreement will also be given a copy of the objection. In some circumstances the delegate may first give the representative body the opportunity to provide information about certification before providing the parties with an opportunity to comment on the objection. This is because it is the representative body who certified the registration application and an objection can only be made on the grounds that an application was not properly certified. However, the parties will be informed of the objection and the process that is to be followed.
- The practice leader will outline the process and the timeframe for providing any information.

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 the certifying representative body you are owed procedural fairness.

You should provide all of the information that you have as early as possible in the procedural fairness process.
Fact sheet about Indigenous Land Use Agreements

**What are the conditions for 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 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.

**What are the requirements of the first condition?**

When a valid objection is made the delegate must consider the requirements of certification. The requirements of certification are that:

- all reasonable efforts have been made to ensure that all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement have been identified; and
- all the persons so identified have authorised the making of the agreement.

**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.
**What is involved in the procedural fairness process?**

The procedural fairness process gives:

- you the chance to provide any information about the objection and about certification of the registration application;
- you the chance to see any information that is given to the Registrar by the objector;
- the objector the chance to see information that is relevant to certification of the registration application, including the certificate;
- the objector the chance to respond to information provided by the representative body and the parties; and
- you the chance to respond to specific questions that the delegate may have about certification.

**Is your information confidential?**

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 information will the delegate request from the objector?**

The delegate will usually request information about the statements contained in the certificate. Subject to the grounds of the objection, the delegate may ask the objector questions about the identification of persons who hold or may hold native title in the agreement area and the authorisation of the making of the agreement.

**What should your information focus on?**

Your information should focus on issues that are relevant to the certification of the registration application. This may include information about:

- the efforts that were made to identify persons who hold or may hold native title in the agreement area;
- who was identified as persons who hold or may hold native title in the agreement area and why;
- who authorised the making of the agreement;
- how the agreement was authorised, including information about: where; when; if a meeting was held what happened at the meeting and what was the decision-making process that was used to authorise the making of the agreement; and who attended the meeting; if anyone objected at the meeting or was not allowed to participate in authorising the making of the agreement and why.

**Will the information in the certificate be sufficient?**

When a valid objection to registration is made, the delegate will look ‘behind’ the certificate, i.e. assess the information in it. Generally, a certificate contains required statements of opinion and briefly sets out the representative body’s reasons for being of the opinion.

Where an objection is made, the delegate will generally require more detailed information about the requirements of certification and why the representative body says that the registration application was properly certified.

As the representative body, you should respond to the specific grounds of the objection. You will be expected to provide information about the statements that are made in the certification that accompanied the registration application.
**Fact sheet about Indigenous Land Use Agreements**

**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.

**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.

**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.

You can contact the 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](http://www.nntt.gov.au)

**Did you know?**

Under the Act the parties to the agreement can ask the NNTT to assist with negotiating with the objector with a view to having the objection withdrawn. Once the objection is withdrawn, the grounds of the objection are no longer relevant to the decision about registration.

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