Alternative Procedure Agreements: guidelines for registration

These guidelines for registration are specifically for alternative procedure agreements. There must be at least one registered native title body corporate (RNTBC) (for part of the area), or at least one Representative Aboriginal and Torres Strait Islander Body (RATSIB) for the area. An alternative procedure agreement cannot be considered if there is a RNTBC for the whole of the agreement area.

These guidelines should be read in conjunction with the relevant sections of the Native Title Act 1993 (Cth) (NTA), the Native Title (Indigenous Land Use Agreement) Regulations 1999 (ILUA Regulations) and the Native Title (Prescribed Bodies Corporate) Regulations 1999 (PBC Regulations), which outline the requirements for registration. They are intended to assist applicants meet those requirements, and identify key issues that must be addressed in the agreement and the information that must be provided when making an application for registration.

The Native Title Registrar (Registrar) is responsible for ensuring that an ILUA lodged for registration meets the formal requirements of the NTA and the Regulations. The Registrar can assist parties by providing comments on draft ILUAs and draft applications for registration.

Registration

The registration of an alternative procedure agreement can be divided into two stages:

1. The Registrar checks the agreement, the application for registration and accompanying documents and information to make sure that they comply with the formal requirements of the NTA and Regulations. If they do, notification can proceed; and
2. The Registrar considers objections to the agreement (if any) and any other barriers to registration and decides whether the agreement can proceed to registration.

The Registrar cannot make a decision on registration before the end of the notification period and without considering any objections or other barriers to registration.
**Further information**

If you are considering negotiating an alternative procedure agreement you should read the application information for alternative procedure agreements, which includes an application form.

The list below will assist you in identifying the issues that need to be addressed in your agreement and application for registration, and will help you meet the legal requirements for registration of the alternative procedure agreement.

1. Subject matter: what is the alternative procedure agreement about?
2. Complete description of the area.
3. Parties: who can and must be party to the alternative procedure agreement?
4. Consultation and consent requirements.
5. Essential information and documentation.
6. Confidentiality.

These guidelines are intended to provide assistance to people interested in pursuing an alternative procedure agreement to registration. They do not cover all instances or circumstances. They are general information only and should not be relied upon as legal advice. If you have further questions please contact the National Native Title Tribunal (Tribunal) for more information on freecall 1800 640 501.

**Assistance**

We can assist you with your application for registration of an alternative procedure agreement by:

- Preparing a complete description of the agreement area; and
- Providing pre-lodgement comments on your draft application and draft agreement.
1. Subject matter: what is the alternative procedure agreement about?

An alternative procedure agreement can be about many matters related to native title rights and interests. But it cannot provide for extinguishment of any native title rights or interests. It must be about at least one of the issues set out in the NTA, and it can be about other matters as well. The details of the agreement will depend entirely upon the needs and requirements of the parties involved.

For example, an alternative procedure agreement may be about:

- allowing future acts to be done;
- validating previous acts;
- providing a framework for other native title agreements;
- contracting out of the right to negotiate provisions of the NTA;
- compensation for past, future or intermediate period acts; and
- the relationship between native title rights and interests and other interests in the area.

If your alternative procedure agreement is about allowing future acts to be done, the right to negotiate or validating previous acts, then the following information must be provided in the agreement:

\[\text{Future acts}\]

A future act is broadly defined as an act or class of acts that may affect native title rights and interests in land and waters. Future acts can be consented to by an alternative procedure agreement. To do so, those future acts must be adequately and accurately described.

\[\text{Right to negotiate}\]

The Registrar requires a concise description of the future acts intended to be consented to by the alternative procedure agreement. However, if the future act consists of the granting of a licence or permit, a statement indicating the type of permit or licence is sufficient.

If the alternative procedure agreement is intended as a substitution for the right to negotiate, that must be clearly stated in the terms of the agreement.
Validating previous acts

Certain kinds of previous acts that may be invalid may be subsequently validated by an alternative procedure agreement if the relevant government is a party. These include some types of 'past acts' as defined in the NTA.

'Intermediate period acts' as defined in the NTA cannot be validated by an alternative procedure agreement. If the parties wish to, by agreement, change the effect of validation of intermediate period acts they should consult with the Registrar.

Why are these requirements so important?

They are important because:

- they provide accurate and adequate information to the parties regarding what they have agreed can be done in that area;
- they provide that information to interested third parties, both in the notice period and afterwards for the life of the agreement; and
- they supply concise material for the notice of the agreement and for the registration of the agreement.

Key points and tips

- As some of the statements made in the agreement will be included in the notice and be entered on the Register of Indigenous Land Use Agreements (Register), they should be described as concisely as possible; and
- Contact the Registrar for further assistance if you are contemplating the validation of previous acts in an alternative procedure agreement. In general, the procedural requirements outlined in these guidelines apply. However there may be more particular requirements depending on the nature of the previous act(s).
2. Complete description of the area.

An application to register an alternative procedure agreement must be accompanied by a complete description of the area that the agreement covers. The description must consist of two key components:

- a written description of the area which enables the external and internal boundaries to be clearly identified; and
- a map of the area, complete with geographic coordinates.

**Why are the map and the written description so important?**

They are important because they:

- make it possible to identify all the necessary parties, so they can be included as parties to the agreement. The map and written description also make it possible to identify any other potential parties or interest holders; and
- provide accurate information about the area covered by the agreement for notice and for the Register.

**Written description**

The written description may include any of the following:

- geographic coordinates and datum;
- tenure types and cadastral boundaries, where these correspond to the alternative procedure agreement boundaries;
- local government or other gazetted boundaries;
- man-made features such as roads, especially where those features form boundaries; and
- lot plan numbers.

**Map**

The map provided must be legible and precise enough to identify the boundaries of the alternative procedure agreement. Where possible, the map should also indicate which areas are excluded from the agreement. The map must also include geographic reference coordinates and datum (the datum form part of the coordinates).

Features of the landscape, such as rivers and roads, may help identify the location of the agreement area and can be included in the map, particularly when they are referred to in the written description.
3. Parties: who can and must be party to the alternative procedure agreement?

 Certain people and organisations must be a party to an alternative procedure agreement. These are:

- all RNTBCs in the area;
- all RATSIBs for the area; and
- the relevant State or Territory government (and the Commonwealth if any of the area is outside State or Territory jurisdiction).

Remember, there must be one RNTBC (for part of the area), or at least one RATSIB for the area.

Any other person (including registered or unregistered native title claimants) or organisation may also be a party to the agreement.

4. Consultation and consent requirements.

 If a RNTBC is a party to the agreement, and for any part of its area there is no RATSIB then the application for registration must include a document from the prescribed body corporate stating that all common law holders of native title have been consulted about, and have consented to, the agreement.
5. Essential information and documentation.

The NTA and the Regulations require that an application for registration of an alternative procedure agreement include a copy of the agreement and be accompanied by certain information and other documents.

The application must indicate where the following statements can be found in the agreement, if applicable:

- intention to contract out of the right to negotiate provisions of the NTA;
- consent to future acts yet to be done; and
- validation of previous acts that may be invalid.

The application must also contain or be accompanied by the following, if applicable:

- names and addresses of all parties;
- statement/s that identifies any RATSIB that is party to the agreement;
- statement/s that any Commonwealth, State or Territory government is party to the agreement;
- complete description of the agreement area;
- a statement specifying the period during which the agreement will operate; and
- a statement by each party that they agree to the making of the application.

The following documents must accompany the application, if applicable:

- copies of each determination of native title (available from the Federal Court of Australia);
- copies of register extracts from Register of Native Title Claims; and
- documentation of consultation and consent (see 4 above).

6. Confidentiality.

Some of the details provided in the application and the agreement must appear in the notice and on the Register of Indigenous Land Use Agreements. This information cannot be kept confidential. If parties would like any other information or documents to be kept confidential they should make this request when lodging the documents. The Registrar can, however, only keep the information confidential to the extent that the law allows. Please contact the Tribunal for further information about its confidentiality policy.