



Body Corporate agreements: guidelines for registration

These guidelines for registration are specifically for **body corporate agreements**. A body corporate agreement can only be considered for registration where there are one or more registered native title bodies corporate (RNTBC/s) 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 a body corporate 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 a body corporate agreement you should read the application information for body corporate 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 body corporate agreement.

1. Subject matter: what is the body corporate agreement about?
2. Complete description of the area.
3. Parties: who can and must be party to the body corporate 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 body corporate 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 a body corporate 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 body corporate agreement about?

s 24BB of the NTA A body corporate agreement can be about almost anything related to native title rights and 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, a body corporate agreement may be about:

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

If your body corporate agreement is about allowing future acts to be done, extinguishment of native title, the right to negotiate or validating previous acts, then the following information must be provided in the agreement:

s 233
of the NTA

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 a body corporate agreement. To do so, those future acts must be adequately and accurately described.

s 24EB (1)(a)
of the NTA

The Registrar requires a concise description of the future acts intended to be consented to by the body corporate 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.

s 24EB(1)(c)
of the NTA

Right to negotiate

If the body corporate agreement is intended as a substitution for the right to negotiate, that must be clearly stated in the terms of the agreement.

s 24EB(1)(d)
of the NTA

Extinguishment

The extinguishment of native title by surrender to government may be the entire subject, or part of the subject of a body corporate agreement.

If native title is to be extinguished over any part of the agreement area it must be plainly stated in the agreement. The area of the extinguishment must be clearly identified by providing a detailed map and description of the area.

s 24EBA
of the NTA

Validating previous acts

Certain kinds of previous acts that may be invalid may be subsequently validated by a body corporate 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 a body corporate agreement, although a body corporate agreement may vary the effect on native title rights and interests of the validation of those acts.

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.

s 199B(1)(d)
of the NTA

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;
- The content of the agreement may have implications about who must be parties. For example, extinguishment requires the relevant government(s) to be a party; and
- Contact the Registrar for further assistance if you are contemplating the validation of previous acts in a body corporate 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.

Regs 5, 6(2)(c) and (d) of the ILUA Regulations

An application to register a body corporate 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.

If the agreement also provides for extinguishment of native title, the application must be accompanied by a complete description of any areas over which native title is to be extinguished.

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 body corporate 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 body corporate 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.

Both the map and the written description should attempt to show as clearly as possible that the area of the ILUA is entirely within the Body Corporate area(s).

3. Parties: who can and must be party to the body corporate agreement?

s 24BD
of the NTA

Certain people and organisations must be parties to a body corporate agreement. These are:

- **all** RNTBCs in the area **must** be parties to a body corporate agreement.

s 24EBA
of the NTA

If the agreement validates previous acts or changes the effect of validation of intermediate period acts on native title rights and interests, the relevant government(s) must be a party.

If the agreement extinguishes native title over any of the area, the relevant government(s) must be a party.

Any other person or organisation **may** also be a party to the agreement.

Key points and tips

- If none of the Representative Aboriginal and Torres Strait Islander Bodies (RATSIBs) for the agreement area are party to the agreement then someone from the body corporate must notify at least one of those RATSIBs that it intends to enter the agreement. This must be done before the agreement is signed;
- It may also be a good idea to keep a record of any notice given to a RATSIB of the intention to enter the agreement, if that notification was required;
- Use only the most current register extracts. Prior to lodging the application for registration, check to make sure that all of the necessary parties are involved;
- If there has already been a determination of native title over the area and there is a prescribed body corporate in place to manage that native title, then extracts from the Register of Native Title Claims are unnecessary. In this case a copy of the determination is required. This can be obtained from the Federal Court of Australia; and
- Remember that the content of the agreement has implications for whom must be party to the agreement. For instance, extinguishment of native title requires that the relevant governments must be party to the agreement.

4. Consultation and consent requirements.

Reg 6(2)(e) of the ILUA Regulations and Reg 9(2) of the PBC Regulations

If, for any part of the agreement area, there is either:

- no RATSIB, or
- a RATSIB that is not a party to the agreement

then the application for registration of the agreement 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 a body corporate 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 extinguish native title by surrender to government;
- intention to contract out of the right to negotiate provisions of the NTA;
- consent to future acts yet to be done;
- validation of previous acts that may be invalid; and
- changing the effect on native title rights and interests of any intermediate period acts.

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;
- if no RATSIB is a party, a statement by each body corporate that one RATSIB for the area was informed of its intention to enter the agreement;
- statement/s that any Commonwealth, State or Territory government is party to the agreement;
- complete description of the agreement area, including any area over which native title is to be extinguished (if applicable);
- 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); and
- documentation demonstrating 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. 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.