



# Indigenous Land Use Agreements

## What is an ILUA?

An ILUA is a voluntary agreement between native title parties and other people or bodies about the use and management of areas of land and/or waters.

An ILUA can be made over areas where:

- native title has been determined to exist in at least part of the area
- a native title claim has been made
- no native title claim has been made.

While registered, ILUAs bind all native title holders to the terms of the agreement. ILUAs also operate as a contract between the parties.

## Types of ILUAs

There are three types of ILUAs:

### Area Agreements

These agreements can be made where there is no registered native title body corporate (RNTBC) for the entire agreement area

### Body Corporate Agreements

These agreements can be made where there is one or more RNTBCs for the entire agreement area, other than for any part of the area where it has been determined that native title does not exist

### Alternative Procedure Agreements

These agreements can be made where there is at least one representative body for the area or at least one RNTBC in the area, but not where there are RNTBCs in relation to all of the area.

## What can an ILUA be about?

An ILUA can be about any native title matter agreed by the parties, including settlement or exercise of native title rights and interests, surrender of native title to governments, land management, future development, mining, cultural heritage, coexistence of native title rights with other rights, access to an area, and compensation for loss or impairment of native title.

All types of ILUAs can be made about the following matters:

- allowing future acts to be done
- validating future acts that have already been done
- changing the effect of intermediate period acts
- dealing with a native title or compensation application
- relationship between native title rights and other rights and interests
- way in which native title and other rights and interests will be exercised
- compensation
- provision of a framework for making other agreements about matters relating to native title
- other matters concerning native title.

Extinguishment of native title by surrender to government can only be made through area agreements and body corporate agreements.

Matters relating to rights of access to non-exclusive agricultural and pastoral leases under Subdivision Q of the Native Title Act can only be made through area agreements and alternative procedure agreements.

## Parties to ILUAs

The persons or bodies that must or may be party to an ILUA, depends on the type of ILUA being made:

	<i>Area Agreement</i>	<i>Body Corporate Agreement</i>	<i>Alternative Procedure Agreement</i>
<i>If there is a registered native title claimant over the area</i>	Persons nominated/ determined or a majority of persons comprising the registered native title claimant/s must be a party	not applicable	may be a party
<i>If there is a RNTBC over the area</i>	must be a party	must be a party	must be a party
<i>For unclaimed or undetermined areas such that there are no registered native title claimants or RNTBCs</i>	one or more must be a party: <ul style="list-style-type: none"> <li>• persons claiming to hold native title</li> <li>• representative body</li> </ul>	not applicable	may be a party
<i>Commonwealth, state or territory governments</i>	must be a party if the agreement: <ul style="list-style-type: none"> <li>• extinguishes native title by surrender</li> <li>• validates future acts which have already been done invalidly</li> <li>• allows for a change in the amount of extinguishment of native title caused by the validation of an intermediate period act</li> </ul> otherwise, they may be a party	must be a party if the agreement: <ul style="list-style-type: none"> <li>• extinguishes native title by surrender</li> <li>• validates future acts which have already been done invalidly</li> <li>• allows for a change in the amount of extinguishment of native title caused by the validation of an intermediate period act</li> </ul> otherwise, they may be a party	must be a party
<i>Representative bodies</i>	must be a party if there is no: <ul style="list-style-type: none"> <li>• registered native title claimant</li> <li>• RNTBC</li> <li>• persons claiming to hold native title</li> </ul> otherwise, they may be a party	may be a party	must be a party
<i>Anyone liable to pay compensation</i>	must be a party if the agreement provides for validation of a future act or for a change in the amount of extinguishment of native title caused by the validation of an intermediate period act	must be a party if the agreement provides for validation of a future act or for a change in the amount of extinguishment of native title caused by the validation of an intermediate period act	must be a party if the agreement provides for validation of a future act
<i>Others such as local governments, miners, pastoralists</i>	may be a party	may be a party	may be a party

## How to apply for registration of an ILUA?

An application for registration of an agreement on the [Register of ILUAs](#) must be made in writing to the Native Title Registrar. The Native Title Act, *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth) and *Native Title (Prescribed Body Corporate) Regulations 1999* (Cth) set out the information that must accompany the application.

Applications to register any type of agreement must be accompanied by a copy of the agreement and the following information:

	<i>Area Agreement</i>	<i>Body Corporate Agreement</i>	<i>Alternative Procedure Agreement</i>
<i>Parties</i>	✓	✓	✓
<i>Map and description of the agreement area</i>	✓	✓	✓
<i>Map and description of the surrender area, if any</i>	✓	✓	
<i>Signed statement from the parties that the application can be made</i>	✓	✓	✓
<i>Location of particular statements in the agreement</i>	✓	✓	✓
<i>Certification/authorisation statement</i>	✓		
<i>Determination of native title</i>	For any RNTBC party	✓	For any RNTBC party
<i>Certificate under PBC Regulation 9</i>	If there is a RNTBC party	✓	If there is no representative body for the area
<i>Extract from Register of Native Title Claims</i>	If there is a RNTBC party		

Application forms which set out the relevant requirements are available for download from [www.nntt.gov.au](http://www.nntt.gov.au).

You should email [luas@nntt.gov.au](mailto:luas@nntt.gov.au) to lodge your application and accompanying documents, or to request assistance or information about an ILUA.

## Notification of an ILUA

When an ILUA is lodged for registration and there are no issues of non-compliance, the Registrar notifies certain people and organisations by mail and, for area agreements and alternative procedure agreements, notifies the general public through newspaper advertisements of the agreement.

Body corporate agreements must be notified for a period of one month, while area agreements and alternative procedure agreements must be notified for three months.

Visit the [Public notices page](#) to see which ILUAs are currently in notification.

## Opposing registration

The grounds for opposing registration, and the people who can oppose, are limited and specific to each type of ILUA.

### Area Agreements

Where the application has been certified by the representative body, a person claiming to hold native title in the area may make an objection in writing to the Registrar, within the three month notification period, against registration of the agreement on the basis that the following were not satisfied:

- all reasonable efforts have been made to ensure that all persons who hold or may hold native title in the agreement area have been identified
- all the persons so identified have authorised the making of the agreement
- any conditions on the authority that relate to the making of the agreement have been satisfied.

Where the application has not been certified, a person claiming to hold native title in the agreement area can lodge a claimant application over the agreement area in response to the notice. If the claimant application is accepted for registration in the relevant time period, the agreement cannot be registered until the registered native title claimant (persons nominated/determined or a majority) become a party to the ILUA. Before deciding whether or not to register an agreement as an ILUA, the Registrar may also consider information that is provided in relation to whether:

- all reasonable efforts were made (including consulting all representative bodies for the area) to ensure that all persons who holds or may hold native title in the agreement area have been identified
- all the persons so identified have authorised the making of the agreement
- any conditions on the authority that relate to the making of the agreement have been satisfied.

The Registrar will consider any valid objections for certified applications or any relevant information provided for uncertified applications, and undertake any required procedural fairness or information exchange process before making a decision about registration of the agreement.

### Body Corporate Agreements

A body corporate agreement cannot be registered if, within the one month notification period:

- a party advises the Registrar that the party does not wish the agreement to be registered
- a representative body for any of the area advises the Registrar that no representative body for the area was informed of the native title party's intention to enter into the agreement.

### Alternative Procedure Agreements

A person claiming to hold native title in the agreement area may make an objection to the Registrar against registration of the agreement on the ground that it would not be fair and reasonable to register the agreement.

## Review of Registration Decisions

Any person aggrieved by a decision made in relation to the registration of an ILUA, may apply to the Federal Court for a review of that decision.

An aggrieved person may request a written statement of reasons for that decision, within 28 days after receiving written notice of the decision, in order to decide whether or not to seek review.

You should consider seeking legal advice if you decide you want to appeal the decision.

## Removing the details of an ILUA from the Register

The Registrar must remove details of an ILUA from the Register if:

- a body corporate agreement has been entered into, and a subsequent determination of native title is made that the persons holding native title in the area are not the same as those previously determined to hold it, and the Federal Court has not ordered that the ILUA should remain on the Register
- an area agreement has been entered into, and a determination of native title is made over the agreement area, and any of the persons determined to hold native title is not a person who authorised the making of the agreement, and the Federal Court has not ordered that the ILUA should remain on the Register
- a party advises the Registrar in writing that the agreement has expired and the Registrar believes, on reasonable grounds, that the agreement has expired
- all parties advise the Registrar in writing that they wish to terminate the agreement
- the Federal Court orders the Registrar to remove the details of the agreement on the ground that a party would not have entered into the agreement but for fraud, undue influence or duress by any person, or following a judicial review of the decision to register an agreement as an ILUA under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

All requests to remove details of an ILUA from the Register must be emailed to [iluas@nntt.gov.au](mailto:iluas@nntt.gov.au).

## Amending the details of an ILUA on the Register

There are limited circumstances where the details of an ILUA on the Register can be amended. These include:

- where a party advised that the contact details of the party has changed
- parties agree to update the property description which does not result in any additional areas not previously covered by the agreement
- parties agree to update a description identifying a party including where a party has assigned or transferred rights or liabilities under the agreement
- parties agree to do a thing specified by a legislative instrument.

Such requests must be made in writing to the Registrar and can be emailed to [iluas@nntt.gov.au](mailto:iluas@nntt.gov.au).

## Assistance the NNTT can provide

The NNTT can assist in various ways including during the negotiation of an ILUA, preparation of an application or when an application for registration has been lodged.

### *Negotiation assistance*

Persons and organisations wishing to make an ILUA may request assistance in negotiating the agreement. Assistance is provided by a Member of the Tribunal and experienced staff.

### *Preparing an application*

The Registrar can assist parties prepare their application and accompanying material for registration, including:

- preparing mapping and technical descriptions of the agreement area
- conducting searches of the NNTT Registers to identify potential native title holders and representative bodies in the agreement area
- providing information about registration requirements.

The Registrar and delegated staff members can also provide comments on draft agreements and applications for registration to help the parties meet the requirements for ILUA registration.

This allows for changes to be made before the agreement is signed by the parties and may prevent delays once the application for registration is made.

### *Dealing with an objection*

If an application for registration of an area agreement has been certified by the relevant representative body, any person who claims to hold native title in the agreement area, can make an objection to registration of the agreement. Parties can ask for assistance in negotiating with the person making the objection, to resolve the matter and have the objection withdrawn.

### *Making a request for assistance*

Any party involved in negotiating or making an application for registration of an agreement can make a request for assistance. When requesting assistance, you should:

- send your request to [iluas@nntt.gov.au](mailto:iluas@nntt.gov.au)
- specify the type of assistance required
- include reasons why you have made the request and any other attempts you have made to receive assistance from other organisations.

## Information on particular ILUAs or copies of agreements

If you have a question about a particular ILUA or would like a copy of the ILUA, please contact the parties to the agreement identified on the Register extract for the ILUA.

You can access a copy of the Register extract for an ILUA by searching the [Register of ILUAs](#).