



National  
Native Title  
Tribunal



# Steps to an indigenous land use agreement

*Facilitating timely and effective outcomes.*

### **Disclaimer**

This publication is provided as general information only and should not be relied upon as legal or other professional advice for a particular matter.

*Cover picture: Western Yalanji Elder Des Brickey on his traditional country in 2006, when the Western Yalanji People had their native title rights and interests recognised for the second time through a consent determination. Four indigenous land use agreements were negotiated to establish how the rights and interests of the Western Yalanji People would coexist with the rights held by others.*

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# Overview

## What is an indigenous land use agreement?

Indigenous land use agreements (ILUAs) are a type of voluntary agreement between native title parties and other people. They allow people to agree on a wide range of native title matters including the use and management of areas of land and/or water. ILUAs may offer opportunities and advantages for all parties and can help foster good relations between native title groups and other people with interests in areas of land or water.

While an ILUA can be made separately from the formal native title process, it may also be a stepping stone towards, or be part of, a native title determination. A major advantage of ILUAs is that they can be made before there is a determination of native title, and generally in a shorter time frame.

The Tribunal is not always involved in ILUA negotiations but the Native Title Registrar may register the agreements on the Register of Indigenous Land Use Agreements so long as they meet the conditions set out in the *Native Title Act 1993* (Cwlth). The Tribunal may, if requested, assist parties before and during the registration process (see *Step 2 - Getting help from the Tribunal* and *Step 6 - Registration*).

## About Steps to an ILUA

This publication provides general information about ILUA registration and the process leading up to registration. It assumes some knowledge about ILUAs and explains the process in stages ('steps'). It is not legal advice. For a basic introduction to ILUAs visit the Tribunal website [www.nntt.gov.au](http://www.nntt.gov.au). For more detailed information on ILUA negotiations and registration, refer to the Native Title Act and the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (the ILUA Regulations).

## Who is this information for?

This publication is for people who may be involved in negotiating an ILUA. While some of the sections are more relevant to native title holders, others may also find them useful.



# 1. Getting started

## Is an ILUA the right agreement?

Before going down the ILUA path, it is important that all parties understand the process, the different types of ILUAs and the legal requirements for registration of an ILUA.

ILUAs are not always the best way to proceed. For example, the requirements of an ILUA can be too complex or time-consuming for someone wanting to do an individual future act which has little impact on native title. In this case, an agreement might be unnecessary or another form of agreement might be easier. A publication comparing agreements, *ILUA or the right to negotiate process? A comparison for mineral tenement applications* is available on the Tribunal website. The parties to an ILUA also need enough time to negotiate and go through the registration process (read *Step 4 - Negotiating ILUAs* and *Step 6 - Registration*).

## What can ILUAs be about?

ILUAs might cover:

- native title holders agreeing to a future act or group of future acts
- compensation for loss or impairment of native title
- how native title rights and interests coexist
- access to an area
- extinguishment of native title by surrender to governments
- framework agreements (that is, agreements that define terms and conditions for future act negotiations, decision-making or other activities)
- the exercise of native title rights and interests.

ILUAs can also cover cultural heritage issues, the provision of public works and infrastructure and employment and economic opportunities for native title groups.

## What are the advantages of an ILUA?

Some of the advantages of an ILUA include:

- the ability to deal with several future acts in one ILUA
- parties can progress matters in their own time and set their own process for negotiation
- once registered, the ILUA binds all native title holders for the agreement area
- an ILUA allows developments on land to proceed before a determination of native title is reached
- for Indigenous parties, some of the benefits of native title are accessible without the need for a determination of native title.

ILUAs can help create and foster good relations between commercial proponents, government parties and native title groups.

### **What are the differences between the three types of ILUAs?**

To establish which type of agreement is most appropriate, it is important to understand the difference between the three types of ILUAs:

- body corporate agreement
- area agreement
- alternative procedure agreement.

The type of ILUA will depend on the area involved, the subject matter of the agreement and whether there is a registered native title body corporate for the whole of the area. To ensure that the agreement can be registered, it is important that parties select the right type of ILUA to suit their particular circumstances.

In particular:

- an area agreement can only be made where there is no registered native title body corporate (or bodies corporate) for the entire agreement area
- a body corporate agreement can only be made when one or more native title bodies corporate exist in relation to the whole agreement area
- alternative procedure agreements can only be made where there is no registered native title body corporate (or bodies corporate) for the entire agreement area, however there must be at least one registered native title body corporate for part of the agreement area, or one native title representative body for the area.

Body corporate and area agreements can be about almost anything related to native title rights and interests, including extinguishment of native title rights and interests. To date, area agreements have been the most common type of ILUA.

An alternative procedure agreement can be about a range of things related to native title rights and interests but cannot provide for extinguishment of any native title rights or interests.

People considering entering into an ILUA should first seek legal advice. Tribunal assistance can be sought at any time before or during an ILUA negotiation. The table on the facing page shows what the different types of ILUA can be about.

Subject matter	Body corporate agreement	Area agreement	Alternative procedure agreement
Allowing future acts to be done	✓	✓	✓
Validating future acts that have already been done	✓	✓	✓
Changing the effect on native title of intermediate period acts	✓	✓	✗
Dealing with a native title or compensation application	✓	✓	✓
The relationship between native title rights and other rights and interests	✓	✓	✓
The way in which native title and other rights and interests will be exercised	✓	✓	✓
Extinguishment of native title by surrender to government	✓	✓	✗
Compensation	✓	✓	✓
Provision of a framework for making other agreements about matters relating to native title	✓	✓	✓
Any other matters concerning native title	✓	✓	✓
Any matters relating to rights of access to land or waters covered by non-exclusive agricultural and pastoral leases under Subdivision Q of the Act	✗	✓	✓

# NATIONAL NATIVE TITLE TRIBUNAL



## 2. Getting help from the Tribunal

Under the Native Title Act, parties to ILUAs can ask the Tribunal for assistance in negotiating the agreement and preparing the application for registration. Tribunal assistance early in the process can help identify risk factors that may prevent the ILUA being registered.

### How can the Tribunal help parties?

Help the Tribunal may give to parties at no cost includes to:

- help identify the area to be covered by the ILUA
- provide information and assistance on the ILUA process to native title groups, representative bodies and others
- help non-indigenous parties to identify the correct native title groups
- arrange and facilitate meetings
- provide technical information and support relating to ILUAs, including providing feedback on draft agreements and applications for registration
- help parties to negotiate an ILUA
- undertake project management
- provide registration application forms for each type of ILUA to help parties lodge compliant applications
- conduct preliminary consultations
- provide background research support
- review and provide maps and descriptions of the area covered by the ILUA
- provide land tenure information and conduct searches against Tribunal registers
- outline options for negotiations
- give information about the process through seminars, workshops, conference papers, publications and guidelines on registration requirements.

The Tribunal must remain impartial on all matters.

After an ILUA has been lodged with the Registrar for registration, the Tribunal can also assist in negotiating with anyone objecting to the registration of a certified area ILUA or an alternative procedure agreement with a view to having the objection withdrawn.

When the Tribunal is asked to provide assistance in the negotiation of an ILUA (or to withdraw an objection to registration), the Tribunal will not use or disclose any information obtained as part of those assistance activities for any other purpose without the permission of the person who provided it. Importantly, this means that the Registrar or her delegate will not be able to have regard to the information, without prior consent, in determining whether or not the ILUA can be registered.

## **Providing feedback on draft agreements and applications for registration**

The requirements for the registration of an ILUA may be very technical. To assist, the Registrar may provide comments on draft agreements and applications for registration to help the parties meet the legal requirements for ILUA registration.

If parties get feedback on drafts early in the process, it is less likely that there will be delays when they apply to register the ILUA.

Once the draft documentation has been prepared, including the application for registration, the ILUA and any accompanying documents (e.g. maps and technical description), the Tribunal can provide feedback about whether the application and agreement would meet the requirements of the Native Title Act and ILUA Regulations. It is preferable to seek this assistance before the agreement has been signed by the parties. Changes can then be made before the ILUA is lodged for registration.

The Tribunal does not prepare ILUAs or give legal advice. More information is available from the assistance procedures on the Tribunal website.

## **Asking the Tribunal for assistance**

When asking the Tribunal for assistance:

- make the request in writing (verbal requests can be transcribed by a Tribunal employee)
- include a name and address
- state the type of assistance sought and why it is needed.

Requests are sent to:

National Native Title Tribunal  
GPO Box 9973 in your capital city  
Phone: 1800 640 501 Fax: (08) 9268 7299

## **What information is on the website?**

The Tribunal website contains:

- information about ILUAs
- information about Tribunal assistance
- guidelines and application forms for ILUA registration
- summaries about all registered ILUAs.

# 3. Parties to ILUAs

The Native Title Act states who must and who may be a party to each type of ILUA. Making sure that the right people and organisations are party to the ILUA is essential for registering an ILUA. If the right people are not a party, then the agreement cannot be registered or there may be delays in the decision about registration. The table on the next page shows who must and who may be a party for each type of ILUA.

## How to find out who the native title parties are

Parties need to make sure that reasonable efforts have been made to identify all potential native title holders for the agreement area, and that those identified have authorised the making of the agreement (see *Step 5 - Authorisation*).

The Tribunal can help find the appropriate native title claimants, Representative Aboriginal and Torres Strait Islander Bodies and prescribed body corporate for the ILUA area. When there has been no determination of native title for the area, further steps will be required to determine who has to authorise the agreement. This should include, among other things, consulting with the relevant Representative Aboriginal and Torres Strait Islander Body for the area (see *Step 2 - Getting help from the Tribunal*).

## What if the representative body is not a party?

For body corporate and area agreements, if there is a representative body or bodies for a part of the agreement area, and they are not a party, then at least one of them needs to be informed that the native title holders intend to enter the agreement. Alternative procedure agreements cannot be made unless all the representative bodies for the area are party to the agreement.

People or organisation	Body corporate agreement	Area agreement	Alternative procedure agreement
<b>Native title holders and people claiming to hold native title (including unregistered claimants)</b>	not applicable	one or more must be a party if there is no: <ul style="list-style-type: none"> <li>• registered native title claimant</li> <li>• registered native title body corporate, or</li> <li>• representative body as a party—otherwise they may be a party</li> </ul>	may be a party
<b>Registered native title claimants</b>	not applicable	must be a party, if they exist	may be a party
<b>Registered native title bodies corporate</b>	must be a party	must be a party, if they exist	must be a party, if they exist
<b>Commonwealth, state or territory governments</b>	must be a party if the agreement: <ul style="list-style-type: none"> <li>• extinguishes native title by surrender (that is, when native title holders agree to give up their native title)</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—otherwise they may be a party</li> </ul>	must be a party if the agreement: <ul style="list-style-type: none"> <li>• extinguishes native title by surrender (that is, when native title holders agree to give up their native title)</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—otherwise they may be a party</li> </ul>	the relevant government must be a party
<b>Representative bodies</b>	may be a party	must be a party if there is no: <ul style="list-style-type: none"> <li>• registered native title claimant</li> <li>• registered native title body corporate, or</li> <li>• persons claiming to hold native title</li> </ul> otherwise they may be a party	must be a party
<b>Others such as local governments, miners, pastoralists and energy companies</b>	may be a party	may be a party	may be a party
<b>Anyone liable to pay compensation</b>	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

# 4. Negotiating ILUAs

## What parties need to know before starting negotiations

Before starting negotiations:

- consider if an ILUA is the best way to resolve the issue(s)
- properly identify the agreement area
- identify and involve all the mandatory parties and any person who should be a party to the ILUA
- be aware of the procedural requirements for registration of an ILUA (see *Step 6 - Registration* and *Step 5 - Authorisation*)
- understand that the ILUA cannot be registered if it does not meet all the requirements for registration
- understand that registered ILUAs bind all native title holders, whether or not they are already a party
- be realistic about what can be achieved: if parties' expectations are too high negotiations may not progress and people may become disillusioned
- be realistic about the timeframes needed to properly negotiate and register the ILUA.

The Tribunal may not always be involved in negotiations, but parties should still contact the Tribunal as soon as possible so it can help ensure the requirements for registration are met. If requested, the Tribunal can appoint a member to help with negotiations.

Proponents also need to ensure that they are dealing with all potential native title holders. Negotiating with one group but not including everyone who claims to hold native title may place an agreement at risk if:

- another group that has not been involved in the process objects to the registration of the agreement (see *Step 7 - Opposing registration*)
- the agreement is not authorised by everyone who may hold native title in relation to the ILUA area (see *Step 5 - Authorisation*).

While negotiating with a small group may produce quicker results initially, it can backfire if it does not include all the people who may hold native title in the ILUA area.

The Tribunal can help with searches of the registers to find out who holds, or may hold, native title for the area. The native title representative body for the area should also be contacted. Other steps are likely to be required to identify all the people who may hold native title to the area where there has been no determination of native title.

## How long will negotiations take?

ILUA negotiations have no set time frames. The time it takes to negotiate depends on the parties and what the ILUA is about.

Proponents must also allow time to inform the native title parties about the proposal and wait for them to make a decision about the agreement. This may take longer than commercial proponents are used to.

It may also be difficult for native title holders to access adequate legal advice - this can further delay negotiations.

## What happens after negotiations are complete?

Once negotiations are complete and an agreement is signed, parties must also allow time for:

- the assessment by the Native Title Registrar to decide whether the legal requirements of the ILUA have been met
- the notification period (one or three months, depending on the type of ILUA)
- the resolution of any objections or other bars to registration
- the Registrar to register the agreement on the Register of Indigenous Land Use Agreements.

For area and alternative procedure agreements a period of at least six months should be allowed for the registration process.

If the proponent wants to have an agreement in place by a set time, and there is not enough time for all steps to be taken for an ILUA, they may need to consider other options (for example other future act processes).

## What costs are involved?

There are no fees for requesting assistance from the Tribunal or applying to have an ILUA registered.

Native title groups and representative bodies cannot always meet the costs involved in taking part in negotiations. Proponents may consider contributing resources to these parties to help them participate and progress negotiations. Representative bodies can also ask for funding from proponents when they are, for example, asked to become parties to an ILUA.

# 5. Authorisation

## Authorisation of area agreements

One of the requirements for registration of an area agreement is that the making of it has been authorised as described below.

### What is authorisation?

For an agreement to be authorised, the making of the agreement must be approved by everyone who can be identified through all reasonable efforts as holding, or possibly holding, native title to the area.

Because registered ILUAs bind all native title holders for the area covered by the agreement, it is important that the agreement has been properly authorised.

### What does authorisation involve?

There are two components to getting an area agreement ILUA authorised.

The first step is to make all reasonable efforts to try to identify everyone who holds, or may hold, native title to the area. This includes consulting with all the native title representative bodies and native title service providers for the area. It may also mean placing advertisements, writing to claimants or other people, and talking to Indigenous organisations. The way in which the parties try to identify the native title holders, or potential holders, will vary depending on the ILUA area and whether or not the people in the native title groups in that area are easy to identify.

For the second part of the authorisation process, the people who have been identified in the first step must authorise the making of the agreement. The authorisation process could be quick or may take several months. It is important that it is done properly to avoid, as far as possible, opposition to the registration of the ILUA (see *Step 7 - Opposing registration*) and having to recommence negotiations to include other people in the negotiations.

### Who must authorise an area agreement?

Area agreements must be authorised by everyone who can be identified through all reasonable means as holding, or possibly holding, native title to the agreement area.

If there is a registered native title claim over all or part of the area, the people who are jointly the applicant (the registered native title claimant) must be parties to the ILUA (see *Step 3 - Parties to ILUAs*). This alone does not mean that they have been authorised to make the ILUA.

Where there is more than one native title group for the area, there may be people who have not lodged a native title application over the area and are therefore not 'native title claimants'. These people must also authorise the making of the ILUA. They do not necessarily have to be parties to the ILUA themselves, but they must authorise the people who are the native title parties to make the agreement. For example, they may authorise the representative body to be a party on their behalf.

### How is authorisation decided?

If there is a process under traditional laws and customs that must be complied with for the native title group to make this kind of decision, then it must be used to authorise the agreement. For example, if decisions of this kind must be made by the elders of the group then that process must be followed. No other decision-making process can be used.

If there is no traditional decision-making process that must be used, the group must authorise the agreement using a decision-making process that has been agreed on and adopted by them. Such a process could include traditional and non-traditional steps.

### What evidence of authorisation is needed to register an ILUA?

In order for the area agreement to be registered, the application to register the agreement must either:

- include an authorisation statement, or
- be certified by all native title representative bodies for the agreement area.

#### Authorisation statement

If the application for registration is not certified by the representative body, it must include a statement by the native title parties that:

##### *The identification requirement*

All reasonable efforts have been made to make sure that everyone who holds, or may hold, native title in relation to the agreement area has been identified (all representative bodies for agreement areas must be consulted as part of the process of identifying those people), and

##### *The authorisation requirement*

All the people identified through this process have authorised the making of the agreement.

The application should also include a statement briefly setting out the reasons why the Registrar should agree that these requirements have been met. It could include information, for example, about the existence of a group of elders or other traditional decision-making body, the membership and powers of that group and the fact that the group has made the decision to authorise the making of the ILUA. Or, if there is no traditional decision-making process, a statement about what the process is and that it has been agreed to and adopted by the native title group, how that happened and what was the outcome of the process.

## Certification

If the native title representative body (or bodies) has certified the application for registration, the certificate must include a statement that it believes:

### *The identification requirement*

All reasonable efforts have been made to make sure that everyone who holds, or may hold, native title in relation to the agreement area has been identified, and

### *The authorisation requirement*

All the people identified through this process have authorised the making of the agreement. It must also briefly set out its reasons for coming to this conclusion.

## How is authorisation checked?

Where the application has been certified, the native title representative body (or bodies) for the area is responsible for checking that the requirements have been met. Where the application has not been certified, the Registrar is responsible for checking that the requirements have been met.

Where there is an objection to the registration of the ILUA made in the notification period on the grounds that the application was not properly certified, the Registrar must consider these issues. In these cases, the Registrar cannot register the agreement, unless all the objections are withdrawn, or the objector has not satisfied the Registrar that the requirements were not met (see *Step 7 - Opposing registration*).



# 6. Registration

Before lodging an application to register an ILUA, you may want to ask the Tribunal to comment on a draft of your application and other documentation (see *Step 2 - Getting help from the Tribunal*).

## Do ILUAs need to be registered?

ILUAs only need to be registered on the Register of Indigenous Land Use Agreements if you want to get the benefits that registration provides. While the details of the agreement are on the register:

- the agreement is a contract binding all parties
- the agreement binds all native title holders in the area covered by the agreement whether or not they are parties to the agreement
- any future acts covered by the agreement can be validly done
- the surrender of native title (at that time) can extinguish native title if the agreement contains a statement that the surrender is intended to extinguish native title
- invalidly done future acts covered by the agreement are validated
- the effect of validation of intermediate period acts on native title can be changed, and
- the agreement may cap compensation for certain native title holders.

The Native Title Act sets out the processes to follow to register an ILUA and the flowchart (overleaf) shows the steps involved for each type of ILUA. The Native Title Registrar is responsible for ensuring that an ILUA lodged for registration meets the formal requirements of the Native Title Act and the ILUA Regulations.

## What are the conditions for registration of an ILUA?

There are specific guidelines for registration for the type of ILUA you are negotiating - these provide essential information to help you meet the requirements for registration.

The guidelines cover key issues such as:

- subject matter - what is the agreement about?
- description of the ILUA area
- parties - who can and must be a party to the agreement?
- consultation and consent requirements
- authorisation and certification
- essential information and documentation
- confidentiality.

The guidelines are available on the Tribunal's website.

## How to apply to register an ILUA

Any party, with the agreement of all parties, can apply to have the agreement registered. To assist parties, the Tribunal has developed application forms for the registration of each type of ILUA. The forms are accompanied by comprehensive notes and are available from the Tribunal website. You do not have to use these Tribunal forms. Alternatively, they can be posted or faxed to those without internet access.

# Steps to registering ILUAs

Area agreement	
<b>Lodgment</b>	Any party, with the consent of the other parties, can lodge an application to register the ILUA with the Native Title Registrar. To minimise delays, it is a good idea to get assistance from the Tribunal, for example getting feedback on the draft ILUA before lodging it for registration.
<b>Compliance check</b>	The Registrar checks that the application for the registration meets the requirements of the Act and ILUA Regulations. Any issues with the ILUA need to be identified and resolved before moving forward. The Registrar can provide assistance as part of feedback.
<b>Notification</b>	The Registrar notifies certain people, organisations and, in many cases, the public that the ILUA has been lodged.
<b>Opposing registration</b>	<pre> graph TD     A[If the application is not certified] --&gt; B[A native title claim may be filed within the notification period.]     B --&gt; C[The registration test is applied to the new claim.]     C --&gt; D[If the Registrar decides not to register the claim, the decision may be reviewed.]     D --&gt; E[If the claim is registered initially or upon review, all registered native title claimants must be party to the area agreement.]          F[If the application is certified] --&gt; G[Anyone claiming to hold native title may object to registration on grounds that the certification requirements have not been met.]     G --&gt; H[The Tribunal may assist in negotiating the withdrawal of objections.]     H --&gt; I[The Registrar decides on the objection if it is not withdrawn.]          subgraph "3-month notification period"         B         C         D         G         H         I     end </pre>
<b>Decision to register</b>	<p>The Registrar registers the agreement if it meets all conditions set out in the Native Title Act.</p> <div style="display: flex; justify-content: space-between;"> <div style="background-color: #eee; padding: 10px; border-radius: 10px; width: 45%;"> <p>If the application is not certified the conditions mainly relate to:</p> <ul style="list-style-type: none"> <li>• who has been a party to the agreement (see <i>Step 3 - Parties to ILUAs</i>)</li> <li>• whether the Registrar considers that the authorisation requirements have been satisfied.</li> </ul> </div> <div style="background-color: #eee; padding: 10px; border-radius: 10px; width: 45%;"> <p>If the application is certified the conditions mainly relate to:</p> <ul style="list-style-type: none"> <li>• who has to be a party to the agreement (see <i>Step 3 - Parties to ILUAs</i>)</li> <li>• whether objections, if any, have been resolved.</li> </ul> </div> </div>
<b>Registration</b>	If the conditions have been met, the Registrar registers the ILUA on the Register of Indigenous Land Use Agreements. Only some information goes on the register, not the whole ILUA. If the conditions have not been met, the agreement cannot be registered. The parties may be able to address any problems and make a new application for registration. Alternatively, it may be possible to ask for a review of the Registrar’s decision by the Federal Court.

Body corporate agreement	Alternative procedure agreement
As per area agreement.	As per area agreement.
As per area agreement.	As per area agreement.
As per area agreement.	As per area agreement.
<p style="text-align: center;">.....            ↓ ..... 1-month notification period .....            ↓</p>	<p style="text-align: center;">.....            ↓ ..... 3-month notification period .....            ↓</p> <div style="text-align: center;"> <p>Anyone claiming to hold native title may object on the ground that it would not be fair and reasonable to register the agreement.</p> <p>↓</p> <p>The Tribunal may assist in negotiating the withdrawal of objections.</p> <p>↓</p> <p>If the objection is not withdrawn, the Tribunal holds an inquiry into whether it is fair and reasonable to register the agreement.</p> </div>
<p>The Registrar registers the agreement if all conditions are met.</p> <p>The Registrar cannot register the agreement if:</p> <ul style="list-style-type: none"> <li>any of the parties advise the Registrar that they do not want the agreement to be registered, or</li> <li>a native title representative body for any of the area was not notified of the intention to enter the agreement.</li> </ul>	<p>The Registrar registers the agreement if it meets all conditions set out in the Act.</p> <p>The conditions relate to objections to the registration:</p> <ul style="list-style-type: none"> <li>no objection was made during the 3-month notification period, or</li> <li>all objections have been withdrawn, or</li> <li>an inquiry has found that registering the agreement is fair and reasonable.</li> </ul>
As per area agreement.	As per area agreement.

When sending in an application, please ensure:

- all required information and documentation is submitted including a copy of the ILUA, and
- if necessary, fix any problems with the ILUA or application raised by the Registrar in the initial check.

The form and attachments should be sent to the Native Title Registrar, National Native Title Tribunal, GPO Box 9973 in your capital city.

### **What is the process for registration?**

Once an application to register an ILUA is lodged with the Tribunal, it usually takes between three to six months to process, depending on the type of ILUA.

During that time the Native Title Registrar (or a delegate):

- checks that the agreement meets the provisions of the Native Title Act and ILUA Regulations
- notifies the representative body for the area, federal, state and local governments, and any other relevant people by letter, and in the case of area and alternative procedure agreement ILUAs, notifies the public through newspapers and other media as appropriate (the notification period is usually three months, or one month in the case of body corporate agreements)
- considers any submissions opposing the registration of the agreement that are received in the notification period (see *Step 7 - Opposing registration*).

When satisfied that the application and ILUA comply with the Native Title Act and ILUA Regulations, the Registrar registers the ILUA and writes to the parties to advise them of the registration. The Registrar does not assess the merit or fairness of the agreement.

Once an application to have an ILUA registered is submitted, the Registrar has a legal obligation to make some information available to the public during the notification process. Also, if the ILUA is registered, the Registrar will give extracts from the Register of Indigenous Land Use Agreements to people who ask for them (there are some details about the ILUA that the Tribunal must make available to the public on the register). The Registrar will not give copies of your agreement to members of the public and will not release details of your agreement (unless you have authorised the Tribunal to do this).

For alternative procedure agreements, the Registrar must give a copy of the agreement to anyone claiming to hold native title to the agreement area.

### **How long are ILUAs registered for?**

Generally ILUAs remain registered until:

- a party notifies the Registrar that the agreement has expired, and the Registrar believes on reasonable grounds that this is the case (for example, because the agreement included a specific end date), or
- all parties advise the Registrar that they wish to end the agreement and have it removed from the register, or
- it is established through an application to the Federal Court that a person would not have become a party to the ILUA but for fraud, duress or undue influence by any person.

Body corporate and area agreement ILUAs can also be taken off the register if a determination of native title is made, or revised, and the native title holders did not authorise the making of the agreement, or are different from the ones previously determined.

For all types of ILUAs, once an agreement is no longer registered the agreement ceases to have the effect(s) specified in the Native Title Act.

If an ILUA is amended after it is registered, the Registrar cannot update it on the Register of ILUAs. To have the amended agreement registered, an application for registration of the amended ILUA must be submitted.

# 7. Opposing registration

When an ILUA is lodged with the Tribunal for registration, the Native Title Registrar notifies certain people and organisations by mail, and in relation to area and alternative procedure agreement ILUAs, the general public through newspaper advertisements, that the ILUA has been lodged. During the notification period (one to three months depending on the type of agreement) certain people can oppose the registration.

## Who can oppose the registration of an ILUA?

Any person claiming to hold native title in relation to the area covered by the ILUA can oppose the registration of an alternative procedure agreement or an area agreement. The registration of a body corporate agreement can be opposed by any party to the agreement and the native title representative body. The grounds for opposing registration of an ILUA, and the people who can oppose registration, are limited and specific to each type of ILUA.

### Area agreements

#### *Certified applications*

If the application to register an agreement has been certified by the native title representative body (see *Step 5 - Authorisation*), only people who claim to hold native title for the area may oppose the registration. The objection must be made in writing, given to the Registrar within the three-month notification period, and set out why the application to register the agreement has not been properly certified. That is, outline why one or both of the following requirements were not met:

- all reasonable efforts were made to identify everyone who holds or may hold native title to the area
- all the people who were identified authorised the making of the agreement.

#### *Uncertified applications*

When the application is not certified, anybody can give the Registrar information in relation to whether or not those requirements were met. This information may be given at any time before a decision about registration has been made.

Alternatively, if a native title group has not authorised the agreement, they can lodge a native title claim over part or all of the ILUA area before the end of the three-month notification period. If the native title claim is accepted for registration in the relevant time periods, the ILUA cannot be registered until the person(s) who made the native title claim (the applicant) become a party to the ILUA.

### Alternative procedure agreements

The only valid grounds for opposing the registration of an alternative procedure agreement is that it would not be fair and reasonable to register the agreement.

## Body corporate agreements

The only grounds for opposing the registration of a body corporate agreement are:

- a native title representative body informs the Registrar that no representative body for the area was informed of the native title party's intention to enter into the agreement, or
- any party to the ILUA advises the Registrar that they do not want the agreement registered.

## What objections cannot include

Other grievances or complaints about an agreement do not qualify as valid grounds for objection. For example, an objection may not be made if someone:

- is unhappy about who is receiving benefits out of the agreement
- does not like the way they are being treated by the native title representative body, or
- is unhappy about the progress of a native title claim which relates to the same area.

Even though these types of complaints are important, the Registrar cannot consider them as valid grounds for objection when deciding whether to register the ILUA. The first point above may be relevant to whether it would be fair and reasonable to register an alternative procedure agreement. This is a matter for the Tribunal to inquire into if an objection is lodged to the registration of such an agreement.

## Lodging an objection

Objections to registration of an ILUA should be addressed in writing to:

National Native Title Tribunal  
GPO Box 9973 in your capital city

## What happens to a valid objection to the registration of an area agreement where the application is certified?

When the Registrar receives an objection:

- she may seek further information from the person making the objection
- she informs all parties and encourages the parties and the person making the objection to resolve the matter
- if they cannot resolve the matter, the parties can ask the Tribunal to assist in negotiating with the person making the objection to try to resolve the issues and have the objection withdrawn
- if the objection is not withdrawn, the Registrar determines whether the objection is upheld and, if so, does not register the agreement
- the agreement may then go back to the parties for renegotiation and a Tribunal member may help with negotiations at this stage.

To ensure the process is fair, the parties and the objector may need to exchange information.

## What happens to an invalid objection?

The Registrar may allow time for the person opposing registration to clarify their case. If the information is not provided within the relevant time, or if the information provided does not meet the requirements of a valid objection, the Registrar informs the parties and the person making the objection that no valid objection has been received.

Unless there is another valid objection, the agreement can be registered as long as it meets all of the other conditions.

# List of terms

**Alternative procedure agreements** are a type of ILUA that can only be made where there is no registered native title body corporate (or bodies corporate) for the entire agreement area. However, there must be at least one registered native title body corporate for part of the agreement area, or at least one representative Aboriginal or Torres Strait Islander body ('representative body') for the area.

**Area agreements** are a type of ILUA that can only be made where there is no registered native title body corporate (or bodies corporate) for the entire agreement area.

**Authorisation** is the process that is used to show that the native title group has been given the necessary authority to make the agreement by all persons claiming to hold native title over the area covered by the ILUA (the native title group). An agreement is authorised by either:

- using a mandatory process of decision making under the traditional laws and customs of the native title group, or
- where there is no such process, by using a process of decision-making that is agreed on and adopted by the native title group.

Another way of demonstrating that an agreement has been prima facie authorised is by getting the application certified by a representative Aboriginal or Torres Strait Islander body.

**Body corporate agreements** are a type of ILUA that can only be made where there is a registered native title body corporate (or bodies corporate) for the entire agreement area. This means that there must be at least one determination of native title in place in relation to the entire agreement area.

**Certification (certified)** refers to documentation from a representative Aboriginal or Torres Strait Islander body (the representative body) stating that it is of the opinion that all reasonable efforts have been made to identify potential native title holders and that the potential native title holders identified authorised the making of the agreement. The certification must also briefly set out the body's reasons for being of that opinion. This only applies to area agreements.

**Delegate** is a Tribunal employee appointed to make decisions on behalf of the Native Title Registrar.

**Determination of native title** is a decision by the Federal or High Court of Australia or other recognised body that native title does or does not exist in a particular area of land or waters.

**Future act** is a proposed activity or development on land and/or waters that will affect native title by extinguishing it or creating interests that are inconsistent with the existence, enjoyment or exercise of native title. Examples of future acts include the grant of mining or exploration rights and the compulsory acquisition of native title.

**ILUA Regulations** – see Native Title (Indigenous Land Use Agreement) Regulations.

**Intermediate period act** is, generally speaking, an act (excluding most legislative acts) done between 1 January 1994 and 23 December 1996 (inclusive) over land that is or was freehold or leasehold, or land on which a public work is situated, which was invalid to any extent because of the existence of native title.

**Mediation** is the process of bringing together some or all the parties to a native title proceeding to help them reach agreement about things such as whether native title exists, what other interests exist in the area, and the relationship between native title and those other rights and interests.

**Member** is a person who has been appointed by the Governor-General as a member of the Tribunal under the Native Title Act. Members can be appointed to provide assistance with ILUA negotiations or to assist in the withdrawal of objections to the registration of an ILUA.

**Native Title Act 1993 (Cwlth)** was amended in 1998 to provide for ILUAs. Relevant sections of the Native Title Act include: Division 3 – Subdivisions B, C, D and E.

**Native title group** is made up of all the mandatory native title persons who must be a party to an ILUA.

**Native title holder** is the person or people who have had their native title rights and interests recognised over a particular area of land or waters through a determination of native title, or a prescribed body corporate registered on the National Native Title Register as holding native title rights and interests on trust.

**Native Title (Indigenous Land Use Agreement) Regulations**, sometimes called ILUA Regulations, were established in 1999 under the Native Title Act.

**Native Title Registrar (Registrar)** is a statutory office holder appointed under the Native Title Act who, among other things, assesses applications for ILUA registration. The Registrar may delegate her powers to make these decisions to a Tribunal employee (a delegate). The Registrar also gives notice of proposed ILUAs, receives and determines objections to registration, and maintains the Register of Indigenous Land Use Agreements.

**Notification** is the process by which certain people and organisations (by letter) and in the case of area and alternative procedure agreements, the general public (by newspaper and other media) are advised that an application to register an ILUA has been lodged with the Native Title Registrar.

**Notification period** is the period during which people can object to the registration of certain types of ILUAs. The period is usually three months for area and alternative procedure agreements, and one month for body corporate agreements.

**Objection** is when someone opposes the registration of an ILUA. The Native Title Act provides limited grounds on which certain people can object to the registration of an ILUA.

**Party** is an individual, group, or organisation that has an interest in an area covered by the ILUA.

**Past act** is, generally speaking, a legislative act done before 1 July 1993 or any other act done before 1 January 1994 which is invalid to any extent because of the existence of native title.

**Prescribed body corporate** is a body established to represent native title holders as a group and manage their native title rights and interests once a determination that native title exists has been made. Once the court approves the corporation, it is entered onto the National Native Title Register as a registered native title body corporate.

**Proponent** is a party, usually a commercial entity and occasionally a government body, that is promoting the negotiation of an ILUA to achieve a specific economic or social objective.

**Register of Indigenous Land Use Agreements** contains information about agreements including a description of the area, the name of each party and contact address, the period during which the agreement will operate (if specified) and any statements about extinguishment, validation or future acts if they are part of the agreement.

**Registered native title body corporate** – see ‘Prescribed body corporate’.

**Registrar** – see ‘Native Title Registrar’.

**Registration** occurs when the Tribunal enters the details of an ILUA on the Register of Indigenous Land Use Agreements.

**Representative Aboriginal and Torres Strait Islander body** is a regional organisation recognised by the federal Indigenous affairs minister, and funded to represent Indigenous Australians in native title issues in a particular region. The representative Aboriginal and Torres Strait Islander body:

- can represent native title holders
- can certify that all reasonable efforts to identify potential native title holders have taken place and that the potential native title holders identified authorised the making of the ILUA
- can be a party to the ILUA in its own right, and
- in certain circumstances, must be notified of an intention to make an ILUA before it is signed.

Other persons and bodies may be funded under s. 203FE of the Native Title Act to perform some or all of the functions of a Representative Aboriginal and Torres Strait Islander Body (RATSIBs). Where a person or body is funded to perform a particular function, the references to the RATSIB in that part of the Native Title Act that relate to that function should be read to include the person or body.

**Representative body** – see ‘Representative Aboriginal and Torres Strait Islander body’.

# Contact the Tribunal

The National Native Title Tribunal has offices in Adelaide, Brisbane, Cairns, Darwin, Melbourne, Perth and Sydney. A wide range of information is available at [www.nntt.gov.au](http://www.nntt.gov.au) .

## Principal Registry

4th Floor, Commonwealth Law Courts Building  
1 Victoria Avenue  
Perth WA 6000  
GPO Box 9973  
Perth WA 6848  
Telephone (08) 9268 7272  
Facsimile (08) 9268 7299

## New South Wales and Australian Capital Territory Registry

Level 25, 25 Bligh Street  
Sydney NSW 2000  
GPO Box 9973  
Sydney NSW 2001  
Telephone (02) 9235 6300  
Facsimile (02) 9233 5613

## Northern Territory Registry

5th Floor, NT House  
22 Mitchell Street  
Darwin NT 0800  
GPO Box 9973  
Darwin NT 0801  
Telephone (08) 8936 1600  
Facsimile (08) 8981 7982

## Queensland Registry

Level 30, 239 George Street  
Brisbane Qld 4000  
GPO Box 9973  
Brisbane Qld 4001  
Telephone (07) 3226 8200  
Facsimile (07) 3226 8235

## Queensland Registry - Cairns Regional Office

Level 14, Cairns Corporate Tower  
15 Lake Street  
Cairns Qld 4870  
GPO Box 9973  
Cairns Qld 4870  
Telephone (07) 4048 1500  
Facsimile (07) 4051 3660

## South Australia Registry

Level 10, Chesser House  
91 Grenfell Street  
Adelaide SA 5000  
GPO Box 9973  
Adelaide SA 5001  
Telephone (08) 8306 1230  
Facsimile (08) 8224 0939

## Victoria and Tasmania Registry

Level 8, 310 King Street  
Melbourne Vic. 3000  
GPO Box 9973  
Melbourne Vic. 3001  
Telephone (03) 9920 3000  
Facsimile (03) 9606 0680

## Western Australia Registry

11th Floor, East Point Plaza  
233 Adelaide Terrace  
Perth WA 6000  
GPO Box 9973  
Perth WA 6848  
Telephone (08) 9268 9700  
Facsimile (08) 9221 7158

Was this information useful?

The Tribunal welcomes feedback on this publication.

Email Public Affairs with your comments and suggestions to [enquiries@nntt.gov.au](mailto:enquiries@nntt.gov.au) or telephone (08) 9268 7268.



## National Native Title Tribunal



For more information about native title and services of the Tribunal please contact the National Native Title Tribunal, GPO Box 9973 in your capital city or **Freecall 1800 640 501**. Information is also available at **[www.nntt.gov.au](http://www.nntt.gov.au)** .

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