

FACT SHEET

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Indigenous land use agreements (ILUAs) for PBCs*


What is an ILUA?

An ILUA is an agreement between the PBC and those who want to do a future act, that has been registered by the National Native Title Tribunal (NNTT). It can also cover things other than future acts. It binds all the parties, and all native title holders for the area covered by it, whether they were involved in making the ILUA or not. Before it can be registered by the NNTT, certain processes have to be followed. The NNTT can help parties negotiate an ILUA. PBCs should get legal advice before making an ILUA.

A registered ILUA:

- works as a contract between the parties to the ILUA
- can validate (make it legal to do) future acts

- legally binds all the native title holders for the area covered by the ILUA (even if they weren't involved in making the ILUA)
- usually provides for the non-extinguishment principle to apply (if the ILUA does extinguish native title by surrendering it to a government, that government must be a party to the ILUA)
- can provide compensation for future acts, but usually compensation is limited to what is in the ILUA (you can't ask for more in the future)
- can provide other benefits to the native title holders and the PBC (eg freehold grants, cultural heritage protection, positions on committees, employment, training etc).



An ILUA is an agreement between the PBC and those who want to do a future act that has been registered by the National Native Title Tribunal (NNTT).

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* PBCs are Prescribed Bodies Corporate. Once registered with the NNTT, they are also called Registered Native Title Bodies Corporate (RNTBCs).




Australian Government

Department of Families, Housing,
Community Services and Indigenous Affairs



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Statutory (legal) requirements

The law says that ILUAs must properly describe the future act(s) and the area covered by the ILUA (with a map and description). If the ILUA replaces the right to negotiate, it must say so.

Consent of the native title holders

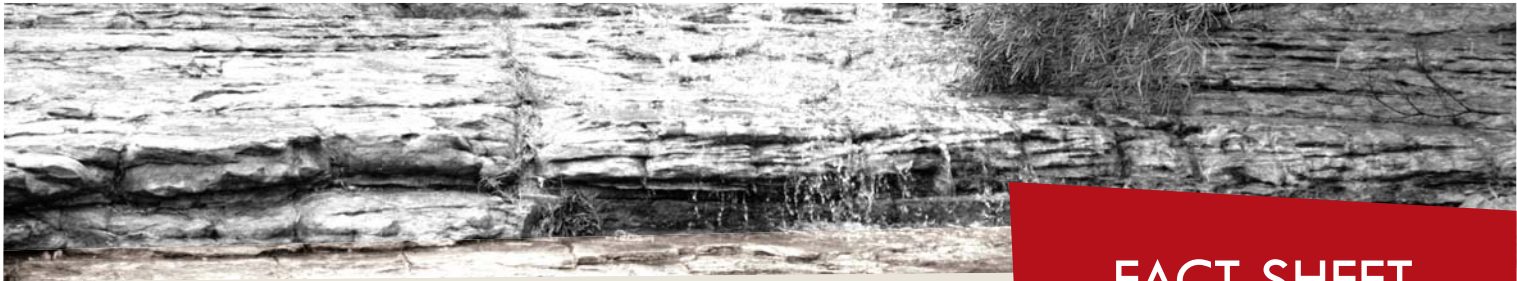
Before a PBC can make an ILUA, it must consult with the native title holders whose native title will be affected by the future act and get their consent (see [PBC Decision Making Factsheet](#)).

Features of ILUAs

- An ILUA can only be made if the PBC and native title holders want one – they cannot be forced to sign
- Third parties are not involved (unless you want them to be)

- The terms of an ILUA are negotiated, they cannot legally be imposed by government, the NNTT, a court, or by anyone else (though in practice, people's choices might be limited)
- Flexibility – an ILUA can include any benefits the parties agree on
- Relationship building – an ILUA can help build a relationship between the parties which can be useful in the future (eg with government or companies)
- An ILUA binds all the native title holders even if they didn't help make the ILUA
- ILUAs take time to negotiate and register.

This Fact Sheet contains general information only and is not a substitute for getting legal advice. Aurora does not accept liability for any action taken based on this Fact Sheet or for any loss suffered because someone relied on it. We urge native title holders and PBCs to get legal advice on any matter which may impact on their native title rights and interests.



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Types of ILUAs

There are three types of ILUAs: Body Corporate, Area and Alternative Procedure ILUAs.

The different types of ILUAs have different rules about when they can be used and how they must be made. Usually (but not always) PBCs make Body Corporate ILUAs.

Native title holders must be consulted and give their consent before a PBC can make any of these types of ILUA (see [PBC Decision Making Fact Sheet](#)).

Body Corporate ILUAs ('Subdivision B') are used where the whole ILUA area is covered by registered PBCs. All of these PBCs must be parties. They can be registered relatively quickly once the parties have completed the negotiations (although the negotiations can take time).

Area ILUAs ('Subdivision C') are used where parts of the ILUA area are not covered by registered PBCs. All the PBCs and registered claimants for the area covered by the future act must be parties to the ILUA. These can take longer to negotiate and register, especially if someone claiming to be a native title holder objects to something about the ILUA.

Alternative Procedures ILUAs

('Subdivision D') are used where parts of the ILUA area are not covered by registered PBCs. At least one PBC or Native Title Representative Body/ Native Title Service Provider (**NTRB**) for the area must also be a party to the ILUA. No-one has registered an Alternative Procedures ILUA so far.

For all ILUAs the Government must be a party if the ILUA extinguishes native title. Remember, an ILUA can only be made if the PBC and native title holders want one, so native title can only be extinguished in an ILUA if the native title holders choose to surrender it – usually in return for compensation or another benefit.

Other parties to ILUAs can include:

- people who claim to hold native title (but don't have a registered claim or a determination)
- NTRBs
- anyone who wishes to do a future act on native title land or waters.





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Important questions to ask before making an ILUA

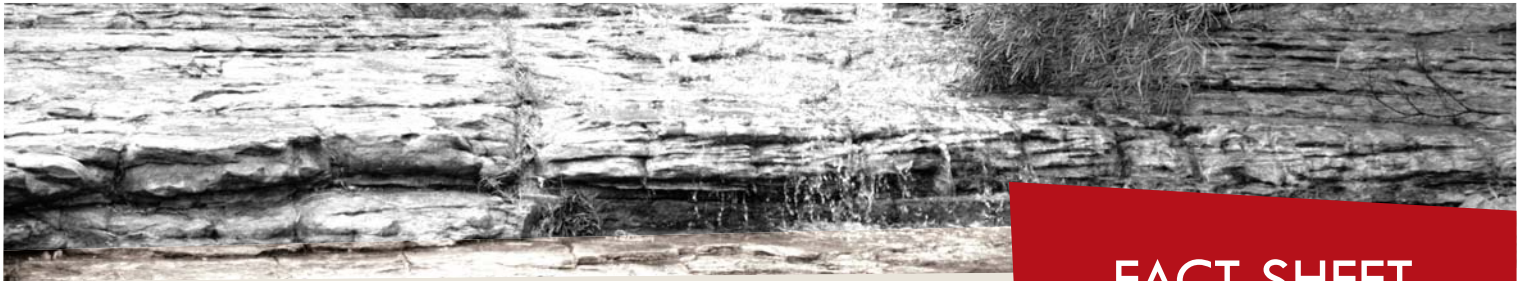
- Do you have the advice of a lawyer?
- What type of ILUA should it be?
- Who should be parties to it?
- What do you want to include in it?
- Are the right parties involved?
- Have the statutory (legal) requirements been complied with?
- Has the ILUA been properly notified?
- Have any objections to registration been dealt with?



Body Corporate ILUAs ('Subdivision B')

Registration

1. Any party may apply to the NNTT Registrar to register the ILUA
2. The Registrar must notify the parties, the relevant NTRB, governments, and any other appropriate person of the ILUA
3. Any party to the ILUA may tell the Registrar within one month that it doesn't want the ILUA registered (like a cooling off period)
4. The relevant NTRB may tell the Registrar within one month that it wasn't told about the ILUA before it was made
5. Otherwise, the ILUA must be registered.



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Area ILUAs ('Subdivision C')

Authorisation

Before it can be registered, the making of an Area ILUA must be authorised by the native title group. The native title group might include:

- all PBCs and registered claimants for the area;
- anyone claiming to hold native title in the area;
- the NTRB for any other part of the area.

Authorisation must be proved to the NNTT by:

- a certificate issued by the NTRB; OR
- evidence provided by the native title group.

The NNTT Registrar must be satisfied that

1. all reasonable efforts have been made to identify native title holders in the area; AND
2. all of those identified native title holders have authorised the making of the agreement.

This is easy for the part of the area for which there is a PBC that has provided evidence that it has followed the consultation and consent requirements necessary before it can make an ILUA (see [PBC Decision Making Factsheet](#)).

It can be difficult for any part of the area which has not yet received a native title determination, especially if no native title claim has yet been registered.

Registration

1. Any party may apply to the NNTT Registrar for registration, showing evidence of authorisation, that the PBC has consulted the native title holders whose native title is affected by the future act and obtained their consent to making the ILUA
2. The Registrar must notify the parties, the NTRB, governments, any other appropriate person, and the public of the ILUA (using letters and public notices)
3. If no-one objects within three months, the ILUA can be registered.

BUT

1. A person who claims to hold native title has three months to:
 - a. object if the ILUA has been certified by the NTRB and they believe that native title holders were not identified in the process or did not authorise the agreement, OR
 - b. make a native title application that is later registered, if the ILUA hasn't been certified by the NTRB.
2. These issues are resolved by:
 - a. negotiating with the person who made the objection so they withdraw their objection (eg there might be part of the ILUA they want changed), OR
 - b. making sure all registered native title claimants are party to the ILUA.
3. Once all issues are resolved the ILUA can be registered.
4. Registration usually takes six months, but can take longer.

