

ILUA POLICY PRINCIPLES

PREAMBLE

Native title agreements can materially contribute to closing the gap between Indigenous and non-Indigenous Australians through the provision of practical benefits, while serving the interests of both Indigenous communities and Commonwealth entities.

As participants in native title negotiations, Commonwealth entities can promote the negotiation of innovative native title agreements, building foundations for better functioning and more sustainable Indigenous communities by providing benefits which include social and economic development opportunities.

By engaging in negotiations at an early stage, including where there has not yet been a determination of native title, and emphasising real outcomes rather than legal technicalities, Commonwealth entities can provide practical benefits to native title groups in a timely and efficient way.

PRINCIPLES

When negotiating an Indigenous Land Use Agreement (ILUA) Commonwealth entities will observe the following principles:

1. The impact of any proposed future acts on the continued existence and exercise of native title rights should be minimised to the extent possible, while still enabling the Government entity to achieve its objectives.
2. The extinguishment of native title should only be proposed where absolutely necessary.
3. While ILUAs may acknowledge the special relationship of a native title group to land and waters, in the absence of a judicial determination of native title, ILUAs will not concede that native title exists over the agreement area.
4. Commonwealth entities may agree to provide financial and non-financial benefits to native title parties under an ILUA in accordance with these principles, regardless of whether there has been a determination of native title.
5. Commonwealth entities should be creative in developing benefits packages that deliver social and economic development opportunities for native title groups, including where appropriate:
 - employment and enterprise development
 - education and training
 - housing
 - cooperative land management
 - environmental and heritage initiatives,
 - and recognition of ties to traditional country.
6. Commonwealth entities should consider the role existing Commonwealth programs and bodies might play in contributing to benefits packages.

7. Commonwealth ILUAs will generally provide that the ILUA benefits fully discharge any liability of the Commonwealth for native title compensation liability in respect of the future acts consented to in the agreement.
8. Commonwealth entities should remain aware that benefits that reflect an existing right, are already protected through legislation, or are available through existing government programs may not assist in discharging any Commonwealth compensation liability.
9. ILUAs should benefit the whole native title group or, where appropriate, particular sections of the native title group, for example children or the elderly, rather than a limited number of native title holders or claimants.
10. The provision of benefits should generally be conditional upon:
 - a. the registration of the agreement as an ILUA, and
 - b. the completion by the native title party of any action necessary to ensure that the project dealt with by the ILUA can proceed.
11. In determining the appropriate size of a benefits package for which the Commonwealth is responsible, the Commonwealth will have regard to:
 - a. the degree to which the future act interferes with the native title rights and interests of the native title party to the agreement
 - b. the likelihood that the benefits will shape expectations in relation to future dealings involving Commonwealth entities and other participants in the native title system,
 - c. the expectations of the native title party, and the value the native title party place on its native title rights and interests, and
 - d. Division 5 of Part 2 of the Native Title Act which sets out some basic rules about the determination of compensation under the Act.
12. The Attorney-General and other relevant Ministers must be consulted about the method of assessment and provision of any benefits under an ILUA.
13. The terms of an ILUA will only be confidential where there are strong reasons such as cultural sensitivities or national security considerations.
14. ILUA parties are to ensure the correct native title groups are party to the ILUA.
15. ILUAs are to reflect relevant requirements, principles and policies promoting appropriate use of public funds.
16. ILUAs should include, where necessary, appropriate provisions in relation to variation and termination to ensure that all parties' interests are protected.
17. Consideration should be given to whether provisions should be included to review the agreement in particular circumstances and whether the ILUA should be of a set term.