



Department of **Water**
Department of **Regional Development**
Department of **Lands**
Department of **Agriculture and Food**



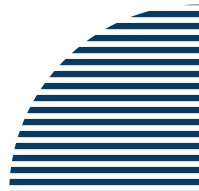
ROYALTIES
FOR REGIONS



L T P I A

**LAND TENURE PATHWAY
FOR IRRIGATED AGRICULTURE**

**OVERVIEW OF WATER FOR FOOD
TEMPLATE INDIGENOUS LAND USE
AGREEMENTS**



Unless native title has previously been extinguished over the land, the grant of a Section 79 lease or freehold under the *Land Administration Act 1997* and any associated easements required for a Water for Food (WFF) agricultural project will constitute ‘Future Acts’ for the purposes of the *Native Title Act 1993* (NTA).

An Indigenous Land Use Agreement (ILUA), as defined in Section 253 of the NTA, will be required to be registered by the Proponent at the National Native Title Tribunal (NNTT) prior to any grant of tenure.

Two forms of template ILUA have been developed by the State, a “Body Corporate Agreement” and an “Area Agreement”.¹

¹ Information on these two forms of ILUA can be found on the NNTT website at <http://www.nntt.gov.au/Pages/Home-Page.aspx>

1.0 REGISTRATION OF AN ILUA WILL BE REQUIRED

The Proponent will need to negotiate and reach agreement with the relevant Native Title Party and procure the registration of an ILUA in accordance with the terms of the NTA, in order to:

- Ensure that the grants of tenure are valid for the purposes of the NTA
- Deal with compensation and the release of the State’s liability.

The Minister will be a party to the ILUA.

The ILUA must contain certain mandatory provisions stipulated by the State and a template ILUA will be provided by the State to the Proponent.

The Proponent is responsible for all costs associated with the ILUA including, without limitation, legal fees, duties, meeting costs, negotiations and all compensation or other benefits payable to the Native Title Party to secure agreement to the project.

There are two parts to the WFF ILUA arrangement – the Template ILUA and an Ancillary Agreement.



2.0 THE TEMPLATE ILUA

The Template ILUA will be signed by the State, the Proponent and the Native Title Party.

The Template ILUA will reference the Ancillary Agreement and confirm that benefits have been agreed between the Proponent and Native Title Party and they are set out in that separate Ancillary Agreement.

MANDATORY PROVISIONS IN THE TEMPLATE ILUA

The Template ILUA will contain certain mandatory provisions, including the following:

- Native title rights are suspended during the four-year lease and any easement attached to that lease (i.e. if the project falls over during the four-year lease period, and no long-term tenure is ever granted to the Proponent, native title rights will revive).
- Native title rights are surrendered by the Native Title Party on the commencement of the 49-year agricultural lease or freehold, and any easements attached to those grants.
- Confirmation that the benefits set out in the Ancillary Agreement constitute full and final compensation in relation to any compensation entitlement of the Native Title Party in respect of the grant of the leases/easements/freehold and the surrender of native title rights.
- The parties agree that the grants of leases/easements/freehold can validly be done.
- Confirmation that the State will not be paying benefits to the Native Title Party.
- Indemnities to protect the State, including an indemnity and release from the Proponent in relation to any and all claims, compensation, costs, damages, liabilities etc. the State may incur in relation to the grants of tenure and surrender of native title.
- The State will not be liable for any costs.

NON-MANDATORY PROVISIONS IN THE TEMPLATE ILUA

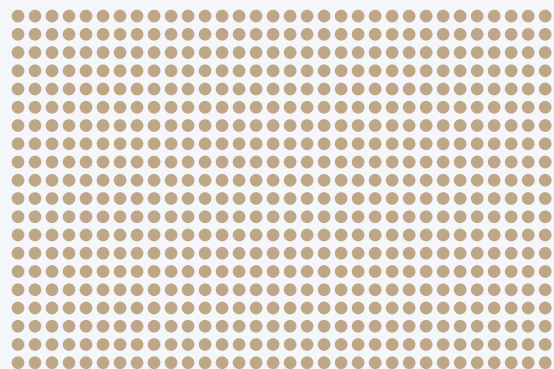
The Template ILUA will contain certain non-mandatory provisions that the parties may vary, including the following:

- A dispute clause.
- Each party will bear its own costs. However, note that in most cases, the Native Title Party will require the Proponent to pay costs for the ILUA including 'authorisation costs'.
- The Proponent will be arranging the registration of the ILUA on the NNTT ILUA Register. This is non-mandatory only in the sense that either the Proponent or Native Title Party can register the ILUA. It is mandatory that the State will not be registering the ILUA.



DID YOU KNOW?

No tenure can be issued until the ILUA is registered.



3.0 THE ANCILLARY AGREEMENT

An Ancillary Agreement will be negotiated between the Proponent and Native Title Party.

No template Ancillary Agreement will be provided. It is instead an agreement that will be negotiated privately between the Proponent and the Native Title Party.

The Ancillary Agreement will cover the commercial arrangement between the Proponent and Native Title Party and all matters which do not concern the State.

The Ancillary Agreement will include the benefits that will be provided by the Proponent to the Native Title Party such as what they are, and how and when they will be paid or provided and any other aspects of their arrangement that the Proponent and Native Title Party want covered.

Matters which are commonly included in such Agreements include Aboriginal heritage, joint venture or corporate arrangements, royalty arrangements, annual payments based on land area, equity, money for implementation or social impact management plans, employment and training, environmental matters, any progressive payments or guarantees and securities.

The State will not be a party to the Ancillary Agreement or to Agreement negotiations and will not be advising on matters relating to benefits or their sufficiency.



HANDY HINT

You are strongly recommended to seek legal advice in relation to the negotiation and drafting of ILUAs and Ancillary Agreements.

This work is copyright. Apart from any use permitted under the Copyright Act 1968, no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of the Minister for Lands, Department of Lands.

