



Government of **Western Australia**
Department of **the Premier and Cabinet**

The South West Native Title Settlement

Newsletter May 2017

The South West Native Title Settlement is the largest and most comprehensive agreement to settle Aboriginal interests over land in Australia since colonisation. Involving around 30,000 Noongar people and covering approximately 200,000 square kilometres, the Settlement provides an opportunity for the WA Government to work in partnership with the Noongar community to improve their economic, social and cultural development. It represents a significant investment in both the Noongar community and the shared future of the Western Australian community as a whole.

On 8 June 2015 the WA Government executed the six South West Native Title Settlement Agreements with the Ballardong People, Gnaala Karla Booja, South West Boojarah #2, Wagyl Kaip & Southern Noongar, Whadjuk People and Yued native title agreement groups. Although the Agreements were signed, the Settlement, involving the exchange of native title rights and interests for the package of benefits under the Agreements, becomes fully effective only after all of the Agreements have been registered and any related Court proceedings have been resolved.



Registration of the Agreements and the effect of the **McGlade** Judgement

Four High Court applications were commenced in December 2015 against the Native Title Registrar and the parties to the South West Native Title Agreements, including the State and South West Aboriginal Land and Sea Council (SWALSC), seeking to prevent the Native Title Registrar from registering the Whadjuk People, Ballardong People, South West Boojarah #2 and Wagyl Kaip & Southern Noongar Agreements.

The applications were made on the basis that these four agreements are not "Indigenous Land Use Agreements" as defined in the *Native Title Act 1993* (Cth), and are therefore not capable of being registered. The applications were remitted to the Full Federal Court in February 2016 and were heard on 28 and 29 July 2016.

On 2 February 2017 the Federal Court found that the Native Title Registrar does not have the jurisdiction to register the four Agreements as not all named applicants had signed the Agreements. This Full Court judgement declined to follow an earlier single judge decision which had been relied upon in relation to the Settlement Agreements, and has clarified the case law in relation to execution of Indigenous Land Use Agreements (ILUAs).

As a result, the four Agreements do not currently meet the necessary requirements to be an Indigenous Land Use Agreement (ILUA) and cannot be registered, given that only a majority of the persons comprising the Applicant signed.

To address the implications of the Full Federal Court (*McGlade* Decision) on 15 February 2017 the Commonwealth Government introduced the *Native Title Amendment (Indigenous Land Use Agreements) Bill 2017* (the Bill). Debate on the Bill commenced but was interrupted during the May sitting. The earliest next date of consideration will now be in the next Senate sitting in June.

When the Bill is passed the 4 Agreements affected by the *McGlade* decision will be valid for registration. They will then need to be re-lodged and considered for registration by the Registrar of the National Native Title Tribunal (NNTT).

Settlement Commencement

The judgement by the Full Federal Court has impacted the timing of registration of the Settlement Agreements, resulting in a delay to the commencement of all 6 of the South West Native Title Settlement Agreements. At this stage, the earliest possible commencement date for the Settlement is mid-2018.

The Federal Court judgement does not have a bearing on the content of the 6 South West Settlement Agreements, relating only to the registration of the Agreements under the *Native*



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Title Act 1993. Pre-Settlement obligations remain under the Agreements, including obligations in relation to the [Noongar Standard Heritage Agreement](#), the identification and selection of land for inclusion in the Noongar Land Estate (NLE), the [gazettal of the Water By-Law Amendments](#) and the passing of the [Noongar \(Koorah, Nitja, Boordahwan\) \(Past, Present, Future\) Recognition Act 2016](#). The WA Government and the SWALSC remain committed to Settlement and continue to prepare for the implementation of the South West Native Title Settlement as soon as possible.

What's Happening?

Machinery of Government Changes and Settlement Preparations

Machinery of Government changes were recently announced by the State Government, including a reduction in the number of government departments. The changes do not affect the State's commitment to the implementation of the Settlement.

The Department of Premier and Cabinet's (DPC) South West Settlement Implementation Team continues to work with government agencies to prepare for the implementation of the South West Native Title Settlement. This work includes liaising with the Department of Lands and the Department of Aboriginal Affairs (soon to form part of the combined Department of Planning, Lands and Heritage) in preparing for land transfers as part of the Land Base Strategy, coordinating the Interim Period Advisory Group (IPAG) and working with other government departments on the operation of the Noongar Standard Heritage Agreement.

Noongar Boodja Trustee

Perpetual Trustee Company Limited remains the 'Trustee in Waiting' and will be formally appointed and commence its role as the Trustee at the 'Trust Effective Date'. This date will occur following the conclusive registration of the 6 Settlement Agreements. The Interim Period Advisory Group (IPAG) continues to advise Perpetual prior to the commencement of the Settlement, and at this stage is the primary mechanism for communication between the Parties.

Establishment of Noongar Corporations

The Noongar Native Title Agreement Groups, facilitated by SWALSC are currently working towards the [establishment of the 6 Noongar Corporations and Central Services Corporation](#). SWALSC's role and functions remain as a Native Title Service Provider, however also includes undertaking the pre-Settlement obligations on behalf of the Noongar Agreement Groups and any preparatory work required for the implementation of the Settlement. Key areas for SWALSC are the operation of the Noongar Standard Heritage Agreements and the identification and selection of potential land for the future Noongar Land Estate. They continue to be resourced by the Federal Government as a Native Title Service Provider during this interim period.



Future Act provisions

Until the successful registration of the six Settlement Agreements and the Settlement formally commences, the future act provisions of the *Native Title Act 1993* continue to apply across the South West.

Further Information

DPC's South West Settlement Implementation Unit can be contacted directly:

Email: [South West Settlement Implementation Unit](#) Phone: 08 6552 6191

Information and relevant documentation about the content of the Settlement is available on DPC website: www.dpc.wa.gov.au.

Please see the list below to find the best contact at DPC for your enquiry. Our team will be able to direct your enquiry to other government departments if required.

ILUA Component	Contact
Heritage	Natalie Contos
For all enquiries regarding the Noongar Standard Heritage Agreement (NSHA)	Jeremy Elliott, DAA (Jeremy.Elliott@daa.wa.gov.au)
Land Base Strategy	Sarah Charbonneau
Community Development	Natalie Contos
Economic Development	Robyn Taylor
Water By-Laws	Robyn Taylor
Establishment of the Noongar Regional Corporations	Claire Egan
Housing	Sarah Charbonneau
Joint Management Arrangements	Angela Elder
Noongar Boodja Trust	Claire Egan