



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

The South West Native Title Settlement

Newsletter December 2015



Background

On 8 June 2015 the Government of Western Australia (WA Government) executed the 6 South West Native Title Settlement Indigenous Land Use Agreements (ILUAs). The signing was significant as it represented the WA Government's commitment to the largest and most comprehensive agreement to settle Aboriginal interests over land in the history of Australia.

The comprehensive detail of the South West Native Title Settlement (Settlement) is recorded in the 6 ILUAs made in compliance with the Commonwealth *Native Title Act 1993*. Each ILUA is identical in content, but is made in relation to a different geographic region in the South West with the South West Aboriginal Land and Sea Council and the relevant Noongar people for that area:

- Yued (Jurien, Moora, Lancelin, Gingin)
- Gnaala Karla Boodja (Mandurah, Bunbury, Donnybrook)
- South West Boojarah (Busselton, Dunsborough, Margaret River, Pemberton, Nannup)
- Wagyl Kaip (Katanning, Gnowangerup, Albany)
- Ballardong (York, Northam, Hyden, Kondinin)
- Whadjuk (Perth Metropolitan area)

The execution of the ILUAs does not signal the full commencement of the Settlement. The ILUAs can only come into full effect once they have been registered by the [National Native Title Tribunal \(NNTT\)](#). Successful registration of the ILUAs will resolve all native title claims in the South West of Western Australia and trigger the commencement of the full agreement.

However certain ILUA provisions (such as the Noongar Standard Heritage Agreement) did come into effect from execution. This Newsletter provides an update on key activities since June 2015 toward meetings these various obligations.

Registration Process Update

The executed ILUAs were submitted to the NNTT Registrar on 29 June 2015 to be assessed for potential registration. The NNTT ran a three month notification period from 16 September to 16 December 2015, providing an opportunity for objections to ILUA authorisation to be lodged by any persons claiming to hold native title in the ILUA areas. The period for objections closed on 16 December 2015

The NNTT Registrar will now consider all objections lodged, and the following actions may occur:

- The NNTT Registrar may seek further information in relation to particular objections.



- If the NNTT Registrar determines that the objections are valid, the objections will be provided to the WA Government and SWALSC for the opportunity to respond.
- After procedural fairness processes have been completed, the NNTT Registrar will decide whether any objections should be upheld, or if the ILUAs can be registered.
- If the Registrar decides to register the ILUAs, then the Settlement will commence 60 days after the registration date of all six ILUAs.
- If any objections are upheld by the NNTT Registrar, the WA Government will have to consider whether and on what basis it can proceed with the Settlement.
- If there are one or more judicial review proceedings in relation to the NNTT Registrar's decision to register the ILUAs, the Settlement will commence only once those legal proceedings are finalised (and if the ILUAs remain registered).

Legislation and By-Laws – WA Government Commitments

The WA Government, as a part of its commitment to the Settlement, will use all reasonable endeavours to enact and commence the following legislation and by-laws, in the period between the execution of the ILUAs and before the commencement of the Settlement:

- The *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2014*;
- The *Land Administration (South West Native Title Settlement) Bill 2015*; and
- By-laws to provide for certain customary activities to take place in public drinking water source areas.

Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2015 - Introduced to Parliament

On 14 October 2015, the Premier introduced the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2015* to the Parliament of Western Australia.

The Recognition Bill recognises the relationship that the Noongar people have with the Noongar lands and, importantly, acknowledges the significant and unique contribution that the Noongar people have made, are making, and will continue to make to the heritage, cultural identity, community and economy of the State.





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

Noongar Elders and representatives attended a morning tea at Parliament House and later witnessed the Premier give the historic second reading speech, introducing the Bill to the Legislative Assembly. The Premier's speech also provided a brief history of the Noongar people and most importantly acknowledged the Noongar people as the traditional owners of the South West of Western Australia.

For details of the Bill and its progress through Parliament visit the [website of the Parliament of Western Australia](#).

Land Administration (South West Native Title Settlement) Bill 2015 – Introduced to Parliament

The *Land Administration (South West Native title Settlement) Bill 2015* was introduced to the Parliament of Western Australia on 25 November 2015. Once passed, it will allow for the commencement of specific land-related provisions in the Settlement, including:

- implementation of a Land Base Strategy for the creation of the Noongar Land Estate. The Noongar Land Estate will hold up to 300,000 hectares of reserve land and a maximum of 20,000 hectares of freehold land; and
- granting of Land Access Licences - the licences will give Noongar people the right to access certain areas of unallocated Crown land for the practice of customary activities. The licences will be provided to all six of the Noongar Regional Corporations.

For details of the Bill and its progress through Parliament visit the [website of the Parliament of Western Australia](#).

By-laws for customary activities in public drinking water source areas.

The *Metropolitan Water Supply Sewerage and Drainage Amendments By-Laws 2014*, and the *Country Areas Water Supply Amendments By-Laws 2014* are scheduled to be gazetted in 2016. The by-laws set out arrangements for Noongar people to access some water catchment areas for limited customary activities, and will allow Noongar people to access and maintain Aboriginal sites and to teach and learn on country.

Noongar Standard Heritage Agreement

Appointment of Department of Aboriginal Affairs South West Settlement Director



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

Mr Jeremy Elliott has been appointed to a newly created South West Settlement (Heritage) Director position within the Department of Aboriginal Affairs (DAA). This position will facilitate the implementation of the Noongar Standard Heritage Agreement (NSHA), as well as prepare for the implementation of Noongar Heritage Partnership Agreements between DAA and each of the Regional Corporations once they are established. Contact the South West Settlement (Heritage) Director for information about the new heritage arrangements.

Phone: (08) 6551 8070 or email the [South West Settlement \(Heritage\) Director](#).

Signing of the First Noongar Standard Heritage Agreements by Government

On 26 October 2015 Main Roads Western Australia became the first WA Government agency to sign up to NSHAs over each of the six ILUA areas.

The NSHAs now provide Main Roads with a framework for when and how Aboriginal heritage surveys will be conducted across the Settlement area, and will assist compliance with the *Aboriginal Heritage Act 1972*.

The NSHAs provide the ILUA groups with a clear process for engagement about Main Roads' activities that may impact Aboriginal heritage sites. The NSHAs also ensure the submission of relevant information to the Department of Aboriginal Affairs for potential inclusion on the [Register of Aboriginal Sites](#).

Other WA Government agencies are also now in the process of signing up to NSHAs in relation to the conduct of Aboriginal Heritage Surveys in the ILUA areas

WA Government departments, agencies and instrumentalities are required to enter into a NSHA with the relevant ILUA group when conducting an Aboriginal Heritage Survey in an ILUA area, unless they have an existing heritage agreement. During the interim period SWALSC is signing up to NSHAs on behalf of the six ILUA groups.

DMP Heritage Condition on New Titles

From the 8 June 2015 the Department of Mines and Petroleum (DMP) now places a condition on the grant of new Mining, Petroleum and related Access Authority tenures requiring a heritage agreement or a NSHA be executed before any rights can be exercised by the Proponent. To date, DMP has issued 37 Mineral and Petroleum titles with the heritage condition, and at least one NSHA has already been signed in accordance with the condition.

Industry Proponents can visit the [DMP website](#) for more information.



NSHA Template Resources

To simplify use of the NSHA the following resources have been developed:

- [Noongar Standard Heritage Agreement - Template](#) - modifiable templates for each of the six ILUAs, that may be adapted to apply over a limited area e.g. for one-off project use, or for global application across an entire ILUA area
- [Activity Notice - Template](#) - to be used when issuing an 'Activity Notice' as per clause 8.2 of the NSHA

Additional templates are also being developed to further simplify the process:

- Activity Notice Response – Template – to be used when issuing an 'Activity Notice Response' as per clause 8.3 of the NSHA
- Service Provider Agreement – Template – which will mirror relevant NSHA obligations and safeguard Government Proponents when they are contracting an Aboriginal Heritage Service Provider to conduct an Aboriginal Heritage Survey.

To learn more about the NSHA contact the [Department of Aboriginal Affairs](#) or visit the [DPC website](#).

Establishment of the Noongar Corporations

SWALSC is currently facilitating processes for the establishment of the six Noongar Regional Corporations by the ILUA Groups, as well as the Central Services Corporation. All ILUA Group members are encouraged to get involved.

SWALSC held a series of Information Workshops throughout the six ILUA areas and established Focus Groups in order to develop a plan for ILUA group engagement for the establishment and endorsement of the Regional Corporations. The Focus Groups are also developing draft Cultural Advice Policies and Corporation Rule Books for the consideration of the broader ILUA Groups.

Provisions contained within the ILUAs set out the various requirements for the establishment of the seven Noongar Corporations, in order for them to be endorsed by the State and eligible for appointment by the Noongar Boodja Trustee.



Noongar Boodja Trustee – Selection Process

The Noongar Boodja Trust will operate as a perpetual charitable trust and is intended to deliver enduring economic, social and cultural benefits to the Noongar people.

A formal tendering process is currently underway for the selection and appointment of an independent Professional Trustee to be the initial Trustee of the Noongar Boodja Trust. The WA Government and SWALSC have delegated their authority to facilitate the selection of the Professional Trustee to the Noongar Boodja Trustee Selection Taskforce (Taskforce). The Taskforce was established in June 2015, comprised of an Independent Chair and four representatives from both the State and SWALSC.

In November the Taskforce hosted the Noongar Boodja Trustee Symposium which was opened by the Premier. The Symposium gave insight and information to prospective tenderers on the unique aspects of the Trust. Seven Trustee companies attended the event along with members of the SWALSC Board and executive team.

The Taskforce is also providing strategic direction and leadership to assist the Noongar Boodja Trustee Selection Panel (Panel) in their ultimate selection of a suitable Professional Trustee Company, which will become the Trustee upon the declaration of the Noongar Boodja Trust.

Panel members were chosen because of their extensive experience and expertise. The Panel Members are:

- Independent non-voting Chair: Dr Ken Michael AC, former Governor of Western Australia;
- Independent Financial Expert: Ms Catherine Nance, Partner PricewaterhouseCoopers;
- Independent Legal Expert: Mr Geoff Gishubl, Partner Ashurst Australia;
- Independent Practical Expert: Professor Colleen Hayward AM, Pro-Vice-Chancellor, Equity and Indigenous, Edith Cowan University;
- State-nominated Representative: Ms Kylie Towie, Assistant Director General, Department of Health; and
- SWALSC-nominated Representative: Mrs Gningala Yarran-Mark, Aboriginal and Torres Strait Islander Coordinator, Aboriginal Engagement, UGL Limited.

On the 23rd of December the Request for Tender Document was released to eligible Trustee Companies on the [Tenders WA website](#). Access to this website is limited to registered users.



Noongar Land Base Strategy

Over a five year period the Noongar Boodja Trust will be allocated the following land, to form a part of the Noongar Land Estate:

- a maximum of 300,000 hectares of reserve and leasehold land; and
- a maximum of 20,000 hectares of freehold land.

This land will be drawn primarily from existing unallocated crown land and unmanaged reserve, as well as Aboriginal Lands Trust properties. None of the land will be from private land holdings.

To meet the targets set out in the ILUA for land selection and allocation, SWALSC and the Department of Lands (DoL) have commenced, and will continue to identify and select land potentially available for allocation to the Trust. DoL is also consulting with relevant State and Local Governments before the land is considered eligible for transfer.

Terms of allocation for land parcels that have been assessed are being prepared by DoL as per the process agreed to in the Noongar Land Base Strategy (ILUA: Appendix J), for transfer to the Trust once established. The Trustee will, once appointed, take over from SWALSC in identifying and selecting land for potential transfer, as well as accepting all lands for allocation to the Trust.

Government Implementation Planning

DPC is working with WA Government agencies involved in the implementation of the Settlement, on a Government Service Management Plan (GSMP). The GSMP records the obligations of each department involved in the Settlement, including the DPC, and maps the various obligations and associated timeframes.

The GSMP outlines reporting arrangements against each agency's ILUA obligations, including how progress will be monitored. The GSMP will be a tool to assist agencies in meeting their ILUA obligations and the broader Settlement objectives.

Ongoing Activities in 2016

In 2016 the ILUA registration process will continue, although there may be some delays to the commencement of the Settlement as a result of objections lodged to the ILUAs. It is hoped that registration may be well advanced by mid-2016 and work toward the implementation of the ILUAs will continue during this period, activities include:



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

- progression of South West Settlement related legislation and water by-law amendments through the Parliament and Minister for Water;
- operation of Noongar Standard Heritage Agreements across Government and Industry;
- selection of a Professional Trustee company;
- establishment of the Noongar Corporations by the Noongar ILUA groups;
- ongoing identification and selection of potential land for future transfer to the Noongar Boodja Trust in accordance with Settlement targets.

Subject to successful ILUA registration, it is anticipated that in the second half of 2016 the following events will occur:

- commencement of the Settlement and delivery of the benefits package;
- declaration of the Noongar Boodja Trust and the appointment of the Professional Trustee;
- appointment of the Noongar Corporations; and
- resolution of all native title claims in the South West, and the cessation of the operation of the *Native Title Act 1993*, including the future act regime.

Communication

South West Native Title Settlement Briefings

Since June 2015 DPC, DAA and DoL representatives have provided 24 briefings to a range of stakeholders, including WA Government departments, agencies and instrumentalities (incorporating agencies on the Interagency Reference Group for Native Title and Aboriginal Heritage) and a number of Local Governments via their 'Zone' meetings.

Further briefings are scheduled in 2016 to cover the remainder of the Local Government Zones affected by the Settlement and to address particular requests by agencies. In addition to general briefings on the South West Native Title Settlement, State agencies have been offered particular detail on the operation of the Noongar Standard Heritage Agreement, and Local Governments have been provided with detailed information on the Land Transfer Process.

DPC, together with DAA and DoL, will arrange further briefings upon request. DAA can be contacted directly in relation to NSHA briefing requirements.

Fact Sheets about the Settlement

Fact Sheets first released July 2015 to assist in stakeholder and broader community understanding of the South West Native Title Settlement, have been updated. The Fact Sheets outline the specific benefits being provided through the Settlement, including



answers to frequently asked questions raised by a range of stakeholder groups during consultations. The Fact Sheets are available on the DPC website.

Fact Sheets can be copied and distributed by local governments, local Members of Parliament and government agencies to the wider community when they seek information about the Settlement.

Online information about the South West Native Title Settlement

All relevant documentation about the ILUA and the Settlement is available on the DPC website: www.dpc.wa.gov.au.

Information includes:

- Copies of each of the 6 executed ILUAs;
- Maps of the relevant ILUA area boundaries;
- Technical descriptions of the 6 ILUA boundaries;
- Template Noongar Standard Heritage Agreements for each ILUA area;
- Links to the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2014*, and the *Land Administration (South West Native Title Settlement) Bill 2015*; and
- Supporting information, such as the Fact Sheets, that may assist in understanding of the Settlement.

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

Email: South West Settlement Implementation Unit

Phone: 08 6552 6191

We would like to extend a sincere thanks to all stakeholders who have worked with us on the implementation of the South West Native Title Settlement through 2015.

We wish everyone a safe and happy Christmas and look forward to working with you all again in 2016.