



South West Native Title Settlement

Noongar Standard Heritage Agreement

The South West Native Title Settlement (Settlement) is a landmark native title agreement negotiated between the Noongar people and the Western Australian Government (WA Government). The Settlement commenced 25 February 2021.

The Settlement, involving six Noongar Native Title Agreement Groups, and covering 200,000 square kilometres of land, represents significant social and economic investment in the Noongar community and the shared future of Western Australia.

For the latest Settlement information visit wa.gov.au (the WA Government website).

About the Noongar Standard Heritage Agreement

The Noongar Standard Heritage Agreement (NSHA), under the Settlement, provides a uniform and efficient approach to Aboriginal heritage surveys in the South West, in compliance with the *Aboriginal Heritage Act 1972*. An NSHA provides all parties with a clear, timetabled framework about their various obligations and also delivers a process for improving the quality of data on the WA Government's Aboriginal Heritage Inquiry System.



Map of the Settlement Area showing the Settlement's six Indigenous Land Use Agreement boundaries

When did the NSHA commence?

The Noongar Standard Heritage Agreement (NSHA) template commenced operation from the date the six Settlement Indigenous Land Use Agreements (ILUAs) were executed – **8 June 2015**.

This was in advance of the majority of the other ILUA initiatives which begin at various stages following the Settlement commencement date (25 February 2021).

Who must use a NSHA?

WA Government land users must use an NSHA. Since 8 June 2015, WA Government departments, agencies and instrumentalities are required to sign up to an NSHA with the relevant ILUA Agreement Group (Agreement Group) when conducting an Aboriginal Heritage Survey in an ILUA area, unless they had a pre-existing Heritage Agreement as at 8 June 2015. See [here](#) for more information.

Registered holders of a **Mining or Petroleum Tenement** or **Access Authority** granted after 8 June 2015 will have a heritage condition on title requiring them to enter into an Aboriginal Heritage Agreement with the relevant Agreement Group. This may be either an NSHA or another form of Aboriginal Heritage Agreement (as defined in the ILUAs) if agreed by the relevant ILUA group. See [here](#) for more information.

Who must Proponents sign up to and engage on the NSHA with?

Between 8 June 2015 and 8 December 2022, the South West Aboriginal Land and Sea Council (SWALSC) signed up to NSHAs and other Aboriginal Heritage Agreements on behalf of the relevant Agreement Group.

On 9 December 2022 the six Noongar Regional Corporations (Regional Corporations) became parties to the six ILUAs. From this date they assumed the role of the Agreement Groups under the ILUAs, including responsibility for entering into NSHAs and other Aboriginal Heritage Agreements.

Updated templates for each Regional Corporation must be used for all new NSHAs made from 9 December 2022 and can be found [here](#), together with further details and NSHA resources.

Who must Proponents sign up to and engage on the NSHA with?

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At present, there is no change to pre-existing NSHAs and other Aboriginal Heritage Agreements where SWALSC is the Noongar party on behalf of a Native Title Agreement Group. In the future, SWALSC and the Regional Corporations may arrange for these pre-existing agreements to be assigned to the Regional Corporations. Relevant Proponents will be contacted by SWALSC if this is proposed.

The six Regional Corporations have authorised SWALSC to:

- coordinate advice to Proponents on existing NSHAs and other Aboriginal Heritage Agreements, and Proponent requests for new agreements;
- prepare NSHA documents on their behalf using the standard NSHA templates and arrange for signing. *NB: SWALSC has advised it prefers to prepare NSHAs for Proponents direct from the templates, and is happy to do this for Proponents upon request;*
- sign NSHAs and other Aboriginal Heritage Agreements on their behalf; and
- continue to accept and process Aboriginal Heritage Agreement (including NSHA) Activity Notices, in consultation with the Regional Corporations and their Cultural Advice Committees.

These arrangements will be in place until further notice.

When must WA Government agencies use an NSHA?

An NSHA must be used by WA Government agencies when conducting Aboriginal Heritage Surveys in the six [ILUA areas](#). However it is recommended that an NSHA is entered into, and an 'Activity Notice' issued, if there is a risk that an activity will 'impact' (i.e. by excavating, destroying, damaging, concealing or in any way altering) an Aboriginal site. The [Aboriginal Heritage Due Diligence Guidelines](#), referenced by the NSHA, provide guidance in how to assess this risk.

Does the NSHA/Heritage Condition apply over private land?

The requirement for WA Government departments, agencies and instrumentalities to use an NSHA, and the heritage condition on new tenements, applies across all land in the ILUA areas, including private land. This reflects the fact that the *Aboriginal Heritage Act 1972* applies to all land.

Can other Land users use an NSHA?

Yes, other land users are encouraged to consider using an NSHA when their planned activity occurs within an ILUA area and an Aboriginal Heritage Survey may be required. The *Aboriginal Heritage Act 1972* and Regulations apply across all WA land including the ILUA areas, but unlike the WA Government, other land users (including local Government and private land users) are not bound to enter into an NSHA. However, they may find an NSHA offers an efficient and Aboriginal Heritage Act-compliant alternative.

Where other land users do not elect to follow an NSHA, and a heritage survey is necessary, it is recommended that heritage surveys be conducted following key elements in an NSHA to ensure a consistent approach across the South West and to assist in compliance with the Aboriginal Heritage Act. This would include:

- Following the [Aboriginal Heritage Due Diligence Guidelines](#) to determine whether an activity may pose a risk to Aboriginal heritage and may require a survey;
- Seeking the names of suitable Aboriginal Consultants through SWALSC (or the Noongar Regional Corporations, once established);
- Consulting with SWALSC prior to making an application for consent to impact a site under section 18 of the Aboriginal Heritage Act; and
- Following an NSHA's prescribed schedule of fees, as and where appropriate.

Any land user interested in using an NSHA or seeking further information on key elements of an NSHA can visit the [DPLH website](#).

Is there a template for Local Government land users?

A template Noongar Heritage Agreement for Local Government (NHALG) has been negotiated between SWALSC and the Western Australian Local Government Association (WALGA), and is being trialled between SWALSC and one Local Government Authority before being rolled out more broadly.

Local Government Authorities should seek advice from SWALSC in relation to entering into a NHALG for land based activities.

Does a Proponent to an NSHA have the same obligations when it contracts another party to undertake ground-disturbing activity?

Yes, if a Proponent engages a contractor to carry out ground disturbing activities, then all the usual obligations apply. The Proponent must also ensure that the contractor is aware of obligations under both an NSHA and the Aboriginal Heritage Act. It is recommended that Land users (whether Government or non-government) seek their own advice about their obligations in these circumstances.

What is an Aboriginal Heritage Survey?

An Aboriginal Heritage Survey under an NSHA is defined as a survey conducted to assess the potential impacts of activities on Aboriginal Heritage and may include anthropological, ethnographic or archaeological investigations as appropriate.

Aboriginal Heritage Surveys can also be conducted solely for the purpose of identifying potential Aboriginal sites with no linkage to planned activities. See the [DPLH website](#) for further information about Aboriginal Heritage Surveys.

What happens if there is an emergency, for example a bushfire?

Emergency activities to secure life, health or property are exempt from the need for an Aboriginal heritage survey. An NSHA does not apply in these circumstances.

What is the impact of the *Aboriginal Cultural Heritage Act 2021*?

The *Aboriginal Cultural Heritage Bill 2021* passed State Parliament and received Royal Assent on 22 December 2021, and will in future replace the *Aboriginal Heritage Act 1972*. Before the *Aboriginal Cultural Heritage Act 2021* (ACH Act) comes into operation there is a transitional period during which the regulations, statutory guidelines and operational policies will be developed to ensure the ACH Act will have its intended effects.

Aboriginal Heritage requirements under the Settlement will be reviewed in due course to take account of the ACH Act but remain in place at present. Proponents will be notified of the review and any implications for existing heritage arrangements in the Settlement area.

Where can I find further information and resources?

See [DPLH's website](#), which provides a number of resources including:

- Due Diligence Guidelines;
- NSHA Factsheets;
- NSHA Templates per ILUA region; and
- All six ILUAs in full.

You may also be interested to learn more about the '[Noongar Heritage Partnership Agreement](#)' found at [Annexure V](#) of the ILUAs.

Who should I contact about Aboriginal Heritage matters in the South West?

For requests for NSHAs and advice on Aboriginal Heritage Agreements in the Settlement area generally, contact SWALSC at legal.team@noongar.org.au or on (08) 9358 7400.

The Department for Planning, Lands and Heritage (South West Native Title Settlement Heritage) can be contacted for guidance on Aboriginal heritage requirements in the Settlement area at: swsheritage@dplh.wa.gov.au, or on (08) 6551 7985.

Further information

Further information about the Settlement, including the six ILUAs made in compliance with the Commonwealth *Native Title Act 1993*, can be found on the website of the WA Government

<https://www.wa.gov.au/organisation/department-of-the-premier-and-cabinet/south-west-native-title-settlement>