



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

The South West Native Title Settlement

An Agreement reached between the Noongar People and
the Western Australian Government

Noongar Standard Heritage Agreement: Factsheet

The South West Native Title Settlement (the Settlement) is the largest and most comprehensive agreement to settle Aboriginal interests over land in Australia. 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.

On 8 June 2015, after extensive negotiations, and authorisation by the Noongar people, the Western Australian Government signed (executed) the six South West Native Title Settlement Agreements with the Ballardong, Gnaala Karla Booja, South West Boojarah, Wagyl Kaip & Southern Noongar, Whadjuk and Yued groups.

The Settlement as a whole will only become fully effective after all of the six Agreements have been conclusively registered in accordance with the *Native Title Act 1993 (Cth)*, and any related court proceedings have been resolved.

For the latest information see the 'status of the Settlement' section of the Department of the Premier and Cabinet website (<http://www.dpc.wa.gov.au/lantu>).



Noongar Standard Heritage Agreement

The Noongar Standard Heritage Agreement (NSHA) provides a uniform and efficient approach for conducting Aboriginal Heritage Surveys in the South West Native Title Settlement Area. The NSHA provides all parties with a clear, timetabled framework about their various obligations in compliance with the Aboriginal Heritage Act 1972. The NSHA also delivers a process for improving the quality of data on the Aboriginal Heritage Inquiry System (AHIS). The NSHA process is informed by the WA Government’s ‘Aboriginal Heritage Due Diligence Guidelines’.

When did the NSHA commence?

The NSHA commenced on the 8 June 2015, the same date on which the Western Australian Government signed (executed) the six South West Native Title Settlement Agreements (ILUAs).

Where does the NSHA apply?

The NSHA applies to the whole of the South West Native Title Settlement Area.





Who must use the NSHA?

WA Government Land Users

WA Government land users are required to enter into and follow the NSHA if an Aboriginal Heritage Survey is required and a pre-existing heritage agreement was not in place as at 8 June 2015.

If a WA Government land user has a pre-existing heritage agreement that it wishes to continue to operate, it need not enter into a NSHA. Alternatively, a pre-existing heritage agreement can be replaced by the NSHA (to the extent they cover the same subject matter) by listing the existing agreement in 'Schedule 2' of the NSHA.

It is recommended a NSHA is entered into, and an 'Activity Notice' issued under the NSHA, if there is a risk that an activity will unlawfully 'impact' (i.e. by excavating, damaging, destroying or altering in any way) an Aboriginal site. The Aboriginal Heritage Due Diligence Guidelines are referenced by the NSHA and provide guidance on how to assess potential risk to Aboriginal heritage. The Guidelines can be viewed at: <http://www.daa.wa.gov.au/globalassets/pdf-files/ddg>

Registered holders of a Mining or Petroleum Tenement or Access Authority

Registered holders of a Mining or Petroleum Tenement or Access Authority granted after 8 June 2015 will have a heritage condition on their title requiring them to enter into a Heritage Agreement with SWALSC, on behalf of the relevant Noongar Native Title Agreement Group, before any rights can be exercised. This may be the NSHA or another form of Heritage Agreement agreed to by SWALSC.

See the Department of Mines, Industry Regulation and Safety website for information about the grant of mining tenure over the Settlement area:

<http://www.dmp.wa.gov.au/Minerals/South-West-Native-Title-12821.aspx>

Does the NSHA/Heritage Condition apply over private land?

Yes, the requirement for WA Government land users to use the NSHA, and the heritage condition on new tenements, applies to *all* land in the Settlement Area including private land. This is different from 'future act' requirements under the *Native Title Act 1993* (Cth), which only need apply where native title exists.



Can other land users use the NSHA?

Yes, the WA Government encourages all land users to consider possible use of the NSHA when their planned activity occurs within the Settlement or specific ILUA area and an Aboriginal Heritage Survey may be required. Unlike the WA Government, other land users are not legally bound to use the NSHA, but some may find the NSHA offers an efficient and *Aboriginal Heritage Act 1972* (WA) compliant alternative.

Where land users do not elect to follow the NSHA, it is recommended that heritage surveys be conducted following key elements in the NSHA to ensure a consistent approach across the Settlement Area. This approach would include:

- early engagement with SWALSC (acting on behalf of the Noongar Agreement Groups) regarding proposed activities that may impact Aboriginal sites (NSHA clause 7);
- assessment of risks of proposed works damaging or altering an Aboriginal heritage site by using the Due Diligence Guidelines (NSHA clause 7.2)
<http://www.daa.wa.gov.au/globalassets/pdf-files/ddg>;
- issuing notices for works that may potentially damage or alter Aboriginal heritage sites in a format similar to the 'Activity Notices' contained in the NSHA (NSHA clause 8, Schedule 4, and using the Template Activity Notice);
- if a Heritage Survey is required, seeking the names of suitable Aboriginal survey participants from SWALSC (NSHA clause 9);
- following the NSHA Heritage Survey processes (NSHA clause 9 and 10);
- following the NSHA timelines (NSHA clauses 8 to 12);
- adhering to the NSHA heritage survey costs schedule (Schedule 5);
- following the NSHA heritage survey reporting requirements (NSHA clause 12 and Schedule 6);
- providing the Heritage Survey Reports and Heritage Information Submission forms to the Department of Planning, Lands and Heritage (Clause 12.5); and



- providing notice to and consulting with SWALSC (acting on behalf of the six Noongar Agreement Groups) prior to the Local Government lodging an Aboriginal Heritage Act (1972) Section 16 or Section 18 Application (NSHA clause 15).

Any land user interested in using the NSHA or seeking further information on key elements of the NSHA can contact the Department of Planning, Lands and Heritage (contact details are provided below).

What is an Aboriginal Heritage Survey?

The NSHA defines an Aboriginal Heritage Survey as a survey conducted to assess the potential impact 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 and the survey may have no linkage to any planned activities or future land use.

My NSHA is with the South West Aboriginal Land and Sea Council – What happens when the Noongar Regional Corporations are established?

SWALSC is currently signing up to NSHAs on behalf of the six Agreement (ILUA) Groups. After the Settlement formally commences, all existing NSHAs will be transferred to the relevant Noongar Regional Corporation(s) – there is no requirement for a replacement or new NSHA to be executed. Once the Noongar Regional Corporations are established, they will sign up to any new NSHAs and will be the key contact for Aboriginal Heritage matters within their respective ILUA areas.

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

If a Proponent is carrying out a ground disturbing activity through contractors, the NSHA requires that the Proponent ensure that the contractors are made aware of the obligations that arise under the *Aboriginal Heritage Act 1972 (WA)* and that the Proponent may have obligations under the NSHA. Because contractual arrangements



vary, it is recommended that land users seek their own advice about their obligations in these circumstances.

What happens if there is an emergency such as a bushfire?

The NSHA does not apply to emergency activities required to secure life, health or property.

Where can I find further information?

A range of information and resources can be found on the Department of the Premier and Cabinet (DPC) website, including:

- Modifiable NSHA templates for each of the six ILUA areas.
- Maps and technical boundary descriptions for each of the six ILUA areas.
- Activity Notice (Template) to be used by the Proponent when issuing an 'Activity Notice'.
- Activity Notice Response (Template) "Yes Heritage Survey" to be used by SWALSC or the relevant Noongar Regional Corporation when issuing an 'Activity Notice Response' as per clause 8.3 of the NSHA.
- Activity Notice Response (Template) "No Heritage Survey" to be used by SWALSC or the relevant Noongar Regional Corporation when issuing an 'Activity Notice Response' as per clause 8.3 of the NSHA.
- Aboriginal Heritage Service Provider Contract (Template) to be used by the Proponent when engaging the Aboriginal Heritage Service Provider*. The Contract sets out the contractual obligations of the Aboriginal Heritage Service Provider when conducting an Aboriginal Heritage Survey under the NSHA. The contract mirrors relevant NSHA obligations to ensure outcomes are consistent with the requirements detailed in the NSHA.

The templates may be amended from time to time so be sure to visit the DPC website for the latest versions (www.dpc.wa.gov.au/lantu).

General Aboriginal Heritage Enquiries

Contact the Heritage Directorate within the Department for Planning, Lands and Heritage for general Aboriginal heritage enquiries:

Phone: (08) 6551 7950

e-mail: heritageenquiries@daa.wa.gov.au



Director South West Settlement – Aboriginal Heritage

Department for Planning, Lands and Heritage has a South West Settlement (Aboriginal Heritage) Director who can provide direction on the implementation of the NSHA:

Jeremy Elliott, Director South West Settlement

Phone: (08) 6551 8070

e-mail: jeremy.elliott@daa.wa.gov.au

South West Land and Sea Council

For general enquiries and NSHA sign up, contact:

Peter Nettleton, Senior Legal Officer

Phone: 9358 7400

e-mail: peter.nettleton@noongar.org.au

alternative e-mail: reception1@noongar.org.au

Department of Mines, Industry Regulation and Safety

For enquiries in relation to the condition on title, contact:

David Crabtree, Team Leader, Native Title Section, Tenure and Native Title Branch

Phone: 9222 3805

e-mail: david.crabtree@dmirs.wa.gov.au

Further Information

Further information about the Settlement, including the six Settlement Agreements (or Indigenous Land Use Agreements – ILUAs) made in compliance with the Commonwealth *Native Title Act 1993*, can be found on the Department of the Premier and Cabinet website (<https://www.dpc.wa.gov.au/lantu>.) See also the 'Noongar Heritage Partnership Agreement: Fact Sheet' available on the DPC website.