



South West Native Title Settlement – Heritage Fact Sheet

Noongar Standard Heritage Agreements

Issuing an Activity Notice

On 8 June 2015, after extensive negotiations, and authorisation by the Noongar people, the WA Government signed (executed) six South West Native Title Settlement (Settlement) Agreements with the Ballardong People, Gnaala Karla Booja, South West Boojarah #2, Wagyl Kaip & Southern Noongar, Whadjuk People and Yued Agreement Groups.

The Noongar Standard Heritage Agreement (NSHA), a component of the Settlement, took effect upon the signing of the Settlement Agreements by the parties on 8 June 2015. State Government land users (Proponents) 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.

The NSHA component provides a uniform and efficient approach to Aboriginal heritage surveys in the South West, in compliance with the *Aboriginal Heritage Act 1972* (AHA). The NSHA provides all parties with a clear, timetabled framework about their various Aboriginal heritage obligations. The NSHA also delivers a process for improving the quality of data on the Aboriginal Heritage Inquiry System (AHIS), which in turn enhances protection of Aboriginal heritage through identification of sites that are important to Noongar people.

Nothing in the NSHA purports to authorise any act or omission that would be in breach of the AHA.

Copies of the six NSHAs can be found at <https://www.dplh.wa.gov.au/information-and-services/aboriginal-heritage/noongar-heritage-and-history/noongar-standard-heritage-agreement/resources-and-templates>

What is the purpose of an Activity Notice?

An **Activity** means physical works or operations, involving entry onto the Settlement Area (whether on the surface of the land or waters, or under or over the surface).

An **Activity Notice** means a notice issued by the Proponent to SWALSC under clause 8.2 of the NSHA. The purpose for issuing an Activity Notice is set out in clause 8.3 of the NSHA:

- To provide adequate information to assist SWALSC in assessing whether a Survey is required; and
- If a Survey is required to provide information relevant to the conduct of the Survey.

When is an Activity Notice not required?

If the Proponent has reasonable grounds to form the opinion that no Survey is required (taking into account the matters referred to in NSHA clause 8.1(b) below and the Due Diligence Guidelines), the Proponent may elect not to issue an Activity Notice in respect of a proposed Activity. The Guidelines can be found at:

<https://www.dplh.wa.gov.au/information-and-services/aboriginal-heritage/land-use-under-the-aha/aboriginal-heritage-surveys>

Clause 8.1(b) provides that the Proponent does not have to issue an Activity Notice where the Activities that are proposed to be conducted consist entirely of:

- Minimal Impact Activities; or
- Low Ground Disturbance Activities of a class that SWALSC has notified in writing to the Proponent need not be the subject of an Activity Notice.

However nothing in the NSHA purports to authorise any act or omission that would be in breach of the AHA.

When is an Activity Notice required?

It is recommended an Activity Notice is issued under the NSHA, if there is a risk that an activity will unlawfully impact (i.e. by excavating, destroying, damaging, concealing or altering in any way) an Aboriginal site. The Aboriginal Heritage Due Diligence Guidelines provide guidance on how to assess potential risk to Aboriginal heritage.

Proponents are encouraged to engage in an early exchange of information with SWALSC about the proposed Activities to enable informed decisions to be made.

If there is doubt as to the impact of any proposed Activity on Aboriginal Heritage the Parties may also seek the advice and assistance of the Department of Planning, Lands and Heritage (DPLH).

An Activity Notice should be considered if, upon assessment the proposed Activity:

- is not a Low Impact activity (see definition in NSHA clause 1.1);
- is not an agreed Low Ground Disturbance activity (see definition in NSHA clause 1.1);
- is within the boundary of a Place or Site as defined under s5 of the AHA;
- excavates, destroys, damages, conceals or in any way alters any Aboriginal site; or
- is within an area of minimal disturbance and where there have been no previous Aboriginal Heritage Surveys, or previous surveys may be unreliable;

The processes associated with considering the Activity Notice and deciding whether a survey is required are set out in detail in clauses 8.3 and 9.2 of the NSHA.

The required contents of the Activity Notice are set out in NSHA Schedule 4 and an Activity Notice template is available at <https://www.dplh.wa.gov.au/information-and-services/aboriginal-heritage/noongar-heritage-and-history/noongar-standard-heritage-agreement/resources-and-templates>

Contact Information

Further information on NSHAs can be found at <https://www.dplh.wa.gov.au/projects-and-initiatives/south-west-native-title-settlement/noongar-standard-heritage-agreement>

Department of Planning, Lands and Heritage	South West Aboriginal Land and Sea Council
South West Native Title Settlement Aboriginal Heritage T: (08) 6551 8070 or (08) 6551 7985 E: swsheritage@dplh.wa.gov.au	Ettienne van Tonder, Principal Legal Officer T: (08) 9358 7400 E: ettienne.vantonder@noongar.org.au

South West Native Title Settlement Area

