



South West Native Title Settlement – Heritage Fact Sheet

Noongar Standard Heritage Agreements

Entering a NSHA - Information for Proponents

On 8 June 2015, after extensive negotiations, and authorisation by the Noongar people, the WA Government signed (executed) six South West Native Title Settlement Indigenous Land Use Agreements (**Settlement ILUAs**), one for each of the Ballardong People, Gnaala Karla Booja, South West Boojarah #2, Wagyl Kaip & Southern Noongar, Whadjuk People and Yued Agreement Groups. After formal commencement of the Settlement in 2021, six Noongar Aboriginal Corporations (**Noongar Regional Corporations**) were established, one for each of the six Settlement Agreement areas, to manage Settlement responsibilities including Aboriginal cultural heritage.

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, in advance of formal Settlement commencement. **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. **Mining Proponents** who have applied for, or been granted, a mining tenement after this date will have a condition on title which requires them to enter into an NSHA or other form of Heritage Agreement (as defined in the ILUAs). **Even if you or your organisation are not included in either of these categories** but you are undertaking ground disturbing activities in an area within any of the six Settlement Agreement areas (see map below) which may affect Aboriginal cultural heritage, it may be prudent to have your activities covered by an NSHA, or to follow the principles.

The NSHA component provides a uniform and efficient approach to Aboriginal heritage surveys in the Settlement Area, 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.

From 9 December 2022, the six Noongar Regional Corporations became parties to the Settlement ILUAs and responsible for entering into NSHAs and other Aboriginal Heritage Agreements (as defined in the Settlement ILUAs) in their own right. Updated templates for each Regional Corporation must be used for all new NSHAs made from 9 December 2022 and are available at <https://www.wa.gov.au/government/document-collections/noongar-standard-heritage-agreement-south-west-native-title-settlement> together with further details and NSHA resources. Information for Industry Proponents can be found [here](#).

In effect, each Noongar Regional Corporation must be the Noongar party to any new NSHA or the Aboriginal Heritage Agreement from 9 December 2022, for proposed activities within its respective Settlement ILUA area. The six ILUA areas largely correspond to six former regional claims over the Settlement Agreement area (now concluded and replaced by Settlement arrangements).

At present, there is no change to pre-existing NSHAs and other Aboriginal Heritage Agreements where the South West Aboriginal Land and Sea Council (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.

Until further notice, the six Regional Corporations have authorised SWALSC officers on their behalf to:

- coordinate advice to Proponents on existing NSHAs and other Aboriginal Heritage Agreements and also Proponent requests for new agreements;
- prepare NSHA documents on their behalf using the standard NSHA templates and arrange for signing;
- sign NSHAs and other Aboriginal Heritage Agreements; and
- continue to accept and process Aboriginal Heritage Agreements (including NSHAs) and Activity Notices in consultation with Regional Corporations and their Cultural Advice Committees.

How to Enter into a Noongar Standard Heritage Agreement (NSHA)

The following steps describe the process to be followed where a Proponent is seeking to enter into an NSHA:

Step 1 – Whether to enter a NSHA and area to be covered

Proponents are encouraged in the first instance to contact the Department of Planning, Lands and Heritage (DPLH) Aboriginal Heritage Directorate to discuss the general application of the NSHA. Proponents should always obtain independent advice about their particular circumstances.

The following questions will assist in determining the area to be covered by an NSHA:

- Is your organisation likely to conduct activities that may impact Aboriginal sites throughout the Settlement Area? If so, then entering into six NSHAs, one in relation to each Agreement area, in order to cover the entire Settlement area, may be the most efficient way to proceed;
- Are you conducting a one-off activity/project within a defined area? If so an NSHA limited to the project area may be the best way to proceed.

Maps of the six Settlement ILUA areas can be found at:

<https://www.wa.gov.au/government/document-collections/noongar-standard-heritage-agreement-south-west-native-title-settlement>

NSHA templates are available for each of the six Settlement ILUA areas can be found at:

<https://www.wa.gov.au/government/document-collections/noongar-standard-heritage-agreement-south-west-native-title-settlement>

Please note that the NSHA template is 'locked'. Therefore, only the relevant sections of the locked NSHA templates can be amended (highlighted in the template). This includes:

- Proponent's name on the front cover and in the footer. A file reference number for your agreement will also be added by SWALSC;
- On Page 8 'Due Diligence Guidelines' definition add date of current Due Diligence Guidelines (see <https://www.dplh.wa.gov.au/information-and-services/aboriginal-heritage/land-use-under-the-aha/aboriginal-heritage-surveys>);
- Schedule 1 (Party Details);
- Schedule 2 (Details of SWS Agreement and Pre-existing Aboriginal Heritage Agreements);
- Schedule 3 (Map and description of NSHA Agreement area) note that this can be for entire Agreement area or a project specific area (DPLH website contains maps and description for each Agreement area); and
- The execution pages to identify the signatory parties to the agreement.

Step 2 - Having an NSHA prepared by SWALSC - Hardcopy/Wet ink or Electronic signing options

While you may prepare an NSHA yourself in accordance with the provisions of Schedule 10, cl. 18.1 of the relevant ILUA, SWALSC has advised it prefers to prepare NSHAs for Proponents, and is happy to do this for Proponents upon request. SWALSC offers both hardcopy/wet ink option or a paperless electronic heritage agreement e-signing option through the use of Adobe Sign, a widely used electronic signing platform. Depending on the circumstances, this option may significantly decrease the NSHA execution process time.

To have SWALSC prepare a NSHA

Please send the following details to SWALSC at legal.team@noongar.org.au :

- The full name and ABN/ACN (if any) of the organisation(s) or individual(s) that will be the party(s) to the NSHA;
- Their contact details for communications and service of notices-business, including postal address(es) and fax number(s) (if any);
- Details of any known previously signed heritage protection agreement(s) over the same proposed activity or project area(s) or the mining tenement number; and a map of the proposed activity/project area.
- Your request for either the hardcopy/wet signing option or the electronic signing option. If electronic signing option is requested, please see additional information required below.

SWALSC will then prepare your NSHA using the relevant Noongar Regional Corporation's template and either post it to your contact address for signing if you choose the hardcopy/wet ink signing option or email it to you if you choose the electronic signing option.

Hardcopy/wet ink signing option

If you choose the hardcopy/wet ink signing option please sign the NSHA(s) prepared by SWALSC and return by post to SWALSC. SWALSC will then sign them and return your copy(s) of the executed NSHA(s) by post. The Agreements require SWALSC to use its best endeavours to provide the fully executed NSHAs within 20 business days from the time the SWALSC receives the signed NSHAs from the Proponent.

Electronic Signing Option

To request an e-signed, all electronic NSHA document, please also provide:

| | | |
|---|-----------------|------------------------------------|
| Full name of Company | | |
| ACN | | |
| Contact Address for Service of Notices (as per Schedule 1 of the NSHA) | | |
| Contact Email Address for Service of Notices (as per Schedule 1 of the NSHA) | | |
| | Director | Company Secretary/Director2 |
| Full name of Director or Company; | | |
| Position in the Company. | | |
| Personal or business address; and | | |
| Contact email address. | | |

(in the case of a company, two directors or a director and a company secretary. If the corporation is a Corporation Sole, please provide the details for the single Director/Company Secretary).

**Please note that due to the still evolving law and jurisdictional differences in requirements for valid e-signing, SWALSC offers the e-signing option in simple contract form only and not as Deeds. If you have concerns or questions as to the difference between these two forms of agreement and their effect, we recommend that you seek independent legal advice.

Contact Information

Further information on NSHAs can be found at [South West Native Title Settlement \(www.wa.gov.au\)](http://www.wa.gov.au) or call the South West Aboriginal Land & Sea Council on (08) 9358 7400.

| Department of Planning, Lands and Heritage | South West Aboriginal Land and Sea Council |
|---|---|
| South West Native Title Settlement Aboriginal Heritage T: (08) 6551 7985 E: swsheritage@dplh.wa.gov.au | David Farrell, Senior Legal Officer T: (08) 9358 7400 E: legal.team@noongar.org.au |

South West Native Title Settlement ILUAs-Agreement Areas

