

SOUTH WEST
NATIVE TITLE SETTLEMENT

**TRANSITION
PROGRAM:
ESTABLISHMENT
OF THE
REGIONAL
CORPORATIONS
2019**



South West Aboriginal
Land & Sea Council

IMPORTANT: The material in this publication contains photos of deceased people and has been included with permission from the family. It is not our intention to offend any persons and would like to respect our people's contribution to our Noongar community.



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INTRODUCTION

The purpose of this Transition Program is to provide a documented plan to assist the Noongar people to participate in the development and establishment of six Regional Corporations as part of the South West Native Title Settlement (Settlement).

The Settlement area includes land covered by the eight registered Noongar native title claims.

The terms of the negotiated Settlement are in the form of six separate Indigenous Land Use Agreements (ILUAs) (Document 1). The six ILUAs generally encompass the entire area of the eight registered Noongar native title claims.

The Agreement Groups as described in the ILUAs are:

1. Ballardong People
2. Gnaala Karla Booja and Harris Family
3. South West Boojarah #2 and Harris Family
4. Wagyl Kaip and Southern Noongar
5. Whadjuk People
6. Yued

The ILUAs prescribe that six Regional Corporations are to be established, one in each of the ILUA regions and one Central Services Corporation to support the Regional Corporations.

The activities that occur during the Transition Period are guided by the Transition Principles (Document 2) which were included in the ILUAs. The Transition Principles were negotiated to encourage maximum Noongar Community participation in the development of the Regional Corporations and require that this will be achieved through the development and implementation of a well-defined Transition Program.

The Settlement also provides for the establishment of the Noongar Boodja Trust (Trust), which will be established solely for the purpose of providing money, property or benefits to the Regional Corporations and Central Services Corporation. The Trust will be managed by an independent professional Trustee.

The WA Government will make funding instalments of \$50 million (indexed) yearly for 12 years into the Trust. These financial contributions will be invested during those 12 years. The Trust will function as a permanent fund which will provide ongoing funding for Noongar cultural, social and economic programs.

Operational funding of \$10 million (indexed) will be shared between the seven Noongar Corporations annually for the first 12 years.

In order for the Trustee to start providing financial support to a Regional Corporation, that entity must be established and formally appointed as a Regional Corporation by the Trustee. Each Regional Corporation must satisfy the Trustee that it has been established through a transparent and accountable process, in accordance with the requirements of the Transition Principles and other ILUA obligations.





NOONGAR CORPORATIONS

SIX REGIONAL CORPORATIONS WILL BE ESTABLISHED TO REPRESENT THE AGREEMENT GROUPS, AND A CENTRAL SERVICES CORPORATION WILL ALSO BE ESTABLISHED TO ASSIST THE REGIONAL CORPORATIONS IN THEIR EVERYDAY BUSINESS.

WHAT IS A REGIONAL CORPORATION?

The key purpose of the Regional Corporations is to benefit, advance and promote the Agreement Groups and their communities within the ILUA Region and to manage and care for the Cultural Land in the ILUA Region. Each Regional Corporation will develop a strategic plan based on the area's priorities and key projects. This will probably vary between the 6 Corporations based on local priorities.

The Regional Corporations must meet the **Regional Corporation Principles** (Document 3) which are set out in the ILUA. These are the Key Principles for the structure, rule book and operations of the Regional Corporations.

HOW DO YOU BECOME A MEMBER OF A REGIONAL CORPORATION?

Each Regional Corporation will have a Register of Members. Members can only be people that are included in the Native Title Agreement Group (Agreement Group) definition as per Schedule 2 of the relevant ILUA, and who meet requirements set out in the relevant **Regional Corporation Rule Book** (Document 4).

Schedule 2 of each ILUA includes an Agreement Group description which outlines that the Agreement Group is made up of Noongar People who are the descendants of one or more persons listed (the apical ancestors).

Agreement Group members will be able to submit **Expressions of Interest** (Document 5) for membership of the future Regional Corporations in accordance with the eligibility requirements in Schedule 2 of the ILUA, the most important being connection with the apical ancestor lists. The Expression of Interest process for Membership will commence at the Town Information Sessions.

Applicant's eligibility will be determined using a genealogical database containing information relevant to the apical ancestor lists as per Schedule 2 of the relevant ILUA. The Expressions of Interest will then be processed after the Regional Corporation has been incorporated. Applicants will become members once the Initial Directors have confirmed eligibility requirements, the most significant requirement being connection with the apical ancestor lists, as mentioned above.

After Incorporation, the Agreement Group members will continue to be able to submit membership applications which will be processed by the Directors.

WHAT ARE THE DIFFERENT TYPES OF MEMBERSHIP?

An **Agreement Group Member** is a Noongar Person who is the descendant of one or more persons listed in Schedule 2 of the relevant ILUA (the apical ancestors). Agreement Group members may apply to become members of one or more Regional Corporations, and/or of the Central Services Corporation.

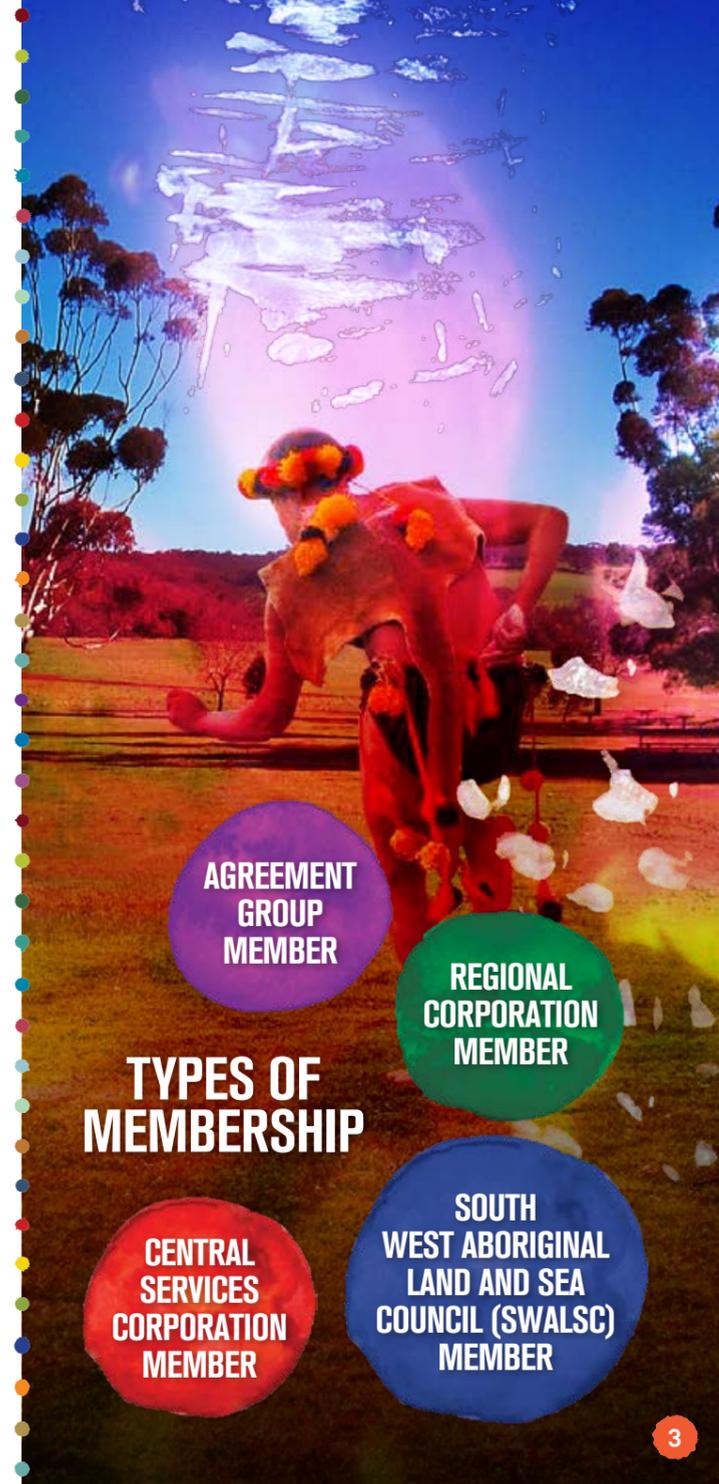
A **Regional Corporation Member** is an Agreement Group member that has applied to become a member of a Regional Corporation, and has been accepted as a member. A person can be a member of more than one Regional Corporation.

A **Central Services Corporation Member** is a Noongar Person that has applied to become a member of the Central Services Corporation, and has been accepted as a member. Regional Corporation Members will not automatically become Central Services Corporation Members, they must separately apply.

A **South West Aboriginal Land and Sea Council (SWALSC) Member** is a Noongar Person that has applied to become a member of SWALSC, and has been accepted as a member. If SWALSC becomes the Central Services Corporation, SWALSC members will automatically be Central Services Corporation members.

The roles of Agreement Group members and members of the Regional Corporation in relation to the appointment of Directors are different. Agreement Group members will appoint the Initial Directors at the Pre-incorporation Meeting.

Only the Members of a Regional Corporation can appoint the Member Directors of a Regional Corporation, this appointment will be through a postal vote process, in accordance with the **Election Manual** (Document 6).





WHAT IS THE PROCESS FOR EMPLOYMENT OF REGIONAL CORPORATION STAFF?

The Agreement Groups will have an opportunity to consider and provide feedback on the Regional Corporation staff recruitment process outlined below at the Town Information Sessions:

1. Regional Corporation board will consider the skills required for a Chief Executive Officer. Specific details regarding the selection criteria, short listing and interview process will be determined by the Regional Corporation board following the appointment of Member Directors and Expert Directors (at the first “full board” meeting).
2. The Board will engage an Independent Recruitment Company to conduct the recruitment process for a Chief Executive Officer.
3. Once appointed, the Chief Executive Officer and Board will inform the Regional Corporation Members about the Regional Corporation’s proposed organisational structure, including how staff will be recruited, selected and appointed through an open, independent and transparent process.
4. The proposed Regional Corporation staffing requirements will need to take into account the purpose and role of the Regional Corporation.
5. The Board and Chief Executive Officer will report to the membership at the first and every opportunity in relation to the progress of recruitment of Regional Corporation staff.

6. Regional Corporation Members will have an opportunity to apply for staffing positions within their Corporations, and will be provided with sufficient notice to do so.

Agreement Group members will be asked to endorse the staff recruitment process at the Pre-incorporation meetings.

Agreement members have an opportunity to get involved at the Town Information Sessions, by providing feedback on the Staff Recruitment Process.

To further participate in the staff recruitment process after the incorporation of the Regional Corporations, Agreement Group members can do so by ensuring they become Regional Corporation Members and/or Directors of their Regional Corporation. Membership provides an opportunity to vote in Directors that will make decisions about the Regional Corporation Chief Executive Officer.

WHAT IS THE REGIONAL CORPORATION CULTURAL ADVICE POLICY?

THE TRUST DEED (DOCUMENT 7) REQUIRES THAT ALL REGIONAL CORPORATIONS SATISFY THE REQUIREMENTS OF THE REGIONAL CORPORATION PRINCIPLES. THE REGIONAL CORPORATION PRINCIPLES STATE THAT EACH OF THE REGIONAL CORPORATIONS MUST ADOPT A CULTURAL ADVICE POLICY (DOCUMENT 8).

The Cultural Advice Policy will outline how the Regional Corporations will make cultural decisions in their particular Region. It will also set out how the Regional Corporation will obtain advice on making cultural decisions from persons who have traditional connection and cultural authority within the Noongar Community.

The Regional Corporation Board can only make decisions in relation to Noongar cultural interests after having received cultural advice following the process set out in the Cultural Advice Policy.

Consideration of the draft Cultural Advice Policy has occurred at the Focus Group Workshops. Agreement Group members will have the opportunity at the Town Information Sessions to participate in the further development of the Policy. It is intended the draft Policy will be tabled for **Agreement Group Endorsement** (Document 9) at each of the Regions’ Pre-incorporation Meetings.

WHAT IS THE CENTRAL SERVICES CORPORATION?

The Central Services Corporation will support the Regional Corporations by providing financial, administrative and legal services. The **Central Services Corporation Transition Program** (Document 10) includes further detail about the role and function of the Central Services Corporation.

The Central Services Corporation must:

- Be an Aboriginal Corporation;
- Be endorsed by the State;
- Be endorsed as an Eligible Charity (or be capable of being endorsed);
- Receive written endorsement from a majority of the Agreement Groups; and
- Satisfy the requirements set out in the **Central Services Corporation Principles** (Document 11) and the Transition Principles.

WHAT IS THE CENTRAL SERVICES CORPORATION CULTURAL CONSULTATION POLICY?

The Central Services Corporation Principles require that the Central Services Corporation must develop and maintain policies and procedures for consultation with relevant Noongar People regarding cultural matters. The **Cultural Consultation Policy** (Document 12) will be designed to meet this requirement. The Cultural Consultation Policy will outline how the Central Services Corporation will consult with persons who have traditional connection and cultural authority within the Noongar Community. It will provide guidance on consultation processes.

The Transition Principles require that the Agreement Groups have an opportunity to consider the initial Cultural Consultation Policy. An initial Consultation Policy will be developed for discussion at the Town Information Sessions. This will be a framework policy only at this stage.

The Cultural Consultation Policy must be developed jointly by the Central Services Corporation and the Noongar Corporations Committee, once this Committee has been established. This Committee cannot be established until the Central Services Corporation and the Regional Corporations have been appointed by the Trustee.

It is therefore anticipated that the initial Cultural Consultation Policy (as considered and adopted by the Agreement Groups) will be presented as a proposed draft to the Noongar Corporations Committee for further development.

SETTLEMENT COMMENCEMENT PROCESS



TIMEFRAME FOR SETTLEMENT

This diagram outlines the relationship between the establishment of the Regional Corporations and the commencement of the Settlement through the Registration of the ILUAs. These two processes have been aligned to ensure that the Regional Corporations are established at the same time that the Settlement will commence.

For the Settlement to commence the ILUAs need to be registered with the National Native Title Tribunal (NNTT). This registration process depends on finalising any legal proceedings against registration.

Once these are finalised, the WA Government will signal commencement of the Settlement through the issue of a "Settlement Effective Date Notice". The Settlement Effective Date Notice will trigger the Agreement Groups to initiate the formal ORIC incorporation process for the Regional Corporations.

Once established, the Trustee will consider the eligibility of the Regional Corporations as established through this Transition Program.

TRUSTEE APPOINTS NOONGAR CORPORATIONS

ESTABLISHING REGIONAL CORPORATIONS PROCESS



BD: business days

STEPS TO BECOME A REGIONAL CORPORATION

This Transition Program is designed to assist the Agreement Groups in understanding how to comply with the requirements set out in the:

- CATSI Act that relate to the establishment and registration of an Aboriginal Corporation;
- Relevant documents within the ILUAs (including the Noongar Boodja Trust Deed);
- Regional Corporation Principles; and
- Transition Principles.

The following steps are required to satisfy the Trustee that an organisation is eligible to act as a Regional Corporation (clause 4.5 of the Trust Deed).

STEP 1 ESTABLISHING A REGIONAL CORPORATION

A Regional Corporation must be an Aboriginal Corporation established under the CATSI Act. It must also satisfy the requirements set out in the Transition Principles and in the Regional Corporation Principles.

STEP 2 AGREEMENT GROUP ENDORSEMENT

There must be an Agreement Group Endorsement of the Regional Corporation. An Agreement Group Endorsement is an endorsement given in writing by an Agreement Group following a special procedure set out in the Trust Deed.

STEP 3 ENDORSEMENT AS ELIGIBLE CHARITY

There must be an endorsement by the Commissioner of Taxation (via the ACNC) that the entity is an Eligible Charity (or is capable of being endorsed as such). This means a fund, institution or other entity endorsed by the Commissioner of Taxation as income tax exempt under the Income Tax Assessment Act 1997 (Cth).

STEP 4 STATE ENDORSEMENT

The Trust Deed requires that the WA Government must provide written approval of the nomination of a corporation as a Regional Corporation before the Trustee can be satisfied that it may be appointed as a Regional Corporation. This is called State Endorsement.

STEP 5 NOMINATION OF REGIONAL CORPORATION

Once steps 1-4 are complied with, the Regional Corporation can nominate in writing for appointment as the Regional Corporation for its region.

STEP 6 APPOINTMENT OF REGIONAL CORPORATION

If satisfied that the Regional Corporation is eligible in accordance with the requirements of the Trust Deed, the Trustee must appoint it as the Regional Corporation for the Region by a written Appointment Notice.

STEP 7 APPLICATION FOR FINANCIAL SUPPORT MADE TO THE TRUSTEE

A Regional Corporation may make an application and is eligible to receive support from the Trust in accordance with the rules of the Trust and in such amounts and on such conditions as the Trustee may determine. Applications must be made in accordance with the Funding Guidelines

(Document 13).

STEP 1

ESTABLISHING THE REGIONAL CORPORATIONS

There are a number of opportunities for the Noongar Community to participate in the establishment of the Regional Corporations. The following Diagram provides an outline of the stages (which are discussed in more detail below) in the Transition Program where Noongar people have already and are still able to get involved in the establishment of the Regional Corporations.

AGREEMENT GROUP WORKSHOPS

Informed the Transition Program and how the Agreement Groups want to establish Regional Corporations.

FOCUS GROUP WORKSHOPS

Have commenced and will continue to prepare documentation and comply with the ILUA requirements.

TOWN INFORMATION SESSIONS

Will be held across the ILUA areas to consider and finalise documentation.

PRE-INCORPORATION DIRECTOR NOMINATIONS MEMBERSHIP DRIVE - EXPRESSIONS OF INTEREST

The Pre-incorporation Director Nomination Process will commence after the Town Information Sessions. A list of eligible candidates will be available for voting at the Pre-incorporation Meetings. Noongar People may submit an expression of interest to become a Member of their Regional Corporation at this time.

PRE-INCORPORATION - AGREEMENT GROUP MEETINGS

Pre-incorporation meetings will most likely occur in early 2020, where Agreement Groups will agree to apply to ORIC for incorporation, approve the proposed Rule Books, and elect 4 Pre-incorporation Directors by secret ballot.

ORIC INCORPORATION - INITIAL DIRECTORS

The Settlement Effective Date Notice will be the trigger for the Regional Corporations to be incorporated with ORIC as it signals commencement of the Settlement. The Pre-incorporation Directors will become Initial Directors.

MEMBER DIRECTORS AND EXPERT DIRECTOR NOMINATIONS

Once the Regional Corporations are incorporated, the nomination process for the Member Directors and Expert Directors will commence. A list of eligible candidates for Member Directors will then be available for Postal Vote.

POSTAL VOTE

Postal Vote proposed to be conducted by Western Australian Electoral Commission to elect Member Directors.

FIRST REGIONAL CORPORATION GENERAL MEETING

The Regional Corporations will hold the first General Meeting after the Regional Corporations are incorporated to confirm the appointment of the Member Directors and endorse other documentation.

APPOINTMENT OF EXPERT DIRECTORS

To be eligible to be appointed by the Trustee as a Regional Corporation, the Corporation is required at that time to have a Board of Directors of between 4 and 6 individuals consisting of up to 4 Member Directors and 2 Expert Directors. Expert Directors can only be appointed by Members Directors.



AGREEMENT GROUP WORKSHOPS

During November and December 2015, Agreement Group Workshops were held to inform Noongar people on the progress of the Settlement, and to commence discussions and plan for the establishment of the Regional Corporations. This included discussions about the draft Rule Books and draft Cultural Advice Policies.

COMMUNITY PARTICIPATION

To maximise Noongar Community participation, the Agreement Groups developed a **Communication, Consultation and Participation strategy** (Document 14). There are three broad marketing (Communication) strategies that will be implemented for the Transition Program:

1. Notification

SWALSC will advertise with meeting notices and a newsletter to the SWALSC membership, the Focus Groups, working groups and attendees at the Agreement Group Workshops, as well as the local newspapers and identified agencies in the towns and metro area, for all meetings.

2. Community Connect

The Agreement Groups will use their agreed internal communication strategies including the nominated focus groups who will email out any documents to the Agreement Group. The Agreement Group members will also participate in family meetings to run through the core documentation i.e. the Rule Book amendments, the Cultural Advice Policy and the Regional Corporation Directors nomination process. This will provide for the involvement of a broader Noongar population than the current SWALSC membership.

3. Social Media

The Transition Program will be marketed on a number of social media platforms.

AGREEMENT GROUP WORKSHOP SCHEDULE

Agreement Group	Date	Place
Ballardong (On country)	7 November 2015	Quairading Town Hall
Ballardong (Perth Metro)	25 November 2015	Cannington Exhibition Centre
Gnaala Karla Booja (Perth Metro)	9 December 2015	Cannington Exhibition Centre
Gnaala Karla Booja (On country)	16 December 2015	South West Italian Club, Bunbury
South West Boojarah (Perth Metro)	4 November 2015	SWALSC Boardroom, Cannington
South West Boojarah (On country)	5 December 2015	Busselton Youth & Community Centre
Wagyl Kaip/ Southern Noongar (Perth Metro)	11 November 2015	SWALSC Boardroom, Cannington
Wagyl Kaip/ Southern Noongar (On country)	28 November 2015	Kojonup Memorial Hall
Whadjuk (North Metro)	18 November 2015	Cannington Exhibition Centre
Whadjuk (South Metro)	19 November 2015	Cannington Exhibition Centre
Yued (On country)	21 November 2015	Moora Performing Arts Centre
Yued (Perth Metro)	2 December 2015	Cannington Exhibition Centre

FOCUS GROUP WORKSHOPS

As a result of the Agreement Groups workshops Focus Group workshops have been held and will continue in preparation for the establishment of the Regional Corporations and comply with the requirements of the ILUAs.

The purpose of the Focus Groups is to consider and develop:

1. The Regional Corporation Rule Books
2. The draft Cultural Advice Policy
3. Director nomination process
4. Trust establishment update





All of the Focus Group members were nominated from the Agreement Group workshops. No nominations were accepted on behalf of absent members. All Agreement Groups addressed the issue of gender and age representation in the Focus Groups.

The Focus Groups, having considered the documents, have nominated a small group to present the Regional Corporation Rule Book and the Cultural Advice Policy at the Town Information Sessions and to the Agreement Groups for their endorsement at the Pre-incorporation Meetings.

TOWN INFORMATION SESSIONS

PURPOSE

These meetings are to prepare for the Pre-incorporation Meetings, and the establishment of the Regional Corporations.

These sessions will include discussion and information related to:

- SWALSC update information on the Transition Program.
- Focus Group work.

FOCUS GROUP WORKSHOPS HELD

Agreement Group	Total # of Workshops	Place	Date
Wagyl Kaip	2	Kojonup	20 February 2016
		Kojonup	12 March 2016
Ballardong	2	Quairading	12 December 2015
		Quairading	16 January 2016
Whadjuk	4	Cannington	8 December 2015
		Cannington	15 December 2015
		Cannington	4 February 2016
		Cannington	25 February 2016
South West Boojarah	2	Busselton	30 January 2016
		Busselton	20 February 2016
Yued	2	Moora	23 January 2016
		Moora	5 February 2016
Gnaala Karla Booja	2	Cannington	20 February 2016
		Boddington	5 May 2016

- The Director Nomination and appointment process, explaining how and when Directors will be elected.
- The Regional Corporation Rule Book.
- The process and commencement of the Membership Drive.
- The Draft Cultural Advice Policy.
- The Draft Central Services Corporation Cultural Consultation Policy.
- Consideration and feedback on the **Central Services Corporation Rulebook** (Document 15).
- The Central Services Corporation Transition Program.
- An update on Noongar Boodja Trust progress.
- Consideration and feedback on the Regional Corporation Staff Recruitment Process.

NOTIFICATION

The Town Information Sessions will be advertised as agreed at the Agreement Group Workshops. Family meetings will also be facilitated on request for Agreement Group members that are unable to attend Town Information Sessions.

LOCATION OF TOWN INFORMATION SESSIONS

Agreement Group	Location
Wagyl Kaip	Albany, Katanning, Cannington
Ballardong	Northam, Quairading, Cannington
Gnaala Karla Booja	Bunbury, Narrogin, Cannington
South West Boojarah	Busselton, Bridgetown, Cannington
Yued	Moora, Wongan Hills, Cannington
Whadjuk	Beechboro, Seville Grove, Cannington





MEMBERSHIP DRIVE – EXPRESSIONS OF INTEREST

The Membership Drive will include opportunities for Agreement Group members to express their interest in becoming a member of a Regional Corporation. Applications forms will be available:

- Through Social media;
- On SWALSC website;
- At Town Information Sessions;
- At Pre-Incorporation Meetings; and
- Through the Director Nomination Processes.

The Membership Drive will commence from the Town Information Sessions to encourage maximum participation in and membership of a Regional Corporation by the relevant Agreement Group members. Agreement Group members will be able to commence submitting Expressions of Interest applications immediately, but their Expressions of Interest will not be finalised until the Regional Corporation has been incorporated.

The Membership Drive will include informing Agreement Group members of the Expressions of Interest process, access to application forms, and how their membership application process will be run. It is also proposed that all current SWALSC members will receive a letter which will explain the process, and which will include Expression of Interest Forms.

To enable maximum awareness of the Membership Drive, the Director Nomination Processes (outlined below) will include further opportunities for Agreement Group members to apply for membership. The Membership Drive also includes the same opportunities to submit an Expression of Interest for membership of the Central Services Corporation.

DIRECTOR NOMINATION PROCESS

An Interim Nominations Committee has been established by SWALSC and the WA Government to pre-qualify Noongar candidates as eligible for appointment as Directors. This will assist the Regional Corporations to comply with the Regional Corporation Principles. This Committee will not have any role in relation to the appointment of Directors other than confirming candidates' eligibility for appointment.

The Committee is comprised of six persons as follows:

- one person nominated by SWALSC;
- one person nominated by the WA Government;
- two representatives of the Noongar Community that have experience with directorships and boards; and
- two Independent persons that have experience with directorships and boards, of which one shall be appointed Chair.

An independent organisation, the **Forum for Directors of Indigenous Organisations (FDIO)** (Document 16), Will provide secretariat support to the Interim Nominations Committee for the selection process for Initial, Member and Expert Directors of the Regional Corporation.

A list of pre-qualified candidates who are eligible for nomination will be voted on by secret ballot at the Pre-incorporation Meeting for their Regional Corporation.

This Director Nomination Process will commence following the Town Information Sessions.

Agreement Group members who have skills and experience relevant to holding a Director position will be able to nominate for appointment. The Regional Corporation Rule Book outlines the eligibility requirements for Directors of Regional Corporations. Those that nominate and are eligible will be voted on at the Pre-incorporation meeting.

The Director Nomination package will include the **Terms of Reference** (Document 17) for the Pre-incorporation Directors, so that nominees understand the nature and scope of the role of Pre-incorporation Directors.





PRE-INCORPORATION MEETINGS

The Pre-incorporation Meeting, will also be an Agreement Group Meeting to approve actions and documents for Regional Corporation incorporation. The Pre-incorporation Meetings are expected to occur early in 2020.

On this day the following will need to be agreed to:

- Apply to ORIC for registration.
 - This is because the Regional Corporations are required to be Aboriginal Corporations. Aboriginal organisations must apply to the Office of the Registrar of Indigenous Corporations (ORIC) under the *Corporations (Aboriginal and Torres Strait Islander) Act 2016* (CATSI Act). There are laws regarding incorporation under the CATSI Act that must be complied with.
- Approve the proposed Regional Corporation Rule Book and Regional Corporation Cultural Advice Policy.
- Nominate four Pre-incorporation Directors by a secret ballot.
 - The list of pre-qualified candidates will be voted on by the Agreement Group in a secret ballot.
 - Nominated Pre-incorporation Directors to accept and sign onto Terms of Reference for the Pre-incorporation Directors.
- Nominate the contact person or secretary.
- Endorsement of the Regional Corporation Staff Recruitment Process.
- Endorse SWALSC nominating to be the Central Services Corporation consistent with their Central Services Corporation Transition Program.

- Instruct SWALSC to commence the necessary Australian Tax Office applications to ensure that the Regional Corporation is capable of endorsement by the Commissioner of Taxation as an Eligible Charity.
- Develop a list of initial members.
 - The list of initial members will be gathered from attendees at the meeting who are willing to put their names forward to be initial members. This group of people would need to sign to confirm that they:
 - a) Authorised the Principal Legal Officer of SWALSC to apply to **ORIC for incorporation** (Document 18) of the Regional Corporation;
 - b) Approved the proposed Rule Book;
 - c) Agreed to any “Replaceable Rules” that were included in that Rule Book;
 - d) Nominated the persons who will become the Initial Directors on registration;
 - e) Nominated who will be the “Contact Person” on registration.

Each Regional Corporation will need to provide evidence to ORIC that at least 75% of people who have consented in writing to become members of the Corporation have agreed to the above. This is called the ‘pre-incorporation requirement’. The Regional Corporation must obtain this evidence through a resolution document signed by 75% of those persons at the meeting who wish to be initial members that they have agreed to the resolutions associated with the establishment of the Corporation as per s.29.15 of the CATSI Act.

NOTIFICATION

Pre-incorporation Meetings require a minimum 21 day’s written notice. The notification process for the Pre-incorporation Meetings will include:

- Mail out to the SWALSC membership;
- Mail out to Focus Group and Town Information Session participants;
- Advertising on Facebook and the SWALSC website;
- Advertising in local newspapers and notice boards in each region.

PRE-INCORPORATION DIRECTORS

The Agreement Groups will elect 4 Pre-incorporation Directors at the Pre-incorporation Meeting. Once the Regional Corporation is incorporated with ORIC the Pre-incorporation Directors will become the Initial Directors. The Pre-incorporation Directors will have a limited role as they will not have the rights and powers of a director during this period.

At this meeting the elected Pre-incorporation Directors will be asked to accept the Terms of Reference for Pre-incorporation Directors. The Terms of Reference will have been circulated as part of the Director Nominations process. The Terms of Reference may include the following tasks for the Pre-incorporation Directors:

- Making recommendations regarding the membership applications. These applications will be formally endorsed by the Initial Directors once the Regional Corporations are incorporated with ORIC.
- Promoting and assisting with the continuation of the Membership Drive.
- Considering the Expert Director Skill Set.

The Pre-incorporation Directors are not paid as the Regional Corporations will not be established and are not yet eligible to receive funding from the Trustee.



ORIC INCORPORATION

The State and SWALSC have received confirmation from ORIC that it is possible to align incorporation of the Regional Corporations with the Registration of the ILUAs, to ensure that the Regional Corporations are established at the same time that the Settlement will commence.

The Registration process with the National Native Title Tribunal depends on finalising any legal proceedings challenging registration of the ILUAs. Once these proceedings are finalised and there are no further delays, the WA Government will signal commencement of the Settlement through the issue of a “Settlement Effective Date Notice”.

Once the State issues a Settlement Effective Date Notice, everyone will know the date when the Settlement will start and the Agreement Groups will initiate the formal ORIC incorporation of the Regional Corporations.

INITIAL DIRECTORS

Once the Regional Corporations are incorporated with ORIC, the Pre-incorporation Directors will become the Initial Directors and will have the rights, powers, duties and responsibilities of a Director.

The Initial Directors will continue to work on the same tasks, however they will be able to formally endorse the recommendations for Regional Corporation Membership. The Initial Directors will also have a role in commencing and progressing the Member and Expert Director Nomination process, and in overseeing the postal vote process. They will finalise the Expert Director skill set and prepare, approve and release the notice of meeting for the First Regional Corporation General Meeting.

The Initial Directors must ensure that the Regional Corporation can complete the remaining tasks necessary to satisfy the Trustee that it is eligible to act as a Regional Corporation, including the appointment of Member and Expert Directors.

The Initial Directors are not paid as the Regional Corporations will not be appointed and are not yet eligible to receive funding from the Trustee.

Initial Directors will principally be responsible for finalising the Election Manual and commencing the election process for Member Directors by postal vote.

The Initial Directors will also consider:

- Adoption of a **Board Code of Conduct** (Document 19) for the Regional Corporation;
- Formally accept the membership Expressions of Interest for Agreement Group members who meet the Rule Book membership criteria, and ensure that new Members are included in the Membership Register;
- Consider Expert Director skills requirements;
- Commence the Member Director and Expert Director Nomination process;
- Request Interim Nominations Committee to assist with Director Nomination Process;
- Undertake any other preliminary activities associated with meeting State and Trustee Endorsement requirements as a Regional Corporation;
- Applications to ORIC to allow for an extension of time for the first general meeting; and
- Prepare for and release the **Notice of Meeting for the First Regional Corporation General Meeting of Members** (Document 20), following completion of the Member Director Election process.

MEMBER AND EXPERT DIRECTOR NOMINATIONS

Any Agreement Group Member who nominated themselves in the earlier Director Nomination process will be required to nominate again to be considered as a Member Director. Initial Directors of the Regional Corporation can also nominate to be a Member Director.

The Initial Directors will request the Interim Nominations Committee to call for nominations for Member and Expert Directors.

POSTAL VOTE

Once the Committee has a list of eligible candidates, it is proposed that the WA Electoral Commission will conduct a postal vote for Members of each Regional Corporation to vote for their Member Directors.

ROLE OF MEMBER DIRECTORS

The Member Directors elected through the postal vote will be appointed at the First Regional Corporation General Meeting. The Member Directors will:

- Appoint the Expert Directors;
- Consider any new membership applications;
- Apply to the State and the Trustee to be appointed as a Regional Corporation; and
- Carry out the role and functions of Directors of an Aboriginal Corporation as set out in their Regional Corporation Rule Book and the CATSI Act.

ROLE OF AN EXPERT DIRECTOR

Expert Directors are appointed by the Member Directors (after the First Regional Corporation General Meeting) and together they will constitute the “Full Board”.

An Expert Director will have recognised expertise and demonstrated experience that is appropriate and relevant to the priorities of the applicable Regional Corporation.



FIRST REGIONAL CORPORATION GENERAL MEETING

PURPOSE

The CATSI Act requires that the First General Meeting of an Aboriginal Corporation be held within three months of its incorporation. However, as the Director Nomination Process and Postal Vote is anticipated to take longer than three months, ORIC has confirmed this timeframe can be extended.

The business of the First Regional Corporation General Meeting must comply with the requirements of the CATSI Act and the relevant Regional Corporation Rule Book. It will also provide an opportunity to inform members about progress and the required steps to achieve endorsement as a Regional Corporation by the State and the Trustee.

- This will require that the following business be included on the agenda:
- An update on the process for considering and accepting applications for memberships;
- Confirm and endorse the election of Member Directors;
- Update on outcomes of the Initial Directors' First meeting/s;
- An update on the status of the endorsement applications made to the Australian Tax Office;
- Any other business regarding compliance with the CATSI Act or the Rule Book; and
- Update on progress and future steps in relation to the Noongar Boodja Trust and Regional Corporation Endorsement.

NOTIFICATION

The First Regional Corporation General Meeting will require a minimum of 21 days' notice. The notification process will need to include:

- Mail out to Regional Corporation members;
- Advertising on Facebook and SWALSC Website; and
- Advertising in local newspapers and notice boards in each region.

THE ROLE OF THE FIRST "FULL BOARD"

The two Expert Directors will be appointed by the Member Directors shortly after the First Regional Corporation General Meeting, at which the Member Directors commence their Term. At that stage, the Corporation will have a complete (full) board and will comply with the Regional Corporation Principles.

This will enable the Corporation to complete the remaining steps to be eligible to be appointed as a Regional Corporation.



STEP 2

AGREEMENT GROUP ENDORSEMENT

NOONGAR BOODJA TRUST DEED REQUIREMENTS FOR AGREEMENT GROUP ENDORSEMENT AT THE PRE-INCORPORATION MEETING

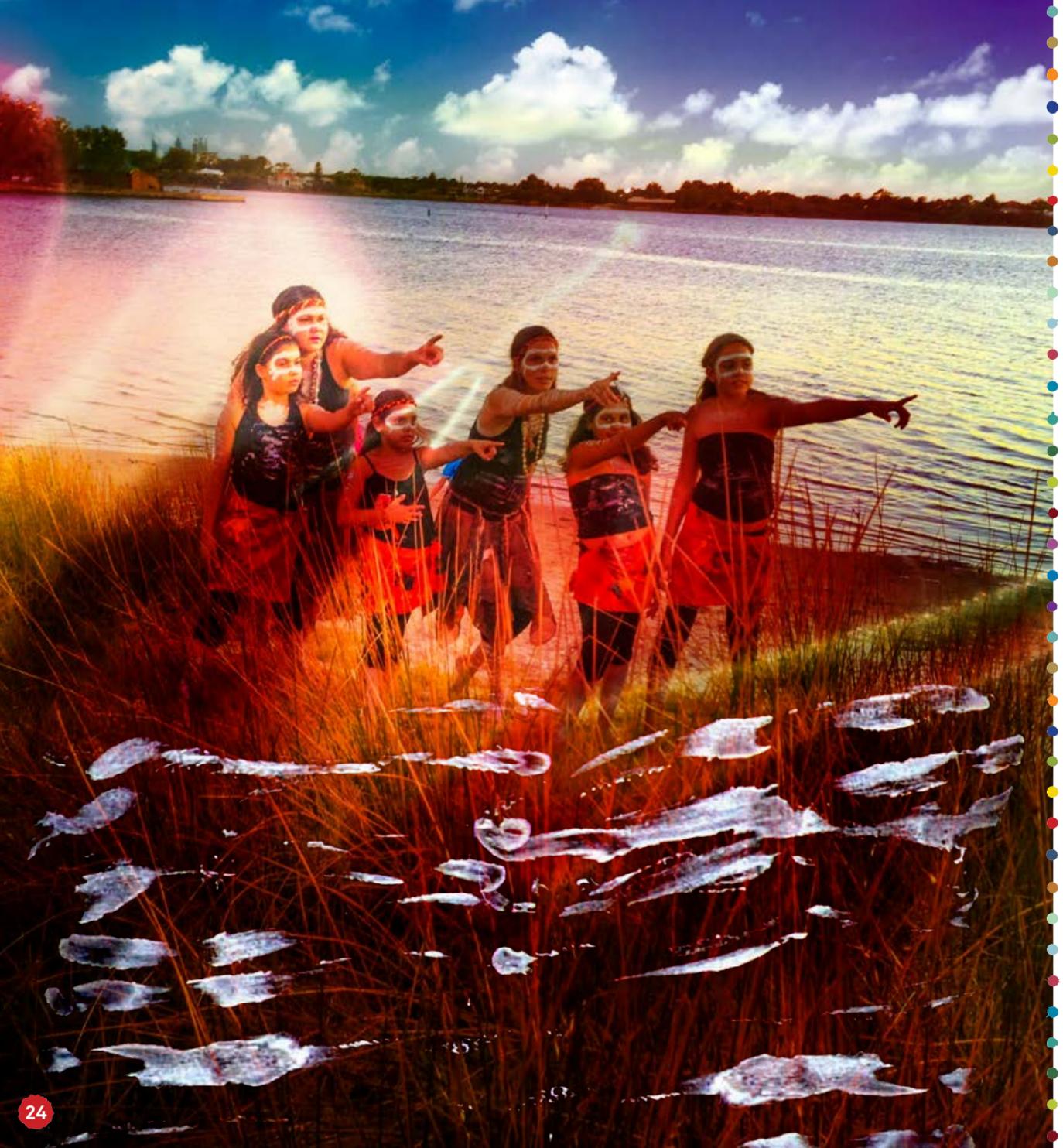
The Trust Deed requires that there must be Agreement Group Endorsement of their Regional Corporation.

There are a number of things that must be done in order to fulfill the requirements for Agreement Group Endorsement:

- Agreement Group Endorsement must be given in writing by an Agreement Group to the Trustee following the procedure set out in Schedule 6 of the Trust Deed;
- Agreement Group Endorsement must be provided following a meeting called by the Agreement Group at which a resolution was passed to endorse the Regional Corporation as the Regional Corporation for the purposes of the Trust Deed; and
- The Agreement Group Endorsement must be signed on behalf of the Agreement Group by the persons authorised to do so by the Agreement Group.

It is proposed that the Agreement Group Meeting for Agreement Group Endorsement will take place at the same time as the Pre-incorporation Meeting.





STEP 3 ENDORSEMENT AS AN ELIGIBLE CHARITY

WHY IS A REGIONAL CORPORATION REQUIRED TO BE ENDORSED AS AN ELIGIBLE CHARITY?

The Trust Deed requires that the Commissioner of Taxation must endorse that a Regional Corporation is an Eligible Charity and therefore Tax exempt. Tax exempt means to be free from, or not subject to, taxation by the Australian Tax Office. This will mean that a Regional Corporation will not need to pay income tax or lodge income tax returns.

This requirement must be met before the Trustee can appoint the Regional Corporation as a Regional Corporation.

It is proposed that the Agreement Group will provide instructions to SWALSC at the Pre-incorporation Meetings to seek the required Australian Tax Office endorsements.

The ACNC and Australian Tax Office have provided preliminary indication that the Regional Corporations will meet the requirements to be endorsed as an Eligible Charity.



STEP 4 STATE ENDORSEMENT

WHAT ARE THE REQUIREMENTS FOR STATE ENDORSEMENT OF A REGIONAL CORPORATION?

The Trust Deed requires that the WA Government must provide written approval of the nomination of a corporation as a Regional Corporation. This is called State Endorsement.

A **Framework of Assessment of Transition Principles** (Document 21) has been developed by the WA Government. The framework sets out the criteria on which the State will rely when considering whether to provide its endorsement of a Regional Corporation which is seeking appointment as a Regional Corporation by the Trustee.

Evidence regarding the establishment of the Regional Corporations by the Agreement Groups will be provided to the Transition Consultant to enable the WA Government to carry out its assessment.

The Transition Consultant is an independent consultant engaged by the WA Government to report on and advise the WA Government on compliance with satisfaction of the Transition Principles. The Consultant will require evidence of:

1. A widespread membership drive;
2. Consultation, review and amendment of the Regional Corporation Template Rule Book with the relevant Agreement Group members prior to its adoption;
3. Reasonable notification and widespread advertising of the First Regional Corporation General Meeting;

4. Consultation, review and amendment of Cultural Advice Policy prior to First Regional Corporation General Meeting;
5. Appointment of Member and Expert Directors in accordance with the Rule Book;
6. A Pre-incorporation Meeting that achieves the following:
 - Adoption of the Rule Book;
 - Adoption of the Cultural Advice Policy; and
 - Endorsement that the Regional Corporation seek appointment by the Trustee as a Regional Corporation; and
7. Agreed processes for recruitment, selection and appointment of senior management and staff.



STEP 5

NOMINATION OF A REGIONAL CORPORATION

Once steps 1 to 4 are completed, the Regional Corporation can apply in writing to the Trustee for appointment as the Regional Corporation for that region.

STEP 6

APPOINTMENT OF REGIONAL CORPORATION BY THE TRUSTEE

If satisfied that the Regional Corporation is eligible in accordance with the requirements of the Trust Deed, the Trustee must appoint the nominated entity as a Regional Corporation. This will be evidenced by a written Appointment Notice.

STEP 7

APPLICATION FOR FUNDING TO THE TRUSTEE

Once appointed by the Trustee, the Regional Corporation can apply for funding from the Trust.

This will require the Regional Corporation to prepare the following documents:

- A financial year budget; and
- A first year implementation/annual plan.

SWALSC will provide assistance to the Regional Corporations to ensure that they have prepared the necessary documentation to support an application to the Trust for financial support.



THE ROLE OF THE SOUTH WEST ABORIGINAL LAND AND SEA COUNCIL (SWALSC) IN THE TRANSITION PROGRAM

SWALSC's role in this Transition Program is to support the Agreement Groups in maximising Noongar participation in the development of the Regional Corporations.

SWALSC will have a dedicated team for the Transition Program, consisting of:

1. Project Manager – to manage the roll out of the Transition Program.
2. Regional Development Unit – to support all media, logistics and liaison.
3. Legal corporate and tax specialist advice.
4. Secretariat support – minute taking, record keeping and preparation of meeting materials.
5. Communications and marketing support – an internal communication specialist to manage social media, newsletters and updates on the website.

SWALSC will assist the Agreement Groups with the drafting of a number of documents required as part of the implementation of the Transition Program, including:

- Cultural Advice Policy
- Rule Book amendments
- Induction packs for Directors
- Board Code of Conduct
- Meeting template documents
- Strategic and annual plans
- Applications to the Trust for funding
- Budgets for the Regional Corporations
- Other documentation as requested

During the Transition Period for the establishment of Regional Corporations, SWALSC will continue to act as the Native Title Representative Body.

The Transition Period will end in each region when the Regional Corporation is appointed as a Regional Corporation by the Trustee.

SWALSC engaged Pricewaterhouse Coopers to develop a Central Services Corporation Transition Program to outline how it may transition to become the Central Services Corporation.

The WA Government requires SWALSC to develop a framework for how it will consult with SWALSC members, Directors and staff regarding how it will use its existing resources to transition into the Central Services Corporation. It is anticipated that the Pricewaterhouse Coopers Transition Report will address this requirement.

SWALSC will seek endorsement as the Central Services Corporation at each of the Agreement Group Pre-incorporation Meetings.

SWALSC must satisfy the Trustee and the WA Government that a transparent and accountable process was undertaken to establish the Central Services Corporation.

DEFINITIONS

Aboriginal Corporation: means corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act)

Australian Charities and Not-for-profits Commission (ACNC): is the independent national regulator of charities.

Agreement Group: the relevant “Native Title Agreement Group” associated with a Region as defined in the ILUA. Means Ballardong, Gnaala Karla Booja and Harris Family, South West Boojarah and Harris Family, Wagyl Kaip and Southern Noongar, Whadjuk, Yued being all of the people who have been identified as people who hold or may hold Native Title in relation to land and waters within that ILUA Area.

Agreement Group Endorsement: an endorsement given by the Agreement group in accordance with Schedule 6 of the Noongar Boodja Trust Deed.

Agreement Group Member: is a Noongar Person who is the descendant of one or more persons listed in Schedule 2 of the relevant ILUA (the apical ancestors).

Australian Business Number (ABN): means the registered business number with the Australian Tax Office.

Australian Tax Office: means the Australian Government Office for Taxation.

CATSI Act: the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). The Regional Corporations must be incorporated under this Act so as to be considered to be Aboriginal Corporations.

Central Services Corporation: means the organisation appointed as the Central Services Corporation.

Central Services Corporation Member: is a Noongar Person that has applied to become a member of the Central Services Corporation, and has been accepted as a member.

Central Services Corporation Principles: the Principles which must be provided for in the Rule Books of Central Services Corporation. The Principles provide for sound governance arrangements, as set out in Annexure E to the Settlement Terms of the ILUA.

Central Services Corporation Rule Book: a comprehensive written document containing all of the internal governance rules (as that phrase is defined in section 63-1 of the CATSI Act) of the corporation and consistent with the Central Service Corporation Principles, the ILUAs, the Trust Deed and the CATSI Act.

Conclusively Registered: an ILUA that remains Registered in the ILUA Register which is maintained by the National Native Title Tribunal.

Cultural Advice Policy: each Regional Corporation is required under the Regional Corporation Principles to have a process providing for Cultural Decisions to be made in accordance with the advice and recommendations of persons who have relevant traditional connection and cultural authority under Traditional laws and Customs.

Cultural Consultation Policy: policies and procedures developed by the Central Services Corporation to guide consultation processes with relevant Noongar People in relation to matters affecting Traditional Laws and Customs.

Cultural Land: means any estate, right, interest in land or Management Order held by the Land Sub and vested in the Trust from time to time and identified by the Trustee as Cultural Land.

Directors Nomination Process: the process followed to pre-qualify Noongar candidates as eligible for appointment as Directors.

Eligible Charity: an entity endorsed by the Commissioner of Taxation as income tax exempt under Sub-division 50B of the Income Tax Assessment Act 1997.

Election Manual: sets out the process for nomination and election of Directors.

Expert Directors: means a Director of the Corporation having recognised qualifications and demonstrated experience that is appropriate and relevant to the matter for which the expert is required.

Framework of Assessment of Transition Principles: sets out the WA Government’s criteria for State Endorsement of a Regional Corporation.

ILUA: an Indigenous Land Use Agreement containing the details of the South West Native Title Settlement, entered into by the State and each of the Agreement Groups.

Initial Directors: the first Directors of the Corporation upon registration with ORIC. Persons who were Pre-Incorporation Directors become Initial Directors upon Incorporation by ORIC.

Initial Members: members of an Agreement Group who agree to be Initial Members of the Corporation for the purpose of enabling Incorporation of the Regional Corporation by ORIC.

Interim Nominations Committee: established to pre-qualify candidates as eligible for appointment as directors on the boards of the Regional Corporations and Central Services Corporation before the Trust is established.





Member Directors: means a Member of the Corporation who is appointed as a Director.

Native Title Representative Body: means a prescribed body corporate in relation to Native Title rights and interests.

Noongar Boodja Trust: will hold and manage assets derived from the Settlement for the benefit of the Regional Corporations.

Noongar Community: the six Agreement Groups, collectively.

Noongar Corporations Committee: established as the primary source for consultation amongst the Regional Corporations and Central Services Corporation.

Pre-incorporation Directors: the persons who are approved by the Agreement group at the Pre Incorporation meeting to become the Initial Directors once the Corporation is Incorporated under the CATSI Act by ORIC.

Office of the Registrar of Indigenous Corporations (ORIC): maintains the public registers of Aboriginal councils and incorporated Aboriginal associations.

Regional Corporation: a Corporation that is established by the relevant Agreement Group and appointed by the Trustee as the Regional Corporation for that Region.

Regional Corporation Member: is an Agreement Group member that has applied to become a member of a Regional Corporation, and has been accepted as a member. A person can be a member of more than one Regional Corporation.

Regional Corporation Nomination: a written notice to the Trustee from a Corporation seeking appointment as a Regional Corporations.

Regional Corporation Principles: the Principles which must be provided for in the Rule Books of each Regional Corporation. The Principles provide for sound governance arrangements, as set out in Annexure E to the Settlement Terms of the ILUA.

Regional Corporation Rule Book: document that contains all of the internal governance rules (as that phrase is defined in section 63-1 of the CATSI Act) of the corporation and consistent with the Regional Corporation Principles, the ILUAs, the Trust Deed and the CATSI Act.

Settlement Effective Date Notice: notice of the actual date of Settlement. Notice must be given by the State within 20 Business days of the last of the Conditions to Settlement being fulfilled for all ILUAs.

South West Aboriginal Land And Sea Council (SWALSC): means the Native Title Representative Body for the South West of Western Australia.

South West Native Title Settlement: means the full and final resolution of native title claims of the Noongar People in the South West of Western Australia, as described in each of the ILUAs.

State Endorsement: the WA Governments' written approval for the nomination of a Corporation as a Regional Corporation.

SWALSC Member: is a Noongar Person that has applied to become a member of SWALSC, and has been accepted as a member.

Traditional Laws and Customs: the body of traditions, laws, customs and beliefs of the Noongar Community.

Transition Consultant: an independent consultant engaged by the State to report on and advise the State on compliance with satisfaction of the



Transition Principles and the associated "Framework of Assessment" of compliance with the Transition Principles.

Transition Period: the period in each Region from the execution of the ILUA, through to the appointment by the Trustee of a Regional Corporation for that Region.

Transition Principles: the Principles described in Annexure Y of the Settlement Terms to the ILUAs, which are designed to ensure that a transparent and accountable process is undertaken to identify Corporations that can nominate to become Regional Corporations, through maximum community

participation in the development of the organisation, and in its membership.

Transition Program: the document that outlines the process for establishing the Regional Corporations during the Transition Period, to assist the Noongar people to understand how and when they can participate in the development and establishment of the Regional Corporations.

Trust Deed: means the trust deed that establishes the Trust.

Trustee: means the professional trustee company that will be the initial trustee of the trust. The Trustee of the Noongar Boodja Trust, as appointed under the Trust Deed.

Trustee in Waiting: the Trustee that is nominated to be appointed as the Trustee of the Noongar Boodja Trust. After the Trust Effective Date, the Trustee in waiting becomes the actual Trustee, following Appointment by the Appointers, as described in the Trust Deed.

Trust Effective Date: means the Noongar Boodja Trust commencement date.



LINKS TO SUPPORTING DOCUMENTATION (AS THEY APPEAR IN THE TRANSITION PROGRAM)

All links can be found in www.noongar.org.au/formal-docs

1. ILUAs
2. Transition Principles
3. Regional Corporation Principles
4. Template Regional Corporation Rule Book
5. Expression of Interest: Membership application forms
6. Election Manual
7. Trust Deed
8. Draft Cultural Advice Policy
9. Agreement Group Endorsement
10. Central Services Corporation Transition Program
11. Central Services Corporation Principles
12. Draft Central Services Corporation Cultural Consultation Policy
13. Funding Guidelines
14. Communication, Consultation and Participation strategy
15. Central Services Corporation Rulebook
16. FDIO Proposal
17. Terms of Reference for the Pre-incorporation Directors
18. ORIC Application for Registration
19. Draft Regional Corporation Board Code of Conduct
20. Draft Notice for the First Regional Corporation General Meetings
21. State's Framework of Assessment of Transition Principles

OTHER USEFUL DOCUMENTATION

22. Presentation that SWALSC provided at the Preliminary Workshops
23. Noongar Governance Manual
24. Focus Group Workshop Agenda
25. Town Information Session Agenda
26. Draft Notice for the Pre-Incorporation Meetings
27. Draft Agenda for the Pre-Incorporation Meetings
28. Draft proposed resolutions for the Pre-Incorporation Meetings
29. Draft First Regional Corporation Board Meeting Agenda Draft
30. Draft Agenda for the First Regional Corporation General Meeting
31. Draft proposed resolutions for the First Regional Corporation General Meeting



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IMPORTANT: The material in this publication contains photos of deceased people and has been included with permission from the family. It is not our intention to offend any persons and would like to respect our people's contribution to our Noongar community.



South West Aboriginal
Land & Sea Council

