

Framework of Assessment of Transition Principles for the Government of Western Australia

Purpose of this document – Obtaining State Endorsement

This document sets out the assessment criteria that the State proposes to apply when it reviews an ENE Nomination to determine if, in the State's view, the ENE has satisfied the requirements in the Transition Principles. This is a critical consideration for the granting of State Endorsement for the purposes of the NBT Trust Deed.

The State's assessment criteria are based on the State's responsibility to ensure that the seven Nominated Noongar Entities are established with the fullest confidence of both the State and the wider Noongar community.

The extent of the proposed State Government investment in the South West Settlement requires the State to make every effort to ensure the seven NNEs are established through a transparent and accountable process with the highest standards of probity.

Definitions for the purpose of this document

Agreement Groups	<ol style="list-style-type: none">1. Ballardong (York, Northam, Hyden, Kondinin);2. Gnaala Karla Boodja and Harris Family (Mandurah, Bunbury, Donnybrook);3. South West Boojarah and Harris Family (Busselton, Dunsborough, Margaret River, Pemberton, Nannup);4. Wagyl Kaip and Southern Noongar (Katanning, Gnowangerup, Albany);5. Whadjuk (Perth Metropolitan area); and6. Yued (Jurien, Moora, Lancelin, Gingin).
CSC	means the ENE appointed as the Central Services Corporation.
Eligible Noongar Entity (ENE)	means a Nominated Noongar Entity appointed as a Regional Corporation or the CSC.
ILUA	means the Indigenous Land Use Agreements that document and represent the South West Settlement.
Nominated Noongar Entity (NNE)	an entity that proposes to issue an ENE Nomination to the Trustee to be appointed as an Eligible Noongar Entity.
Noongar Boodja Trust (NBT)	is designed to hold and manage the financial and land package under the ILUAs for the benefit of the 'Eligible Noongar Entities'.
Regional Corporation	means the ENE appointed for a particular region.
South West Settlement	means the full and final resolution of native title claims of the Noongar People in the South West of Western Australia.
Transition Consultant	means the independent consultant engaged by the State to report on and advise the State on compliance with the Transition Principles and this document.
Transition Period	means the period from execution of the ILUA to appointment of the ENE.
Transition Principles	means the Transition Principles set out in Annexure Y of Schedule 10 of the ILUA.
Trustee	means the professional trustee company that will be the initial trustee of the Trust.

PURPOSE OF TRANSITION PRINCIPLES

(Extract from Annexure Y, Schedule 10 of the ILUA)

The purposes of the Transition Principles are to :

- (a) ensure that a transparent and accountable process is undertaken to identify the following entities during the period following the ILUA Execution Date and prior to the Trust Effective Date (the **Transition Period**):
 - (i) **Nominee CSC:** an Aboriginal corporation that is eligible for appointment as the Central Services Corporation by the Trustee of the NBT; and
 - (ii) **Nominee RCs:** Aboriginal corporations that are eligible for appointment as the Regional Corporation for each of the Agreement Areas in the ILUAs by the Trustee of the NBT,

(together referred to as the **Nominee Noongar Entities**); and
- (b) provide guidance to the Trustee on how to determine if a Nominee Noongar Entity has satisfied these Transition Principles.

Appointment of a Regional Corporation or CSC

(based on clause 4.5 and 5.4 of the Trust Deed)

Upon receipt of an ENE Nomination, The Trustee must appoint the nominated entity as a Regional Corporation or CSC (as the case requires) if it is satisfied the entity:

1. is an Aboriginal Corporation that is endorsed as a charity by the Commissioner of Taxation;
2. is endorsed by the relevant Agreement Group by an Agreement Group Endorsement (or in the case of a CSC, by a majority of the Regional Corporations or Agreement Groups have endorsed the entity);
3. **is endorsed by the State by a State Endorsement;**
4. does satisfy the requirements set out in the following:
 - (a) Regional Corporation Principles or CSC Principles (as set out in Annexure E of Schedule 10 to the ILUA); and
 - (b) Transition Principles (as set out in Annexure Y of Schedule 10 to the ILUA).

This document is not the Transition Program or a timeline of how the Transition Principles will be effected by the relevant Agreement Groups. The methodology for effecting these Principles will be at the discretion of the Agreement Groups.

This document is not the implementation plan (for use by an ENE after ENE Appointment).

Transition Principle 2(a) – Establishment of Nominee Noongar Entities

Maximise Noongar Community participation in the development of the Nominee Noongar Entities by the execution of a well defined communication, consultation and participation plan.

Assessment Material

Development of the Transition Program:

1. Is there a well defined and documented transition program (**Transition Program**) that contains transparent, accountable and culturally appropriate:
 - (a) community engagement plan which includes communication, consultation and participation strategies;
 - (b) specific steps to be taken to maximise Noongar Community participation in the development of the Nominee Noongar Entity; and
 - (c) evidence to show that the relevant Agreement Groups participated in the development of the Transition Program.

Expected evidence: Transition Program / minutes of relevant Agreement Group meetings to adopt the Transition Program or delegate to committee to develop the Transition Program.

Execution of the Transition Program:

2. Is there documented evidence that the Transition Program was properly and effectively implemented regarding each of the following:
 - (a) community engagement plan;
 - (b) specific steps actually taken to maximise Noongar community participation in the development of the NNE; and
 - (c) actual participation of the relevant Agreement Groups in the development of the NNE.

Expected evidence: minutes of meeting including date, agenda, numbers in attendance resolutions moved / meeting notice and written summary of advertising methods / file notes of attendances and consultation with family groups or smaller committees.

Transition Principles 2(b) – Establishment of Nominee Noongar Entities

Encourage maximum participation in and membership of the Nominee Noongar Entities by the relevant Agreement Group members.

Assessment Material

1. Evidence that:
 - (a) a genuine membership drive was held;
 - (b) members of the relevant Agreement Groups were given at least 3 genuine opportunities to submit membership applications;
 - (c) that the NNE Board has processed all membership applications; and
 - (d) the NNE's public register of members, as recorded on the ORIC website (Updated Members Register), includes the outcome from the above processes and is otherwise up to date when the ENE Nomination is made.

2. Evidence that:
 - (a) any members of the Agreement Group refused membership of the NNE were provided reasons for the refusal; and
 - (b) the relevant member was provided with an appropriate opportunity to object or contest the decision of the Board of the NNE.

Expected evidence: Minutes of relevant Agreement Group or committee meetings / copies of advertisements / Relevant policies and procedures of the Nominee Noongar Entity / SWALSC claim group register of previous native title claim / written correspondence from SWALSC.

Transition Principles 2(b) – Establishment of Nominee Noongar Entities

Ensure that relevant Agreement Group members have the opportunity to:

1. review, amend and adopt the Rulebook of their relevant Nominee Noongar Entity;
2. review, amend and adopt the initial Cultural Advice Policy of a Nominee Regional Corporation; and
3. review, amend and adopt the initial Cultural Consultation Policy of the Nominee CSC.

Assessment Material

Each Agreement Group begins the transition with a template rulebook prepared specifically to integrate the requirements of the NBT and the ILUA.

As the cultural decision making process of the Agreement Groups is unique, there is no template Cultural Advice Policy. Accordingly, maximum Noongar participation to develop the initial Cultural Advice Policy is fundamental to the State's considerations.

1. Regarding the Rule Book, is there evidence that:
 - (a) the Agreement Group members were made aware of exactly how they could participate in rule book discussions;
 - (b) those Agreement Group members that chose to participate in rule book discussions had a genuine opportunity to do so; and
 - (c) the agreed outcomes of the rule book discussions were incorporated into the relevant rule book.
2. Regarding the Cultural Advice Policy, is there evidence that:
 - (a) the Agreement Group members were made aware of how they could participate in Cultural Advice Policy discussions;
 - (b) Agreement Group members that chose to participate in Cultural Advice Policy discussions had a genuine opportunity to do so;
 - (c) the agreed outcomes of the Cultural Advice Policy discussions were incorporated in the initial Cultural Advisory Policy;
3. Regarding the content of the Cultural Advisory Policy, is there a clear and robust process for:
 - (a) identifying persons with Cultural Authority in relation to a Corporate Cultural Decision having regard to:
 - (i) Law and Custom;
 - (ii) the Cultural Interests of the Agreement Group in relation to certain land and waters within the Region; and
 - (iii) the varying nature of Corporate Cultural Decisions and that not all Corporate Cultural Decisions can be treated alike;
 - (b) the Corporation to be required to provide reasonable assistance to persons with Cultural Authority to provide Cultural Advice; and
4. Evidence of an [ordinary/special] resolution of the members (based on the Updated Members Register) of the relevant NNE, passed at a duly convened General Meeting held on or near the conclusion of the Transition Program.

The resolution must contain a statement that the members confirm that the ENE Rule Book and Cultural Advice Policy are endorsed and genuinely reflects the outcomes of the Transition Program.

Transition Principles 2(c)(i) – Establishment of Nominee Noongar Entities

Ensure the relevant Agreement Groups participate in the recruitment, election and appointment of a new board of directors, including expert directors, in accordance with the Rulebook and the relevant Regional Corporation Principles and CSC Principles.

Assessment Material

During the Transition Period:

1. Evidence that:
 - (a) the Agreement Group members were made aware of exactly how they could participate in the recruitment, election and appointment of directors;
 - (b) those Agreement Group members that chose to participate in the recruitment, election and appointment of directors had a genuine opportunity to do so; and
 - (c) the agreed outcomes of the recruitment, election and appointment of directors process were implemented.

At the end of the Transition Period:

2. Evidence of an [ordinary/special] resolution of the members (based on the Updated Members Register) of the relevant NNE, passed at a duly convened General Meeting held on or near the conclusion of the Transition Program.

The resolution must contain a statement that the members confirm that the appointment of the Board are endorsed and genuinely reflects the outcomes of the Transition Program.

Transition Principles 2(c)(ii) – Establishment of Nominee Noongar Entities

Ensure the relevant Agreement Groups participate in the recruitment, selection and appointment of appropriate senior management and staff.

Assessment Material

During the Transition Period:

1. Evidence that:
 - (a) the Agreement Group members were made aware of the process for the recruitment, selection and appointment of senior management and staff;
 - (b) Agreement Group members had a genuine opportunity to provide feedback and consider the process for the recruitment, selection and appointment of Regional Corporation staff; and
 - (c) the Agreement Group agreed to a recruitment, selection and appointment process and to its implementation by the Regional Corporation board.

At the end of the Transition Period

2. Evidence of resolution of the Agreement Group members, passed at a duly convened Pre-Incorporation/Agreement Group Meeting.

The resolution must contain a statement that the members confirm the processes for the recruitment, selection and appointment of senior management and staff have been endorsed and genuinely reflects the outcomes of the Transition Program.

Transition Principles 2(c)(iii) – Establishment of Nominee Noongar Entities

Ensure the relevant Agreement Groups participate in the relevant Agreement Group Endorsement of a Nominee RC and a Nominee CSC.

Assessment Material

1. Documented evidence of successful Agreement Group Endorsement of the ENE as the Eligible Noongar Entity.

Minutes of Agreement Group meeting / copy of Agreement Group Endorsement form / written summary of how any conditions on Agreement Group Endorsement were satisfied / written correspondence from SWALSC confirming process was appropriate.

Transition Principles 3(a) – Satisfaction of Transition Principles

A transparent and accountable process was undertaken to establish the Nominee Noongar Entity in accordance with the Transition Principles and the Nominee Noongar Entity genuinely reflects the outcomes of that process.

Assessment Material

A transparent and accountable process is most likely to arise from the development and implementation of the Transition Program in a manner consistent with the Transition Principles.

1. Transparent and accountable process

Evidence based on a written report from the Transition Consultant regarding the development and delivery of the Transition Program. The report must also contain recommendations as to whether each assessment criteria has been met and that a transparent and accountable process was undertaken to establish the Nominee Noongar Entity in accordance with the Transition Principles and the Nominee Noongar Entity genuinely reflects the outcomes of that process.

2. Outcomes

Evidence of an [ordinary/special] resolution of the members (based on the Updated Members Register) of the relevant NNE, passed at a duly convened General Meeting held on or near the conclusion of the Transition Program.

The resolution must contain a statement that the members confirm that the ENE Rule Book, Cultural Advice Policy, Board, senior management are endorsed and staff genuinely reflects the outcomes of the Transition Program.

Transition Principles 3(b) – Satisfaction of Transition Principles

Assessment by Trustee on receipt of ENE Nomination – **N/A**