

**NATIONAL
INDIGENOUS
LAND AND
SEA
STRATEGY**

Discussion Paper:

You've got your land back, now what? Some observations from the South West on moving to a 'Post-Acquisition Era'



Australian Government
Indigenous Land and Sea Corporation



The ILSC GROUP

PEOPLE. COUNTRY. OPPORTUNITY.

This paper was developed through facilitated discussions with Professor Stephen van Leeuwen, Curtin University, a Noongar man from Wardandi country between Busselton and Margaret River in south-west Western Australia. The views expressed are for generating broader discussion and may not represent the position of the ILSC.

Indigenous land holdings – state of play

The total area of land comprising the Indigenous estate in 2016 was 57% (438 million hectares) of Australia’s land mass.¹

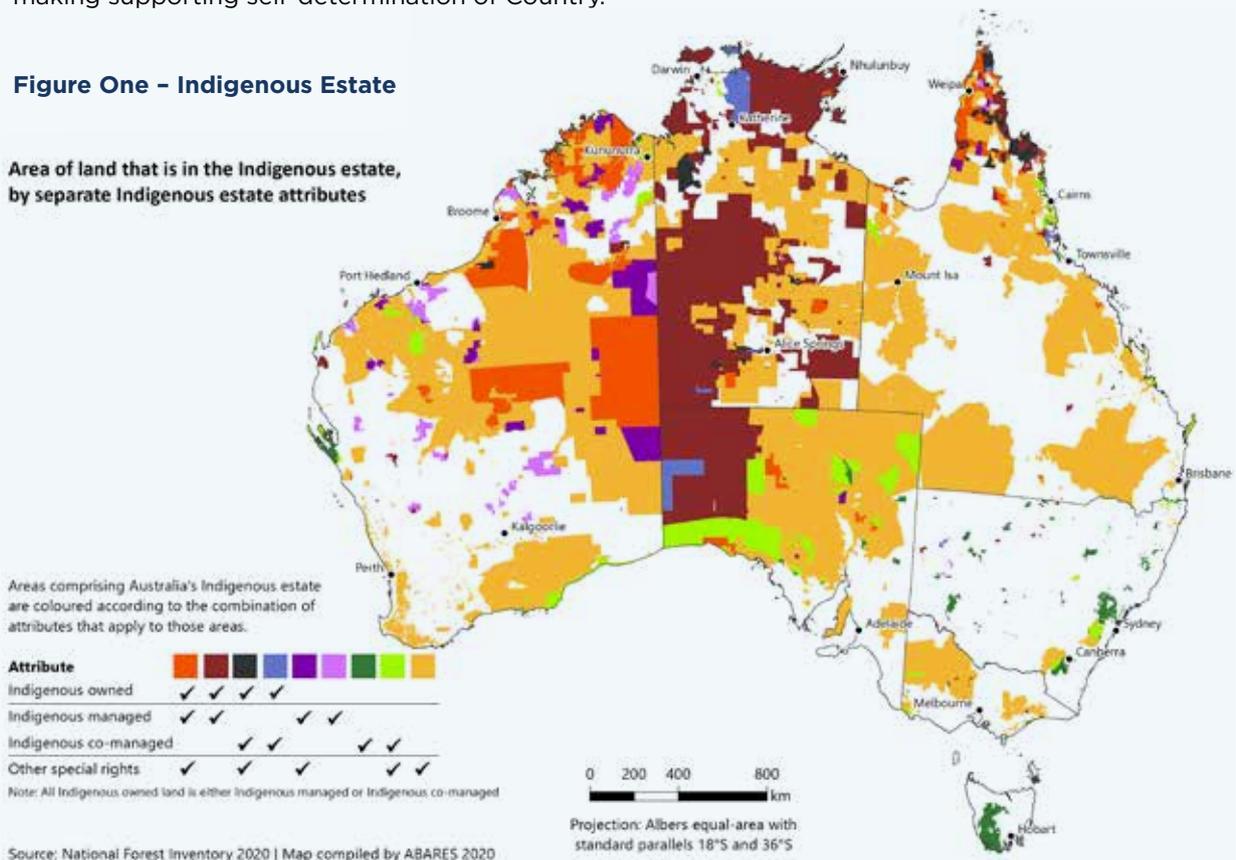
In northern Australia, Indigenous legal rights and interests incorporate over 75% (380 million hectares) of the country. This excludes further rights and interests in sea Country and freehold properties purchased under mainstream titles, including those acquired by the ILSC (since 1995).

Much of the land mass reflects Native Title determinations (exclusive and non-exclusive) made under the *Native Title Act 1993 (Cth)* and jurisdictional-based statutory land rights regimes including the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*, *Aboriginal Land Rights Act 1983 (NSW)*, *Traditional Owner Settlement Act 2010 (Vic)*.

Land subject to Native Title has grown significantly over the past 20 years to approximately 39% of Australia’s land mass in 2019 with projections for a further increase of 15% by 2030 through Native Title determinations. With statutory land rights arrangements from state and territory jurisdictions covering a further 12% and an additional 6% of country under some form of Indigenous management regime we are looking at approximately 60% of Australia’s land mass under a form of tenure, control or Indigenous management – which is estimated to grow to over 72% by 2030. It is important to remember that non-exclusive native title and various types of Indigenous management do not enable full control or decision-making supporting self-determination of Country.²

Figure One – Indigenous Estate

Area of land that is in the Indigenous estate, by separate Indigenous estate attributes



- 1 [Jacobsen R, Howell C, Read SM 2020, Australia's Indigenous land and forest estate: separate reporting of Indigenous ownership, management and other special rights. ABARES technical report, Canberra, December, DOI: doi.org/10.25814/bqr0-4m20. CC by 4.0 - www.awe.gov.au/abares/forestsaustralia/publications/indigenous-estate-report](https://www.awe.gov.au/abares/forestsaustralia/publications/indigenous-estate-report)
- 2 Non-exclusive native title rights may include the right to access, hunt and camp on traditional Country, **but not the right to control access to, and use of, that Country.**

ILSC Returning country - our primary purpose

Since 1995, we have been using our funding to buy Country to hand it back to Australia's Indigenous people. This is our highest profile activity to redress Australia's historic dispossession of Indigenous people through the restoration of an Indigenous land, water and sea base. As at 2021 the ILSC spent \$581m (purchase price) to acquired 272 properties comprising 6.3 million hectares and over three quarters of these properties are now under the care and control of an Indigenous title holder.³

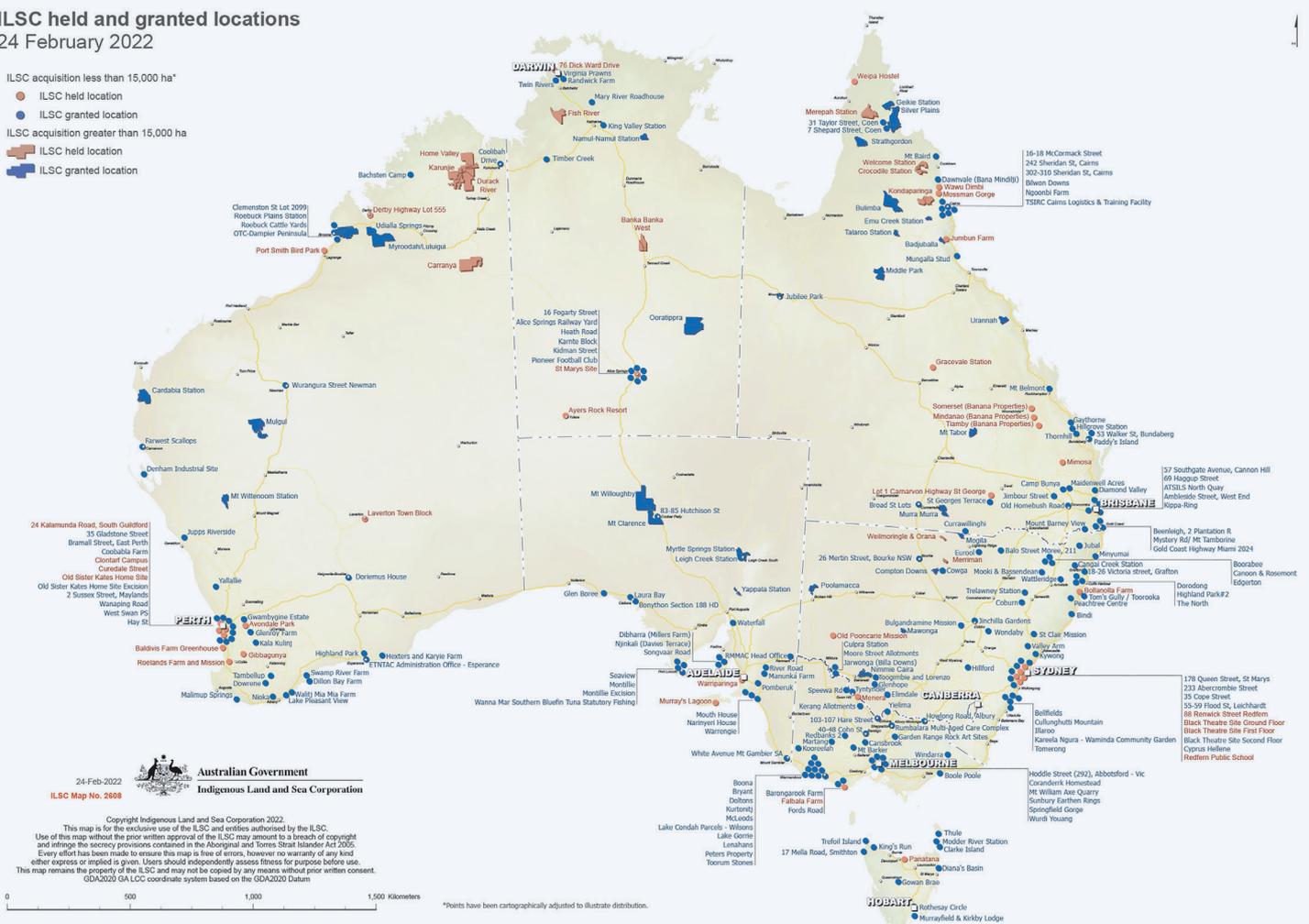


Indigenous Bush Food products.
Photo Credit: Voyages Indigenous Tourism Australia Pty Ltd.

Figure Two - ILSC acquired and divested properties (February 2022)

ILSC held and granted locations 24 February 2022

- ILSC acquisition less than 15,000 ha^a
- ILSC held location
- ILSC granted location
- ILSC acquisition greater than 15,000 ha
- ILSC held location
- ILSC granted location



For more information through case studies that profile the full diversity of our land water and sea Country acquisitions and demonstrate how the return of Country lays the foundation for positive change for Indigenous communities check out the Project Profiles on our website www.ilsc.gov.au

3 With 211 properties covering 3.9 million hectares granted to Indigenous hands (worth \$269m valuation at grant) - www.ilsc.gov.au

South West Noongar Native Title Settlement

The Settlement involves around 35,000 Noongar people and covers approximately 200,000 square kilometres of the south-west region and took the form of six Indigenous Land Use Agreements (ILUAs) negotiated between the Noongar Nation and the WA Government. The Settlement package provides Noongar people with sustainable assets and options for developing Noongar interests, including opportunities for the WA Government to work in partnership with the Noongar people to elevate economic, social and community outcomes.

Each of the following areas has a corresponding ILUA:

- **Yued People** - Yued Aboriginal Corporation (Jurien, Moora, Lancelin, Gingin).
- **Gnaala Karla Boodja** - Kada-Moda Maambakoort Aboriginal Corporation (Mandurah, Bunbury, Donnybrook).
- **South West Boorah** - Karri Karrak Aboriginal Corporation (Busselton, Dunsborough, Margaret River, Pemberton, Nannup).
- **Wagyl Kaip and Southern Noongar** - Wagyl Kaip and Southern Noongar Aboriginal Corporation (Katanning, Gnowangerup, Albany).
- **Ballardong People** - Ballardong Aboriginal Corporation (York, Northam, Hyden, Kondinin).
- **Whadjuk People** - Whadjuk Aboriginal Corporation (Perth Metropolitan area).

The Noongar peoples' strong relationship to their boodja (Noongar land) is reflected through the many components of the Settlement package, including the creation of the Noongar Land Estate and the recognition, in statute, of the Noongar peoples as the Traditional Owners of the South West region.

The Settlement will resolve the Noongar native title claims in the South West of Western Australia in exchange for a package of benefits that includes:

- **Recognition through an Act of Parliament** - the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016*.
- **Noongar Boodja Trust** - a perpetual trust, receiving yearly instalments of \$50 million for 12 years.
- **Noongar Corporations** - the establishment of six Noongar Regional Corporations and one Central Services Corporation, with funding support of \$10 million a year for 12 years, and \$6.5 million to establish the Central Services and regional corporation offices.
- **Noongar Land Estate** - up to 320,000 hectares of development and cultural land to be held by the Noongar Boodja Trust.
- **Co-operative and joint management** - of National Parks and the South West Conservation Estate.
- **Land Access - to certain types of Crown lands for customary activities.**
- **Noongar Standard Heritage Agreement** - standard processes for determining when and how to carry out heritage surveys on Noongar boodja.
- **Noongar Heritage Partnership Agreement** - collaboration framework for identifying, recording, protecting and managing Noongar heritage values and sites.
- **Noongar Housing Program** - transfer and refurbishment of 121 properties to the Noongar Boodja Trust and \$10 million to develop and refurbish these properties.
- **Economic and Community Development** - through development frameworks to assist Noongar businesses and improve Government service delivery to the Noongar community.
- **Capital Works Program** - funding to contribute to the establishment of a Noongar Cultural Centre and office space for Noongar Corporations.
- **Noongar Land Fund** - up to \$46,850,000 over ten years for land-related projects
- **Noongar Cultural Centre** - \$5. million and up to two hectares of land towards the development of a Noongar Cultural Centre.

On 27 January 2021 the six ILUAs were conclusively registered on the National Register of ILUAs, completing the final condition necessary for the start of the Settlement.

Commencement of the Settlement occurred on 25 February 2021 enabling the appointment of the initial Noongar Boodja Trustee; the first State payment into the Noongar Boodja Trust; and resolution of Native Title in the Settlement area. On 29 March 2021 the initial Noongar Boodja Trust (NBT) was established, to manage and hold all assets from the Settlement, including the payments to the NBT by the WA Government comprising key commitments of the Settlement being:

- \$50 million to the Future Fund; and
- \$10 million to the Operations Fund.

The six Noongar Regional Corporations and a supporting Central Services Corporation are the major beneficiaries of the Noongar Boodja Trust and will be established in consultation with Traditional Owners in 2022. The South West Aboriginal Land and Sea Council (SWALSC) is facilitating the establishment of these Noongar corporations.⁴

Map of the South West Native Title Settlement Area



Professor van Leeuwen – perspectives on post-acquisition

Some previous experiences with land acquisition

Initially, confusion over the right people to make decision for land and its customary, cultural and spiritual values hindered the process of land handback and ultimately the settlement of Native Title. Quality of Country is relevant to supporting custodians' aspirations – is Country capable of sustaining people? Are there robust processes to ensure economic ventures or aspirations are viable? And if so, are there proper levels of support provided over appropriate timeframes so there is real capability and capacity building?

Looking at issues associated with connectivity to Country from other places, where for example proximity to towns may mean systemic social issues are impacting on what communities have planned and can achieve, is critically important to successful land acquisition / hand back. Similarly, how does 'acquired' Country work or fit across the broader, regional landscape both physically and culturally is important to understand?

How custodians are supported to deal with more 'general' challenges such as remoteness, accessibility and maintaining infrastructure and assets is really key. A lot of money can be thrown at ventures that are still not going to succeed. Especially where expectations are for Aboriginal people to succeed in an economic venture when others have failed.

Opportunities and Challenges under the South West Settlement

The ambitions of the Noongar people go beyond the content of the Settlement. We are really looking to expand and take all the opportunities we can. Including looking at further acquisitions, setting up Indigenous Protected Areas, and really progressing Indigenous-led joint management but we must acknowledge the challenges associated with these aspirations too.

⁴ <https://www.noongar.org.au/>
<https://www.noongar.org.au/about-settlement-agreement>
<https://www.wa.gov.au/organisation/departments-of-the-premier-and-cabinet/south-west-native-title-settlement>

Tenure security remains a critical issue and the underlying tenure for IPAs is an area to be addressed with the WA and Commonwealth Government, relevant for IPAs across the Nation. Whilst joint management is presenting some key pathways forward supporting caring for country, including sea country, legal arrangements mean that fundamentally decision making remains with the Crown. This is an issue for many groups and in combination with lower levels of funding can limit the benefits of joint management arrangements for the Traditional Custodians.

We are looking for greater joint management outcomes using the Settlement commitments as a starting point which could lead to better joint management arrangements for Aboriginal people across the state. Opportunities for joint management approaches with third parties (e.g. Bush Heritage Australia, The Nature Conservancy) are also an option to be explored which could provide a more appropriate level of decision making and governance by Traditional Custodians, than the current arrangements dominated by the Crown. There are also ongoing complexities around State and Federal joint management of sea country. All the complexity of teasing out each of these opportunities. To see what will work takes time and resources- reinforcing the importance of well supported governance arrangements and recognition of the challenges of every person involved 'walking in two worlds' to meet cultural obligations whilst dealing with western institutions, outdated business practices and culturally unsafe processes.

The Settlement is enabling us to explore a suite of different types of enterprises on Country including the use of biodiversity planting to provide economic opportunities through carbon farming, honey production, bush tucker, nutraceuticals, flower production, and potentially filling the supply niche for plantation timber (blue gums and pines). There are great opportunities as part of healing country and restoring country through the different activities and cultural practice we can undertake. Honey production provides a relevant example of the need to further develop and protect our Indigenous Cultural and Intellectual Property (ICIP) including effective branding and marketing, which could support us to provide a high value product to the Japanese and Middle East markets. We are keen to work with existing operators in the industry to help build local capability and capability in the local community.

Scale of enterprise and capability are key considerations for groups, where in some cases, it may be preferable to consider working together on enterprise opportunities rather than seeking to achieve the aspirations of a group in isolation to other groups who have similar aspirations. Centralisation of some activities may enable greater sustainability, viability and/or profitability for enterprises such as seed collection, storage and distribution. Replication of investment, for example in seed cleaning machinery and temperature-controlled storage facilities by multiple groups within a region, may not lead to genuine enterprise development, where working smartly and collegially together can deliver such outcomes.

Carbon continues to provide opportunities on Country however clear environmental outcomes need to be part of the equation with other activities (cultural, environmental, social and economic) undertaken on Country as part of a broader healing and restoration approach. Ranger programs have often adopted carbon abatement activities which has improved the sustainability of their work. However Aboriginal Ranger program funding remains a real issue where long-term commitment to proper funding is needed to grow this critical program. Noting restrictions to existing ranger programs; funding needs to be expanded a) in recognition of the cultural and conservation activities of Aboriginal rangers cf. standard park management (rubbish, tourist management, etc); b) to ensure parity of wages between Indigenous and non-Indigenous rangers and c) provide broader support for the infrastructure required for ranger teams e.g. business managers who can write grant applications and meet required reporting arrangements for funders, etc. This is not an issue limited to WA Aboriginal ranger programs. A well-funded, long term, secure ranger program will also enable the development of support services and skills - in GIS, business manager, leadership- providing additional opportunities for other people in community.



Ranger performing a controlled burn

We are really focused on building multiple opportunities from healing and restoring country - an approach needed in the South West (and across southern Australia) where landscapes have been fragmented and impacted by settlement and extensive development. The ARC Training Centre for *Healing Country* aims to achieve cost-effective restoration solutions that grow and strengthen Indigenous enterprises, expand and bolster diverse training pathways, and conduct innovative research to advance a diversified Indigenous-led restoration economy.⁵ The key nodes of the Training Centre will:

1. build Indigenous research capability and harness the knowledge of Indigenous restoration practitioners to explore options to restore Country (eg. carbon and honey, seed collection and storage);
2. have a strong business socioeconomic stream of work demonstrating the business case for Indigenous restoration activities showing greater value than investment and critically substantiating the value to communities; and
3. focus on eco-health exploring how people working on Country, to restore their Country improves the wellbeing of community.

Making the most of the opportunities presented through the Settlement and as developed by Noongar ourselves is still going to take a lot of time and considerable effort, however we do have a good starting platform and support through the Settlement to take our aspirations forward - for healthy boodja, healthy people, strong community and enduring prosperity.

5 <https://news.curtin.edu.au/media-releases/curtin-hosts-new-arc-training-centre-with-a-mission-to-heal-country/>
<https://www.arc.gov.au/news-publications/media/media-releases/74-million-bring-australian-research-and-industry-together>





Talaroo hot springs board walk on Ewamian country, north Queensland



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Join The Conversation



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Complete the on line survey.



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Email your submissions to NILSS@ilsc.gov.au to share your thoughts.



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A feedback report summarising what we have heard from you and how we will use this important information will be available on the website.



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