

Issues, Strategies, and  
Outcomes - Negotiating the  
Noongar Native Title  
Settlement

Bill Lawrie on behalf of  
SWALSC

# Overview

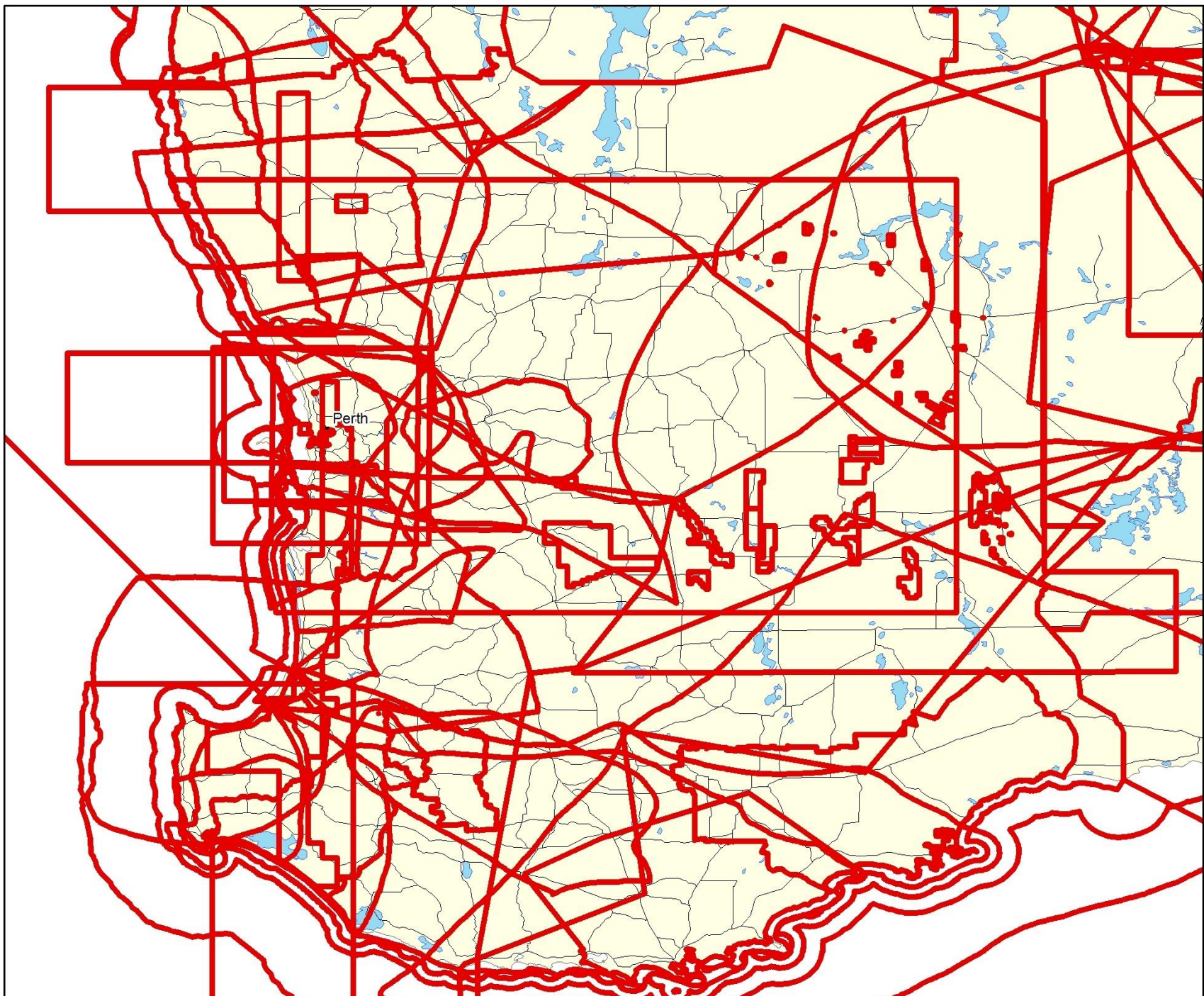
- Background to the Settlement Negotiations – the development of the claims
- Origins of the Noongar alternative settlement
- The negotiation process and the options
- The proposed settlement

1995 - The Noongar Land Council (NLC) established as the Native Title Representative Body for Noongar People in South West of Western Australia.

1997 - 78 individual family claims lodged over the SW with the National Native Title Tribunal

1998 - (Post Amendments) - 78 claims replaced by six communal claims.

# Noongar Claims – Pre 1998



# Noongar Claims – Post 1998



Yued

*Western Australia*

Perth

Ballardong People

Gnaala Karla Booja

South West Boojarah 2

Wagyl Kaip

# 1998-2003 – Mediation – Lodgment of Single Noongar Claim

1998-2002 – Little progress in Mediation –State of WA position – no native title in south west WA

2002 - NLC replaced by the South West Aboriginal Land and Sea Council as the NTRB representing all Noongar people.

- Moves toward a Single Noongar Claim (SNC) begun. Community meetings in support of the SNC were carried out all over the South West.

2003 -In September 2003 the SNC was lodged with the Federal Court, though the six underlying claims remained in place.



## SWALSC SNC and underlying claims



# Litigation of SNC

- 2005 WA Government refuses to negotiate. Trial to ascertain Native Title over the Perth Area takes place with evidence heard from Noongar witnesses all over the South West on their country.
- 19th Sept 2006 the Federal Court brought down an historic judgment in favour of Noongar Native Title over the Perth metropolitan area in *Bennell v State of Western Australia* FCA 1243.

Wilcox J found: Noongar people have, since sovereignty, continued to occupy, use and enjoy those parts of the lands and waters of the claim area to which they have had legal access [809].

What survives as native title is the right of the Noongar people to occupy, use and enjoy lands and waters for the following purposes:

# 2006-2008

- 2006 State lodges appeal
- Early attempts to explore mediation around underlying claims - hiatus waiting for appeal decision
- 2008 Appeal Decision – Sets aside some of Wilcox decision but does not find there is no Noongar society. “Scores are level at half time”.
- 2008 Change of State Government.
- SNC Applicant Debrief – Instructions to explore negotiated settlement.
- 2008 SWALSC Position Paper- Sets out Principles and Architecture of possible Alternative Settlement.



Towards a Just Resolution and  
Recognition of Native Title  
in South West Australia

A Discussion and Options Paper

April 2009

ry resulting compensation for removal of the right to a religious education by re the land on which the buildings were located.

### Settlement Principles

The Council believes that the most productive outcome for resolution of native from a negotiated settlement that provides a foundation for the economic deve Noongar People. The Council seeks to have a settlement on four principles:

- **Acknowledgment** of the past
- **Just** recognition
- **Equity** for all Noongar people
- **Sustainability** with respect to governance, structures, social and enviro

# 2008-2009

- 2008 - December – Meeting SWALSC and Premier – interest and engagement
- Emphasis on interest based negotiation rather than positions
- 2009 – Negotiation of Heads of Agreement - Signed on 17 December

2000

STATE OF WESTERN AUSTRALIA

and

SOUTH WEST ABORIGINAL LAND AND SEA CORPUS.

---

HEADS OF AGREEMENT  
NEGOTIATIONS IN THE SOUTH WEST

---

State Solicitor's Office  
141 St Georges Terrace  
PERTH WA 6000

Telephone: (08) 9224 1300

Facsimile: (08) 9421 1100

Ref: 04/1 000070

# December 2009 -Heads of Agreement – Areas for Negotiation

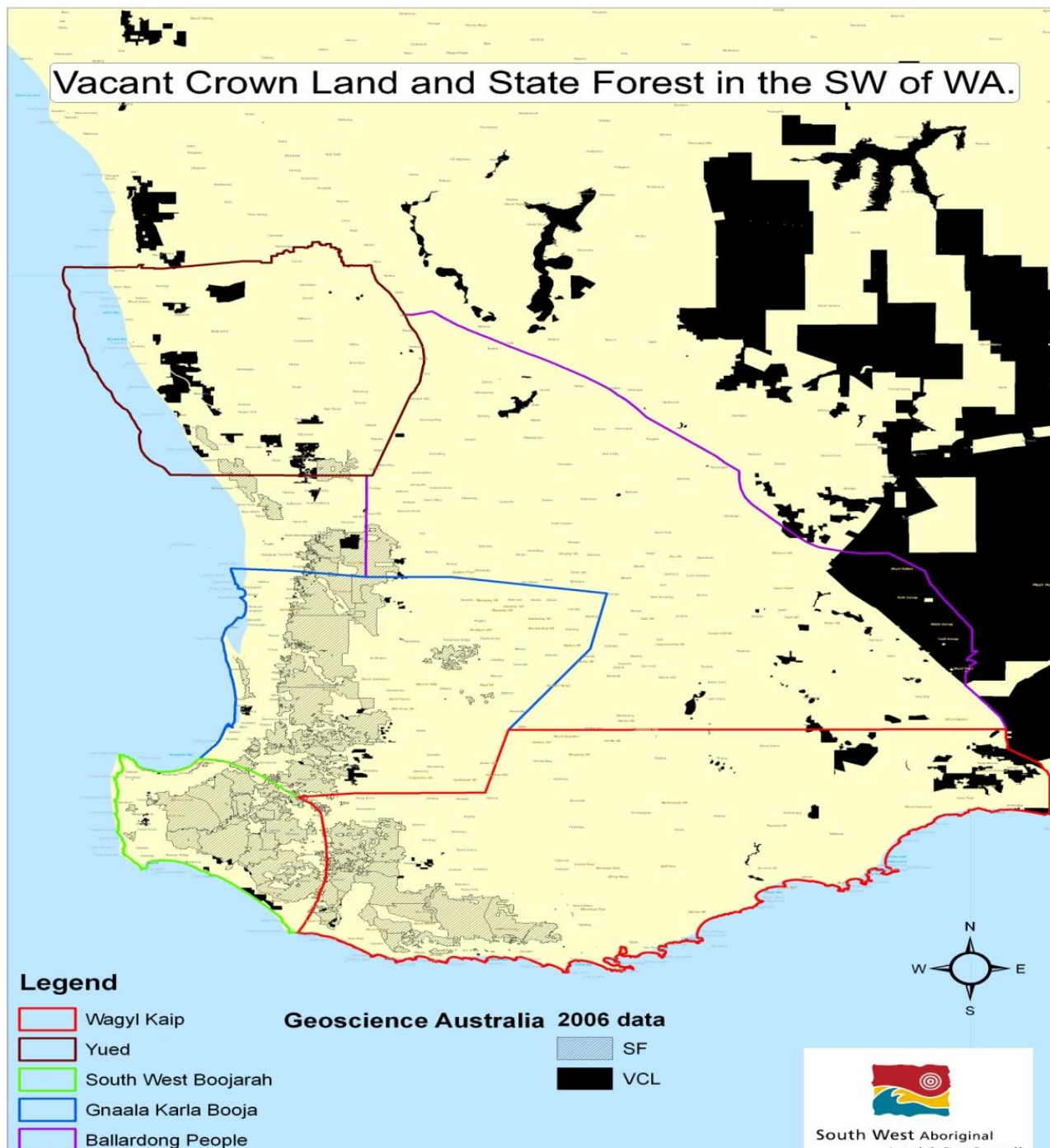
- Noongar Recognition Act - Traditional Ownership
- Governance and Service Provision
- Sustainable Economic Base
- Land Base
- Revised Heritage regime
- Joint Management of Conservation Estate / Land Access / Access to Natural Resources
- Alternative Future Acts regime
- Community Development



# Why Negotiate rather than Litigate?

- From the State Perspective – social and political downside to a litigated finding of no native title.
- Potential to reform problematic future act and heritage regimes.
- Possibility native title could exist in some areas.
- From SWALSC side - Outcome of Appeal – possibility native title might be found not to exist in parts of Noongar Country.
- Massive pre RDA extinguishment – even a native title win would produce very poor outcomes – particularly given the size of the Noongar population (35,000 plus).
- Seemingly endless timeline to determine native title and any compensation claim.

# Vacant Crown Land and State Forest in the SW of WA.



# 2010 Negotiations

- Selection SWALSC Negotiating Team – EOI
- Plenary 13 April 2010
- Government Agencies – ONT, DEC, RDL, DMP, DSD, DIA, DoW, DoF, DLG, SSO plus Commonwealth Representative
- 3 Rounds of Negotiations in 2010
- State retires to consider its position

# 2011

- State considers its position.
- SWALSC researches potential Trust arrangements and possible scale of compensation required for full and final agreement.
- Long State delay while internal positions settled.
- December – STATE OFFER. SWALSC accepts in principle as basis of further negotiation.

# 2012 - 13

- Noongar Congress – 180 Elders and Representatives meet with Premier and Attorney General.
- Further Negotiations - Rounds 4, 5,6 through the year – hard yards
- Technical issues with identification of land base, legal issues.
- Drafting of Noongar Recognition Act

# 2013-14

- More Negotiation – Diminishing Returns
- Detailed drafting – exhaustion of options (and personnel!)
- Finalisation of Trust Structure and Governance documents.
- Final Offer – SWALSC signs off on ILUA draft ready to present to Noongar Community
- SWALSC Community Information and Consultation Campaign (2010 – 2014) – Hundreds of community meetings across south west.

# 2015

- Authorisation – 6 Meetings - January to Late March

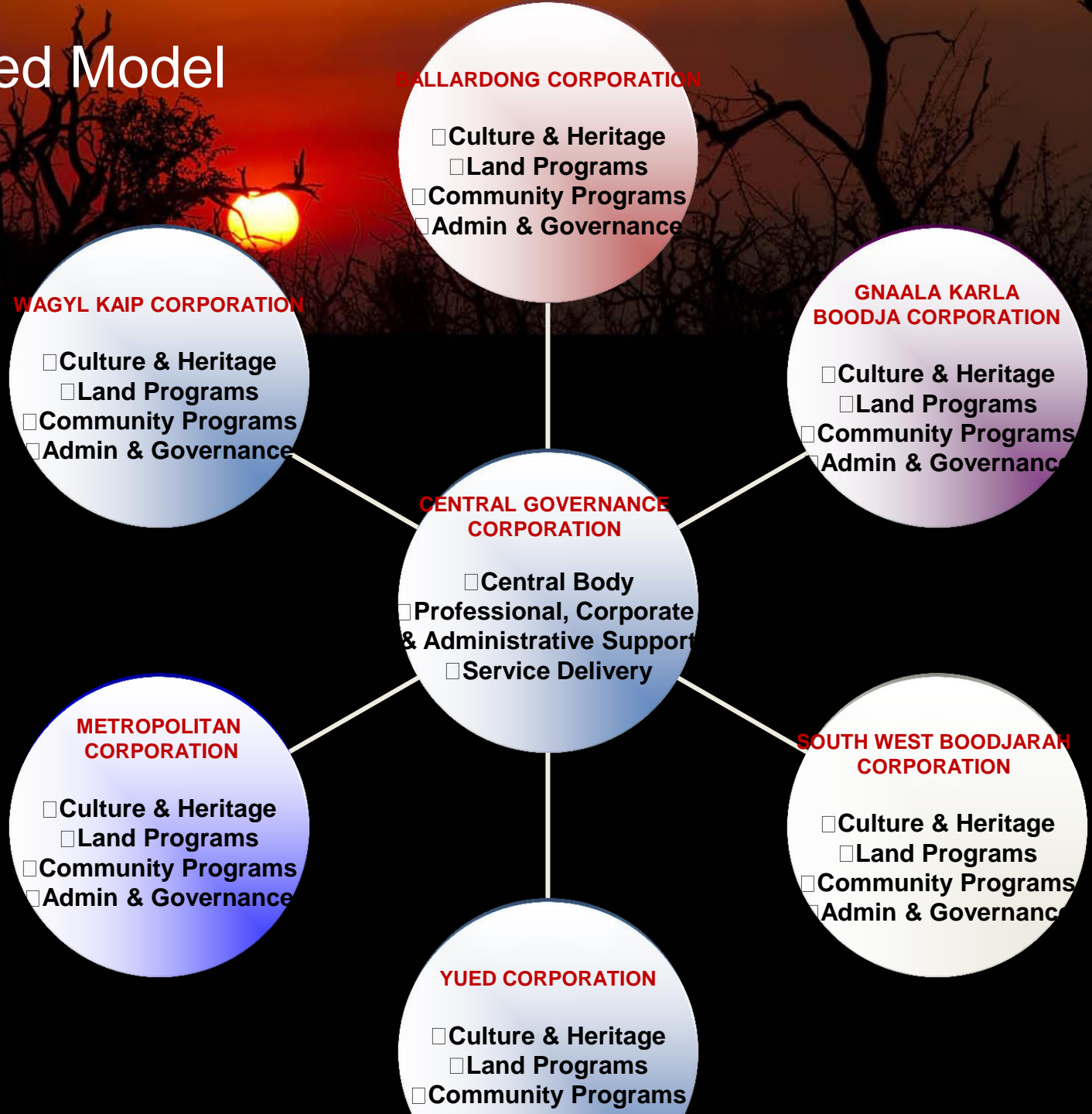
# Proposed Post Settlement Governance Structure:



# Regional Corporations, Central Services Corporation, and the Trust

- Six Regional Corporations
- Memberships open to the persons who make up the native title claimant groups.
- Can be a member of more than one Regional Corporation but only hold an office in one Corp at any one time.
- Central Services Corporation replaces NTRB role – coordination and support functions – does not direct the Regional Corporations.
- Trust separated from Regional Corporations . Large scale professional Trustee with capacities to hold the Land and Assets. Investment Committees
- Regional Corporations responsible for cultural programs and cultural governance land management, joint management, community development, cultural programs and operations related to the agreement in their region.
- Trust responsible for the growth and maintenance of the assets.
- Boards of the Regional Corporations do not cross over with the Trustee entities.
- Trust run Nominations committee ensures anyone seeking to be nominated to a directorship of the Regional Corporation is a qualified and suitable person.
- Relationship Committee ensures strategic dialogue between the Trust and the Corporations.

# Proposed Model



# Recognition Bill

- Act of Parliament in WA.
- Linked to Authorisation of the ILUA
- Recognises Noongars as Traditional Owners of south west WA
- Preamble written by Noongar Elders
- Written in Noongar with English translation.

# Economic Base

- \$10M for twelve years for the operation of the Noongar Corporations while the Trust builds.
- \$50M per year for twelve years invested in perpetual Noongar Future Fund
- \$6.5M to establish office premises for the Noongar Corporations.
- \$5.3M and land in the Perth Metro for the Noongar Cultural Centre

# Land Base

- 20 000 ha Freehold
- 300 000 ha other tenures (Reserve/Perpetual Lease)
- Some development land
- Land of Cultural Significance identified through the community

# Governance

- Noongar Boodja Trust – separate from Regional Corporations – responsible for asset growth and economic future of the Noongar estate.
- Central Services Corporation – Central agency replaces NTRB role to support the Regional Corporations in their professional operations – some coordination role.
- Regional Corporations – (six) – Land Management, Community and Cultural Programs. Effectively manage the rights and interests in the regions – funded through the Trust.
- Series of communication mechanisms to make sure the Trust operates in sync with the strategic directions of the Regional Corporations

# Housing

- Hand over of 121 State housing properties to the Noongar Boodja Trust.
- Funds for repairs

# Community Development Framework

- Noongar to Noongar Programs delivered through the Regional Corporations and Noongar service providers
- Collaborative Partnerships with NGOs
- Engagement mechanisms to ensure Noongar Regional input to program design and delivery by mainstream providers – Community Development Reference Group and Regional Human Services Management Groups



# Noongar Economic Participation Framework

- 5% value of some Landcorp developments
- Noongar Economic Steering Group
- Aims to Grow Noongar Businesses, increase employment, knowledge about government tendering, build entrepreneurial culture

# Noongar Standard Heritage Agreement

- Focus on the Regional Corporations
- Shift heritage management to more proactive focus through Heritage Partnership Agreement

# Access to Crown Land

- Access to Unallocated Crown Land and Unmanaged Reserves
- Access to Department of Water Outer Catchment Areas and Reservoir Protection Zones
- Department of Parks and Wildlife managed Lands
- Access via licenses issued through Regional Corporations

# Joint Management of National Parks

- Cooperative management agreement between Regional Corporation and Department Parks and Wildlife for Conservation Estate over whole Regional Area.
- Specific joint management agreement with joint management bodies over parks within Regional Area.
- Joint Management commences with one park in each of the six areas under joint management within first five years. A second park in each Region with second five years – 12 Parks under Joint Management within ten years.