

# Connection to Country

Aboriginal people occupied Australia for at least 40,000 to 60,000 before the first British colony was established in Australia. In the South West of WA (where the British claimed sovereignty in 1829) archaeological evidence establishes that the Noongar people have lived in the area and had possession of tracts of land on *their country* for at least 45 000 years. The Noongar people are one of the largest Aboriginal cultural blocks in Australia and there is no evidence that there has been any other group than Noongar in the South West.

Noongar people spoke their own language and had their own laws and customs. Those laws and customs were characterised by a strong spiritual connection to 'country'; caring for the natural environment and for places of significance; performing ceremonies and rituals; collecting food by hunting, fishing and gathering; providing education and passing on law and custom through stories, art, song and dance. Noongar people not only survived European Colonisation but thrived as family groups and sought to assert their rights to their land on their country. Formalising this in parliament was not to occur for some 150 years after Europeans arrived.



## 1983

**1983** Under pressure from Aboriginal groups, particularly Noongar people, in Western Australia to enact some form of Land Rights similar to the Northern Territories 1975 Land Rights Act appointed a Queens Counsel Paul Seaman to investigate.

The 'Seaman Report' as it was known contained vast amounts of evidence from Noongar people and recommended a whole range of reforms relating to land tenure and resources revenue rights, access to significant sites and protection of sites. The government of the day rejected almost all of the findings.



## 1985

**1985** In 1985 a Land Rights Bill was proposed which would enable Aboriginal people and Noongar people to hold land in freehold, to own it.

It was not supported by the Government of the day and the Bill would never reappear. Unlike other states the Western Australian government has historically been hostile to Aboriginal Land Rights and has never supported or enacted any Land Rights legislation.



## 1992

**1992** This issue was to change altogether with the Mabo (No.2.) High Court Decision.

Only in 1992 was the assumption that Australia was *terra nullius* or unoccupied by Aboriginal people before European arrival rejected by the High Court.

## 1993

**1993 Native Title Act**  
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Photographs courtesy SWALSC, Toni Wilkinson and Blackwood Basin Group

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**Native Title Act.** Following 1992 the Native Title Act of 1992 provided the recognition of the right of Native Title in the legislative system. The Act attempted to clarify the position of landholders and processes that must be followed for Native Title to be claimed, and recognised through the court. However the process was not always fair to Aboriginal people.

...prove - in aggressive cases if necessary – that they had native title. The onus was on the Aboriginal people to provide evidence of their connection to the land rather than any government department. Claimants were required to prove their connection to the land through Native Title Representative Bodies (NTRB) such as the Noongar Land Council. To make matters even more difficult, native title was extinguished on private land making it un-likely that this is particularly true in the 'settled' area of the South West where less than 4% of native title exists in the entire



1995

**1995** Native Title claims in the South West were initially administered by the Aboriginal Legal Service of Western Australia, following agitation from local Noongars who said that their community was not being represented.

Over 200 Noongars met and decided by a vote that a Land Council would be established for the south west and it would actively seek to obtain NTRB status. Following this the Noongar Land Council (NLC) was established in 1995 as NTRB for Noongar People in the South West of Western Australia initially with a staff of three.



1996

**1996** Wik Decision. The Mabo decision created uncertainty, particularly for pastoralists who held pastoral leases.

That decision led to amendments to the *Native Title Act* (by the *Native Title Amendment Act*) in 1998 which provided security of tenure to non-Indigenous holders of pastoral leases and other land title, where that land might potentially be claimed under the *Native Title Act*. Aboriginal people were further disadvantaged by this change.



1997

**1997** Despite this in Noongar Country there was a rush to lodge native title claims and 78 different individual family claims were lodged over the South West with the National Native Title Tribunal.

At this time there was informal support for a Single Noongar Claim to represent all Noongars though this did not develop until later.



1998

**1998** Due to acute funding restrictions and simple manageability (NTRB's have very few staff) it was impossible to run all of these claims.

A situation would have developed where some claims were run and others would have been abandoned. This was considered most unfair (in an already unfair system) where some Noongar people could possibly have native title and most not. Most of the 78 claims were withdrawn and replaced by six communal claims which remain to this day.

# Noongar Native Title



## 2002

**2002** Problems with the Noongar Land Council constitution saw them being replaced by the South West Aboriginal Land and Sea Council as Native Title representative Body representing all Noongar people.

Because of a desire to represent Noongar people as the 'One Nation' they have always been the formal move the Single Noongar Claim (SNC) was starting to take shape. Community meetings in support of the SNC were carried out all over the South West.



## 2003

**2003** In September 2003 the SNC was lodged with the Federal Court of Australia though the six underlying claims remained in place.



## 2005

**2005** The WA Government would not negotiate with SWALSC and insisted a trial to ascertain Native Title over the Perth Area take place. SWALSC had to prepare the SNC for trial. This was an intensive period of activity with very few staff performing an enormous task.

A Federal Court Trial took place before Justice Murray Wilcox where he heard evidence from Noongar witnesses all over the South West on their country. Witnesses were cross examined by the Western Australian Government. The State of WA not only denied there was a Single Noongar People but insisted that the word Noongar itself was a fabrication and that the Noongar people of the South West had actually come in from elsewhere. This was offensive to all Noongars.

## 2006

**2006 'Noongar'** On 19th Sept 2006 the Federal Court brought a Historic judgment in favour of Noongar Native Title over the Perth metropolitan area, it is known as *Bennell v State of Western Australia* FCA 1243. Justice Wilcox found that Native Title continues to exist in the area in and around Perth. This is the first judgment which recognizes Native Title over a capital city and its surroundings.

It is important not to understate the importance of this victory. Noongar people been unsuccessful in this instance and the journey gone in their favour years of work, hope and aspirations of the Noongar people would have been wasted and they may have had to go square one and start all over again with their country possibly not recognised. This was the bedrock from which Noongar people were acknowledged as Traditional owners of the South West and they were in a strong position to negotiate with the State Government of

Wilcox's judgement validates the SNC as he found that the laws and customs governing land throughout the whole Single Noongar (viewing Perth as simply a part of the greater South West) were a single community. The Noongar claimants shared a language and extensive interaction with others in the claim area. Importantly, Wilcox found the Noongar community had continued to exist in practice many of their laws and customs despite the disruption from people being forced off their land and moved as a result of settlement and later Government policies.

# le Journey



## 2007

**2007** Despite this victory the State and Commonwealth aggressively appealed the decision arguing that Native Title couldn't possibly still exist of a capital city and in April of 2007 an Appeal was heard in Perth.



## 2008

**2008** On 23 April 2008 the Full Bench of the Federal Court upheld parts of the appeal by the Western Australian and Commonwealth governments against Justice Wilcox's judgment.

The judges did not however agree that there was no native title over Perth. They did not also dispute the existence of a Single Noongar People. This was an important victory from this result.

The Deputy Premier, Mr Eric Ripper, stated that the WA Government recognised the Noongar people's traditional connection to the southwest of WA. This was unthinkable a few years before.



## 2009

**2009** Despite the appeal result Noongar people, represented through SWALSC, had made critical progress with the State Government making the historic decision not to pursue Noongar Native Title through the Courts but rather through negotiations.

In supporting these negotiations the Deputy Premier, Mr Eric Ripper, stated that the WA Government recognised the Noongar people's traditional connection to the southwest of WA. This was unthinkable a few years before.



## 2010

**2010** A Heads of Agreement with The State of Western Australia is signed with SWALSC CEO Glen Kelly and the Noongar Executive.



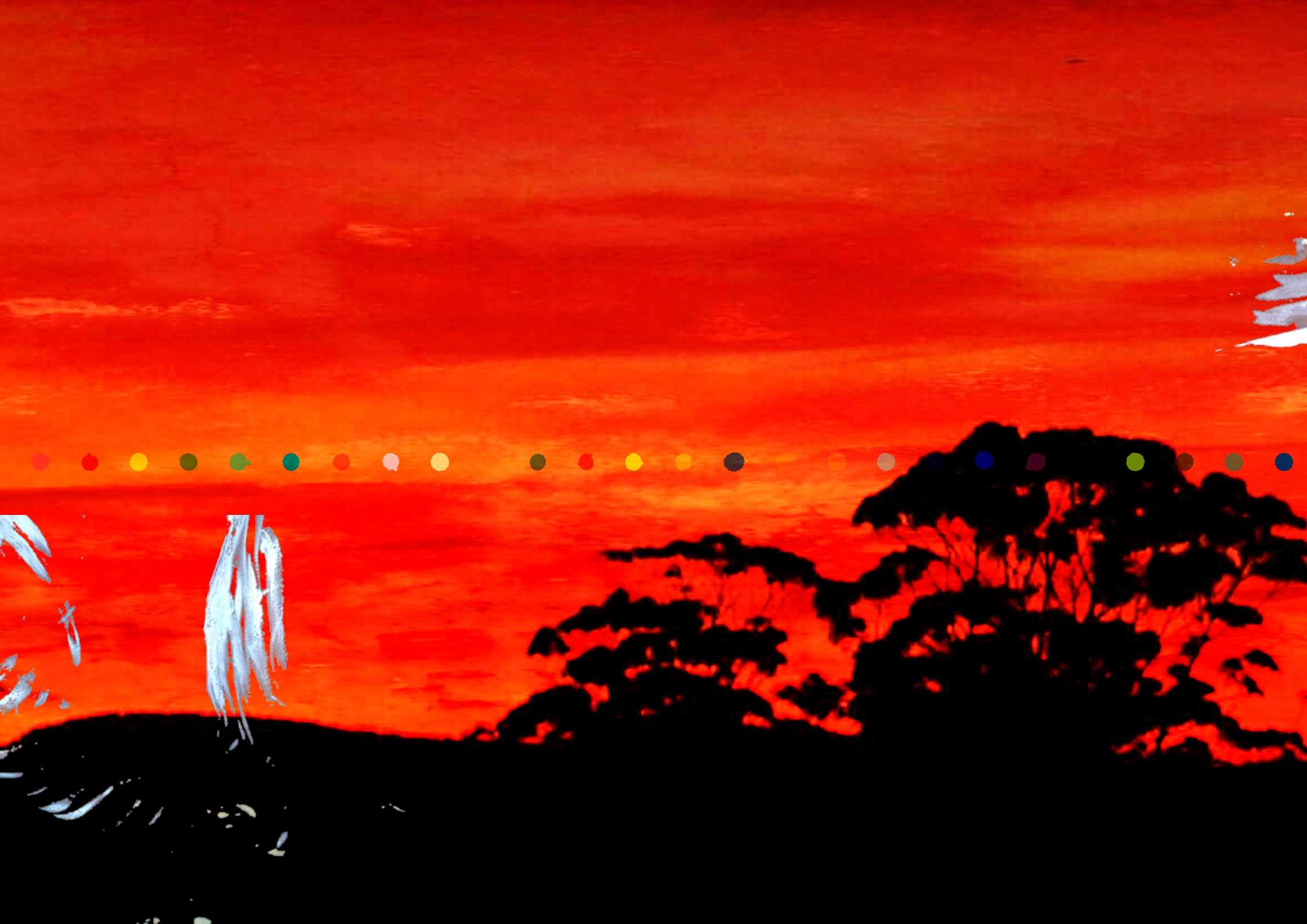
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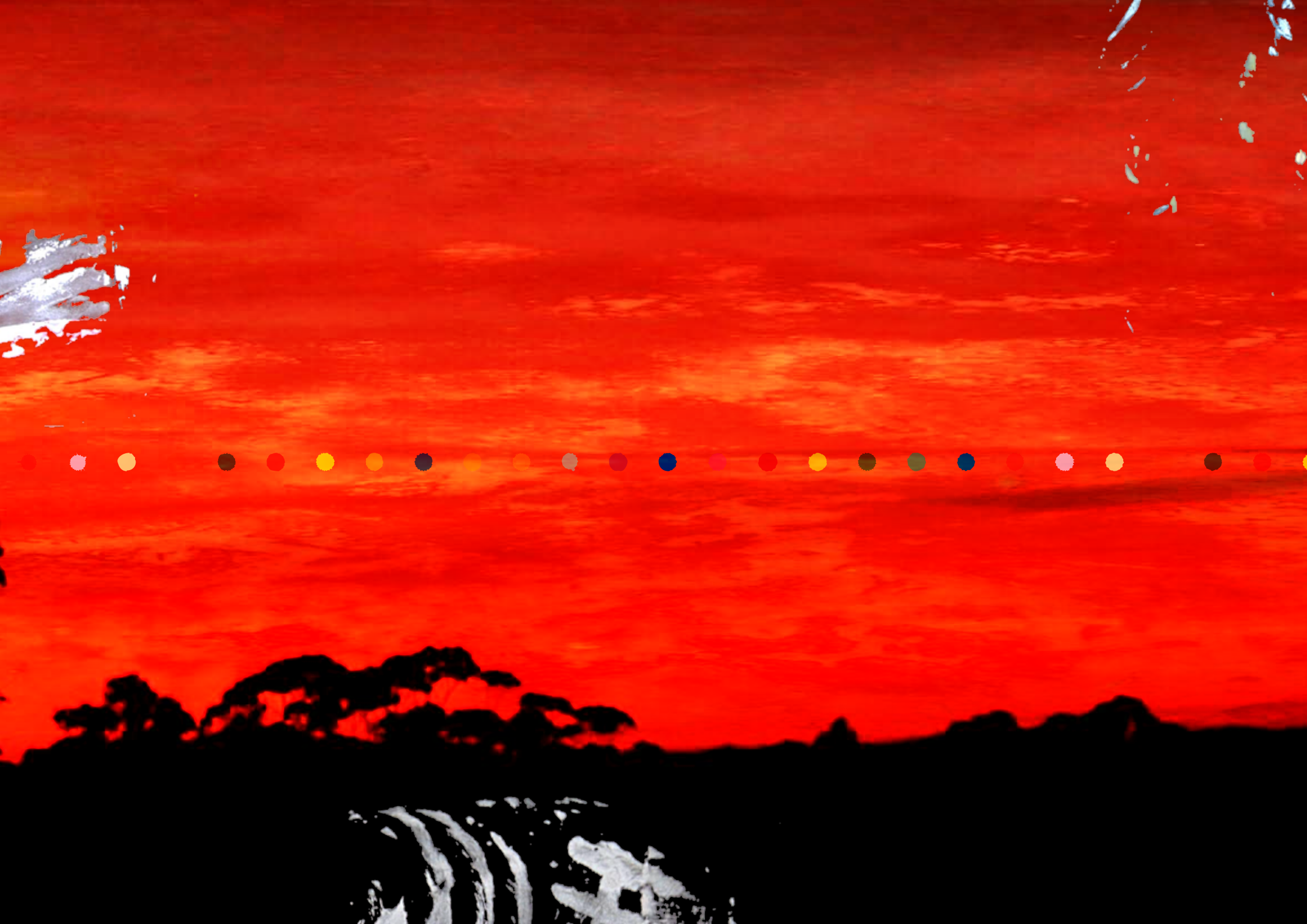
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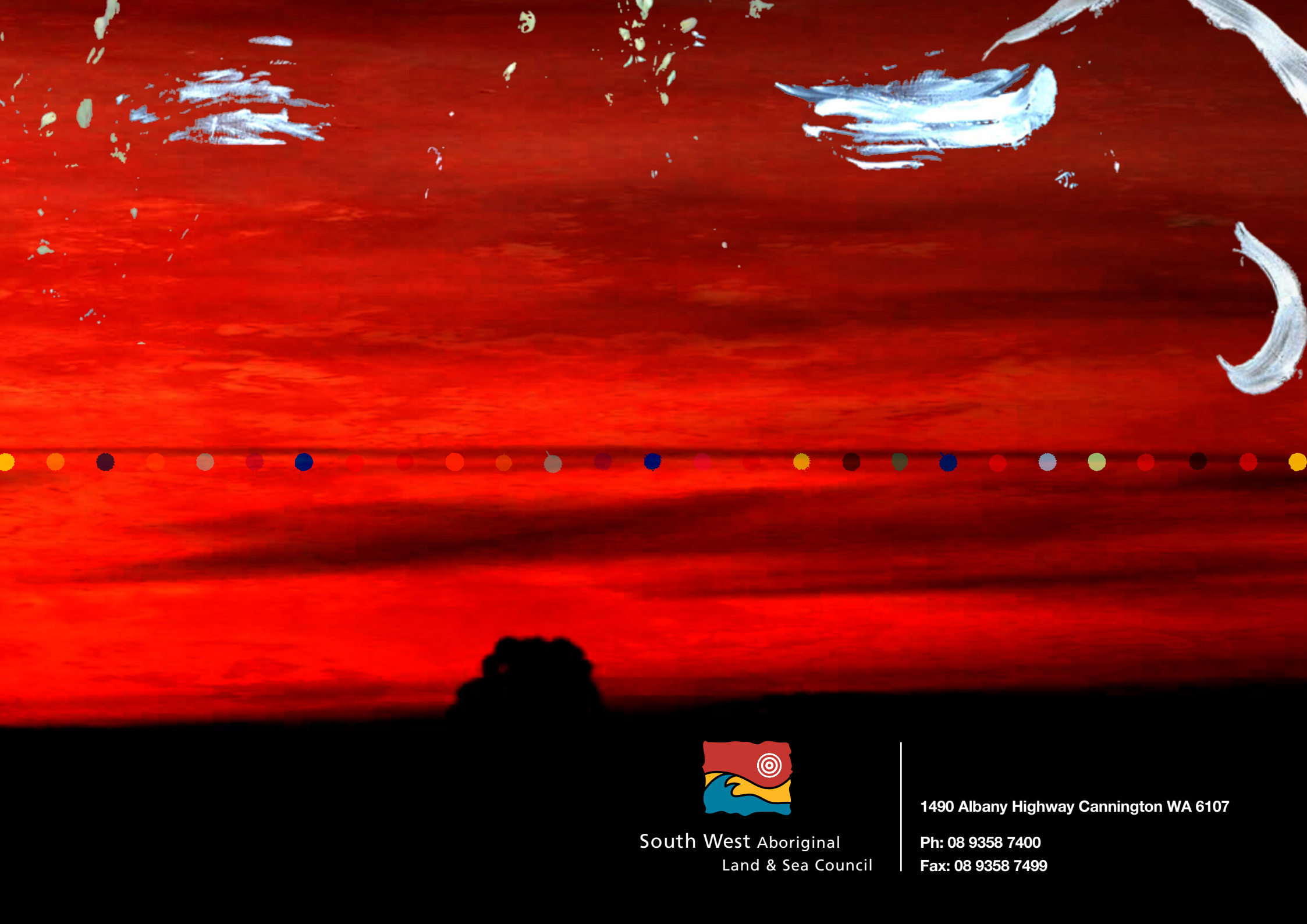
South West Aboriginal  
Land & Sea Council

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South West Aboriginal  
Land & Sea Council

1490 Albany Highway Cannington WA 6107

Ph: 08 9358 7400

Fax: 08 9358 7499