



NATIVE TITLE BENEFITS CHECKLIST FOR MINING AGREEMENTS FOR NATIVE TITLE PARTIES

Material considered within this checklist:

1. Planning for negotiations
2. Protecting Country and Culture
3. Relationship Building
4. Financial Benefits
5. Consents
6. Finalisation and implementation

MPS Law strongly encourages you to read this document in conjunction with our Healthy Contract Checklist and Native Title Decision Checklist. The Healthy Contract Checklist and Native Title Decision checklist is available on our website.

For a complimentary discussion about this checklist and your responses, please email this completed checklist to info@mpslaw.com.au

Your name: _____

Your role: _____

Corporation/
Native Title Claim: _____

Date: _____

Note: This document is intended as a guide only to assist with the negotiation of a native title mining agreement. This does not constitute legal advice. The issues and questions set out are of a general nature and may not reflect your specific circumstances. There may be additional and important issues that should be covered by an agreement in your specific circumstances, depending on the nature of the arrangement you wish to enter into, and the circumstances of the contracting parties. If you or your organisation has a legal issue you should obtain professional advice from a legal practitioner.

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PLANNING FOR NEGOTIATIONS	
<p>Preparation and advice</p> <p>Have you sought legal advice?</p> <p>Have you sought economic advice?</p> <p>Do you have a negotiation team with authority to negotiate?</p> <p>Are you negotiating with people with authority to negotiate?</p> <p>Do you have a clear negotiation plan with an objective, wish list and concession list?</p> <p>Has a negotiation protocol and resourcing for negotiation been agreed?</p> <p>Is it otherwise clear how the agreement will be negotiated?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
PROTECTING COUNTRY AND CULTURE	
<p>Proper heritage survey procedures</p> <p>Is there a heritage survey procedure?</p> <p>Does the heritage survey procedure give native title holders the right to say, 'no'?</p> <p>Is it clear when a heritage survey is required (or may not be required)?</p> <p>Is the heritage survey procedure properly resourced?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Cultural heritage management plan</p> <p>Has the agreement provided for appropriate funding and management measures for cultural heritage preservation in a cultural heritage management plan or similar document?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

<p>Monitoring of activities</p> <p>Is there a monitoring process?</p> <p>Is it clear when monitoring is required (or may not be required)?</p> <p>Is the monitoring procedure properly resourced?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Rehabilitation works</p> <p>Will best practice mining standards be adopted?</p> <p>Will best practices be adopted in managing environmental obligations?</p> <p>Will first right for rehabilitation works be offered to the native title party?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Cross culture awareness training</p> <p>Will cultural training be compulsory for all mining company employees involved on the project?</p> <p>Will you (or your nominee) be delivering the training?</p> <p>Will training be frequent?</p> <p>Is training properly resourced?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Celebrating culture</p> <p>Will the mining company be required to promote Indigenous culture in and around their mining operation and facilities?</p> <p>Have you had the opportunity to adopt your language and names in the agreement and/or on site?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

RELATIONSHIP BUILDING	
<p>Acknowledgment of history</p> <p>Does the agreement acknowledge important history and values, in your terms?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>International standards</p> <p>Has the agreement referred to the United Nations Declaration of the Rights of Indigenous People?</p> <p>Has the agreement referred to the Equator Principles?</p> <p>Is it clear how any reference to these standards are relevant to the agreement?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Regular Reporting</p> <p>Has the mining company agreed to a frequency of reporting on their activities?</p> <p>Will you have the right to report to the company shareholders or funders?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Implementation committee and review</p> <p>Will a committee be formed to start, monitor and review the agreement?</p> <p>Will the committee meet frequently enough to implement and review the agreement?</p> <p>Do the people on the committee have the authority to give effect to meeting outcomes?</p> <p>Will the committee be properly resourced?</p> <p>Are there clear goals and objectives under the agreement for the committee to monitor?</p> <p>Can you review and update the agreement?</p> <p>What is the review process? Does it make the review periods, costs and timing clear?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

<p>Contracting with native title party</p> <p>Does the agreement support and promote contracts with the native title party?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Indigenous employment</p> <p>Do you have a minimum number of Indigenous employees on the project?</p> <p>Will special processes be in place to facilitate the Indigenous employees?</p> <p>Is there a dedicated role in the mining company to support Indigenous employees?</p> <p>Is there a requirement that at least one Indigenous person hold a senior position in the mining company?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Public statements</p> <p>Do public statements by the company about native title or cultural heritage issues require your consent before they are made?</p> <p>Will the traditional owners be acknowledged in any or all public release made by the mining company?</p> <p>Are you entitled to provide commentary in public reporting of the company?</p> <p>Are you entitled to publicly object if the company does the wrong thing?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Confidentiality</p> <p>Is culturally confidential information provided in a heritage clearance report protected under the agreement?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Community funding</p> <p>Will the mining company provide funding to services to benefit community?</p> <p><i>Consider, for example: mapping, office support, health, sporting activities, scholarships, transport, education, emergency housing and reversion of infrastructure.</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

FINANCIAL BENEFITS	
<p>Royalties</p> <p>Is it clear how royalties will be calculated and paid, consistent with economic advice?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Milestone and other payments</p> <p>Are there other milestone payments to the native title party, consistent with economic advice? For example:</p> <p><i>Signing of the agreement?</i></p> <p><i>Mining commencement?</i></p> <p><i>Resource shipment?</i></p> <p><i>Resource sale agreement?</i></p> <p><i>Other licenses being granted?</i></p> <p><i>Renewal of mining license?</i></p> <p><i>Annual anniversaries?</i></p> <p><i>Sale or assignment of the project?</i></p> <p><i>Administration payments?</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Administration fees</p> <p>Will your invoices include an administration fee to cover the costs of implementing the agreement?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>CPI/WPI increase</p> <p>Do all payments have adjustments for CPI/WPI increases?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Use of funds</p> <p>Can you decide on how funds can be used?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

CONSENTS	
<p>Your consent</p> <p>Are you only agreeing to the grant of licences relevant to the company for this project?</p> <p>Is it otherwise clear what you are agreeing to?</p> <p>Is your consent required for an assignment of the agreement to another party?</p> <p>The company</p> <p>Can you complain and object if the company does the wrong thing?</p> <p>Can you terminate the agreement if the company breaches it?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
FINALISATION AND IMPLEMENTATION	
<p>Native title holder consent</p> <p>Has the representative native title body for your area been consulted on the proposed decision to enter into the agreement?</p> <p>Have native title holders/claimants been notified of the proposed decision?</p> <p>Have native title holders/claimants been given the opportunity to understand and talk about the proposed decision at a native title holder/claimant meeting?</p> <p>Have native title holders/claimants consented to the agreement by resolution at a native title holder/claimant meeting?</p> <p>Execution and implementation</p> <p>Is it clear what will happen once the agreement is signed, including any registration steps?</p> <p>Is a joint public statement going to be made by the parties?</p> <p>Is agreement implementation properly resourced?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>