



## WITNESS STATEMENT CHECKLIST FOR NATIVE TITLE CLAIMS

### Material considered within this checklist:

1. Obtaining Prior Informed Consent from the witness
2. Preparation and Logistics
3. Approach to interviewing
4. Consolidation and review
5. Finalising the Statement
6. Themes of discussion and questions

Witness statements are a key source of evidence in native title claims. The United Nations Declaration on the Rights of Indigenous Peoples require that free, prior and informed consent is a key aspect when obtaining instructions or legal agreements from Indigenous clients. Free, prior and informed consent implies that consent should be obtained with no coercion, sufficiently in advance and with the size, pace, reversibility and scope of the activity appropriately explained. In addition, native title law is complex and the settings can be challenging, which can make witness statements more difficult than usual.

In approaching obtaining witness statements, it is essential to remain empathetic, accommodating and adaptable with the witness. This checklist sets out necessary legal, ethical, and practical considerations to ensure that witness statements are obtained and prepared in a way that increases the likelihood of success and satisfies obligations.

*For a complimentary discussion about this checklist and your responses, please email this completed checklist to [info@mpslaw.com.au](mailto:info@mpslaw.com.au)*

Your name: \_\_\_\_\_

Your role: \_\_\_\_\_

Native Title Claim: \_\_\_\_\_

Date: \_\_\_\_\_

<b>Obtaining Free, Prior and Informed Consent from the Witness</b>	
Have you considered whether Counsel should be engaged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you met the witness previously? If not, are you able to invite someone to meet with yourself and the witness to make the introduction?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you obtained contact details for the potential witness?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you obtained and/or read any information that can provide some context to the witness' areas of knowledge?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Can the witness speak English fluently? If not, have you engaged an interpreter?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If the witness is new to the native title system, have you prepared a plain English summary of your role and the native title procedure?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you properly explained the process, timeframe and purpose of the statement to the witness?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you organised maps or pictures that may assist?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you organised a polite offering (for example, cake or slice) if visiting the witness' house?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If appropriate, have you sought consent from the witness to record the meeting and if so, have you explained what it will be used for (for example, to check notes, but not to be shared with anyone else)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you taken into account traditional laws and customs, where applicable (for example, how do you plan to name and show deceased people, if any, and / or how will gender or culturally restricted topics be discussed)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you noted key language terms (for example, terms for 'Dreaming) and checked pronunciation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you recorded a brief report (or file note)?	<input type="checkbox"/> Yes <input type="checkbox"/> No

<b>Preparation and Logistics</b>	
Have you completed personal research to determine the witness' breadth and extent of knowledge?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you contacted any relevant Native Title Representative Bodies which can provide access to any key documents which the witness has previously informed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you drafted or obtained access to a precedent witness statement which you can fill in prior and throughout the interview process?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you drafted a list of questions which aim to fill in gaps of information that are not addressed by any records or relevant documents?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you prepared necessary equipment? (For example, recording equipment, markers, maps, notebooks and battery packs, GPS recorder, printer, paper and ink)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you booked accommodation for yourself (if necessary)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you booked transport for yourself (if necessary)? Will you require a four-wheel-drive?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Do you have access to a suitable vehicle (if necessary)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you organised travel and accommodation logistics for the witness (if necessary)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you drafted a travel plan or schedule for the interview process, and otherwise followed any risk management processes?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you prepared alternative plans if plans need to change at the last moment?	<input type="checkbox"/> Yes <input type="checkbox"/> No

<b>Approach to Interviewing</b>	
Have you introduced who you are and provided some context for why you are here to speak with them? For example, where you grew up, why and how you are assisting with the native title claim.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you explained the witness statement taking process?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you explained the witness statement taking process is voluntary and that witnesses do not need to participate, but why the native title claim may benefit from their participation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you explained the difficult questions that will be asked before those topics are raised?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you discussed the logistics and realities of participating as a witness in a hearing (if applicable)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you planned how you will demonstrate effective communication and build a relationship, like demonstrating active listening?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you provided a space where the witness feels comfortable to object to or pause their participation in the interview process?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you asked whether the witness would prefer to have family present?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Do you have two team members present, one to ask questions and the other to record the interview directly into the precedent, if possible?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you properly considered who should conduct the interview? For example, will the witness be more comfortable with a particular gender, and / or, will the witness better respond to a less authoritative interviewer?	<input type="checkbox"/> Yes <input type="checkbox"/> No

<b>Consolidation and review</b>	
Have you reviewed your notes and any audio/visual recording of the interview?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you filled in any gaps of information in the precedent?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you edited your writing style to better reflect the spoken style of the witness?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you located any further gaps in information and consolidated a new list of questions?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you organised a new interview session with the witness?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you noted and created a list of any inconsistency in answers throughout the interviewing process?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Finalising the Statement</b>	
<p>Have you located and finalised any supporting materials?</p> <p>For example:</p> <ul style="list-style-type: none"> <li>○ Drawn on maps, that may be converted to a digital format</li> <li>○ Photographs of sites or boundaries</li> <li>○ Photographs of art or tools</li> <li>○ Photographs of the witness</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you introduced the witness to Counsel, if applicable?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you considered the structure of the witness statement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you considered the court rules relating to the formatting and content of the documents?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has Counsel reviewed and approved the witness statement?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Have you read through the statement slowly and clearly with the witness?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you updated the document to reflect any corrections made by the witness?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has the witness signed the finalised witness statement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If the witness cannot read the statement themselves, can you confirm that you have read the statement to the witness and the witness has confirmed that it is true and correct?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Themes of Discussion and Questioning</b>	
Personal Details / Family	
Some of their life so far	
Elders they have learned from	
Language groups and family areas	
Speaking for and using country	
Law ceremonies / Dreaming	
Marriage and Kinship	
Other ceremonies and sites	
Songs about country	
The context of any competing or neighbouring claim groups	

*Note: This document is intended as a guide only. 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 considerations that should be taken into account in your specific circumstances, depending on the requirements of your corporation and its rule book. If you or your organisation has a legal issue, you should obtain professional advice from a legal practitioner.*