

WPS LAW

**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 (& ICN if known): _____

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.

Planning for negotiations	
Preparation and advice	
Have you sought legal advice?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you sought economic advice?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Do you have a negotiation team with authority to negotiate?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are you negotiating with people with authority to negotiate?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Do you have a clear negotiation plan with an objective, wish list and concession list?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has a negotiation protocol and resourcing for negotiation been agreed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is it otherwise clear how the agreement will be negotiated?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Protecting country and culture	
Proper heritage survey procedures	
Is there a heritage survey procedure?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the heritage survey procedure give native title holders the right to say, 'no'?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is it clear when a heritage survey is required (or may not be required)?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Is the heritage survey procedure properly resourced?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Cultural heritage management plan	
Has the agreement provided for appropriate funding and management measures for cultural heritage preservation in a cultural heritage management plan or similar document?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Monitoring of activities	
Is there a monitoring process?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is it clear when monitoring is required (or may not be required)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the monitoring procedure properly resourced?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Rehabilitation works	
Will best practice mining standards be adopted?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will best practices be adopted in managing environmental obligations?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will first right for rehabilitation works be offered to the native title party?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Cross culture awareness training	
Will cultural training be compulsory for all mining company employees involved on the project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will you (or your nominee) be delivering the training?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Will training be frequent?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is there a monitoring process?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will training be frequent?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is training properly resourced?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Celebrating culture	
Will the mining company be required to promote Indigenous culture in and around their mining operation and facilities?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you had the opportunity to adopt your language and names in the agreement and/or on site?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Relationship Building	
Acknowledgment of history	
Does the agreement acknowledge important history and values, in your terms?	<input type="checkbox"/> Yes <input type="checkbox"/> No
International standards	
Has the agreement referred to the United Nations Declaration of the Rights of Indigenous People? Has the agreement referred to the Equator Principles?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has the agreement referred to the Equator Principles?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is it clear how any reference to these standards are relevant to the agreement?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Regular Reporting	
Has the mining company agreed to a frequency of reporting on their activities?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will you have the right to report to the company shareholders or funders?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Acknowledgment of history	
Does the agreement acknowledge important history and values, in your terms?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Implementation committee and review	
Will a committee be formed to start, monitor and review the agreement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will the committee meet frequently enough to implement and review the agreement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Do the people on the committee have the authority to give effect to meeting outcomes?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will the committee be properly resourced?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there clear goals and objectives under the agreement for the committee to monitor?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Can you review and update the agreement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
What is the review process? Does it make the review periods, costs and timing clear?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Contracting with native title party	
Does the agreement support and promote contracts with the native title party?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Indigenous employment	
Do you have a minimum number of Indigenous employees on the project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will special processes be in place to facilitate the Indigenous employees?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is there a dedicated role in the mining company to support Indigenous employees?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is there a requirement that at least one Indigenous person hold a senior position in the mining company?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Public statements	
Do public statements by the company about native title or cultural heritage issues require your consent before they are made?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will the traditional owners be acknowledged in any or all public release made by the mining company?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are you entitled to provide commentary in public reporting of the company?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are you entitled to publicly object if the company does the wrong thing?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Confidentiality	
Is culturally confidential information provided in a heritage clearance report protected under the agreement?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Community funding	
<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>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Financial Benefits	
Royalties	
<p>Is it clear how royalties will be calculated and paid, consistent with economic advice?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Milestone and other payments	
<p>Are there other milestone payments to the native title party, consistent with economic advice? For example:</p> <p>Signing of the agreement?</p> <p>Mining commencement?</p> <p>Resource shipment?</p> <p>Resource sale agreement?</p> <p>Other licenses being granted?</p> <p>Renewal of mining license?</p> <p>Annual anniversaries?</p> <p>Sale or assignment of the project?</p> <p>Administration payments?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Administration fees	
<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

CPI/WPI increase	
Do all payments have adjustments for CPI/WPI increases?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Use of funds	
Can you decide on how funds can be used?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Consents	
Your Consent	
Are you only agreeing to the grant of licences relevant to the company for this project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is it otherwise clear what you are agreeing to?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is your consent required for an assignment of the agreement to another party?	<input type="checkbox"/> Yes <input type="checkbox"/> No
The Company	
Can you complain and object if the company does the wrong thing?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Can you terminate the agreement if the company breaches it?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Finalisation and implementation	
Native Title holder consent	
Has the representative native title body for your area been consulted on the proposed decision to enter into the agreement?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Have native title holders/claimants been notified of the proposed decision?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have native title holders/claimants been given the opportunity to understand and talk about the proposed decision at a native title holder/claimant meeting?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have native title holders/claimants consented to the agreement by resolution at a native title holder/claimant meeting?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Execution and implementation	
Is it clear what will happen once the agreement is signed, including any registration steps?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is a joint public statement going to be made by the parties?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is agreement implementation properly resourced?	<input type="checkbox"/> Yes <input type="checkbox"/> No

How can we help?

Let's talk about your needs

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