

# Checklist: Ethical Negotiations of Indigenous Land Use Agreements

## Sources considered within this checklist:

- Native Title Act 1993 (Cth)

For more information, reach out to [info@mpslaw.com.au](mailto:info@mpslaw.com.au)

### Consultation Standards

Are there any traditional or agreed and adopted decision-making processes which will inform how native title group members should be consulted with?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there pre-established communication, decision-making and conflict management processes?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the group have broader community and strategic aspirations?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there any interrelated issues that may inform appropriate consultation procedures, such as kinship, gender, group politics, cultural custodianship and seniority?	<input type="checkbox"/> Yes <input type="checkbox"/> No
How will group participation be facilitated and any intra-group conflict be managed in a way that will satisfy the group that processes are impartial?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there particular views should be heard before a decision can be made? E.g. Will decisions affect particular groups of native title holders, such as those with a connection to a particular area of country?	<input type="checkbox"/> Yes <input type="checkbox"/> No
How should native title group members be notified about proposed decisions concerning ILUAs, to ensure all native title holders (regardless of membership) are reasonably notified? E.g., should notice be by post, email, local newspaper, community notice board, website update and/or social media post?	<input type="checkbox"/> Yes <input type="checkbox"/> No
How should native title group members be consulted to ensure full and equitable participation? E.g., should group members be consulted at a community meeting, or in family group sessions as well?	<input type="checkbox"/> Yes <input type="checkbox"/> No
How will input from native title group members on issues and solutions be implemented in the agreement negotiation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
What does a reasonable opportunity for native title holders to provide consent look like? <sup>[1]</sup>	<input type="checkbox"/> Yes <input type="checkbox"/> No

<sup>[1]</sup> Note parties will not require the consent of all native title claimant/holders, but must have provided them all a reasonable opportunity to provide consent.

<p>What information will be necessary to ensure that native title group members understand:</p> <ul style="list-style-type: none"> <li>• The nature of the proposed ILUA?</li> <li>• The effects of entering into an ILUA?</li> <li>• The potential consequences and impact on native title?</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have parties agreed on and addressed these consultation considerations in a negotiation protocol?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

## Process Considerations

<p>Have the parties identified what success will look like for the agreement? E.g. is success:</p> <ul style="list-style-type: none"> <li>• An executed agreement?</li> <li>• Project consent given and compensation provided?</li> <li>• Free prior and informed consent?</li> <li>• Long term relationships developed?</li> </ul> <p>Intergenerational benefits and community investment?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have the parties agreed on:</p> <ul style="list-style-type: none"> <li>• Who are the negotiators?</li> <li>• What project and community perspectives need to be represented at the negotiation table?</li> <li>• Who has authority to make decisions?</li> <li>• How will instructions be obtained?</li> <li>• How will broader views of the native title group be sought and communicated?</li> <li>• What is the role of the lawyers in the negotiations?</li> <li>• What is the negotiation timeframe?</li> <li>• Access to information and expertise?</li> <li>• Do they need independent facilitation?</li> <li>• Further resourcing?</li> <li>• Decision making processes?</li> <li>• Cultural protocols?</li> <li>• What information is sensitive/confidential and how will it be treated?</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Have parties agreed on and addressed these process considerations in a negotiation protocol?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

## Ethical Considerations for Practitioners

Have practitioners considered how the professional conduct rules apply to the negotiations?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have native title practitioners identified who their client is for the purposes of seeking instructions? <ul style="list-style-type: none"><li>• E.g. will the practitioner seek instructions from an applicant group or PBC board?</li></ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have native title practitioners considered what to do if their client fails to act on the express wishes of the broader native title group?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have native title practitioners considered what to do if their client acts against the express wishes of the broader native title group?	<input type="checkbox"/> Yes <input type="checkbox"/> No