Native title future acts - preparing evidence

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Preparation of evidence

• Evidence commonly used in native title future act determinations.
  • Affidavits
  • Oral evidence from witnesses
  • Expert reports
• Preparing contentions, evidence and submissions.
• Rules of evidence are not binding on the Tribunal, but they are persuasive and a useful guide.
Future act determinations

• Nature and footprint of proposed activity (eg location and nature of ground disturbance - main and ancillary or related infrastructure or activities), if known. If not known, identify what you can (eg: method to be used).

• Specific evidence - low impact can still be an unacceptable impact.

• Nature and location of sites, places, stories associated with country.

• More documents or witnesses doesn't necessarily equate to more compelling evidence.

• Keep submissions clear; help the decision maker – point out key evidence.

Future act determinations

• What is your strategy? (What is the focus of the inquiry? What are the facts? What approach has succeeded in the past? Targeted or broad? Affidavits and/or oral evidence?)

• Know the documents you are submitting (which version, and why it's being provided).

• Ensure witnesses are prepared (including for cross examination).
**Affidavits**

- Recap: a written document sworn on oath, or affirmed. It must be witnessed by an authorised witness.
- Paper equivalent of giving oral evidence – carry the same weight and achieve the same aim as the witness giving oral evidence.
- Who might give an affidavit? – what facts are needed?
  - Company managers, employees, tenement managers
  - Native title group members
  - Experts (anthropologists, archaeologists, geologists etc.)

**Affidavits**

- Ensure the relevant facts are easy to understand.
- Confine the affidavit to relevant statements.
- Keep it short, use clear font and number the pages.
- Try to present documents in chronological order (or logical order)
- State the facts and let the reader draw his or her own conclusions.
- Focus the affidavit on things the deponent can attest to (things they have experienced themselves).
- Submissions on matters of law or legal argument belong in submissions, not affidavits.
Expert evidence

- Expert evidence enables opinions to be provided based on the relevant field of expertise
- The facts underlying the opinion should be admissible evidence
- Explain the Tribunal’s procedures so witnesses know what to expect (including cross-examination)

Clear description of relevant facts, with sources.
Reasoned analysis of the facts.
Any assumptions the expert has relied on.
No unsupported opinions which fall outside the expert’s area of expertise.
Clear language – avoid technical expressions where possible.
Clear graphs, maps and images if it will help with explanations.
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