



Preservation Evidence

What is preservation evidence?

Preservation evidence is the holding of early evidence of elderly or ill native title claimants.

A full trial, or native title hearing may not take place for many years after the native title claim is first registered and by then some elderly or ill witnesses may no longer be alive or be able to remember things well.

So the court hears evidence from these witnesses before the rest of the trial. That evidence is then recorded and “preserved” for the full and final trial.

Preservation evidence is given just the same as other court evidence – witnesses give their evidence in front of a Judge or Registrar and they are cross examined by the Respondents’ lawyers.

The respondents to a native title claim always include the State Government, and can include other parties like pastoralists or mining companies.



On-Country preservation evidence

How does preservation evidence happen?

The simplest way to conduct preservation evidence is by splitting it into two parts:

1. Film evidence on-Country:

We go to various places on-Country that witnesses can speak about. The court films the witnesses pointing out and naming places or demonstrating things, like how to greet the land in language and to sing the songs about the place.

The court sends officials to film this evidence and other parties can come as well.

2. Hearing evidence in front of the Judge or Registrar:

This can take place on-Country, or in a hall or meeting room, wherever the witness is most comfortable.

The witness can have a family member sit with them if they choose to. The witness swears to the court that what they are going to say to the judge is true and correct.

Preparing for preservation evidence

To prepare for preservation evidence, a lot of time needs to be spent with the witnesses to get information about Country and their connection with it.

This includes laws and customs of their people and information to show connection to Country as far back as possible. Sometimes this is all put into a long statement.

The route for the filming must also be planned out and recorded on a map before the hearing.

If the witness is still alive and well when the full trial comes around, then they may have to give more evidence to the court.

Preservation evidence takes a lot of time and can be stressful, but some people also find that it can be a positive experience to tell their story and to help their native title claim move forward.



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