

Prosecution Bulletin no. 14/2018

Summary

- A quarrying company was charged with two offences pursuant to sections 23(1) and 24(1) of the *Aboriginal Cultural Heritage Act 2003* (the Act) for failing to take all reasonable care to ensure the activity did not harm Aboriginal cultural heritage (the cultural heritage duty of care) and harming Aboriginal cultural heritage that it knew or ought reasonably to have known was Aboriginal cultural heritage.
- The company was fined \$188,000 and ordered to pay \$2,519 in legal costs. No conviction was recorded.
- The company was also ordered to pay \$250,000 towards the cost of repair or restoration of the Aboriginal cultural heritage which had been harmed.
- The sentence was delivered by the Emerald Magistrates Court on 2 November 2018.

Facts

In 2015, the company undertook quarrying activities, which caused damage to Aboriginal cultural heritage at a site which formed part of a wider Significant Aboriginal Area. The traditional owners of the area are the Karingbal People and the site is considered to be of high cultural significance to the Karingbal People being used for camping and as a resource reserve.

A licence agreement between the company and the owner of the site contained a term that the company undertake its own investigations and obtain all approvals required before commencing operations. Initial discussions were also held where the company was advised that Aboriginal cultural heritage had been identified at the site and as a part of its Management Plan, the company would liaise with a nominated cultural heritage advisor.

Despite the above, the company commenced operations without taking steps to comply with the cultural heritage duty of care. The company ceased the works upon the discovery of the damage by the traditional owners.

Damage was caused to the land and whilst it was not possible to precisely quantify the physical harm, at least three Gumbi Gumbi trees were destroyed and at least 50 and likely many more artefacts were damaged or displaced. In addition, there was harm to cultural, historical, spiritual and social values.

Outcome

On 2 November 2018, the defendant pleaded guilty in the Emerald Magistrates Court to two offences in contravention of sections 23(1) and 24 (1) of the Act.

The company was fined \$188,000 and ordered to pay \$2,519 in legal costs. The Court also ordered that pursuant to section 27 of the Act, the defendant pay \$250,000 towards the cost of repairing or restoring the Aboriginal cultural heritage at the site. No conviction was recorded.

In sentencing, the Magistrate accepted that the company did not intentionally cause harm and did co-operate with parts of the investigation, however stated:

- the conduct was as a result of gross negligence on the part of the company especially given it was on notice that Aboriginal cultural heritage had been identified at the site;
- no restoration work had commenced or been offered by the company;
- the harm went beyond physical damage in the way of causing significant damage to the spiritual culture of the Karingbal People;
- not knowing the extent of the damage or destruction of the artefacts makes the offence more serious; and
- deterrence, both generally and personally, was an important sentencing factor.

The outcome is a reminder of the importance in complying with the cultural heritage duty of care and the significant damage, both physical and cultural that can be caused.

November 2018

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