

# Company successfully prosecuted under the *Aboriginal Cultural Heritage Act 2003*

## Summary

In a landmark court ruling, a Queensland company has been ordered to pay nearly half a million dollars in penalties, legal costs and restorative works for failing to comply with the cultural heritage duty of care and harming cultural heritage pursuant to the *Aboriginal Cultural Heritage Act 2003* (the legislation).

The breaches concerned quarrying activities at a site in the Arcadia Valley in Queensland's Central Highlands which disturbed stone artefacts and culturally significant vegetation.

The company was charged with two offences under the legislation:

- a) failing to take all reasonable and practicable measures to ensure an activity did not harm Aboriginal cultural heritage contrary to section 23(1); and
- b) harming Aboriginal cultural heritage contrary to section 24(1).

The company was fined a total of \$188,000 for both charges and ordered to pay \$2,519 in legal costs.

In addition, pursuant to section 27 of the legislation, the Court ordered the company to pay an amount of \$250,000 towards the costs of rehabilitation or restoration of Aboriginal cultural heritage at the site.

This is the first time an amount has been ordered under section 27 since the legislation commenced in April 2004.

## Facts

During 2015, the company undertook quarrying activities at a site which formed part of a wider significant Aboriginal area recorded on the DATSIP Aboriginal Cultural Heritage Database.

The Karingbal People are the Aboriginal Party for the area and the site has a high level of cultural significance as a traditional camping and resource place as well as documented archaeological values.

A licence agreement between the company and the owner of the land required the company to undertake its own investigations and obtain all necessary approvals before commencing operations.

The company was also advised that Aboriginal cultural heritage had previously been identified in the area.

However, despite such notice, the company commenced its activities without consulting the Karingbal People or taking any steps to comply with the cultural heritage duty of care.

Quarrying activities resulted in the physical destruction of at least three Gumbi Gumbi trees and at least 50 but likely many more stone artefacts were displaced or damaged.

## Outcomes

On 2 November 2018 the defendant pleaded guilty to both offences in the Emerald Magistrates Court.

In sentencing, the Magistrate accepted that the company did not intentionally set out to cause harm but its failure to address the duty of care amounted to gross negligence.

The Court found that although the land had been subject to previous disturbances, including clearing and grazing, the harm caused by quarrying activities was far greater than any harm which may have been caused by earlier activities.

The Court also found that beyond the physical harm to tangible heritage values, the harm to the cultural, historical, spiritual and social values of the Traditional Owners was significant.

In considering an order for rehabilitation and restoration, the Magistrate stated it was impossible to repair the site for scientific or archaeological purposes but there was a need to repair the emotional and spiritual harm done to the Karingbal People.

Consequently, the company was ordered to pay \$250,000 to DATSIP to be utilised specifically towards the cost of repairing or restoring cultural heritage at the site in consultation with the Karingbal People.

The outcomes in this case highlight the importance of complying with the cultural heritage duty of care and the harm to both tangible and intangible values which can be caused by the failure to do so.