

Prosecution Bulletin no. 6/2018

Summary

- On 24 May 2018, an agriculturalist pleaded guilty to failing to comply with the Aboriginal cultural heritage duty of care, contrary to section 23 of the *Aboriginal Cultural Heritage Act 2003*.
- The Atherton Magistrates Court ordered that the defendant pay a penalty of \$8,000 and pay legal costs of \$1,500. No conviction was recorded.

Facts

On 12 October 2016, a member of the public reported that dredging and excavation works had been undertaken at a sacred site in the Atherton Tablelands region.

The disturbed site is a sacred watercourse of high cultural significance to the Tableland Yadinji People, the traditional owners of the area, due to the healing qualities of the water, and the lore and custom associated with the area.

A local agriculturalist had undertaken the dredging works to better access their water entitlement, during a prolonged dry period.

Before undertaking the works, there was no consultation with the Tableland Yadinji People. As a result, the works contravened the Aboriginal cultural heritage duty of care.

In February 2017, the site was remediated with the assistance of the Tableland Yadinji People.

Depending on the nature of the activity, the *Aboriginal Cultural Heritage Act 2003* may require consultation with traditional owners, and, in some instances, the formulation of a cultural heritage management plan between the parties.

Outcome

On 24 May 2018, the defendant pleaded guilty in the Atherton Magistrates Court to one offence of failing to comply with the Aboriginal cultural heritage duty of care, contrary to section 23 of the *Aboriginal Cultural Heritage Act 2003*.

The Court ordered the defendant be fined \$8,000 and pay \$1,500 in legal costs. No conviction was recorded.

In sentencing, the mitigating factors considered were that the defendant was remorseful, had paid for the remediation works, and had made enquiries to a government department before conducting the works. In aggravation, the Court considered the high cultural significance of the site and the harm caused to the Aboriginal cultural heritage of the site.

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