

Cultural heritage—your duty of care

The *Aboriginal Cultural Heritage Act 2003* (the Act) protects all Aboriginal cultural heritage in Queensland. This protection applies whether or not the Aboriginal cultural heritage has been identified or recorded in a database. The Department of Environment and Resource Management (DERM) is responsible for administering this legislation.

The Act requires anyone who carries out a land-use activity to exercise a duty of care, that is, they must take all reasonable and practical measures to ensure their activity does not harm Aboriginal cultural heritage.

The duty of care applies to any activity where Aboriginal cultural heritage is located, including freehold land.

Identifying the cultural heritage values of an area can be difficult. The area may be secret or sacred, incorporated into the landscape or under the soil surface.

The Act, together with gazetted duty-of-care guidelines, provides guidance on how to proceed.

Duty-of-care guidelines

Duty-of-care guidelines have been gazetted under the Aboriginal Cultural Heritage Act and set out reasonable and practical measures to avoid harming Aboriginal cultural heritage and to meet duty-of-care requirements. They also provide guidance on identifying features likely to contain or constitute cultural heritage.

Following the duty-of-care guidelines will ensure land-use activities proceed lawfully in relation to Aboriginal cultural heritage.

The guidelines recognise that some activities (such as driving along existing roads and tracks or cultivating areas currently subject to cultivation) are unlikely to harm Aboriginal cultural heritage.

They also recognise that the nature and extent of past land uses in an area (such as development) may mean that any further activity in the area is unlikely to harm Aboriginal cultural heritage.

Unfortunately, harm is likely to have already been caused to the Aboriginal cultural heritage. Despite this, it is recognised that Aboriginal cultural heritage may continue to lie below the surface. For this reason, the guidelines provide that, if at any time during your activity you excavate, relocate, remove or harm a cultural heritage find, you must notify the relevant Aboriginal party immediately and seek their advice on how best to proceed.

Where the nature and extent of the past land use of an area is not inconsistent with the continued presence of

Aboriginal cultural heritage, you should exercise greater caution before proceeding.

Be safe

Before undertaking a land-use activity, it is advisable to check the duty-of-care guidelines and decide what, if any, precautions you need to take to adequately address the issue.

This will not only ensure you avoid the risk of a substantial fine under the Act, but also that you are doing your bit to preserve our history and Queensland's Aboriginal cultural heritage.

Financial penalty

Fines of up to \$75 000 for an individual and \$750 000 for a corporation apply for causing unlawful harm to Aboriginal cultural heritage or for breaching your duty of care.

Further information

For further information on cultural heritage duty of care visit the DERM website <www.derm.qld.gov.au> or contact:

Cultural Heritage Coordination Unit
Department of Environment and Resource Management
Locked Bag 40
Coorparoo Delivery Centre QLD 4151

Telephone: (07) 3238 3838
Fax: (07) 3238 3842

August 2009
CH 16

For general enquiries contact the
Queensland Government call centre 13 13 04
or visit www.derm.qld.gov.au

Cultural heritage duty of care

