



HIGH COURT OF AUSTRALIA

8 May 2024

CHIEF EXECUTIVE OFFICER, ABORIGINAL AREAS PROTECTION AUTHORITY v
DIRECTOR OF NATIONAL PARKS & ANOR
[2024] HCA 16

Today, the High Court unanimously allowed an appeal from a decision of the Full Court of the Supreme Court of the Northern Territory. The question was whether the Director of National Parks ("the DNP") can be criminally liable for breach of s 34(1) of the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) ("the Sacred Sites Act"), which prohibits a "person" from carrying out work on or using a "sacred site" within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

Gunlom Falls, within Kakadu National Park, is held in fee simple by the Gunlom Aboriginal Land Trust on behalf of the Jawoyn people. Gunlom Falls was leased to the DNP by the Gunlom Aboriginal Land Trust on condition that it be a Commonwealth reserve under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ("the EPBC Act"). In March 2019, the DNP engaged a contractor to perform construction works on the realignment of the walking track at Gunlom Falls. The area on which the works were carried out is a sacred site under the Sacred Sites Act. The DNP caused the works to be undertaken without the permission of an "Authority Certificate" or a "Minister's Certificate" under the Sacred Sites Act. The Chief Executive Officer of the Aboriginal Areas Protection Authority ("the Authority") charged the DNP with an offence against s 34(1) ("the charge").

Section 34(1) of the Sacred Sites Act is expressed to impose a prohibition on a "person" carrying out work on or using a sacred site. The *Interpretation Act 1978* (NT) defines "person" to include "a body politic and a body corporate". The DNP was established as a corporation sole under s 15 of the *National Parks and Wildlife Conservation Act 1975* (Cth) and continues in existence as a body corporate under ss 514A and 514E of the EPBC Act. Its statutory functions include administering, managing and controlling Commonwealth reserves.

Before the Local Court of the Northern Territory, the DNP pleaded not guilty to the charge on the basis that it cannot be convicted of the offence created by s 34(1) of the Sacred Sites Act. The Local Court stated a special case for the opinion of the Supreme Court of the Northern Territory, which was referred to the Full Court. The Full Court held that the DNP, as a government instrumentality, enjoyed the privileges and immunities of "the Crown" or the Executive Government of the Commonwealth, including the presumption against the imposition of criminal liability on the Crown stated in *Cain v Doyle* (1946) 72 CLR 409. The Full Court held that the offence and penalty prescribed by s 34(1) did not apply to the DNP as a matter of statutory construction.

The High Court held that the DNP can be criminally liable for breach of s 34(1) of the Sacred Sites Act. The presumption stated in *Cain v Doyle* is a presumption against construing a statute to impose criminal liability on a body politic. It is not a presumption against construing a statute to impose criminal liability on a natural person or a body corporate, such as the DNP.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.