

SUPREME COURT OF QUEENSLAND

CITATION: *Chief Executive of the Department of the Environment, Tourism, Science and Innovation v Magistrate Kahlert & another* [2026] QSC 217

PARTIES: **CHIEF EXECUTIVE OF THE DEPARTMENT OF THE ENVIRONMENT, TOURISM, SCIENCE AND INNOVATION**
(applicant)
v
MAGISTRATE GRACE KAHLERT
(first respondent)
and
NUGROW IPSWICH PTY LTD
(second respondent)

FILE NO: BS 2288 of 2025

DIVISION: Civil

PROCEEDING: Judicial Review

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 14 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 27 July 2026

JUDGE: Ryan J

ORDER: **1. The application is refused.**
2. As to costs: If a party wishes to contend for an order *other than* an order that the applicant is to pay the second respondent's costs, then the party is to contact my associate, by email, copying in the other parties, within 7 days and I will set a timetable for written submissions. Otherwise, my order is: the applicant is to pay the second respondent's costs.

CATCHWORDS: ADMINISTRATIVE LAW – PREROGATIVE WRITS AND ORDERS – Order in the nature of *certiorari* against a Magistrate's summary dismissal of a complaint for being out of time – indictable offences dealt with summarily on plaintiff's election – whether time limit applies at all because the offence is indictable – whether proceedings brought within one year of offence coming to the complainant's knowledge – whether the "offence" for the purposes of knowledge includes knowledge of an offence which consists of some but not all of the elements of the offence the subject of the complaint

CRIMINAL LAW – JURISDICTION PRACTICE AND PROCEDURE – indictable offence under the *Environmental Protection Act 1994* dealt with summarily at election of complainant – whether time limit for prosecution applies because offence indictable – whether proceedings brought within one year of offence coming to the complainant’s knowledge – whether the “offence” for the purposes of knowledge includes knowledge of an offence which consists of some but not all of the elements of the offence the subject of the complaint – meaning of “wilfully” – whether action or inaction wilful if controlled

Criminal Code Act 1899 (Qld) Sch 1, 23(1)(a)
Environmental Protection Act 1994 (Qld) s 330, 432, 494, 495, 497, Sch 4
Judicial Review Act 1991 (Qld) s 43
Justices Act 1886 (Qld) s 54

Cross Country Realty Pty Ltd v Peebles [2007] 2 Qd R 254
Smith v Baldwin ex parte Smith [1979] Qd R 380
Green v NuGrow Ipswich Pty Ptd [2025] QMC 21
Witheyman v Van Reit [2008] 2 Qd R 658

COUNSEL	J M Horton KC with Mr B McMillan KC for the applicant No appearance for the first respondent S C Holt KC for the second respondent
SOLICITORS:	Department of the Environment, Tourism, Science and Innovation for the applicant No appearance for the first respondent McCullough Robertson for the second respondent

[1] A Magistrate summarily dismissed a complaint brought against the second respondent, charging it with two offences against the *Environmental Protection Act 1994* (Qld), for being out of time. The applicant seeks an order, in the nature of *certiorari*, under s 43(1) of the *Judicial Review Act 1991* (Qld), quashing the Magistrate’s decision.¹

[2] The application is refused for the following reasons.

The legislation

[3] Section 432 of the *Environmental Protection Act 1994* (Qld) (the **Act**) creates offences for non-compliance with a transitional environmental program (**TEP**).

¹ The Magistrate has indicated that she will abide by the order of the Court. She has been excused from further participation in the proceeding, save as to any question of costs.

- [4] Section 330(1) of the Act defines a TEP as “a specific program that, when complied with, achieves compliance with this Act for the activity to which it relates” by, *inter alia*, reducing the environmental harm caused by the activity or transitioning the activity to comply with a condition of the environmental authority for the activity.
- [5] Section 432 of the Act states:
- (1) The holder of a transitional environmental program, or a person acting under a transitional environmental program, must not wilfully contravene the program.

Maximum penalty—6,250 penalty units or 5 years imprisonment.
 - (2) The holder of a transitional environmental program, or a person acting under a transitional environmental program, must not contravene the program.

Maximum penalty—4,500 penalty units.
 - (3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).
 - (4) A reference in this section to contravening a transitional environmental program includes a reference to contravening a condition of the program.
- [6] “Wilfully” in section 432(1) is defined in Schedule 4 of the Act to mean “(a) intentionally; or (b) recklessly; or (c) with gross negligence”.
- [7] An offence under section 432(1) is an indictable offence: as per section 494 of the Act.
- [8] By section 495(1) of the Act, a proceeding for an indictable offence against the Act may be taken, at the election of the prosecution, either by way of summary proceedings under the *Justices Act 1886* (Qld) or upon indictment (ordinarily requiring a committal hearing, although an indictment presented ex-officio would be, at least in theory, an option).
- [9] As the Act stood at the relevant time, if the prosecution elected to proceed summarily, it had to commence proceedings either within 1 year after the commission of the offence (section 497(a)); or within 1 year after the offence came

to the complainant's knowledge, but within 2 years after the commission of the offence (section 497(b)).

- [10] Section 497(b) is relevant in the present case.

The history of the matter, the complaints, and their prosecution

- [11] The second respondent, **NuGrow**, operates a waste recycling and compost manufacturing facility at Swanbank² under an environmental authority issued under the Act which authorises it to carry out environmentally relevant activities.
- [12] On 17 December 2021, the applicant, the **Chief Executive** of the Department of the Environment, Tourism, Science and Innovation (**Department**) approved a TEP which, among other things, required NuGrow to undertake works to bring the facility into compliance with the conditions of its environmental authority, especially those which concerned odour nuisance.³
- [13] Action Item 10 of the TEP required NuGrow to design, install and operate a Leachate Dam which was fit for purpose by 31 July 2022. Action Item 12 of the TEP required NuGrow to install and operate an In-Vessel System by 4 December 2022.
- [14] NuGrow did not complete Action Items 10 and 12 by the dates stated in the TEP.
- [15] On 15 May 2024, the Chief Executive, by her Department's employee **Mr Green**, filed a complaint against NuGrow, alleging two breaches of section 432(1) of the Act.
- [16] The complaint utilised Form 4 of the *Justices Act 1886* (Qld) and was titled "COMPLAINT – GENERAL PURPOSES – MADE, and SUMMONS". It –
- (a) alleged two section 432(1) offences – that is, two offences of *wilfully* contravening the TEP – committed on 1 August 2022 and 5 December 2022 (one day after the date for completion of Actions Items 10 and 12 respectively);

² In the City of Ipswich.

³ Cf section 330(1)(c)(i) of the Act.

(b) included an averment in respect of each offence which said, “and the offence came to the complainant’s knowledge on 18 May 2023”;

and

(c) commanded NuGrow to appear before the Magistrates Court at Ipswich “to answer the said complaint and to be further dealt with according to law”.

[17] The first respondent Magistrate dismissed the complaint because the proceeding was not started within the time required by section 497(b) of the Act. Her Honour found that the offences complained of – offences of *wilful* contraventions – had not come to the complainant’s knowledge within the requisite period of time (indeed, if ever at all).

The complainant elected to proceed summarily and the time limit in 497(b) applied

[18] The complaints of the offences against section 432(1) *could* have been brought by the Mr Green *either* summarily *or* on indictment (after a committal hearing and assuming committal for trial or sentence).⁴ Under section 495(1) of the Act, the complainant had to choose between those options; and in accordance with section 54(1) of the *Justices Act 1886* (Qld), had to inform NuGrow of his choice by way of the content of the complaint.

[19] Different time limits applied depending upon the way in which the complainant chose to prosecute the offences. At the relevant time, the time limit in section 497(b) applied to a summary prosecution for a section 432(1) offence but not to a prosecution for that offence on indictment.⁵

[20] It was obvious that the complainant had determined to proceed summarily against NuGrow. Surprisingly there seemed to be some uncertainty about that at the hearing before the Magistrate. And there was a suggestion at the application before me that the election was still to be made. But it was clear from the complaint and summons document that Mr Green had elected to prosecute NuGrow summarily for

⁴ I appreciate that an ex-officio indictment may, in theory, have been presented. But there was nothing about this matter which suggested that that rather unusual course was in contemplation as an option.

⁵ The section has since been amended and simplified. Now, a summary proceeding for an offence against the Act must start within two years after the commission of the offence.

the two indictable offences. The complaint summoned, or “commanded” NuGrow to “answer” it – that is, to attend a hearing by a Magistrate of the complained of indictable offences for their determination. NuGrow was not commanded to attend a committal hearing (that is, not commanded to “appear before justices taking an examination of witnesses in relation to an indictable offence”) with a view to being committed for a trial or sentence which would proceed on indictment.

- [21] It followed, from the complainant’s election to proceed summarily, that the Magistrate only had jurisdiction to hear the complaint if it was made within the time prescribed by section 497(b) of the Act.
- [22] The applicant argued that there was *no* time limit for the bringing of the complaint in this matter because the offences *could* have been dealt with on indictment – relying, I think at least in part, on section 495(2) of the Act, which allows a defendant or a Magistrate to, in effect, over-ride the complainant’s election to proceed summarily and to “convert” what would have been a summary prosecution to finalisation into a committal hearing.
- [23] Reading the Act reasonably, and as a complementary whole, and ensuring its workability: section 495(2) does not affect the time limitation on the commencement of proceedings for an indictable offence *where there has been an election made to proceed summarily*. It simply permits the complainant’s *already-made-election* to proceed summarily on complaint – a complaint which must be made within time to ground jurisdiction – to be overridden at the behest of the defendant or the Magistrate.⁶

The averment and the jurisdictional issue

- [24] At the hearing before the Magistrate, NuGrow was able to establish that neither offence came to the complainant’s knowledge on 18 May 2023.
- [25] The Chief Executive accepted that the averment in the complaint was not correct. However, she made no application to amend the complaint to correct the averment. Instead, she argued that: the “jurisdictional fact”, with which the averment was

⁶ As an aside, I note that this procedural approach, of applying a time limit upon summary prosecutions for indictable offences, but allowing the election to be overridden, is seen in numerous pieces of Queensland legislation.

concerned, was whether Mr Green had the relevant knowledge within the “time limitation period”; and that notwithstanding the incorrectness of the averment, jurisdiction would be established if the court was satisfied that the offences came to the complainant’s knowledge by 7 September 2023.⁷

- [26] At the hearing, NuGrow accepted that, if the offence came to the complainant’s knowledge by 7 September 2023, then jurisdiction was established.⁸ The application before me proceeded on the same basis.

The Magistrate’s findings as to the complainant’s knowledge

- [27] It is uncontentious that –

(a) the knowledge required of the complainant for the purposes of section 497(b) of the Act was knowledge of facts *sufficient* to establish the offence, which was something more than having *reasonable grounds for suspecting it*: see *Cross Country Realty Pty Ltd v Peebles* [2007] 2 Qd R 254 at [10];

and

(b) a complainant may be said to have acquired knowledge of an offence only when they have before them such information as to give them *reasonable grounds for such a belief*: see *Smith v Baldwin ex parte Smith* [1979] Qd R 380 at 385.

- [28] NuGrow argued that Mr Green did not have the requisite knowledge, even by 7 September 2023 – in the sense that he had no reasonable grounds for believing that NuGrow *wilfully* contravened the TEP.

- [29] The Magistrate accepted that argument and found that the complaint was out of time. Her Honour’s findings included that:

(a) By 7 September 2023, Mr Green had knowledge of *an* offence that NuGrow had contravened the TEP – the 432(2) offence.

⁷ Pages 49 to 55 of the hearing before the Magistrate.

⁸ Page 61, line 40 to page 62, line 17 of the hearing before the Magistrate. See also paragraphs [81] and [82] of the Magistrate’s decision: *Green v NuGrow Ipswich Pty Ptd* [2025] QMC, 21 March 2025.

- (b) The reference to *the* offence in the averment must mean that the relevant offences, for the purpose of Mr Green’s knowledge, were the alleged offences against section 432(1).
- (c) The offence *simpliciter* was not charged at all or in the alternative.
- (d) There was no evidence to support the submission that, by 7 September 2023, Mr Green had knowledge of *the* offences which were laid, namely those which included the element of “wilfully” contravening the TEP.
- (e) Mr Green did *not* believe that simply because the contravention had occurred it had been done wilfully (that is, her Honour rejected his evidence that he so believed).
- (f) Mr Green was not in possession of information which was sufficient to give him reasonable grounds for his stated belief that the alleged offences had been committed wilfully.
- (g) The complaint was filed more than one year after the commission of the alleged offences, therefore the time limit in section 497(a) of the Act had not been satisfied.
- (h) The complaint was not made/filed within one year of the offence coming to Mr Green’s knowledge. There would therefore be no utility in allowing the proceedings to continue, as the Court had no jurisdiction to hear them.

[30] Accordingly, her Honour dismissed the complaint.

The section 432 offences

[31] I am of the view that the offences created by sections 432(1) and 432(2) of the Act are two separate offences. It is not the case that the section creates a base or “*simpliciter*” offence which is aggravated by a circumstance of aggravation⁹ of the mental element of wilfulness. The inclusion of section 432(3) makes this plain – if it were not otherwise. An offence under section 432(2) is not the natural alternative to an offence under section 432(1), as would be the case if the section 432(1)

⁹ See section 1 of the Criminal Code.

offence were an aggravated version of a section 432(2) offence.¹⁰ That is why the Act includes section 432(3).

- [32] It follows that the relevant offence for the purposes of section 497(b) in this case was the offence created by section 432(1) – the wilful contravention offence.

Mr Green’s knowledge

- [33] Mr Green joined the Department in January 2023. He is a senior investigator with the Department’s State Investigations Unit and was assigned to “the Swanbank Project” (the **Project**). The Project’s purpose was to manage the Swanbank industrial precinct’s “odour issues”. There was a workshop/planning meeting for the Project on 18 May 2023 (the date included in the averment). At the end of the workshop, Mr Green was aware of the odour issues, the relevant area affected by them, and the operators within that area.
- [34] When Mr Green was cross-examined about his averment, he said the first day he heard anything in relation to the offence[s] was 18 May 2023 but that he “...would actually say that the offence didn’t fully come into [his] knowledge to (sic) a later period.”
- [35] He said the NuGrow TEP was mentioned on the day of the workshop, and it was “...suggested that it was likely that there were going to be breaches in relation to that program.” He explained why he nominated 18 May 2023 as his knowledge date – but given the concession made by NuGrow about the date that matters, I do not need to go into that explanation. The short point is that he accepted that he did not have knowledge of the offences on the date stated in the averment.
- [36] Mr Green said that he was “...introduced to the issues about the TEP for NuGrow and the ... alleged breaches of conditions,” in late June/July 2023 – that is, about a month after the workshop. But he said he did not start looking into the alleged breaches until the TEP concluded on 4 September 2023.
- [37] On 7 September 2023, he inspected the site – this was the date on which he was said to have acquired knowledge of the offences.

¹⁰ Compare section 575 of the Criminal Code (Offences involving circumstances of aggravation).

- [38] He explained that, before his inspection, he understood that there had been a breach of the TEP in that the infrastructure relevant to Action Items 10 and 12 had not been built, on the basis of a December 2022 inspection of the site by another employee and drone footage of the site obtained by that employee.
- [39] He said his investigation, which caused him to lay the complaint, was based on his own site inspection. He did not read any relevant file. He did not review the relevant history. He did not look at any communications between NuGrow and the Department. He did not know that NuGrow told the Department that there were difficulties in completing the Action Items on time, including because of flooding in February 2022.
- [40] He understood that he alleged “wilful” offences; and he understood that he was alleging intentional or reckless or grossly negligent contraventions.
- [41] He was asked, “What investigations did you conduct to allow you, on a good faith basis, to say that the offences were committed intentionally, grossly negligently or recklessly?” He said, “**Just the mere fact that the requirements [were] not being complied with**”. His evidence continued (my emphasis and formatting):

MR HOLT: You’re aware there are two versions of this offence under the Act; right? One which is just not complying with the TEP, and another which is not complying with the TEP wilfully?

MR GREEN: Yes

MR HOLT: Right. As I understand the answer you just gave, it was, “Well, I thought it was done wilfully just because it wasn’t done”. Is that your actual position?

MR GREEN: Yes.

MR HOLT: **So you literally cannot point to a single investigation or piece of evidence beyond just the bare fact of the breach of the TEP to suggest, as the person who laid this complaint, that it was done wilfully?**

MR GREEN: No.

MR HOLT: You didn’t go back and look at the history or correspondence and communications between the department and NuGrow in the lead up to the expiry of those dates to decide what the reasons for it might have occurred – I don’t know, whether it had something to do with major ... one in 100 year flooding in Ipswich in February 2022? You didn’t look at that?

MR GREEN: No.

- [42] After confirming that he did not question staff when he inspected the site on 7 September 2022, he was asked what he did do to investigate and he said he compiled the statements and the drone flights. He confirmed that the majority of the investigation was conducted by the compliance officers.

The application

- [43] The applicant's six grounds for her application were expressed differently in her written outline from the way in which they were expressed in her filed application. At the hearing, her senior King's Counsel acknowledged that the issues were in fact more limited than the grounds would suggest. He identified them as, "What's a degree of knowledge required for that commencement time, for the time for which time starts running" (sic – I understood this to mean that one of the significant questions for me was "What does it mean to have knowledge of 'the offence'?" – see ground 6 below) and "What knowledge was needed with respect to the element of 'wilfulness'" (which was not something which the grounds as expressed in the submissions expressly covered, although grounds 4 and 5 come close) .

Knowledge of the contravention having been "wilful"

- [44] I will deal first with the question of what is required for a "wilful" contravention.
- [45] The applicant contended that knowledge of the element of wilfulness was not something which required "a great deal of intellectual analysis" and that had been Mr Green's approach: Mr Green considered there to be evidence of wilfulness because there had been non-compliance. The applicant asked rhetorically – "what more would one expect Mr Green to say?" She contended that it "required too much" to expect him to say more.
- [46] With respect, the applicant, and Mr Green, appear to have confused the notion of "wilfully", which in this context is a culpable *state of mind as to a result*, with the notion of a *willed act* – as "willed" is understood in the context of criminal (or quasi-criminal/regulatory) responsibility.

[47] Without question, NuGrow was the entity *responsible* for the completion of the action items, and (at least *prima facie*) NuGrow *controlled* its own action or inaction for the purposes of complying with the TEP. In that sense, its action or inaction was *willed* (or intentional): that is (at least *prima facie*) its action or inaction did not occur *independently* of the exercise of its will.¹¹

[48] The element of “wilfully”, which differentiates 432(1) from 432(2), has other “work to do”. It refers to the particular *state of NuGrow’s mind* which accompanied its *willed* action or inaction, *in relation to the contravention of the TEP*. The element of “wilfully” elevates, as it were, the lesser offence in sub-section (2) to the indictable offence because of the presence of this egregious mental element as to the resulting contravention.

[49] In other words –

- (a) the simpliciter offence in section 432(2) is concerned only with a defendant’s *willed* action or inaction. A defendant would not be guilty of the offence if the relevant action(s) or inaction, which caused the contravention, occurred independently of the exercise of its will or, in that sense, “unintentionally”;¹² and
- (b) the indictable offence in section 432(1) is concerned *not only* with a defendant’s *willed* action or inaction causing a contravention of a TEP, *but also* with the defendant’s state of mind *about* the contravention of the TEP.

To further elaborate, the offence of “wilfully” contravening the TEP concerns *willed* actions or inactions to which a particular state of mind attaches about the result: that is, willed action or inaction done with either –

- (i) an *intention* to contravene the TEP; or
- (ii) *recklessness* as to a foreseeable substantial risk of contravention of the TEP; or

¹¹ Although NuGrow may well have argued at any trial that its action or inaction was not willed in the section 23(1)(a) *Criminal Code* sense – a possible line of defence revealed during NuGrow’s counsel’s cross-examination of Dr Menzendorf but not something I need to consider.

¹² Or more accurately: would not be guilty of the offence if the complainant could not exclude, beyond reasonable doubt, that the action or inaction occurred independently of the exercise of the defendant’s will.

(iii) *gross negligence* as to a foreseeable risk of contravention of the TEP.

A defendant without that state of mind in relation to the contravention would not be guilty of the section 432(1) offence,¹³ although section 432(3) might apply.

[50] While Mr Green may have been correct in reasoning that NuGrow’s *willed* action or inaction contravened the TEP – and he may have conceptualised NuGrow’s *action or inaction* as “intentional” – he did not have (or even look for) evidence about NuGrow’s *state of mind* about the contravention.

[51] There was simply no evidence sought out by him or obtained by him that NuGrow intended to contravene the TEP; was reckless as to a contravention of the TEP; or was grossly negligent as to a contravention of the TEP, nor reasonable grounds for Mr Green believing so.

Disposing of the grounds

[52] The grounds set out below are quoted as per the applicant’s outline. The applicant acknowledged that they overlap.

“Ground 1 asserts that the time limit in s 497 of the EP Act had no application to the proceeding because the Complaint alleged indictable offences against section 432(1), not summary offences.”

[53] The opening words of section 497 are (my emphasis), “A proceeding for **an offence against this Act** by way of summary proceeding...”

[54] “An offence against this Act” includes an indictable offence against the Act – see section 494, especially 494(1A).

[55] Although the complaint alleged indictable offences against the Act, the complainant elected to prosecute them summarily. That did not change their character as indictable offences but, under the Act, section 497 applied. The time limit was engaged because of the election made about how the indictable offences were to proceed.

¹³ Or more accurately: would not be guilty of the offence if the complainant could not exclude, beyond reasonable doubt, that the defendant did not have that state of mind about the contravention.

- [56] To put it another way: The characterisation of the offence as an indictable offence against the Act did not determine whether the time limit applied or not. The time limit was triggered by the procedural choice made by the complainant.

“Ground 2 asserts that the Court did have jurisdiction to hear the proceedings either because the time limit did not apply or because the Complaint was within time.”

- [57] As above, the indictable offence created by section 432(1) is an offence *against the Act*: see 494(1). The complainant elected to proceed summarily: section 495(1). As spelt out in section 497, the time limit applied to a proceeding for *an offence against the Act by way of summary proceeding* – which includes a proceeding for an indictable offence against the Act.

- [58] The argument about the complaint being within time is dealt with in grounds 4, 5 and 6.

Ground 3 was not pressed.

“Ground 4 and 5 assert that, if s 497 did apply, the Magistrate’s decision that the alleged offences did not come to the Complainant’s knowledge on 18 May 2023 or any date thereafter, for the purposes of s 497(b), was unavailable on the evidence or legally unreasonable.”

- [59] Mr Green did not look for evidence that NuGrow had *wilfully* contravened the TEP. He may have confused the notion of “wilfully”, as a *state of mind* about a result, with the notion of “willed” or “intentional” action or inaction, which is concerned with a defendant’s *physical control* over its conduct.
- [60] His reasoning as to his knowledge of the commission of the wilful offence – that is, relying on the mere fact that there had been a contravention – was flawed.
- [61] The Magistrate’s finding was available on the evidence – indeed, it was the only finding available on the evidence. It was not legally unreasonable. Indeed, if her Honour reasoned that the contravention was *wilful* (intentional, reckless, or grossly negligent) *just because* there had been a contravention, then her Honour would have been in error.

“Ground 6 asserts that it was not necessary, for the purposes of s 497(b), for the Complainant to have knowledge that the alleged offences were committed wilfully, despite that being an element of the offence in s 432(1) ... because section 432(3) permitted a conviction of the *simpliciter* offence against s 432(2) if the Court was not satisfied the offence/s had been committed wilfully.”

[62] The applicant relied upon *Witheyman v Van Reit* [2008] 2 Qd R 658 to argue that –

“The operation of s 432(3) meant that the defendant could be found guilty of an offence of not complying with its TEP if the element of wilfulness were not established. Therefore, to adopt the language in *Witheyman v Van Reit* [2008] 2 Qd R 658 at [15], it was only necessary for the Complainant to have knowledge of “specific facts that constitute the elements of a particular offence under s 432, not the specific offence alleged against s 432(1).”

[63] With respect, that argument misconceives and overvalues the statement made at [15] in *Witheyman v Van Reit*.

[64] The headnote to that case explains:

“Section 68 of the *Vegetation Management Act 1999* relevantly provides:

68 Summary proceedings for offences

- (1) A proceeding for an offence against this Act, or for a vegetation clearing offence, must be taken in a summary way under the *Justices Act 1886*.
- (2) ...
- (3) Despite the [*Integrated Planning Act 1997*], and subject to subsection (4), a proceeding for a vegetation clearing offence must start –
 - (a) ...
 - (b) within 1 year after the offence comes to the complainant’s knowledge but within 5 years after the offence is committed.
- (4) ...
- (5) ...
- (6) A vegetation clearing offence does not come to the complainant’s knowledge because the complainant receives a remotely sensed image that may provide evidence of the offence.

Held, that a complainant possessed the requisite knowledge for the purposes of s 68(3)(b) when the complainant knew that the offence had been committed, even if he or she did not know the identity of the offender.

Smith v Baldwin ...; Woods v Beattie, ex parte Woods [1995] 1 Qd R 343, 344; *Cross Country Realty v Peebles ...* distinguished.”

- [65] The issue in *Witheyman v Van Reit* was whether a complainant could be said to have knowledge of an offence if they did not have knowledge of the identity of the offender.
- [66] Justice Fraser, with whom Holmes JA (as her Honour then was) and Daubney J agreed, dealt with that issue as follows (footnotes omitted, my emphasis):

“The construction issue

- [12] The question is whether the judge erred in holding that a complainant possesses the requisite knowledge for the purposes of s 68(3)(b) when the complainant knows that the offence has been committed even if the complainant does not then know who committed the offence.
- [13] The question is of some general significance. In my view the applicant’s contention that the judge erred is fairly arguable. If there was such an error the complaints should not have been summarily dismissed. For these reasons, I would grant leave to appeal on this proposed ground of appeal.
- [14] It was submitted on behalf of the applicant that the natural construction of the phrase in s 68(3)(b) “the offence comes to the complainant’s knowledge” necessarily implies knowledge of the identity of the offender. This was said to follow from the use of the phrase “the offence” rather than the more general words such as “an offence”.
- [15] I disagree. The requirement that “a proceeding for a vegetation clearing offence must start ... within one year after the offence comes to the complainant’s knowledge ...” does not necessarily imply knowledge of the identity of the offender. **Where someone knows of specific facts that constitute the elements of a particular offence at a particular place and within a particular period, but is in doubt as to the identity of the offender, it is a perfectly natural use of language to say that the person knows the offence has been committed.** It involves no misuse of language to say that the applicant knew of the commission of the offence against s 4.3.1 of the *Integrated Planning Act 1977* (Qld) described in the complaints once

the applicant knew that someone had started assessable development within the specified period in the form of the clearing of trees covering the specified 2,823.9 hectares of the described land without any development permit.

[16] That view derives support from a number of considerations identified by the judge. The authorities provide some guidance as to what is required for the relevant “knowledge” but in none of the authorities is there a clear statement that knowledge of the identity of the offender is required. If the legislature had intended that s 68(3)(b) required knowledge of the identity of the offender the enactment of s 68(6) seems particularly odd: s 68(6) implies that, were it not enacted, a complainant might know of the commission of an offence merely by receiving a remotely sensed image. The one-year period specified in s 68(3) provides ample time for the complainant to investigate the offence and gather the necessary evidence, including in that process identifying the particular offender, before proceedings are commenced in time; that is a relatively generous period when compared with other statutory examples. If the legislature had intended that knowledge of the identity of the offender was required to set time running, the legislature could have easily said so, as legislatures occasionally have done.

[17] This provision is an exception to the general rule allowing 12 months in which to commence a prosecution after a summary offence is committed [see section 52 of the *Justices Act*]. It concerns the prosecution of an offence. One purpose of the limitation is to provide protection to citizens who may have committed offences. Another purpose is to encourage the efficient and timely investigation of offences. As his Honour observed, these matters also suggest that s 68(3)(b) should not be given a wider construction than is clearly indicated by its text.

[18] I would add that the presence in s 68(4) of the power to extend time points in the same direction. If a complainant does not learn the identity of the offender within the specified time that might, in a particular case, be a very weighty factor in favour of the exercise of the discretion to extend time (for example, where that occurred despite prompt and diligent efforts by the complainant or as a result of obstructive conduct by the offenders).

[67] While it may be that some characterise, as an element of the offence, the name of the offender, it is obviously an element of a different kind from those which make up the offence itself – which may be described as the legal elements of the offence.

- [68] In *Witheyman v Van Reit*, the only thing not known was the identity of the offender. As his Honour made plain at [15] – the legal elements which constituted the particular offence (plus the particulars of its date and location) *were known*.
- [69] Additionally, his Honour differentiated *Smith v Baldwin* on the basis that, in that case as here, the identity of the offender was *not in issue* (footnotes omitted, my emphasis) at [20]:

“It was also submitted that various statements in the authorities supported the construction propounded for the applicant. Reference was made, for example, to the statement in *Smith v Baldwin* that there was no evidence to show that an authorised person “either had knowledge or had, or should have had, reasonable grounds to believe ... that the respondent had committed an offence”. In that case, if any offence was committed at all it was committed by that respondent. **The relevance of knowledge of the identity of the offender was not an issue.** In that context, the statement I have quoted does not imply that such knowledge was relevant or essential.”

- [70] With respect to counsel for the applicant, the argument made (set out at [62]) does not at all “adopt” the language in *Witheyman v Van Reit* and unreasonably attempts to stretch its ratio.
- [71] In my view, the offences created by section 432(1) and 432(2) were distinct offences. The relevant knowledge required by the complainant was knowledge of the commission of the section 432(1) offence. That offence included as an element, “wilfully”, as the defendant’s requisite state of mind about the contravention. The complainant had no evidence, nor reasonable grounds for a belief, that NuGrow held that state of mind. He did not therefore have knowledge of the commission of the offences complained of. The identity of the offender was not an issue.
- [72] I note from [106] of the reasons of the learned Magistrate that the complainant did not argue that, because the offences had not yet come to his knowledge, the limitation period had not yet expired.

Conclusion

- [73] None of the grounds are made out. The application is refused.