



HIGH COURT OF AUSTRALIA

Manager, Public Information

13 October 2009

JOHN HOLLAND PTY LTD v VICTORIAN WORKCOVER AUTHORITY [2009] HCA 45
JOHN HOLLAND PTY LTD v INSPECTOR NATHAN HAMILTON & ANOR [2009] HCA 46

Today the High Court of Australia unanimously held that a company subject to a Commonwealth occupational health and safety law was liable to be prosecuted under State occupational health and safety laws for offences allegedly committed before the company became subject to the relevant Commonwealth law.

In October 2006, John Holland Pty Ltd carried on the business of road construction and associated activities. At around this time John Holland was declared by the federal Minister to be eligible to be granted a licence under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the SRC Act). John Holland was granted a licence under the SRC Act which commenced on 1 January 2007.

In March 2007, on the commencement of amendments to the *Occupational Health and Safety Act 1991* (Cth) (the OHS Act) and by reason of John Holland's licence under the SRC Act being in force, John Holland became a "non-Commonwealth licensee" and an "employer" as defined in the OHS Act. This had the effect that John Holland became subject to the occupational health and safety regime created by that Act.

In September 2008 the Victorian Workcover Authority (the VWA) authorised Mr Andrew Gildea, an inspector appointed under the *Occupational Health and Safety Act 2004* (Vic) (the Victorian Act), to prosecute John Holland for offences allegedly committed under the Victorian Act in October 2006. Mr Gildea arranged for a charge and summons to be issued against John Holland in the Magistrates Court in Victoria.

In separate proceedings in the Industrial Court of New South Wales, John Holland was also charged with breaches of the *Occupational Health and Safety Act 2000* (NSW) (the NSW Act), arising out of an incident occurring in New South Wales in October 2005.

On 19 February 2009 John Holland commenced proceedings in the High Court of Australia seeking a declaration that the Victorian Act was invalid insofar as it purported to empower the VWA to authorise the prosecution. A case was stated for the consideration of the Full Court asking whether John Holland, once it became a "non-Commonwealth licensee" under the OHS Act, was liable for conviction under the Victorian Act for offences committed before John Holland became a "non-Commonwealth licensee". John Holland argued that by virtue of section 109 of the Constitution, it could not be charged with offences under the Victorian Act in those circumstances. John Holland later applied to remove part of the proceedings in the Industrial Court of New South Wales to the High Court, insofar as they raised a similar issue to that raised in the Victorian-based litigation.

In the matter concerning the Victorian Act the Court held that John Holland, whilst a "non-Commonwealth licensee" for the purposes of the OHS Act, was liable to be prosecuted under the Victorian Act. The Court held that there was no inconsistency between the Victorian Act and the Commonwealth law to the extent that the Victorian Act purported to empower VWA to authorise the bringing of proceedings against John Holland for offences committed before John Holland became a "non-Commonwealth licensee" under the OHS Act. In the second matter (*John Holland v Inspector Nathan Hamilton*) John Holland's application for removal was granted but the Court declared that the charges against John Holland were valid and that the Industrial Court of New South Wales had jurisdiction to hear those charges.

- *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.*