

Work Health and Safety Act 2011 (Cth)

Part 11 – Enforceable Undertakings

REASONS FOR DECISION

Comcare Reference: MC00007476

Applicant: John Holland Pty Ltd (**John Holland**)

ACN: 004 282 268

Incident Location: Castle Hill Metro Train Station, Sydney

Decision Maker: Justin Napier, General Manager, Regulatory Operations
Group Comcare

Date of Decision: 7 April 2022

DECISION

Pursuant to section 216 of the *Work Health and Safety Act 2011 (Cth)* (**WHS Act**), Comcare accepts a written Work Health and Safety undertaking dated 24 February 2022 (**WHS undertaking**) given by John Holland in connection with a matter relating to one alleged contravention of the WHS Act.

- Incident involving a worker (subcontracted to the Northwest Rapid Transit Consortium) who fell through a penetration cover on the mezzanine floor of the Castle Hill Metro Station, NSW, resulting in leg injuries.

BACKGROUND

1. At 8:19am on 11 September 2018, a DJD Brick and Blocklaying Pty Ltd (DJD) worker, [REDACTED] who was subcontracted to the NorthWest Rapid Transit Consortium as part of the Sydney Metro Project, Castle Hill Metro Station, was carrying out works on the mezzanine level. He stepped on a penetration cover which gave way, resulting in a fall of over seven metres onto the concrete floor below.
2. [REDACTED] sustained injuries, including a broken femur and a damaged patella of the left leg, as well as a laceration to the left elbow. Following the incident, his left knee required surgical reconstruction, and his broken femur was repaired. He was released from hospital on 14 September 2018.

3. [REDACTED] received ongoing care for his injuries from Westmead Hospital's orthopaedic specialist as well as a physiotherapist who he was referred to, for approximately three months. [REDACTED] was formally discharged on 4 December 2018 once he was able to walk without assistance. It is understood that [REDACTED] has since returned to full duties at work.

LEGISLATION/ JURISDICTION

4. Pursuant to section 216 of the WHS Act, Comcare may accept a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of the Act.
5. Under section 19(1) of the WHS Act, persons conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of workers while the workers are at work in the business or undertaking.
6. Failure to comply with section 19(1) in circumstances where the failure exposes an individual to a risk of death or serious injury or illness is an offence pursuant to section 32 of the Act.
7. Comcare is defined as the regulator under section 4 of the WHS Act. Comcare was established under section 68 of the *Safety Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**) and is constituted by the Chief Executive Officer (**CEO**) under section 74(1A) of the SRC Act.
8. The CEO of Comcare can exercise any authority vested in the regulator under the WHS Act, including the authority to accept a written undertaking under section 216 of the Act. By way of delegation dated 8 June 2021, this authority was delegated to the General Manager – Regulatory Operations Group. I was appointed as the General Manager – Regulatory Operations Group on 1 June 2015.
9. Comcare has published a *Guide to WHS Undertakings* which provides general guidelines in relation to the acceptance of WHS undertakings under the WHS Act as required by section 230(2) of the Act (**Comcare Guide to WHS Undertakings**).

EVIDENCE AND MATERIALS CONSIDERED BY COMCARE

10. In reaching the decision to accept the WHS undertaking, Comcare has considered the following:
 - *Work Health and Safety Act 2011* (Cth);
 - *Comcare Guide to WHS Undertakings*;
 - *Comcare Regulatory Guide – Prosecutions*;
 - *Comcare Regulatory Guide – WHS Undertakings*;

- Proposed WHS undertaking and supporting materials submitted by John Holland (2 November 2021, 24 February 2022 and 6 April 2022);
- Court Attendance Notice; 9:30 am 22 September 2020; and
- Prosecution Policy of the Commonwealth.

FINDINGS ON MATERIAL QUESTIONS OF FACT AND REASONS

11. I am satisfied that the WHS undertaking given by John Holland is capable of being accepted by Comcare under section 216 of the Act because:
 - a. the WHS undertaking is proposed in connection with a matter relating to a contravention or alleged contravention by John Holland under the Act; and
 - b. the alleged contravention by John Holland is not a category 1 offence under the Act.
12. I am satisfied that the WHS undertaking addresses the requirements of the Comcare *Guide to WHS Undertakings*.
13. I have considered the nature and extent of the (alleged) contravention, and the remedial steps taken by John Holland.
14. I have considered the views provided by the injured worker in relation to the incident and I note that they support the acceptance of the WHS undertaking.
15. I have considered John Holland's criminal history. While there are two recorded convictions against John Holland under the Act, with the most recent matter concluding on 29 May 2017, I am satisfied that in this circumstance the WHS undertaking will deliver superior work health, and safety outcomes to a possible court sanction.
16. I note John Holland will issue a Notice of Acceptance of an Enforceable Undertaking in 'The Australian' newspaper and further details about the WHS undertaking will be included in their Annual Report, published on 1 April each year.
17. I consider that the WHS undertaking will deliver benefits for the workplace and the construction industry more broadly, including virtual reality applications for working from height training as well as on-site induction processes, to be made publicly available. There is also a focus on providing opportunities in the construction industry through the provision of scholarships and a partnership with SydWest Multicultural Services to assist in offering job opportunities.
18. I am satisfied that the undertaking contains a commitment to outcomes that are tangible, measurable and achievable, with specified timeframes. I note in particular:

- the commitment by John Holland to provide seven undertakings that will provide measurable improvements in work health and safety, both within the organisation and across the construction industry and community more broadly;
- the identified timeframes for achieving various stages of each undertaking, and John Holland's commitment to providing quarterly updates to Comcare on the progress of all seven proposed deliverables;
- a significant and achievable financial commitment by John Holland to meet the terms of the seven deliverables;
- a statement of regret that the incident took place;
- improvements that are not limited to the specific contravention or alleged contravention, covering a range of risks or different subdivisions within the organisation;
- commitments that are in accordance with community expectations and the public interest;
- an expression of readiness to consider Comcare's feedback regarding the development of the seven deliverables in addition to quarterly updates;
- John Holland's assurances regarding the quality of the deliverables to be provided by the undertaking compared to the seriousness of the alleged contravention; and
- an assurance that John Holland is working to ensure the alleged contravention does not reoccur.

19. I appreciate the obvious work and effort in preparing the undertaking, and I acknowledge the safety focus represented by the proposed deliverables.

20. I have considered each of the commitments offered and note the tangible outcomes of the seven deliverables. In particular, I note the following:

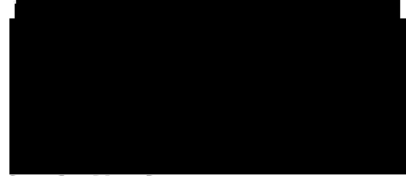
- Deliverable 1 comprises development of a virtual reality (VR) application (app) to be used for working from height training. The VR app will provide an immersive and interactive experience, and an opportunity to practice identifying and assessing hazards and risks in height training scenarios. The VR training app will be made freely available to the broader industry under a freeware license.
- Deliverable 2 relates to the development and delivery of an improved site induction process using 360-degree cameras and VR systems with an aim to highlight locations and site plan key hazards. The technology aims to provide the trainee with an immersive visual experience and improved engagement, familiarisation and understanding of the risks and hazards of the site.
- Deliverable 3 involves capturing and publishing of best practice using 360-degree camera/photogrammetry technologies to record good Global Mandatory Requirements (GMR) practices and link them to respective GMRs on the John Holland GMR online guide website (gmr.jhg.com.au) which is publicly available.

- Deliverable 4 involves engagement with the construction industry to share information about the incident, the lessons learnt and working at height initiatives arising from the undertaking. John Holland has engaged with Australian Constructors Association, the Office of the Federal Safety Commissioner, and the Master Builders Association (NSW) to assist in facilitating this presentation.
- Deliverable 5 involves partnership with, and a financial contribution to, the Wellness in Infrastructure Mentoring Program. The Mentoring Program will select and train mentors and mentees, with a view to becoming Wellness Champions. John Holland commits to running speaking events, group sessions with specialised EI coaching and developing a smart phone application.
- Deliverable 6 involves Sponsorship of NSW Aboriginal Education Consultative Group to support regional Science, Technology, Engineering, and Maths (STEM) camps, annual scholarships and work experience for the Aboriginal and Torres Strait Islander students undertaking STEM-related university studies. Opportunities will also be given for students to visit John Holland Projects and Offices and provide casual, ongoing paid work experience.
- Deliverable 7 involves John Holland partnering with SydWest Multicultural Services, a non-for-profit organisation supporting culturally diverse communities in Western Sydney, and become a financial sponsor and employment partner for the duration of the undertaking. Due to John Holland's position within the construction industry, the commitment to improve mental health by partnering with 'Wellness in Infrastructure' has the potential for far-reaching impact across the industry.

DECISION

21. Having regard to the information before me and for the reasons set out above, I consider that a WHS undertaking is an appropriate enforcement outcome. John Holland has made a commitment to outcomes that are of a quality that will deliver significant benefits across the workplace and broader construction industry and wider community.
22. The WHS undertaking offers benefits that would not otherwise be achieved by a prosecution. These benefits include significant financial contributions and numerous job opportunities offered to a culturally diverse sector of the community and publicly available VR training procedures. Further, John Holland's WHS undertaking includes contributions to the Wellness in Infrastructure Mentoring program and presenting to the construction industry on the learnings from the incident and initiatives from the undertaking — all of which has the potential for far-reaching impact across the industry.
23. John Holland has assured Comcare that it is committed to ensuring the alleged contravention is avoided in the future.

24. Under section 216 of the Act, Comcare accepts the WHS undertaking given by John Holland dated 24 February 2022. Comcare will take all reasonable steps to discontinue the prosecution proceedings.



Justin Napier

General Manager – Regulatory Operations Group

Comcare

(Delegate under s 216 of the *Work Health and Safety Act 2011* (Cth)).