



HIGH COURT OF AUSTRALIA

Public Information Officer

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WESTON ALUMINIUM PTY LIMITED v ALCOA AUSTRALIA ROLLED PRODUCTS PTY LIMITED (appeal)

WESTON ALUMINIUM PTY LIMITED v ENVIRONMENT PROTECTION AUTHORITY AND ALCOA AUSTRALIA ROLLED PRODUCTS PTY LIMITED (special leave application)

An aluminium recycling plant was not permitted to process aluminium dross brought in from interstate without a separate development consent, the High Court of Australia held today.

In 1996, Alcoa acquired Comalco Australia's aluminium manufacturing plant at Yennora in western Sydney. Since the 1960s, aluminium cans and other scrap have been recycled at Yennora by melting them down and casting them into blocks or bars. Melting aluminium scrap produces aluminium dross which, when used as feedstock in a rotary furnace, allows recovery of more aluminium. Smelting also produces aluminium dross and since 2002, when it obtained a variation to its licence under the *Protection of the Environment Operations Act* (PEO Act), Alcoa has brought dross from its smelter at Port Henry in Geelong to Yennora as feedstock.

Weston Aluminium brought proceedings in the New South Wales Land and Environment Court (LEC) alleging that the processing of imported dross at Yennora is a land use which requires development consent under the *Environmental Planning and Assessment Act* (EPA Act) and that Alcoa lacks this consent. Weston sought declarations and an injunction restraining Alcoa from processing imported dross. In 2004, Justice David Lloyd held that Weston was entitled to this relief but no orders granting relief were made because Alcoa applied under the EPA Act for authority to process imported dross at Yennora. The application was not determined within the time limit so Alcoa brought proceedings in the LEC to challenge the deemed refusal of its application. Alcoa obtained leave to appeal out of time against Justice Lloyd's decision, even though no final orders had been made. In 2005, Weston began further proceedings in the LEC to challenge the variation to Alcoa's licence to process imported dross. The LEC dismissed these proceedings and Weston appealed to the NSW Court of Appeal. The Court of Appeal ordered that Weston's first proceedings be dismissed and upheld the LEC's order dismissing Weston's second proceedings. By special leave, Weston appealed to the High Court regarding the first proceedings and Weston also sought special leave to appeal in the second proceedings.

The High Court unanimously allowed the appeal in the first matter. In the second matter, it granted special leave to appeal, treated the appeal as heard and allowed the appeal. In relation to the first appeal, there was no development consent which permitted Alcoa's use of the Yennora site to process imported dross. In the second matter, the Court held that the PEO Act provides that the Environment Protection Authority is prohibited from issuing or varying any licence regulating a particular use of land unless development consent has been granted for that use. When the EPA varied the relevant licence, Alcoa did not have development consent to use the Yennora site to process imported dross, therefore the variation was invalid. The matter was remitted to the LEC for further consideration in conformity with the High Court's decision.

- *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.*