

HIGH COURT OF AUSTRALIA DECISION

The High Court of Australia, by a majority of 5 to 2, today dismissed challenges to the validity of the WorkChoices legislation. The majority were Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ. The dissenting judges were Kirby and Callinan JJ. The majority decision is 160 pages; the decision in totality is over 400 pages. In essence, the WorkChoices legislation will apply to all Australian trading or financial companies and to foreign corporations. In Victoria, the ACT and the NT, special arrangements apply that extend the coverage of the legislation to employers who are not trading or financial corporations. ACCER and CCER will now analyse the decision and provide further general information to Catholic employers.

While the legislation is valid, a determination will need to be made in due course, as to whether or not it applies to particular Church employers in States other than Victoria. Some Catholic employers are incorporated, but whether they can be regarded as trading or financial corporations is unclear. The continuing advice of CCER is that this issue does not need to be decided urgently and that a decision should not be made until all relevant factors are considered. The High Court judgement does not assist in determining what a trading or financial corporation is, because it was not an issue that needed to be dealt with in order to resolve the constitutional issues.

The concerns of the Church in relation to the WorkChoices legislation remain, notwithstanding that the legislation has been held to be valid. The main concern of the Church has been the need for a framework that fosters fairness and encourages cooperative and productive workplaces. The Australian Catholic Bishops Conference has identified several aspects which the legislation does not provide a proper balance between the rights of employers and employees: minimum wages, the adequacy of the safety net and unfair dismissal and has raised concerns about the potential of the legislation to impact on the ability of unions to represent their members. A copy of the Australian Catholic Bishops Conference's statement can be downloaded from <http://www.acbc.catholic.org.au/bishops/pm/2005112512.htm>.

The WorkChoices legislation allows some employers to use this regime to reduce the wages and conditions of employees. The vulnerable workers in a community, namely the young, the old, women, people in rural areas and those with disabilities are more likely to be affected by this legislation at this time and workers, more generally, in the event of a down turn in the economy.

Church agencies will now analyse this extensive decision and provide information to employers. In the meantime, pending further advice, ACCER and CCER advise Catholic employers to continue to conduct their employment relations by having regard to the Church's social teaching in terms of upholding the dignity of the human person, fostering cooperative and productive workplaces, providing fair and just mechanisms to deal with poor work performance and dismissal, and enabling employees access to representation by their unions.

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14 November 2006

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