

Betfair Pty Limited v Western Australia (2008) 234 CLR 418

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Facts

- Betfair Pty Limited (**Betfair**) operated a national betting exchange licensed in Tasmania and operated legally under Tasmanian law.
- The amendments to the *Betting Control Act 1954* (WA) (**the Act**) in 2007 placed several new restrictions on Betfair:
 - 1. section 27B(1) made it illegal for Betfair to operate a betting exchange in Western Australia;
 - 2. section 24(1aa) of the Act made it illegal for residents of Western Australia to place a wager through a betting exchange; and
 - 3. sections 27C and 27D of the Act made it illegal to publish the race fields of Western Australian races without ministerial approval.
- This made it impossible for Betfair to operate in Western Australia. Betfair argued that the amendments were of a "protectionist nature" and contravened section 92 of the Constitution.

Issues

- Did the 2007 amendments to the Act cause a contravention of section 92 of the Constitution?

Held

- The High Court unanimously held that the Act as amended contravened section 92 of the Constitution.
- The High Court held that sections 27C and D prohibition on the publication of a Western Australia race field burdened interstate trade and commerce both directly and indirectly.
- In relation to section 24(1aa), the High Court concluded that the prohibition on persons in Western Australia betting through a betting exchange constituted a discriminatory burden on interstate trade of a protectionist kind.
- Prohibition was not an "appropriate and adapted" method to minimise the impact of gambling, given the avenue of non-discriminatory regulation.
- The High Court introduced a proportionality element into the test that was originally formulated in *Castlemaine Tooheys Ltd v South Australia*.
- The High Court can now consider both the purpose and effect of any law in future section 92 applications.

Quotes

"What is involved here is an attempt at an evidentiary level to measure something of an imponderable.

But, allowing for the presence to some degree of a threat of this nature, a method of countering it, which is an alternative to that offered by prohibition of betting exchanges, must be effective but non-discriminatory regulation. That was the legislative choice taken by Tasmania and it cannot be said that that taken by Western Australia is necessary for the protection of the integrity of the racing industry of that State. In other words, the prohibitory State law is not proportionate; it is not appropriate and adapted to the propounded legislative object."

(Gleeson CJ, Gummow, Kirby, Hayne, Crennan and Kiefel JJ at page 479)

Full Text

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2008/11.html>

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