

Bropho v Western Australia (1990) 171 CLR 1

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Facts

- The Western Australia Development Corporation performed works to redevelop the Swan Brewery. This site was owned by the WA Government.
- Mr Robert Bropho was an Aboriginal activist. Bropho applied to the WA Supreme Court for an injunction against the development, claiming it was Aboriginal land known as Godininup and the Waugal Dreaming Land.
- Section 17 of the *Aboriginal Heritage Act 1972 (WA)* (**the Act**) of Western Australia prohibited the destruction or damage of Aboriginal sites except with the consent of the responsible State Minister.
- The Supreme Court did not grant the injunction and did not do so on appeal. The Supreme Court held that the Act did not bind the Crown, despite section 17 not stating this.
- Bropho appealed to the High Court.

Issues

- Did section 17 of the Act bind the Crown?

Held

- The High Court unanimously held that section 17 of the Act bound the Crown in right of Western Australia.
- According to the High Court joint judgment, the relevant issue was whether Parliament intended for the Act to bind the Crown.
- This intention could be ascertained by proper interpretation and construction of the content and objectives of the statute.

Quotes

"The rationale of all such rules lies in an assumption that the legislature would, if it intended to achieve the particular effect, have made its intention in that regard unambiguously clear. Thus, the rationale of the presumption against the modification or abolition of fundamental rights or principles is to be found in the assumption"

(Mason CJ, Deane, Dawson, Toohey, Gaudron and McHugh JJ at page 304)

Full Text

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1990/24.html>

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