

Addisons FocusPapers

INTERNET REGULATION

END OF CROSS-BORDER RESTRICTIONS ON GAMBLING ACTIVITIES?

27 March 2008

Summary

Today's High Court decision in *Betfair & Anor -v- Western Australia* is a watershed in the regulation of betting exchanges and other wagering and sportsbetting operators as well as other Internet businesses in Australia.

In essence, it means:

- any State that wishes to go it alone in imposing restrictions on the conduct of business activities over the Internet permitted by another State (including gambling activity conducted under a licence) faces the risk of a constitutional challenge;
- that constitutional challenge will have reasonable grounds of success if the:
 - restrictions are discriminatory in their application between certain categories of business, particularly if there is involved the protection of businesses in the relevant State; and
 - the restriction is not reasonably appropriate to the issue being addressed; and
- cross border restrictions which have been in place in most states and territories that target interstate betting operators (and protect local betting operators, including the local TAB) may not be enforceable.

As a result:

- advertising restrictions on those interstate operators may no longer be valid; and
- the legislative regime introduced in Victoria, New South Wales and Western Australia which prohibits the publication of race fields (and, in Victoria, sporting fixtures) without relevant approvals may not be enforceable.

Addisons FocusPapers

This may affect the value of existing totalisator/betting licences and the ability of racing bodies to generate product fees.

Proceedings

These proceedings involved a challenge by Betfair against prohibitions introduced by Western Australia directed specifically at betting exchange operators.

There were two principal prohibitions being challenged:

1. a prohibition on persons making bets through the use of a betting exchange (the “**betting exchange prohibition**”); and
2. a prohibition on the publication of Western Australian race fields without the relevant approval (the “**race fields prohibition**”).

In each case, Betfair’s application was accepted and the High Court has ordered that each of these prohibitions is invalid insofar as it applies to Betfair.

The success of Betfair’s challenge is a material step in its objective to being able to conduct and promote its betting exchange operations throughout Australia free of legal restrictions. Since it commenced providing services to Australians some years ago, it has faced substantial opposition by a range of parties, including the racing industry, competitors and governments. The Western Australian legislation was of material concern as it was the first time, in Australia and elsewhere, that a parliament had introduced legislation that contained specific prohibitions on the operation and use of a betting exchange.

For more information please contact:

Jamie Nettleton, Partner

Telephone: +61 2 8915 1030

Facsimile: +61 2 8916 2030

Email: jamie.nettleton@addisonslawyers.com.au