



## *The case that changed me*

# Jamie Nettleton

Jamie Nettleton is a partner at Addisons where he heads the gambling law practice. Nettleton provides advice to both Australian and international gambling operators. He is Past-President of the International Masters of Gaming Law and is a senior fellow at the University of Melbourne. Nettleton tells **FLOYD ALEXANDER-HUNT** about a case that changed the gambling market in Australia forever.



**T**he case in 2008 was against the State of Western Australia and involved the validity of laws made by the Western Australian government targeting activities by Betfair. Essentially, the state government implemented a series of amendments to prohibit betting exchanges.

It was unusual insofar as the process began in the High Court of Australia. It was heard by all seven justices sitting together. I wasn't the solicitor nor was my firm (Addisons) the solicitor on record, but we conducted the research in respect of the law and did a lot of the preparation for the case. We researched the laws that existed in each state and territory, well before Federation, in respect of the regulation of betting. This involved reviewing each of those laws, including Victorian-era laws, and the extent to which those laws didn't account for cross-border, free trade principles.

The High Court determined the state legislation imposed discriminatory burdens of a protectionist kind and was invalid. It was a landmark decision because it considered, for the first time, how e-commerce was affected by the Constitution.

Senior Counsel for Betfair was Stephen Gageler, who is now a Justice of the High Court. It was absolutely fascinating to watch him work. The level of detail which he applied to arcane laws in examining the effect of Section 92, which had not been drafted with the e-commerce sector in mind, was a remarkable illustration of how law should be practised.

This case was particularly relevant for me because, as a result of the decision, it opened up Australia to other overseas gambling operators. It enabled me to advise those parties in

respect of all the regulations that are involved and meant that the historic state and territory borders, which had previously existed to prohibit interstate trade relating to cross-border gambling, no longer existed in practice.

Prior to this case, I had worked with Betfair for a long time. It was very difficult for Betfair to establish its business in Australia because of the barriers which existed, both generally and particularly, to a corporate entity setting up an online gambling business. Following this case, overseas online gambling operators could identify the opportunities, set up business (principally in the Northern Territory) and provide services throughout Australia over the internet (then relatively new): this completely changed the gambling market in Australia.

The case was interesting because it was a unanimous verdict. There were documents which indicated that the State of Western Australia had been looking to move into this gambling space and essentially its action was a matter of preventing competition. I still recall the smoking gun document that came to light. The case considered the confluence between law and new technologies, which is always changing. It is particularly challenging in respect of online gambling, an area where policy and regulation interact. Every day, I continue to deal with these issues, which give rise to questions of policy, in general terms, how out of date laws apply, and trying to understand how they affect the businesses I represent.

For me, this case was a matter of realising the potential of the Internet at its cusp – that e-commerce would affect our lives and how, from a legal perspective, it would be regulated particularly in areas like cross-border gambling. **LSJ**