



## HIGH COURT OF AUSTRALIA

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### BETFAIR PTY LTD AND MATTHEW EDWARD ERCEG v STATE OF WESTERN AUSTRALIA

Western Australian legislation outlawing the operation of betting exchanges was unconstitutional because it imposed protectionist burdens on interstate trade and therefore contravened section 92 of the Constitution, the High Court of Australia held today.

Since January 2006 Betfair has held a licence under Tasmanian law to operate a betting exchange, by which bets may be laid on a horse or a team losing as well as winning. Customers from all over Australia can place bets by telephone or internet. Betfair matches bets from customers with opposing bets from other customers. Between 28 August 2006 and 24 January 2007, Mr Erceg, who lived in WA, used the internet to place bets with Betfair on horse and greyhound races and other sporting events in WA and elsewhere. Provisions of WA's *Betting and Racing Legislation Amendment Act*, which came into effect on 29 January 2007, made betting with a betting exchange an offence. In all other States, Betfair was authorised to conduct its operations by its being licensed in one State (Tasmania). Betfair and Mr Erceg, with the support of Tasmania, began proceedings in the High Court to challenge the validity of the WA amendments, which they claimed were contrary to section 92 of the Constitution which provides that trade, commerce and intercourse among the States shall be absolutely free.

In particular, Betfair and Mr Erceg challenged two provisions introduced into the *Betting Control Act*. Section 24(1aa) stated that a person who bets through a betting exchange commits an offence attracting a penalty of \$10,000 or two years' imprisonment or both. Section 27D(1) provided that publishing or making available a WA race field without approval attracted a fine of \$5000. As at 26 October 2007, of the 115 applications to use WA race fields, 110 had been approved, four awaited determination, and only one – Betfair – had been refused.

The Court unanimously upheld the challenge to the validity of the legislation. It held that section 24(1aa) was invalid to the extent that it applied to a person who made or accepted offers to bet through the use of Betfair's betting exchange by telephone or internet between WA and Betfair's Hobart premises. Section 27D(1) was invalid to the extent that it would apply to Betfair's publishing or making available WA race fields by telephone or internet between Tasmania and another State. The Court held that the two sections contravened section 92 of the Constitution as they imposed discriminatory and protectionist burdens on interstate trade and were inconsistent with the absolute freedom of interstate trade and commerce guaranteed by that provision.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*