

BETFAIR PTY LIMITED & ANOR v. STATE OF WESTERN AUSTRALIA
(C2/2007)

Date of Referral of Special Case to Full Court: 21 February 2007

The first plaintiff ("Betfair") holds a gaming licence granted by the Tasmanian Gaming Commission pursuant to the *Gaming Control Act 1993* (Tas) ("the Tasmanian Act") which permits Betfair to operate a betting exchange by means of internet connection or telephone and to broker wagering by players registered with Betfair, one of whom is the second plaintiff, Matthew Edward Erceg, a resident of Western Australia. On 23 January 2007 certain sections of the *Betting and Racing Legislation Amendment Act 2006* (WA) ("the amending Act") came into operation, including (relevantly) inserting new sections 24(1aa), 27B(1) and 27D(1) in the *Betting Control Act 1954* (WA) ("the Betting Control Act"). These sections make it an offence to bet through a betting exchange or to establish or operate a betting exchange, wherever that betting exchange is located, or to publish or make available a WA race field (that is, the list of horses or greyhounds taking part in a race to be conducted in Western Australia), unless the bet is placed with, or the betting exchange operator is, Racing and Wagering Western Australia (RWWA) or a bookmaker or totalisator licensed under the Betting Control Act. The effect of these new sections is to prohibit Betfair from accepting bets from a person in Western Australia or publishing a WA race field, and to prohibit the second plaintiff from placing bets with Betfair.

By writ of summons filed 29 January 2007, the plaintiffs seek declarations that sections 24(1aa) and 27D(1) of the Betting Control Act (and the amending Act to the extent that it inserts those sections) are invalid as a restraint on interstate trade, contrary to section 92 of the Constitution, and that section 27D(1) of the Betting Control Act does not, on its proper construction, prohibit Betfair from operating a betting exchange in accordance with the licence granted to it under the Tasmanian Act or, in the alternative, that section 27B(1) of the Betting Control Act (and the amending Act to the extent that it inserts that section) are invalid as contrary to sections 92 and 118 of the Constitution.

The questions stated for the opinion of the Full Court include:

- Is section 24(1aa) of the Betting Control Act invalid as contrary to section 92 of the Constitution either wholly or as it applies to the second plaintiff when making a bet through Betfair's betting exchange by telephone or internet from a place in Western Australia to Betfair's Tasmanian premises?
- Is section 27D(1) of the Betting Control Act invalid as contrary to section 92 of the Constitution either wholly or as it applies to Betfair publishing or making available a WA race field by telephone or internet communication between its Tasmanian premises and a place in another State, or for the purpose of taking bets through its betting exchange by telephone or internet between its Tasmanian premises and a place in another State?

- Is section 27D(1) of the Betting Control Act invalid or inoperative by reason of section 118 of the Constitution either wholly or to the extent that that section would apply to Betfair publishing or making available a WA race field in Tasmania, Western Australia or elsewhere?

The Attorney-General of the Commonwealth of Australia, and the Attorneys-General for the States of New South Wales, South Australia, Victoria, Queensland and Tasmania are intervening in this matter pursuant to s. 78A of the *Judiciary Act* 1903.

The hearing of this matter is continued from 7, 8 and 9 November 2007.