



Live Performance Australia Ticketing Code of Practice

Industry Code

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INDUSTRY CODE: LPA MEMBER OBLIGATIONS

1. RELATIONSHIP TO THE CONSUMER CODE

This Industry Code is to be read in conjunction with the *LPA Ticketing Code of Practice – Consumer Code* (Consumer Code). Together with the Consumer Code, the Industry Code establishes the standards of Consumer protection and complaints handling that apply to LPA Members (subject to relevant legislation), and provides industry best practice guidance for non-Members.

Much of this Industry Code sets out practical guidance for how the obligations and procedures of the Consumer Code are to be managed.

DISPLAY AND PROVISION OF THE CONSUMER CODE

LPA Members should, as far as practicable, make Consumers aware of the existence and application of the Consumer Code. Copies of the Consumer Code should be available for downloading from LPA Members' websites. The Consumer Code should be referenced in the context of complaint handling procedures.

Each LPA Member will engage in appropriate activities, as requested by LPA from time to time, to promote awareness among LPA Members and the general public of the Consumer Code and its operation.

STAFF TRAINING

Each LPA Member will take reasonable steps to ensure that its employees, agents and sub-contractors are aware of, and at all times comply with the terms of both the Consumer Code and the Industry Code.

In particular, an LPA Member will take reasonable steps to ensure that its employees, agents and subcontractors are aware of the procedures for handling complaints and resolving disputes set out in the *LPA Complaints Handling and Dispute Resolution Policy*, and are able to explain those procedures to contractors, service providers and the general public.

2. COMPLAINTS HANDLING AND DISPUTE RESOLUTION

2.1 - LPA MEMBER PROCEDURES FOR COMPLAINTS RESOLUTION

Each LPA Member will develop and publicise procedures for:

- a) Dealing with complaints from Consumers; and
- b) Resolving disputes between the LPA Member and Consumers.

The procedures developed should apply to any complaint about a matter covered by the Consumer Code which adequately identifies the nature of the complaint and the identity of the person complaining.

The procedures should comply with the requirements of Australian Standard ISO [AS 10002-2006 Customer Satisfaction – Guidelines for Complaints Handling in Organisations](#).

In developing its procedures, an LPA Member will have particular regard to the following principles:

- a) The procedures should define the categories of complaints and disputes they cover and explain the way in which each will be dealt with, and must accord with the standards set out in the Consumer Code.
- b) Information on how to make complaints should be readily accessible to Consumers.
- c) Each LPA Member should provide reasonable assistance to a Consumer in the formulation and lodgment of a complaint
- d) The procedures should recognise the need to be fair to both the person complaining and the LPA Member to whom the complaint relates.
- e) The procedures should specify by position who in the first instance will handle complaints on behalf of the LPA Member.
- f) The procedures should indicate time frames for the handling of complaints and disputes.
- g) Each LPA Member should provide a written response to a complaint that is made in writing.
- h) Each LPA Member should establish appropriate dispute resolution procedures.
- i) Each LPA Member will ensure that adequate resources are made available for the purpose of responding to complaints and resolving disputes.

LPA Members shall make every effort to reach a swift settlement of all complaints and shall deal with all complaints in a polite, courteous and objective manner.

All complaints will be dealt with as soon as practicable by LPA Members.

In the event that the complaint cannot be settled between the Consumer and the LPA Member, the LPA Member shall report the complaint to the LPA Complaints Officer (complaints@liveperformance.com.au).

If the reported complaint is subsequently resolved or withdrawn the LPA Member shall inform the LPA Complaints Officer as soon as reasonably practicable.

2.2 – ESCALATION OF COMPLAINTS - CONSIDERATION OF CONSUMER COMPLAINTS AND POTENTIAL CODE BREACHES BY LPA

If a Consumer is unsuccessful in resolving their complaint through the LPA Member's complaints handling procedures, or if the Consumer believes the LPA Member has breached either the Consumer Code or the Industry Code then the Consumer may refer the complaint to the LPA Complaints Officer, who will deal with the complaint in accordance with the procedures set out below and the [LPA Complaints Handling and Dispute Resolution Policy](#).

The complaint and the LPA Member's response and representations to the complaint will be promptly considered by the LPA Complaints Officer who will contact the Consumer and the LPA Member and attempt to resolve the matter.

The vast majority of complaints will be resolved by this stage.

If the matter cannot be resolved and it is believed that the complaint carries industry-wide implications, the Complaints Officer may then refer the matter to the LPA Executive Council.

The LPA Executive Council may either make a decision on the complaint at this point, or seek further information or clarification on any relevant issues, setting out the timetable for such information to be provided, and when final deliberation of the complaint will take place.

2.3 - EXCEPTIONAL CIRCUMSTANCES - CONSIDERATION OF COMPLAINTS BY THE CODE REVIEWER

In exceptional circumstances or where very serious breaches of the Consumer Code or this Industry Code have been alleged, the LPA Complaints Officer will notify the Code Reviewer, who may convene and Chair a Special Meeting of the Executive Council, which may decide to allow oral representations to be made by both the Consumer and the relevant LPA Member to be heard.

Upon receipt of a complaint from the LPA Complaints Officer the Code Reviewer must, as he or she determines to be appropriate:

- a) Request of the Consumer sufficient information and documentation as to the specific breaches alleged as may be required to determine the nature of the complaint;
- b) Provide the relevant LPA Member with full details of the complaint and allow the LPA Member a reasonable period within which to provide a response;
- c) To the extent that the LPA Member's response makes allegations against the Consumer, provide full details of that response to the Consumer and allow the Consumer a reasonable time within which to reply;
- d) Having considered the views of both the Consumer and the relevant LPA Member, the Code Reviewer must form a view on the merits of the complaint: - namely,

- i. Whether it is wholly or partly justified;
 - ii. Whether it is wholly or partly unjustified;
 - iii. Or whether some other view is appropriate and if so, what view and for what reason.
- e) Inform the Consumer and the LPA Member of that view, making such recommendations as may be appropriate in the circumstances. If the Code Reviewer considers it appropriate, he or she may also report on that complaint in the Annual Report produced in accordance with point 16 of the Consumer Code.

2.4 - POTENTIAL PENALTIES FOR BREACHES OF THE CODE

In the event that the Executive Council decides that an LPA Member has breached either the Consumer Code or the Industry Code, or it comes to the attention of the Code Reviewer or the Executive Council that an LPA Member has breached the law in connection with the sale of Tickets, the Code Reviewer, in consultation with the Executive Council, shall have the power to impose one or more of the following disciplinary measures:

- a) A written warning stating that if the breach is repeated the Code Reviewer in consultation with the Executive Council shall have the power to impose a more serious punishment.
- b) Suspension from LPA up to a maximum period of 12 months, during which time the LPA Member will not be permitted to use the LPA logo or access the services or LPA Membership benefits of LPA.
- c) Expulsion from LPA and revocation of LPA Membership.

The penalty imposed shall depend on the severity of the breach.

Each decision of the Code Reviewer in consultation with the Executive Council shall be notified to both the LPA Member and to the Consumer in writing and shall state the reasons for the decision.

2.5 - APPEALS TO THE EXECUTIVE COUNCIL

Both the LPA Member and Consumer shall have 21 days from the date of receipt of the Code Reviewer's notice of decision to appeal to the LPA Executive Council. Appeals may only be made in relation to findings of fact.

If the LPA Member or Consumer does appeal within a 21 day period, the decision being appealed shall not take effect until the appeal is determined.

In considering an appeal, the Executive Council shall be entitled to consider all information submitted to it in connection with the complaint and to seek further information or clarification on any relevant issue; setting out the timetable for such information to be provided and when the final determination of the complaint will take place.

Each decision of the Executive Council in relation to an appeal shall be notified to both the LPA Member and to the Consumer in writing and shall state the reasons for the LPA Executive Council's decision.

To the extent permitted by law, the decision of the LPA Executive Council in relation to an appeal shall be final and following this decision. LPA will no longer consider submissions in relation to the complaint for which the decision was made.

Representatives of State and/or Federal consumer protection agencies may from time to time be invited to send observers to any meeting of the LPA Executive Council at which appeals are heard.

3. INDUSTRY PROTOCOL FOR MONIES RECEIVED FROM CONSUMERS IN ADVANCE OF EVENT

3.1 TICKET PROCEEDS HELD IN A SEPARATE ACCOUNT

- (a) **Establishment of a separate account**
 - (i) The relevant agreement(s) in respect of the show/event (for example, the agreement between the promoter and venue, and/or the agreement between the venue and ticketing service provider, and/or the agreement between the promoter and the ticketing service provider) should acknowledge that the Consumer has an interest in the ticket proceeds until such time as the relevant show /event is held and should provide that those advance ticket monies will be released into an account that has been opened for the purpose of holding such ticketing proceeds ("**Account**") as soon as practicable after receipt;
 - (ii) the advance ticket monies in the Account will be held on trust (in accordance with (b) below);
 - (iii) no other monies are to be deposited into the Account / mixed with the ticket monies (although the Account may be a general Consumer monies account, with a separate ledger account being maintained in respect of each event)
 - (A) It is permissible to deposit other monies in the Account if such monies are collected as part of the ticket transaction (e.g. donations, prepayment for souvenir program or car parking) and there are clear policies and procedures on:
 - The types of deposits which are permitted in the Account;
 - How and when transfers of these deposits out of the Account will be performed; and
 - How regularly reconciliations will be performed.
 - (iv) the account may by commercial negotiation be operated solely by the ticketing service provider, venue or promoter, or, where practicable, may be jointly

controlled by two or more of the venue, promoter and ticketing service provider.

Care may need to be taken not to trigger the financial services licensing provisions of the *Corporations Act 2001* (Cth). For example, the provisions dealing with custodial or depository services might apply if the monies are being held other than in basic deposit products (with such products typically including savings accounts, interest bearing accounts and certain term deposits).

(b) **Additional terms**

The agreement(s) should specify that:

- i. where the event or a show is cancelled or a refund is otherwise required and the ticket proceeds are not being held by the ticketing service provider, an amount sufficient to satisfy all refund obligations will be returned to the ticketing service provider by the party holding the ticket proceeds (after taking into account the ticketing service provider's obligations to contribute its commission / booking fees, if necessary). The money will be earmarked for refunds and will not be able to be utilised by the ticketing service provider for any other purpose; and
- ii. where a show is performed / event is held the ticket monies referable to the show / event will belong to the venue and promoter in accordance with the formula set out in the agreement between the venue and promoter. Where the ticket proceeds are being held by the ticketing service provider, they will be settled to the venue and/or promoter in accordance with the terms set out in the ticketing services agreement.

(c) **Absence of third party ticketing service provider**

Where ticketing services are not provided by a third party, but by one of the venue or the producer/promoter, the agreement(s) should provide that all amounts transferred into the Account will be held on trust for the Consumer by the account holder(s) until such time as the show is performed / event is held.

3.2 - INVESTMENT POLICY

Venues and ticketing service providers should have an Investment Policy which sets out how advance ticket monies are invested. The investment policy should be made available on request to the other stakeholders.

Where ticket monies being held on trust are being invested, the investor should consider its obligations under the financial services licensing provisions of the *Corporations Act 2001* (Cth) (for example, holding the ticket monies in basic deposit products may help avoid a number of the financial services licensing provisions).

3.3 - AUDITING PROCEDURE

Where one or more parties with an interest in the monies in the Account is not a co-signatory to the Account, they shall have the right, acting reasonably, to request an audit or other form of legally binding assurance at any time to verify that the sum of money in the Account matches the advance monies liability on the venue/ticketing company's ledger.

The relevant agreement in respect of the show/event may provide for the circumstances in which a spot audit or other legally binding assurance can be called for.

Any auditor used should be agreed upon by the party holding the monies and the party requesting the audit. The cost of any audit will be borne by the party requesting the audit.

3.4 - COMBINED OPERATORS

Where a show or event is being promoted and ticketed by the same entity, Live Performance Australia expects that the entity will:

- (a) hold all ticket proceeds in a separate trust account as outlined in clause 3.1 (a)(i)-(iii) and not mix the ticket proceeds with other monies or use the ticket proceeds for any purpose other than refunds until the relevant show / event has occurred; and
- (b) make it clear in the terms and conditions attaching to the tickets that the ticket proceeds are being held in a separate trust account and that the Consumer will be entitled to a refund from that account in the event that the show / event does not proceed.

3.5 - LIMITED EXCEPTIONS

In limited circumstances it may be reasonable for ticket proceeds to be available to a venue or promoter prior to the relevant show or event being held. Live Performance Australia considers that advance access to ticket proceeds will not result in a breach of this Code if:

- (a) **Security:** the recipient of the ticket proceeds has provided to the ticketing service provider a guarantee from a bona fide financial institution in a form that is sufficient to secure an amount equal to those ticket proceeds;
- (b) **Government funding:** the recipient of the ticket proceeds has agreed to immediately satisfy all refund obligations and is a Live Performance Australia member that is in receipt of triennial Government Funding. The Boards of such LPA Members should undertake appropriate risk management to ensure that there are sufficient funds to cover Consumer refunds if required at any time;
- (c) **Government Venues:** the recipient of the ticket proceeds is a government venue which has an explicit guarantee that the government will cover any Consumer refunds if required;

- (d) **Other:** the recipient of the ticket proceeds has agreed to and demonstrated the ability to immediately satisfy all refund obligations.
- (i) Where a recipient relies on the exception under this paragraph (d) and there is a third party ticketing service provider, the assurance should be provided in a manner acceptable to the ticketing service provider.
 - (ii) Where a combined operator under clause 64 seeks to rely on the exception under this paragraph (d) the board or management of the recipient company is required to undertake appropriate risk management practices to ensure that there are sufficient funds to cover Consumer refunds if required at any time including adherence to a risk averse investment policy in accordance with relevant government guidelines. If there are other parties involved in the event, they are entitled to request reasonable evidence of appropriate risk management practices.

The failure of any LPA Member to comply with points 3.1 – 3.4 above will be regarded as a serious breach of the Industry Code, and will be potentially subject to the disciplinary measures set out in point 2.4 above.

4. USE OF ON-LINE “LAST MINUTE” DISCOUNT TICKET SERVICE PROVIDERS

In the event that an LPA Member opts to utilise the services of an On-line Discount Ticket Service Provider (such as Jumponit.com, Groupon.com, etc.), the LPA Member must ensure that the On-line Discount Ticket Service Provider complies with the standards set out in this Industry Code and the Consumer Code, with particular regard to Point 3 above.

On-line Discount Ticket Service Providers present difficulties for Venues in that they often provide Tickets and/or Ticket vouchers that are unfamiliar to Venue staff.

To avoid misunderstandings and Consumer complaints, any LPA Member intending to utilise an On-Line Discount Ticket Service Provider should ensure that they have advised the Venue of their intention, and provided adequate opportunity for Venue Management to brief Venue Staff on the use of Tickets and/or Ticket vouchers provided by the On-Line Discount Ticket Service Provider.

5. CONSUMER INFORMATION: PRIVACY

LPA administers the *Privacy and Spam Acts: LPA Member Guidelines* and provides information and support for organisations complying with government legislation with regard to the privacy of Consumer information.

The Guidelines are available from our website at www.liveperformance.com.au/site/content/document/00000046-source.pdf.

There is nothing in the Privacy or Spam Acts that allocates ownership of Consumer data, except that personal information ultimately belongs to the individual, whose wishes should be respected when organisations use that information for various purposes.

6. ACCURATE MARKETING MATERIAL AND TICKET PRICING

6.1 - ADVERTISING MATERIAL

In the interests of avoiding confusion and preventing Consumer complaints, advertising and promotional material in respect of Live Performance Events should be clear and accurate.

Advertising and promotional material should give details, so far as is practicable, of:

- a) **Main Event; main attraction or performer(s).** In some areas of the Live Performance industry it is practice to use understudies where the principal performer is unavailable for reasons outside the control of the Member, or where the performer is not required by his or her contract to perform. In this instance it is industry practice for Presenters to notify Consumers at the Venue on the night of the Event. Presenters are not required to notify Consumers through websites or advertising of changes to the main attraction or performers or the use of understudies.
- b) **Support attraction(s) or performer(s), where known.** With contemporary music concerts ticketed well in advance, support acts may not have been finalised at the time of booking, and more than one support act can be used at different times during a series of Events. Consumers should be made aware of the identity of the support act, where known, or if it is not known, where Consumers can obtain the information prior to the Event.
- c) **Name of the Presenter, where possible;**
- d) **Venue(s) configuration and seating arrangements.** Where the normal configuration of the Venue is significantly varied for a particular Event, the configuration to be used should be disclosed in promotion material, e.g. if the Venue has been changed from a stage facing the audience to “in the round”;
- e) **Any restricted viewing limitations;**
- f) **Scheduled Event date(s);**
- g) **The Authorised Ticketing Service Providers for that Event including advance booking facilities.**

6.2 - ADVANCE BOOKING ARRANGEMENTS

Advance booking arrangements should seek to maximise fair access to Tickets for a prospective Consumer by:

- a) providing adequate booking facilities;
- b) making as much information available as possible at the time about the number and type of Events that will occur; and
- c) disclosing appropriate information about the particular seats or seating area for a given Event that the prospective Consumer may purchase.

6.3 - EVENT INFORMATION

Ticketing Service Providers should provide Consumers who have purchased a Ticket with information regarding:

- a. The venue name;
- b. The event date;
- c. The event's commencement time (either the time the first act commences or the "doors open" time); and
- d. Any specific conditions of entry for the event.

6.4 - PRICING ON TICKETS

Ticketing service providers are not required by law to print the sale price of the Ticket on the Ticket, but most industry participants do.

Where tickets do not display any price, it is advisable that they have a mark or code printed on the Ticket to indicate that such Tickets are authorised by the Presenter for sale either as part of a package or special offer or via an authorised wholesale or resale Ticket distributor.

Any price representation, whether made on the face of a ticket or otherwise, must reflect the total price, inclusive of any mandatory charges which the Consumer must pay to acquire that Ticket, including GST. Where there are additional charges payable that cannot be calculated at the time the ticket is produced, their existence should be clearly indicated.

Any price representations made to Consumers must comply with the component pricing provisions of sections 47- 48 of Schedule 2 of the *Consumer and Competition Act 2010* (the *Australian Consumer Law* (ACL)).

If LPA Members are advertising or making representations to Consumers about ticket prices and choose to show one or more components (such as booking or transaction fees or credit card charges) separately, LPA Members must also state the minimum single total price the Consumer will have to pay to obtain the ticket. Generic phrases such as 'Additional fees and charges may/will apply' should only be used where those fees and charges do not apply in all circumstances or vary depending upon the purchase method used and so cannot be calculated for inclusion in a single price representation at the time it is made.

Further guidance on these provisions is available on the LPA Members Only section of www.liveperformance.com.au.

APPENDIX: DEFINITIONS

In this Code, the following terms have the meanings set out in this paragraph:

Code Reviewer

Means a person appointed by the LPA Executive Council who is independent of LPA and its' LPA Members with specialist expertise in trade practices and Consumer law to perform the functions conferred in point 16 of the Consumer Code.

Consumer

Means a person who holds a Ticket to an Event and has used, or intends to use, that Ticket to attend a Live Performance Event.

Fair Trading Legislation

Means legislation, State or Federal, which governs fair trading and provides statutory consumer protection.

Industry Imposed Ticket Charges

Means charges such as transaction fees, booking fees and credit card surcharges. It does not include costs imposed by external suppliers (e.g. Registered Post) or the State or Federal Government (e.g. carbon taxes or public transport levies).

LPA Executive Council

Means the Council in which is vested the management of the Australian Performance Industry Association, trading as 'Live Performance Australia', in accordance with Rule 11 of the Rules of the Association.

Live Performance Events (Events)

References to "Performance", "performance" and "Events" are intended to cover all kinds of live Performance in the widest sense of the word including, but not limited to theatre, opera, dance, spectaculars, arena events, festivals, concerts and all other public performances or gatherings of whatever nature for which a Presenter uses the services of a Ticketing Service Provider. References in this Code to "Events" are to be taken to refer to "Live Performance Events".

LPA Member

Means a full financial member of Live Performance Australia in accordance with the Fair Work (Registered Organisations) Act 2009 and the Rules of the Australian Performance Industry Association as registered with Fair Work Australia in the State of Victoria.

The LPA Membership of LPA comprises employers in the live performance industry which are in the business of providing goods and services in relation to ticketing for all forms of Performance, whether to the general public or otherwise.

Person

Includes a natural person or any form of legal entity.

Presenter

Means a person, promoter, producer or Venue who presents Live Performance Events. Actions of staff of a Presenter will be taken to be the actions of the Presenter.

Ticket

Means the revocable license granted to the Consumer to be admitted entry to a Live Performance Event or to a Venue, subject to the Terms and Conditions of Sale and is evidenced by any voucher, coupon, card, badge, document or other form of identification device. Other forms of evidence may include, without limitation, admission devices in the form of an electronic barcode, a paper ticket, wristband, member's card or a credit card.

The right of admission to a given Event may also include the right to be admitted to a designated area or a seat in a designated seating area.

Ticketing Service Provider (TSP)

Means a person who is authorised by a Venue or Presenter to provide goods and services relating to ticketing and Ticket sales for a Live Performance Event. The term includes reference to a person authorised by the Presenter to sell tickets as part of a package with travel, hospitality or accommodation benefits.

Valid Ticket

Means a Ticket that has been dealt with in a way that does not breach the Terms and Conditions under which it was sold or distributed by a Member.

Venue

Means the physical boundary of the place where the relevant Live Performance Event is being held, or an entity, company or person responsible for the holding of the relevant Live Performance Event.

Venue Manager

Means the owner, proprietor or manager of a Venue. The actions of staff of the Venue Manager and Venue will be taken to be actions of the Venue Manager.