

15 December 2017

Ms Shelby Schofield
Small Business and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Schofield,

Ticketing Reselling in Australia – Consultation Regulatory Impact Statement

Live Performance Australia (LPA) welcomes the opportunity to comment on the *Consultation Regulatory Impact Statement – Ticketing Reselling in Australia*. Our submission (attached) provides our comments and views on the options canvassed in the consultation paper. LPA's submission is informed by feedback received from our Members, including music promoters, music festivals, venues (e.g. commercial theatres, metropolitan and regional performing arts centres, concert/recital centres), commercial producers, performing arts companies and ticketing companies. We understand that some LPA Members have provided feedback directly to you.

ABOUT LPA

LPA is the peak body for Australia's live performance industry. Established 100 years ago in 1917 and registered as an employers' organisation under the Fair Work (Registered Organisations) Act 2009, LPA has over 400 Members nationally. We represent commercial producers, music promoters, major performing arts companies, small to medium companies, independent producers, major performing arts centres, metropolitan and regional venues, commercial theatres, stadiums and arenas, arts festivals, music festivals, and service providers such as ticketing companies and technical suppliers. Our membership spans from small-medium and not-for-profit organisations to large commercial entities.

LPA has a clear mandate to advocate for and support policy decisions that benefit the sustainability and growth of the live performance industry in Australia. Ticket reselling is an area of concern for many parts of the industry.

LPA SUMMARY POSITION

- LPA has taken a longstanding position against illegitimate organised ticket scalping operations. We also recognise that it is important to allow consumers the opportunity to resell tickets in a legitimate secondary marketplace when circumstances change and the consumer can no longer attend the event.
- LPA believes that none of the options canvassed in the consultation paper on its own will be effective; a combination of options working together will more likely achieve the desired outcomes of reducing consumer detriment and reducing the risks for being misled or deceived in the secondary ticket market.

- LPA believes consumer education is critical and is developing a campaign to improve consumer awareness about the risks associated with buying tickets in the secondary ticket market. LPA also supports transparency measures that reduce consumer confusion and that help consumers understand what tickets they're buying and the source of the tickets.
- LPA supports a national prohibition on ticket bots, as those who use this software technology have an unfair advantage in acquiring tickets and do so for the sole purpose of profiteering from ticket resale.
- LPA strongly believes that if new legislation were to be introduced, it must be combined with adequate resources dedicated to compliance and enforcement. Without it, it will spur (not deter) scalping behaviour; scalpers will continue their practices without fear of criminal or financial repercussions.
- Currently, there exist different ticket scalping laws in several Australian jurisdictions. There needs to be a nationally consistent legislative approach to address ticket scalping so that there is less confusion amongst consumers about the protections that exist and less administrative burden on ticketing companies and event organisers to comply with differing legislative requirements.

Once again, we thank you for the opportunity to present our views for consideration as part of your consultation process. We wish to remain engaged throughout the process and we look forward to working with you on this matter. Should you have any queries regarding our submission, please do not hesitate to contact us via email or telephone.

Yours sincerely,



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LPA SUBMISSION

Ticket Reselling in Australia: Consultation Regulatory Impact Statement

1. INTRODUCTION

Live Performance Australia (LPA) welcomes the opportunity to comment on the *Consultation Regulatory Impact Statement – Ticketing Reselling in Australia*. LPA's submission is informed by feedback received from our Members, including music promoters, music festivals, venues (e.g. commercial theatres, metropolitan and regional performing arts centres, concert/recital centres), commercial producers, performing arts companies and ticketing companies. We understand that some LPA Members have provided feedback directly to you.

2. TICKET RESALE AND THE LIVE PERFORMANCE INDUSTRY

According to LPA's Ticket Attendance and Revenue Survey, 18.78 million tickets to live entertainment events were sold in 2016. Unfortunately, we do not have data to know how many of these tickets were unsold. Despite this, the feedback we receive from our Members is that ticket reselling/scalping is a major growing concern. Ticket reselling and scalping affect all types of live events – from world renowned artists performing in stadiums to local acts performing in regional venues.

The prevalence of ticket reselling and scalping often depends on the type of and demand for an event. Our smaller venue Members report there have been instances in recent times where people have turned up to their venue having bought tickets from the secondary market. On the other hand, our major venue Members report this occurs daily or for every event featuring a high profile act. In some instances, these consumers have legitimate tickets and are able to enjoy the event. Unfortunately, however, there are many instances where the ticket presented is fraudulent (usually because the same ticket has been resold multiple times). One of our musical theatre Members reported ticketholders are presenting invalid tickets for every performance. One of our venue Members estimates that for sold out events, 1-2 percent of ticketholders are affected by some kind of fraudulent issue.

A large variety of shows are presented in Australia each year and the majority of these do not sell out. Some of our Members indicated that some of their shows have never sold out, whereas others indicated that sell out shows occur anywhere between 5 and 80 percent of all performances presented. Our Members also reported that for many shows the majority of tickets (90-95 percent) go on sale to the general public. However, there are also many shows (particularly, 'hot' shows) where the proportion of tickets available to the general public is dependent upon the sponsorship and contracting arrangements with the artist.

The practice of cancelling tickets due to having been resold in contravention of the ticket terms and conditions varies among our Members. For many of our Members, the reality is they are unable to cancel tickets because:

- they do not have full ticket details to perform the cancellation

- the venue at which the production is being presented does not use barcode scanning technology (and therefore venue staff are unable to definitively know if a ticket is valid or invalid)
- they lack the resources to monitor ticketing scalping activity.

Other Members take a very firm stance against ticket scalping; they cancel every ticket that comes to their attention as having been resold in contravention of the ticket terms and conditions.

3. LPA'S POSITION ON TICKET RESALE AND SCALPING

LPA has taken a longstanding position against illegitimate organised ticket scalping operations. We also recognise that it is important to allow consumers the opportunity to resell tickets in a legitimate secondary marketplace when circumstances change and the consumer can no longer attend the event. Consumer confidence in purchasing tickets in advance will be eroded if consumers do not have fair access to a legitimate means for reselling event tickets.

While government regulation is one mechanism for addressing ticket scalping, there is also a range of industry-based mechanisms. For example, strategies which our Members employ include (but are not limited to):

- Restricting the number of tickets that can be purchased by a person/household
- Delaying the delivery of tickets until closer to the event
- Issuing paperless tickets
- Making all tickets box-office collect and requiring identification to be presented when collecting tickets
- Including identifying information (e.g. name and date of birth) on tickets
- Staggering the release of tickets for sale
- Offering a ticket resale facility through the authorised ticket agent, enabling ticketholders who can no longer attend the event to resell their tickets at face value to another consumer
- Providing information on websites that lists the authorised seller for each event
- Warning the public on websites, social media, and signage at venues about unauthorised sellers and that tickets bought via unauthorised channels may not be honoured
- Actively monitoring accounts suspected of engaging in ticket scalping and/or fraudulent activity
- Removing known ticket scalpers from mailing lists
- Paying for sponsored links to ensure search results appear ahead of resellers and resale platforms
- Including a term in the ticket terms and conditions that restricts resale above face value.

LPA is currently working on a number of initiatives to address ticket scalping. Our priorities are:

- Advocating for legislation to criminalise 'bots'
- Revising the Ticketing Code of Practice to include provisions related to the secondary ticket market
- Developing and implementing a consumer education campaign.

LPA also lodged a formal complaint to Google about the misleading marketing practices of a resale ticket platform and welcomes the changes Google is making to its AdWords policy (effective from January 2018).

4. LPA'S POSITION ON THE OPTIONS UNDER CONSIDERATION

The options presented in the consultation paper address different parts of the problem. That is:

- Option 1 is intended to educate consumers about the risks of buying from the secondary ticket market
- Options 2 and 3 are intended to ensure that consumers are not overpaying for tickets
- Option 4 is intended to improve transparency so that ticket buyers can make informed decisions when buying in the secondary ticket market
- Option 5 is intended to 'level the playing field' for consumers to purchase tickets and prohibit the use of technology that provides an unfair advantage.

LPA believes that no option on its own will be effective; a combination of options working together will more likely achieve the desired outcomes of reducing consumer detriment and reducing the risks for being misled or deceived in the secondary ticket market. LPA strongly believes that if new legislation were to be introduced, it must be combined with adequate resources dedicated to compliance and enforcement. Without it, scalpers will continue their practices without fear of any repercussions.

Many LPA Members support a combination of options 3, 4 and 5, as they believe this combination offers the best protection for consumers. It should also be noted that the preferred option for some LPA members was a national prohibition on ticket resale.

LPA recognises that there are benefits for a nationally consistent approach to ticket scalping. Currently, there exist different ticket scalping legislations in several Australian states. This inconsistency creates confusion as to what protections exist for consumers. It also places greater administrative burden on ticketing companies and event organisers to comply with differing legislative requirements.

Specific comments on each option

Specific comments related to each option are provided below.

Option 1: Status quo with consumer education

Some LPA Members believe the current laws are not working and do not provide adequate protection to consumers. LPA Members believe consumer education is important and necessary. It will require a large campaign to reach infrequent ticket buyers (who are most at risk of being misled or ill-informed about the secondary ticket market).

Option 2: National prohibition on ticket reselling

Those Members in support of a national prohibition on ticket resale believe this option will be the easiest to implement and monitor. They have concerns about how to maintain the integrity of resellers and resale platforms under a restricted reselling model.

LPA strongly opposes any proposal that requires refunds to be provided when ticketholders can no longer use the tickets. This would cause greater uncertainty in the industry, which already operates under enormous pressure and financial risks. Some ticketing companies currently offer optional ticket insurance to protect against a range of eventualities and we believe ticket insurance should be encouraged or mandatory under this model.

If a national prohibition were in place and the law required refunds, there would need to be strict parameters around when ticketholders could receive a refund or exchange, so that the system is not open to abuse. For example, refunds should be provided simply because the consumer changed his/her mind or is no longer able to use tickets to an outdoor event because poor weather has been forecast. Consumers would need to provide sufficient evidence to support refund/exchange claims. In addition, requests for refunds/exchange need to be made with sufficient lead time to allow event organisers to resell the ticket. There is a natural expiry date for live events (for example, there may only be one or two concert performances for a particular artist or there is a limited four week season of a production), and so refund circumstances must not prohibit the event organiser's viability in staging live events.

Option 3: Restricted reselling

Many LPA Members support this option as it allows consumers who can no longer attend an event the ability to fairly onsell the ticket to someone else. Promoters and producers carry all the risks when staging events, and this option prevents scalpers from profiteering from resale without bearing any of the event risks.

The majority of our Members do not support the ability to profiteer from ticket resale. Some Members believe capping the resale price to the face value ticket price will be simpler to implement and more transparent; allowing for some mark-up would cause confusion. Other Members are sympathetic to allowing the recovery of any associated costs with buying and reselling tickets.

Some of our Members raised operational concerns with respect to restricted and unauthorised resale activity. For example, for security reasons, venues may need to check the identification of ticketholders against the details provided in the initial purchase transaction. When tickets are bought via unauthorised channels this impedes the ability for venue staff to perform these security checks.

Members also raised concerns about the ability for scalpers to work around restricted selling legislation by offering tickets as part of a package (e.g. selling tickets with a "collector's edition" pen at a premium price) to circumvent the resale restrictions.

Members believe that an active compliance and enforcement program would need to be implemented alongside this option.

Option 4: Improved information disclosure arrangement for ticket resellers

Many LPA Members support this option as the transparency requirements mean consumers will:

- know they are dealing with a reseller or resale platform and not the authorised ticket seller
- have a better understanding of what they are buying.

LPA believes that resellers should be required to provide the following information when tickets are advertised for resale:

- the face value price of the ticket
- event date, time and venue/location
- the type of ticket – e.g. general admission, A-Reserve, B-Reserve
- section/block, row and seat, if the ticket is for a particular seat
- any restrictions on the ticket – e.g. restricted view, concession, age
- whether the ticket terms and conditions prohibit resale of the ticket

- other pertinent information – e.g. whether identification matching the name on the ticket is needed to enter the venue; whether the delivery of tickets will be delayed until closer to the event date.

Members also suggested that consumers should be made aware that when tickets are purchased in the secondary market:

- refunds are unavailable from the authorised ticket seller if a legitimate refund situation arises
- they will not receive essential information from the event organiser or authorised ticket seller about changes to their ticket or performance.

A key risk with requiring the disclosure of prescribed ticketing information is that resellers will falsify or disguise information to prevent the ticket from being identified and cancelled. A potential unintended consequence of this option is that resellers provide false information and event organisers use this information to cancel tickets that belong to innocent ticketholders.

Option 5: National ban on the use of ticket-buying ‘bot’ software

Many LPA Members support a ban on the use of ticket-buying bot software because the only purpose of this technology is to beat consumers out of fair access to tickets and to profiteer from any tickets acquired using bot technology. Bots are also used in the co-ordination and operation of automated attacks on a business’s networked computers, known as a denial-of-service attack, which can create queues and negatively impact the fan’s purchasing experience. Some of our Members have experienced denial-of-service attacks to their ticketing systems.

Bots can be deployed from anywhere in the world and statistics on bot activity in Australia alone is difficult to ascertain. Ticketmaster has publically reported that in 2015, it blocked 5 billion attacks globally. In 2016, this figure rose by 10 percent. As would be expected, bot activity is more prevalent for high demand shows, and Ticketmaster reports that up to 70 percent of web traffic for popular on-sales can be caused by bots. Ticketmaster generally finds that 5-10 percent of all events experience bot activity at any given time.

Other LPA Members report that they detect bot attacks on a daily basis and that bots are an increasing problem for their business. Our Members invest significant resources to combat bot activity – including IP blocking, ticket limits, paperless ticketing, CAPTCHA and cancelling tickets that have been purchased using bots.

4.1 Penalties for breaching the law

If legislation were to be introduced, LPA believes the penalties for breaching the law need to genuinely disincentivise illegal behaviour. These penalties may include:

- Large financial penalties applying to both individuals resellers/scalpers and businesses that facilitate ticket resale
- Business deregistration
- Restricting/banning the ability for international companies to trade in Australia
- Shutting down websites.

5. OTHER ISSUES

5.1 Speculative resale

An issue that is not raised in the consultation paper relates to speculative resale. Speculative resale is the practice whereby a scalper (who does not 'own' tickets) advertises tickets at an inflated price through the secondary market and once a consumer has bought the tickets, purchases tickets from the primary market to then pass on to the unsuspecting consumer.

LPA is aware that this practice often occurs for well-known acts or long-running productions (e.g. Jimmy Barnes, musical theatre productions) and in locations where the event is unlikely to sell out quickly (e.g. regional areas). LPA is concerned about this practice because:

- From a consumer perspective – consumers may unintentionally pay too much for a ticket and/or may be deterred from attending any live entertainment event because they believe tickets to live entertainment events are cost prohibitive. The industry is particularly concerned about the impact of this practice on consumer confidence.
- From a commercial perspective – if tickets remain unsold in the primary market, producers/promoters are not maximising their tickets sales and may not be able to recoup the costs associated with staging the event. The flow on impact is that producers/promoters may no longer be able to stage quality events which reduces the choices available to consumers.

LPA believes that if legislation were introduced, there needs to be greater consumer protections to prevent speculative resale.

5.2 Chargebacks

Many of our Members are witnessing increasing levels of chargebacks due to organised scalping activity. Scalpers are opening credit card accounts to buy event tickets, reselling these tickets at any price and then disputing the charges post event with the bank. This is an area of growing concern for our Members, which exposes the ticket selling industry to significant financial risk. One Member indicated that the chargeback claims for July this year totalled more than chargeback claims for the preceding financial year. There are concerns this practice will escalate if legislation were introduced that prohibits or restricts resale.

6. SUMMARY

In summary:

- LPA does not support illegitimate organised ticket scalping practices. We also recognise there are legitimate circumstances when consumers need to resell tickets. As such, there needs to be legitimate channels that allow consumers to do so.
- LPA believes that none of the options canvassed in the consultation paper on its own will be effective; a combination of options working together will more likely achieve the desired outcomes of reducing consumer detriment and reducing the risks for being misled or deceived in the secondary ticket market.

- LPA believes consumer education is critical and is developing a campaign to improve consumer awareness about the risks associated with buying tickets in the secondary ticket market. LPA also supports transparency measures that reduce consumer confusion and that help consumers understand what tickets they're buying and the source of the tickets.
- LPA supports a national prohibition on ticket bots, as those who use this software technology have an unfair advantage in acquiring tickets and do so for the sole purpose of profiteering from ticket resale.
- LPA strongly believes that if new legislation were to be introduced, it must be combined with adequate resources dedicated to compliance and enforcement. Without it, it will spur (not deter) scalping behaviour; scalpers will continue their practices without fear of criminal or financial repercussions.
- Currently, there exist different ticket scalping laws in several Australian jurisdictions. There needs to be a nationally consistent legislative approach to address ticket scalping so that there is less confusion amongst consumers about the protections that exist and less administrative burden on ticketing companies and event organisers to comply with the legislative requirements.