

8 October 2018

House Standing Committee on Communications and the Arts  
PO Box 6021  
Parliament House  
CANBERRA  
Canberra ACT 2600

Dear Committee,

### **Inquiry into the Australian Music Industry**

As the peak body for Australia's \$2.5 billion live performance industry, Live Performance Australia welcomes the opportunity to make a submission to this *Inquiry into the Australian music industry* (Inquiry).

The live performance industry employs over 34,000 people nationally; supports more than 500 performing arts companies around Australia plus hundreds of venues, producers and music promoters. It supports the development of world-class talent both on stage and in production and technical areas. The industry attracts more than 18 million people each year to shows and concerts in capital cities, regional centres and country towns across Australia.

LPA's submission provides a summary of Australia's live music sector currently, and recommendations for how issues identified by our industry can be addressed to support a thriving live music industry in Australia. LPA's submission is informed by consultation with our members and music industry stakeholders.

### **Summary of LPA Recommendations**

- 1.** The Federal Government develop a national music strategy, based on consultation with industry, to support Australia's music industry. A national music strategy should support the live music sector by:
  - Funding the Live Music Office (LMO)
  - Reducing regulatory red tape
  - Providing for more regional and international touring opportunities
  - Scoping investment initiatives (e.g. tax offsets or incentives)
  - Supporting audience safety and well-being
  
- 2.** The Federal Government implement a nationally consistent legislative approach to address illegitimate ticket scalping that is adequately resourced to be enforceable and that includes a national prohibition on the use of ticket-buying bot software.

A vibrant live music industry is critical to the economic, social and cultural wellbeing of all Australians, and we ask the Government to continue to support and promote investment in the sector.

Once again, we thank you for the opportunity to present this submission for consideration.

Yours sincerely,



**Evelyn Richardson**

Chief Executive

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#### **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.

# LPA submission to the Inquiry into the Australian music industry

House Standing Committee on Communications and the Arts

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**LIVE  
PERFORMANCE  
AUSTRALIA**

# INTRODUCTION

## Live music in Australia

Australia has a thriving and diverse live music sector. Contemporary and classical live music not only contribute significantly to Australia's economic, social and cultural fabric in their own right – live music also underpins the entire live performance ecology. Live music is an integral feature in all live performances – from theatre and musicals to opera and dance. Australia's broad live music offerings stretch from local bands playing in our pubs and clubs to major global artists selling-out national stadium and arena tours.

The live music industry encompasses a wide range of small to large businesses and organisations including event promoters, venues, festivals, performing arts organisations and service providers, such as ticketing companies. Live music organisations contribute significantly to the economy and create jobs, including not only for musicians and artists, but stage crew, administrators, venue staff, technicians and various other professionals that contribute to Australia's live music industry.

As reported in LPA's *2016 Ticket Attendance and Revenue Report*, Contemporary Music, Festivals (Contemporary Music) and Classical Music combined generated 41% of the live performance market's ticket sales revenue and attendance.<sup>1</sup> It is forecast that the live music industry will achieve a Compound Annual Growth Rate of 2.7% between 2018-2020.<sup>2</sup> Nationally, it has been estimated that 65,000 full and part-time jobs are created by monies spent on live music, with the contribution of live music to the economy valued at \$15.4 billion.<sup>3</sup> In addition to economic value, participation and access to live music provides extensive benefits to society, with music linked to better community cohesion, health and education outcomes.<sup>4</sup>

## Factors contributing to the growth and sustainability of the Australian music industry

For Australia's live music industry to grow both domestically and internationally, the Federal Government needs to commit to developing a national music strategy that can address the various barriers and take advantage of the opportunities for industry growth. LPA's submission recommends that a national music strategy should support the live music sector by:

- Funding the Live Music Office (LMO)
- Reducing regulatory red tape
- Providing for more regional and international touring opportunities
- Scoping investment initiatives (e.g. tax offsets or incentives)
- Supporting audience safety and well-being

LPA has undertaken a number of initiatives to address concerns amongst the live music industry and consumers regarding ticket scalping and the growing secondary ticket market. This includes advocating for legislation to criminalise 'bots', releasing a revised Ticketing Code of Practice expanded to include the secondary ticket market, and delivering a consumer education campaign. To combat the negative consequences of illegitimate ticket resale, the Federal Government should implement a nationally consistent legislative approach to address ticket scalping that is adequately resourced to be enforceable and that includes a national prohibition on ticket bots.

<sup>1</sup> Ernst and Young (2017), *Live Performance Industry in Australia: Ticket Attendance and Revenue 2016*, Report for Live Performance Australia

<sup>2</sup> PricewaterhouseCoopers (2018), *Entertainment and Media Outlook 2018 (Music)*, <https://www.pwc.com.au/industry/entertainment-and-media-trends-analysis/outlook/music.html?cid=EMOutlook-social-facebook-paid-music>

<sup>3</sup> University of Tasmania (2014), *The Economic and Cultural Value of Live Music in Australia 2014*, <http://livemusicoffice.com.au/research/#/research/utasresearch/>

<sup>4</sup> UK All-Party Parliamentary Group on Arts, Health and Wellbeing (2017), *Creative Health: The Arts for Health and Wellbeing*, <http://www.artshealthandwellbeing.org.uk/appg-inquiry/>

## Recommendations

- 1.** The Federal Government develop a national music strategy, based on consultation with industry, to support Australia's music industry. A national music strategy should support the live music sector by:
  - Funding the Live Music Office (LMO)
  - Reducing regulatory red tape
  - Providing for more regional and international touring opportunities
  - Scoping investment initiatives (e.g. tax offsets or incentives)
  - Supporting audience safety and well-being
  
- 2.** The Federal Government implement a nationally consistent legislative approach to address illegitimate ticket scalping that is adequately resourced to be enforceable and that includes a national prohibition on the use of ticket-buying bot software.

# 1. NATIONAL MUSIC STRATEGY

## Supporting sustainability and growth of the music industry

A number of states and territories, such as Victoria and South Australia, have successfully implemented music industry strategies that have greatly benefited the development of their local music sectors.<sup>5</sup> However, Australia needs a nationally cohesive strategy to effectively drive the growth of live music both domestically and internationally. A national music strategy should be driven, funded and executed by the Federal Government. The strategy should be informed by wide and extensive consultation with industry to effectively identify opportunities for and threats to the growth of Australia's music industry. LPA has identified key issues, based on consultation with members and other industry organisations, related specifically to the live music industry that we believe a national music strategy should address.

### 1.1 Live Music Office

Australia's Live Music Office (LMO) was established by the Australian government in 2013 to identify key policy, regulatory and process reforms to better support a robust live music scene. Since its inception, the LMO has delivered significant benefits in support of growing live music in Australia. This includes producing key economic research, successfully working with state and local governments on regulatory initiatives and providing expert advice.<sup>6</sup> The Federal Government should provide secure operational funding to the LMO to ensure they can continue to deliver the essential service they provide for Australian live music.

The LMO could form part of an overarching national music development office tasked with championing, promoting and supporting Australia's music industry. A national music development office can be a centre for cross-sector collaboration between different government departments and jurisdictions, industry and artists, to deliver initiatives that holistically support and promote the value of Australia's music industry.

### 1.2 Regulation and red tape

Australia's live music industry is significantly burdened by regulatory red tape and restrictions at both the state and local level. There are numerous inefficient, inconsistent, overlapping and burdensome regulations at the local and state level that significantly deter the staging of live music at both indoor and outdoor venues. Live music businesses are restricted by convoluted and cost-prohibitive regulations including but not limited to liquor licensing, lockout laws, development planning and approvals, land use conflicts, environmental protection, noise pollution, event permits and licensing, crowd and emergency management and security.

Regulatory restrictions are significant obstructions to cultivating a thriving live music industry. For example, it was reported that following the introduction of lock-out laws in Sydney in 2014 that required CBD live music venues to close early, there was a 40% decline in attendance and revenue in live music venues and closures of local live music venues.<sup>7</sup>

The Federal Government should drive a collaborative initiative with state and local governments to introduce reforms that reduce onerous red tape and streamline regulatory compliance between state and local jurisdictions. Some states have recognised and begun to address the need to improve live music regulations:

<sup>5</sup> Live Music Office (2018), *Submission to the Inquiry into the music and arts economy in New South Wales*,

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2471#tab-submissions>

<sup>6</sup> Live Music Office (2018), *Five years on: Achievements and Plans*, <http://livemusicoffice.com.au/apra-amcos-live-music-office-five-years-on/>

<sup>7</sup> PricewaterhouseCoopers (2018), *Entertainment and Media Outlook 2018 (Music)*, <https://www.pwc.com.au/industry/entertainment-and-media-trends-analysis/outlook/music.html?icid=EMOOutlook-social-facebook-paid-music>

- In 2016 the South Australian government implemented an initiative to streamline live music regulations. This included convening the industry, state and local governments together to address regulatory barriers for live music venues and recommend reforms. As a result, several beneficial reforms were introduced in South Australia such as exemptions for low impact entertainment to development compliance requirements and variations to the construction code to benefit small arts venues.
- In 2014 Victoria introduced the ‘agent of change’ principle into state planning laws, requiring new residential planning proposals close to existing live music venues to include appropriate noise attenuation measures. The principle protects established live music venues from the negative consequences of complaints occurring from residents of new developments. This novel legislation was recently adopted in the UK and is being considered in other states including WA.<sup>8</sup>

The Live Music Office (LMO) has extensive expertise in working with state and local governments to advocate for and support improved regulatory conditions for the live music industry. A nationally-led initiative to streamline regulations and cut back red tape should involve close consultation with the LMO.

LPA recently provided a submission to the *Tackling the Black Economy – Designing a modern Australian Business Number system* consultation initiated by the Treasury. Changes proposed in the consultation paper, such as introduction of ABN registration and renewal fees, would have negative implications for live music organisations by imposing an additional cost and administrative burden. A copy of LPA’s submission can be found at **Attachment A**.

### 1.3 Touring

There is greater capacity to support both more regional and international touring by Australian music artists and organisations.

- Regional Australia derives significant social and cultural benefits from access to quality classical and contemporary live music. However, Federal Government funding to support regional touring is limited. For example, in 2016-17 the Australia Council for the Arts was only able to provide 23 contemporary music touring grants out of 84 applications.<sup>9</sup> The Federal Government can provide further support for live music touring to regional Australia through increased funding for the Australia Council’s ‘Playing Australia’ and ‘Contemporary Music Touring’ funds.
- Support for international touring by Australian artists is a key element in promoting and exporting Australian music globally. The Federal Government should provide operational funding to support Sounds Australia, so they can continue to deliver initiatives that support Australian artists to perform and showcase Australian music overseas.<sup>10</sup> Small-medium and major performing arts companies that perform live music, such as orchestras, should also have access to increased opportunities for international touring through the Australia Council for the Arts or other Federal Government initiative. Additionally, there is scope to consider other avenues for supporting international touring by Australian artists, such as through cultural diplomacy initiatives.

<sup>8</sup> Live Music Office (2018), *Submission to the Inquiry into the music and arts economy in New South Wales*, <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2471#tab-submissions>

<sup>9</sup> Australia Council for the Arts (2017), *Annual Report 2016-17*, <http://www.australiacouncil.gov.au/about/annual-report-2016-17/>

<sup>10</sup> Sounds Australia (2018), *Submission to the Inquiry into the music and arts economy in New South Wales*, <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2471#tab-submissions>

## 1.4 Investment

The establishment of investment incentives for the live performance industry have proven to be an effective means for stimulating investment. For example, the UK has a suite of creative industry tax relief schemes, including tax relief for live theatre productions and orchestral concerts, to increase both domestic and foreign investment in their live performance sector.<sup>11</sup>

A national music strategy should explore initiatives that can stimulate and grow investment in the live music sector. A recent study released by APRA AMCOS and other industry stakeholders found that the introduction of tax offsets to incentivise venues to stage live music could generate \$40.2 million for the Australian economy and result in an additional 284,193 live music performances per year.<sup>12</sup>

## 1.5 Audience safety and well-being

LPA believes patron safety at music events and festivals is paramount. Our members take very seriously their responsibility to provide safe and secure environments so that people of all ages can enjoy safe live music experiences.

The music industry has implemented industry initiatives to support safe and respectful experiences for all patrons at events, such as the “Your Choice” campaign which promotes a culture of positive behaviour amongst patrons.<sup>13</sup> Additionally, the Victorian Government is running a pilot program with live music venues to improve the safety of live music venues by training staff and patrons about how to identify and respond to sexual harassment and assault.<sup>14</sup>

A national music strategy should explore initiatives to support patron safety and well-being at events. Any initiatives by government to address patron safety and well-being should be informed by close consultation with industry stakeholders, including event organisers and venues. For example, the recent announcement by NSW Premier Gladys Berejiklian that a panel will be established to explore measure that will make music festivals safer can only be effective if informed by industry expertise.

**Recommendation 1:** The Federal Government develop a national strategy, based on consultation with industry, to support Australia’s music industry. A national music strategy should support the live music sector by:

- Funding the Live Music Office (LMO)
- Reducing regulatory red tape
- Providing for more regional and international touring opportunities
- Scoping investment initiatives (e.g. tax offsets or incentives)
- Supporting audience safety and well-being

<sup>11</sup> UK Gov (2018), Corporation Tax: creative industry tax reliefs, <https://www.gov.uk/guidance/corporation-tax-creative-industry-tax-reliefs#orchestra-tax-relief-otr>

<sup>12</sup> Ernst and Young (2016), *Investment initiative to cultivate the Australian contemporary music industry*, Report for APRA AMCOS

<sup>13</sup> Your Choice (2018), *Your Choice Becomes our Story*, <https://your-choice.net.au/about/>

<sup>14</sup> Minister for Consumer Affairs, Gaming and Liquor Regulation (21 March 2018), Perpetrators Face The Music As Pilot Program Launched, <https://www.premier.vic.gov.au/perpetrators-face-the-music-as-pilot-program-launched/>



## **2. TICKET RESALE**

### **Australia's Secondary Ticket Market**

Feedback we have received from our Members is that ticket scalping, being the illegitimate or unauthorised resale of tickets at a premium, is a major growing concern for the live music industry that can negatively affect the patron experience and comes at a significant cost to industry to combat. Ticket scalping affects all types of live music shows – from world renowned artists performing in stadiums to local acts performing in regional venues.

The prevalence of ticket 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 for shows from the secondary market that were fake or at an inflated mark-up above the original price, even though tickets were not sold-out and still available from the primary seller at the original price. 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).

### **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 when 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.

Government regulation is one mechanism for addressing ticket scalping, in which tickets are sold at a premium above the original purchase price on secondary ticket market platforms. 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 and 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 events 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 has implemented a number of initiatives to address ticket scalping. This includes:

- Advocating for legislation to criminalise the use of ticket-buying bot software, also referred to as 'bots', 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
- Revising the Ticketing Code of Practice to include provisions related to the secondary ticket market
- Developing and implementing a consumer education campaign, including LPA's Safe Tix video (available here: [http://liveperformance.com.au/lpa\\_safe\\_tix\\_video\\_0](http://liveperformance.com.au/lpa_safe_tix_video_0))
- Lodging a formal complaint to Google about the misleading marketing practices of a resale ticket platform and welcoming the changes Google made to its AdWords policy (effective from January 2018).

LPA also provided a detailed submission to the Treasury's Consultation Regulatory Impact Statement on Ticket Reselling in Australia (15 December 2017). A copy of LPA's submission can be found at **Attachment B**. In summary, LPA submitted that:

- Consumer education is critical, and LPA 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. Legislation outlawing the use of ticket-buying bot technology currently exists in both the UK and US.
- LPA strongly believes that if new Federal 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.

**Recommendation 2:** The Federal Government implement a nationally consistent legislative approach to address illegitimate ticket scalping that is adequately resourced to be enforceable and that includes a national prohibition on the use of ticket-buying bot software.



31 August 2018

Black Economy Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600

By e-mail: [Blackeconomy@treasury.gov.au](mailto:Blackeconomy@treasury.gov.au)

### **Tackling the Black Economy – Designing a modern Australian Business Number system consultation**

As the peak body for Australia's \$2.5 billion live performance industry, Live Performance Australia (LPA) welcomes the opportunity to provide feedback on the Treasury's Consultation Paper on designing a modern Australian Business Number (ABN) system.

Australia has a vibrant and dynamic cultural industry, which Australians support and are actively engaged with. In 2016, 18.7 million people attended a live performance event in Australia<sup>1</sup> – which is more than the combined attendances at the AFL, NRL, Super Rugby, soccer, cricket and NBL.<sup>2</sup> The ability to provide Australian audiences with exceptional live entertainment products sometimes requires bringing talented artists from overseas to Australia. For example: an international guest conductor for a symphony orchestra; an international comedian for a comedy festival; an international cabaret performer for a cabaret festival; a director for a musical theatre or theatre production. These international artists are employed in Australia for a specific purpose and generally for a short amount of time.

A common practice is for non-resident employees to apply for a tax file number (TFN) and ABN in order to pay tax at the corresponding marginal tax rate rather than at the highest marginal tax rate, consistent with no-ABN withholding rule. LPA is concerned that changes (such as additional obligations and registration fees) to the ABN system will negatively impact a workforce that is only employed in Australia for a short time.

LPA understands that a key driver of Treasury's review of the ABN system is to address issues relating to the black economy. LPA agrees that these issues need to be addressed. However, LPA is

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<sup>1</sup> Ernst & Young (2017), *Live Performance Industry in Australia, 2016 Ticket Attendance and Revenue Survey*,

<sup>2</sup> Australian Sporting Attendances 2016, Stadiums Australia

unconvinced that the changes being considered will deter black economy activity. More importantly, we also do not believe it is fair to penalise legitimate businesses with additional obligations due to unethical and illegal behaviour perpetrated by a small proportion of businesses.

In summary:

- LPA does not support any changes (e.g. introduction of registration and renewal fees) that impose additional cost or administrative burden on small businesses.
- LPA seeks changes to the system that allows non-resident employees who are paid to perform, or to participate in the performance or presentation of any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills to be taxed at the marginal tax rate, without having to apply for an ABN.
- Should this option not be possible and should ABN registration and renewal fees be introduced, LPA seeks fee exemptions for all non-resident employees who are paid to perform, or to participate in the performance or presentation of any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills.

If you have any queries in relation to any matters raised in this letter, please do not hesitate to contact us.

Yours sincerely



**Evelyn Richardson**

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#### **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.



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.