

31 July 2019

Hon Dr Sally Talbot MLC
Chair
Legislative Council
Parliament House
PERTH WA 6000

lclc@parliament.wa.gov.au

Dear Chair,

Inquiry into the *Ticket Scalping Bill 2018*

Live Performance Australia (LPA) welcomes the opportunity to make this submission to the inquiry into the *Ticket Scalping Bill 2018* (Bill).

LPA is the peak body for the live performance industry. LPA was established over 100 years ago and is registered as an employers' organisation under the *Fair Work (Registered Organisations) Act 2009*. LPA has over 400 members nationally. We represent all sectors of the industry, including music promoters, music festivals, live music venues and service providers (such as ticketing companies and technical suppliers). We also represent commercial and independent producers, performing arts companies, arts centres and commercial theatres and arts festivals. 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 ensure industry sustainability and future growth.

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.

There are mixed views in the industry about the need for legislation to prevent ticket scalping. Some Members are strongly of the view that legislation is not needed, and that industry is best placed to deal with issues related to ticket scalping. However, other Members are supportive of legislation because it gives them an additional lever to tackle ticket scalping for their events.

Having said that, Members feel that the decision about whether an event is subject to ticket scalping legislation should rest with the artist, and the promoter/producer/presenter acting in accordance with the artist's wishes. In essence, the industry seeks the ability to 'opt out' or 'opt in' of any ticket scalping legislative regime.

EXPERIENCES WITH AND FEEDBACK ON TICKET SCALPING LEGISLATION IN OTHER JURISDICTIONS

The Western Australian Bill is modelled on legislation introduced in New South Wales and South Australia, which came into effect on 1 June 2018 and 10 December 2018 respectively. We can offer some insights from our Members about the effectiveness of these laws.

There are mixed views from our Members about the New South Wales and South Australian ticket scalping laws. The most significant concern is that the laws have created an uneven playing field. Offshore online platforms (such as Viagogo) and ticket scalpers either ignore or are oblivious to local laws, and subsequently operate in contravention of these laws. Without additional resources to take enforcement action against illegal activity generated offshore, law-abiding Australian based online platforms and professional brokers are being driven out of the market, while offshore ticket scalpers and online platforms are increasingly able to capitalise on a market gap and resell tickets at an inflated price.

In addition, Members believe the legislation's wording is confusing and unclear, making it difficult for venues and event organisers to monitor and enforce scalping activity.

A different model exists in Victoria; only declared events under the *Major Events Act 2009* receive protection from ticket scalping. In contrast to the New South Wales laws, our Members have provided positive feedback about the Victorian laws. Firstly, the process for seeking a major event ticketing declaration is easy. When an event is declared, it becomes illegal to sell or advertise for resale tickets for more than 10 per cent above face value. Consumers are subsequently protected and given the opportunity to attend major events without being priced out or paying exorbitant costs. Secondly, and more importantly, our Members have not detected a vast number of declared event tickets being offered for resale on online platforms. This is likely attributable to Victorian Government investment in additional dedicated resources (authorised ticketing officers) to monitor ticket scalping activities.

LPA recommends the Committee consider the appropriate legislative model for minimising ticket scalping in Western Australia in light of the feedback provided above.

IMPLEMENTATION CONSIDERATIONS

LPA has previously written to the Attorney-General and highlighted some issues with the *Ticket Scalping Bill 2018* that warrant further consideration. Should Parliament decide to pass or modify the Bill, those key issues are outlined below:

1. Authorised resale

LPA understands that the proposed Bill will apply to situations where the event organiser has authorised a ticketing company to facilitate the resale of tickets when the first purchaser can no longer attend the event. LPA is aware that ticketing companies and event organisers are reviewing models for authorised resale, in response to the differing legislative regimes across Australia.

Event organisers that offer an authorised resale service for their events do so to combat ticket scalping and fraud. They want to ensure consumers have a safe and secure means of accessing valid and verified tickets through the secondary market. There are no guarantees that tickets purchased through unauthorised resale channels will be valid.

The proposed Bill prohibits event organisers cancelling tickets if they are sold or offered for resale in the secondary market within 110% of the original ticket price. **LPA seeks provisions to allow event organisers that offer an authorised resale service to cancel tickets that are sold or offered for resale through unauthorised resale channels.** This is to ensure ticket buyers in the secondary market are getting valid and verified tickets.

In addition, there are costs involved in being able to provide an authorised resale service (e.g. cancelling and reissuing new tickets). If an authorised resale provider is unable to recover costs through charging fees, it may render providing this service unviable. This would lead to consumers buying tickets from unauthorised resale platforms without the confidence of knowing whether they are valid. **LPA seeks provisions in the legislation that expressly allow the authorised resale provider to charge fees associated with providing this service.**

2. Resale restriction

LPA understands that the proposed ticket scalping laws will apply if tickets to an event in Western Australia are sold subject to a resale restriction. There are many ways in which ticket terms and conditions are expressed and there may be different interpretations on what constitutes a resale restriction. If the Bill is passed, it would be useful for guidance to be issued on terminology that would or would not constitute a resale restriction. It would also be useful to have guidance on where and when resale restrictions need to be presented and communicated to consumers.

3. Terms and conditions

There are several key players involved in staging an event – the promoter/producer/presenter/event organiser, venue and ticketing agent. Sometimes, one entity may perform all or multiple roles. Sometimes, particularly for high profile events, different entities perform these roles. Each of these entities will have their own terms and conditions, and these terms and conditions may not always align.

LPA previously sought clarification from the Western Australian Attorney-General on whose terms and conditions apply, for the purposes of the ticketing scalping laws, when there are multiple parties involved in presenting an event. LPA was advised that the terms and conditions that would apply are those between the authorised seller and the original purchaser. This view differs to that in New South Wales; we were advised that the event organiser's terms and conditions apply.

LPA believes that, given the similarities with the New South Wales, South Australian and proposed Western Australian ticket scalping laws, **there needs to be a consistent approach to interpreting the provisions.**

4. Cancelling tickets

LPA understands that the Bill prohibits event organisers cancelling tickets if the ticket has been resold for no more than 110% of the original ticket price. LPA believes it would be useful to gain clarity and guidance on whether a resale restriction, which allows the event organiser to cancel tickets, would be valid or void in different situations – for example:

- a) If an event organiser sees tickets advertised for resale for more than 110% of the original ticket price and the ticket terms and conditions say tickets may be cancelled if they are resold or offered for resale for profit
- b) If an event organiser suspects/has reasonable grounds to believe that tickets have been purchased for the purposes of scalping – e.g. the ticket buyer has a history of fraudulent behaviour or offering tickets for resale for profit
- c) Someone has bought 10 tickets and 2 of those tickets have been advertised for resale for more than 110% of the original ticket price and the ticket terms and conditions say tickets may be cancelled if they are resold or offered for resale for profit. Can all 10 tickets be cancelled?

5. Disclosure of ticketing information

LPA notes that the Western Australian *Ticket Scalping Bill* does not include provisions related to disclosure of ticketing information (provisions which are included in the New South Wales legislation). LPA commends the exclusion of these provisions, as we believe they are an unnecessary burden for producers and promoters in the live performance industry.

6. Industry and consumer education

Should the Western Australian Parliament pass ticket scalping legislation, LPA urges that its introduction be complemented with dedicated resources to educate consumers and industry about the legislative changes and what they need to do to comply. Legislative changes often mean that the industry must adapt the way in which it operates. There may also be different interpretations of the legislation. An education program would help consumers and industry to have a common understanding of the legislation, which would avoid confusion and misunderstanding.

Given that similar legislation exists in New South Wales and South Australia, LPA encourages the Western Australian Government to work closely with the New South Wales and South Australian Governments to ensure consistency of interpretation. Many of our Members operate nationally and consistent interpretations would make complying with the law easier, as well as making it less confusing for both consumers and industry.

LPA is happy to work with Consumer Protection on any planned education activities.

7. Enforcement

LPA believes that any new legislation requires additional resources dedicated to enforcement for the ticket scalping provisions to be effective. A strong enforcement presence is critical to keeping such activity to a minimum.

While we recognise that scalpers will find ways to resell tickets in the face of legislation, a lack of monitoring and enforcement will undermine the effectiveness of legislation. If scalpers believe there are no repercussions for reselling or advertising tickets for resale, then it will likely spur, not deter, illegal scalping behaviour.

As noted earlier in our submission, LPA is particularly concerned about offshore ticket scalpers (professional brokers) and online platforms who may not be aware that legislation exists in Western Australia or avoid the jurisdiction of local law. Without an effective enforcement regime, an unintended consequence of the legislation will be that ticket resale and scalping activity will move from platforms that operate within the law to those that do not. Ticket scalpers/professional brokers will use those platforms that allow them to make the highest margins.

LPA urges investment of additional resources to monitor and enforce any new ticket scalping laws.

SUMMARY

In summary, we request consideration of:

- the appropriate legislative model for minimising ticket scalping in Western Australia in light of the experiences in other Australian jurisdictions
- provisions to allow event organisers that offer an authorised resale service to cancel tickets that are sold or offered for resale through unauthorised resale channels
- provisions to allow authorised resale providers to charge fees associated with providing this service
- guidance on terminology that would or would not constitute a resale restriction

- consistency of interpretation across jurisdictions with similar ticket scalping legislation
- the circumstances when a resale restriction that allows an event organiser to cancel tickets is valid or void
- additional resources to educate consumers and industry about the new ticket scalping laws
- additional resources to monitor and enforce the new ticket scalping laws.

We would welcome the opportunity to discuss in further detail the matters raised in this submission.

Yours sincerely



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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.

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