

The Chair and Members  
Legislation Committee  
By email: [lclc@parliament.wa.gov.au](mailto:lclc@parliament.wa.gov.au)

Dear Hon Ms Talbot and Committee members,

**Inquiry – Ticket Scalping Bill 2018**

I refer to the current inquiry into the Ticket Scalping Bill 2018 and respectfully submit that the Bill should be amended to include disclosure requirements for authorised/primary ticket sellers.

*Primary market drivers of ticket scalping*

I acknowledge that the Bill aims to address problems in the ticket resale/secondary market.

However, both the 2018 Decision Regulation Impact Statement by Treasury (Cth) "Ticket Reselling in Australia" (DRIS)<sup>1</sup> and the 2014 unanimous report of the Senate Economics References Committee "Ticket Scalping in Australia"<sup>2</sup> identified drivers in the primary market arising from lack of disclosure or transparency that contribute to ticket scalping.

DRIS identified these relevant drivers:

- Finite supply of tickets that can be exceeded by demand. CHOICE has reported (the touring companies and promoters consulted for the DRIS denied it was a general practice) that sometimes artificial scarcity is generated in order to create hype. An example is advertising an event as one show only so that people wanting to attend turn to ticket scalpers, before further shows are announced
- Withholding of tickets, especially the earliest or best seating tickets, from the general public and distributing them via fan clubs, corporate sponsors or "reward" schemes with credit card companies or hotels instead. This creates opportunities for ticket scalpers to access the best tickets before the general public can.

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<sup>1</sup> Accessible via <https://ris.pmc.gov.au/2018/11/30/ticket-reselling>

<sup>2</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Ticket\\_scalping\\_2013/Report/index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Ticket_scalping_2013/Report/index)

A few years prior, the Senate Committee had similarly found that drivers in the primary market contributing to ticket scalping include the practice of withholding tickets for corporate and hospitality packages and pre-sale and sponsorship deals.

The Senate Committee identified a need in the primary market for greater transparency in ticket allocations between corporate/hospitality packages, sponsors and the general public, so the public knows what tickets are available for purchase, and whether those tickets are tied to hospitality packages or available individually. This, said the Committee, would both provide consumers with clearer information, and provide an incentive for event holders to think more carefully about their ticketing strategy, for example ensuring that their hospitality bundles offer value for money and do not disadvantage consumers who do not want a package but have no option but to purchase it.<sup>3</sup>

The Committee's proposed solution was codes of best practice with consumer protection as a primary objective. Recommendation 1 of the Committee was that both the Coalition of Major Professional and Participation Sports and Live Performance Australia review the criticism of the primary market in the report and consider how event holders and promoters could adopt or revise a code of best practice to address the criticism, noting particularly the desirability of having greater transparency in the way in which tickets are issued and distributed. The Committee also supported an industrywide standard of conduct being established, with the Australian Competition and Consumer Commission (ACCC) to be consulted during the development of this code.

#### *Limitations on enforcement risk creating a black market for ticket scalping*

Both the Senate Committee report and the DRIS, and also the recent debate in the other place on this Bill, identified that antiscalping laws can be difficult to enforce.

Enforcement of antiscalping laws is not impossible, as the current ACCC case against Viagogo makes clear. But it is difficult, as the Minister has rightly conceded. Reasons include:

- The laws can be easy to evade
- Enforcing the laws can cost more than the loss
- Some of the biggest ticket resellers (eg Viagogo, StubHub) are based overseas.

I submit that the difficulty of consistently enforcing the Bill's antiscalping measures heightens the need to address the drivers in the primary market that send consumers to the secondary market. Otherwise the Bill is undermined.

Improved disclosure and transparency regarding ticket quantities and allocations in the primary market is a way that Parliament can address some of those drivers.

#### *Precedent in other jurisdictions' antiscalping laws*

Precedent for such an approach can be found in the antiscalping laws of some other jurisdictions.

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<sup>3</sup> See paras 3.10-3.11 and 3.16

The New South Wales legislation<sup>4</sup> on which the Bill is closely modelled contains a provision that has been omitted from the Bill. It states:

### ***Division 4 Public disclosure of ticketing information***

#### ***Section 58L Minister may require notification of number of tickets available for general public sale***

*(1) The Minister may, by order published on the NSW legislation website, require a specified event organiser (or a specified class of event organisers) to give public notice of the total number of tickets for the event that are to be made available by authorised sellers for general public sale.*

*(2) The notice must be given within the time and in the manner specified in the order.*

*(3) The total number of tickets specified in a notice required under this section must be a number that the event organiser believes, on reasonable grounds, is not more than 10% greater or less than the total number of tickets that are to be made available for general public sale before the day on which the event is held (including any number of tickets made available before the notice is given).*

*(4) A ticket is not made available by an authorised seller for general public sale if the authorised seller requires a person to do either of the following in order to acquire the ticket:*

*(a) pay a fee (in addition to the price of the ticket and any transaction cost such as a commission, booking fee, payment surcharge or ticket delivery fee),*

*(b) register for access to any pre-sale, publication, competition or other special offer.*

*(5) The regulations may make further provision for the circumstances in which a ticket is, or is not, made available for general public sale for the purposes of this section.*

*(6) The Minister may not make an order under this section unless:*

*(a) the Minister is satisfied that each event organiser for an event to which the proposed order applies has been notified (whether by public notice or otherwise) of the Minister's intent to make the order, and*

*(b) the event organiser has been given a reasonable opportunity to make submissions in relation to the proposed order, and*

*(c) the Minister has considered any such submission, and*

*(d) the Minister is satisfied that it is in the public interest to make the order.*

*(7) An event organiser must not fail to comply with a requirement made under this section. Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).*

Victoria has a different model from New South Wales, but it too has transparency provisions. Under the Major Sporting Events Act 2009<sup>5</sup>, if the Minister makes a declaration in respect of a sporting event then the event organiser must give the Minister a "ticket scheme proposal" concerning the sale and distribution of tickets to the event. Paragraph 4.3 of the Senate Committee report explains that essentially this requires the event organiser to publicly

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<sup>4</sup> <https://www.legislation.nsw.gov.au/#/view/act/1987/68/part4a/div4/sec58l>

<sup>5</sup>

[http://www.legislation.vic.gov.au/domino/Web\\_Notes/LDMS/LTObject\\_Store/ltobjst10.nsf/DDE300B846EED9C7CA257616000A3571/2AD2EAD2F3D6427ECA2583B20080FCA4/\\$FILE/09-30aa022%20authorised.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst10.nsf/DDE300B846EED9C7CA257616000A3571/2AD2EAD2F3D6427ECA2583B20080FCA4/$FILE/09-30aa022%20authorised.pdf)

declare how tickets are to be distributed and to whom and in what quantity, for example the minimum proportion of tickets available to the public generally or to particular classes of people.

Ontario's Ticket Sales Act 2017<sup>6</sup> contains another precedent for addressing a driver for ticket scalping via improved disclosure and transparency in the primary market. Ontario's version, which has been very recently amended as can be seen below, goes further than that of either New South Wales or Victoria. In Ontario, the primary market transparency requirements are not dependent on Ministerial discretion. Primary/authorised sellers are required to publicly disclose as follows:

*PART III*  
*TICKET BUSINESS TRANSPARENCY*

***DISCLOSURE***

***Disclosure before sale***

***5 (1) Before making any tickets to an event available for sale, a primary seller shall publicly disclose, on its website or otherwise, the following information:***

- 1. The distribution method of all of the tickets to the event that will be made available for sale by the primary seller, including any sale that will occur before tickets are made available for sale to the general public.*
- 2. The maximum capacity for the event.*

***Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 5 (1) of the Act is repealed and the following substituted: (See: 2019, c. 7, Sched. 58, s. 2 (1))***

***Disclosure before sale***

- (1) A primary seller who makes tickets to an event available for sale shall publicly disclose, on its website or otherwise,***
- (a) the maximum capacity for the event, as soon as the seller has the information and no later than the time at which the seller makes any tickets to the event available for sale;***
  - (b) if the seller makes tickets to the event available for sale in batches, the following information for each batch, as soon as the seller has the information and no later than the time at which the seller first makes the batch available for sale:***
    - (i) the date and time when the batch will be made available for sale,*
    - (ii) the number of tickets in the batch, and*
    - (iii) if the batch is not being made available for sale to the general public, the class or classes of persons that are eligible to purchase tickets from the batch;*
  - (c) if the seller does not make tickets to the event available for sale in batches, the following information, as soon as the seller has the information and no later than the time at which the seller makes any tickets to the event available for sale:***
    - (i) the date and time when the seller will make tickets to the event available for sale, and*
    - (ii) the total number of tickets to the event that the seller will make available for sale; and*

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<sup>6</sup> <https://www.ontario.ca/laws/statute/17t33>

*(d) all other prescribed information at the prescribed time. 2019, c. 7, Sched. 58, s. 2 (1).*

### ***Exception***

*(2) The disclosure referred to in subsection (1) is not required for the sale of season ticket subscriptions.*

***Note: On a day to be named by proclamation of the Lieutenant Governor, section 5 of the Act is amended by adding the following subsection: (See: 2019, c. 7, Sched. 58, s. 2 (2))***

### ***Ongoing disclosure***

*(3) A primary seller who is required under subsection (1) to disclose information about an event to which the seller makes tickets available for sale shall ensure that the information continues to be disclosed in accordance with that subsection until the time at which the event takes place. 2019, c. 7, Sched. 58, s. 2 (2).*

### ***Section Amendments with date in force (d/m/y)***

#### ***Disclosure of face value and total price***

***6 (1) Every primary seller that makes a ticket available for sale shall ensure,***

- (a) that the offer discloses the total price of the ticket and includes a separately itemized list of any applicable fees, service charges and taxes; and*
- (b) that the face value of the ticket is printed on or is otherwise displayed on the ticket when it is issued to the ticket purchaser.*

### ***Consistent with consumer protection laws***

It is not my submission that the government should attempt to intervene regarding the quantity of tickets or the price of tickets that are made available by authorised sellers in the primary market.

I submit only that authorised sellers should be required to **disclose** sufficient information about the availability and allocation of tickets to enable consumers to make an informed decision about purchase.

I further submit that assisting consumers to make informed purchasing decisions is strongly consistent with the policy underlying our consumer protection laws.

Disclosure is also strongly consistent with our laws against bait advertising. Given the variety of ways tickets are distributed in the primary market, I submit that it is reasonable that ticket advertisements in the primary market should require the authorised seller to be upfront about the quantity available in each category, so that consumers know at the outset what is available and are not lured into buying other, potentially more expensive, products such as hospitality packages or upgraded "platinum" type experiences.

I refer for example to section 35 of the Competition and Consumer Act 2010 (Cth)<sup>7</sup>, applicable via our Fair Trading Act 2010 (WA)<sup>8</sup>:

### 35 Bait advertising

- (1) A person must not, in trade or commerce, advertise goods or services for supply at a specified price if:
- (a) there are reasonable grounds for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable, having regard to:
    - (i) the nature of the market in which the person carries on business; and
    - (ii) the nature of the advertisement; and
  - (b) the person is aware or ought reasonably to be aware of those grounds.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

- (2) A person who, in trade or commerce, advertises goods or services for supply at a specified price must offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to:
- (a) the nature of the market in which the person carries on business; and
  - (b) the nature of the advertisement.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.

I respectfully ask the Legislation Committee to refer the Bill back to government for amendment addressing the matters raised in this submission, in order to improve disclosure and transparency in the primary market and thereby improve consumer protection and counter a known driver for ticket scalping. Without such amendment, I submit that something important is missing from the Bill.

Yours sincerely,



Hon Alison Xamon MLC  
Member for North Metropolitan

16 July 2019

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<sup>7</sup>[https://www.legislation.gov.au/Details/C2013C00620/Html/Volume\\_3#\\_Toc368657577](https://www.legislation.gov.au/Details/C2013C00620/Html/Volume_3#_Toc368657577)

<sup>8</sup>

[https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc\\_41029.pdf/\\$FILE/Fair%20Trading%20Act%202010%20-%20%5B02-a0-03%5D.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_41029.pdf/$FILE/Fair%20Trading%20Act%202010%20-%20%5B02-a0-03%5D.pdf?OpenElement)