



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

EXPLANATORY MEMORANDUM

Ticket Scalping Bill 2018

TICKET SCALPING BILL 2018

Overview of Bill

The Ticket Scalping Bill 2018 will restrict the resale of tickets to a range of events hosted in Western Australia and prohibit the use of software designed to circumvent security measures on ticket selling websites.

The provisions in the Bill relating to resale will apply to all ticketed events in Western Australia where a resale restriction has been imposed by the authorised seller as a term or condition of purchase of the ticket. The Bill will:

- Prohibit the resale of tickets at a price that is higher than the original ticket price plus 10 percent.
- Prohibit the advertising of tickets for resale at a price that is higher than the original ticket price plus 10 percent.
- Render void any resale restriction on a ticket that provides for cancellation, provided that the ticket is resold for an amount not exceeding 110 percent of the original ticket price.
- Prohibit the use of software programs (bots) to circumvent security measures of a ticket sales website.
- Confer investigation and enforcement functions and powers on the Commissioner for Consumer Protection consistent with those that currently apply under the *Fair Trading Act 2010*.

A clause by clause commentary of the Bill is as follows:

Clause 1 PART 1 - PRELIMINARY

Short Title

This clause provides the short title of the *Ticket Scalping Act 2018*.

Clause 2 Commencement

This clause provides that Part 1 will commence on Royal Assent and the remaining sections on a day fixed by proclamation.

Terms Used

Clause 3

This clause sets out definitions for purposes of the Bill. In particular it defines the terms “advertising publication” and “event” very broadly.

The term “advertising publication” is used to include a notice placed in any public forum whether physical or online and whether or not any charge, fee or subscription is paid by the advertiser.

Similarly, the term “event” has broad application and includes any performance or display which may be accessed by purchase of a ticket.

Clause 4 Resale Restrictions

Clause 4 defines resale restrictions for the purposes of determining which tickets the provisions of the Bill will apply to. Subclauses (1) and (2) describe what “resale restrictions” are and specifically link to clause 5(1) which sets out the scope of the Bill.

Subclause (1) describes a resale restriction as any term or condition of purchase of a ticket that places a limitation on the circumstances in which the ticket can be resold. Such a condition will generally be dictated by the event organiser and reflected in the terms and conditions that apply to the sale of tickets by an authorised ticket seller.

Subclause (2) provides that a resale restriction will be considered to apply where a ticket is sold subject to a condition that it will be invalid if it is resold.

Clause 5 Application of the Act

Clause 5(1) provides that the Act will apply to tickets to events in Western Australia where the tickets are subject to resale restrictions as described above.

Clause 5(2) extends the operation of the Act to activities undertaken in other states or territories or outside Australia. This is particularly relevant to an offence under clause 11 which includes activity on a website that could occur wholly outside Western Australia. As the misconduct would relate to an event to be held in Western Australia the provision will protect consumers in the State who may be otherwise be adversely affected by software that impedes their capacity to purchase tickets to the event.

Part 2 – Resale, supply or advertising of tickets

Clause 6 Ticket Scalping

Clause 6 is an offence provision which provides a maximum penalty of \$20 000 where a ticket which is subject to resale restrictions is sold for a price that is more than 10 percent above the original ticket price. The original ticket price will be the face value of the ticket plus any booking fee or commission paid by the original ticket holder when purchasing the ticket.

Clause 7 Invalid resale restrictions

Clause 7 will protect purchasers of resold tickets by ensuring that when a ticket is bought from a reseller in accordance with the requirements of the Act (for less than 110 percent of the original ticket price) the purchaser will secure a valid ticket, because any term or condition to the contrary will be void.

Clause 8 Supply of tickets not to be made contingent on other purchases

Clause 8(1) provides that it is an offence to supply a ticket for admission to an event under an agreement that requires any other goods or services to be purchased together with the ticket. This prevents the price of the ticket being effectively increased above 110 percent of the ticket price by including an additional premium in the charge for the associated goods or services.

Clause 8(2) permits the supply of a ticket contingent on other purchases where this has been authorised by the event organiser. This permits the sale of packages combining tickets with meals or accommodation which are often utilised with the consent of the organiser as a promotional tool. There is also an ability to prescribe by regulation other kinds of agreement. This is considered necessary to permit other arrangements for example the selling or raffling of event tickets for promotional or charitable purposes.

Clause 9 Prohibited advertisements

The requirements for an advertisement offering tickets for resale are set out in this clause. The price specified in the advertisement must not be more than 110 percent of the original ticket price, being the face value of the ticket plus any booking fee or commission paid by the original purchaser.

A ticket resale advertisement is also required to specify the original price of the ticket, and information about the location from which the event can be viewed. This provides information to prospective purchasers to allow them to make a judgement about the value of the ticket.

Clause 10 Ticket resale advertising

Clause 10 provides that the owner of an advertising publication must ensure that advertisements published in the publication are not prohibited advertisements under clause 9. "Advertising publication" is defined broadly to include both traditional physical advertising mediums such as newspapers and magazines and online sites and platforms that permit notices, advertising tickets for resale, to be placed on the site, platform or service. A notice offering tickets for sale will be an advertisement whether or not there has been any payment for the placement of the notice.

A defence will be available if the owner of the publication can satisfy all of the elements of the defence set out in subclause 2. These require the owner to have published the advertisement in the ordinary course of business (whether or not the publication is a commercial enterprise), to have taken reasonable steps to ensure that advertisements by resellers are compliant (including having an agreement with the seller that prohibits publication of prohibited advertisements) and to have taken reasonable steps to remove the

advertisement on becoming aware that it is a prohibited advertisement under this legislation.

Part 3 – Online Purchase of Tickets

Clause 11 Prohibited conduct in relation to the use of ticketing websites

Clause 11 prohibits the use of software programs that enable a user to circumvent security measures employed by ticket selling websites to prevent the automated purchase of quantities of tickets for the purposes of resale. The security measures may be applied to the website at the request of the event organiser, or initiated by the ticket seller. Terms of use of the website will advise those accessing the site of the requirement to comply with restrictions on the use of ‘bots’ as a condition of purchase through the site.

Security measures is defined to include measures currently in use that would be ordinarily come within the meaning of that term, and any measures of a kind prescribed by the regulations.

The maximum penalty for an offence under this section is a maximum fine of \$100 000. This penalty recognises that there are software programs that would generate a large amount of revenue if used in contravention of the provisions of the Bill.

Part 4 – Miscellaneous

Clause 12 Functions of the Commissioner

Clause 12 outlines the functions of the Commissioner for Consumer Protection in administering the Act. These are broadly consistent with the range of functions exercised by the Commissioner in respect of other legislation administered by the Consumer Protection Division of the Department of Mines, Industry Regulation and Safety and include responsibilities for promoting the operation of the Act and educational and compliance activities as well as the receipt and investigation of complaints.

Subclause (1)(d) confers a function on the Commissioner to issue a public statement or warning about conduct or practices in breach of the Act. This provides an option for protecting members of the public from being adversely affected by the conduct of scalpers where prosecution of the offender may not be possible or appropriate.

If the warning identifies a specific person, the Commissioner must not issue the statement unless satisfied that it is in the public interest.

Clause 13 Application of the *Fair Trading Act 2010*

Clause 13 applies some of the provisions of the *Fair Trading Act 2010* (FTA), with the necessary modifications, to provide investigation and enforcement powers for the Commissioner.

Subclause (1)(a) applies sections 60 and 61 of the FTA which provide for delegation of powers and judicial notice of the Commissioner’s signature.

Subclause (1)(b) applies most of Part 6 of the FTA, which provides powers for investigation and enforcement. The provisions are modified in subclause (2) to provide that investigators appointed under the FTA will be regarded as having been appointed under this Act, sections 64 and 65 are therefore not applied, as no separate powers of appointment are required. Division 4A is not applied, as the powers conferred under that Division related only to registration and licensing Acts administered by Consumer Protection.

Subclause (1)(c) applies those sections of Part 7 that deal with the institution and conduct of criminal proceedings and the issue of injunctions. Those sections that relate specifically to proceedings under the FTA or conduct of civil proceedings are not to be applied as they are not relevant to the Act.

Subclause (1)(d) applies sections 112, 113, 114 and 115 which deal with the responsibilities of, and protections provided to, persons managing personal information collected in the process of administration of the Act.

Subclause 2 makes the amendments required to the applied sections to ensure that they work as intended in this Act, and to remove references to those sections that have not been applied.

Clause 14 Infringement notices and the *Criminal Procedure Act 2004*

It is intended that the Bill, if enacted, will be prescribed for the purposes of the *Criminal Procedure Act 2004*, allowing less serious offences to be dealt with by way of issue of an infringement notice.

Clause 14 provides for the modification of the *Criminal Procedure Act* to allow additional time for the service of a notice – permitting the collection of sufficient information to support an allegation.

An infringement notice will be required to be served within 21 days of the day on which the authorised officer forms the opinion that there is sufficient evidence to support the allegation, and no more than six months after the date of commission of the offence.

Clause 15 Regulations

Clause 15 provides the Governor with the power to make regulations in support of the Act. The regulations made in support of the Act can include prescribing offences and penalties not exceeding the penalty of a fine of \$5 000.

Clause 16 Review of the Act

As the Bill will result in new regulation, and mechanisms for ticket selling have changed significantly in recent years, clause 16 will provide for statutory review of the operation and effectiveness of the legislation after 5 years, with a report of the findings of the review to be provided to Parliament.

Part 5 – Transitional Provision

Clause 17 Transitional Provision

Clause 17 is a transitional provision, which provides that the Act will not apply to tickets purchased prior to the commencement of the Act.