



Responses to Questions Taken on Notice at Hearing Wednesday 7 August 2019

Department of Mines Industry Regulation and Safety, Consumer Protection Division

A1. Hon NICK GOIRAN (Page 3) sought information with regard to the data on the rate of complaints of ticket scalping reported at WA venues.

Response to be provided by VenuesWest

A2. Hon SALLY TALBOT (CHAIR) sought information about prosecutions for ticket fraud under the WA Criminal Code.

On 10 May 2019 Hannah Valentine was convicted of 53 separate fraud offences in the Perth Magistrates Court arising from the sale of fake tickets on Facebook and Gumtree using accounts in a number of false names. In some instances purchasers did not receive any tickets, in other cases, they received tickets that were counterfeit or had been altered in a way which rendered them invalid.

As far as Consumer Protection is able to determine, this is the only recent prosecution for ticket fraud offences.

WA Police advise members of the public to report online trading issues such as sale of fraudulent tickets on online platforms to the national agency the Australian Cybercrime Online Reporting Network (ACORN). Matters may then be referred to WA Police by ACORN for investigation.

A3 Hon SALLY TALBOT (CHAIR) sought the latest available figure on the value of the live entertainment industry in Western Australia?

Response to be provided by VenuesWest

A4 Hon NICK GOIRAN requested an estimate of the period of time after the passage of the Bill that will be taken prior to proclamation.

The Department understands that it is the Government's intention that the legislation should commence as soon as possible. Drafting of regulations in support of the Act is likely to take around three months. Some additional time will be required to undertake initial information campaigns to ensure that industry and consumers have reasonable notice of the proposed changes. Our best estimate is that the Act will be proclaimed around six months after the Bill completes passage through Parliament.

A5 Hon SALLY TALBOT (CHAIR) sought advice as to whether the Department would be receptive to the insertion of a definition of 'ticket scalping'. Is there a reason for not having a definition?

Advice has been sought from the Office of Parliamentary Counsel (PCO). PCO advises that it would not be appropriate to define a term that is not used in the Bill. In the view of PCO, the short title, which uses the term, is descriptive of the content of the Bill and it is not unusual for a term used in that context not to appear in the Bill and not to be defined. The term would have its usually understood meaning.

Standing Committee on Legislation

TICKET SCALPING BILL 2018

A6 Hon SALLY TALBOT (CHAIR) sought clarification of what is meant by the phrase ‘a person within a class of persons’ in the definition of ‘event organiser’. Is it possible to provide an example of a person or class or persons who may be declared in the regulations?

Clause 8 of the Bill provides that an ‘event organiser’ may authorise agreements for the supply of tickets contingent on the purchase of other goods - where tickets are sold as part of a package which includes other services such as meals or accommodation.

The ‘event organiser’ will generally be the person who enters into a contract with the authorised ticket seller for the supply of tickets to the event. It is noted, however, that at major venues in Western Australia that are managed by VenuesWest the event organiser, by this definition will be VenuesWest. In some instances it may be necessary to make provision for event promoters to authorise packaging of tickets to events held at those venues independent of VenuesWest. To be able to authorise agreements for the supply of tickets under clause 8 of the Bill requires that a person be an ‘event organiser’. Subclause (b) in the definition of ‘event organiser’ provides a mechanism for dealing with this issue by allowing for additional declared event organisers.

This issue is particularly likely to arise in respect of sporting events, where the association responsible for staging of the event may seek to have ongoing ticket packaging arrangements with members or sponsors for events at multiple venues. In such cases the declared event organiser could potentially be a person within the class of members of the Committee or the Chief Executive Officer of the association.

A7 Hon AARON STONEHOUSE questioned, in relation to figure provided by Venues West about cancelled tickets, whether it would be possible to determine how many people were denied entry to a venue because they had been sold fake tickets, as opposed to the total number denied entry?

Response to be provided by VenuesWest

A8 Hon SALLY TALBOT (CHAIR) Does the addition of a specific defence at clause 13 limit the operation of other defences that might be available under other laws such as the Criminal Code? If not, is it possible to amend the Bill to specifically state this?

PCO has confirmed that the inclusion of a specific defence would not limit the operation of defences that may be available to a defendant under other laws. In their view, it would be possible to draft an amendment to include a subsection specifically stating that. They note, however, that this would not accord with usual drafting practice. Such statements are not usually included when specific defences are drafted for an offence.

A9 Hon NICK GOIRAN What modified penalty is contemplated for offences dealt with by way of an infringement notice?

Section 5 of the Criminal Procedure Act 2004 permits a modified penalty for an infringement notice of up to 20% of the statutory penalty for an offence.

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The offences created by clauses 6, 8 and 10 carry a statutory penalty of \$20 000 which would allow for a maximum penalty of \$4000 to be prescribed for infringement notices. After consultation with our compliance area we can advise that it is likely that the penalty sought for infringement notices for these offences is likely to be significantly lower than the maximum permitted by the legislation.

The Department is likely to recommend a penalty in the range of \$1000 - \$2000. This is because infringement notices are likely to be used to deal with offences involving the sale of a small number of tickets by individuals and a penalty in that range is likely to offer a sufficient deterrent to such activity.

A10 Hon SALLY TALBOT (CHAIR) Would it be possible to insert an aid-memoire or other note summarising the content of the applied provisions in clause 13

PCO have advised that it would be possible to draft an informational note stating what the applied provisions of the *Fair Trading Act 2010* relate to, so that this information is more readily available. This could be inserted by amendment in Committee.

A11 Hon NICK GOIRAN Is there a precedent for the time periods specified in Clause 14 for the issue of infringement notices?

Time periods specified in clause 14 are the same periods used in several other Acts administered by Consumer Protection and that have been found to operate effectively. Specific examples are:

Section 88A of the *Residential Tenancies Act 1987*

Section 173 of the *Associations Incorporation Act 2015*

Section 109 of the *Limited Partnerships Act 2016*

A12 Hon SALLY TABOT (CHAIR) Is it possible for Clause 15 to be amended to provide for the Governor to consult with the Commissioner in making regulations?

PCO advise that requirements for consultation to be undertaken before regulations are made are unusual, but have sometimes been included in legislation. The requirement would be for the Minister, rather than the Governor to consult with another person (in this case the Commissioner for Consumer Protection) before making regulations. Examples of cases where this has previously been done are section 194 of the *Biodiversity Conservation Act 2016* and section 20 of the *Legal Deposit Act 2012*.

PCO notes that it is difficult to imagine why this requirement would add anything of value in this case. In other instances where this has been done, the requirement is to consult with a representative of an agency outside of the Department which administers the legislation and is making the regulations, which may also have an interest in the content. In this instance, staff of the Commissioner for Consumer Protection would be drafting the regulations and it would be expected that consultation with the Commissioner would occur in the usual course of events.

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A13 Hon NICK GOIRAN Is it possible to provide for the commencement of clause 16 on assent rather than proclamation in order to ensure that the legislation is subject to review within five years of assent?

A period of five years after commencement of the Act was selected for the review clause as it is the view of the Department that at that point there will be a sufficient period of operation to enable reasonable assessment of the impact of the legislation. In order to ensure that appropriate data is available to undertake a review, it is preferable for the provisions to commence at the same time as other operative provisions in the Bill.

There is no intention on the part of the Department to delay commencement of any of the provisions of this Bill beyond the minimum period of time necessary to prepare for commencement, neither is there any intention for delay of the commencement of clause 16 beyond the date on which other operative provisions are proclaimed.

A14 Hon NICK GOIRAN Please provide a list of those who were consulted on the Bill, the concerns raised and the clauses in the Bill that address those concerns.

Response to be provided by VenuesWest.