

STANDING COMMITTEE ON LEGISLATION

TICKET SCALPING BILL 2019



TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 7 AUGUST 2019

Members

Hon Dr Sally Talbot (Chair)
Hon Nick Goiran (Deputy Chair)
Hon Colin de Grussa
Hon Aaron Stonehouse
Hon Pierre Yang

Hearing commenced at 9.38 am

Ms PENNY LIPSCOMBE

Director, Legislation and Policy, Consumer Protection Division, sworn and examined:

Ms KARINE BROUX

General Manager, Legislation and Policy, Consumer Protection Division, sworn and examined:

Ms ROBYN PETERSON

Legal Policy Officer, Consumer Protection Division, sworn and examined:

Mrs JANIS CARREN

Director, Strategy and Partnerships, VenuesWest, sworn and examined:

The CHAIR: On behalf of the committee, I would like to welcome you to the hearing. Today's hearing will be broadcast. Before we go live, I would just like to remind all parties that if you have any private documents with you, keep them flat on the desk to avoid the cameras.

[Witnesses took the affirmation.]

The CHAIR: You all will have signed a document entitled, "Information for Witnesses". Have you read and understood that document?

The WITNESSES: Yes.

The CHAIR: These proceedings are being recorded by Hansard and broadcast on the internet. Please note that this broadcast will also be available for viewing online after the hearing. Please advise the committee if you object to the broadcast being made available in this way. A transcript of your evidence will be provided to you. To assist the committee and Hansard, could you please quote the full title of any document you refer to during the course of this hearing for the record. Be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them. I am sure you will all be very courteous, but if you could speak one at a time, it makes Hansard's job a lot easier.

I would remind you that your transcript will be made public. If you wish to provide the committee with details of personal experiences during today's proceedings, you should request that the evidence be taken in private session. If the committee grants your request, any public and media in attendance will then be excluded from the hearing. Until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Let us make a start. Do you want to make an opening statement to the committee?

Ms LIPSCOMBE: Yes, I would like to do that.

The CHAIR: Thank you.

Ms LIPSCOMBE: The Ticket Scalping Bill 2018 was developed to implement an election commitment of the McGowan government to address public concerns about the grossly inflated prices charged by resellers and broking platforms for event tickets and the impact of this scalping on genuine fans. It was initially intended that restrictions on the prices at which tickets could be advertised and sold on the secondary market and a prohibition on the use of automated software for the bulk purchase

of tickets from the authorised ticket seller would be included in major events legislation. This was the model used in most other jurisdictions at that time, with resale restrictions first introduced in Victoria in 2009. However, in 2018, a new scheme was introduced in New South Wales that provided a more comprehensive framework that was likely to be replicated in other jurisdictions and could be adapted for Western Australia. The bill was therefore drafted as stand-alone legislation, dealing with ticket scalping by introducing restrictions on the price at which tickets can be advertised or sold on the resale market and a ban on the use of robotic ticket-buying software. As is the case in the New South Wales act on which it is modelled, the bill is to be administered by the Commissioner for Consumer Protection using investigation and enforcement powers that apply to other consumer protection legislation, including the Australian Consumer Law. Ticket reselling practices can cause detriment to consumers in a number of ways. There is evidence that consumers are being misled by resellers and prevented from making informed purchasing decisions. Inflated prices erode consumer benefit. Consumers are exposed to the risk of cancellation of resold tickets by promoters, and fair access to tickets is undermined by scalpers using buying software bots.

The policy objectives of this bill are: to protect consumers from the detriment of paying inflated prices to commercial resellers for tickets to live sporting and entertainment events in Western Australia; to provide a mechanism permitting the resale of tickets for the purchase price plus reasonable expenses when tickets can no longer be used by the original purchaser and to protect those subsequent purchases from cancellation; to support event promoters and authorised ticket sellers in their efforts to prevent scalping; and to ensure that venues in Western Australia remain attractive and competitive to promoters for the staging of events.

The written submission provided to the committee by the Department of Mines, Industry Regulation and Safety describes in more detail the objectives of this bill, the development process and the issues that have been raised by stakeholders. In that submission, it was noted that the effective control of scalping will depend on the cooperative efforts of government and industry. In that context, the department would like to draw the attention of the committee to the most recent developments in the industry.

On 1 August, primary seller Ticketmaster announced plans to trial new technology in Australia in 2020. The SafeTix encrypted ticket system uses technology that tracks each ticket issued by the agency to a specific mobile phone at all times. The system will not prevent scalping, but will minimise the opportunities for fraud and make the purchase of large quantities of tickets by scalpers more difficult. The market for tickets to live entertainment and sporting events in Australia is significant. Around 18 million tickets are sold to live performances in Australia each year and another 17 million to major live sporting events. Live events are important to Western Australia, both in economic and cultural terms. This bill will protect consumers and promote fair access to the primary market for event tickets while ensuring that WA venues remain attractive and competitive in the bid to attract live entertainment to the state. Thank you very much.

The CHAIR: Thank you. Now, we have got a large number of questions, so I am going to push through them as expeditiously as we can, recognising that we can do some follow-up after the hearing with you if we do not get through everything. But I am going to do my best to get through them because we are on a fairly short time frame. So, my first question was about the policy of the bill because that is part of the referral to this committee. I noticed in your opening statement that you talked about three specific things, two of which I heard as being about consumer protection and one about reselling. Could you just state those again for us so that it is clear?

Ms LIPSCOMBE: Certainly. The primary objectives are to protect consumers from the detriment of inflated prices—that is, protecting consumers—a mechanism to permit the resale of tickets for the

purchase price plus reasonable expenses; to support event promoters and authorised ticket sellers in their bids to prevent scalping, because we recognise that industry certainly has a part to play here; and to ensure that venues in WA remain attractive and competitive to promoters.

The CHAIR: So there are four?

Ms LIPSCOMBE: Four objectives.

The CHAIR: Okay; thank you. How prevalent is ticket scalping in WA today? We have got some contested evidence about the prevalence. What is the department working on?

Mrs CARREN: I can comment from what is happening at the industry level. At VenuesWest venues, we would have a considerable number of upset consumers at our box offices at any given event. They have varied from up to 300 at an event, but usually less than five per cent at each event. But we will have regular consumers sitting there at the box office unable to attend.

The CHAIR: And what is their complaint—that they cannot get in or they have paid too much?

Mrs CARREN: Yes. Correct.

The CHAIR: They cannot get in?

Mrs CARREN: They cannot get in. Yes, so it is fraudulent tickets. We will field complaints in the lead-up to an event about the inflated prices, and often that is associated with incorrect access to tickets or incorrect information. So, the consumer would be incorrectly looking at Viagogo sites or something that has ranked higher than the official outlet. If they contact us, we can redirect them to the official outlet, but otherwise it is actually at the venue on the night itself.

Hon NICK GOIRAN: Further to that, I think you said five per cent of people?

Mrs CARREN: Yes.

Hon NICK GOIRAN: So, is that five per cent of people—on average; I appreciate it is a ballpark figure—who are unable to access the event, or is it five per cent of people who are complaining about the inflated price, or is it both?

Mrs CARREN: It will be both. Yes, it will be both. I would have to get you specific numbers, and it varies greatly event to event depending on, I guess, the popularity of the artist or the sporting event.

Hon NICK GOIRAN: Is there data about the number of complaints that have been received?

Mrs CARREN: Do I have that here? No, I do not.

Hon NICK GOIRAN: No, not here, but would you have that available for the committee at a later stage?

Mrs CARREN: We could probably take that as a question on notice.

The CHAIR: Could you take that on notice? That will be question A1 on notice.

Hon AARON STONEHOUSE: You might be able to answer it in that same question on notice, but I suppose I am wondering how that data is collected. Is it solicited? Is it a survey of all ticket customers? What is the sample size? To understand how useful that data is, I suppose we need to know how it is collected.

[9.50 am]

Mrs CARREN: Yes, there is definitely no sample size, no survey, undertaken, so we do not go and actively try to drum up complaints. It is only a responsive issue.

Hon NICK GOIRAN: Just to round that out, it would assist the committee if the data that is provided to us could be broken down in this fashion. I presume that RAC Arena is one of your stadiums.

Mrs CARREN: Correct.

Hon NICK GOIRAN: Let us say, for instance, at a Perth Wildcats game, the attendance on a particular date was 14 000 and for that particular event there were 1 000 complaints. I think that would assist.

Hon COLIN de GRUSSA: We are talking not just about tickets resold at an inflated price, but also potentially about fraudulent tickets that are not even sold at all, effectively—they are just made. Is there data to break that down as well?

Mrs CARREN: It is going to be quite hard to get that data. We also face an issue of embarrassment by the consumers. Often when they realise that they have bought a fraudulent ticket, they do not want to take that information any further. We will provide the consumer protection education information about what to do when you have found yourself in that circumstance, but they will not want to give us any personal information thereafter.

Hon COLIN de GRUSSA: So you would not have numbers, roughly?

Mrs CARREN: Yes, it is going to be quite a —

The CHAIR: Are you suggesting that it is under-reported?

Mrs CARREN: Yes.

The CHAIR: Why can people not have redress to current consumer protection legislation if they do want to seek some redress? That question is for whoever wants to answer it.

Ms PETERSON: I think it probably depends on the nature of the problem. If it is a fraudulent ticket, then it is not really a consumer protection issue, but obviously there are potential police investigations and it is a criminal offence to commit ticket fraud. From a perspective of having paid too much for tickets or tickets being cancelled by promoters, there is really nothing to be done about that from a consumer protection perspective because there are no rules against it at the moment. If people complain to us that they paid five times the face value of a ticket, at the moment there is nothing to prevent it being sold for that price. There are potential consumer protection issues when consumers are misled and they may be buying a ticket off a site that they believe is the primary ticket seller because of the way the site is set up and advertised, when in fact it is not, and there have been actions taken by the commonwealth against ticket brokers for that type of misleading conduct under fair trading legislation.

The CHAIR: Or consumer protection legislation?

Ms PETERSON: Exactly, yes.

The CHAIR: What about prosecutions under the Criminal Code?

Ms PETERSON: I am not aware of them. I would be able to find out but I do not know off the top of my head. I believe there may have been some.

Ms LIPSCOMBE: We will have to check that for you.

The CHAIR: We will take that as question on notice A2.

Hon NICK GOIRAN: Question A2, that is taken on notice, is about the number of prosecutions that have been made?

The CHAIR: Shall we broaden it to the Criminal Code and consumer protection legislation? I think you answered about consumer protection.

Ms PETERSON: Yes, there will not be any prosecutions under our consumer protection legislation. I can find out whether there have been any criminal prosecutions for you.

The CHAIR: Thank you. I return to the number of complaints that you have received. How many complaints would the department have received since 2014?

Ms PETERSON: We would not receive complaints in relation to inflated prices because, as I say, that is not an offence. We would get phone contacts from people perhaps making inquiries. Certainly, anecdotally we know from our compliance people that that happens, but at the moment obviously all we can tell them is that there is no avenue to complain.

The CHAIR: What about people who cannot get into the venue because they have fake tickets?

Ms PETERSON: Again, if it is a fake ticket, it is a criminal matter and it is not something that we have the capacity to deal with. If they cannot get into an event because the ticket has been cancelled by the promoter because it has been resold, that is a contract issue between them and the person they bought the ticket off. That is not something that we would get involved in.

Hon AARON STONEHOUSE: Do you draw a distinction between fraudulent tickets sold and a broker overselling tickets, when the same ticket may be sold to two different people, perhaps unwittingly by a broker in some kind of mistake? Do you draw a distinction between those two and would you have any power to take action in cases when the same ticket is sold to two people?

Ms LIPSCOMBE: I think we would regard that as the same. Whether it be intentional or not, it is a fraudulent sale.

The CHAIR: In 2018, the commonwealth Treasury gave us a figure—the live entertainment industry was worth \$1.43 billion Australia-wide in 2016. Do you know what Western Australia's share of that would be? What is the value of the industry in WA?

Mrs CARREN: I am not sure off the top of my head. We had six million patrons through our venues in the VenuesWest portfolio in the 2018–19 calendar year. I would have to take that on notice.

The CHAIR: Could you take that as question A3; that is, the latest figures you can provide on the value of the industry in WA?

Hon NICK GOIRAN: Can we have a list of where VenuesWest locations are?

Mrs CARREN: Just now?

Hon NICK GOIRAN: Yes.

Mrs CARREN: Sure: HBF Stadium, HBF Arena, HBF Park, Bendat Basketball Centre, RAC Arena, Optus Stadium, SpeedDome and Perth Motorplex. I think that is close; there are 13 of them.

The CHAIR: You tell us in the submission that you have based the bill on the New South Wales legislation. What evidence do we have for how well that legislation is working in New South Wales?

Ms PETERSON: We have very little evidence at the moment because it commenced in New South Wales only six months ago, so we are still waiting for information. There is evidence, anecdotally, that there has been improved compliance in terms of the advertising that they are seeing for tickets over there. But in terms of prosecution, I am not aware of any that have been conducted as yet in New South Wales.

The CHAIR: The ACCC oversees the Australian Consumer Law, which applies to tickets as well as to other things. What are the deficiencies in the Australian Consumer Law for people who have been scalped?

Ms LIPSCOMBE: The Australian Consumer Law does not directly address overcharging, if we look at scalping as overcharging rather than the fraudulent sale of tickets. It leaves it really to the seller and the buyer to determine what the price would be.

The CHAIR: Can I just share with you a note that I have here which states that the ACL requires a seller to provide tickets which are fit for purpose and match their description; advertise the full price and include all fees, plus the minimum postage costs, if known by the seller at the time; provide a receipt; and not mislead in any way. What is the deficiency in there? What is that not covering?

Ms LIPSCOMBE: When it is talking about the price, it is really that there be full disclosure of the price up front, so if there are embedded fees and so on, that that be included as part of the price so that somebody purchasing from the original site knows what they are getting. With scalping, it is usually a reseller who has bought at the original price and then chooses to resell at a mark-up. The Australian Consumer Law does not address that.

The CHAIR: There is evidence in the UK of what they call sham websites. Do we have any evidence in WA that organised criminal syndicates have entered this market? That is clearly what has happened in the UK. That is the evidence that is emerging from the UK.

Ms LIPSCOMBE: We are not aware of any of those sham websites.

The CHAIR: To whom does a consumer who has been scammed report? Is it the police or the Commissioner for Consumer Protection?

Ms LIPSCOMBE: Has been scammed or scalped?

The CHAIR: Scalped, sorry. Let me get the terminology right.

Ms LIPSCOMBE: I think that would vary. Sometimes they will complain to VenuesWest or the venue. Sometimes they will ring our contact line and we will get inquiries about what might be done about that.

[10.00 am]

The CHAIR: Are you aware of any LGAs—local governments—making local laws on the subject of ticket scalping or ticket reselling? Would they have the power to do that?

Ms PETERSON: I believe there are some local laws in respect of traditional-type scalping—people who are hanging around outside of venues. What you can do on the pavement outside the venue is something that local councils have some authority over, but not the type of activity that this bill is designed to address.

Hon AARON STONEHOUSE: Can we just go back to that question about someone who has bought a fraudulent ticket and been ripped off. Who do they report to? You said that they might complain to VenuesWest or they might complain to the commissioner. Who should they complain to?

Ms LIPSCOMBE: They can certainly also complain to the police.

Hon AARON STONEHOUSE: They can but “should” they complain to the police or they “may”?

Ms LIPSCOMBE: I think they certainly can complain to the police. The issue would be to what degree would the police be able to follow up on that.

Hon AARON STONEHOUSE: But it would be a criminal matter, right? Based on answers you gave previously, it would be a criminal matter; is that correct?

Ms LIPSCOMBE: If it is a fraud.

Hon AARON STONEHOUSE: If they have bought a fraudulent ticket, does VenuesWest or the commissioner refer ripped-off consumers to the police? Do they advise them that they should be complaining to the police if they have been a victim of fraud?

Ms LIPSCOMBE: No, we have not formally referred those matters to the police.

Hon NICK GOIRAN: I think this goes to the heart of what the definition of ticket scalping is because there really does seem to be distinction between a fraudulent ticket—that is my phrase—as one variety. The second variety is the excessively purchased ticket and the third variety is the—I do not know how to describe it other than the street scammer. They seem to be the three types of complaints. It would assist me if we could be clear as to which of those three types this bill is intended to address.

Ms PETERSON: This bill is intended to address primarily the second type because it controls the resale price—a ticket that is being sold for a price that is in excess of the allowed mark-up. It also has other restrictions like the prohibition on bots, but of those three types of scalping, primarily where a ticket is sold by many times the mark-up of its original price.

Hon AARON STONEHOUSE: I am sorry if I am derailing things here but this is my final question on this point. The issue of consumers being defrauded and buying fraudulent, fake tickets seems to be not addressed in this bill. What is addressed in this bill, as you just outlined, is the resale price, which is not illegal under Australian Consumer Law, as you have told us. There is no recourse for people who buy a ticket at an inflated price. But victims of fraud who currently are not being referred to police by VenuesWest or by the commissioner, as you just told us, are not helped by this bill at all. In fact, one of the recommendations in the 2018 Treasury regulatory decision paper was consumer information. It was not a recommendation on maximum resale prices. Is anything being done in this bill to address defrauded consumers?

Ms BROUX: I believe there was a recent prosecution of a fraudulent sale. I believe the police actually prosecuted that.

Hon AARON STONEHOUSE: So the police do have the power to do something and they do prosecute but Venues West and the commissioner are not referring consumers.

Mrs CARREN: That is incorrect, sorry. VenuesWest will take the complaint in the first instance and it will actually refer, as it best sees fit, at the box office level, so whether it is Consumer Protection as the first point of call or the police.

Hon PIERRE YANG: Can I just make an observation? Here in the policies of the bill, I think fraudulent behaviours are not part of the policy of the bill. Is that right?

Ms LIPSCOMBE: That is correct.

Hon PIERRE YANG: So it is definitely not going to be addressed by this bill.

The CHAIR: I think the next little change of question goes to this issue of caveat emptor and why that principle appears not to be sufficient in the case of resale of tickets. Do you want to make a general comment about that or are you happy that you have covered that in responding to other members' questions? Why can we not just apply the principle of caveat emptor?

Ms LIPSCOMBE: I would be happy to look at that. One of the issues that we have with the introduction of robotic software, which can go to the primary site and purchase bulk tickets far faster than any person can, is that it has distorted the market. The ordinary consumer does not have the fair access that might otherwise prevail. In that case, it is a bit hard to simply rely on caveat emptor. I think that is why the government made a commitment to do something about scalping and addressing the inflated prices that those who use the software are then capable of charging.

The CHAIR: So to make sense of these questions, we really need the existence of the robotic technology in there. In a sense, what you are saying is that it is the market disruptor.

Ms LIPSCOMBE: Yes.

The CHAIR: My other question on this subject was why can we not just treat tickets as a good, as a commodity? Is the scalper not just an honest businessperson making a profit on the supply and demand principle?

Ms LIPSCOMBE: As I said, if there was not the advent of robotic software and if scalpers had to compete on much the same basis as any other consumer to obtain tickets, I think that would be a reasonable proposition. But with the advent of that technology and the control of that, it does distort the market.

Ms BROUX: Also in terms of the websites that have been used, consumers often believe they are buying the tickets from the original website. The way the websites are organised is that even if you search for a ticket, what will first come up often is the reseller website, which is where tickets that have been scalped are being sold. It is a very difficult market for the consumer to be able to make informed purchasing decisions.

Hon AARON STONEHOUSE: Just on that, the normal market activity or normal business activity of supply and demand would normally apply except for the advent of bots and the scalper's ability to buy tickets en masse. Do we know what percentage of tickets in WA are bought up by bots?

Mrs CARREN: I do not have that detail to hand.

The CHAIR: Is that available to you? Do you want to take that question on notice?

Mrs CARREN: I could not tell you the volume of inventory that goes onto a resale platform at this time.

Ms PETERSON: I think it would be very difficult for anyone to know, even the authorised ticket sellers themselves because they make efforts to block bots. They are reporting high levels of activity from bots. I think when the commonwealth Treasury did a regulatory impact assessment in 2018, they estimated that bot activity accounted for around 30 per cent of total traffic to primary-sell websites. That was based on information that was provided to them by the primary sellers, but it is always going to be an estimate because when they get a contact to purchase a ticket, they cannot be sure. Part of what they are doing is trying to identify the bot activity, but they cannot do it with 100 per cent accuracy.

Hon AARON STONEHOUSE: There was one other thing you identified as a problem disrupting the normal business activity and that was confusion around search results online when the resale website might be listed at the top rather than the legitimate primary seller. Is there anything in the bill that addresses that problem?

Ms LIPSCOMBE: No, there is nothing in the bill that addresses that. Representations have been made to Google and the other websites. In fact, recently, Google announced that it is not going to allow Viagogo, for example, which is a ticket reselling platform, to appear —

Hon AARON STONEHOUSE: To buy that top ad space.

Ms LIPSCOMBE: Yes, to buy that top space.

Ms PETERSON: There has been some work done at a commonwealth level. The consumer affairs ministers nationally, as part of a national project, are looking at introducing some requirements around disclosure from secondary ticket web sellers, and that will be done nationally as part of that project.

[10.10 am]

Hon NICK GOIRAN: Further to this, who sells the tickets for VenuesWest events?

Mrs CARREN: We engage a ticketing company to do that.

Hon NICK GOIRAN: Is it always the same company?

Mrs CARREN: No. There are different ones for different venues.

Hon NICK GOIRAN: Okay. So there is a contract between you and the ticketing company on an event-by-event basis, or a venue-by-venue basis?

Mrs CARREN: Venue by venue.

Hon NICK GOIRAN: If you are in a contract with a ticket seller for a particular venue—we will just use Optus Stadium as an example—would it be possible for you, in your contract with them, as a term of the contract, to insist that they buy the top search item? I just heard that there is a capacity for Viagogo to buy the top search entry. Well, if they can do it, why do we not do that? And if that is able to be negotiated with the ticket seller—you want to have the benefit of selling tickets to Perth Optus Stadium—that is obviously a lucrative contract for that particular organisation otherwise they would not do it in the first place—the trade-off is you need to be the best. You cannot be outboxed by Viagogo.

Mrs CARREN: I guess that is a lot of commercial market forces happening at the same time. So we would be negotiating to get a really good deal for Western Australia and to bring the best content we possibly can to the people and visitors of Western Australia. So the different ticketing companies are in a competitive setting against each other to do that for us and then the advertising spend that they have is part of that but then they are also competing with other people, so I am not sure that we can specifically contract to secure a high ranking with another advertising body like Google.

Hon NICK GOIRAN: So you could do it, but you just do not want to do it?

Mrs CARREN: It would be a good way of guaranteeing low content at the cost of a spend on marketing if the official ticket provider was required to be at the top of ranking.

The CHAIR: It is part of the marketing cost splitting, is it not—advertising?

Hon COLIN de GRUSSA: Just further to this discussion the primary ticket resellers, do you have a view as to whether they actually make it easy enough for the consumer to understand exactly what they are purchasing, and access those tickets relatively easily? Because there has obviously been some experience that would suggest that perhaps it is very difficult to—even on the primary ticket resellers sites—actually buy the tickets in the first place. Do you have a view on that? Is that part of the contract negotiations?

Mrs CARREN: Absolutely. I think that the official ticket outlets do a fantastic job of managing the on sale as per the promoter instructions. So I think they are very active in the inventory management and it is about consumer education, ongoing. I think it is important that the consumer checks with the venue and with the official ticketing provider. So I have no damnation of the industry itself. I have a lot of damnation for the resellers who actually fraudulently present inventory that does not exist at venues, including things that you would perhaps expect on other types of goods and services that you would buy; things like reclining seats and viewpoints at venues that do not exist, and the resellers try to sell it to our consumers.

Hon COLIN de GRUSSA: Are the requirements for the primary resellers to make the sale of tickets convenient for the consumer so that they happen at times when the consumer is actually available to log on to the website and buy the tickets?

Mrs CARREN: Absolutely, yes. There is a long-negotiated discussion about what the on-sale strategy is for each event. There is a lot of information that goes out to the marketplace prior to on-sales. They are staged. There is a requirement to be able to access information by telephone, through websites and through mobile devices.

Hon COLIN de GRUSSA: And so you are suggesting that ticket sales are staged in terms of the number of tickets sold over a period of time. Is that right?

Mrs CARREN: They can be if that is the marketing strategy for their particular event, and, again, that is dependent on what is actually being proposed to go on sale.

The CHAIR: Have you considered that an alternate to this approach might be to regulate the primary market to insist that the primary sellers disclose more information. For example, we had an example drawn to our attention. It is actually from the Senate report where eBay talked about—I do not think it was an Australia—a Justin Bieber concert in February 2013, where 93 per cent of the tickets had been set aside for other partners and only seven per cent went on public sale. Has there been any consideration given to altering the focus of the bill to focus on the primary providers to disclose more information and follow a set of regulations?

Mrs CARREN: From our viewpoint, the industry is opposed to that kind of shift. It is an essential marketing strategy to test what the appetite is for an event to be able to scale it up and down appropriately so that the event experience is the appropriate one.

The CHAIR: But could that happen at a VenuesWest concert or an event in Western Australia—that only seven per cent of the tickets went on public sale?

Mrs CARREN: No.

The CHAIR: Why could it not happen?

Mrs CARREN: Why could it not happen? Because of the on-sale strategy. For example, for Optus Stadium there is a guarantee that we have a number of walk-ups, there is a fan-first commitment, there is a commitment to tourism outcomes and then there is a commitment to servicing members and things like that.

The CHAIR: Okay, so there are a set of expectations and requirements?

Mrs CARREN: Yes, absolutely.

Hon AARON STONEHOUSE: I suppose it changes from venue to venue, but can you give us an idea of what percentage of tickets for VenuesWest venues are sold to the general public and what are set aside for partners, people in the industry, reserved for VIPs and that kind of thing?

Mrs CARREN: Again, it would vary for every event and for the promoters. So the promoter negotiates an on-sale strategy and determines what level of inventory they would like to retain as theirs, which would be the VIP; that is usually a very conservative number. The venue typically has another, I guess, set of house seats, and it would determine whether it wants to put that into the general pool or reserve that for VIP use, and then the rest is available for general public through different marketing strategies.

The CHAIR: Our submissions will be available for you to read later today, presumably. We have made them all public and they will be on the internet, but you will see that there are many submitters who talk about the fact that—I am just going to summarise it from one phrase that a submitter gave us—which was that if tickets were really easy to come by, then the industry would not exist. And that has been borne out by many, many anecdotes that we have heard. What is your response to that?

Mrs CARREN: I think the industry exists because it sees an opportunity to generate revenue at very little cost, and it is an opportunistic sort of activity.

Hon AARON STONEHOUSE: The supply of tickets is limited, obviously. Everybody wants to go see the upcoming Eagles game, but there is a limited number of tickets. How do you ration those tickets

to ensure that those that want to go get to go? Is it the first person in line to buy the ticket that gets it, or do you use a price? What is the best way to ration these? Is your view that it is just first come, first served? Is that the approach taken here, or should a price mechanism be used for rationing tickets?

Mrs CARREN: There are many mechanisms put in place by the industry itself. Price is one of them; for example, there will be, say, five tiers in place, different price points for different experiences and up-close experiences, so that automatically splits the market. Then there is the on-sale strategies themselves, so often a promoter might choose to do an onsell for a fan-base first, but then there will be a staged approach, and so it is definitely not first come, first served; it is staged.

Hon AARON STONEHOUSE: Then if resellers are selling tickets with a 200 per cent, 300 per cent or 500 per cent mark-up, does it not show that there is still a demand for those tickets out there and all they are doing is facilitating that those who want it the most are getting access to those tickets?

Mrs CARREN: But that is the artificial nature of what the resellers do. So, in fact, if you search for an event, you will access a reseller's platform which makes you feel like it is sold out as a consumer, but it is not, and the tickets are still available through the official outlet.

Hon AARON STONEHOUSE: Can we just be clear, though, that what you are describing there would be a misleading practice, right?

Mrs CARREN: Correct, yes.

Hon AARON STONEHOUSE: But that is distinctly different to somebody who is selling a ticket at a mark-up. These can be two separate things. They may be done together—

Mrs CARREN: It can be two separate things.

Hon AARON STONEHOUSE: —but they can be two separate things. And we have spoken, as well, about fraudulent tickets, fake tickets, being sold and people being disappointed at the gate because they cannot get in. Again, that is a distinctly different thing. This bill, though, only seems to deal with the price mark-up; it does not deal with those fraudulent or misleading behaviours or activities, does it?

Mrs CARREN: I think, yes, you are right. But I guess what we are trying to do through this bill is establish the fact that there is a legitimate reason to have a reselling availability. It is normal that the consumer will buy a ticket and potentially not be able to use it, and so therefore we are saying that is okay as long as it works within the parameters that we have set in this bill.

The CHAIR: We will move on to some questions about specific clauses, but can I just ask you one final question about the overall nature of the bill: there seems to have been support at COAG for a national approach. Why have we gone down this path of not implementing uniform legislation? Why is each state taking its own measures?

[10.20 am]

Ms PETERSON: Consideration was given to doing it nationally and there were some agreed outcomes in terms of the national process. As I said before, one was in respect of misleading behaviour and the other is in respect of the prohibition on bots. There is still some work being done at a national level on that, although it may take a while to come to fruition. With respect to the resale price restrictions, that did not go ahead nationally but that may well be because a lot of jurisdictions already have their own restrictions along the lines of what we are proposing. I am speculating. The decision was made that it was not going to go ahead at a national level so the government here decided to act on a state basis on that particular issue, although there are some issues that are still being looked at nationally.

The CHAIR: Has industry itself taken measures to deal with scalping?

Ms LIPSCOMBE: Yes, they have. You would all be familiar with the ticket selling platforms that ask you to show that you are not a robot. That certainly is an industry.

The CHAIR: The CAPTCHA mechanism, which apparently does not work.

Ms LIPSCOMBE: It did for a while and then somebody thought a way around it. Yes, industry is actively taking those sorts of steps. The new encrypted tickets that Ticketmaster has just brought out is another industry advent to try to deal with that. Promoters themselves by putting resale restrictions on tickets is their attempt to discourage scalpers from buying up tickets and simply reselling them. I think industry is actively attempting to do things, to get as many tickets as possible to legitimate fans.

Ms PETERSON: One of the things they do, and one of the things this bill is designed to address, is that a number of promoters and artists have a policy that where there is evidence that tickets have been resold, they will be cancelled, and that is a condition of the original purchase. That is a big part of the reason people are being turned away at venues. It is not that the ticket was fraudulent, but that it has been cancelled because the original seller has identified the fact that it has been resold. That is one thing that a number of artists and promoters do, and that is one of the things that we are attempting to address, because it is causing detriment to consumers.

The CHAIR: Let us move on to the specific clauses. I will start with clause 2, which has different commencement times. Can you explain the reasons the whole act cannot commence on royal assent?

Ms PETERSON: There is not any intention that different provisions will commence at different times, apart from the usual process of clause 1, the initial clauses. The intention is that the rest will come into effect at the same time. The primary reason for allowing commencement on a date by proclamation rather than immediately is because there is an intention that a number of offences in this bill will be dealt with by way of infringement notice and we need to put regulations into effect to deal with that. As part of that process we also need to have some time with industry while they clear existing inventories and that sort of process and get themselves up to speed. It is intended that it will all commence simultaneously and as soon as everything is in place for that to happen.

The CHAIR: You have got regulations to draft and you also have an education campaign. Is that with industry or with the public as well?

Ms PETERSON: Both.

Hon NICK GOIRAN: What is the intended time frame between assent and proclamation? What is the plan?

Ms LIPSCOMBE: It would be as expediently as we could achieve all of those regulations that we need to do and prepare the education.

Hon NICK GOIRAN: Sure, but there must be a plan. I know that it will be done as soon as possible, but how many regulations need to be drafted? Is there already a draft education plan in place? Has there been consultation with industry to find out what that education process might look like? It is not conceivable to me that we are at this stage and there is no plan whatsoever. There must be some rough time frame.

Ms PETERSON: There is in the sense that we are looking at—in terms of the education campaign and getting people up to speed, we do have a plan organised and we are looking at an 18-month plan in terms of our education and commencement. That does not mean that we are waiting 18 months to start; that means from the time that it starts we would be providing the education and

support to industry and phasing it in. In terms of the actual commencement though, we are dependent on this getting through Parliament. It is difficult to predict when that is going to happen.

Hon NICK GOIRAN: No, that is not my question. Irrespective of when Parliament passes this law—it might happen next month, it might happen next year—there is then a period of time after it has passed Parliament before then the proclamation will take place. The question is: what is that period of time, irrespective of when Parliament passes it?

Ms LIPSCOMBE: We cannot give you a precise date on that. If you like, we can take that on notice and do our best to estimate that for you.

The CHAIR: We will have an estimate of the implementation time in question on notice A4.

We move on to clause 3. We notice that the terms “scalping” or “ticket scalping” are not defined in clause 3. Is that an omission or is there a plan here? Perhaps I will go through a couple of other elements of that same question, which is that part of the long title reads as follows —

An Act to restrict the resale of event tickets ...

Our question is: is restricting the resale of ticket events what ticket scalping is?

Ms PETERSON: Ticket scalping is the selling of a ticket for an amount that exceeds the original purchase price by more than 10 per cent as described in clause 6.

The CHAIR: Would you be receptive to the insertion of a definition of ticket scalping along the lines that you have just suggested, or is there a reason for not having a definition? It does not actually appear in the bill, given that the titles are not part of the written law.

Ms LIPSCOMBE: We can certainly discuss that.

The CHAIR: Would you mind giving us a response to that as a question on notice, because obviously it is something that is of interest to us. That will be question A5.

Ms BROUX: Is there a reason for including “ticket scalping” as a definition? Currently the way the bill works is to set up what is prohibited conduct. Is the committee looking for something to connect it to the term used in the community?

The CHAIR: There is an offence provision at clause 6, which seems to suggest to us that it would be of some benefit to have actually defined the term.

Hon NICK GOIRAN: If I might add, the title of the bill is the Ticket Scalping Bill and I think it is useful for Western Australians to be clear as to what this law is intended to address. We went through those three scenarios earlier. I think the evidence that was given was helpful to indicate that it was the second scenario, which was the inflated ticket scenario that is sought to be addressed here. If that is the case, it is probably useful to have a definition.

Ms BROUX: That is very helpful, thank you.

The CHAIR: Just in the spirit of helpfulness, I might refer you to the question about the connection between the long title and the short title, which has been the subject of some discussion in the upper house, about how closely it has to be related and what is the nature of the connection.

Question on notice A5 is the insertion of the definition of ticket scalping.

We move to the definition of “advertising publication” on page 2, line 12. Why is that then left so broad?

[10.30 am]

Ms PETERSON: The definition of “advertising publication” has been left as broad as we can possibly leave it, because of the fact that a lot of this advertising happens online, and there are new

mechanisms and newly described mechanisms coming on board all the time. We have a specific discussion about this with PCO, because we have actually added to the definition that was in the New South Wales one this is based on to add “online facility” because, after discussion with PCO we decided that just saying “website” was not sufficient to cover all online selling facilities.

The CHAIR: So “online facility” includes Facebook and Twitter?

Ms PETERSON: Exactly. Those are the ones at the moment, but obviously there can be new systems coming on board. The reason for describing it so broadly is that the advertising is one of the big issues that we have with this, because one of the targets is the activity of the resale platforms, or the retail advertising platforms. One of the issues that we have with dealing with an online reselling broker, like Viagogo, is that they are not the seller of the ticket. That is what they tell us in the course of consumer law proceedings and conversations that we have with them. The seller is the person who owns the ticket. They are simply a broker, or an advertiser, and because the target of this bill is that advertising process, in a lot of cases that is where the damage is caused. We want to make sure that we are capturing any platform or publication or any mechanism by which that promotion is carried out.

The CHAIR: So it is a kind of futureproofing?

Ms PETERSON: Yes.

The CHAIR: What about the definition of “event organiser” on page 3, line 11? Can you tell us what is meant by the phrase “a person within a class of persons”, and can you provide an example of a person or a class of person that may be declared in regulations?

Ms PETERSON: No, I am sorry; I would have to check that. I will take it on notice if you want.

The CHAIR: I feel as if I am hosting a quiz program. Do you want to take that one on notice?

Ms PETERSON: Yes, please.

The CHAIR: Okay, so A6 is our question 29, about the definition of “event organiser”.

I move to clause 4, “Resale restrictions”. Under the definition of “resale restriction” in clause 4(1) it is up to the event organiser to decide whether or not to impose a restriction on the face of the ticket by inserting relevant words such as “cancelled if resold”. That is copied from the New South Wales model, which defines ticket restriction more widely to include an express prohibition against resale of the ticket. By contrast, clause 4 presupposes that all tickets may be resold. Why not include an express prohibition?

Ms PETERSON: We do not want to completely prohibit resale. We want to permit resale in accordance with requirements of the act. What ticket sellers do is that they will put a condition on the ticket saying that it will be cancelled if it is resold. They generally do that as a way of attempting to prevent scalping, and they do act on it, as we said before, to cancel the ticket if they have evidence that it has been resold. So what we are trying to do is, we are trying to create a situation where, if a resale restriction has been placed on the ticket—if it has been sold subject to a condition that it will not be resold, and if it is resold it will be cancelled—then that ticket will have the protection of this legislation. If the original organiser is not concerned about tickets being resold, and is happy for them to be resold by the purchaser at will—that will normally be a small event, or community event where they do not believe that there will be a risk of tickets being resold at marked-up prices—then the legislation will not apply.

The CHAIR: Just as a matter perhaps of speculation, what informs the decision by the promoter?

Ms PETERSON: It will generally be informed by the fact that they believe that there is a risk of tickets being scalped.

Hon AARON STONEHOUSE: Can I follow up on that? I know this is a bit out of place because we are going through the clauses now, but earlier we spoke about dissatisfied customers turning up to an event and not being able to get through the gate. I was presuming that those people had been defrauded, and maybe many of those people have, but do we have any idea how many of those customers or consumers going to the event and being denied access are denied access as a result of being defrauded, or having the ticket cancelled by the venue operator because the venue operator has identified it as having been resold? Do we have a breakdown of that, perhaps?

Mrs CARREN: Where they are concerned and are happy to talk to us at the box office, we capture that information, and ask where the ticket has been sold, because it will be stopped, so we do have details, for example, of the 102 Eminem through Viagogo. We can capture that information.

Hon AARON STONEHOUSE: So the 102 were people who were not getting in, because the venue operator had cancelled their ticket, because they had identified it was resold through Viagogo?

Mrs CARREN: Correct.

Hon AARON STONEHOUSE: Distinctly different from people who were sold fake tickets?

Mrs CARREN: Correct.

Hon AARON STONEHOUSE: Do we know, at that same venue, how many people were denied access because they were sold fake tickets?

Mrs CARREN: Sorry, I do not have that detail right now.

Hon AARON STONEHOUSE: I would be interested to know that. Can we have that on notice?

The CHAIR: We will take that on notice as A7.

I have two questions about clause 5(2) and the application of the act. What triggers the application of the act, and if it is a global website, how would someone seek relief outside Western Australia?

Ms PETERSON: The act would create an offence, and they would report it. If the event is within Western Australia—so a ticket is sold to an event in Western Australia—and the person has an experience of a breach of the legislation, then they would report it to us, and Consumer Protection would be responsible then for making a decision on how best to deal with it.

Hon NICK GOIRAN: Further to that, let us try to work through a practical example here. I am a Manchester United fan who lives in England, and Manchester United is coming to play at Perth Optus Stadium. I go online and I purchase a ticket, and unbeknownst to me I am paying 50 per cent of more than the face value of the ticket, and this law is now in force. This is the scenario. Would that ticket sale or resale at 50 per cent inflation be captured by this bill, and if I am this Manchester United person from England, who do I complain to and get redress from?

Ms LIPSCOMBE: It would apply, and you would complain to Consumer Protection in Western Australia.

Hon NICK GOIRAN: What action would be available to Consumer Protection at that point, on behalf of this overseas tourist?

Ms LIPSCOMBE: We would approach the organisation that sold the ticket and carry out our investigations accordingly.

Hon NICK GOIRAN: That would be more difficult if that organisation was based overseas than in Western Australia for Consumer Protection?

Ms LIPSCOMBE: Yes, it is always more difficult if you are pursuing something overseas.

The CHAIR: We move to clause 6, which is the key one that appears to lack a definition, because it looks at first glance as if we have got a definition of “ticket scalping” here, which I think Ms Broux was referring to. This is clearly the clause that creates the offence, so the first question we have is: is it a criminal or a civil offence?

Ms PETERSON: It is a criminal offence.

The CHAIR: What are you thinking about the modified penalty, for the \$20 000 penalty?

Ms PETERSON: The infringement notice regime would allow, once we get the regulations in place, a penalty for an infringement of up to 20 per cent of that \$20 000. We have not determined exactly what that penalty will be as yet.

The CHAIR: Here again you will find this thematically through the submissions we have received. Is there not a sense in which the 10 per cent is a kind of price-setting mechanism for the resale of tickets? If that is the case, why 10 per cent?

Ms PETERSON: It is intended to cover the costs associated with resale of the ticket. If you are a person who has purchased a ticket, there will be other costs associated with the purchase of that ticket and advertising it for resale that we need to provide an amount that is reasonable to cover. There are other ways of doing it. In New South Wales you can claim your expenses back up to a maximum of 10 per cent, but then of course when you try to enforce it and try to work out whether there has been a breach, you have the process of having to account for all of those various costs and fees, which is quite difficult to do. This is based on the Queensland model, which is the one that was in place when the drafting first started and when we first started considering putting legislation in place in Western Australia, which was the cost price plus 10 per cent. We have kept the same provision in Western Australia because when it was looked at, that was considered to be the most effective way of doing it.

Hon COLIN de GRUSSA: Who was consulted in determining that 10 per cent? Were ticket brokers consulted as to what their costs of operation might be in setting that 10 per cent?

Ms PETERSON: No, they were not, because it is not intended to provide an income for ticket brokers as such. It is intended to cover the reasonable costs of someone who can no longer use their ticket in order to make sure that they are not out of pocket through the process of passing it on to someone else to use.

Hon AARON STONEHOUSE: On the 10 per cent, that would include printing or advertising, maybe driving to meet somebody somewhere to exchange the ticket or something like that, or postage perhaps—things like that; the costs involved or incurred with reselling a ticket. So for a \$50 ticket, \$5 resale; a \$100 ticket, \$10 resale—a \$10 additional margin you can pop on top of that. What is the difference, though, in the administrative cost of somebody reselling a between \$50 and \$100 ticket, or a \$200 or \$300 ticket? We have set it at 10 per cent. I understand you have to set it somewhere—it is going to be arbitrary to some degree, if we are going to put a cap on it—but are we not overlooking the fact that there will be cheaper tickets and more expensive tickets? To give you a practical example, with Billie Eilish at the Fremantle Performing Arts Centre a couple of months ago, I think there were \$50 tickets that sold out almost instantly. For a \$5 margin, that is not worth getting out of bed for some people, I would imagine—certainly not for a broker. Whereas other more expensive tickets have a higher margin, so there is perhaps an incentive to resell more expensive tickets but not an incentive to resell cheaper tickets. Has any thought been given to a fixed price as opposed to a percentage of the face value?

Ms LIPSCOMBE: We could do a fixed price. The difficulty with that is that if you set a fixed price in legislation or regulation, you have to update it from time to time to deal with inflation. We wanted

to set what was a reasonable amount. It is not intended that for every reseller of a ticket that we will always cover all their costs. In fact, sometimes when people can no longer sell a ticket, they will often sell it at a bit of a discount in order that it be used, but it is to cover legitimate costs in a reasonable way. We do not pretend that it is perfect in all cases.

Hon COLIN de GRUSSA: Just going back to my original question about consultation, could you provide us with who was actually consulted with on the setting of that 10 per cent?

Mrs CARREN: The 10 per cent has been taken direct from our peers in other jurisdictions, and then we have worked with our two ticketing providers that are our main providers here in Western Australia, Ticketmaster and Ticketek. We have also discussed it with our partner-managed venues, AEG Ogden and VenuesLive. We have also talked to the Department of Culture and the Arts in terms of the venues that they run.

Ms PETERSON: It is important to maintain some consistency with other jurisdictions, because a lot of these sellers and promoters are operating nationally and we need to have something that is manageable for them.

Hon NICK GOIRAN: Just a couple of questions that arise from this. First of all, about the decision to go with 10 per cent. I understand that that was based on the Queensland model. Was consideration given to allowing no uplift at all in the context that I buy a ticket, I cannot attend, so I either give it to somebody else or I sell it on to somebody else at the same price that I bought it? The fact that I cannot attend and maybe I lose a bit of money on the journey, well, that's life. I bought the ticket, I intended to attend and I cannot do it anymore. Was consideration given to that option, rather than the complexities that immediately arise as soon as you allow 10 per cent?

Ms LIPSCOMBE: I recall a brief conversation around that, but, again, it comes back more to the issue of consistency with other legislation and keeping that as consistent as possible.

Hon NICK GOIRAN: Okay, which takes me to the second question. You indicated earlier that the 10 per cent has largely been selected based on the Queensland model. I understand there are elements of this bill that are based on the New South Wales model. Is the only thing that we have based on the Queensland model just simply that 10 per cent cap, or are there other elements of the Queensland model that we are also incorporating? To what extent are we therefore then incorporating the New South Wales model? I want to be clear as to which parts we are picking from each jurisdiction.

Ms PETERSON: It is primarily based on the New South Wales model. There is nothing outside the pricing issue that is based on the Queensland model. However, the similarity with the Queensland model is not just in the 10 per cent mark-up; it is also in the fact that we incorporate commission costs into the original ticket price, which they do not do in New South Wales.

The CHAIR: We move to clause 10(1) on page 6. Again, we have a question about what modified penalty is being contemplated, if indeed one is.

Ms PETERSON: The same answer applies.

The CHAIR: Subclause (2) may give the impression that this is the sole defence that can be relied on by a charged person. I think, in fact, there might be other defences available outside the bill, given that clause 13(1)(c) excludes sections of the Fair Trading Act. Are there other defences that could be relied on?

Ms PETERSON: This is the only statutory defence that is provided in the act; there may be common law defences available.

The CHAIR: What are your views on including either a note or an amendment to the bill to the effect that other defences, such as those in the Criminal Code, may apply?

Ms PETERSON: We could speak to the drafter and get a view on that. It is not something that we have a view on. It was done this way because this is based on the Australian Consumer Law—set up in the same way. There are offences in the Australian Consumer Law in respect of advertising and false advertising as well, and I believe this was done by the drafter based on what was existing in the ACL, with modifications to suit the requirements in this act.

The CHAIR: Perhaps we could ask you to take that on notice, in the same spirit that you talked about including the definition of “scalping”. That will be question on notice A8, which will be the consideration of an amendment to the bill or a note.

Hon NICK GOIRAN: Just on clause 10 and this issue of the maximum modified penalty, I know in the earlier clause—I think it was clause 6—you mentioned that the modified penalty would be, I think, no more than 20 per cent. Where does the decision come from about 20 per cent?

Ms PETERSON: The 20 per cent is in the legislation that provides for —

Hon NICK GOIRAN: For modified penalties.

Ms PETERSON: — modified penalties in infringement notices.

Ms BROUX: The Criminal Procedure Act I believe it is.

[10.50 am]

Hon NICK GOIRAN: So that caps, if you like, the capacity for there to be a modified penalty with the quantum of that modified penalty, but the decision that is still under consideration is: What modified penalty will be implemented here? Is it a decision that is imminent? Is it something that is capable of being taken on notice and provided to the committee before our inquiry concludes?

Ms LIPSCOMBE: We are not able to provide a definite answer on that. We would have to consult with the minister.

Hon NICK GOIRAN: Okay. Shall we take that on notice?

The CHAIR: Are you prepared to take that as a question on notice?

Ms LIPSCOMBE: We can take that as a question on notice.

Hon NICK GOIRAN: Thanks.

The CHAIR: That is question A9.

We move to clause 11, which is the bot clause. What are the elements of a clause 11 offence? Just to elaborate, what would a prosecutor or the commissioner have to establish in order to mount a case?

Ms PETERSON: They would have to establish that there were conditions in respect of the purchase of tickets from the primary seller that prohibited the use of particular types of software and that the software had been used in contravention of that condition.

The CHAIR: How did you arrive at the penalty?

Ms PETERSON: The penalty was considered to be required to be significantly higher for this offence, and that is because of the nature of the offence, because of the fact that it is activity that takes place on quite a significant scale. We are probably not talking about a single ticket here; we are talking about hundreds or even thousands of tickets being purchased at a time, so it was considered that the penalty needed to be significant enough to deal with that type of activity where there was potential for a lot of profit to be generated out of the activity.

The CHAIR: You clearly think this is a sufficient penalty, because the industry is worth billions, is it not?

Ms PETERSON: Yes, it is potentially.

Hon AARON STONEHOUSE: I refer to clause 11. The definition of the type of software that might be used is a bit general. I understand that the nature of the software might change over time. We do not know what new technology might be out in the future, so I can appreciate the need for that. But what I am wondering is when you talk about security measures in very broad terms, wonder whether someone who is using some kind of software to buy tickets, not for the purpose of scalping, might fall foul of this. I do not know whether there is any software for folks buying tickets for their own personal consumption out there, but perhaps things like software that runs on your browser to apply discount vouchers and codes when checking out through an online store. There are a few platforms like that. Honey is one I hear advertised a lot and you see advertised online. They scour the web for a discount code and then they apply that there. If that was against the terms of some ticket providers' terms of purchasing a ticket, could someone like that fall foul of this offence here in clause 11?

Ms PETERSON: It would have to be in contravention of the restrictions put in place by the site, and those are put in place for specific reasons, to prevent scalping, so they would not be likely to be prohibiting the use in that situation.

Hon AARON STONEHOUSE: I understand I am talking broadly. I am talking about a sort of hypothetical here, but this could be applied not just to bots for the purpose of scalping; this could be applied to any software used that contravenes some kind of security measure that a ticket provider has in place, right? I suppose, this would have to be prescribed in regulations, though, so the regulations would have to spell out what those security measures are. Is that right? I am just trying to make sure that we are not sort of opening the door to someone using discount code software on the browser falling foul of clause 11. What is in place to ensure that that kind of scenario does not arise?

Ms PETERSON: It is going to depend on what the ticket seller has in place and on it being a contravention of that.

Hon AARON STONEHOUSE: That is my concern with that hypothetical scenario. If they had some term that says, "You cannot use a browser plug-in", if you guys know what I am talking about, "to automatically apply discount voucher. You have to have been offered the discount voucher. You can't just use some program that scours the web and finds it for you. That's against our terms of buying a ticket", they would fall foul of this clause 11 offence. That is my concern.

The CHAIR: How would you distinguish between an activity like that, which presumably is not a criminal offence, and the kind of criminal offence that supposed to be captured by clause 11?

Mrs CARREN: I am not sure I am following exactly your point, but I think if I extrapolate it to a real, practical example, the industry might cap the number of tickets you can purchase to 10, and then we identify that a consumer holds 14 tickets, so that is obviously in breach of the cap. We would then contact the account holder as part of the industry practice to check that that is a valid transaction. There are many practices in place like that where it is not going to, I guess, cause the individual consumer an issue. It is really intended to tackle the organised scalpers.

The CHAIR: There is a provision whereby a website could be suspended. Did you look at the possibility of inserting a provision to allow the police or the commissioner to suspend a suspicious website if they suspect criminal activity?

Ms PETERSON: No.

Mrs CARREN: No.

The CHAIR: The New South Wales act provides for, and I quote —

The Minister may, by order published on the NSW legislation website, require a specified event organiser ... 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.

Did you consider inserting an equivalent section in this bill?

Ms PETERSON: It was considered. It was the subject of consultation early in the development of the bill, and the authorised ticket sellers were strongly opposed to the inclusion of that requirement in Western Australia. Did you want to elaborate, Janis?

Mrs CARREN: I think that is correct that the industry is strongly opposed to that. In fact, the publication of total inventory available actually gives the scalpers all the information that they need, and that is quite a considered concern. It is also then anti any of the marketing strategies that are at play, where you can test the demand and make sure that your prices are set correctly. So there was strong consideration and opposition to the inclusion.

The CHAIR: It is interesting that it has been accepted in New South Wales, or presumably they objected to it there as well.

Mrs CARREN: Perhaps, but it has been untested at this time.

The CHAIR: I turn to clause 13, “Application of the *Fair Trading Act 2010*”. Clause 13, on pages 8 to 10, contains multiple insertions and deletions that are difficult and time-consuming for a reader to navigate. We are not unused to doing this sort of thing, but I have to say that it is pretty complex. Would you consider inserting an aide-mémoire or some kind of note summarising these insertions and deletions? It would not form part of the written law, but you have already done that in the EM on pages 4 and 5. Would you consider inserting that in the bill?

Ms PETERSON: Again we would have no issue with that. I would have to just discuss that with parliamentary counsel.

The CHAIR: Could we take that as A10, for you to ask parliamentary counsel and tell us what the reaction is to that? Thank you.

I turn to clause 14, “Infringement notices and the *Criminal Procedure Act 2004*”. What are the benefits of prescribing part 2 of the Criminal Procedure Act 2004 in regulations?

[11.00 am]

Ms PETERSON: That is the process that is used to establish that infringement notices will be available under the act. The Criminal Procedure Act requires that if infringement notices are to be used, the act needs to be prescribed under the regulations.

Hon NICK GOIRAN: This is going back to the earlier point; this is the trigger to enable the 20 per cent maximum.

Ms PETERSON: That is right. That is all set out in the Criminal Procedure Act.

Hon NICK GOIRAN: As a requirement of that act?

Ms PETERSON: That it be prescribed.

Hon NICK GOIRAN: In the absence 14(1), you cannot have the modified penalty regime?

Ms PETERSON: I believe some legislation does contain a modified penalty regime in the act itself rather than it being prescribed under that act, but the process for doing it since that act came into effect in 2004 has been to prescribe it under that act.

The CHAIR: What are you thinking about in terms of modified penalties for less serious offences?

Ms PETERSON: As we said previously, we have not settled on penalties as yet. But we are conscious of the fact that if we are dealing with potentially those offences—not your bot offences, but your offences for selling a ticket at a price more than 10 per cent above, we could be often dealing with just individual consumers and it would be convenient to be able to deal with that by way of infringement notices. I believe the infringement notices will be set at a level that permits them to be used in that way.

The CHAIR: And the six-month period within which to serve an infringement notice, that is unusual. Why did we choose six months?

Ms PETERSON: That is unusual. It was discussed with our operational area who have found that in some of the other legislation that we administer where infringement notices are used, they are not being able to be used effectively because the time frames do not allow for them to do the work that needs to be done and to issue the infringement notice. That particular time period was chosen after consultation with our operational area about what they believed would be necessary for them to use the notices effectively.

Hon NICK GOIRAN: Further to that, the existing provisions in other regimes in WA is presumably less than six months and this is an extended period to enable the workability of the enforcement?

Ms PETERSON: That is right.

Hon NICK GOIRAN: Is there any other template or precedent for a six-month period?

Ms PETERSON: I believe there was but I would have to take that on notice and check it for you. I would not want to speculate on which act it was, but I believe it was based on another one.

Ms BROUX: I believe there are other acts but I would not know at this stage.

The CHAIR: We will make that question on notice A11.

We will move to clause 15. Why have you included the commissioner as making regulations with the Governor, so the Governor making regulations in consultation with the commissioner. Why have you included the commissioner? Sorry, it is the other way round. Would you consider having the Governor consult the commissioner in the making of those regulations, as is sometimes done with ministers?

Ms PETERSON: Yes, we could consider that.

Ms LIPSCOMBE: We will talk with parliamentary counsel on that. It may simply be a drafting issue.

The CHAIR: Could we take that as question on notice A12?

At this stage, are you contemplating any amendments to the bill?

Ms LIPSCOMBE: No.

The CHAIR: At implementation, how many additional FTEs do you think would be involved in monitoring compliance with the act and what additional funding would that involve?

Ms PETERSON: There has been an assessment done. I believe that assessment looked at both running an education campaign and the work involved with that and ongoing monitoring. At this stage they have advised us that we would be looking at one additional FTE in the initial stages and probably 0.5 ongoing, but obviously that depends on the experience once the act comes into effect and we get a chance to see what volume of work is generated out of it.

Hon NICK GOIRAN: Might that be influenced by the data that might come through in respect to the prevalence of this issue? I am mindful of the earlier evidence about the difficulty in being able to

enforce these things with people overseas. Without having given it too much consideration, my initial reaction is that 0.5 FTE would really be inadequate to thoroughly enforce against overseas scammers, but perhaps there has been some further work done on that.

Ms PETERSON: This is the advice that we have from our operational area.

The CHAIR: I think that leads quite neatly onto my final question which is about the five-year review clause, which is two years longer than South Australia, which has specified three years. Given that the technology is moving so fast—I think the first legislation we ever saw in this field was in 2009 and things have moved very rapidly in the last 10 years—do you think five years is too long for a review?

Ms LIPSCOMBE: The short answer to me would be: no, I do not think it is too long. When you look at what it takes to actually get things up and going, to educate the public, and to allow time for people to familiarise themselves and then start to avail themselves of the avenues of redress, it is a reasonable period of time to deal with that lag before it gets used.

Hon NICK GOIRAN: I anticipate you will need to take this on notice. This is linking clause 16 to clause 2, which are the commencement clauses. At the moment, the bill currently reads that clause 16 would come into effect on a day fixed by proclamation, but of course that may never eventuate. I am not suggesting that the government intends any mischief here but of course it would be possible for the executive of government to have clauses 1 to 15 operative and not clause 16. Can you take on notice, in the event that you cannot answer it right now, whether there would be any objection to clause 16 commencing immediately upon assent or alternatively the day after assent?

Ms LIPSCOMBE: My only thought on that would be if there were for some reason an unanticipated delay in proclaiming the rest. Again, that would I guess tie back to your earlier question about is five years too long a period, because any delay of course eats into that period.

Hon NICK GOIRAN: Yes. If the review period begins straightaway, then time begins to run on the five years so that in five years' time will in actual fact be in six years' time. There will be a report before Parliament no matter what telling us what has occurred. If that means that the scheme has not been operating for five of those six years, then Parliament will be informed about that. Is it possible to take that on notice? The specific question is that clause 16 commence on assent or the day after assent.

The CHAIR: That is question on notice A 13. I think that brings us to a close for today. Did any witnesses want to make a final statement?

Hon NICK GOIRAN: Chair, one last thing. I know Hon Colin de Grussa asked about consultation, but if one of my colleagues or one of the witnesses could just refresh my memory, did we get a list of all those who have been consulted on the bill; and, if not, could that be provided?

Mrs CARREN: Yes, we can provide it.

The CHAIR: That will be question on notice A14.

Hon NICK GOIRAN: In doing that, could you provide the list and just indicate what the concerns were of those who were consulted and which clauses in the bill address the concerns that were raised in the consultation process.

The CHAIR: That is all in question A14, which is fortunate because that is the end of the sheet of paper.

Thank you all very much for attending today. We can end the broadcast there, thank you. A transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate these

corrections on the transcript. Errors of fact or substance must be corrected in a formal letter to the committee. You have taken 14 questions on notice. Due to our short reporting period, when you receive your transcript of evidence you will have five working days to provide both transcript corrections and the answers to questions taken on notice. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence.

Thank you very much for your time this morning. It has been very illuminating.

Hearing concluded at 11.10 am
