

General Purpose Standing Committee No. 4

# **Fair Trading Amendment (Ticket Reselling) Bill 2014**

Ordered to be printed 19 February 2015 according to Standing  
Order 231

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Legislative Council. General Purpose Standing Committee No. 4**

Inquiry into the Fair Trading Amendment (Ticket Reselling Bill) 2014 / General Purpose Standing Committee No. 4 [Sydney, N.S.W.] : the Committee, 2015. [75] pages ; 30 cm. (Report no. 30 / General Purpose Standing Committee No. 4)

“Ordered to be printed February 2015”

Chair: Hon. Sarah Mitchell, MLC.

ISBN 9781920788964

1. New South Wales. Parliament. Legislative Assembly. Fair Trading Amendment (Ticket Reselling Bill) 2014.
2. Ticket brokerage—Law and legislation—New South Wales.
3. Tickets—Law and legislation—New South Wales.
  - I. Mitchell, Sarah.
  - II. Title.
- III. Series: New South Wales. Parliament. Legislative Council. General Purpose Standing Committee No. 4. Report ; no. 30

343.94408 (DDC22)

## How to contact the committee

Members of the General Purpose Standing Committee No. 4 can be contacted through the Committee Secretariat. Written correspondence and enquiries should be directed to:

---

The Director

---

General Purpose Standing Committee No. 4

---

Legislative Council

---

Parliament House, Macquarie Street

---

Sydney New South Wales 2000

---

Internet [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)

---

Email [gpscno4@parliament.nsw.gov.au](mailto:gpscno4@parliament.nsw.gov.au)

---

Telephone (02) 9230 3586

---

Facsimile Fax: (02) 9230 2981

---

## Terms of reference

1. That General Purpose Standing Committee No. 4 inquire into and report on the Fair Trading Amendment (Ticket Reselling) Bill 2014.

These terms of reference were referred to the Committee by the Hon Adam Searle MLC.

## Committee membership

---

<b>The Hon Sarah Mitchell MLC</b>	<b>The Nationals</b>	<i>Chair</i>
<b>The Hon Robert Borsak MLC</b>	<b>The Shooters and Fishers Party</b>	<i>Deputy Chair</i>
<b>Dr John Kaye MLC*</b>	<b>The Greens</b>	
<b>The Hon Trevor Khan MLC</b>	<b>The Nationals</b>	
<b>The Hon Charlie Lynn MLC</b>	<b>Liberal Party</b>	
<b>The Hon Adam Searle MLC</b>	<b>Australian Labor Party</b>	
<b>The Hon Lynda Voltz MLC</b>	<b>Australian Labor Party</b>	

---

\*Dr John Kaye MLC replaced Mr David Shoebridge MLC as a member of the committee for the duration of the inquiry.

# Table of contents

	<b>Chair's foreword</b>	<b>vii</b>
	<b>Summary of recommendations</b>	<b>viii</b>
<b>Chapter 1</b>	<b>Introduction</b>	<b>1</b>
	<b>Establishment and conduct of the inquiry</b>	<b>1</b>
	Establishment of the inquiry	1
	Terms of reference	1
	Submissions	1
	Hearing	1
	<b>Structure of report</b>	<b>2</b>
<b>Chapter 2</b>	<b>The ticketing industry</b>	<b>3</b>
	<b>Ticket sales</b>	<b>3</b>
	<b>The primary market</b>	<b>3</b>
	Ticket releases	3
	Underpricing tickets	5
	Ticket refund restrictions	6
	Handling fees	6
	<b>The secondary market</b>	<b>7</b>
	What is ticket scalping?	8
	Prevalence of scalping	9
	Ticket fraud	10
	Conditional support for the secondary market	11
	<b>Consumer protections</b>	<b>13</b>
	Legislation to protect consumers	13
	Industry codes of conduct	14
	Committee comment	15
<b>Chapter 3</b>	<b>Approaches to ticket selling legislation and regulation</b>	<b>17</b>
	<b>Ticket selling legislation in other Australian jurisdictions</b>	<b>17</b>
	Victoria – <i>Major Sporting Events Act 2009</i>	17
	Queensland – <i>Major Sports Facility Act 2001</i> and <i>Major Events Act 2014</i>	19
	South Australia – <i>Major Events Act 2013</i>	20
	Australian Capital Territory – <i>Major Events Act 2014</i>	21
	Committee comment	21
	<b>Non-legislative approaches to ticket scalping</b>	<b>22</b>
	Consumer education	22
	Industry initiatives	24
	Ticket terms and conditions	25
	Ticket insurance	26
	Secondary market initiatives	26
	Committee comment	27

<b>Chapter 4</b>	<b>The Fair Trading Amendment (Ticket Reselling) Bill 2014</b>	<b>29</b>
	<b>Background</b>	<b>29</b>
	Section 58 – tickets covered by new provisions	29
	Section 59 – requirements for ticket advertisements	30
	Section 60 – unauthorised advertisements	30
	Section 60A – tickets to display resale warning	31
	Section 60B – Review of Division	31
	<b>Stakeholder views on the bill</b>	<b>31</b>
	Support for greater regulation of ticket resale	31
	Consumer rights	33
	Effectiveness of the bill	34
	Resale methods not captured by the bill	35
	Requirement to include a photograph of the ticket	35
	Transparency of the secondary ticket market	36
	Impact on price gouging	37
	Implementation and enforcement	38
	Other concerns	39
	Committee comment	40
<b>Appendix 1</b>	<b>Submission list</b>	<b>43</b>
<b>Appendix 2</b>	<b>Witnesses at hearings</b>	<b>44</b>
<b>Appendix 3</b>	<b>Answers to questions on notice</b>	<b>45</b>
<b>Appendix 4</b>	<b>Fair Trading Amendment (Ticket Reselling) Bill 2014</b>	<b>46</b>
<b>Appendix 5</b>	<b>Tabled documents</b>	<b>52</b>
<b>Appendix 6</b>	<b>Minutes</b>	<b>53</b>
<b>Appendix 7</b>	<b>Dissenting statement</b>	<b>62</b>

---

## Chair's foreword

The Fair Trading Amendment (Ticket Reselling) Bill 2014 was proposed as a means of achieving openness and transparency in the secondary ticket market and to address concerns raised by industry stakeholders who were unable to enforce the terms and conditions attached to tickets originally sold through the primary ticket market. In addition, the bill was intended to enhance protections provided to consumers purchasing resale tickets.

The committee received evidence from stakeholders in both the primary and secondary ticket markets who provided valuable input to our consideration of the bill. The committee also considered the incidence of tickets being resold in the secondary ticket market which according to evidence is relatively small, although when an event is sold out, it is highly publicised. Incidences of fraud are also said to occur on a relatively infrequent basis.

Consumers have demonstrated a willingness to purchase tickets through a secondary ticket marketplace and it is important that these transactions are protected, similarly to those in the primary ticket market. Inquiry participants acknowledged the need for a secondary ticket marketplace and supported its existence, provided it was legitimate, transparent and offered a level of security for ticket purchasers.

The committee agreed that more could be done to improve the experience of consumers purchasing tickets in both the primary and secondary markets, while recognising the need for ticketing agencies and event promoters to impose ticket resale terms and conditions. There were differing views on how this could be best achieved with the majority of committee members not supporting a legislative solution.

It is my view, however, that there is scope for proceeding with this bill, or similar legislation, in the next Parliament. I would encourage the Minister for Fair Trading to consider the issues raised in this inquiry should legislative reform be pursued.

I thank my committee colleagues for their participation throughout the inquiry. I also thank the committee secretariat for their guidance, hard work and professionalism.



The Hon Sarah Mitchell MLC  
**Committee Chair**

## Summary of recommendations

- Recommendation 1** **41**  
That the NSW Government not proceed with the Fair Trading Amendment (Ticket Reselling) Bill 2014.
- Recommendation 2** **41**  
That the NSW Government take steps to improve the transparency of the primary ticket selling industry, as touched on in paragraph 2.77 of this report.
- Recommendation 3** **42**  
That the NSW Government, if it believes there need to be improvements in the transparency of the secondary ticket market, should convene an industry roundtable, including participants and consumer representatives, to discuss the relevant issues and see if a consensus can be achieved on sensible and practical reforms that safeguard all interests.



## Chapter 1 Introduction

This chapter provides an overview of how the inquiry was established. It also describes the way in which the inquiry was conducted and provides an outline of the structure of this report.

### Establishment and conduct of the inquiry

#### Establishment of the inquiry

- 1.1 The Fair Trading Amendment (Ticket Reselling) Bill 2014 seeks to amend the *Fair Trading Act 1987*. The bill proposes a new division, namely, Division 6 'Resale of tickets to sporting or entertainment events'. Division 6 includes provisions to prevent the unauthorised advertisement of resale tickets in a manner that is in breach of the ticket terms and conditions set by the event organiser.
- 1.2 The bill was introduced by the NSW Government into the NSW Legislative Assembly on 14 November 2013 by the Hon Anthony Roberts MP, the then Minister for Fair Trading. Following its passage through the Legislative Assembly, it was introduced in the Legislative Council on 26 March 2014 by the Hon Matthew Mason-Cox MLC, Minister for Fair Trading.
- 1.3 Debate on the second reading of the bill commenced on 10 September 2014. At the conclusion of the debate, the bill was referred to the General Purpose Standing Committee No. 4 for further examination by resolution of the Legislative Council.<sup>1</sup>

#### Terms of reference

- 1.4 The terms of reference require the committee to inquire into and report on the Fair Trading Amendment (Ticket Reselling) Bill 2014.

#### Submissions

- 1.5 The committee wrote to identified stakeholders and invited them to make a written submission to the inquiry. The closing date for submissions was 23 October 2014.
- 1.6 The committee received nine submissions representing the views of the ticketing sector, sporting bodies, the live performance industry and those involved in the ticket resale market.
- 1.7 A list of submissions can be found at Appendix 1.

#### Hearing

- 1.8 The committee conducted one hearing, held at Parliament House, on 3 November 2014. The committee received evidence from ticketing agencies, sporting codes and ticket brokers.
- 1.9 A list of witnesses is available at Appendix 2.

---

<sup>1</sup> *Hansard*, Legislative Council, 10 September 2014, p 120 (Adam Searle).

## **Structure of report**

- 1.10** The report is comprised of four chapters. Chapter 1 provides an overview of the establishment and conduct of the inquiry.
- 1.11** Chapter 2 discusses the ticketing industry, including the role of ticket sellers in both the primary and secondary markets.
- 1.12** Chapter 3 includes an analysis of similar legislation currently in place in other Australian jurisdictions. It also discusses non-legislative strategies to improve ticket selling practices in both the primary and secondary ticket markets.
- 1.13** Chapter 4 examines the bill in detail, including its purpose and possible impacts. It also considers the practicalities of implementing the bill and monitoring compliance.

## Chapter 2      The ticketing industry

This chapter discusses the role and features of both the primary and secondary ticket markets. Additionally, the current legislative protections for consumers are also examined.

### Ticket sales

- 2.1 Members of the public seeking to attend sporting events, concerts and the theatre will generally purchase their tickets through the primary ticket sales market. Ticketek or Ticketmaster are considered to be the two major players selling tickets in the primary ticket market.<sup>2</sup>
- 2.2 The price of tickets purchased through the primary market will vary and will generally be based on the ticket category, location of the seat and view of the entertainment. Tickets purchased through the primary market may also be sold as part of a package which could include refreshments, event programs and souvenir items.
- 2.3 In situations where tickets are no longer available via the primary market, tickets can often be purchased through the secondary ticket market. They may be advertised for sale through general online marketplaces such as eBay and Gumtree, or through social media such as Facebook. Online marketplaces specifically established for ticket sales, such as Viagogo and Ticketmaster Resale, are also becoming common. Tickets offered for sale on the secondary market are in most instances tickets that were initially purchased through the primary market.
- 2.4 Tickets are resold for a variety of reasons, including the inability of the original purchaser to attend the event. Tickets may also be resold with the intention of making a profit on the original purchase price. The terms and conditions attached to a ticket may prohibit its resale at a price that is higher than the face value of the ticket. Instances where this occurs and is detected by the primary market ticket seller can result in the ticket being cancelled.<sup>3</sup>

### The primary market

- 2.5 During the inquiry, there was some criticism directed at the ticketing practices of the primary market. Criticisms included restricting the amount of tickets released to the general public, underpricing tickets, poorly timed ticket releases, and restrictive terms and conditions attached to tickets that may prevent resale or refunds. Some inquiry participants claimed that these practices contribute to the existence of the secondary market.

### Ticket releases

- 2.6 The manner in which tickets are allocated and released for sale to the general public will vary and depend on the event and the preferences of the performer (e.g. the artist or the sporting code) and the promoter. From the ticket pool, allocations will be made to corporate sponsors, loyalty programs, credit card companies, and in some instances, the performer.

<sup>2</sup> Zoya Sheftalovich, *The problems with ticketing*, 28 March 2014, Choice, <<http://www.choice.com.au/reviews-and-tests/money/shopping-and-legal/shopping/ticket-pricing.aspx>>.

<sup>3</sup> Ticketek Australia, Ticketek online terms and conditions of sale, Ticketek Australia, <[www.premier.ticketek.com.au/content/buyers/termsofsale.aspx](http://www.premier.ticketek.com.au/content/buyers/termsofsale.aspx)>.

- 2.7** According to Ticketek, the ticket release strategy normally follows a pattern which includes a presale period prior to tickets becoming available to the general public. The presale period caters to members of fan or sporting clubs, sponsors, and other selected groups.<sup>4</sup>
- 2.8** Viagogo, an international ticket resale marketplace, noted that the allocation of tickets to sponsors and corporate entities meant that there are often only a small percentage of tickets made available through the box office for fans.<sup>5</sup>
- 2.9** The Ticket Brokers Association of Australia observed that there was a tendency for promoters to hold back premium tickets for an event for inclusion with hospitality packages.<sup>6</sup> Similarly, eBay said that tickets are bundled with other services and goods such as food, drinks and merchandise and offered at a premium sales price.<sup>7</sup>
- 2.10** In advice to consumers on ticket selling practices, NSW Fair Trading notes on its website that not all tickets to events are available to the general public:
- A certain proportion of tickets, particularly for major events, are reserved for sponsors, club and stadium members, season ticket holders, corporate packages, and friends of performers.<sup>8</sup>
- 2.11** NSW Fair Trading also noted that when tickets go on sale to the general public, they can sell out quickly as modern ticketing technology allows up to 20,000 consumers to simultaneously purchase tickets online.<sup>9</sup>
- 2.12** The Ticket Brokers Association noted that the practice of releasing only a limited amount of tickets to the general public through the primary market ultimately contributed to strong ticket sales and premium prices in the secondary ticket market. In relation to tickets for One Direction concerts, fans who missed out were desperate to secure tickets. The Association commented that:
- The tickets (for One Direction) went on sale quickly and about one-quarter were released to the general public at that stage. The demand was so strong that on the resale market they were worth up to about one thousand dollars.<sup>10</sup>
- 2.13** Mr Chris Forbes, Managing Director, Ticketek commented on ticket release practices and remarked that the number of tickets released to the general public depended on the event:
- It depends on whether it is a sports event or a concert event but there are presales, there are general public sales, there are sponsors, and there are dining functions, et cetera. So there are a whole array of different ticket packages or just general tickets that are sold for an event.<sup>11</sup>
- 2.14** The committee questioned the sporting codes on their ticket distribution practices. It was acknowledged by Mr David Sykes, Senior Manager, Strategy and Business Development, Australian

---

<sup>4</sup> Answers to questions on notice, Ms Kate Cooper, General Counsel, Nine Live for Ticketek, 3 December 2014, p 2.

<sup>5</sup> Submission 4, Viagogo, p 2.

<sup>6</sup> Evidence, Witness B, Ticket Brokers Association of Australia, 3 November 2014, p 2.

<sup>7</sup> Submission 1, eBay, p 4.

<sup>8</sup> NSW Fair Trading, *Entertainment – Buying tickets and ticket scalping* (25 June 2014), <[http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying\\_services/Entertainment.page](http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying_services/Entertainment.page)>.

<sup>9</sup> NSW Fair Trading, *Entertainment – Buying tickets and ticket scalping* (25 June 2014), <[http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying\\_services/Entertainment.page](http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying_services/Entertainment.page)>.

<sup>10</sup> Evidence, Witness B, Ticket Brokers Association, 3 November 2014, p 12.

<sup>11</sup> Evidence, Mr Chris Forbes, Managing Director, Ticketek, 3 November 2014, p 27.

Rugby Union that a significant amount of tickets were provided to corporate sponsors.<sup>12</sup> When the committee requested specific information in relation to the release of tickets for sporting events, the committee was informed by the National Rugby League, Australian Rugby Union and Cricket Australia that information relating to ticket release, distribution and sales for their events was considered to be commercial-in-confidence.<sup>13</sup>

- 2.15** The timing of ticket sales was also considered problematic with tickets being sold several months, or even a year, in advance of an event. As an example, tickets for the One Direction concerts were released 18 months prior to the event.<sup>14</sup> This can result in unwanted tickets becoming available as the original purchaser is no longer able to attend the event.<sup>15</sup> However, the terms and conditions attached to the ticket may prevent the ticket holder from obtaining a refund from the primary ticket seller.<sup>16</sup>
- 2.16** For example, eBay submitted that rugby league fans can be left with unwanted grand final tickets if their team is eliminated. Subsequently, the purchaser is no longer interested in attending the event and will attempt to resell the ticket on the secondary market.<sup>17</sup>

### **Underpricing tickets**

- 2.17** eBay remarked on the practice of underpricing tickets on the primary market and claimed that event organisers and ticketing agencies deliberately underpriced tickets to achieve a sellout event and secure the performer's commitment to touring.<sup>18</sup> As a result, ticket resellers are able to sell the ticket at a higher price on the secondary market which resale ticket purchasers will still consider reasonable.
- 2.18** In defense of the practice of underpricing tickets on the primary market, Ticketek remarked that underpricing was used to provide genuine fans with affordable access to events.<sup>19</sup>
- 2.19** The sporting codes noted that the ticket pricing strategy used for sporting events represented a balance between generating revenue for the sport and providing equitable access for fans. Mr Jaymes Boland-Rudder, Head of Government Relations and Campaign Management, National Rugby League remarked:

Each code has its own ticket-pricing strategy. In coming up with that strategy as a sport you try to find a balance between servicing fans and generating revenue to reinvest in the sport. We choose to sell bronze tickets at \$80 for the grand final. If we wanted to we could sell them at a much higher price. They would still sell and we would generate more revenue. However, because our ticket-pricing strategy considers the need to balance revenue with providing an

<sup>12</sup> Evidence, Mr David Sykes, Senior Manager, Strategy and Business Development, Australian Rugby Union, 3 November 2014, p 17.

<sup>13</sup> Answers to supplementary questions, Mr David Sykes, Senior Manager, Strategy and Business Development, Australian Rugby Union, 3 December 2014, p 3., Answers to supplementary questions, Mr Jaymes Boland-Rudder, National Rugby League, 3 December 2014, p 2., Answers to supplementary questions, Mr Grant Poulter, Government and Community Relations Manager, Cricket Australia, 5 December 2014, p 1.

<sup>14</sup> Evidence, Witness B, Ticket Brokers Association, 3 November 2014, p 3.

<sup>15</sup> Submission 1, eBay, p 4.

<sup>16</sup> Ticketek, *Ticketek online terms and conditions of sale*, Ticketek Australia, <[www.premier.ticketek.com.au/content/buyers/terms\\_of\\_sale.aspx](http://www.premier.ticketek.com.au/content/buyers/terms_of_sale.aspx)>.

<sup>17</sup> Submission 1, eBay, p 2.

<sup>18</sup> Submission 1, eBay, p 4.

<sup>19</sup> Submission 2, Ticketek, p 4.

experience for our loyal, dedicated and passionate fans, we make a conscious decision to sell at that price.<sup>20</sup>

- 2.20** The Coalition of Major Professional and Participation Sports submitted that ticket prices are set to achieve a number of outcomes other than revenue raising:

In some cases revenue is not the strategic driver for ticket-pricing, it is the desire to maximise the size of the crowd and derive the collateral benefits from a large, passionate supporter base. While this may not drive a return in terms of ticket revenue, there are numerous beneficiaries from such a strategy including the state where it owns the stadium through increased food and beverage sales, surrounding businesses within a sporting precinct, merchandise sellers, event sponsors, broadcasters and most importantly the supporters of the game.<sup>21</sup>

- 2.21** While tickets are underpriced in some instances, Mr Christoph Homann, Managing Director, Resale, Ticketmaster International disagreed that there was a trend in the primary market to underprice tickets:

...the scenario where there would be consistent underpricing of quality seats to a degree that there could be a reasonable assumption on the part of the purchaser that he will definitely be able to flip those at a higher price in the market is just not what we see. That would be effectively assuming wide incompetence and insanity on the part of event organisers in consistently underpricing those quality seats.<sup>22</sup>

### **Ticket refund restrictions**

- 2.22** Primary market ticketing agencies generally have standard terms and conditions that apply to the tickets they sell. It is a common feature for most tickets sold in the primary market to include a condition to restrict the consumer's ability to seek a refund. Mr Homann of Ticketmaster remarked that there was a valid reason for this:

There is a very specific element to live events, both sporting and concerts, and that is that you cannot give your ticket back, and there are really good reasons for that. If you bring in Pink or the Rolling Stones, if you are an organiser, you have to pay a huge font of money upfront, so it is understandable that you do not want to expose yourself to the risk of potentially going bankrupt because lots of people are giving their tickets back.<sup>23</sup>

### **Handling fees**

- 2.23** Another point of contention raised by inquiry participants related to the fees imposed by primary market ticket sellers which are in addition to the advertised face value of the ticket. eBay estimated that primary market ticket sellers add approximately 12 per cent of the ticket price for handling and processing fees.<sup>24</sup>
- 2.24** The Australian Competition and Consumer Commission recently concluded an investigation into ticketing fees, focusing on drip pricing, which refers to charges being incrementally disclosed to a consumer during an online booking process. The investigation examined:

---

<sup>20</sup> Evidence, Mr Jaymes Boland-Rudder, Head of Government Relations and Campaign Management, National Rugby League, 3 November 2014, p 21.

<sup>21</sup> Submission 9, Coalition of Major Professional and Participation Sports, p 4.

<sup>22</sup> Evidence, Mr Christoph Homann, Managing Director, Resale, Ticketmaster International, 3 November 2014, pp 10-11.

<sup>23</sup> Evidence, Mr Homann, 3 November 2014, p 5.

<sup>24</sup> Submission 1, eBay, p 9.

- payment processing fees – charges for purchases made by credit or debit card
- Ticketek’s service/delivery fees – transaction fees applied to certain events which varies depending on selected delivery method
- Ticketmaster’s handling fees – transaction fees applied to certain events.<sup>25</sup>

**2.25** As a result of its investigation, the Australian Competition and Consumer Commission reported that both Ticketek and Ticketmaster have improved their pricing practices by including payment processing fees in the per ticket price displayed on their websites. In addition, the service/delivery fee imposed by Ticketek and the Ticketmaster handling fee are now displayed to the purchaser as soon as they can be calculated during the online booking process which has enhanced pricing transparency.<sup>26</sup>

## The secondary market

**2.26** The secondary ticket market is also referred to as the resale market. Mr Homann from Ticketmaster remarked that the secondary ticket market is relatively small in Australia and that the perceptions of its size are exaggerated:

If you look at the Australian market for commercially sold tickets, our estimate is that about two per cent of those tickets are resold tickets, which we think is a small market and not reflective of I think what would be sort of a natural part of resold tickets – which means that many people are not reselling tickets who should be reselling tickets because they are not going...The perception that we sometimes encounter is “Oh my god, there are millions of tickets being resold; it is such a huge market”. Our experience is that it is not.<sup>27</sup>

**2.27** Mr Forbes, Ticketek noted that while the resale market in Australia is small at the moment, it is growing. Ticketek is in the process of creating a general resale site that will allow tickets to be offered for resale at face value prices only, which will exclude any booking or handling fees that were imposed by the primary ticket seller.<sup>28</sup>

**2.28** The Ticket Brokers Association described itself as a national organisation representing individuals and entities engaged in the reselling of tickets to entertainment and sporting events.<sup>29</sup> During evidence, the Association informed the committee that it currently has eight members.<sup>30</sup>

**2.29** Members of the Ticket Brokers Association considered themselves to be a legitimate part of the ticketing industry that provided an alternative option for individuals who were not able to purchase their tickets through the primary ticket sales market. The Association described their members as ‘people who actually trade in tickets rather than putting the event on themselves.’<sup>31</sup>

<sup>25</sup> Media Release, Australian Competition and Consumer Commission, ‘ACCC investigation leads to clearer ticket pricing’, 23 October 2014, <[www.accc.gov.au/media-release/accc-investigation-leads-to-clearer-ticket-pricing](http://www.accc.gov.au/media-release/accc-investigation-leads-to-clearer-ticket-pricing)>.

<sup>26</sup> Media Release, Australian Competition and Consumer Commission, ‘ACCC investigation leads to clearer ticket pricing’, 23 October 2014, <[www.accc.gov.au/media-release/accc-investigation-leads-to-clearer-ticket-pricing](http://www.accc.gov.au/media-release/accc-investigation-leads-to-clearer-ticket-pricing)>.

<sup>27</sup> Evidence, Mr Homann, 3 November 2014, p 11.

<sup>28</sup> Evidence, Mr Forbes, 3 November 2014, p 28.

<sup>29</sup> Tabled document, Ticket Brokers Association of Australia Inc, *Code of Ethics*, p 1.

<sup>30</sup> Evidence, Witness A, 3 November 2014, p 7.

<sup>31</sup> Evidence, Witness B, 3 November 2014, p 2.

**2.30** In its view, the Ticket Brokers Association provides the general public with an alternative to purchasing high priced premium tickets or VIP hospitality package tickets through the primary market when lower priced tickets have sold out:

...there are people that would choose to buy tickets from us as opposed to buying the VIP packages. Every person who chooses to do that has saved themselves money and will result in tickets that were being held for the VIP packages being released back into public allocation.<sup>32</sup>

**2.31** Tickets for resale on the secondary market are generally sourced from the primary market but they may also be sourced from event organisers, sporting clubs, corporate sponsors and through the performer. Ms Maria O'Connor, Managing Director, Ticketmaster noted that the performer will often have tickets for resale:

For international tours the artist and the artist's manager have access to tickets for every show they do everywhere in the world. Part of the deal is that the artist has control over the tickets and gets so many per show. A lot of the brokers are getting them directly from the artist and the artist's manager.<sup>33</sup>

**2.32** Secondary market tickets are predominantly sold through the internet using established marketplace services such as eBay, Gumtree, Ticketmaster Resale and Viagogo. The Ticket Brokers Association, however, noted that its members mainly sell tickets to an established customer base, which generally allowed them to bypass the need to use electronic marketplaces.<sup>34</sup>

**2.33** Ticket sellers may be individuals selling a ticket on a one-off basis, or professional ticket dealers who buy and sell tickets as a business. Professional ticket sellers are sometimes referred to as ticket scalpers.

### **What is ticket scalping?**

**2.34** There were varying views among inquiry participants on what constituted ticket scalping. Some witnesses considered that an individual who purchased tickets to an event with no intention of personally using the tickets was a ticket scalper. Others were of the view that the initial intention to resell was not the issue: they believed that scalping occurred in any situation where a ticket was resold at a significantly higher price than its original purchase price, even if the reseller initially intended to personally use the ticket.

**2.35** Live Performance Australia, with a membership including producers, music promoters, venues, performing arts companies, festivals and ticketing companies, submitted that it viewed 'illegitimate, organised ticket reselling operations' as ticket scalping.<sup>35</sup> The Live Performance Australia code of conduct for consumers discouraged the purchase of tickets from scalpers and supported the right of its members to cancel tickets purchased through scalpers.<sup>36</sup>

**2.36** The Coalition of Major Professional and Participation Sports Inc. considered ticket-scalpers to be unauthorised third parties who 'lawfully purchase tickets that are in short supply with the intention of selling them to the public at highly inflated prices, thereby denying access to fans who cannot afford to pay those prices.'<sup>37</sup>

---

<sup>32</sup> Evidence, Witness B, 3 November 2014, p 8.

<sup>33</sup> Evidence, Ms Maria O'Connor, Managing Director, Ticketmaster, 3 November, p 11.

<sup>34</sup> Answers to questions on notice, Witness B, Ticket Brokers Association of Australia Inc., 1 December 2014, p 2.

<sup>35</sup> Submission 8, Live Performance Australia, p 1.

<sup>36</sup> Live Performance Australia, *Ticketing Code of Practice - consumer code*, 1 February 2012, p 8.

<sup>37</sup> Submission 9, Coalition of Major Professional and Participation Sports Inc., pp 3-4.



**2.37** According to NSW Fair Trading ticket scalping is:

... the unauthorised reselling of tickets for more than the original ticket price. This can occur when someone buys a ticket to an event and can then no longer attend, or by scalpers deliberately purchasing tickets in advance to resell for a profit when an event is sold out.<sup>38</sup>

**2.38** Ticketmaster, however, expressed a different view and contended that a person who resells a ticket and makes a profit on the original ticket price is not scalping. According to Mr Homann there is a difference between ticket resale and ticket scalping:

As I mentioned, a major issue we have experienced in Australia and in some other jurisdictions throughout the world is that there is a misunderstanding of what is ticket resale and what is scalping. They are often referred to as one; they are not. Resale is not scalping; it is simply a safe and reliable marketplace in which to sell unwanted tickets or buy tickets that might not be otherwise available.<sup>39</sup>

**2.39** Mr Homann also advised that Ticketmaster believed that the resale price for a ticket should be determined by the market at the time it is being offered for sale:

Scalping for us is not a price that may be higher than the original price and I will tell you why. Prices are very much driven in the secondary market by supply and demand. It is a factor of the free market.<sup>40</sup>

### **Prevalence of scalping**

**2.40** The committee heard varying views on the prevalence of scalpers. Ms O'Connor, Ticketmaster remarked that she did not believe that scalping was as prolific as the public was led to believe and that it mainly occurred when an event was sold out:

Very few events you cannot, in Australia, get a ticket for. It is probably 10 a year, so the scalping is not actually the problem that it is made out to be. I think that is a furphy. It has been manufactured as evil...It is the creation of the public perception that the public are getting ripped off and it is not actually true.<sup>41</sup>

**2.41** Mr Grant Poulter, Government and Community Relations Manager, Cricket Australia noted that scalping also occurred when the most desirable seats to an event are sold out:

...we are not just talking about sold-out events as well because across all our events you have various categories of seating. Sporting fans will want to purchase tickets for the best seats possible and if the premium category seats are sold out and all that remains is restricted view or standing or way up in the bleachers, then some fans feel they have no option but to look to the secondary market for those premium seats.<sup>42</sup>

**2.42** eBay submitted that the incidence of ticket scalping is low, noting that during 2012 NSW Fair Trading received only one complaint that fell within the realm of ticket scalping. Information provided to eBay by NSW Fair Trading in July 2013 reported that 128 ticket related complaints were received but none

<sup>38</sup> NSW Fair Trading, *Entertainment – Buying tickets and ticket scalping* (25 June 2014), <[http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying\\_services/Entertainment.page](http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying_services/Entertainment.page)>.

<sup>39</sup> Evidence, Mr Homann, 3 November 2014, p 2.

<sup>40</sup> Evidence, Mr Homann, 3 November 2014, p 8.

<sup>41</sup> Evidence, Ms O'Connor, 3 November 2014, p 5.

<sup>42</sup> Evidence, Mr Grant Poulter, Government and Community Relations Manager, Cricket Australia, 3 November 2014, p 16.

related to ticket scalping. Approximately 70 per cent of complaints related to cancelled and postponed events or technological glitches encountered when purchasing tickets.<sup>43</sup>

- 2.43** The Australian Senate's Economics References Committee noted in its report on ticket scalping in Australia, issued in March 2014, that the Australian Consumer Complaints Commission had received a total of 52 contacts (inquiries) from consumers that related to ticket sales since 2011. This was considered proportionally insignificant against the total number of inquiries to the Australian Consumer Complaints Commission (in 2012-2013 the Australian Consumer Complaints Commission received more than 185,000 contacts).<sup>44</sup>
- 2.44** The 52 ticket sale-related contacts received by the Australian Consumer Complaints Commission related to a broad range of matters, including concerns about unauthorised resale of tickets, as well as consumers complaining about being unable to on sell their tickets legitimately.<sup>45</sup>
- 2.45** NSW Fair Trading also considered the prevalence of scalping to be low and on its website refers to the view of the 2010 Commonwealth Consumer Affairs Advisory Report into ticket onselling in the Australian market:

A 2010 review of ticket scalping by the Commonwealth Consumer Affairs Advisory Council found that the number of sold out events in Australia is low, and that the offering of scalped tickets for resale, is generally a very small percentage of tickets sold to any given event in Australia.<sup>46</sup>

### **Ticket fraud**

- 2.46** The committee received some evidence that there are instances of fraud occurring in the secondary ticket market. For instance, Mr Poulter from Cricket Australia noted that during the 2014 Ashes series, there were 'hundreds of cricket fans' who attempted to collect tickets they were resold that did not exist.<sup>47</sup>
- 2.47** Other inquiry participants gave evidence on mechanisms to protect buyers of resold tickets from fraud. Viagogo, self-described as the world's largest ticket marketplace, claimed it provided a secure environment for secondary market ticket purchases that protected buyers against fraud:

Our business is founded on the principle of protecting the consumer and not only do we offer a guarantee, but we also provide customer service seven days a week. We track the delivery of each ticket to ensure that it reaches the buyer. Thus, ticket buyers can purchase tickets on secure ticket marketplace platforms like ours with confidence that they will not be defrauded.

<sup>48</sup>

- 2.48** Additionally, Viagogo submitted that the ticket seller will only receive payment after the buyer has confirmed receipt of the tickets and attended the event.<sup>49</sup>

---

<sup>43</sup> Submission 1, eBay, p 6.

<sup>44</sup> Senate Economics References Committee, Australian Senate, *Ticket scalping in Australia*, (2014), p 50.

<sup>45</sup> Senate Economics References Committee, Australian Senate, *Ticket scalping in Australia*, (2014), p 50.

<sup>46</sup> NSW Fair Trading, *Entertainment – Buying tickets and ticket scalping* (25 June 2014), <[http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying\\_services/Entertainment.page](http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying_services/Entertainment.page)>.

<sup>47</sup> Evidence, Mr Poulter, 3 November 2014, p 14.

<sup>48</sup> Submission 4, Viagogo, p 2.

<sup>49</sup> Submission 4, Viagogo, p1.

- 2.49 Ticketmaster has also implemented safeguards on its resale marketplace to ensure users are protected, such as its barcode validation technology, and submitted that in the unlikely event of a ticket order being unfulfilled, it will provide a full refund. Ticketmaster advised that sellers that advertise tickets that are not delivered are blocked and banned from the site.<sup>50</sup>

### Conditional support for the secondary market

- 2.50 Inquiry participants generally acknowledged the need for a secondary ticket marketplace and supported its existence, provided it was legitimate, transparent and offered a level of security for ticket purchasers. For example, Ticketmaster submitted that in the interest of consumer fairness, there must be a secondary ticket market for consumers who are unable to seek a refund from the primary market ticket seller:

We believe, and fairness requires, that you balance that by giving people a way to get at least some their money back by selling their ticket at some point....In balance, where your hands are tied and you cannot return the ticket and you also cannot resell the ticket just does not seem fair.<sup>51</sup>

- 2.51 Mr Forbes noted that Ticketek similarly supported ticket resale provided it was not unauthorised, that is where the intent is not about buying tickets to attend an event but to gain a commercial benefit.<sup>52</sup>
- 2.52 While there was acknowledgement that a secondary ticket market was necessary, several inquiry participants noted that a ticket offered for resale in excess of a reasonable amount constituted scalping.<sup>53</sup>
- 2.53 Inquiry participants were questioned on what they considered to be a reasonable resale price for a ticket, given that there are additional on-costs, including credit card, postage and handling costs that are not included in the ticket's face value price.
- 2.54 The Coalition of Major Professional and Participation Sports submitted that its members would support an amendment to the current bill to allow ticket sellers who can no longer attend an event to recoup their purchase costs:

In circumstance where a ticket holder cannot attend a sporting event and needs to resell their ticket, we support the right to do so and not be out of pocket. Section 59 (6)(b) of the bill allows for a ticket to be resold at or below the price (not including any booking fee or other transaction cost) at which the ticket was offered for sale by, or on behalf of, the organiser of the event to which the ticket relates.

We understand that there is some concern this provision would not allow a ticket holder who genuinely cannot attend an event and is looking to resell their ticket to recoup the costs associated with the purchase of the ticket. This is an area in which as indicated, the Coalition of Major Professional and Participation Sports would be prepared to accept a compromise, which would allow the reseller to recoup the cost of the booking fee.<sup>54</sup>

<sup>50</sup> Submission 5, Ticketmaster, p 5.

<sup>51</sup> Evidence, Mr Homann, 3 November 2014, p 5.

<sup>52</sup> Evidence, Mr Forbes, 3 November 2014, p 26.

<sup>53</sup> Submission 6, Australian Ruby Union Limited, p 1; Evidence, Mr Poulter, 3 November 2014, p 13, supported this view.

<sup>54</sup> Submission 9, Coalition of Major Professional and Participation Sports, p 7.

- 2.55** Mr Poulter of Cricket Australia remarked that a reasonable mark up on the face value of the ticket could be 20 or 30 per cent.<sup>55</sup>
- 2.56** The National Rugby League also supported a resale price that would allow the individual to recoup their costs but added that any resale should be completed through the original ticket seller:
- We believe the best mechanism to do this (resell tickets) is through the original ticket seller, many of which, including Ticketek and Ticketmaster, now allow a secure resale program within their system where a purchaser is no longer able to attend the event.<sup>56</sup>
- 2.57** Ticketek noted that it would accept a resale premium of ten per cent over the price appearing on the face of the ticket.<sup>57</sup>
- 2.58** Other witnesses expressed the view that a ticket owner had a right to resell their ticket in the free market, at an amount determined by the market. Viagogo argued that the secondary ticket market provided competitive pricing that is transparent and relative to the current value of the ticket.<sup>58</sup>
- 2.59** Ticketmaster launched an Australian resale marketplace early in 2014 to provide fans with ‘access to the full choice of available tickets at any point in time on the market.’<sup>59</sup> Mr Homann described the site as an ‘eBay for tickets’ and said that consumers want to be able to sell their tickets at a fair market price, whatever that may be at the time of sale:
- At times this price is below face value, at other times it is above face value and that is the result of the market-based economy we live in.<sup>60</sup>
- 2.60** In response to the suggestion that a free market approach should apply to the resale of tickets, the National Rugby League argued that the event organiser, who bears the risk and provides the service, should receive the return on their investment, not the ticket reseller.<sup>61</sup>
- 2.61** Ms Kate Cooper, General Counsel, Ticketek contended that a ticket is dissimilar to other consumer goods and any rights attached to its resale should recognise this:
- I think tickets are distinguishable from other goods because they are a contract between two parties. I know I am looking at this through my legal eyes but to me it is not the same as buying a magazine off a shelf and you own that magazine and away you go. You are buying the right to attend an event and that does come with a layer of conditions imposed.<sup>62</sup>
- 2.62** While there is a perception that ticket sale prices on the secondary market are inflated, the committee heard that prices will vary and the final resale price may well be below the original ticket price. eBay submitted that tickets for the 2013 National Rugby League Grand Final sold through its site and Gumtree were being sold below cost price and many were offered as ‘two for the price of one’ deals.<sup>63</sup>

---

<sup>55</sup> Evidence, Mr Poulter, 3 November 2014, p 18.

<sup>56</sup> Submission 7, National Rugby League Limited, p 2.

<sup>57</sup> Correspondence, Ms Kate Cooper, General Counsel, Ticketek, 3 December 2014, p 1.

<sup>58</sup> Submission 3, Viagogo, p 1.

<sup>59</sup> Submission 5, Ticketmaster, p 1.

<sup>60</sup> Evidence, Mr Homann, p 3.

<sup>61</sup> Evidence, Mr Boland-Rudder, 3 November 2014, p 22.

<sup>62</sup> Evidence, Ms Kate Cooper, General Counsel, Ticketek, 3 November 2014, p 32.

<sup>63</sup> Submission 1, eBay, p 2.

- 2.63** According to eBay, there are also instances where tickets do not sell on the secondary market, such as 34 per cent of those tickets listed on its website for the 2014 National Rugby League Grand Final.<sup>64</sup>
- 2.64** Inquiry participants pointed out, that aside from providing a mechanism for consumers wishing to sell unwanted tickets, the secondary ticket market provided other benefits. For example, eBay submitted that the secondary ticket market encouraged competition and compelled primary ticket market sellers to improve their systems and customer service.<sup>65</sup>
- 2.65** Viagogo noted that it provided fans with access to a wide variety of tickets for events all over the world.<sup>66</sup> Ticketmaster commented that the secondary market also provided value to artists and venues in facilitating sell out events, noting that ‘no one wants empty seats.’<sup>67</sup>

## Consumer protections

- 2.66** Consumers purchasing resale tickets are afforded a level of protection against unfair and fraudulent dealings through legislation. The ticketing industry has also developed codes of conduct prescribing appropriate standards of behavior and dispute resolution processes.

### Legislation to protect consumers

- 2.67** In New South Wales, consumers purchasing resale tickets are provided with a level of protection through the *Fair Trading Act 1987* and the Fair Trading Regulation 2012. In addition, the Australian Consumer Law, which was introduced in 2010, provides for consumer protection and fair trading across Australia. The Australian Consumer Law also incorporates the national unfair contracts law.<sup>68</sup>
- 2.68** There was a view among some inquiry participants that the existing legislation provided an adequate level of protection for consumers. For example, eBay submitted that the Australian Consumer Law included a number of provisions that were relevant to the ticket industry, including:
- sections 18 and 29, relating to misleading and deceptive conduct
  - sections 20 to 22, relating to unconscionable conduct
  - sections 23 to 28 relating to unfair consumer contracts
  - sections 51 to 59 relating to consumer guarantees.<sup>69</sup>
- 2.69** The Commonwealth Treasury, in a submission to the 2010 Senate Economics References Committee Inquiry into ticket scalping in Australia, stated that the prohibition of misleading and deceptive conduct and the consumer guarantee provisions of the Australian Consumer Law are relevant to unauthorised ticket selling in Australia.<sup>70</sup>

<sup>64</sup> Submission 1, eBay, p3.

<sup>65</sup> Submission 1, eBay, p 3.

<sup>66</sup> Submission 4, Viagogo, p 1.

<sup>67</sup> Submission 5, Ticketmaster, p 4.

<sup>68</sup> Commonwealth of Australia, *Australian Consumer Law, Compliance and enforcement, how regulators enforce the Australian Consumer Law*, 2010, p 6.

<sup>69</sup> Submission 1, eBay, p 7.

<sup>70</sup> The Treasury, Submission by the Commonwealth Treasury to the Senate Economics References Committee Inquiry into ticket scalping in Australia, 14 February 2014, p 3.

- 2.70** Section 29 of the Australian Consumer Law prescribes that it is illegal to make false or misleading representations about goods or services, when supplying, offering or promoting those goods or services. Penalties can be imposed for breaches of this section. The Commonwealth Treasury submitted that this means it is unlawful for an unauthorised on-seller of tickets to misrepresent whether tickets they are on-selling are authorised or valid to enable entry to an event.<sup>71</sup>
- 2.71** The Australian Consumer Law ensures that all goods purchased by consumers are covered by statutory consumer guarantees which require a consumer to receive what they pay for and that the goods and services they purchase are fit for purpose. According to the Commonwealth Treasury, the Australian Consumer Law provided a balanced level of protection with respect to the on-selling of tickets in Australia and did not consider that further regulation was necessary.<sup>72</sup>
- 2.72** In 2012, NSW Fair Trading was successful in taking legal action against Ticketfinders, an organisation involved in ticket resales. Ticketfinders was selling tickets in a manner that was in breach of the tickets' terms and conditions which resulted in tickets being cancelled in a number of cases. Individuals who purchased these tickets were subsequently denied entry to events.
- 2.73** As an outcome of the legal proceedings, Ticketfinders was required to prominently display on its website advice to potential buyers that Ticketfinders was not authorized by the event promoter to resell the tickets and that the ticket could be cancelled or voided. In addition, the advice noted that Ticketfinders would provide a refund in the event that this occurred and the consumer was denied access to the venue. The Minister for Fair Trading at the time hailed this as an effective prosecution under the provisions of the Australian Consumer Law:

The outcome of the case was very important as it was one of the first real tests of the deceptive conduct civil provisions of the Australian Consumer Law. This direction sets a clear standard for ticket resellers. It also means consumers who believe they have been unfairly treated or suffered financial disadvantage in the past may seek redress with the company.<sup>73</sup>

### **Industry codes of conduct**

- 2.74** Certain sectors of the ticketing and entertainment industries have developed codes of conduct and implemented other measures to provide consumer protection. For example, Live Performance Australia has developed a ticketing code of practice for both the industry and the consumer. This code, while not legally enforceable, has been developed to provide a level of protection for consumers. Live Performance Australia noted that:

... although the document itself does not carry legal force it is reflective of legal standards as expressed in the Australian Consumer Law. The LPA Ticketing Code is independently reviewed and re-issued every three years, and the Australian Competition and Consumer Commission (ACCC) provide feedback as part of the review process.<sup>74</sup>

---

<sup>71</sup> The Treasury, Submission by the Commonwealth Treasury to the Senate Economics References Committee Inquiry into ticket scalping in Australia, 14 February 2014, p 3.

<sup>72</sup> The Treasury, Submission by the Commonwealth Treasury to the Senate Economics References Committee Inquiry into ticket scalping in Australia, 14 February 2014, p 4.

<sup>73</sup> Media Release, Mr Anthony Roberts MP, Minister for Fair Trading, 'Landmark action a game-changer for ticket resellers', 3 April 2012.

<sup>74</sup> Live Performance Australia, Ticketing code of practice, 1 February 2012, <[http://www.liveperformance.com.au/ticketing\\_code\\_practice](http://www.liveperformance.com.au/ticketing_code_practice)>.

- 2.75 The Ticket Brokers Association has developed a code of ethics for its members as a means of 'promoting and maintaining the highest standards of conduct among its members.'<sup>75</sup> Further information on the initiatives being implemented in secondary ticket market to provide consumer protection is detailed in chapter 3.

**Committee comment**

- 2.76 The committee understands that the primary ticket market is constrained by the expectations and requirements of performers and event promoters and that these restraints determine the ticketing strategy for an event which includes event pricing, ticket packaging, allocation and timing of release, and strict ticket refund conditions.
- 2.77 The committee does believe, however, that ticketing agents in the primary ticket market could improve transparency by releasing information to consumers that increases awareness about ticket availability. This could alleviate some of the level of frustration consumers experience when tickets sell out quickly. Additionally, the consumer would benefit from being advised that overall, there are very few events that are sold out each year.
- 2.78 The committee is convinced of the need for a secondary ticket market. This need is in no small part due to some of the features of the primary market and the ticket selling strategies used to sell out events and maximise returns to the event organiser and performer.
- 2.79 The committee notes that the secondary market, although currently small, is growing and gaining legitimacy through the entry of established entities such as Ticketek and Ticketmaster. These organisations and other resale platforms are attempting to protect consumers through various safeguards. Additionally, the robustness of the Australian Consumer Law has been tested and found to be capable of successfully prosecuting tickets resellers that are breaching ticketing terms and conditions.

---

<sup>75</sup> Tabled document, *Ticket Brokers Association of Australia Code of Ethics*, p 1.





## Chapter 3 Approaches to ticket selling legislation and regulation

This chapter examines the legislation in place in other Australian jurisdictions designed to halt ticket scalping. It also discusses non-legislative strategies that could be used to improve ticket selling processes in both the primary and secondary markets.

### Ticket selling legislation in other Australian jurisdictions

**3.1** Several Australian jurisdictions have introduced legislation that incorporates provisions relating to ticket scalping, including Victoria, Queensland, South Australia and the Australian Capital Territory. The specific features of these pieces of legislation as they relate to ticket scalping are discussed below.

#### *Victoria – Major Sporting Events Act 2009*

**3.2** The *Major Sporting Events Act 2009* (Vic) consolidated a number of related acts to provide a single legislative framework for the conduct of major sporting events. The second reading speech for the bill described the Act as the most comprehensive major sporting event-related legislation in the world.<sup>76</sup>

**3.3** The Act provides for the Minister for Sport to recommend that an event be declared as a major sporting event. Once an event is declared, the Act may be applied to manage and regulate a range of features that are characteristic of major events, including crowd containment, ambush advertising, venue management, and the sale and distribution of tickets.<sup>77</sup>

**3.4** Under Part 9 of the Act, the Minister may make a sports ticketing event declaration and provide notice of this in a local newspaper. If a sports ticketing event declaration is made, the event organiser has 60 days to provide a ticketing scheme to the Minister.<sup>78</sup>

**3.5** The ticketing scheme establishes the framework that will apply to the allocation, sale and distribution of tickets for the event. The event organiser must include detailed information in regard to the allocation of tickets to the general public or others, venue configuration and arrangements for returning unwanted tickets.<sup>79</sup>

**3.6** Once the ticketing scheme is approved, the event organiser must manage the sale and allocation of tickets in accordance with the scheme or risk penalisation under the Act for non-compliance.<sup>80</sup>

**3.7** Under section 166 of the Act a person must not sell event tickets if they are unauthorised to do so. Sections 166A and 166B prohibit the unauthorised resale or advertisement of tickets at a premium price.<sup>81</sup>

<sup>76</sup> Hansard, Legislative Assembly, Parliament of Victoria, 26 February 2009, p 502 (James Merlino).

<sup>77</sup> Department of Transport, Planning and Local Infrastructure, *Major sporting legislation*, <http://www.dtpli.vic.gov.au/sport-and-recreation/about-sport-in-victoria/major-sport-events/major-sporting-legislation>.

<sup>78</sup> *Major Sporting Events Act 2009* (Vic), section 154.

<sup>79</sup> The Senate Economics References Committee, *Ticket scalping in Australia*, March 2014, p 37.

<sup>80</sup> Submission No. 18 to the Senate Economics References Committee Inquiry into Ticket Scalping in Australia, Hon. Heidi Victoria, MP, Minister for Consumer Affairs, Parliament of Victoria, p 2.

<sup>81</sup> *Major Sporting Events Act 2009* (Vic), sections 166, 166A and 166B.

- 3.8** A premium price is defined under the Act as an amount that exceeds the face value of the ticket.<sup>82</sup> Subsequently, any handling, credit card or postage fees cannot be recouped by a ticket reseller without breaching the Act as these additional costs are not included and displayed on the face value of the ticket.
- 3.9** The Act was also amended to include provisions for enforcement. Section 167A enables a police officer to issue an infringement notice to a person who commits an offence under sections 166A or 166B. Police have also been given powers to seize tickets and bring about proceedings for a ticketing offence.<sup>83</sup>
- 3.10** Individuals who do breach the Act by onselling tickets inappropriately can be fined in excess of \$8,000 while a company can incur a penalty of \$42,000.<sup>84</sup>
- 3.11** The Australian Football League Grand Final and the Melbourne matches of the Cricket World Cup 2015 are declared events under the Act. Subsequently, it is illegal to on-sell AFL Grand Final and Cricket World Cup 2015 tickets at a premium or part of a package, unless the seller is authorised to do so by the sporting authority.<sup>85</sup>
- 3.12** The Victorian model is not punitive to the person who has purchased a scalped ticket and this person is considered to be an innocent victim. Under section 167C of the Act the person who has purchased the ticket is asked to temporarily surrender it to the police for evidentiary purposes.<sup>86</sup>
- 3.13** The committee asked witnesses representing the major sporting codes to comment on the *Major Sporting Events Act 2009* and its effectiveness in addressing ticket scalping. Because of the complexity associated with the declaration process, the sporting codes said that it was not used widely and was therefore considered as ineffectual in preventing the occurrence of scalping for the majority of events. The Australian Rugby Union commented:
- As a general proposition, the main issue with the Victorian system of declared events is the complexity of having to go through the process of having an event declared in order to gain the protection of the scalping provisions in the legislation.
- Broadly, the view of the Coalition of Major Professional and Participation Sports is that this is a long and detailed process, requiring a detailed understanding of event location and attendance at least two months before tickets go on sale. For many sports, this is not possible given that schedules and match locations may not be settled until up to a week prior to the match and because it is generally not known at this point in time whether the event will satisfy the threshold for seeking protection.<sup>87</sup>
- 3.14** Mr David Sykes, Senior Manager, Strategy and Business Development, Australian Rugby Union explained that they opted not to go through the declaration process for the 2013 British Lions tour because of the of the procedures involved:

---

<sup>82</sup> *Major Sporting Events Act 2009* (Vic), section 166B

<sup>83</sup> Hansard, Legislative Assembly, Parliament of Victoria, 20 February 2013, p 427 (Hugh Delahunty).

<sup>84</sup> Department of Transport, Planning and Local Infrastructure, *Major sporting legislation*, <<http://www.dtpli.vic.gov.au/sport-and-recreation/about-sport-in-victoria/major-sport-events/major-sporting-legislation>>.

<sup>85</sup> Department of Transport, Planning and Local Infrastructure, *Major sporting legislation*, <<http://www.dtpli.vic.gov.au/sport-and-recreation/about-sport-in-victoria/major-sport-events/major-sporting-legislation>>.

<sup>86</sup> Hansard, Legislative Assembly, Parliament of Victoria, 20 February 2013, p 427 (Hugh Delahunty).

<sup>87</sup> Answers to questions on notice, Australian Rugby Union, 3 December 2014, p 1.

To be honest, I do not negotiate those agreements but to start with there is about a 12-month wait time. There are several levels of bureaucratic approval before an event becomes a declared event. We looked at it for the Lions series, which had 18 months notice. We made a judgement call at that time it was too difficult or too onerous. If an event gets it once then wants it on an ongoing basis, like the AFL, it is an attractive system.<sup>88</sup>

- 3.15** In essence, the Victorian system was considered to be better suited to those events that are held annually and are consistently sold out. Mr Jaymes Boland-Rudder, Head of Government Relations and Campaign Management, National Rugby League noted that the Victorian system was not suitable for the majority of its games because it was very difficult to predict which games would sell out until the season was underway:

One of the difficulties around the declared events concept...is that in a rugby league season it may be that the Bulldogs are playing Parramatta and it unexpectedly becomes a sold-out event and it is more likely that it will become a victim of ticket scalping. Therefore within a season it would be very difficult to have clarity around the declared events.<sup>89</sup>

- 3.16** Mr Grant Poulter, Government and Community Relations Manager, Cricket Australia, remarked that while he does not consider the Victorian legislation to be a bad model, it has 'limited utility'.<sup>90</sup>
- 3.17** Live Performance Australia expressed the view that the Victorian legislation has not had any impact on the live performance industry as the only events that have been declared are sporting events.<sup>91</sup>

#### **Queensland – Major Sports Facility Act 2001 and Major Events Act 2014**

- 3.18** The *Queensland Major Sports Facilities Act 2001* (Qld) was introduced to restrict ticket scalping for events being held at Stadiums Queensland venues. The Act applies to ticketed events at several major stadiums and entertainment complexes in Queensland, including Brisbane Cricket Ground, Brisbane Entertainment Centre, Brisbane Stadium, Carrara Stadium, Queensland Sport and Athletics Centre, Queensland Tennis Centre, Robina Stadium, Sleeman Sports Complex and Townsville Stadium.<sup>92</sup>
- 3.19** Events declared in June 2014 for the following 12 months include the Cricket World Cup 2015, Gold Coast Sevens Rugby, Super Rugby and 2014 Rugby League Four Nations.<sup>93</sup>
- 3.20** Under the Act, tickets for a major sports facility event cannot be resold if the terms and conditions attached to the tickets prevent their resale. If ticket resale is authorised by the event promoter, the ticket cannot be resold at a price greater than 10 per cent above the original ticket price of the ticket. Sellers of scalped tickets may be fined a maximum of \$2,200 while purchasers of scalped tickets may be fined up to \$550.<sup>94</sup>

<sup>88</sup> Evidence, Mr David Sykes, Senior Manager, Strategy and Business Development, Australian Rugby Union, 3 November 2014, p 23.

<sup>89</sup> Evidence, Mr Jaymes Boland-Rudder, Head of Government Relations and Campaign Management, National Rugby League, 3 November 2014, p 16.

<sup>90</sup> Evidence, Mr Grant Poulter, Government and Community Relations Manager, Cricket Australia, 3 November 2014, p 24.

<sup>91</sup> Submission 8, Live Performance Australia, p 2.

<sup>92</sup> Queensland Major Sports Facilities Regulation 2014, Schedule 1 Major Sports Facilities.

<sup>93</sup> Queensland Law Society, Legislation update, 7 – 13 June 2014, p 9.

<sup>94</sup> Stadiums Queensland, *Ticket scalping*, [www.stadiums.qld.gov.au/Policies/Ticket-Scalping.aspx](http://www.stadiums.qld.gov.au/Policies/Ticket-Scalping.aspx).

- 3.21** Queensland recently introduced the *Major Events Act 2014* (Qld) in preparation for the 2018 Commonwealth Games. This Act imposes restrictions on ticket resale and specifies that a person cannot resell a ticket at a major event area, or elsewhere at a price that is in excess of 10 per cent of the original purchase price of the ticket. Individuals can be fined up to \$2,000 for breaches of these provisions of the Act.<sup>95</sup>
- 3.22** The Queensland Police Service is responsible for enforcing the ticket scalping legislation and police officers are authorised to issue on the spot fines to offenders.<sup>96</sup>
- 3.23** The Queensland legislation was criticised during the 2014 Senate Economics References Committee inquiry into ticket scalping in Australia because it was considered to be too broad in its application, and captured any event held at one of the stadiums prescribed under the Act, regardless of the event size and popularity. In addition, it was considered easy for ticket scalpers to evade authorities and difficult for the Police Service to enforce the legislation.<sup>97</sup>
- 3.24** Live Performance Australia remarked that it was unaware of any impact that the Queensland legislation had on the incidence of ticket scalping for live performance events:

The Brisbane Entertainment Centre, a major venue covered by the Act, has similar quantities of tickets advertised on unauthorised reselling websites for numerous live performance events as do other venues in other states that do not have anti-scalping legislation. For example, the Viagogo website had over 100 tickets advertised for the recent Bruce Springsteen concert at the Brisbane Entertainment Centre, ranging from \$284 - \$888, the original price set by the promoter being between \$100 - \$228.<sup>98</sup>

### **South Australia – *Major Events Act 2013***

- 3.25** The *South Australia Major Events Act 2013* (SA) has similar features to the Victorian legislation and includes a comparable requirement to declare an event before it can be captured under the Act. For example, the Cricket World Cup 2015 was declared under the *Major Events Act* on 13 February 2014.
- 3.26** Section 9 of the Act refers to ticket scalping and prescribes that without written approval from the event organiser an individual cannot, in a controlled area for an event, sell or offer for sale a ticket for admission to an event. This section of the Act prohibits any resale, even if the sale price is at or below the original purchase price of the ticket. In addition, the Act specifies that an individual cannot sell or offer for sale a ticket anywhere else for a price that exceeds the original purchase price by more than 10 per cent.
- 3.27** The Act prescribes that the original ticket price means the actual cost of the ticket and includes any booking fee or commission paid to the event organiser.
- 3.28** The Act imposes significant penalties on sellers for breaches of this section: up to \$25,000 for body corporates and up to \$5,000 for individuals.

---

<sup>95</sup> *Major Events Act 2014* (Qld), Division 3 Limits on commercial activity for a major event, Clause 31.

<sup>96</sup> The Senate, Economics References Committee *Ticket scalping in Australia*, March 2014, p 41

<sup>97</sup> The Senate Economics References Committee *Ticket scalping in Australia*, March 2014, p 41.

<sup>98</sup> Submission 9, Live Performance Australia, p 2.

### **Australian Capital Territory – *Major Events Act 2014***

- 3.29** The Australian Capital Territory recently introduced the *Major Events Act 2014 (ACT)* in preparation for the Asian Football Confederation Asian Cup and the Cricket World Cup 2015. Similarly to major events legislation in other States, the Act can be applied selectively to particular events.<sup>99</sup>
- 3.30** In addition, once an event has been declared a major event, the Government can determine that provisions relating to the ‘Protection of ticketing arrangements’ will apply to the event. The Government must publish any ticketing determinations in a daily newspaper.
- 3.31** Under the Act, a person has committed a ticket scalping offence if the person sells or trades a ticket to a major event and the value of the ticket is more than the original sale price of the ticket and the person does not have the written permission of the event organiser.<sup>100</sup> The original sales price of the ticket includes any charges imposed by the ticketing agent, including booking fees, credit card charge and delivery fee.<sup>101</sup>
- 3.32** The person selling the ticket may be fined up to \$4,500 for breaching this legislation.

### **Committee comment**

- 3.33** The common feature of the ticketing legislation in the jurisdictions examined here is that it is an offence to resell a ticket captured under the legislation, at a price in excess of a prescribed amount. Each jurisdiction specifies a slightly different method of determining the price that a ticket can be resold for before it becomes an offence.
- 3.34** The Queensland legislation provides for a ten per cent margin on the face value of the ticket. The South Australian legislation also provides for a ten per cent loading but this is on top of the total cost of the ticket, including any handling, postage and other fees. The Australian Capital Territory legislation specifies that a ticket can be resold for an amount that includes any purchase costs. The Victorian legislation does not provide for any on costs and considers any resale is illegal if the ticket is resold for an amount that is in excess of the face value of the ticket.
- 3.35** The committee notes that the proposed NSW legislation is similar to the Victorian legislation in that it is considered an offence if a ticket is resold at an amount that is higher than the face value of the original ticket. In its current form the bill does not allow for the ticket seller to recoup any additional costs they have incurred, such as handling fees, credit card charges, and postage.
- 3.36** The committee notes that the legislation in place in other Australian jurisdictions penalises the individual or organisation reselling the ticket if they do not comply with the resale provisions. Queensland is the only jurisdiction that also provides for a penalty for the ticket purchaser. In contrast the NSW bill does not penalise the scalper or the ticket purchaser but directs the penalty at the individual or organisation who is in charge of the advertising forum that is hosting the unauthorised advertisement.

<sup>99</sup> The Legislative Assembly for the Australian Capital Territory, *Major Events Bill 2014*, Revised Explanatory Statement, p 1.

<sup>100</sup> *Major Events Act 2014 (ACT)*, Section 40

<sup>101</sup> *Major Events Act 2014 (ACT)*, Section 38

## Non-legislative approaches to ticket scalping

- 3.37** During the inquiry, the committee was alerted to alternative strategies to combat ticket scalping that did not involve legislative change. These strategies included the education of consumers and strengthening industry mechanisms. The advantages of non-legislative strategies is that they can more easily evolve in order to respond to changes in fraud or scalping practices.

### Consumer education

- 3.38** Consumers have shown a level of willingness to use the secondary ticket market for ticket purchases. As with other consumer goods, many of these purchases are made through recognised market places such as eBay and Gumtree, and ticket resale platforms such as Viagogo and Ticketmarket Resale. Unfortunately, in some instances, consumers using these well-known platforms have been defrauded or have had their ticket cancelled by the primary market ticketing agency.

- 3.39** Ticketek submitted that it had directly experienced the frustration of fans who have been deceived purchasing tickets on the secondary ticket market:

Ticketek has had experiences with frustrated and hostile Viagogo customers who have attempted to enter events such as the recent Ashes series and the Australian Open, with cancelled tickets, invalid tickets, tickets which had already been used/scanned into the venue, tickets which were incorrectly described (in terms of location/restricted viewing) and tickets which were issued for seats which did not exist.<sup>102</sup>

- 3.40** Similarly, the Coalition of Major Professional and Participation Sports reported instances where consumers were swindled by ticket resellers:

In fact, during the 2013/14 Ashes series Cricket Australia handled a significantly increased number of cases of people arriving at the on-site box office of the Sydney Cricket Ground, or contacting Cricket Australia directly, and enquiring as to the whereabouts of the ticket they had purchased. And this is particularly regular in scenarios like this where each of the first three days of the Sydney test were sold out events.

In such circumstances, it falls to Cricket Australia (and not the unauthorized on-seller) to advise the consumer that no ticket actually exists or that it has been cancelled.

...

There are also increasing cases of multiple people trying to access the same seat, in circumstances where ticket scalpers are onselling the same ticket/s to multiple buyers.<sup>103</sup>

- 3.41** The National Rugby League described the consequences for fans who purchased tickets for the 2013 Grand Final on the secondary market that were ultimately cancelled by the organisation when it became known that the tickets were being scalped:

However, come match day, approximately 45 persons holding these tickets attempted to gain entry. All these tickets were purchased from a range of online auction sites and sales outlets, and in some cases the same ticket was sold multiple times. All these patrons had paid above face value and many were forced to leave or purchase a legitimate ticket from the box office.<sup>104</sup>

---

<sup>102</sup> Submission 2, Ticketek, p 3.

<sup>103</sup> Submission 9, Coalition of Major Professional and Participation Sports, p 6.

<sup>104</sup> Submission 7, National Rugby League, p3.

- 3.42** These examples indicate a lack of knowledge among consumers about the possible consequences of purchasing resale tickets, including that tickets can be cancelled by the event organiser and the ticket agent if they are being resold in contravention of the ticket terms and conditions.
- 3.43** Live Performance Australia considered that education about the secondary ticket market is the most effective way of protecting consumers.
- A consumer education program should be undertaken to ensure that consumers are aware that they should visit the website of the original authorised ticket seller and review both their event page and ticket terms and conditions before proceeding with ticket purchases from the secondary market.<sup>105</sup>
- 3.44** Ticketek also commented on the role it could play in educating consumers about purchasing tickets from authorised ticket sellers:
- We would be coming out trying to teach consumers and fans where the authorised channels for purchase are, whether it be on a primary site or an authorized secondary channel, and really working hard so that that is how they get protected.<sup>106</sup>
- 3.45** NSW Fair Trading has information on its website to inform consumers of the risks associated with purchasing tickets on the secondary market. Risks relating to ticket scamming are highlighted, including the possibility that a resold ticket may not exist, will not be sent following payment, or may be invalid. Additionally, consumers are warned that event organisers may cancel tickets bought from a scalper if the ticket conditions restrict its resale or transfer. NSW Fair Trading encourages consumers to check if tickets are still being sold through the primary market ticket seller, as this is generally the case, as it is rare for events in Australia to sell out.<sup>107</sup>
- 3.46** The consumer is also encouraged contact the ticketing agent or event promoter to ensure that the seller is authorised by the organiser to resell tickets and if the terms and conditions attached to the ticket allow for this. In addition, the consumer is advised to conduct as much research as they can on the seller to assess their legitimacy and trustworthiness, and if the ticket is being sold through eBay, to check the seller's rating which is prominently displayed.<sup>108</sup>
- 3.47** NSW Fair Trading also cautions consumers to protect their personal information, to pay by secure methods only and to retain all transaction records.<sup>109</sup>
- 3.48** As part of its consumer education processes, NSW Fair Trading periodically issues media releases in relation to event postponement and cancellation, and to generally remind consumers about safe buying practices.<sup>110</sup>

---

<sup>105</sup> Submission 8, Live Performance Australia, p 5.

<sup>106</sup> Evidence, Mr Chris Forbes, Managing Director, Ticketek, 3 November 2014, p 31.

<sup>107</sup> NSW Fair Trading, *Entertainment – Buying tickets and ticket scalping* (25 June 2014), <  
[http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying\\_services/Entertainment.page](http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying_services/Entertainment.page)>.

<sup>108</sup> NSW Fair Trading, *Entertainment – Buying tickets and ticket scalping* (25 June 2014), <  
[http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying\\_services/Entertainment.page](http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying_services/Entertainment.page)>.

<sup>109</sup> NSW Fair Trading, *Entertainment – Buying tickets and ticket scalping* (25 June 2014), <  
[http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying\\_services/Entertainment.page](http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying_services/Entertainment.page)>.

<sup>110</sup> NSW Fair Trading, *Beware of online ticket scammers*, (30 November 2012), <  
[http://www.fairtrading.nsw.gov.au/ftw/About\\_us/News\\_and\\_events/Media\\_releases/2012\\_media\\_releases/20121130\\_beware\\_of\\_online\\_ticket\\_scammers.page](http://www.fairtrading.nsw.gov.au/ftw/About_us/News_and_events/Media_releases/2012_media_releases/20121130_beware_of_online_ticket_scammers.page)>.

### Industry initiatives

**3.49** The two most recent Australian reports into ticket selling and scalping noted that more could be done in both the primary and secondary ticket sales markets to combat ticket scalping. The Commonwealth Consumer Affairs Advisory Council stated in its 2010 report on ticket onselling in the Australian market that ‘industry is best placed to address issues which arise in the secondary ticket market.’<sup>111</sup>

**3.50** Similarly, the Senate Economics References Committee Ticket Scalping in Australia 2014 report commented that there was evidence that ‘participants in both the primary and secondary markets could do more to ensure that consumers were not exposed to unscrupulous conduct by ticket scalpers.’<sup>112</sup>

**3.51** Ticketmaster noted its support of industry self-regulation measures designed to protect consumers:

It is the obligation of the ticketing industry to create a safe marketplace. Ticketmaster believes that the ticketing industry can, and will, ensure consumers have access to an open and transparent marketplace without having to rely on additional legislation.<sup>113</sup>

**3.52** The ticketing industry has implemented various measures to combat scalping. As discussed below, the imposition of ticket limits, delaying the delivery of tickets, and the development of software to combat robot technology are all current practices being used across the industry that were brought to the attention of the committee during the inquiry

**3.53** The application of ticket limits for high profile events is a common strategy used by ticketing agencies and sporting bodies to prevent large volumes of tickets being purchased with the intention of resale on the secondary market at a profit. For instance, an individual cannot purchase any more than nine tickets for any day of cricket played during Cricket Australia’s 2014-2015 season.<sup>114</sup> Similarly, a ten ticket limit has been applied for the Taylor Swift 2015 Australian tour.<sup>115</sup>

**3.54** Mr Christoph Homann, Managing Director, Resale, Ticketmaster International advised the committee that individuals who are detected exceeding ticket limits are consequently barred from using Ticketmaster:

Wherever it makes sense, and we work with event organisers, we impose very strict ticket-buying limits. Where we see activity trying to circumvent those limits we block barcodes and we take action – we block people for life. So I cannot absolutely exclude that people may be able to circumvent those limits, but what I can tell you is that we invest millions each year for that not to happen.<sup>116</sup>

**3.55** Ticketek similarly limits the number of tickets sold to an individual for certain events through its terms and conditions of sale. Notice of any ticket limit is included on the event page on the Ticketek website. If the ticket limit is exceeded by an individual, all orders and tickets may be cancelled by Ticketek

---

<sup>111</sup> Commonwealth Consumer Affairs Advisory Council, *Consumers and the ticket market – Ticket onselling in the Australian market*, Final report, November 2010, p 37/

<sup>112</sup> Senate Economics References Committee, *Ticket Scalping in Australia*, March 2014, p 62.

<sup>113</sup> Submission 5, Ticketmaster, p 7.

<sup>114</sup> Cricket Australia, 2014-15 Ticket limits and ticket offers, <<http://www.cricket.com.au/tickets>>.

<sup>115</sup> Ticketek, Taylor Swift, <http://premier.ticketek.com.au/shows/show.aspx?sh=TAYLORSW15>

<sup>116</sup> Evidence, Mr Christoph Homann, Managing Director, Resale, Ticketmaster International, 3 November, 2014, p 11.



without notice. This includes orders associated with the same name, e-mail address, billing address, credit card number or other information.<sup>117</sup>

**3.56** According to Ticketek, scalpers manage to purchase large quantities of tickets by using technology, sometimes referred to as Bots or robot programs, which are capable of circumventing online ticketing conditions that impose limits on individual ticket sales.<sup>118</sup>

**3.57** Mr Homann commented on the challenge of combatting the use of this technology:

Our time, effort and financial interest is invested heavily in developing IT platforms that target scalping, which is frequently and wrongly confused with resale. We continue to upgrade and modify our technology in what might be called an arms race against scalpers and to ensure customer safety when purchasing and selling tickets online.<sup>119</sup>

**3.58** Recent media stories have highlighted the difficulties encountered by the primary market in attempting to beat technology that allows multiple ticket purchases. For example, in November 2014 an online booking system for an event at Heston Blumenthal's restaurant, Fat Duck, was compromised by a computer program developed by a systems expert in Asia. The system was able to bypass controls that limited consumer access to ticket opportunities.<sup>120</sup>

**3.59** Delaying ticket delivery is intended to prevent ticket scalpers from having a long lead-in time between the ticket purchase and the event, which reduces the chance of the ticket being resold. While it is still used to some extent, it is becoming increasingly uncommon because of the increased use of print at home tickets. The Australian Rugby Union noted that in their recent experience, this strategy was ineffective in preventing scalping:

However, given the high level of demand for tickets and interest in the (2013 British and Irish Lions) tour, the Australian Rugby Union placed a suppression on the release of tickets which meant that tickets were printed and dispatched (by mail) approximately one month out from match day. The Australian Rugby Union adopted this policy in an attempt to counter ticket scalping (which, as noted above and in our original submission, did not provide an effective mechanism to counter this problem).<sup>121</sup>

### **Ticket terms and conditions**

**3.60** Ticket terms and conditions provide safeguards for the event promoter, performer and the ticketing agent. Consumers are generally prohibited from transferring, exchanging, refunding or reselling tickets. Choice, the public face of the Australian Consumers Association, commented in its feedback to the NSW Government on its ticketing proposals that 'consumers who have genuine reasons for needing to onsell their tickets may be prevented from being able to do so'.<sup>122</sup>

**3.61** The Commonwealth Consumer Affairs Advisory Council 2010 report noted that restrictive ticket terms and conditions can contribute to unscrupulous activity on the secondary market:

<sup>117</sup> Ticketek, *Online terms and conditions of sale*, <<http://premier.ticketek.com.au/Content/buyers/termsofsale.aspx>>.

<sup>118</sup> Submission 2, Ticketek, p 4.

<sup>119</sup> Evidence, Mr Homann, 3 November 2014, p 2.

<sup>120</sup> Mark Hawthorne, 'Table scalpers target Heston Blumenthal's The Fat Duck', *Sydney Morning Herald*, 18 November 2014, <[www.goodfood.com.au/good-food/food-news/table-scalpers-target-heston-blumenthals-the-fat-duck](http://www.goodfood.com.au/good-food/food-news/table-scalpers-target-heston-blumenthals-the-fat-duck)>.

<sup>121</sup> Answers to questions on notice, Australian Rugby Union, 3 December 2014, p 2.

<sup>122</sup> Choice, *Feedback on NSW Government ticketing proposals*, 24 October 2013, <[www.choice.com.au](http://www.choice.com.au)>.

It is the Commonwealth Consumer Affairs Advisory Council view that the inability to transfer tickets or obtain a refund provides incentives for consumers to participate in the secondary ticket market to resell unwanted tickets. Consumer concerns have been raised about the unfairness associated with this issue. Allowing refunds and exchanges, in certain cases, can help to reduce the incidence of onselling.<sup>123</sup>

- 3.62** The National Rugby League Grand Final ticket return service is an example of a primary market initiative that has introduced a level of flexibility. The service allows grand final ticket holders who no longer want to attend the grand final because, for instance, their team has been eliminated, to return their ticket. A small window of time is allowed during which ticket holders can receive a full refund, excluding booking and other transaction fees.<sup>124</sup>

### **Ticket insurance**

- 3.63** The Commonwealth Consumer Affairs Advisory Council 2010 report on ticket onselling noted the availability of ticket insurance as a protection for consumers purchasing tickets through the primary market.<sup>125</sup> Ticket insurance enables the cost of the ticket to be refunded in the event that an individual can no longer attend an event because of unforeseen circumstances. The insurance covers an extensive list of circumstances including injury, illness, transport accidents, vehicle breakdowns, transport cancellation or delay, death of the individual, their companion or relative, assault, redundancy, work relocation, jury duty, military orders, and home or business issues. Insurance coverage will not be provided if the individual changes their mind or has a change of plans.<sup>126</sup>

### **Secondary market initiatives**

- 3.64** Evidence received during the inquiry from stakeholders involved in the secondary ticket market indicated that measures are being put in place to provide consumers with security and protection against scammers.

- 3.65** According to Ticketmaster, its resale website is able to provide a safe and secure environment for ticket purchases and sales by holding back funds paid for a ticket until after an event:

There is no opportunity or motive for anybody to commit fraud because they have no access to the funds until the consumer has been to the event, enjoyed the event and is okay with the funds being disbursed.<sup>127</sup>

- 3.66** Viagogo claimed that consumers wanting to purchase tickets from the secondary market can do so through its secure marketplace without worrying about fraud:

Our secure ticket marketplace has virtually eliminated ticket fraud by enforcing strict security controls, such as delivering tickets by a secure method (either electronically, by courier or at

<sup>123</sup> Commonwealth Consumer Affairs Advisory Council, *Consumers and the ticket market – Ticket onselling in the Australian market*, Final report, November 2010, p 37

<sup>124</sup> National Rugby League, *NRL Grand Final ticket return*, 24 September 2014, <<http://www.nrl.com/nrl-grand-final-ticket-return/tabid/10874/newsid/82112/default.aspx>>.

<sup>125</sup> Commonwealth Consumer Affairs Advisory Council, *Consumers and the ticket market – Ticket onselling in the Australian market*, Final report, November 2010, p 39

<sup>126</sup> Ticketek, *Ticket insurance*, <<http://premier.ticketek.com.au/Content/help/faqs.aspx#faq6>>.

<sup>127</sup> Evidence, Mr Homann, 3 November 2014, p 3.

one of our pick up points), and only permitting the seller to receive payment after the buyer has confirmed receipt of the tickets and attended the event.<sup>128</sup>

- 3.67** Ticketek did provide evidence, however, that it had encountered fans who had purchased resale tickets through Viagogo who were refused entry to events because of fraudulent or cancelled tickets (see paragraph 3.39). Viagogo has claimed that in the event that there are problems with a ticket, it will provide a comparable replacement ticket or a refund.<sup>129</sup>
- 3.68** eBay described its market place as safe, secure and transparent and claimed that it will investigate any instances of fraud. eBay also noted that its system of seller ratings provided a level of transparency to consumers which can help them to determine the level of risk in transacting with an individual.<sup>130</sup>
- 3.69** eBay provides a money back guarantee for most items purchased through its site in the event the item did not arrive or did not match the original description.<sup>131</sup> However, this guarantee does not apply to ticket purchases although the eBay money back guarantee logo is present on ticket listings.<sup>132</sup>
- 3.70** As noted in chapter 2, the Ticket Brokers Association has developed a code of ethics which obliges its members to behave in a manner that is not deceitful or misleading. Accurate information must be provided to the purchaser, including the location of ticket seats and delivery details. Members are also required to display a refund, rescheduling and cancellation policy where the member places its ticket listings.<sup>133</sup>
- 3.71** In addition, the Ticket Brokers Association advised that its members must be classified as a ‘top rated seller’ and displayed as part of the member’s profile on eBay. The Association monitors the profiles of its members and will suspend or expel members who have acted in a manner that is detrimental to the ticket broking industry.<sup>134</sup>

#### Committee comment

- 3.72** The committee acknowledges the ongoing efforts of the ticketing industry to combat ticket scalping through technology and other initiatives. The committee believes that the industry is well resourced and placed to continue to develop and progress these strategies. The committee notes that non-legislative measures can be particularly effective due to the need to be responsive to the changing tactics and actions of scalpers.
- 3.73** The committee believes that the primary ticketing industry should be more flexible in allowing ticket refunds, particularly for those events that are popular and have sold out and where the event organiser will be able to sell returned tickets. The committee encourages the industry to examine their ticket terms and conditions, and to build in flexibility in relation to refunds, credits and transfers for unwanted tickets, wherever possible.

<sup>128</sup> Submission 4, Viagogo, p 1.

<sup>129</sup> Viagogo, *About us - the Viagogo guarantee*, <<http://www.viagogo.com/au/about>>.

<sup>130</sup> Submission 1, eBay, p 2.

<sup>131</sup> eBay, *eBay money back guarantee*, <[http://pages2.ebay.com.au/eBay\\_Money\\_Back\\_Guarantee](http://pages2.ebay.com.au/eBay_Money_Back_Guarantee)>.

<sup>132</sup> eBay, 2 x Taylor Swift Sydney A reserve floor tickets, <[http://www.ebay.com.au/itm/2-x-Taylor-Swift-Sydney-A-Reserve-Floor-Tickets-/251753516741?pt=LH\\_DefaultDomain\\_15&hash=item3a9dadcec5](http://www.ebay.com.au/itm/2-x-Taylor-Swift-Sydney-A-Reserve-Floor-Tickets-/251753516741?pt=LH_DefaultDomain_15&hash=item3a9dadcec5)>.

<sup>133</sup> Tabled document, Ticket Brokers Association of Australia, *Ticket Brokers Association of Australia Inc. Code of Ethics*, pp 1 – 2.

<sup>134</sup> Answers to questions on notice, Witness B, Ticket Brokers Association of Australia, 1 December 2014, p 2.

- 3.74** The committee believes that ticket insurance, if affordable, is a good option for consumers, who for circumstances beyond their control cannot attend an event. The committee encourages the ticketing industry to promote its availability and ensure it is reasonably priced and accessible to consumers.
- 3.75** The committee notes that the ticketing agents in the secondary ticket market have sought to provide consumers with some security when purchasing tickets. Both Ticketmaster Resale and Viagogo claim they have processes in place that will ensure a consumer receives the ticket they purchased, and if not, a guaranteed refund is provided.
- 3.76** The eBay rating system is another means to provide information to the consumer on the reliability of a ticket reseller before they decide to transact. However, the committee believes that eBay could improve its practices by removing the eBay money back guarantee from all ticket listings as it is misleading. Alternatively, eBay could amend its money back guarantee policy to include tickets.
- 3.77** The committee acknowledges that the Ticket Brokers Association Code of Ethics represents the desire of its members to act professionally and honestly. The committee believes that it could be enhanced by including a requirement to inform the potential purchasers of any ticket terms and conditions, as set by the ticketing agency, including resale restrictions and cancellation information.
- 3.78** The committee notes that consumers are prepared to purchase tickets on the secondary ticket market and considers that there is a need to promote awareness of the associated risks, along with strategies to mitigate these risks. The committee encourages NSW Fair Trading to lead an education campaign which should involve industry stakeholders from both the primary and secondary ticket markets. Warnings and links to the NSW Fair Trading website could be used more extensively on all consumer marketplaces, as well as the websites of the sporting codes.

## Chapter 4      The Fair Trading Amendment (Ticket Reselling) Bill 2014

This chapter discusses the Fair Trading Amendment (Ticket Reselling) Bill 2014 in detail, including its purpose and possible impacts. The chapter also considers the challenges of administering and implementing the changes proposed by the bill and the practicality and cost of monitoring and enforcing non-compliance.

### Background

4.1 The Fair Trading Amendment (Ticket Reselling) Bill 2014 was introduced into the NSW Legislative Assembly on 14 November 2013 by the Hon Anthony Roberts MP, then Minister for Fair Trading. Following its passage through the Legislative Assembly, it was introduced to the Legislative Council by the Hon Matthew Mason-Cox MLC, Minister for Fair Trading on 26 March 2014.

4.2 In drafting the bill, the NSW Government conducted discussions with industry stakeholders including the sporting codes, event organisers, ticketing companies and reselling facilitators.

4.3 Minister Mason-Cox stated in his second reading speech for the bill that:

This bill will bring openness and transparency to the secondary ticket market, help protect consumers from price gouging and fraud, and empower event organisers to enforce their ticket terms and conditions.<sup>135</sup>

4.4 The bill was referred to the General Purpose Standing Committee No. 4 for further examination by resolution of the Legislative Council on 10 September 2014.<sup>136</sup>

4.5 The bill proposes a new division to Part 4 'NSW Consumer safety and information requirements' of the *Fair Trading Act 1987*. The new division, Division 6 'Resale of tickets to sporting or entertainment events,' includes sections 58 to 60. A full copy of the bill is provided at Appendix 4. A summary of sections 58 to 60 is provided below.

### Section 58 – tickets covered by new provisions

4.6 Section 58 of the bill defines the type of tickets to which the new provisions will apply, which are those tickets that have a resale restriction imposed by the event organiser. A resale restriction is a term or condition of a ticket which prohibits or limits its resale. An example of a resale condition, currently imposed by Ticketek, is:

Tickets may not, without the prior written consent of Ticketek and the seller, be resold or offered for resale at a premium (including via online auction sites) or used for advertising, promotion or other commercial purposes (including competitions and trade promotions) or to enhance the demand for other goods or services, either by the original purchaser or any subsequent bearer. If a ticket is sold or used in breach of this condition, the ticket may be cancelled without a refund and the bearer of the ticket may be refused admission.

**Scalping warning:** The resale of tickets in certain circumstances is governed by ticket sales legislation and may attract criminal penalties.<sup>137</sup>

<sup>135</sup> *Hansard*, Legislative Council, 10 September 2014, p 112 (Matthew Mason-Cox).

<sup>136</sup> *Hansard*, Legislative Council, 10 September 2014, p 120 (Adam Searle).

4.7 The bill specifies that the ticket must include a term or condition that obliges the event organiser to take all reasonable steps to provide the ticket holder notice of its intention to cancel or void the ticket under the resale restriction, within a reasonable time, before cancelling it or rendering it invalid.

4.8 In response to questioning on this issue, Ticketek noted that as part of all ticketing transactions, either through online sales or the Ticketek call centre, the consumer is made aware of the terms and conditions that apply to the ticket purchase.<sup>138</sup>

### **Section 59 – requirements for ticket advertisements**

4.9 Section 59 of the bill provides that an advertisement for a resale ticket is unauthorised if it does not include:

- the ticket number, bay number, row number and seat number of the ticket, if the ticket has been issued and includes such numbers
- terms and conditions of the ticket or where these can be readily found
- the circumstances under which resale may result in the ticket being cancelled or voided
- a photograph of the ticket displaying the ticket number, row number and seat number, without a barcode being visible.

4.10 Section 59 does not apply to:

- an advertisement published by or on behalf of the event organiser or the event organiser's agent
- an advertisement for a ticket that is sold at or below the price (not including booking fee or other transaction cost) at which the ticket was offered for sale by the event organiser or the event organiser's agent
- an advertisement of a class prescribed by the regulations.

4.11 Section 59, in its current form, could provide an exemption for Ticketmaster or Ticketek to resell tickets as the event organiser's agent. As mentioned in chapter 2, performers do retain tickets and are considered to be a source of tickets sold on the secondary market. This exemption could facilitate these types of sales.

4.12 While there is a requirement for the terms and conditions to be included in the advertisement, this section does not require the terms and conditions to be printed on the ticket. The onus is on the ticket seller to note the terms and conditions or where they can be found, in which case it is then up to the purchaser to access these provisions.

### **Section 60 – unauthorised advertisements**

4.13 Section 60 prescribes that a person conducting the business or undertaking of a forum must take reasonable steps to ensure that no advertisement in the forum is an unauthorised advertisement. A forum is defined as any forum that has advertisements that are publicly accessible (whether or not by fee, subscription, membership or registration), such as a website, a newspaper, magazine, or other

---

<sup>137</sup> Ticketek Australia, *Ticketek Online terms and conditions of sale*, <<http://premier.ticketek.com.au/Content/buyers/termsofsale.aspx>>.

<sup>138</sup> Answers to questions on notice, Ms Kate Cooper, General Counsel, Ticketek, 3 December 2014, p 2.

publication or notice board. A forum does not include social media sites such as Facebook. If reasonable steps are not taken, a maximum penalty of 200 penalty units, equivalent to \$22,000, may be imposed.<sup>139</sup>

- 4.14** Additionally, a person conducting the business or undertaking of a forum must remove an unauthorised advertisement, or amend it so that it is no longer unauthorised, within a reasonable time after being notified of its existence by an event organiser or their nominee. Failure to remove the unauthorised advertisement could result in a maximum penalty being imposed of up to 50 penalty units, equivalent to \$5,500.<sup>140</sup>
- 4.15** This section does not apply to an advertisement offering a ticket for sale if the advertisement is in a forum that has been authorised for the purposes of such sale by the event organisers.

#### **Section 60A – tickets to display resale warning**

- 4.16** Section 60A specifies that tickets with resale restrictions must include a warning that tickets that are resold may be cancelled or rendered invalid. Resale restrictions are void if this warning is not included on the ticket.

#### **Section 60B – Review of Division**

- 4.17** Section 60B provides for a ministerial review of the new Division 6 within three years of its commencement.

### **Stakeholder views on the bill**

- 4.18** Stakeholders expressed various views on the necessity and appropriateness of the bill and whether it will achieve the purpose for which it was intended. There were conflicting views on whether it provided any benefit for consumers. Some believed the bill unfairly favoured event promoters, including the sporting codes. The key issues raised by inquiry participants are discussed below.

#### **Support for greater regulation of ticket resale**

- 4.19** Inquiry participants held different opinions on the need for greater regulation in the ticketing industry. Some believed the introduction of this bill was a heavy handed response to a small problem. Others believed that it was absolutely essential for the benefit of both the industry and the consumer.
- 4.20** The sporting codes expressed a high level of support for increased regulation of the secondary ticket market and believed the bill would assist the codes to enforce their ticket terms and conditions, protect their fans and eliminate scalpers. The Coalition of Major Professional and Participation Sports, representing the views of the major professional and participation sports in Australia, submitted that the bill would ‘empower the individual sports to take action to stop ticket scalping and should become a best practice model for other jurisdictions across Australia.’<sup>141</sup>
- 4.21** Mr Grant Poulter, Government and Community Manager, Cricket Australia also commented on the authority that the legislation would provide to the sporting codes as they would now be able to legally

<sup>139</sup> Fair Trading Amendment (Ticket Reselling) Bill 2013, Explanatory note, p 2.

<sup>140</sup> Fair Trading Amendment (Ticket Reselling) Bill 2013, Explanatory note, p 2.

<sup>141</sup> Submission 9, Coalition of Major Professional and Participation Sports Inc., p 1.

enforce the terms and conditions of sale for tickets to their events.<sup>142</sup> The Australian Rugby Union similarly supported the legislation for those reasons and also as a means of protecting fans from price gouging and fraud.<sup>143</sup>

**4.22** The two primary market ticketing agents, Ticketek and Ticketmaster were at odds in their opinion on the bill. Ticketek was highly supportive of the bill and remarked that the proposed provisions are necessary and would curtail unauthorised ticket reselling as the prime motivation of achieving a profit would be removed.<sup>144</sup>

**4.23** Ticketek argued that without this level of regulation, ticket scalping will increase and ‘ultimately have profound consequences on the live performance industry in Australia, similar to the effects internet downloads have had on the music recording industry.’<sup>145</sup> Ticketek insisted that such legislation is the best way of minimising the unauthorised resale of tickets.<sup>146</sup>

**4.24** Ticketmaster, however, was not supportive of the draft bill and said that it represented an inappropriate and exaggerated response to a relatively small problem:

...we believe that the approach is rather disproportionate. All independent inquiries, be they by Treasury or the recent Senate report, have found consistently that there is a small issue of scalping. Nobody is disputing that there are instances of scalping in Australia and in New South Wales.

But the scale is so small that you have to ask: Do we need to bring in regulation to combat that? That is number one. It is a bit like saying you need to change traffic regulation across the State because there is a consistent issue in one street in Newcastle.<sup>147</sup>

**4.25** Further, Ticketmaster claimed that the NSW Government’s intention to introduce this legislation was contradictory to its commitment to support business investment by reducing regulation.<sup>148</sup>

**4.26** Live Performance Australia noted that its members had mixed views on the proposed bill but observed that international and domestic ticketing regulation had been ineffective and unenforceable.<sup>149</sup> Live Performance Australia contended that consumer education would be a more effective means of tackling the issue of scalping.<sup>150</sup>

**4.27** eBay also commented on the introduction of ticket reselling regulation overseas and the unforeseen consequences, including:

...reducing the availability and access to tickets, driving up pricing, impacting consumers’ privacy and personal security, and causing inconvenience to fans when tickets are cancelled or

<sup>142</sup> Evidence, Mr Grant Poulter, Government and Community Manager, Cricket Australia, 3 November 2014, p 21.

<sup>143</sup> Submission 6, Australian Rugby Union Limited, p 1.

<sup>144</sup> Answers to questions on notice, Ms Kate Cooper, 3 December 2014, p 1.

<sup>145</sup> Submission 2, Ticketek, p 1.

<sup>146</sup> Answers to questions on notice, Ms Kate Cooper, 3 December 2014, p 2.

<sup>147</sup> Evidence, Mr Christoph Homann, Managing Director, Resale, Ticketmaster International, 3 November 2014, p 5.

<sup>148</sup> Submission 5, Ticketmaster, p 3.

<sup>149</sup> Submission 8, Live Performance Australia, p 2.

<sup>150</sup> Submission 8, Live Performance Australia, p 5.



when they are unable to obtain a refund, transfer, onsell or otherwise recoup the cost of tickets which they are unable to use.<sup>151</sup>

**4.28** Viagogo, an international resale ticket marketplace, similarly noted that legislation introduced elsewhere around the world resulted in consumers being disadvantaged.<sup>152</sup>

**4.29** eBay contended that there are other methods that could be used to improve ticket selling practices in both the primary and secondary markets.<sup>153</sup> Likewise, Viagogo submitted that the problems are better addressed in other ways, including free market principles and increasing safety and security for consumers purchasing tickets through secondary marketplaces.

### Consumer rights

**4.30** Some inquiry participants questioned whether the bill was in the best interests of consumers. eBay remarked that the bill was not helpful to consumers and its introduction would detrimentally impact those who attempted to resell a ticket for a marginally higher amount than the ticket's face value, in order to recoup its original purchase cost:

The bill is aimed at protecting and enforcing the terms and conditions of certain primary ticket issuers, who may not allow the resale of tickets, rather than protecting consumers. Consumers will be penalised if they wish to onsell a ticket. In circumstances where a consumer can no longer attend an event, just to recover all costs (including original ticket price, surcharges and fees, resell costs) can be in excess of 20 per cent of the original ticket price.<sup>154</sup>

**4.31** Viagogo submitted that if introduced the legislation would infringe on the right of a consumer to sell something that is their property:

Introducing restrictions on resale violates the basic principle of property ownership. Once someone has bought something – whether that's a house, a car, stocks or a ticket – it is their right to resell it if they wish. This view was supported by independent research, which has shown that eight out of ten Australians agree with us.<sup>155</sup>

**4.32** Choice, the public face of the Australian Consumers Association, was invited to provide feedback to the NSW Government during the stakeholder consultation phase of the bill. In its response, Choice noted that it was supportive of most of the principles proposed by the bill, but believed that it could 'tip the scales in favour of event owners over consumers'.<sup>156</sup>

**4.33** In addition, Choice commented that the ability of the event organiser to cancel a ticket was very unfair to the consumer who purchased the resold ticket but that the scalper may not be penalised at all:

<sup>151</sup> Submission 1, eBay, p 7

<sup>152</sup> Submission 4, Viagogo, p 2.

<sup>153</sup> Submission 1, eBay, p 1.

<sup>154</sup> Submission 1, eBay, p 5.

<sup>155</sup> Submission 4, Viagogo, p 3.

<sup>156</sup> Choice, *Feedback on NSW Government ticketing proposals*, choice.com.au, <[http://searches.choice.com.au/search?&site=default\\_collection&btnG=Search+CHOICE&client=default\\_frontend&output=xml\\_no\\_dtd&proxystylesheet=version1\\_frontend&sort=date%3AD%3AL%3Ad1&oe=UTF-8&ie=UTF-8&ud=1&exclude\\_apps=1&tlen=100&q=feedback%20on%20NSW%20Government%20ticketing%20proposals](http://searches.choice.com.au/search?&site=default_collection&btnG=Search+CHOICE&client=default_frontend&output=xml_no_dtd&proxystylesheet=version1_frontend&sort=date%3AD%3AL%3Ad1&oe=UTF-8&ie=UTF-8&ud=1&exclude_apps=1&tlen=100&q=feedback%20on%20NSW%20Government%20ticketing%20proposals)>.

The cancellation of tickets will impact the end purchasers of the tickets, but will not necessarily impact on scalpers. An end purchaser may only find out their ticket has been cancelled when they attend an event, at which point the scalpers have already made their money and have little incentive to proactively warn consumers of ticket cancellation, if they are even aware of it.<sup>157</sup>

**4.34** Choice also criticised section 60(3) of the bill that requires the removal of an unauthorised advertisement for a resold ticket, and noted that this process did not provide for any appeal right for the ticket seller.<sup>158</sup>

**4.35** Ticketmaster was unequivocal in its view that the bill needs further consideration because of the impact it will have on consumers and additionally, the difficulty of enforcement:

Our experience in this market, primary and resale, prompts us to urge those seeking to regulate ticket resale to think again. This proposed regulation not only undermines the consumer's right to choose to do what they want with their property – this is how they see a ticket – but it will also be difficult to enforce.<sup>159</sup>

**4.36** Concerns relating to the enforcement of the proposed legislation are discussed later in this chapter.

### **Effectiveness of the bill**

**4.37** A number of inquiry participants questioned the effectiveness of the proposed legislation, noting that tickets will continue to be resold in circumstances that are not captured by the bill. In addition, some stakeholders claimed that the bill would not be successful in eliminating, and may actually increase, instances of ticket fraud. There was also a concern that the existing consumer protections could be compromised as ticket resales could move from legitimate resale ticket market platforms to offshore options.

**4.38** During evidence, Mr Chris Forbes, Managing Director, Ticketek was asked by the committee if he believed that the proposed legislation would encourage secondary ticket sales to go offshore and into unregulated markets. Mr Forbes responded that Ticketek would attempt to educate consumers to dissuade them from using these sites:

I think it is a balance of things. We would be coming out trying to teach consumers and fans where the authorised channels for purchase are, whether it be on a primary site or an authorised secondary channel, and really working hard so that is how they get protected.

...

<sup>157</sup> Choice, *Feedback on NSW Government ticketing proposals*, choice.com.au, <[http://searches.choice.com.au/search?&site=default\\_collection&btnG=Search+CHOICE&client=default\\_frontend&output=xml\\_no\\_dtd&proxystylesheet=version1\\_frontend&sort=date%3AD%3AL%3Ad1&oe=UTF-8&ie=UTF-8&ud=1&exclude\\_apps=1&tlen=100&q=feedback%20on%20NSW%20Government%20ticketing%20proposals](http://searches.choice.com.au/search?&site=default_collection&btnG=Search+CHOICE&client=default_frontend&output=xml_no_dtd&proxystylesheet=version1_frontend&sort=date%3AD%3AL%3Ad1&oe=UTF-8&ie=UTF-8&ud=1&exclude_apps=1&tlen=100&q=feedback%20on%20NSW%20Government%20ticketing%20proposals)>.

<sup>158</sup> Choice, *Feedback on NSW Government ticketing proposals*, choice.com.au, <[http://searches.choice.com.au/search?&site=default\\_collection&btnG=Search+CHOICE&client=default\\_frontend&output=xml\\_no\\_dtd&proxystylesheet=version1\\_frontend&sort=date%3AD%3AL%3Ad1&oe=UTF-8&ie=UTF-8&ud=1&exclude\\_apps=1&tlen=100&q=feedback%20on%20NSW%20Government%20ticketing%20proposals](http://searches.choice.com.au/search?&site=default_collection&btnG=Search+CHOICE&client=default_frontend&output=xml_no_dtd&proxystylesheet=version1_frontend&sort=date%3AD%3AL%3Ad1&oe=UTF-8&ie=UTF-8&ud=1&exclude_apps=1&tlen=100&q=feedback%20on%20NSW%20Government%20ticketing%20proposals)>.

<sup>159</sup> Evidence, Mr Homann, 3 November 2014, p 2.

We are the largest ticketing company in Australia and we can over time work with our venues and promoters to have the right sort of campaign so that they know that if they want to buy a ticket through us that it is going to be a genuine ticket.<sup>160</sup>

- 4.39 Mr Homann from Ticketmaster gave evidence that other jurisdictions that have introduced similar regulation of ticket reselling are now debating its effectiveness in combatting scalping:

Michigan, for example, last year repealed their anti-resell legislation because they all found that the only thing it does is it allows genuine scalpers to hide among consumers and forces the consumers against their wishes to try to evade or go against State law, which really had negative consequences.<sup>161</sup>

- 4.40 Similarly, eBay also observed that there is an international trend to move away from regulation because it has had little impact on scalping:

Attempts to regulate the secondary tickets market have not been effective in reducing scalping and protecting consumer interests; which is why many jurisdictions in the United States have been moving towards deregulation of the market, rather than regulation.<sup>162</sup>

#### **Resale methods not captured by the bill**

- 4.41 As noted previously, only those tickets that are advertised for resale on public forums are included in the bill. Tickets resold through social media sites, such as Facebook, are not included, although this method of advertising tickets for resale is popular and represents a significant proportion of the resale market. According to eBay, Facebook is one of the most common ways to sell a ticket in the secondary market:

Although Facebook is the most common way to sell a ticket in the secondary market other than Showbiz, it is not covered by the Bill. This Government says this form of communication is private, despite Facebook posting being available publicly. Many people offload tickets through this channel which can be less transparent than other sites.<sup>163</sup>

- 4.42 As mentioned in chapter 2, the Ticket Brokers Association noted that its members primarily used their existing contacts to resell tickets, and only used public forums for any left-over tickets.<sup>164</sup> In addition, the Ticket Brokers Association said that there is an increase in the development of custom-built exchange-based websites.<sup>165</sup> Tickets resold through either direct contact or through social media, such as individual Facebook accounts, are unlikely to be detected by the primary ticket seller, removing the opportunity for the terms and conditions attached to the ticket to be enforced.

#### **Requirement to include a photograph of the ticket**

- 4.43 The requirement to include a photograph of the ticket in the advertisement for its resale was considered problematic by several stakeholders, many of who were of the view that this requirement could increase the incidence of fake or non-existent tickets being resold. In giving feedback to the

<sup>160</sup> Evidence, Mr Chris Forbes, Managing Director, Ticketek, 3 November 2014, p 31.

<sup>161</sup> Evidence, Mr Homann, 3 November 2014, p 4.

<sup>162</sup> Submission 1, eBay, p 8.

<sup>163</sup> Submission 1, eBay, p 5.

<sup>164</sup> Answers to questions on notice, Witness B, 1 December 2014, p 2.

<sup>165</sup> Submission 3, Ticket Brokers Association of Australia, p 1.

NSW Government on the ticketing proposals, Choice noted that: 'It is a relatively simple process to manipulate photographs and images of tickets to make them appear genuine.'<sup>166</sup>

**4.44** Live Performance Australia submitted that not only would fraudsters be undeterred by this requirement, it could be used to their personal advantage:

...given the easy availability of picture editing software, a reseller could simply doctor the seat numbers to subvert ticket cancellation. If the event owner then inadvertently cancels the wrong ticket based on the numbers displayed in the doctored ticket image, then a legitimate consumer will be the victim of a scalpers fraudulent behavior.<sup>167</sup>

**4.45** Likewise, Ticketmaster noted the photo requirement provided 'a perfect opportunity for fraud. Images are simple to copy and duplicate and the proposition of hiding the barcode will be of little help because these can be added by the fraudsters.'<sup>168</sup>

**4.46** The Ticket Brokers Association called for the requirement to include a photograph to be reconsidered because of the likelihood that it will be used for fraudulent purposes:

...the new photograph requirement proposed by the legislation will simply result in people doctoring otherwise valid tickets for their own nefarious purposes and onselling them in the full knowledge that the person is not going to get in. It will have a manufactured barcode. I think a lot of thought needs to be given to requiring that photograph.<sup>169</sup>

**4.47** Additionally, Ticketmaster claimed that this requirement did not take into consideration that tickets are often held back from release to the purchaser until just prior to the event.<sup>170</sup> Ticketmaster believed that the requirement to include a photograph of a ticket will prevent the ticket being advertised for resale until just before the event. This could impact on the saleability of the ticket.

**4.48** However, Ticketek was 'ambivalent' about the requirement to include a photograph of the ticket and noted that the emergence of paperless tickets will mean that including a photograph will not be possible in the future:

...I mean there is a big move now towards mobile tickets so you are not going to get that classic view in the future. A large percentage of venue entry tickets are just going to have a barcode on the front.<sup>171</sup>

### **Transparency of the secondary ticket market**

**4.49** The objective of the bill to create transparency in the secondary ticket market was also questioned, with several inquiry participants expressing the view that it would, conversely, create an underground

<sup>166</sup> Choice, *Feedback on NSW Government ticketing proposals*, choice.com.au, <[http://searches.choice.com.au/search?&site=default\\_collection&btnG=Search+CHOICE&client=default\\_frontend&output=xml\\_no\\_dtd&proxystylesheet=version1\\_frontend&sort=date%3AD%3AL%3Ad1&oe=UTF-8&ie=UTF-8&ud=1&exclude\\_apps=1&tlen=100&q=feedback%20on%20NSW%20Government%20ticketing%20proposals](http://searches.choice.com.au/search?&site=default_collection&btnG=Search+CHOICE&client=default_frontend&output=xml_no_dtd&proxystylesheet=version1_frontend&sort=date%3AD%3AL%3Ad1&oe=UTF-8&ie=UTF-8&ud=1&exclude_apps=1&tlen=100&q=feedback%20on%20NSW%20Government%20ticketing%20proposals)>.

<sup>167</sup> Submission 8, Live Performance Australia, p 5.

<sup>168</sup> Evidence, Mr Homann, , 3 November 2014, p 2.

<sup>169</sup> Evidence, Witness A, 3 November 2014, p 1.

<sup>170</sup> Evidence, Mr Homann, 3 November 2014, p 2.

<sup>171</sup> Evidence, Mr Forbes, 3 November 2014, p 30.

or off-shore market where tickets will be sold on sites that are beyond the jurisdiction of authorities in New South Wales.

- 4.50** The Ticket Brokers Association strongly argued that the legislation would result in a ticket resale process that was less transparent than the current secondary ticket market and without any level of consumer protection:

Our experience suggests that if legislation is imposed of the breadth anticipated by the Minister for Fair Trading it will simply drive the trade underground or to overseas operators. It is not difficult for an overseas ticket exchange like Ticketbis, which is based in Latin America, to simply pay for Google advertisements in Australia, thereby directing any traffic to them. They could get the first click and direct traffic straight to their exchange, obviously circumventing any legislation that the Parliament would impose. Obviously there are no consumer protections afforded when using an overseas-based exchange.<sup>172</sup>

- 4.51** Viagogo expressed a similar opinion, noting that increasing regulation in the secondary ticket market will push ticket resellers to use obscure, less regulated options:

Introducing restrictions on resale just makes it more complicated for people to use the new safe and secure ticket marketplace platforms. These restrictions would dissuade them from doing so, and they would therefore return to using the old black market sales channels of auction sites, classified ads, and scalpers outside pubs, club and venue car parks, where little or no consumer protection exists.<sup>173</sup>

- 4.52** In giving evidence, the Ticket Brokers Association noted that consumers who purchased tickets through the Association's members either directly or from forums such as eBay or Ticketmaster Resale are protected by Australian consumer laws. If the resale market does move off-shore as a result of the introduction of this legislation, the Ticket Brokers Association believed the restrictions would be flouted:

One of the Ticket Brokers Association of Australia members spoke to Ticketbis and asked what it proposed to do in response to the New South Wales legislation. Ticketbis is a large overseas broker. They said: "What is New South Wales?" They were not being funny; they had no idea. They know what Australia is, but they just sell tickets. I cannot speak for them, but I believe they will ignore any legislation you implement and sales of tickets will still go on, but that will happen outside Australia.<sup>174</sup>

### **Impact on price gouging**

- 4.53** The impact of the legislation on preventing price gouging in the secondary market was debated by inquiry participants. The Coalition of Major Professional and Participation Sports, for example, submitted that the legislation would protect sports fans from price gouging.<sup>175</sup>

- 4.54** According to eBay, however, legislation restricting the resale of tickets could actually result in higher prices on the secondary market. eBay based this assertion on a report issued in 2010 by OSKR, an American legal firm, which found:

<sup>172</sup> Evidence, Witness A, 3 November 2014, p 1.

<sup>173</sup> Submission 4, Viagogo, p 3.

<sup>174</sup> Evidence, Witness B, 3 November 2014, p 10.

<sup>175</sup> Submission 9, Coalition of Major Professional and Participation Sports, p 7.

...that in markets with laws restricting the resale of tickets, the resale price of tickets in those markets were actually higher (due to a lack of transparency) whereas in those places where there were no such laws, the prices for the resale of ticket remained steady.<sup>176</sup>

- 4.55 The Ticket Brokers Association argued that if the legislation is introduced, ticket prices in the primary market would increase as the secondary market contracted. The Association contended that the primary market would increase its use of dynamic pricing practices and as a result ticket prices will rise:

I daresay that if the secondary market for the resale of tickets above face value is eradicated or outlawed then the primary market will simply come in to fill that void. So dynamic pricing will become more common.

...

A perfect example of potential price gouging is the Australian Football League Grand Final. You are not able to sell tickets above face value for that. They have quite a tight control on the distribution of tickets to the general public. People are compelled to purchase packages ranging from \$1,500 to about \$2,800.<sup>177</sup>

- 4.56 In relation to further questioning from the committee on the possible impact of the legislation on tickets sold through the primary ticket market, the Ticket Brokers Association referred to the changing price of Australian Football League tickets, following the introduction of ticketing legislation in Victoria:

The Australian Football League Grand Final, when the legislation came in I think the top level of tickets was about \$100 and official packages were about \$500. We are talking 11 years later and the \$100 has turned into \$4000 and the \$500 has turned into about \$1,750. It is way beyond inflation.<sup>178</sup>

- 4.57 Ticketek, however, claimed that the industry would be forced to move to a dynamic pricing model if the legislation was *not* introduced:

If consumers are forced to acquire tickets on the secondary market where tickets are sold for the purposes of generating premiums, then this impacts on the pricing strategy currently used by artists and sporting clubs which is generally directed at ensuring fair access to tickets for fans. Whilst tickets to many events are currently priced for this policy consideration, the industry may need to move to a dynamic pricing model to ensure revenues remain in the industry.<sup>179</sup>

### **Implementation and enforcement**

- 4.58 A number of inquiry participants noted that implementing and administering the changes required by the legislation would be costly to the industry. Ticketmaster submitted that the bill imposed an unnecessary legislative burden on the industry:

---

<sup>176</sup> Daniel A Rascher & Andrew D. Schwarz, *Paperless ticketing and its impact on the secondary market: an economic analysis*, OSKR LLC, December 2010, referred to in submission 1, eBay, p 8.

<sup>177</sup> Evidence, Witness A, 3 November 2014, p 1.

<sup>178</sup> Evidence, Witness B, 3 November 2014, pp 6-7.

<sup>179</sup> Answers to questions on notice, Ms Kate Cooper, 3 December 2014, p 1.

The bill will see event organisers and ticket companies forced to absorb the significant administrative costs of upholding the regulation, including the manual searches of resale ticket listings.<sup>180</sup>

- 4.59** Mr Homann, Ticketmaster International remarked that it was difficult to predict the cost to the industry as it would vary and depend on the number of tickets being resold:

It would be primarily driven by demand – taking all tickets or by checking tickets that are being put up to make sure that they comply with the regulation. Depending on the size of the market, that could be quite a significant headcount of people looking after that. I could see that easily running into the millions of dollars, depending on how big the market could potentially be.<sup>181</sup>

- 4.60** As the peak body for the live performance industry, Live Performance Australia was concerned that there would be additional requirements and responsibilities placed on its members as a result of the legislation:

Under the proposed provisions event owners will need to carefully set the terms and conditions of sale for each event (by anticipating how popular they believe the event will be) and develop a resale or anti-resale policy accordingly per event. It will then be the responsibility of the event owner to monitor resale activity on countless unauthorised ticket reselling event webpages and cancel tickets in accordance with their policy for that event as applicable.<sup>182</sup>

- 4.61** Live Performance Australia was very concerned about the financial ramifications for its members if they were required to ‘invest additional resources into monitoring and enforcement for the proposed regime to be effective in eliminating scalping.’ Live Performance Australia noted that the industry was operating on very slim margins and this regulation could place a significant burden on the industry that could affect its ongoing operation. Live Performance Australia implored the committee to consider the administrative and financial burdens that the proposed legislation will place on event organisers and take all steps to ensure that this does not happen.<sup>183</sup>

- 4.62** In contrast, Ticketek disagreed that the legislation would be administratively burdensome for the industry to implement. On the contrary, Ticketek remarked that it would be a relatively simple matter for ticketing agencies to update terms and conditions:

Ticketek considers that it will be very straightforward for ticketing agencies to modify their current resale conditions to ensure that they comply with the ‘resale conditions’ contained in the proposed legislation.<sup>184</sup>

### **Other concerns**

- 4.63** Several inquiry participants criticised the requirement proposed by section 59 of the bill to provide ticket details including bay, row and seat number. Live Performance Australia pointed out that there were difficulties in complying with the requirements of section 59 as a significant number of tickets sold do not have reserved seating, such as those that are classified as ‘General Admission’ or those sold for festival events.<sup>185</sup>

<sup>180</sup> Submission 5, Ticketmaster Australia, p 3.

<sup>181</sup> Evidence, Mr Homann, 3 November 2014, p 9.

<sup>182</sup> Submission 8, Live Performance Australia, p 4.

<sup>183</sup> Submission 8, Live Performance Australia, p 4.

<sup>184</sup> Submission 2, Ticketek, p 2.

<sup>185</sup> Submission 8, Live Performance Australia, p 8.

**4.64** There was also concern regarding the jurisdictional issues that may arise from the legislation. Mr Homann noted his view that state by state legislation is confusing to consumers who travel around the country to attend events: ‘it is really hard to explain to the consumer why if he attends a concert in Queensland different rules around the ticket-buying experience apply in Victoria or New South Wales’.<sup>186</sup>

**4.65** Live Performance Australia also submitted that ‘cross jurisdictional hurdles’ would present problems and should be seriously considered by the committee:

As the proposed legislation will only apply to NSW events, and there are different ticket scalping regimes in other states, it may also be necessary for event owners to develop different terms and conditions of sale and resale policies in each state. This is not a desirable outcome given that an act will typically only perform in Australia for a month or so, and may only do one or two performances in each state.<sup>187</sup>

**4.66** In addition, Live Performance Australia believed there would be a need to print separate ticket stock for New South Wales events, necessitated by the requirement to include different information on tickets.<sup>188</sup>

**4.67** Ticketek, however, did not consider state based legislation and jurisdictional differences as presenting a major issue, although the organisation’s preferred position is to have national legislation:

We do not see it as an enormous problem. I think certainly we have said in the past that we would prefer a national approach, but in the absence of the Commonwealth Government agreeing with us we are in favor of the New South Wales legislation.<sup>189</sup>

### **Committee comment**

**4.68** The committee notes that inquiry participants were divided over whether to support the bill. Supporters of the bill included Ticketek and the Coalition of Major Professional and Participation Sports and its members (including Australian Rugby Union, National Rugby League, and Cricket Australia). They considered the bill to be a necessary and appropriate response to combatting unauthorised ticket resale.

**4.69** Those opposed to the bill included eBay, Viagogo, Ticketmaster Australia and the Ticket Brokers Association of Australia. They tended to argue that the bill would negatively impact on consumer rights and in addition, move ticket resale into less transparent avenues, or offshore.

**4.70** Live Performance Australia, while not opposing the bill, cautioned that regulation of the ticketing industry in other jurisdictions had generally been ineffective and unenforceable in relation to ticket scalping.

**4.71** The committee also heard debate about the prevalence of ticket scalping. Opponents of the bill considered ticket scalping in Australia to be marginal, occurring at only a handful of popular events each year. Consequently, opponents of the bill considered it an overreaction to a small problem that was best dealt with through consumer education and industry initiatives. In addition, opponents of the bill said that the Australian Consumer Law had proven to be adequate in its application against unauthorised and fraudulent ticket reselling activities.

---

<sup>186</sup> Evidence, Mr Homann, 3 November 2014, p 4.

<sup>187</sup> Submission 8, Live Performance Australia, p 4.

<sup>188</sup> Submission 8, Live Performance Australia, p 5.

<sup>189</sup> Evidence, Ms Kate Cooper, General Counsel, Nine Live, 3 November 2014, p 33.



- 4.72 The committee does not believe the bill provides meaningful benefits for consumers, but favours event promoters and their commercial interests (see paragraphs 4.18, 4.30-4.31, and 4.35 of this report). While not denying there is some issue with ticket scalping, its incidence is relatively small, a view borne out by the Senate Economics References Committee *Ticket Scalping in Australia* inquiry and the experience of NSW Fair Trading.
- 4.73 Even if the policy embedded in this bill is desirable, the committee is unconvinced of its practicality, and the evidence before us indicates it is not practicable and enforceable (see paragraphs 4.26, 4.37-4.40).
- 4.74 The committee is also mindful of evidence before us that suggests regulation of the kind proposed in this bill will in fact result in a reduction in the availability of event tickets, a resulting increase in ticket price, and an impact on the privacy of consumers (4.27-4.28). The first two impacts would favour event promoters at the expense of consumers.
- 4.75 The requirement in the bill to include a photograph of a ticket, far from being an anti-fraud measure, may actually facilitate fraud given the availability of technology to manipulate images of tickets and make them appear genuine (4.43-4.46).
- 4.76 The claims made by bill proponents, such as the Coalition of Major Professional and Participation Sports, that it would protect fans from price gouging, are not sustained by evidence before the committee and the bill could well increase ticket prices for consumers by restricting availability (4.53-4.55).
- 4.77 The balance of evidence to the committee was that implementation of this legislation would be costly and burdensome to the industry, with little or no advantage to consumers (4.58-4.61).
- 4.78 There were a range of other, practical issues with the bill raised by stakeholders, including difficulties in complying with section 59 given a significant number of tickets sold do not have reserve seating, and issues with sales across State and Territory borders (4.63-4.67).
- 4.79 As a result of evaluating the evidence before the committee, the committee is of the view that the NSW Government should not proceed with the Fair Trading Amendment (Ticket Reselling) Bill 2014.
- 4.80 The committee believes the NSW Government should take steps to improve the transparency of the primary ticket selling industry, as touched on in paragraph 2.77 of this report.
- 4.81 If the NSW Government believes there need to be improvements in the transparency of the secondary ticket market, it should convene an industry roundtable, including participants and consumer representatives, to discuss the relevant issues and see if a consensus can be achieved on sensible and practical reforms that safeguard all interests.

---

### **Recommendation 1**

That the NSW Government not proceed with the Fair Trading Amendment (Ticket Reselling) Bill 2014.

---

### **Recommendation 2**

That the NSW Government take steps to improve the transparency of the primary ticket selling industry, as touched on in paragraph 2.77 of this report.

---

---

**Recommendation 3**

That the NSW Government, if it believes there need to be improvements in the transparency of the secondary ticket market, should convene an industry roundtable, including participants and consumer representatives, to discuss the relevant issues and see if a consensus can be achieved on sensible and practical reforms that safeguard all interests.

---

## Appendix 1 Submission list

No	Author
1	eBay Australia & New Zealand
2	Ticketek
3	Ticket Brokers Association of Australia
4	viagogo
5	Ticketmaster
6	Australian Rugby Union
7	National Rugby League
8	Live Performance Australia
9	The Coalition of Major Professional and Participation Sports

## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
<b>Monday 3 November 2014</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b> <b>In camera hearing</b>	Witness A	Ticket Brokers Association
	Witness B	Ticket Brokers Association
<b>Monday 3 November 2014</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b>	Ms Maria O'Connor	Managing Director, Ticketmaster
	Mr Christoph Homann	Managing Director Resale, Ticketmaster International
	Mr Jaymes Boland-Rudder	Head of Government Relations and Campaign Management, National Rugby League
	Mr David Sykes	Senior Manager, Strategy and Business Development, Australian Rugby Union
	Mr Grant Poulter	Government and Community Relations Manager, Cricket Australia
	Mr Chris Forbes	Managing Director, Ticketek
	Ms Kate Cooper	General Counsel, Ticketek

## **Appendix 3      Answers to questions on notice**

The committee received answers to questions on notice from:

- Australian Rugby Union
- Cricket Australia
- National Rugby League
- Ticketmaster
- Ticketek
- Ticket Brokers Association of Australia

# Appendix 4 Fair Trading Amendment (Ticket Reselling) Bill 2014

Second print



New South Wales

## Fair Trading Amendment (Ticket Reselling) Bill 2014

### Contents

---

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Fair Trading Act 1987 No 68	3

*This public bill which originated in the Legislative Assembly, has passed and is now ready for presentation to the Legislative Council for its concurrence.*

*Clerk of the Legislative Assembly,  
Legislative Assembly,  
Sydney, , 2014*



New South Wales

## **Fair Trading Amendment (Ticket Reselling) Bill 2014**

Act No , 2014

---

An Act to amend the *Fair Trading Act 1987* with respect to the resale of certain tickets to sporting or entertainment events.

---

**EXAMINED**

*Assistant Speaker*

---

Fair Trading Amendment (Ticket Reselling) Bill 2014 [NSW]

---

**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Fair Trading Amendment (Ticket Reselling) Act 2014*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

1  
2  
3  
4  
5



<b>Schedule 1</b>	<b>Amendment of Fair Trading Act 1987 No 68</b>	1
[1]	<b>Part 4 NSW consumer safety and information requirements</b>	2
	Insert after Division 5:	3
	<b>Division 6 Resale of tickets to sporting or entertainment events</b>	4
	<b>58 Tickets to which Division applies</b>	5
	(1) This Division applies to a ticket to a sporting or entertainment event held in New South Wales if:	6
	(a) the ticket is subject to a resale restriction, and	7
	(b) the ticket contains a term or condition that provides that the organiser of the event will take all reasonable steps to give the ticket holder notice of the organiser's intention to cancel the ticket or render it invalid under the resale restriction, within a reasonable time before cancelling it or rendering it invalid.	8
	(2) A <i>resale restriction</i> means, for the purposes of this Division, a term or condition of a ticket that limits the circumstances in which the ticket may be resold or prohibits resale of the ticket and includes a term or condition that provides for the ticket to be cancelled or rendered invalid if the ticket is resold, or if the ticket is resold in certain circumstances.	9
	(3) A reference in this Division to the terms and conditions of a ticket includes a reference to the terms and conditions of any contract that governs the use of the ticket (including resale).	10
		11
		12
		13
	<b>59 Unauthorised advertisement for resale of tickets</b>	14
	(1) An advertisement that offers a ticket for sale is, for the purposes of this Division, an <i>unauthorised advertisement</i> unless the advertisement complies with the requirements of this section.	15
	(2) An advertisement must specify the ticket number, bay number, row number and seat number of the ticket if the ticket has been issued and includes such numbers.	16
	(3) An advertisement must specify the terms and conditions of the ticket or specify where those terms and conditions can be readily found.	17
	(4) An advertisement must include a notice specifying the circumstances in which resale of the ticket may result in the ticket being cancelled or rendered invalid.	18
	(5) An advertisement must contain a photograph of the ticket that clearly shows any ticket number, row number and seat number. However, the photograph must not show any barcode on the ticket.	19
	(6) This section does not apply to:	20
	(a) an advertisement published by or on behalf of the organiser of the event to which the ticket relates or any agent of the organiser, or	21
	(b) an advertisement offering a ticket for sale at or below the price (not including any booking fee or other transaction cost) at which the ticket was offered for sale by, or on behalf of, the organiser of the event to which the ticket relates, or	22
	(c) an advertisement of a class prescribed by the regulations.	23
		24
		25
		26
		27
		28
		29
		30
		31
		32
		33
		34
		35
		36
		37
		38
		39
		40
		41
		42
		43

<b>60 Public forum not to contain unauthorised advertisement</b>	1
(1) In this section:	2
<i>advertisement</i> means any advertisement whether paid or not.	3
<i>forum</i> means any forum having advertisements to which members of the public have access (whether or not a member of the public is first required to pay a fee or subscription, register or become a member) such as a website, a newspaper, magazine or other publication or a public notice board.	4
<i>person conducting a business or undertaking</i> has the same meaning as in the <i>Work Health and Safety Act 2011</i> but also includes any person of a class prescribed by the regulations.	5
	6
	7
(2) A person conducting the business or undertaking of a forum must take reasonable steps to ensure that no advertisement in the forum is an unauthorised advertisement.	8
Maximum penalty: 200 penalty units.	9
	10
(3) A person conducting the business or undertaking of a forum must, within a reasonable time after being notified in writing by a person referred to in subsection (4) of an unauthorised advertisement in the forum, ensure that if it is reasonably practicable to do so:	11
(a) the advertisement is removed from the forum, or	12
(b) the advertisement is changed so that it is not an unauthorised advertisement.	13
Maximum penalty: 50 penalty units.	14
(4) Notification under subsection (3) can only be made by the organiser of the event to which the advertised ticket relates or a person nominated by the organiser.	15
(5) The regulations may prescribe circumstances in which a person conducting the business or undertaking of a forum is taken to have been notified in writing that there is an unauthorised advertisement in the forum.	16
(6) This section does not apply to an advertisement offering a ticket for sale if the advertisement is in a forum that has been authorised for the purposes of such sale by the organiser of the event.	17
	18
(7) A reference in this section to a person conducting a business or undertaking includes a reference to the owner of the business or undertaking.	19
	20
	21
	22
<b>60A Resale restriction void unless ticket contains warning</b>	23
A resale restriction that provides for a ticket to be cancelled or rendered invalid if it is resold (or if it is resold in certain circumstances) is void unless the ticket contains a warning in the form prescribed by the regulations.	24
	25
	26
<b>60B Review of Division</b>	27
(1) The Minister is to review this Division to determine whether the policy objectives of the Division remain valid and whether the terms of the Division remain appropriate for securing those objectives.	28
	29
(2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this Division.	30
	31
(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.	32
	33
	34
	35
	36
	37
	38
	39
	40
	41
	42
	43
	44
	45

Fair Trading Amendment (Ticket Reselling) Bill 2014 [NSW]  
 Schedule 1 Amendment of Fair Trading Act 1987 No 68

<b>[2] Schedule 5 Savings and transitional provisions</b>	1
Omit clause 1A (1). Insert instead:	2
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	3 4
<b>[3] Schedule 5</b>	5
Insert at the end of the Schedule with appropriate Part and clause numbers:	6
<b>Part Provisions consequent on enactment of Fair Trading Amendment (Ticket Reselling) Act 2014</b>	7 8
<b>Definition</b>	9
In this Part:	10
<i>amending Act</i> means the <i>Fair Trading Amendment (Ticket Reselling) Act 2014</i> .	11 12
<b>Unauthorised tickets on forum</b>	13
Section 60, as inserted by the amending Act, does not apply to an unauthorised advertisement in a forum if the advertisement was in the forum before the commencement of that section.	14 15 16
<b>Cancellation of ticket</b>	17
Section 60A, as inserted by the amending Act, does not apply to a ticket issued before the commencement of that section.	18 19

## Appendix 5 Tabled documents

Monday 3 November 2014

Macquarie Room, Parliament House

1. Ticket Brokers Association of Australia, Code of Ethics, *tendered by Witness A*
2. Ticket Brokers Association of Australia, Eagles concert ticket pricing information, *tendered by Witness A*
3. Ticket Brokers Association of Australia, John Farnham and Olivia Newton-John concert ticket pricing information, *tendered by Witness A*
4. Ticket Brokers Association of Australia, Grand Final 2012 ticket pricing information, *tendered by Witness B*
5. Ticket Brokers Association of Australia, media article entitled NSW fans encouraged to buy before dynamic pricing hits, NRL.com, *tendered by Witness B*.

## Appendix 6 Minutes

### Minutes No. 29

Thursday 18 September 2014

General Purpose Standing Committee No. 4

Members' Lounge, Parliament House, Sydney, at 1.45 pm

#### 1. Members present

Mrs Mitchell, *Chair*

Dr Kaye (substituting for Mr Shoebridge for meeting and for the duration of the inquiry into the Fair Trading Amendment (Ticket Reselling) Bill)

Mr Khan

Mr Lynn

Mr Searle

Ms Voltz

#### 2. Apologies

Mr Borsak

#### 3. Previous minutes

Resolved, on the motion of Mr Lynn: That draft minutes no. 25 – 28 be confirmed.

#### 4. \*\*\*

#### 5. \*\*\*

#### 6. Inquiry into Fair Trading Amendment (Ticket Reselling) Bill 2014

##### 6.1 Terms of reference

The Committee noted the following terms of reference referred by the House on 10 September 2014:

That General Purpose Standing Committee No. 4 inquire into and report on the Fair Trading Amendment (Ticket Reselling) Bill.

##### 6.2 Proposed timeline

Resolved, on the motion of Mr Khan: That the committee adopt the following timeline for the administration of the inquiry:

- closing date for submissions – 23 October 2014
- public hearing – 3 November 2014
- report deliberative – early February 2015
- report tabling – mid-February 2015.

##### 6.3 Stakeholder list

Resolved, on the motion of Dr Kaye: That the secretariat email members with a list of stakeholders to be invited to make written submissions, and that members have two days from the email being circulated to nominate additional stakeholders.

##### 6.4 Submission publication

Resolved, on the motion of Dr Kaye: That the committee authorise the publication of all submissions to the inquiry, subject to the committee clerk checking for confidentiality, adverse mention and other issues. Submissions identified as containing confidentiality, adverse mention or other issues are to be considered by the committee.

**6.5 Attachments to submissions**

Resolved, on the motion of Dr Kaye: That all attachments to submissions received during the inquiry remain confidential, unless otherwise published by the committee.

**6.6 Process for determining witnesses**

Resolved, on the motion of Dr Kaye: That the secretariat circulate to members the Chairs' proposed list of witnesses to provide them with the opportunity to amend the list or nominate additional witnesses, and that the committee agree to the witness list by email, unless a meeting of the committee is required to resolve any disagreement.

**6.7 Questions on notice and supplementary questions**

Resolved, on the motion of Dr Kaye: That for the duration of the inquiry:

- supplementary questions be lodged with the secretariat up to two days following the receipt of the hearing transcript
- witnesses be requested to return answers to questions on notice and supplementary questions within 21 days of the date on which questions are forwarded to the witness.

**7. Adjournment**

The Committee adjourned at 1.55 pm, *sine die*.

John Young

**Clerk to the Committee**

**Minutes No. 30**

Monday 3 November 2014

General Purpose Standing Committee No. 4

Macquarie Room, Parliament House, Sydney at 8.50 am

**1. Members present**

Mrs Mitchell, *Chair*

Mr Borsak, *Deputy Chair*

Dr Kaye (substituting for Mr Shoebridge for the duration of the inquiry into the Fair Trading Amendment (Ticket Reselling) Bill)

Mr Khan

Mr Searle

Ms Voltz (from 9.12 am)

**2. Apologies**

Mr Lynn

**3. Previous minutes**

Resolved, on the motion of Mr Khan: That draft minutes no. 29 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

***Received***

- \*\*\*
- 21 October 2014 – From Ms Jacquelynn Willcox, Weber Shandwick Australia requesting that Ms Maria O'Connor be allowed to provide evidence at the Inquiry into the Fair Trading Amendment (Ticket Reselling) Bill 2014 hearing on 3 November 2014 by teleconference.

- 21 October 2014 – Letter providing a submission to the Inquiry into the Fair Trading Amendment (Ticket Reselling) Bill 2014 and requesting that the submission be treated as confidential.
- 22 October 2014 – From Mr Tim McGregor, Group Managing Director, Dainty Group declining invitation to appear at the at the Inquiry into the Fair Trading Amendment (Ticket Reselling) Bill 2014 hearing on 3 November 2014.
- 22 October 2014 – From Ms Erin Turner, Campaigns Manager, Choice, declining the invitation to make a submission to the Inquiry into the Fair Trading Amendment (Ticket Reselling) Bill 2014 hearing on 3 November 2014.
- 27 October 2014 – From Mr Sassoon Grigorian, Director, Public Policy, Asia Pacific, eBay, declining invitation to appear at the at the Inquiry into the Fair Trading Amendment (Ticket Reselling) Bill 2014 hearing on 3 November 2014.
- 28 October 2014 – From the Ticket Brokers Association of Australia Inc. requesting to provide evidence *in camera* at the Inquiry into the Fair Trading Amendment (Ticket Reselling) Bill 2014 hearing on 3 November 2014, on the basis that the individual witnesses not be identified but that it be a matter of public record that the Association gave evidence.
- 29 October 2014 – From Ms Kate Cooper, General Counsel, Nine Live, providing a submission from Ticketek to the Inquiry into the Fair Trading Amendment (Ticket Reselling) Bill 2014 and noting that the submission can be made public.

Resolved, on the motion of Dr Kaye: That the correspondence and enclosed submission, dated 21 October 2014, remain confidential.

Resolved, on the motion of Dr Kaye: That the correspondence received from the Ticket Brokers Association of Australia, dated 28 October 2014, remain confidential. Further, that the committee agree to the request to give evidence *in camera*, with a view to publishing the transcript with identifying information removed.

Ms Voltz joined the meeting.

## 5. Inquiry into Fair Trading Amendment (Ticket Reselling) Bill 2014

### 5.1 Public submissions

The committee noted that submission nos. 1-9 were published by the Committee Clerk under the authorisation of an earlier resolution.

### 5.2 In camera hearing

Resolved, on the motion of Mr Khan: That the committee proceed to take evidence *in camera*.

Persons present other than the committee: Mr Stewart Smith, Ms Donna Hogan, Ms Lynn Race, Ms Kerry Blandon, and Hansard reporters.

Witness A and Witness B representing the Ticket Brokers' Association of Australia Inc were sworn and examined *in camera*.

Witness A tendered the following documents:

- Ticket Brokers Association of Australia Inc. *Code of Ethics*
- Eagles concert ticket pricing information
- John Farnham and Olivia Newton-John concert ticket pricing information

Witness B tendered the following documents:

- Grand Final 2012 ticket pricing information
- Media article *NSW fans encouraged to buy before dynamic pricing hits*, NRL.com.

The evidence concluded and the witnesses withdrew.

### 5.3 Public hearing

Witnesses, the public and media were admitted.

The chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Christoph Homann, Managing Director Resale, Ticketmaster International
- Ms Maria O'Connor, Managing Director, Ticketmaster Australia (via teleconference).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Jaymes Boland-Rudder, Head of Government Relations and Campaign Management, National Rugby League
- Mr David Sykes, Senior Manager, Strategy and Business Development, Australian Rugby Union
- Mr Grant Poulter, Government and Community Relations Manager, Cricket Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Chris Forbes, Managing Director, Ticketek
- Ms Kate Cooper, General Counsel, Nine Live

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 12:26 pm and the public and media withdrew.

### 5.4 Deliberative meeting:

Resolved, on the motion of the Hon Lynda Voltz: That the committee accept and publish the following document(s) tendered during the *in camera* hearing by the Ticket Brokers Association of Australia Inc.:

- Ticket Brokers Association of Australia Inc. *Code of Ethics*
- Eagles concert ticket pricing information
- John Farnham and Olivia Newton-John concert ticket pricing information
- Grand Final 2012 ticket pricing information
- Media article *NSW fans encouraged to buy before dynamic pricing hits*, NRL.com.

Resolved, on the motion of Mr Borsak: That the committee invite Last Tix to make a submission to this inquiry and provide information on how it sources the tickets, it sells to the public.

Resolved, on the motion of Ms Voltz: That the committee write to the Victorian Government to seek clarification on the process used to declare an event under the *Major Sporting Events Act 2009*.

Resolved, on the motion of Mr Khan: That the committee provide supplementary questions for witnesses to the committee secretariat by 5:00 pm, Friday 7 November 2014.



**6. Adjournment**

The Committee adjourned at 12:36 pm, *sine die*.

Donna Hogan  
**Clerk to the Committee**

**Minutes No. 31**

Thursday 13 November 2014  
General Purpose Standing Committee No. 4  
Members' Lounge, Parliament House, Sydney at 5.26 pm

**1. Members present**

Mrs Mitchell, *Chair*  
Mr Searle  
Ms Voltz

**2. Previous minutes**

Resolved, on the motion of Ms Voltz: That draft minutes no. 30 be confirmed.

**3. \*\*\***

**4. Adjournment**

The Committee adjourned at 5.27 pm, *sine die*.

Beverly Duffy  
**Clerk to the Committee**

**Minutes No. 32**

Thursday 5 February 2015  
General Purpose Standing Committee No. 4  
Room 1254, Parliament House, Sydney at 11.00 am

**1. Members present**

Mrs Mitchell, *Chair*  
Dr Kaye (substituting for Mr Shoebridge)  
Mr Khan  
Mr Lynn  
Mr Searle

**2. Apologies**

Mr Borsak  
Ms Voltz

**3. \*\*\***

**4. Adjournment**

The Committee adjourned at 12.25 pm until Monday 16 February 2015 at 9.30 am.

Madeleine Foley  
**Clerk to the Committee**

**Draft Minutes No. 33**

16 February 2015

General Purpose Standing Committee No. 4

Parliament House, Sydney, at 10.00 am

**1. Members present**

Mrs Mitchell (Chair)

Mr Borsak (Deputy Chair)

Dr Kaye

Mr Khan

Mr Lynn

Mr Searle

Ms Voltz

**2. Draft minutes**

Resolved, on the motion of Mr Khan: That draft minutes No.31 and No. 32 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 3 December 2014 – from Ticket Brokers Association of Australia Inc. responding to supplementary questions and reiterating their request to remove the names of their representatives from the transcript of evidence taken *in camera* on 3 November 2014.

***Sent***

- 11 November 2014 – from the Chair to Ms Sheila Moloney, Chief Executive Officer, Tix requesting information on the role of Tix in the ticketing industry and other relevant matters on the Inquiry into the Fair Trading Amendment (Ticket Reselling) Bill 2014.
- 11 November 2014 – from the Chair to the Hon Damian Drum MLC, Minister for Sport and Recreation, Victorian Parliament, requesting information on the process involved in declaring an event under the Major Sporting Events Act 2009 (Vic).

Resolved, on the motion of Mr Searle: That the committee authorise the publication of correspondence from Ticket Brokers Association of Australia Inc. responding to supplementary questions and reiterating their request to have their representatives' names removed from the transcript of evidence taken *in camera* on 3 November 2014, dated 3 December 2014, with the exception of identifying information.

**4. Inquiry into the Fair Trading Amendment (Ticket Reselling) Bill 2014****4.1 Publication of questions on notice**

The committee noted the following answers to questions on notice received which had been published by the committee clerk under the authorisation of an earlier resolution:

- Mr David Sykes, Senior Manager, Strategy and Business Development, Australian Rugby Union, received 3 December 2014
- Ms Kate Cooper, General Counsel, Ticketek, received 3 December 2014
- Mr Jaymes Boland-Rudder, Head of Government Relations and Campaign Management, National Rugby League Limited, received 3 December 2014
- Ms Maria O'Connor, Managing Director, Ticketmaster Australia, 4 December 2014

- Mr Grant Poulter, Government & Community Relations Manager, Cricket Australia, 5 December 2014.

#### 4.2 Publication of in camera transcript

Resolved, on the motion of Mr Borsak: That the committee authorise the publication of the transcript from the *in camera* hearing on 3 November 2014, with identifying information removed, with the agreement of the witnesses from the Ticket Brokers Association.

#### 4.3 Consideration of chair's draft report

The chair submitted her draft report entitled *Fair Trading Amendment (Ticket Reselling) Bill 2014*, which having been previously circulated, was taken as being read.

Chapters 1, 2 and 3 read.

Chapter 4 read.

Mr Searle moved:

- a) That paragraphs 4.72, 4.73, 4.74 and 4.75 and Recommendation 1 be omitted:

‘In determining whether to proceed with the bill, or similar legislation, in the next Parliament, the committee believes that there are a number of issues that need to be addressed. The first issue relates to the authorised resale price of a ticket. The committee believes that it is only reasonable and fair that a person should be able to seek to recoup at least the full cost of purchasing a ticket, and therefore that the authorised resale price for a ticket should include the additional costs incurred when it was purchased. This would be in line with the legislation in place in Queensland, South Australia and the Australian Capital Territory where it is legal to resell a ticket for an amount greater than face value. A flat loading (as is the case in Queensland and South Australia) would allow greater ease of monitoring. The committee recommends that any proposed legislation allow for tickets to be legally resold for a prescribed amount at least equal to ten per cent more than the face value of the ticket.

The second issue that the committee would urge the NSW Government to consider is in relation to the penalties imposed under the bill and the target of those penalties. In its current form, the bill places the onus of compliance on the advertising forum which has responsibility for ensuring that any ticket resale advertisement is authorised, and contains the tickets’ terms and conditions or includes a legitimate link to where these can be accessed. A significant penalty is imposed if the person conducting the business or forum fails to comply with these requirements.

The committee notes that unlike other Australian jurisdictions (namely Queensland, South Australia, Australian Capital Territory and Victoria) the bill does not impose a penalty on individuals offering tickets for resale in breach of a resale restriction. The committee recommends that as a deterrent, the NSW Government include a penalty against individuals offering tickets for resale in breach of a resale restriction, similarly to other jurisdictions.

Finally, the committee urges the NSW Government to reconsider the requirement to include a photograph of the ticket in any advertisement for resale tickets. The committee notes that even supporters of the bill, such as Ticketek, did not believe that this requirement was necessary. On the contrary, the committee was told that this requirement could instead be used for fraudulent purposes to the detriment of consumers.

## Recommendation 1

That the Minister for Fair Trading consider the following issues in determining whether to proceed with the Fair Trading Amendment (Ticket Reselling) Bill:

- the reasonable resale amount for a ticket and whether it should include an amount at least equal to ten per cent more than the face value of the ticket in consideration of its actual purchase cost
- the target of penalties imposed under legislation and whether individuals or organisations offering tickets for resale in breach of a resale restriction should incur a penalty
- the practicality of the requirement to include a photograph of the ticket in resale advertisements.’

b) That the following paragraphs and recommendations be inserted after paragraph 4.71:

‘The committee does not believe the bill provides meaningful benefits for consumers, but favours event promoters and their commercial interests (see paragraphs 4.18, 4.30-4.31, and 4.35 of this report) While not denying there is some issue with ticket scalping, its incidence is relatively small, a view borne out by the Senate Economics References Committee *Ticket scalping in Australia* inquiry and the experience of NSW Fair Trading.

Even if the policy embedded in this bill is desirable, the committee is unconvinced of its practicality, and the evidence before us indicates it is not practicable and enforceable (see paragraphs 4.26, 4.37-4.40).

The committee is also mindful of evidence before us that suggests regulation of the kind proposed in this bill will in fact result in a reduction in the availability of event tickets, a resulting increase in ticket price, and an impact on the privacy of consumers (4.27-4.28). The first two impacts would favour event promoters at the expense of consumers.

The requirement in the bill to include a photograph of a ticket, far from being an anti-fraud measure, may actually facilitate fraud given the availability of technology to manipulate images of tickets and make them appear genuine (4.43-4.46).

The claims made by bill proponents, such as the Coalition of Major Professional and Participation Sports, that it would protect fans from price gouging, are not sustained by evidence before the committee and the bill could well increase ticket prices for consumers by restricting availability (4.53-4.55).

The balance of evidence to the committee was that implementation of this legislation would be costly and burdensome to the industry, with little or no advantage to consumers (4.58-4.61)

There were a range of other, practical issues with the bill raised by stakeholders, including difficulties in complying with section 59 given a significant number of tickets sold do not have reserve seating, and issues with sales across State and Territory borders (4.63-4.67).

As a result of evaluating the evidence before the committee, the committee is of the view that the NSW Government should not proceed with the Fair Trading (Ticket Reselling) Bill 2014.

The committee believes the NSW Government should take steps to improve the transparency of the primary ticket selling industry, as touched on in paragraph 2.77 of this report.

If the NSW Government believes there need to be improvements in the transparency of the secondary ticket market, it should convene an industry roundtable, including participants and consumer representatives, to discuss the relevant issues and see if a consensus can be achieved on sensible and practical reforms that safeguard all interests.

Recommendation 1

That NSW Government not proceed with the Fair Trading (Ticket Reselling) Bill 2014.

Recommendation 2

That the NSW Government take steps to improve the transparency of the primary ticket selling industry, as touched on in paragraph 2.77 of this report.

Recommendation 3

That the NSW Government, if it believes there need to be improvements in the transparency of the secondary ticket market, should convene an industry roundtable, including participants and consumer representatives, to discuss the relevant issues and see if a consensus can be achieved on sensible and practical reforms that safeguard all interests'.

Question put.

The committee divided.

Ayes: Mr Borsak, Dr Kaye, Mr Searle, Ms Voltz.

Noes: Mr Khan, Mr Lynn, Mrs Mitchell.

Question resolved in the affirmative.

Resolved, on the motion of Dr Kaye:

- a) that the draft report as amended be the report of the committee and that the committee present the report to the House
- b) that the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry be tabled in the House with the report
- c) that upon tabling, all transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, minutes of proceedings and correspondence relating to the inquiry not already made public, be made public by the committee, except for those documents kept confidential by resolution of the committee
- d) that the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- e) that the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- f) that dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting
- g) that the report be tabled on 19 February 2015.

## 5. Adjournment

The committee adjourned at 10.10 am, *sine die*.

Donna Hogan  
**Clerk to the Committee**

## Appendix 7 Dissenting statement

**By the Hon Sarah Mitchell, the Hon Trevor Khan and the Hon Charlie Lynn**

We support the majority of the report as published. We agree that the committee identified a number of issues with the proposed bill that need to be addressed if the NSW Government decides to proceed with legislation of this nature.

However we disagree with paragraphs 4.72 to 4.81 inclusive, and Recommendations 1, 2 and 3, as adopted.

In our view, there is scope for either proceeding with this Bill, or similar legislation, in the next Parliament, if the Minister for Fair Trading considers the following issues in determining whether to proceed.

The first issue relates to the authorised resale price of a ticket. We believe that it is only reasonable and fair that a person should be able to seek to recoup at least the full cost of purchasing a ticket, and therefore that the authorised resale price for a ticket should include the additional costs incurred when it was purchased. This would be in line with the legislation in place in Queensland, South Australia and the Australian Capital Territory where it is legal to resell a ticket for an amount greater than face value. A flat loading (as is the case in Queensland and South Australia) would allow greater ease of monitoring. It is our view that any proposed legislation should allow for tickets to be legally resold for a prescribed amount at least equal to ten per cent more than the face value of the ticket.

Secondly, the penalties imposed under the bill and the target of those penalties needs to be considered. In its current form, the bill places the onus of compliance on the advertising forum which has responsibility for ensuring that any ticket resale advertisement is authorised, and contains the tickets' terms and conditions or includes a legitimate link to where these can be accessed. A significant penalty is imposed if the person conducting the business or forum fails to comply with these requirements.

Unlike other Australian jurisdictions (namely Queensland, South Australia, Australian Capital Territory and Victoria) the bill does not impose a penalty on individuals offering tickets for resale in breach of a resale restriction. As a deterrent, the NSW Government could include a penalty against individuals offering tickets for resale in breach of a resale restriction, similar to other jurisdictions.

Finally, the requirement to include a photograph of the ticket in any advertisement for resale tickets needs to be considered. Even supporters of the bill, such as Ticketek, did not believe that this requirement was necessary. On the contrary, the evidence received was that this requirement could instead be used for fraudulent purposes to the detriment of consumers.

### **Response to Recommendations**

We do not support Recommendation 1 as we believe that it does not accurately reflect the evidence received during the inquiry, in particular the evidence from the Coalition of Major Professional and Participation Sports and Ticketek.

We do not believe that Recommendation 2 is necessary as this inquiry should focus on the secondary ticket market and not the primary ticket selling industry.

We do not support Recommendation 3 as we believe that extensive consultation with the industry on this matter has already occurred, and a roundtable which attempts to find industry consensus will not have the same effect as legislation.