

Passed by both Houses



New South Wales

# Fair Trading Amendment (Ticket Scalping and Gift Cards) Bill 2017

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council  
2017*

*Clerk of the Parliaments*



New South Wales

## **Fair Trading Amendment (Ticket Scalping and Gift Cards) Bill 2017**

Act No     , 2017

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An Act to amend the *Fair Trading Act 1987* with respect to the supply of tickets to sporting or entertainment events and expiry dates for gift cards.

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

**1 Name of Act**

This Act is the *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017*.

**2 Commencement**

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

## Schedule 1 Amendment of Fair Trading Act 1987 No 68 relating to ticket scalping

### [1] Part 4A

Insert after Part 4:

## Part 4A Regulation of event ticket transactions

### Division 1 Preliminary

#### 58A Definitions

In this Part:

*authorised seller*, in relation to an event or a ticket for an event, means:

- (a) if the event organiser has authorised a person to supply the ticket on behalf of the event organiser, or to resupply the ticket after acquiring it from the authorised seller—that person, or
- (b) in any other case—any event organiser for the event.

*event organiser*—see section 58C.

*resale restriction*—see section 58B.

#### 58B Tickets to which Part applies

- (1) This Part applies to tickets to sporting or entertainment events in New South Wales that are subject to a resale restriction.
- (2) A *resale restriction* is a term or condition of a ticket that limits the circumstances in which the ticket may be resold or prohibits resale of the ticket.
- (3) A term or condition that limits the circumstances in which a ticket may be resold or prohibits resale of the ticket 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.

#### 58C Event organisers

- (1) The *event organiser*, in relation to an event, is the person who authorises the first supply of tickets for the event, whether or not that person is also the performer, the promoter of the event or the operator of the event venue.
- (2) The regulations may declare any other person (or class of persons) to be the event organiser in relation to the event or in relation to any class of events to which the event belongs.

### Division 2 Resale of tickets

#### 58D Definitions

In this Division:

*first purchaser*, in relation to a ticket, means the person to whom the ticket is first supplied by an authorised seller.

*original acquisition cost*—see section 58E.

*original supply cost*—see section 58E.

*prohibited advertisement*—see section 58F.

*sell* includes offer or advertise for sale.

*supply* includes offer to supply and advertise for supply.

*ticket resale advertisement* means an advertisement for the sale of a ticket by any person other than the authorised seller.

*transaction cost*—see section 58E.

**58E Original supply cost and original acquisition cost—meaning**

- (1) The *original supply cost* of a ticket is the amount for which the ticket was sold to the first purchaser by an authorised seller.
- (2) The *original acquisition cost* of a ticket is the original supply cost of the ticket, plus the transaction cost.
- (3) The *transaction cost* is the cost (not exceeding 10% of the original supply cost) of any commission, booking fee, payment surcharge or ticket delivery fee incurred by the first purchaser of the ticket in connection with the purchase of the ticket.
- (4) If no amount was paid by the first purchaser of the ticket in consideration for the acquisition of the ticket, the original supply cost and the original acquisition cost are each \$0.

**58F Prohibited advertisement—meaning**

- (1) A *prohibited advertisement* is a ticket resale advertisement that does not comply with this section.
- (2) A ticket resale advertisement must not specify an amount for the sale of the ticket that is more than 110% of the original supply cost of the ticket.
- (3) A ticket resale advertisement must specify the following particulars:
  - (a) the original supply cost of the ticket,
  - (b) details of the location from which the ticket holder is authorised to view the event (including, for example, any bay number, row number and seat number for the ticket).

**58G Prohibition on ticket resale profit**

- (1) The first purchaser of a ticket must not sell the ticket to any other person for an amount that exceeds the original acquisition cost of the ticket.  
Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).
- (2) A person (other than the first purchaser) must not sell a ticket to any other person for an amount that the person knows, or ought reasonably to know, exceeds the original acquisition cost of the ticket.  
Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

**58H Supply of tickets not to be made contingent on other purchases**

- (1) A person (the *supplier*) must not supply a ticket to any other person (the *recipient*) under an agreement that makes the liability of the supplier to supply the ticket to the recipient contingent on payment by the recipient to the supplier of any amount in consideration for the provision to the recipient of any other goods or services.  
Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

- (2) This section does not apply to the supply of a ticket under an agreement authorised by the event organiser or under any other agreement of a kind prescribed by the regulations.

**58I Ticket resale advertising**

- (1) The owner of an advertising publication must ensure that no prohibited advertisement is published in the publication.

Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

- (2) It is a defence to a prosecution for an offence of failing to ensure that no prohibited advertisement is published in an advertising publication if the defendant establishes that:

- (a) the agreement between the defendant and the person placing the ticket resale advertisement was subject to terms or conditions prohibiting the publication of prohibited advertisements, and
- (b) the defendant, as soon as practicable after becoming aware that the prohibited advertisement had been published in the publication, took reasonable steps to ensure that the advertisement was removed from the publication, and
- (c) the defendant took such other steps as were reasonable in the circumstances to ensure that no prohibited advertisement was published in the publication.

- (3) The regulations may exclude an advertisement or publication of a kind described by the regulations from the application of this section.

- (4) In this section:

*advertisement* means any advertisement, whether paid or not.

*advertising publication* means any website, newspaper, magazine or other publication containing 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).

*owner*, of an advertising publication, includes any person who conducts the business or undertaking of the advertising publication (but does not include any person of a class prescribed by the regulations).

**58J Certain resale restrictions void**

A resale restriction is void to the extent that it provides for the ticket to be cancelled or rendered invalid if the ticket is resold for an amount not exceeding 110% of the original supply cost of the ticket.

**Division 3 Online purchase of tickets**

**58K Prohibited conduct in relation to use of ticketing websites**

- (1) A person must not engage in any prohibited conduct in relation to the use of a ticketing website.

Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

- (2) A person *engages in prohibited conduct* in relation to the use of a ticketing website if the person uses any software to enable or assist the person to circumvent the security measures of the website and to purchase tickets in

contravention of the terms of use of the website that are published on the website.

- (3) The *security measures* of a website include any measures of a kind prescribed by the regulations.

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

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

- (1) The Minister may, by order published on the NSW legislation website, require a specified event organiser (or a specified class of event organisers) to give public notice of the total number of tickets for the event that are to be made available by authorised sellers for general public sale.
- (2) The notice must be given within the time and in the manner specified in the order.
- (3) The total number of tickets specified in a notice required under this section must be a number that the event organiser believes, on reasonable grounds, is not more than 10% greater or less than the total number of tickets that are to be made available for general public sale before the day on which the event is held (including any number of tickets made available before the notice is given).
- (4) A ticket is not made available by an authorised seller for *general public sale* if the authorised seller requires a person to do either of the following in order to acquire the ticket:
- (a) pay a fee (in addition to the price of the ticket and any transaction cost such as a commission, booking fee, payment surcharge or ticket delivery fee),
  - (b) register for access to any pre-sale, publication, competition or other special offer.
- (5) The regulations may make further provision for the circumstances in which a ticket is, or is not, made available for general public sale for the purposes of this section.
- (6) The Minister may not make an order under this section unless:
- (a) the Minister is satisfied that each event organiser for an event to which the proposed order applies has been notified (whether by public notice or otherwise) of the Minister's intent to make the order, and
  - (b) the event organiser has been given a reasonable opportunity to make submissions in relation to the proposed order, and
  - (c) the Minister has considered any such submission, and
  - (d) the Minister is satisfied that it is in the public interest to make the order.
- (7) An event organiser must not fail to comply with a requirement made under this section.
- Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).

#### **[2] Section 61 Interpretation**

Insert “, Part 4A” after “Part 4” in the definition of *local contravention* in section 61 (1).

**[3] Schedule 5 Savings and transitional provisions**

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provision consequent on enactment of Fair Trading  
Amendment (Ticket Scalping and Gift Cards) Act  
2017—ticket scalping amendments**

**Application of amendments**

Section 58G, 58H, 58I or 58J (as inserted by the *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017*) does not apply to a ticket sold or otherwise supplied to a first purchaser by an authorised seller before the commencement of the section.

## Schedule 2 Amendments relating to gift cards

### 2.1 Fair Trading Act 1987 No 68

#### [1] Part 4B

Insert after Part 4A (as inserted by Schedule 1 [1]):

#### Part 4B Gift cards

##### 58M Interpretation and application

- (1) In this Part:
  - expiry date* of a gift card means the date on which the gift card ceases to be redeemable.
  - gift card* means a card or voucher (in hard copy or electronic form) that is redeemable for goods or services in New South Wales.
  - redeemable value* of a gift card means the value of the goods or services for which the gift card is redeemable.
- (2) For the purposes of this Part, a gift card is not sold to a consumer in New South Wales if the gift card is sold online or by phone and:
  - (a) the gift card is to be delivered to the consumer at an address that is outside New South Wales, or
  - (b) the contact details of the consumer provided in connection with the sale of the gift card include a residential address that is outside New South Wales.
- (3) This Part does not apply:
  - (a) to any class of gift cards that may be prescribed by the regulations, or
  - (b) to any class of persons that may be prescribed by the regulations, or
  - (c) in any circumstances that may be prescribed by the regulations.

##### 58N Prohibition on gift card expiry dates of less than 3 years

- (1) A person must not sell to a consumer in New South Wales a gift card with an expiry date that is earlier than 3 years after the date of sale of the gift card.  
Maximum penalty: 50 penalty units.
- (2) A person who sells a gift card to a consumer in New South Wales, or who has agreed with the seller to redeem that gift card, must not impose any administrative charge or fee that reduces the redeemable value of the gift card after the sale of the gift card.  
Maximum penalty: 50 penalty units.
- (3) A term or condition of a gift card sold to a consumer in New South Wales is void to the extent that it would make the sale of the gift card, or the imposition of a charge or fee, an offence under this section.
- (4) If the expiry date of a gift card is void because of subsection (3), the expiry date is taken to be 3 years after the date of sale of the gift card.

#### [2] Section 61 Interpretation

Insert “, Part 4B” after “Part 4A” in the definition of *local contravention* in section 61 (1).

**[3] Schedule 5 Savings and transitional provisions**

Insert at the end of the Schedule, with appropriate Part and clause numbering:

**Part Provision consequent on enactment of Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017—gift cards amendments**

**Application of amendments**

Part 4B of this Act (as inserted by the *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017*) does not apply to a gift card sold before the commencement of that Part.

**2.2 Fair Trading Regulation 2012**

**[1] Clause 23A**

Insert after clause 23:

**23A Exceptions to gift card expiry date requirements**

For the purposes of section 58M (3) (a) of the Act, Part 4B of the Act does not apply to the following:

- (a) a card or voucher supplied in substitution for goods returned to the supplier of the goods,
- (b) a prepaid card or voucher redeemable for phone credit, internet access or the like,
- (c) a debit card, credit card, prepaid travel card or any similar product supplied by a financial institution,
- (d) a card or voucher supplied as part of a customer loyalty program.

**[2] Schedule 1 Penalty notice offences**

Insert in appropriate order in the matter relating to **Offences under the *Fair Trading Act 1987* (other than the ACL)**:

|                 |       |
|-----------------|-------|
| Section 58N (1) | \$550 |
| Section 58N (2) | \$550 |