



New South Wales

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

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Fair Trading Act 1987* with respect to the supply of tickets to sporting or entertainment events and the expiry dates for gift cards. In particular, the Bill:

- (a) prohibits the resale of certain tickets to sporting or entertainment events for a profit, and
- (b) prohibits the publication of advertisements for the resale of event tickets for a profit, and
- (c) prohibits the use of software to bypass the security measures of a ticketing website in order to purchase tickets for an event, and
- (d) requires certain event organisers to publicly disclose the number of tickets made available for general public sale for certain events, and
- (e) prohibits the sale of gift cards with an expiry date that is earlier than 3 years after the date of sale of the gift card, and
- (f) prohibits the imposition of any charge or fee that reduces the value of the gift card after its sale.

The Bill also makes related amendments to the *Fair Trading Regulation 2012* to create exceptions to the proposed prohibition relating to the sale of gift cards, and to provide for the issue of penalty notices in connection with a contravention of the prohibition.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendments relating to ticket scalping

Schedule 1 [1] inserts proposed Part 4A (comprising proposed Divisions 1–4 and sections 58A–58L) into the *Fair Trading Act 1987* (the *principal Act*).

Proposed Division 1 contains preliminary provisions dealing with interpretation and application of the proposed Part.

Proposed sections 58A and 58C define certain words and expressions for the purposes of the proposed Part.

Proposed section 58B provides that the proposed Part applies to tickets to sporting and entertainment events held in New South Wales that are subject to a resale restriction. A *resale restriction* is a term or condition of a ticket that limits or prohibits resale of the ticket (including any term or condition that provides for the ticket to be cancelled or rendered invalid if it is resold).

Proposed Division 2 deals with the prohibition of the sale and supply of tickets for a profit.

Proposed sections 58D–58F define certain words and expressions for the purposes of the proposed Division.

Proposed section 58G prohibits the sale of a ticket for an amount that exceeds the original supply cost of the ticket (plus transaction costs not exceeding 10% of the original supply cost).

Proposed section 58H provides that a person must not (unless authorised by the event organiser or by regulations under the principal Act) supply a ticket to another person under an agreement that makes the supply contingent on the purchase by that other person of any other goods or services.

Proposed section 58I requires any person conducting the business or undertaking of an advertising publication to ensure that no advertisements are published in the publication for the resale of tickets for an amount that exceeds 110% of the original supply cost of the ticket. 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 certain steps were taken, including making the placement of ticket resale advertisements subject to terms or conditions prohibiting the publication of such advertisements and taking reasonable steps to remove any advertisement that contravenes the prohibition.

Proposed section 58J provides that 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.

Proposed Division 3 (section 58K) prohibits the use of software in order to bypass the security measures of a ticketing website and purchase tickets through the website in contravention of the terms of use of the website.

Proposed Division 4 (section 58L) provides for public notification by event organisers of the number of tickets for an event that are made available for general public sale.

Schedule 1 [2] extends the application of certain remedy provisions of the *Australian Consumer Law (NSW)* to matters involving a contravention of a provision of proposed Part 4A.

Schedule 1 [3] inserts into the principal Act a savings provision that excludes from the application of proposed section 58G, 58H, 58I or 58J tickets first sold or otherwise supplied before the commencement of the section.

Schedule 2 Amendments relating to gift cards

Schedule 2.1 makes amendments to the principal Act that:

- (a) prohibit the sale, to a consumer in New South Wales, of a gift card with an expiry date that is earlier than 3 years after the date of sale of the gift card, and
- (b) prohibit, after the sale of a gift card to a consumer in New South Wales, the imposition of any charge or fee that reduces the value of the gift card, and
- (c) void any term or condition of a gift card that would be in contravention of those prohibitions, and
- (d) deem a gift card with a purported expiry date that is earlier than 3 years after the date of sale of the gift card to have an expiry date that is 3 years after the date of sale, and
- (e) extend the application of certain remedy provisions of the *Australian Consumer Law (NSW)* to matters involving a contravention of any of the proposed provisions, and
- (f) allow the regulations under the principal Act to create exceptions to the proposed provisions.

Schedule 2.2 makes amendments to the *Fair Trading Regulation 2012* that:

- (a) create exceptions to the gift card expiry date provisions enacted by Schedule 2.1, and
- (b) allow an authorised officer to issue to a person a penalty notice for offences against the prohibitions contained in those provisions.