

**Submission
No 8**

INQUIRY INTO FAIR TRADING AMENDMENT (TICKET RESELLING) BILL 2014

Organisation: Live Performance Australia

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The Director
General Purpose Standing Committee No. 4
Parliament House
Macquarie St
Sydney NSW 2000

INQUIRY INTO FAIR TRADING AMENDMENT (TICKET RESELLING) BILL 2014

Live Performance Australia Submission to General Purpose Standing Committee No.4

Dear Committee,

Thank you for the opportunity to provide comment on the *Fair Trading Amendment (Ticket Reselling) Bill 2014* (Bill).

About LPA

Live Performance Australia (LPA) is the peak body for Australia's live performance industry. Established in 1917 and registered as an employers' organisation under the *Fair Work Act 2009*, LPA has over 390 Members nationally. We represent producers, music promoters, venues, performing arts companies, festivals and industry suppliers such as ticketing companies and technical suppliers.

1. LPA POLICY POSITION ON TICKET RESELLING

- 1.1.** LPA has taken a longstanding position against illegitimate organised ticket reselling operations (also referred to as ticket scalping) that can occur for high-profile events.
- 1.2.** Conversely, LPA also recognises it is important to allow consumers the opportunity to resell tickets in a legitimate secondary marketplace when circumstances change and the consumer can no longer attend an event. Consumer confidence in purchasing tickets in advance will be eroded if consumers do not have fair access to a legitimate means for reselling event tickets.
- 1.3.** Ticket fraud (i.e. sale of counterfeit or false tickets) and ticket reselling are separate issues, although there is some overlap between the two. LPA believes in determined action and strong consumer education to prevent the negative impact of illicit ticketing fraud.

LPA supports any provisions or mechanisms that effectively manage to balance support for all of the above policy positions in regard to ticket reselling. We recognise that mixed views exist amongst our Membership on the potential practical implications of legislative approaches to ticket scalping in Australia. It is our understanding that a number of LPA Members will be preparing their own submissions in response to this Inquiry.

2. OVERVIEW OF ANTI-TICKET SCALPING LEGISLATION

LPA has found legislative approaches, both domestic and international, that regulate ticket scalping are often proven **ineffective and unenforceable**. Illegitimate ticket scalping primarily operates online (and often offshore), where the impact of State or Federal legislation is severely hindered due to its **jurisdictional restrictions**. LPA notes that anti-scalping legislation often struggles to practically and effectively be enforced on unauthorised overseas websites that are located completely offshore. For example, in 2012 Viagogo relocated its operation from the UK to Zurich, and as such were exempted from the British Government ban on the resale of tickets to the London Olympics. Viagogo proceeded to advertise the resale of a significant number of Spain's allocated Olympic tickets¹.

2.1. State-based Legislation

Queensland has had anti-scalping legislation (Major Sports Facilities Act 2001) in effect since December 2006, which applies to a limited number of larger state-owned venues. At this time LPA is not aware of any evidence that legislation in Queensland has had any effect on ticket scalping for live performance events. We have not seen any reports of successful prosecutions for live performance events under the Act but we understand there have been successful prosecutions for sporting 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 – 228².

The Victorian legislation (Major Sporting Events Act 2009) has not impacted upon the live performance industry, as only a very limited number of sporting events are “declared” and covered under the legislation each year. The South Australian Government introduced the Major Events Act 2013 to regulate various aspects in the conduct of major events, including scalping. The Rolling Stones concert is the only live performance to have been declared a ‘major event’ for the purposes of the legislation thus far. However, the legislation was introduced after tickets went on sale for The Rolling Stones and hence it did not have a material effect on ticket reselling for this concert. LPA also recognises that the Major Events Bill 2014 has been introduced by the ACT Government in preparation for the Asian Football Confederation Asian Cup and the Cricket World Cup to be hosted in Canberra in 2015.

¹ Spain Drops London Olympic Ticketing into Hot Water 2012, RT, viewed 23 October 2014, < <http://rt.com/news/hot-london-olympics-ticketing-761/>>.

² Figures attained at Bruce Springsteen Brisbane Entertainment Centre 2014, Viagogo, viewed 10 February 2014, <<http://www.viagogo.com/au/Concert-Tickets/Rock-and-Pop/Bruce-Springsteen-Tickets/E-570210>>.

2.2. International Legislation

The 2010 report, 'Consumers and the Ticket Market: Ticket Onselling in the Australian Market', conducted by the Commonwealth Consumer Affairs Advisory Council (CCAAC) notes that there is an international trend toward deregulation of the secondary ticketing market, including countries that have a much higher incidence of scalping compared to Australia³. The CCAAC report states "evidence from the US does not suggest that legislation has been effective in eliminating the practice or improving consumer access to tickets. Rather the evidence suggests that the legislation had an inflationary effect on the face value of tickets in jurisdictions where reselling is restricted or prohibited"⁴.

The UK government ruled in 2010 after extensive research and consultation was commissioned, that legislation of the secondary ticketing market is not necessary⁵. Amendments to the UK Consumer Rights Bill 2014-15 were considered by the UK House of Lords on 26 June 2014, intended to introduce measures to control the resale of tickets. Of the seven proposed amendments debated, only one was put to a vote which was defeated⁶.

3. REGULATION OF TICKET RESELLING ADVERTISEMENTS

The NSW Bill proposed is a new approach to the regulation of ticket scalping that is previously **untested** both in the domestic and international marketplace as far as LPA is aware. However, similar government direction to ticket resellers has recently been provided by the UK with the intention to ensure consumers are provided with adequate event and ticket information.

In June 2014 the UK Government amended their publication on implementation guidance for Consumers Contracts (Information, Cancellation and Additional Charges)⁷, to include a section on traders reselling tickets online. This additional section outlines the information ticket resellers need to provide to meet UK legislative requirements for the provision of adequate information to consumers.

This includes information on the main characteristics of a ticket and their total price (including delivery costs and other charges) in a clear and comprehensible way before the consumer purchases the ticket. Main characteristics include (if known) the date and time of the event, content of the event (e.g. performing artist) and the seat number (if a reserved seat). Depending on the circumstances, the face value of the ticket may also be considered a main characteristic that should be provided to consumers.

³ Commonwealth Consumer Affairs Advisory Council. (2010). *Consumers and the ticket market: Ticket onselling in the Australian market*. Canberra: Commonwealth of Australia, p 31.

⁴ Ibid.

⁵ Ibid, p 33.

⁶ For a record of the debate regarding the proposed amendments, please refer to House of Lords Library. (26 June 2014). Consumer Rights Bill (HL Bill 29 of 2014-15), London, p 10-11, accessed here 23 October 2014: <<http://www.parliament.uk/business/publications/research/briefing-papers/LLN-2014-023/consumer-rights-bill-hl-bill-29-of-201415>>

⁷ Department for Business Innovation & Skills. (December 2013). Consumer Contracts (Information, Cancellation, and Additional Charges) Regulations. London, p 11, accessed here 23 October 2014: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310044/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf>

These provisions came into effect on 13 June 2014, and as such it is too early to accurately measure the effect they may have on the online secondary ticketing marketplace. Currently, none of the three major online secondary ticket reselling platforms operating in the UK (Viagogo, Stubhub UK, and GET MET IN!) have advertised seat numbers for concert tickets offered, although Stubhub UK provides the option for third party ticket resellers to supply seat numbers if they choose⁸.

4. FAIR TRADING AMENDMENT (TICKET RESELLING) BILL 2014

Due to a lack of evidence available on the effect of legislative mechanisms that regulate ticket resale advertisement content, **LPA does not have a firm view on how effective this Bill may or may not be**. However, we believe that the General Purpose Standing Committee should consider the following potential issues in their analysis of the proposed Bill.

4.1. Monitoring and Enforcement

4.1.1. LPA Members have mixed perspectives on whether the proposed Bill will effectively **burden or empower** event organisers. LPA is concerned that implementation and enforcement of the new regime will rest almost entirely with the industry. 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.

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 before moving on.

4.1.2. The Committee should ensure that event promoters will not need to invest additional resources into monitoring and enforcement for the proposed regime to be effective in eliminating scalping. This is a significant burden to place on the industry at a time when the costs of staging events continue to grow, margins are very slim and ticket prices have reached their market limit. LPA suggests that the Committee should ensure the provisions of the proposed legislation do not place an administrative or financial burden on event organisers. Problems of enforcement that may arise due to **cross-jurisdictional hurdles** must also be considered by the Committee.

⁸ For example, see tickets advertised for Ed Sheeran 2014 at Viagogo <<http://www.viagogo.co.uk/Concert-Tickets/Rock-and-Pop/Ed-Sheeran-Tickets/E-612235>>, Stubhub UK <<http://www.stubhub.co.uk/ed-sheeran-tickets/ed-sheeran-newcastle-upon-tyne-metro-radio-arena-25-10-2014-4442767/>>, and GET ME IN! <<http://www.getmein.com/tickets/ed-sheeran-tickets/manchester-251497.html>>, viewed 23 October 2014.

4.2. Advert Information and Consumer Education

- 4.2.1. Many events do not have reserved seating, (e.g. General Admission or Festival tickets), and hence the proposed advert requirement to state the seat number would not be applicable for a large proportion of tickets sold.
- 4.2.2. In regard to the proposed resale restriction warning to be printed on tickets, the Committee should consider that there is limited space for text on standard sized ticket stock and that a short generic warning is all that would fit.
- 4.2.3. The proposed legislation will require touring productions to print separate ticket stock for NSW events which may be costly, and terms and conditions of sale may need to be changed for each event which can be burdensome. It is not practical or cost effective to change the terms and conditions printed on the back of tickets on an event by event basis. Standard ticket stock is also used nationally (within each of the major ticketing companies), yet the legislation will necessitate different information being printed on NSW tickets.
- 4.2.4. The proposal to include a compulsory photograph of the ticket being offered for resale in its listing may be problematic. The photo must include seat numbers so that the event promoter can cancel the ticket if it is resold or offered for resale in breach of the terms and conditions. However, 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 scalper's fraudulent behavior.
- 4.2.5. The most effective means for protecting consumers from the negative impacts of ticket scalping is to ensure consumers are adequately informed and educated on how the legitimate secondary market operates, as well as how to recognise potentially fraudulent activity. A **consumer education campaign** 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 purchase from the secondary market. The committee should also consider that consumer confusion may arise when deciphering how different anti-scalping laws are applied in each state.
- 4.2.6. LPA believes ticket resale adverts should include a statement that indicates the ticket is not being sold by the original authorised ticket seller, and if practical provide a weblink to the event page and ticket terms and conditions of the original ticket seller.

SUMMARY: LPA GENERAL COMMENT

Overall, the Committee should ensure that any provisions adopted by the NSW Government effectively support all of LPA's policy principles outlined on Page 1 of this submission. It is imperative that the Committee ensure that any potential legislative mechanisms support both consumers and event organisers when practically implemented. If a legislative approach is found not to be effective, or heavily burdensome to the live performance industry, it should not be pursued.

In March 2014 the Federal Senate Economics References Committee conducted an Inquiry into Ticket Scalping in Australia. The Senate Committees' Report⁹ should be referred to in considering the issue of ticket scalping and legislative approaches. The Report provides recommendations for both Industry and Government "to introduce measures that would deny ticket scalpers opportunities to exploit consumers and for consumers to be better prepared to protect their interests against unscrupulous practices"¹⁰. The Senate Economics References Committee made the following final concluding comment¹¹:

The Committee does not see any need for more regulation of the ticketing industry at the moment. There was no persuasive evidence that ticket scalping presents a significant problem outside a limited number of events. There was evidence, however, 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.

Thank you for the opportunity to provide comment on the *Fair Trading Amendment (Ticket Reselling) Bill 2014*. We would be pleased to liaise further with the NSW Government on how best to address the issues of ticket scalping and illicit ticketing fraud.

If you have any queries regarding our submission, or would like to discuss these issues further, please do not hesitate to contact us via the contact details below.

Yours sincerely

Evelyn Richardson
Chief Executive

Suzanne Daley
Director, Policy and Programs

⁹ The Senate Economics References Committee. (March 2014). *Ticket Scalping in Australia*. Canberra: Commonwealth of Australia, accessed here 23 October 2014: <http://www.apf.gov.au/parliamentary_business/committees/senate/economics/ticket_scalping_2013/report/index>

¹⁰ Ibid, p.62.

¹¹ Ibid.