

**Submission
No 3**

**INQUIRY INTO FAIR TRADING AMENDMENT (TICKET
RESELLING) BILL 2014**

Organisation: Ticket Broker's Association of Australia
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Ticket Brokers Association of Australia Inc.
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Chairperson
Legislative Council General Purpose Standing Committee No. 4
Parliament House
Macquarie Street
SYDNEY NSW 2000

22 October 2014

Dear Chairperson

Thank you for the opportunity to provide a submission for the Committee's inquiry and report into the Fair Trading Amendment (Ticket Reselling) Bill 2014.

The Ticket Brokers Association of Australia Inc ("TBA") was incorporated in Victoria in February 2013, whose members comprise some of the largest professional ticket brokers in Australia, with an online presence spanning eBay, Viagogo, Ticketmaster Resale and our members' custom-built websites.

TBA's primary purposes are:

- 1) to establish an industry-wide standard of conduct and broker accreditation scheme, and to create and enforce ethical rules and procedures to protect the public and educate the public on the industry;
- 2) to work with law enforcement agencies, state and federal legislators, concert promoters, professional sports leagues and teams in the fight against counterfeit and stolen tickets; and
- 3) to promote a safe, efficient and legitimate secondary ticket market.

In addition to each TBA member being a Top Rated Seller on eBay Australia, each member has an established client base, with many satisfied repeat customers.

Please find attached submission.

Yours faithfully

Warren Jason Cooper
President

Fair Trading Amendment (Ticket Reselling) Bill 2014 (“the Bill”)

TBA applauds the NSW Government's decision to implement reforms for the secondary ticket market by "creating greater certainty and transparency in the market without excessive red tape."¹ However, in its current form, the Bill undeniably skews the secondary market in favour of sporting codes, event promoters and a limited number of corporate licensees, under the guise of consumer protection and fraud reduction.

The Commonwealth Senate Economics References Committee has recently concluded a comprehensive inquiry regarding ticket broking in Australia, and has supported TBA's suggestion that an industry-wide standard of conduct be established which incorporates involvement with the major participants involved in the sale and re-sale of tickets.

TBA is concerned that the Bill undermines the Commonwealth's recommendations in identifying areas where consumer education about ticket resale needs to be strengthened. If enacted in its present form, the Bill will sever a number of safe and transparent avenues by which consumers can search for, buy and sell tickets at a premium, thus driving the resale of NSW event tickets to interstate and overseas regions, where the risk of fraud occurring will be significantly greater.

Just like Queensland's and Victoria's anti-scalping legislation, the practical effect of the Bill is not to prevent resale nor to protect consumers. Its effect is to replace market driven resale prices with official event pricing and packages which, in the absence of a transparent secondary market, will invariably gouge consumers and ensure they pay more for tickets than they currently do on the secondary market. This argument was canvassed extensively in our submission to The Commonwealth Senate Economics References Committee, a copy of which has been annexed to this submission.

Echoing concerns raised by the Christian Democratic Party, our members are also in doubt as to the Bill's practical logistics and effectiveness. Given the pervasive nature of the internet, and the increasing frequency with which some of our members are creating their own custom-built exchange-based websites, TBA wholeheartedly agrees with the observations of Senator Paul Green, who, in his assessment of the Bill, commented that:

It will be interesting to see how this legislation is enforced. Given the global scale of the internet, it would be difficult for it to stop someone using an overseas website that does not abide by New South Wales law to advertise and sell tickets online and then to make a local exchange for the physical tickets. If the primary point of the legislation is to stop ticket scalping, I do not see how it will be able to achieve that. The Government should think this through carefully. ...[W]e cannot stop people who are determined to do the wrong thing; they will simply find another way to do it.²

¹ NSW Government Submission, Commonwealth Senate Enquiry into Ticket Scalping: <http://www.aph.gov.au/DocumentStore.ashx?id=24455815-642c-4b76-85b3-6df6d5302813&subId=32737>

² NSW Parliamentary Debates, Legislative Council, 10/09/2014, page 112.

Proposed section 59(5)

Under proposed section 59(5) of the Bill, ticket resellers must display a picture of the tickets. This will not be possible in instances where a ticket holder has yet to collect the tickets or where collection is required on the day at the venue. The ticket holder will be thus unable to list their tickets for sale on a public sale forum.

TBA does not believe that listing a photograph of a ticket with barcode obscured will prevent fraudulent individuals from inserting a barcode of their own using photo editing software (barcode image files are freely available from Google Images) and attempting to pass off a reseller's ticket as their own. The propensity for fraud is far greater with the photograph requirement, as fraudulent individuals will already have an otherwise valid ticket available to adapt for nefarious purposes.

Possible expansion of inquiry's terms of reference

Just like in our Commonwealth inquiry submission, TBA respectfully submits that the Committee's terms of reference ought to be expanded to include broader consumer protection issues across the ticketing industry as a whole (i.e. not merely confined to ticket resale on the secondary market).

Potential avenues for further enquiry include:

- (a) a tendency by music festival promoters to substitute artists (including headlining artists), with no right of refund, purportedly in reliance on the ticketing agent's terms and conditions of sale which permit such substitution. These terms tend to mislead consumers about their rights under the consumer guarantees under the Australian Consumer Law;
- (b) an increasing tendency by ticketing agents not to refund booking and credit card fees when a promoter must provide a refund;
- (c) a tendency by some ticketing agents to impose significant fees for the replacement of tickets. For example, in the case of the 2014 Soundwave music festival, Oztix have imposed a \$40 per ticket fee for lost or damaged tickets;
- (d) the imposition of liquidity requirements for new and emerging event promoters for large scale events, given a demonstrated increased risk of failure;
- (e) a tendency at the general public onsale by event promoters such as Frontier Touring to hold back the best tickets as part of its "packages", only to release the unbundled tickets months later, purportedly "due to the finalisation of production information";
- (f) a tendency by promoters to announce only one or two shows when they have a contract in place for 4 or more concerts. This results in some of the keenest and most desperate fans buying among the worst seats minutes before the next concert is announced;

- (g) ticket prices printed on tickets from Ticketek and Ticketmaster do not reflect the total average cost per ticket after transaction and credit card fees, but rather the ticket's face value. Transaction fees can be as high as \$11.30 in the case of Ticketek, with credit card surcharges incurring from an additional 1.95%. This is problematic in instances of resale, where the ticketing terms prohibit the resale above face value at risk of the tickets being cancelled; and

- (h) possible misleading and deceptive conduct pertaining to supposed "VIP" benefits offered by event organisers, which do not meet customers' expectations, as occurred with this year's Big Day Out.³

³ <http://www.smh.com.au/entertainment/music/big-day-off-for-boss-of-struggling-big-day-out-20140208-328hf.html>