

**Submission  
No 274**

**INQUIRY INTO THE MUSIC AND ARTS ECONOMY IN  
NEW SOUTH WALES**

**Organisation:** Ticket Brokers Association of Australia

**Date received:** 28 February 2018

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28th February 2018

**Submission in response to Music Industry Parliamentary Inquiry**

Thank you for providing the opportunity to make a submission in response to the Music Industry Parliamentary Inquiry.

The Ticket Brokers Association of Australia (TBA) is a professional industry body made up of several Australian-based ticket marketplaces and individual brokers, who represent the interests of the secondary ticket market in Australia.

Each of our members has an established corporate and private client base, and abides by a code of conduct which prohibits using automated technology to acquire tickets and unfair consumer practices such as "drip pricing".

Our website [www.tba.asn.au](http://www.tba.asn.au) lists each of our members and contains some helpful hints to enable customers to be better informed when purchasing tickets via the secondary market.

Please find attached submission. If you would like to discuss this submission further, please contact email [media@tba.asn.au](mailto:media@tba.asn.au)

Yours sincerely,

The Ticket Brokers Association of Australia



**SUBMISSION TO THE  
PARLIAMENTARY INQUIRY  
INTO THE  
NSW MUSIC INDUSTRY**

## Executive Summary

The Ticket Brokers' Association (TBA) welcomes the opportunity to make a submission to this review of the music and arts industry in New South Wales. Our submission focuses on the ticket industry and its impact on consumers and patrons of the arts and music industry in NSW.

As the association representing ticket brokers, we bring considerable industry experience to our submission. Without a functioning ticket industry, access to events at affordable prices for consumers will continue to elude patrons for many events and acts - as will a fair capacity to purchase tickets at all. Several members of the TBA have appeared in person before a Commonwealth Treasury inquiry into the ticket industry, as well as having collaborated with the NSW and Victorian state governments on ticket industry reform. Our industry experience and knowledge underpins both our evidence and input to those processes, and this submission to the NSW Parliament's formal review.

As individual members and as an industry body, the TBA collectively has over 50 years' experience in the ticket market in Australia, as well as significant exposure to and experience in overseas ticketing markets such as the United States and the United Kingdom. This submission will reference the operation of the primary market, and the need to consider the "flow on" effects of any reforms to or regulation of the secondary market on the primary market, ticket prices and consumer access to music events. **Ours is a view also held by consumer affairs organisation CHOICE Australia and one arrived at by inquiries such as the 2014 Select Committee into ticket scalping laws in the NSW Parliament.**

It is the experience of the TBA that market restrictions, when not accompanied by appropriate disclosure and regulatory requirements on primary ticket vendors, do not create lower prices and greater access for consumers but rather provide monopolistic market power to primary sellers - a power demonstrably shown to be used to disadvantage consumers. **This has the potential to be a major issue for the music industry in NSW.**

The TBA is concerned about the predatory, misleading and deceptive practices of some organisations within the ticket resale industry, particularly ViaGoGo and similar offshore entities conducting ticket resale through offshore websites. These websites represent themselves to consumers as authorised ticket vendors (they are not), use 'drip pricing' techniques to inflate prices and give consumers little recourse in the case of non-delivery of tickets, cancellation of tickets or other problems. These websites are not subject to and do not comply with Australian law. It should be noted that these offshore websites are likely to continue operating regardless of State or Federal legislation in Australia and given the undoubted continuation of a market for secondary tickets, consumer education and consumer protection are preferable to legislative bans when considering the unethical and sometimes illegal behaviour of such offshore sites.

It is the view of the TBA that recent legislation in NSW, ostensibly aimed at bettering patrons' access to and lowering prices for events, including music events, will have the reverse effect in the few cases where it has any effect at all.

To summarise, the TBA believes that the evidence shows consumers and patrons are best served by a ticket industry that requires transparency and disclosure at all stages, most importantly at the primary ticket market stage (that is event promoters and major ticket selling agencies). This is a view shared by consumer groups and previous government inquiries, including in NSW. The TBA is available to discuss the industry and our submission in person, and looks forward to needed reforms of the ticket industry that genuinely serve patrons of the arts and music in New South Wales.

## **Ticket Pricing and the music industry**

As shall be discussed in further detail below, TBA believes that consumers will most benefit from enhanced disclosure obligations by ticket reselling platforms. Google has recently announced a “ticket reseller certification” process<sup>1</sup> which will provide for more accurate price information in the secondary market and to prevent potential confusion by consumers who would otherwise have purchased from a primary provider.

We also fully support any objective to ban the use of automated software to harvest tickets. Such software denies ordinary people a fair chance to purchase tickets at advertised prices.

## **Consumer detriment resulting from lack of disclosure by the primary market**

In our view, a comprehensive analysis of consumer-related issues pertaining to the secondary market cannot be undertaken without also assessing the numerous deficiencies in the primary market from a consumer protection perspective.

It is often due to the opaque nature of ticket distribution methods by event organisers and ticketing agencies that leads to an over-reliance by consumers on secondary market resellers, as shown by the examples below:

- failing to delineate which price categories apply to which sections and ranges of rows on a venue map, thereby enabling them to more stealthily broaden the size of dearer price categories if an event is selling well;
- failure to convey to consumers what proportion of tickets are allocated to sponsor presales, affiliates, the general public, and how many are being held back;
- retaining the best tickets as part of their “official packages”, only to unbundle any unsold tickets months later; and
- a tendency to announce only one show when contracts are negotiated for multiple dates, resulting in many consumers buying among the worst seats minutes before the next concert is announced.

Despite the consumer benefits which will likely flow as a result of increased transparency in the secondary market, without the above information, consumers will be unable to make an informed decision of their chances of obtaining tickets at any given time, and will instinctively blame secondary market participants for the perceived lack of tickets. In our opinion, this plays directly into the hands of event organisers whose intention is to stamp out competition in the secondary market.

The above practices by event organisers arguably also constitute a contravention of section 33 and section 155 of the Australian Consumer Law (ACL) (misleading conduct as to the nature and quantity of any goods).

In order to make event organisers more accountable to consumers about their ticketing distribution practices, the New South Wales Parliament may wish to replicate proposed section 5 of Ontario’s Ticket Sales Act 2017<sup>2</sup>, which, if enacted, will require disclosure of:

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<sup>1</sup> <https://support.google.com/adwordspolicy/answer/7577050?hl=en-AU>

<sup>2</sup> [http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&Intranet=&BillID=5155#Sched310](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=5155#Sched310)

1. *“the total number of tickets to the event that will be made available for sale by the primary seller to the general public;*
2. *the distribution method of all of the tickets to the event that will be made available for sale by the primary seller, including any sale that will occur before tickets are made available for sale to the general public; and*
3. *the maximum capacity for the event.”*

### Restrictions on the secondary ticket market for music events

Industry experience demonstrates that legislative attempts to stifle the secondary market by way of price cap results in the primary market encroaching to take its place. Any legislation – such as the Fair Trading Amendment (Ticket Scalping and Gift Cards) Bill 2017 - adopts a protectionist flavour which benefits event organisers and their corporate licensees, at the expense of consumers.

As illustrated by examples 1 and 2 below, a secondary ticket market restricted by a price cap means that event organisers can bundle up a greater proportion tickets as part of “official packages”, with little to no secondary market competition, thereby enjoying a monopoly to effectively “scalp” their own tickets.

Whilst TBA has no objection to event organisers being able to maximise their investment by offering premium packages, we are concerned that the impact of any proposed legislation will be to further entrench monopolistic pricing practices by event organisers and not have Treasury’s stated objective of reducing consumer detriment.

### Example 1a: Ticketek results for Bruno Mars tickets as at 11 December 2017


**BRUNO MARS**  
 24K MAGIC  
 WORLD TOUR 2018  
 TOURING MARCH

**Bruno Mars**  
 Rod Laver Arena  
 Melbourne & Olympic Parks , Olympic Boulevard , Melbourne VIC 3000  
 Wed 07 Mar 2018 7:30PM

Browse by Price Category	Price Per Ticket/Item†
Best available (Any price category)	\$590.35
G.A Standing Floor	Allocation Exhausted
A Reserve	Allocation Exhausted
B Reserve	Allocation Exhausted
B Reserve Side/Rear View	Allocation Exhausted
C Reserve	Allocation Exhausted
C Reserve Side/Rear View	Allocation Exhausted
24k Pre Show Package	\$590.35
Hot Seat Package	Allocation Exhausted
Early Entry Package	Allocation Exhausted

† Pricing and Fee Information  
 For this event, a one-off service & handling fee from \$5.65 per transaction applies on all purchases. The actual service and handling fee may vary depending on the venue and method of delivery selected, or where you add other items to your basket. All ticket/item prices displayed for this event are subject to change at any time without notice.  
 All ticket/item prices include GST, if applicable, and are quoted in AU\$.

Example 1b: Ticketmaster Resale results for Bruno Mars tickets as at 11 December 2017



**Bruno Mars**

Wed 07 Mar 2018  
7:30 PM  
Rod Laver Arena  
Melbourne, VIC

Filter: All Qty: - +

Note: Prices can exceed face value. All prices in Australian Dollar (AUD). Prices shown exclude delivery costs (\$3.95 for PDF Electronic/Verified or \$17.90 for Australia Post). Prices displayed below are per ticket.

Section: Upper  
Row: --  
Seats

Seats: --  
Quantity: 4 ticket(s)

Buy \$216.20

PDF (electronic)

Emailed before the event.

Section: 44  
Row: LL  
Seats

Seats: --  
Quantity: 3 ticket(s)

Buy \$217.35

PDF (electronic)

Emailed before the event.

Section: upper  
Row: tier  
Seats


Seats: --  
Quantity: 7 ticket(s)

Buy \$217.35

PDF (electronic)

Emailed before the event.

Example 2a: Ticketek results for P!nk tickets as at 11 December 2017




**P!NK**

Qudos Bank Arena  
Corner Edwin Flack Avenue and Olympic Boulevard, Sydney Olympic Park NSW 2127

Sun 12 Aug 2018 7:30PM

**Venue Map**



**P!NK**

ARENA FLOOR - LOWER GROUND:  
The Arena Floor is General Admission Standing only. Patrons with GA tickets will be admitted onto the floor on a "first to first served" basis on the day of the event, behind the Wild Hearts Zone.

WILD HEARTS ZONE - located within the two pits directly in front of the stage.

GROUND LEVEL - FIRST ELEVATION

LEVEL 1 - SECOND ELEVATION

LEVEL 3 - THIRD ELEVATION

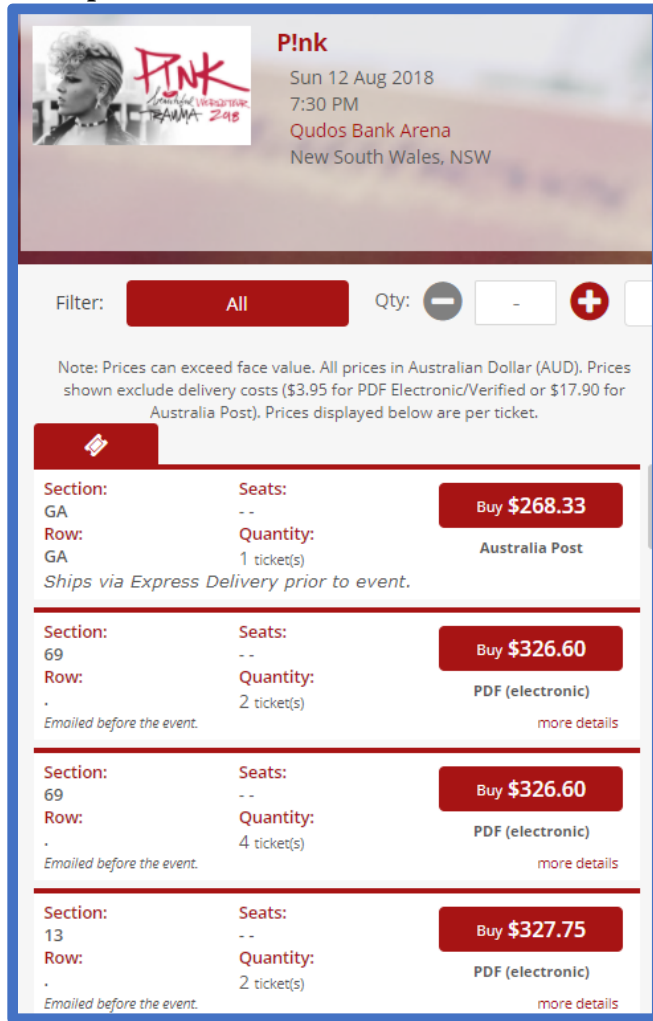
NON ALCOHOL:  
Section 39

SIDEBOARD VIEW - MAY BE RESTRICTED VIEW  
Ground Level: Sections 12, 13, 17, 18  
Level 1: Sections 21 to 24 and 44 to 47  
Level 3: Sections 67 to 70 and 75 to 78

**Browse by Price Category** Price Per Ticket/Item†

A Reserved Seating	Allocation Exhausted
General Admission Standing - Floor	Allocation Exhausted
B Reserved Seating	Allocation Exhausted
B Reserved Seating - Non Alcohol	Allocation Exhausted
C Reserved Seating	Allocation Exhausted
D Reserved Seating	Allocation Exhausted
Wild Hearts Zone - Floor	Allocation Exhausted
Early Entry Package - GA Standing	\$402.25
Hot Seat Package	Allocation Exhausted
VIP Party Package	\$560.10

## Example 2b: Ticketmaster Resale results for P!nk tickets as at 11 December 2017



The screenshot displays the Ticketmaster resale interface for a P!nk concert. At the top, there is a header with the artist's name 'P!nk', the date 'Sun 12 Aug 2018', the time '7:30 PM', and the venue 'Qudos Bank Arena, New South Wales, NSW'. Below the header, there is a filter set to 'All' and a quantity selector set to '1'. A note states: 'Note: Prices can exceed face value. All prices in Australian Dollar (AUD). Prices shown exclude delivery costs (\$3.95 for PDF Electronic/Verified or \$17.90 for Australia Post). Prices displayed below are per ticket.' The main content area shows four resale listings, each with a 'Buy' button and a price:

Section	Row	Seats	Quantity	Price	Delivery Method
GA	GA	--	1 ticket(s)	\$268.33	Australia Post
69	.	--	2 ticket(s)	\$326.60	PDF (electronic)
69	.	--	4 ticket(s)	\$326.60	PDF (electronic)
13	.	--	2 ticket(s)	\$327.75	PDF (electronic)

Each listing also includes a note: 'Ships via Express Delivery prior to event.' or 'Emailed before the event.' and a 'more details' link.

TBA notes that when asked by various inquiries, such as the NSW Upper House inquiry into ticket resale in 2014, event organisers (and major sporting codes) have declined to provide any transparency around their ticketing distribution and pricing practices. Reasons given for this have ranged from “commercial in confidence” to such a request being “administratively cumbersome”.

Industry practice and experience shows that these reasons are not genuine.



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

The TBA has supported efforts to protect consumers from predatory secondary practices and unscrupulous ticket re-sellers, working with governments across several Australian jurisdictions to legislate for a workable and enforceable model that protects patrons.

Regrettably, the TBA's experience shows that the laws passed by the NSW Government in October 2017, purportedly aimed at protecting consumers from these behaviours, will be unlikely to be effective. Rather, the sole practical impact of the law will be to entrench a commercial position for event promoters and major primary ticket vendors at the expense of consumers - that is, where any effect will be seen at all.

The two main factors leading to this sub-optimal outcome are:

1. the legislative requirements for promoters and primary vendors to be transparent in their ticket pricing and allocation, corporate partnerships and promotion of 'packages' to unsuspecting consumers, is at the complete discretion of the Minister for Innovation and Better Regulation;
2. The practical difficulties of the legislation's implementation, already seen in the delays between passage and proclamation of the legislation and its date of effect.

In our consultations with the Minister for Innovation and Better Regulation during the debate on that most recent Bill, the TBA noted the government's wilful refusal to note the findings of a 2014 NSW Upper House inquiry into the ticket industry, which found the predominant causes of ticket supply constraint and prohibitively high ticket prices were the primary ticket market's practices. We note that point again in this submission.

We note, also, the NSW Government's decision to ignore the findings of the consumer advocate CHOICE Magazine, which has repeatedly made the same point.

It is our view that the legislation referred to above is the poorer for those omissions and leaves that Act near useless in the task of reducing prices and increasing availability for tickets to events, musical, cultural or otherwise.

We urge this inquiry to recommend that any music or cultural event protected by law from ticket resale, of any kind, also be required by law to disclose its ticket pricing and allocation, corporate partnerships and design of any 'packages' to consumers, without being contingent on ministerial discretion. Absent these provisions, consumers NSW will not experience any improvement in access to or pricing of event tickets and will likely see both issues worsen rather than improve.

## **Recommendations**

1a) The NSW Parliament look to amend legislation governing ticket sales, re-sales and consumer protection to more accurately reflect industry realities

1b) The NSW Parliament look to the Victorian and Commonwealth legislation and reports, respectively, to inform any such amended legislation

2) Any legislation governing event ticket sale and re-sale be amended to include requirements for full disclosure of ticket pricing and allocation, corporate partnerships and ticket 'packaging' for any event protected by law from ticket re-sale, without ministerial discretion.