

Chapter 4

Government initiatives

4.1 A number of states have implemented their own legislation to manage ticket scalping in their respective jurisdictions. Each has taken its own particular approach to stop people profiteering from the resale of tickets—some quite similar while others, such as the proposed New South Wales legislation, take a different tack. In this chapter, the committee considers the state-based and commonwealth legislation dealing with ticket scalping and whether there is a need for more or better regulation of the resale market for event tickets.

Victoria

4.2 In Victoria, the *Sports Event Ticketing (Fair Access) Act 2002* (Vic) was the first piece of legislation in Australia that dealt specifically with the issue of ticket scalping. More recently, the *Major Sporting Events Act 2009* was introduced in order to assist with the safe and efficient staging of key sporting events that would contribute to making Victoria 'an attractive host destination for world class events'.¹ More specifically, the Victorian Act was designed to regulate the sale and distribution of tickets to certain sports events to ensure fair access; control ticket scalping; and improve major event ticketing practices.

4.3 Under the legislation, the Minister may make a sports ticketing event declaration in respect of a sports event. The effect of making such a declaration is that within 60 days of receiving notice that the Minister has made the declaration, a sports event organiser must give the Minister a ticket scheme proposal.² This proposal sets out details concerning the sale and distribution of tickets to the event. Essentially, it requires the event organiser to declare publicly how tickets are to be distributed and to whom and in what quantity. For example, the ticket scheme proposal should specify the minimum proportion of tickets available for sale or distribution to the public generally or to particular classes of persons. It should also provide information on how the venue is to be configured, 'to ensure the objective of a fair process, maximising public access to the venue,' and on the arrangements for the return of unwanted tickets.³

4.4 The Minister must either approve the ticket scheme proposal with or without modifications or refuse to approve it. If the Minister refuses to approve a ticket scheme set out in the ticket scheme proposal, the sports event organiser, with the

1 Victorian Government, *Submission 19*.

2 Section 154, *Major Sporting Events Act 2009* (Vic).

3 See for example, Additional Information—Government of Victoria, *Major Sporting Events Act 2009* and *Sports Event Ticketing (Fair Access) Act 2002*, Minister's Guide.

Minister's approval, may give the Minister a replacement ticket scheme proposal. The sports event organiser may apply for a review of a decision to refuse to approve the ticket scheme.⁴

4.5 If the sports event has been declared a sports ticketing event and there is a condition of sale that prohibits the sale or distribution of the ticket by a person who is not authorised to sell or distribute tickets, the person is prohibited from contravening that condition. Under the Victorian Act, the condition that prohibits or restricts the sale of the ticket must also be printed on the ticket. In effect, the Victorian Act prohibits the resale of tickets to sporting events if there is a term of the ticketing contract printed on the ticket, prohibiting a person from reselling tickets to the event. There are five offences under the Victorian legislation—two apply to the event organiser and three to ticket scalpers. It is an offence:

- for an event organiser to hold an event before the ticket scheme has been approved;
- for an event organiser or a person authorised to sell tickets to fail to comply with the approved ticket scheme;
- to sell event tickets contrary to the ticket conditions;
- to sell five or less tickets above face value; and
- to advertise for sale five or less tickets above face value.⁵

4.6 The 2003 to 2014 AFL Grand Finals, the 2009 and 2010 Australian Masters Golf, the 2011 Presidents Cup and the Melbourne matches of the ICC Cricket World Cup 2015 have been declared Sports Ticketing Events.⁶

4.7 In preparation for a declared event, advertisements are placed in major newspapers across the country, as well as in relevant event programs to assist in ensuring that the public are aware that the event is declared under the Act. For example, before the AFL Grand Final in September 2012, the Minister issued a media release warning people that under the act, individuals caught scalping tickets faced fines of up to \$8,450 per offence, or \$84,504 for multiple offences.⁷ The words 'declared event' are printed on the front of tickets sold or distributed to the event.⁸

4 Section 157, *Major Sporting Events Act 2009* (Vic).

5 Victorian Department of Transport, Planning and Local Infrastructure, Additional Information, 'Factual Information—Major Sporting Events Act 2009'.

6 Victorian Department of Transport, Planning and Local Infrastructure, Additional Information, 'Factual Information—Major Sporting Events Act 2009'.

7 The Hon Hugh Delahunty MP, Minister for Sport and Recreation, Media release, 'Beware of unauthorised ticket sellers to the AFL Grand Final', 27 September 2012.

8 Victorian Department of Transport, Planning and Local Infrastructure, Additional Information, 'Factual Information—Major Sporting Events Act 2009'.

4.8 Over the past three years, five individuals and the operators of a ticket reselling website (Ticketfinders) have been found guilty of various ticket scalping offences and an injunction obtained against Ticketfinders to prevent it from illegally selling tickets to the 2011 AFL Grand Final.⁹

Assessments of the Victorian legislation

4.9 The LPA noted that the Victorian legislation had not affected the live performance industry, as only a very limited number of sporting events are 'declared' and covered under the legislation each year.¹⁰ Ticketmaster similarly observed that the Victorian 'declared event' legislation, which makes the resale of tickets for specific events an illegal act, is limited to only a few events each year and hence its effect on the overall market was small.¹¹ Nonetheless, it was critical of the legislation because:

- it placed an unnecessary burden on the industry;
- the requirement to provide the Minister for Sports and Recreation with a ticket scheme proposal for each declared event created sizable overheads; and
- the current restrictions ignored and negated the legitimate need of consumers to resell unwanted tickets for declared events.¹²

4.10 On the other hand, eBay was of the view that the Victorian legislation improved transparency because promoters were required to disclose ticket allocation. This requirement would allow consumers to gain a better appreciation of the number of tickets available to the general public and those set aside for corporate members and sponsors. It stated further that the legislation could lead to improvements in primary distribution practices because it requires an approved ticket scheme to provide for a specified minimum proportion of event tickets to be made available for sale or to be distributed to the public generally or to particular classes.¹³

4.11 It also favoured this approach as it was event specific that focused on a limited subset of events expected to be in high demand with consequent ticket shortages. This clearly targeted approach enabled secondary marketplaces 'to more easily review and understand the requirements around ticketing pricing and constraints around resale, and to work with the relevant departments and promoters to implement steps to support compliance by users'.¹⁴ eBay noted further that the limited number of

9 Victorian Department of Transport, Planning and Local Infrastructure, Additional Information, 'Factual Information—Major Sporting Events Act 2009'.

10 *Submission 7*, p. 3.

11 *Submission 8*, p. [5].

12 *Submission 8*, p. [5].

13 *Submission 9*, p. 10.

14 *Submission 9*, p. 10.

events declared so far had meant that, although creating additional complexity and effort, the requirements under the legislation had been manageable.¹⁵

Queensland

4.12 Amendments to the Queensland *Major Sports Facilities Act 2001* took effect on 8 December 2006 and made ticket scalping an offence at certain event venues—currently, Suncorp Stadium, the Gabba, the Brisbane Entertainment Centre, Cbus Super Stadium, Metricon Stadium, 1300SMILES Stadium, the Queensland Sport and Athletics Centre, the Sleeman Sports Complex, and the Queensland Tennis Centre.¹⁶ The government introduced the legislation in response to the growing incidents of people acquiring tickets to popular sporting events with the sole purpose of making a profit from the re-sale of those tickets.¹⁷

4.13 According to Stadiums Queensland, the annual State of Origin rugby league event at Suncorp Stadium, which sells out very quickly, had been one of the main events targeted by ticket scalpers. The Bledisloe Cup, the First Ashes Test at the Gabba, the A-League and Super Rugby grand finals at Suncorp Stadium and a number of sellout entertainment events at the Brisbane Entertainment Centre have also been subject to ticket scalping.¹⁸

4.14 Stadiums Queensland informed the committee that many sports administering bodies and promoters approached the government when it was considering whether legislation should be enacted to regulate the on-sale of tickets.¹⁹ In their view, in circumstances where demand for tickets outstripped supply, genuine fans were being prevented from attending events because of the action of scalpers.

4.15 Under the Queensland Act, a person must not resell or purchase tickets to events held at one of the major sports facility at a price greater than 10 per cent above the original ticket price. The provisions apply to sales and purchases of tickets both within and outside Queensland.²⁰

4.16 In this regard, the Act does not seek to restrict people's ability to resell tickets where they have a legitimate reason to do so and where the transfer of the ticket is allowed under the conditions of sale. The 10 per cent margin allows people who are unable, or no longer want, to attend the event to recoup the ticket price and other costs associated with the purchase and resale of the ticket.

15 *Submission 9*, p. 10.

16 Stadiums Queensland, *Submission 6*, p. 1.

17 *Submission 6*, p. 2.

18 *Submission 6*, p. 2.

19 *Submission 6*, p. 2.

20 Section 30C, *Major Sports Facilities Act 2001* (Qld).

4.17 Queensland Police are responsible for enforcing the legislation and under the Act are authorised to issue on-the-spot fines to anyone committing a ticket scalping offence. Sellers of scalped tickets face a maximum fine of 20 penalty points or \$1,500 while buyers face a maximum fine of 5 penalty points or \$375.²¹

4.18 According to Stadiums Queensland the legislation does not prevent a promoter from including in the terms and conditions for purchase of tickets a provision that enables the promoter to cancel tickets that are advertised for re-sale.²²

Assessments

4.19 Although Queensland has had anti-scalping legislation in effect since December 2006, the LPA was not aware of any evidence that the legislation had had any effect on ticket scalping. It observed that it had not seen any reports of successful prosecutions for live performance events under the Act. Furthermore, it noted that:

...similar quantities of tickets are advertised on unauthorised onselling websites for numerous live performance events at the Brisbane Entertainment Centre, a major venue covered by the Act, as any other venue in states without anti-scalping legislation. For example, the Viagogo website currently has over 100 tickets advertised for the Bruce Springsteen concert at the Brisbane Entertainment Centre, ranging from \$284–\$888, the original price set by the promoter being between \$100–\$228.²³

4.20 Ticketmaster was likewise critical of Queensland's anti-scalping legislation, which, from its point of view, was easy to evade and had proven ineffective and difficult to enforce. It highlighted the futility of regulation that is seen as 'unjust and unnecessary by the majority of event attendees'.²⁴

4.21 EBay also suggested that the Queensland legislation had a number of drawbacks. It noted in particular that promoters were not required to provide information on their ticketing scheme or have reasonable distribution arrangements to ensure the release of an adequate number of tickets to the general public in the first instance. According to eBay, the legislation failed to address the allocation of tickets to corporate and other groups in the primary market and provided 'a market advantage and protection for promoters who may choose to enter the secondary market and resell tickets themselves'.²⁵

4.22 Noting that the Queensland legislation covered major venues and not events, eBay argued that the legislation overreached and captured many events where

21 Stadiums Queensland, *Submission 6*, p. 2 and section 30C, *Major Sports Facilities Act 2001* (Qld).

22 *Submission 6*, p. 2.

23 *Submission 7*, p. 3.

24 *Submission 8*, p. [5].

25 *Submission 9*, p. 11.

a shortage of tickets was unlikely and no incentive existed for ticket scalpers. In this regard, eBay argued that the legislation 'goes beyond what is required to protect consumers and creates considerable increased difficulty and costs for online marketplaces and law enforcement'.²⁶

South Australia

4.23 In line with some of the other states, the South Australian Government last year passed the *Major Events Act 2013*. The legislation, which came into force in December 2013, allows the government to declare any event a 'major event' and, in making such a declaration, to protect the integrity of the event.²⁷ It prohibits the unauthorised hawking of tickets inside the declared areas for the major event and any unauthorised sale for more than 10 per cent of the ticket's face price outside of those areas.²⁸

4.24 The maximum penalty is, in the case of a body corporate—\$25,000; and in the case of a natural person—\$5,000. The Act places an evidential burden on the accused to show that the accused had the approval of the event organiser.²⁹

4.25 The South Australia Police informed the committee that as at January 2014 no ticket scalping offences had yet been detected.³⁰ It did note, however, in respect of counterfeit tickets, that in September 2013 the South Australia Police had commenced a series of prosecutions for the sale of illegitimate tickets. Both matters were currently before the courts and the Police could not disclose any further information at that time.³¹

New South Wales

4.26 In September 2012, the Minister for Fair Trading, Mr Anthony Roberts and the Minister for Sport and Recreation, Mr Graham Annesley, held a round table with representatives from the major sporting codes. They agreed that ticket scalping was an issue that needed to be addressed. According to Mr Annesley, the sporting codes were not concerned about 'protecting the financial interests of large commercial sporting organisations as they receive their money no matter who buys the tickets'.

26 *Submission 9*, pp. 10–11.

27 South Australia Police, *Submission 21*.

28 The Hon. J.R. Rau, South Australia, House of Assembly, *Hansard*, 21 March 2013, p. 4959.

29 Section 9, *Major Events Act 2013* (SA).

30 *Submission 21*.

31 *Submission 21*.

He stressed that all codes 'feel a genuine responsibility to protect their fans from being ripped-off or becoming the victims of fraud'.³²

4.27 The representatives at the meeting agreed that ticket scalping legislation in other states had 'merit but could be improved'.³³ Mr Roberts stated that there was 'a strong argument to protect the consumer from scalpers who prey on a person's passion for their sport or sporting team'. He noted:

With Grand Finals just around the corner, consumers should be aware that tickets sold by scalpers may breach the terms and conditions of sale and may be cancelled.³⁴

4.28 The NSW Government regarded this meeting with the sporting organisations as the first step towards determining the best way to proceed in the public interest.³⁵ In October 2013, Mr Roberts announced the government's intention to introduce new laws to protect consumers from ticket scalping and ticket fraud and on 14 November introduced a bill into the Legislative Assembly to amend the *Fair Trading Act 1987*.

4.29 The proposed legislation recognises the risks for consumers in purchasing a ticket from the secondary markets—the ticket may not be genuine, or may not be provided at all or the ticket may be cancelled by the event organiser. The bill is based on the understanding that, with varying success, event organisers have tried to remedy the problem of ticket scalping by allocating tickets to sporting clubs, limiting the number of tickets that could be bought by any one person and staging the release of tickets.³⁶

4.30 The NSW bill also takes account of the importance of having a secondary market for people no longer able to attend an event but who seek to sell their ticket.

32 NSW Government, Fair Trading, 'Ticket scalping major concern for sporting organisations', 17 September 2012, http://www.fairtrading.nsw.gov.au/ftw/About_us/News_and_events/Media_releases/2012_media_releases/20120917_ticket_scalping_major_concern.page, (accessed 12 February 2014).

33 NSW Government, Fair Trading, 'Ticket scalping major concern for sporting organisations', 17 September 2012, http://www.fairtrading.nsw.gov.au/ftw/About_us/News_and_events/Media_releases/2012_media_releases/20120917_ticket_scalping_major_concern.page, (accessed 12 February 2014).

34 NSW Government, Fair Trading, 'Ticket scalping major concern for sporting organisations', 17 September 2012, http://www.fairtrading.nsw.gov.au/ftw/About_us/News_and_events/Media_releases/2012_media_releases/20120917_ticket_scalping_major_concern.page, (accessed 12 February 2014).

35 NSW Government, Fair Trading, 'Ticket scalping major concern for sporting organisations', 17 September 2012, http://www.fairtrading.nsw.gov.au/ftw/About_us/News_and_events/Media_releases/2012_media_releases/20120917_ticket_scalping_major_concern.page, (accessed 12 February 2014).

36 NSW Government Fair Trading, 'NSW Government tackles ticket scalping', 2 October 2013, http://www.fairtrading.nsw.gov.au/ftw/About_us/News_and_events/Media_releases/2013_media_releases/20131002_nsw_gov_tackles_ticket_scalping.page, (accessed 12 February 2014).

The legislation intends to ensure that the resale of tickets is an open and transparent process requiring anyone reselling tickets to a sporting or entertainment event to include certain information.³⁷ If requested, operators of secondary markets would have to remove items from sale that breach the rules. In effect, the bill would require advertisements for the resale of a ticket to contain the following information:

- the ticket number (and the row and seat number if applicable);
- the terms and conditions of the ticket or where they can be readily found;
- details of the circumstances in which the resale of the ticket may result in the ticket being cancelled; and
- a photograph of the ticket which clearly shows the ticket, row and seat number, but not any barcode on the ticket.³⁸

4.31 A person or company that provides a public forum for advertisements, such as a website, must take reasonable steps to ensure that any advertisement for the resale of tickets in that forum complies with these requirements. The proposed legislation would require the operator of the forum, insofar as is reasonably practicable, to remove or correct the advertisement if notified in writing that the advertisement did not comply with those requirements.³⁹

4.32 The proposed legislation is intended to 'improve transparency in the market place, protect consumers and allow event organisers to enforce their terms and conditions to protect genuine fans from ticket scalping and fraud'.⁴⁰ Its primary concern is with the secondary market and would authorise individual sports to take action to stop ticket scalping by enabling them to enforce their ticket conditions.⁴¹

4.33 The bill would introduce significant monetary penalties for persons who fail to take reasonable steps to ensure ticketing advertisements posted on their forum comply with certain requirements or fail to remove or correct an advertisement after being notified that it is non-compliant.⁴²

37 NSW Government Fair Trading, 'NSW Government tackles ticket scalping', 2 October 2013, http://www.fairtrading.nsw.gov.au/ftw/About_us/News_and_events/Media_releases/2013_media_releases/20131002_nsw_gov_tackles_ticket_scalping.page, (accessed 12 February 2014).

38 *Submission 12*, p. 1.

39 Fair Trading Amendment (Ticket Reselling) Bill 2013, Explanatory Note and NSW Government, *Submission 12*, p. 1.

40 NSW Government Fair Trading, 'NSW Government tackles ticket scalping', 2 October 2013, http://www.fairtrading.nsw.gov.au/ftw/About_us/News_and_events/Media_releases/2013_media_releases/20131002_nsw_gov_tackles_ticket_scalping.page, (accessed 12 February 2014).

41 *Submission 12*, p. 1.

42 NSW Parliament, Legislation Review Committee, *Legislation Review Digest No. 49/55*, 19 November 2013, p. 9.

Assessment of proposed NSW legislation

4.34 Australia's sporting bodies support the NSW legislation because, according to the Minister, 'regrettably, genuine fans have been ripped off by ticket scalpers either charging sky-high prices, or selling tickets that don't actually exist'.⁴³ Ticketing agencies such as Ticketek also welcomed the legislation which, in their view, would help to 'clamp down' on unsound reselling practices.⁴⁴

4.35 Ticketmaster, however, was strongly opposed to the NSW approach which, it thought, would have serious unintended consequences that would 'make unregulated websites attractive to consumers and encourage fraudulent activity'. It stated:

One of the more problematic requirements of the NSW proposal is for sellers to provide a photograph of the actual ticket. Our extensive ticket selling experience convinces us that such a requirement ensures that the sales process (in a world of mobile/virtual tickets) is cumbersome and impossible to secure. Publishing photographs of tickets (where possible to provide) will also create an opportunity for fraud. Images are simple to copy and duplicate.⁴⁵

4.36 In brief, it asserted that the legislation would 'neither protect fans nor stop fraud'; do little to combat sophisticated fraudsters; and drive consumers offshore towards unregulated websites that offer no protection.⁴⁶ CHOICE was concerned that this legislation 'which seeks to allow the enforcement of event owners' terms and conditions, may tip the scales in favour of event owners over consumers'.⁴⁷

4.37 The LPA informed the committee that it had raised major concerns with the NSW Government with regard to the bill. It noted that the legislation would place the onus on event organisers to invest additional resources into monitoring the proposed regime to be effective in identifying scalping. It did not deal with how the proposed requirements against scalping could be enforced.⁴⁸

43 NSW Government Fair Trading, 'NSW Government tackles ticket scalping', 2 October 2013, http://www.fairtrading.nsw.gov.au/ftw/About_us/News_and_events/Media_releases/2013_media_releases/20131002_nsw_gov_tackles_ticket_scalping.page, (accessed 12 February 2014).

44 NSW Government Fair Trading, 'NSW Government tackles ticket scalping', 2 October 2013, http://www.fairtrading.nsw.gov.au/ftw/About_us/News_and_events/Media_releases/2013_media_releases/20131002_nsw_gov_tackles_ticket_scalping.page, (accessed 12 February 2014).

45 *Submission 8*, p. [4].

46 *Submission 8*, p. [4].

47 CHOICE, 'CHOICE feedback on NSW Government ticketing proposals', http://searches.choice.com.au/search/?&site=default_collection&btnG=Search+CHOICE&client=default_frontend&output=xml_no_dtd&proxystylesheet=version1_frontend&sort=date%3AD%3AL%3Ad1&oe=UTF-8&ie=UTF-8&ud=1&exclude_apps=1&tlen=100&q=scalping, (accessed 13 December 2013).

48 *Submission 7*, p. 3.

4.38 For different reasons, eBay opposed the provisions of the bill. In its view, the legislation would lock out competition. According to eBay, the New South Wales legislation would provide promoters with additional means to enforce the terms and conditions on their tickets so that the ticket holder could not offer a ticket for sale if it were in breach of the promoter's conditions. In eBay's view, the proposed legislation was anti-competitive and preserved 'the power in the hands of the ticket issuers for the primary market'.⁴⁹ It suggested that event promoters must be held responsible for the way they distribute tickets.

4.39 eBay also noted the inconsistency in the advice between the NSW Fair Trading and the key motives behind the proposed legislation. It understood that NSW Fair Trading indicated that there had not been a sufficient market failure to justify regulatory intervention. eBay quoted the following statistics obtained through Freedom of Information requests—of the 44,016 complaints received by NSW Fair Trading in 2012 only one was within the scope of ticket scalping; of the 128 ticket related complaints received by NSW Fair Trading as at 26 July 2013 (in 2013) not one related specifically to scalping and 70 per cent related to cancelled/postponed events or purchasing issues such as online technical difficulties. eBay maintained that the NSW legislation does not address these issues.⁵⁰

Views on state regulation

Policing and costs

4.40 A number of submitters commented on the inconsistency in the approaches taken by the States to ticket scalping and the difficulty enforcing legislation outside the respective jurisdictions. Stadium Queensland explained that, where online companies based outside the state had purchased tickets and offered them for re-sale, the Queensland legislation could be enforced if police had sufficient details to identify their names and addresses. It stated, however, that this process could be time consuming and, with stretched police resources, 'the cost incurred in locating these on-line companies and investigating possibly illegal transactions exceeds the value of the amounts involved'.⁵¹

4.41 An article by Mr Daniel Stuk, solicitor and business consultant, drew attention to the problem administering Australia's current regulatory approach to ticket scalping. He gave the following hypothetical:

...an individual in Western Australia is scalping tickets to an AFL Final (a declared event under the Victorian Act). The AFL hears of this and wants to take action. Victorian law is not enforceable in Western Australia. If the AFL wanted to prosecute, it would need the individual to be extradited to Victoria. This would of course complicate the matter in a number of ways.

49 *Submission 9*, p. 11.

50 *Submission 9*, p. 12.

51 *Submission 6*, p. 4.

Primarily, the problem the AFL would face is that the interstate extradition process is generally discretionary. In Victoria, one of the criteria to consider in an extradition matter is 'whether the offence in question is sufficiently serious to justify extradition proceedings being undertaken'. Query whether a breach of the anti-scalping laws would be considered sufficiently serious and whether the penalties that may be imposed justify the costs associated with extraditing the offender and the actual proceedings.⁵²

4.42 Daniel Stuk also cited international events held in Australia such as the Asian Cup and the Cricket World Event where events are held in different cities throughout the country. Because a number of states take a different approach to scalping, event organisers could confront a situation where the same ticketing transaction could be an offence in one state and legal in another. The LPA drew a similar conclusion, noting that:

...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.⁵³

4.43 A number of submitters noted that this lack of nationally consistent legislation leads not only to difficulties with enforcement, but also with educating consumers about those laws. For consumers, the state-based legislation generates uncertainty because of the material distinctions between the different jurisdictions. Putting the focus on state-based legislation, the LPA noted that it was 'particularly confusing' to consumers as it varies from state-to-state. In its view:

Free market industry solutions are the most effective in preventing large-scale illegitimate ticket scalping.⁵⁴

4.44 In this regard, it suggested that 'ultimately any approach to ticket scalping legislative or otherwise that is adopted should be nationally consistent and implemented at the Federal level'.⁵⁵

Overall views on state legislation

4.45 Overall, the LPA argued that the state-based anti-scalping legislation in Australia was 'generally futile and ineffective'.⁵⁶ It explained:

Current available evidence, both domestically and internationally, illustrates that specific anti-scalping legislation is unwarranted, ineffective

52 Daniel Stuk, 'Ticket scalping: advocating for the event organiser', *Australian and New Zealand Sports Law Journal*, 2011 6(1), p. 113, <http://search.informit.com.au/fullText;dn=789487233949283;res=IELHSS>, (accessed 11 February 2014).

53 *Submission 7*, p. 3.

54 *Submission 7*, p. 5.

55 *Submission 7*, p. 5.

56 *Submission 7*, p. 3.

and unenforceable due to the inability of legislation to have an impact on the online operations of the secondary market.⁵⁷

4.46 In the same context, Ticketmaster also submitted that state-based consumer protection had 'proven to be either ineffective or onerous to both consumers and industry, with a potentially negative long-term impact on event attendance'.⁵⁸ The Ticket Brokers Association contended that the states' attempts to limit the resale of event tickets had failed to protect consumers from paying more than they used to.⁵⁹ It was of the view that most state-based legislation aimed at curtailing the unauthorised resale of event tickets had, under the guise of consumer protection, adopted an 'overly protectionist flavour'. According to the Ticket Brokers Association, this approach significantly favoured 'sporting codes, event promoters and a limited number of corporate licensees'.⁶⁰

4.47 While unconvinced about the effectiveness of state-based legislation in curbing ticket scalping, some submissions saw an important role for the Commonwealth.

Commonwealth legislation

4.48 Though not applying specifically to ticket scalping, the Commonwealth currently has consumer laws that offer some protection against the exploitative or dishonest activities of some scalpers.

4.49 The Australian Consumer Law (ACL) is a single, national, generic law covering consumer protection and fair trading that applies in the same way nationally and in each State and Territory.⁶¹ The ACL provides a set of important protections to enable consumers to engage confidently in the marketplace. A number of requirements of this law apply with respect to unauthorised on-selling of tickets.⁶² The Treasury explained:

Under section 18 of the Australian Consumer Law, it is unlawful to make statements in trade or commerce that are misleading or deceptive, or would be likely to mislead or deceive. Whether a representation is false or misleading will depend on the circumstances. Failing to disclose relevant

57 *Submission 7*, p. 2.

58 *Submission 8*, p. [4].

59 *Submission 11*, p. [2].

60 *Submission 11*, p. [2].

61 Commonwealth of Australia, *The Australian Consumer Law, A guide to provisions*, November 2010, p. ix, http://www.consumerlaw.gov.au/content/the_acl/downloads/A_guide_to_provisions_Nov_2010.pdf, (accessed 11 February 2014).

62 *Submission 16*, p. 2.

information, promises, opinions and predictions can also be misleading or deceptive.⁶³

4.50 Also, under section 29 of the Act, a person is prohibited from making false or misleading representations in connection with the supply, possible supply or promotion of goods or services. False or misleading representations banned by the ACL include, among other things, a false or misleading representation that:

- goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;
- a particular person has agreed to acquire goods or services;
- goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits;
- the person making the representation has a sponsorship, approval or affiliation; and
- concerns the place of origin of goods.⁶⁴

4.51 The Act specifically prohibits conduct liable to mislead the public as to the nature, characteristics, suitability for their purpose or the quantity of services.⁶⁵ This provision means that it is 'unlawful for an unauthorised on-seller of tickets to, among other things, misrepresent whether the tickets they on-sell are authorised or will provide entry to a particular event'.⁶⁶ The Treasury noted further:

Consumer guarantees exist to ensure that consumers get what they pay for. Under the Australian Consumer Law all goods purchased by consumers are covered by statutory consumer guarantees. Under these provisions, a supplier must ensure, among other things, that goods and services they supply in trade or commerce, are fit for purpose. Ordinarily, tickets for events are acquired for the purpose of facilitating access to certain events.⁶⁷

4.52 EBay also referred to the number of provisions under the ACL which are relevant to the regulation of the ticketing industry. In addition to sections 18 and 29, it cited:

63 *Submission 16*, p. 3.

64 Commonwealth of Australia, *The Australian Consumer Law, A guide to provisions*, November 2010, p. 11, http://www.consumerlaw.gov.au/content/the_acl/downloads/A_guide_to_provisions_Nov_2010.pdf, (accessed 11 February 2014).

65 Commonwealth of Australia, *The Australian Consumer Law, A guide to provisions*, November 2010, p. 12, http://www.consumerlaw.gov.au/content/the_acl/downloads/A_guide_to_provisions_Nov_2010.pdf, (accessed 11 February 2014).

66 *Submission 16*, p. 3.

67 *Submission 16*, p. 4.

- the unconscionable conduct provisions (sections 20–22 of the ACL), which prevent ticket sellers from taking advantage of vulnerable consumers;
- the provisions regarding unfair consumer contracts (sections 23–28 of the ACL)—these unfair contract provisions should work to limit the ability of ticket sellers and resellers from including terms in their contracts which are excessively burdensome on consumers; and
- the consumer guarantees (sections 51–59 of the ACL), which are designed to ensure that consumers get the item they paid for.⁶⁸

4.53 The Treasury informed the committee that since 1 January 2011, the ACCC had received 52 contacts from consumers regarding the sale of tickets (by comparison, it received over 185,000 contacts in financial year 2012-13 alone on all matters).⁶⁹ According to the Treasury, the contacts related to a number of matters, including general concerns with unauthorised on-selling of tickets, as well as consumers complaining about their inability to sell unwanted tickets legitimately.⁷⁰ The table below provides detail on the nature or type of complaint that the ACCC has received in respect of ticket scalping and the resale of tickets.

Table 4.1: Breakdown of contacts received by ACCC⁷¹

Issue	Count of Issue
Consumer unable to legitimately resell ticket for less than cost (unable to attend event)	
Splendour in the Grass 2011	8
General complaints about scalping	
Tickets rapidly selling out—highly inflated tickets appearing online soon after	17
Frustration at lack of policing over scalping—believes scalping to be illegal	11
Dissatisfied by secondary booking company charging a large booking fee	2
Specific complaint about the allowance of scalping	2
Tickets cancelled because they were purchased in the secondary market from an unauthorised seller	1
Inquiry about the legality of scalping	4
Scalping scam	
Scam—Purchased through Gumtree—tickets not received	1
Specific complaint about a reselling service	
Believes secondary ticket seller is a scalping service and therefore illegal	6
Total	52

68 *Submission 9*, p. 9.

69 *Submission 16*, p. 4.

70 *Submission 16*, p. 4.

71 See also ACCC answer to question on notice No. 1, received 18 March 2014.

The ACCC informed the committee that complaint numbers to the Commission were consistent for the three years 2011–2013 and the numbers to date for 2014 indicated no change from this pattern.⁷²

Effectiveness of the Australian Consumer Law in combating ticket scalping

4.54 EBay was of the view that the ACL provides sufficient consumer protection at the federal level.⁷³ It suggested that regulation of the resale market would likely have the effect of pushing ticket resales underground and deprive consumers of 'the protection and visibility offered by transparent mechanisms such as some online marketplaces'.⁷⁴ Overall, it believed that ticket sales for sporting, concerts or similar events, while popular and sought after, should not be 'regulated, restricted or prohibited'.⁷⁵ Although not advocating legislation, eBay suggested that a federal approach to ticket scalping should consider aspects of the Victorian legislation—greater transparency on the part of event holders in the allocation and distribution of tickets and targeted at specific popular events.⁷⁶ In its view, there was scope for regulators 'to take more action against ticket sellers and resellers utilising the existing ACL provisions (as an alternative to implementing a completely new federal regulatory regime in respect of tickets)'.⁷⁷

4.55 The LPA suggested that the current Australian consumer law '**adequately protects consumers legislatively from unfair trade practices**'.⁷⁸ It would not support legislation that placed an administrative burden on the industry. It stated:

Specific anti-scalping legislation both at the State and Federal level would be onerous on the industry to police, with no quantifiable evidence that it can be effectively implemented to minimise illegitimate ticket scalping.⁷⁹

4.56 Nonetheless, it would support any federal initiative that would 'effectively minimise the occurrence of ticketing fraud'.⁸⁰ It urged the ACCC and State and Territory consumer protection agencies to ensure that adequate resources were 'committed to working jointly and consistently' to implement the ACL.⁸¹

72 ACCC, answer to question on notice No. 1, received 18 March 2014.

73 *Submission 9*, p. 9.

74 *Submission 9*, p. 13.

75 *Submission 9*, p. 3.

76 *Submission 9*, p. 20.

77 *Submission 9*, p. 9.

78 *Submission 7*, p. 4 (emphasis in original).

79 *Submission 7*, p. 4.

80 *Submission 7*, p. 5.

81 *Submission 7*, pp. 2 and 4.

4.57 Stadiums Queensland saw a role for the Commonwealth to assist the states with investigations where online companies based outside the state had purchased tickets and offered them for re-sale. It noted that:

Commonwealth consumer protection legislation applies to such online companies and the relevant Commonwealth agencies would already have the capabilities needed to locate these companies if any breaches of Commonwealth consumer protection legislation have occurred. An exchange of information between Commonwealth and State enforcement agencies about the identity of such online companies could make it easier for State ticket scalping legislation to be enforced.⁸²

4.58 In general, the Treasury considered that the ACL provided 'a balanced level of protection' when it came to the on-selling of tickets in Australia.⁸³ It was not convinced that there were grounds for further regulation in respect of ticket scalping in Australia at this time. The Treasury indicated, however, that it would keep abreast of any future concerns in this sector and whether further regulatory action was warranted at a later time.⁸⁴

4.59 Overall based on its experience, COMPSS found that the enforcement of rights against scalpers who were gouging the market was 'cumbersome, expensive and difficult' and further that it was 'often not cost effective to take action'. It informed the committee that:

The sports have a high level of frustration from not being able to enforce the terms and conditions on their tickets without supporting legislation that creates a specific offence of ticket scalping and profiteering.⁸⁵

4.60 In contrast to those suggesting that there was little or no need for legislation governing ticket scalping, COMPSS was seeking 'a nationally enforceable approach'. According to COMPSS, the ACL had provided a framework of general principles for consumer protection but, in its view, had failed 'to provide an effective mechanism to prevent or punish ticket scalping'. It stated that without clearly defined regulations within the Competition and Consumer Act it was 'difficult to pursue ticket scalping as an offence under the Australian Consumer Law'.⁸⁶

4.61 COMPSS suggested having specific provisions that would 'make it an offence to offer for sale tickets for sporting events at a price above face value without the authority of the event owner/operator'. It stated that the ACL 'provided an opportunity for a unified approach to fair trading and sale of goods'.⁸⁷

82 *Submission 6*, p. 4.

83 *Submission 16*, p. 4.

84 *Submission 16*, pp. 1 and 4.

85 *Submission 17*, p. 8.

86 *Submission 17*, p. 8.

87 *Submission 17*, p. 8.

4.62 The AIMIA Digital Policy Group contended that there was little evidence suggesting that any of the ticket scalping laws were effective. It noted the existence of significant evidence demonstrating that ticket scalping laws were ineffective and enforcement was 'problematic and resource intensive'.⁸⁸ A number of submitters drew on overseas experience to support their view that regulation was unnecessary.

International experiences

4.63 Mr Shane O'Connell highlighted the global nature of the ticket scalping problem. He noted that corporate scalpers mostly in the UK and Switzerland have shown that 'they buy up big and have them on e bay within the hour'.⁸⁹ The LPA suggested that specific anti-scalping laws had proven both ineffective and unenforceable internationally—that overseas experience did not support anti-scalping legislation.⁹⁰ It drew on developments in the US, where 'many states have repealed legislation that capped the price to resell tickets'. The LPA referred to the 2010 CCAAC report on ticket onselling, which found that there was an international trend toward deregulation of the secondary ticketing market, including countries that have a much higher incidence of scalping compared to Australia. It quoted from this report that:

...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.⁹¹

4.64 The LPA elaborated on this observation, noting:

Michigan is currently in the process of repealing its anti-scalping legislation, which has been lauded by representatives from both sides of the aisle as 'outdated and difficult to enforce'. In 2007 New York repealed its price cap legislation due to the practical inability of enforcement and recognition that free market industry solutions could more effectively combat problems that arise due to ticket scalping.⁹²

4.65 Turning to the UK, it noted that, after extensive research and consultation, the government ruled in 2010 that legislation of the secondary ticketing market was not necessary.⁹³ Ticketmaster arrived at the same conclusions about the effectiveness of legislation enacted in other countries. It informed the committee that based on the experiences of other jurisdictions, anti-scalping legislation is 'at best ineffective,

88 *Submission 15*, p. [3].

89 *Submission 10*.

90 *Submission 7*, p. 3.

91 *Submission 7*, pp. 3–4.

92 *Submission 7*, pp. 3–4.

93 *Submission 7*, p. 4.

at worst hurtful because it pushed the demand off-shore and underground'.⁹⁴ It cited France and the US as examples. It informed the committee that the legislation in France, which was not dissimilar to that proposed in NSW, had 'simply driven the market offshore'.⁹⁵ According to Ticketmaster, the US anti-scalping state legislation had proven so detrimental to consumer interests that 'many states have decided to repeal the laws'.⁹⁶

Industry self-regulation

4.66 As an alternative to legislation, the major participants in both the primary and secondary markets suggested that voluntary action by those engaged in the industry would help to minimise the harmful practices of ticket scalpers. The committee has considered some of these measures such as preventing leakages from the primary market by, for example, imposing limits on the number of tickets that a single person could purchase. The committee also looked at the measures taken by ticketing agencies and the online resale websites to establish secondary markets that would protect consumers from unscrupulous ticket scalpers and fraudsters.

4.67 As noted earlier, Ticketmaster was of the view that industry could and would achieve an environment where consumers would have access to a safe, secure, and transparent marketplace without having to rely on additional legislation, as proposed by the NSW Government. It explained further that the market place would provide 'full protection for consumers via a ticketing industry guarantee on all ticket purchase, and indemnifying consumers in the unlikely event of a problem'.⁹⁷

4.68 Moreover, as discussed previously, the LPA, the peak body for the live performance industry, has produced an industry code of practice for ticketing which aims to educate people on their rights and where they can go to if they want a refund or to complain.⁹⁸ Although voluntary, the code is binding on all LPA members and is intended to encourage industry self-regulation. Compliance with the code is a condition of LPA membership and if a member fails to comply with the code, its membership may be revoked.⁹⁹ As noted earlier, the ACCC assisted the LPA when it was developing its code of practice. More specifically, it provided guidance on how LPA could improve the effectiveness of its code, in line with the ACCC's for developing effective voluntary industry codes of conduct.¹⁰⁰

94 Ticketmaster, answer to question taken on notice on 20 February 2014.

95 Ticketmaster, answer to question taken on notice on 20 February 2014.

96 Ticketmaster, answer to question taken on notice on 20 February 2014.

97 *Submission 8*, p. [5].

98 See also, *Committee Hansard*, 20 February 2014, p. 6.

99 Live Performance Australia, *Live Performance Australia Ticketing Code of Practice, Consumer Code*, fifth edition, effective 1 February 2012, p. 4.

100 ACCC, answer to question No. 4, received 18 March 2014.

4.69 Although representing a different interest group, the Ticket Brokers Association also thought that the preferred way to tackle the problem of unscrupulous ticket scalping was through voluntary actions within the industry. It suggested that rather than impose legislative prohibitions on the reselling of tickets or capping the resale price of tickets, the government should seek 'to foster a culture of transparency' and by way of self-regulation encourage event promoters to disclose fully ticket allocations.¹⁰¹

4.70 Turning to the conduct of its own members, the Association stated that its aim was to promote a safe, efficient and legitimate secondary market and advocated:

- the establishment of an industry-wide standard of conduct and broker accreditation scheme, and
- the creation and enforcement of ethical rules and procedures to protect the public and educate the public on the industry.¹⁰²

4.71 The ACCC observed that an effective code of conduct can deliver increased competition and consumer protection by promoting compliance with the *Competition and Consumer Act 2010* within a specific industry.¹⁰³ It noted that industry codes tend to be more effective when they:

- have strong industry support;
- have wide coverage (measured not just by number of signatories, but also by whether 'problematic' traders have signed up);
- contain an effective complaints handling system; and
- provide for commercially significant sanctions for non-compliance.¹⁰⁴

4.72 The committee supports both the ticketing agencies and ticket brokers in developing codes of best practice with consumer protection as a primary objective. It would also support the ACCC providing advice and guidance on how the codes could be improved. The committee is of the view, however, that the effectiveness of self-regulation may be compromised if those who adopt the codes do not subscribe to improved transparency in the industry, in particular to greater openness about the allocation and distribution of tickets.

Recommendation 1

4.73 The committee recommends that both COMPSS and LPA review the criticism that has been levelled at the primary market identified in this report and consider how event holders and promoters could adopt or revise a code of

101 *Submission 11*, p. [2].

102 *Submission 11*, covering letter.

103 ACCC, answer to question on notice No. 5, received 18 March 2014.

104 ACCC, answer to question on notice No. 5, received 18 March 2014.

best practice to address the criticism. The committee notes particularly the desirability of having greater transparency in the way in which tickets are issued and distributed.

4.74 The committee supports the Ticket Brokers Association's suggestion that an industry-wide standard of conduct be established. It recommends that ACCC be consulted during the development of this code.

Consumer education

4.75 Unauthorised sellers often trade via official looking websites that can mislead consumers into thinking that they are buying from an authorised site. COMPSS noted that the 'prevalence and ingenuity of online advertising by unauthorised on-sellers can confuse the public as to who the authorized ticket agent actually is'. It suggested that:

Unauthorised on-sellers can purchase premium advertising on Google and other search engines so that their websites/advertisement appears in search results before the websites/advertisements of the official ticket agent. This misleads consumers, and can lead to them purchasing tickets that are later cancelled by the sport or which do not actually exist.¹⁰⁵

4.76 The LPA was of the view that improving consumer awareness was integral to discourage the public from purchasing tickets from insecure websites. It was of the view that increasing consumer awareness through education campaigns would effectively empower the consumer to make informed purchasing decisions. It referred to its Ticketing Code of Practice Consumer Guide, stating that it has 'worked with state governments in the past to release public alerts that inform consumers of the risks in purchasing tickets from unauthorised websites'.¹⁰⁶ The LPA indicated that it would 'be happy to liaise further with the Federal Government to improve consumer awareness on these issues'. It was of the view, that the Federal Government should commit resources to improving consumer awareness and education initiatives and that efforts should be directed toward educating consumers on the occurrence of fraud on unauthorised onselling websites.¹⁰⁷

4.77 Stadium Queensland identified a particular area where consumer education was required. It noted that recently a number of online companies had entered the market to re-sell tickets for high demand events. According to Stadium Queensland, the companies include information on their websites informing potential buyers that re-sold tickets could be cancelled by event promoters, where the conditions of original sale of the tickets allowed this to occur. It argued that 'these online companies may have met their legal obligations by making reference to the possibility that re-sold tickets may be cancelled by a promoter'. Even so, it was of the view that relevant Commonwealth agencies with responsibility for consumer protection could possibly

105 *Submission 17*, p. 11.

106 *Submission 7*, p. 5.

107 *Submission 7*, pp. 2 and 5.

do more 'to ensure consumers are better informed and not left under any misconceptions about the consequences of the actions upon which they are about to embark'.¹⁰⁸

4.78 Consumers should also be aware of the global context in which ticket scalpers operate. According to the LPA, anti-scalping legislation 'cannot practically and effectively be enforced on unauthorised overseas websites that are located completely offshore'.¹⁰⁹ It argued that the unintended consequences of anti-scalping legislation could 'likely result in overseas websites becoming even more attractive to scalpers and consumers being outside of enforceable reach'.¹¹⁰

Recommendation 2

4.79 The committee recommends that the ACCC consult with the major participants involved in the sale and re-sale of tickets to sporting and entertainment events with a view to identifying areas where consumer education needed to be strengthened. The aim then would be to devise a consumer education strategy that would arm consumers with the information they need to protect themselves against poor practices in the industry and unscrupulous ticket scalpers.

4.80 The committee recommends that, based on the findings of this consultation, the major participants (and their representatives) in the primary and secondary ticketing markets, revise or develop a code of best practice that places a heavy emphasis on, and seeks to strengthen, consumer education.

Nature and extent of ticket scalping

4.81 On the whole, evidence before the committee indicated that, despite media accounts, the reports of ticket scalping were quite low and the effects not substantial. For example, the LPA took the view that unauthorised onselling or ticket scalping, in the main, had minimal impact on the live performance industry. Larger-scale scalping operations primarily targeted high profile events that were expected to sell out quickly, but in Australia each year there were only a few sell-out events.¹¹¹ Ticketmaster agreed with this assessment. It informed the committee that situations where events sell out create a huge demand for tickets and an opportunity for scalpers to make a profit. It found, however, that such events were 'very much limited to eight, 10 maybe 12 events each year: a couple of sporting events, the more obvious ones, and then a handful of concerts'.¹¹²

108 *Submission 6*, p. 4.

109 *Submission 7*, p. 3.

110 *Submission 7*, p. 3.

111 *Submission 7*, p. 2.

112 Mr Christoph Homann, *Committee Hansard*, 20 February 2014, p. 2.

4.82 Earlier on, the committee referred to figures showing that since 1 January 2011, the ACCC had received 52 contacts from consumers regarding the sale of tickets (by comparison, it received over 185,000 contacts in financial year 2012-13 alone on all matters).¹¹³ According to the Treasury, the contacts related to a number of matters, including general concerns with unauthorised on-selling of tickets, as well as concerns by consumers regarding their inability to sell unwanted tickets legitimately.¹¹⁴

4.83 Also, as noted previously, eBay cited the following statistics obtained through Freedom of Information requests—of the 44,016 complaints received by NSW Fair Trading in 2012 only one was within the scope of ticket scalping; of the 128 ticket related complaints received by NSW Fair Trading as at 26 July 2013 (in 2013) not one related specifically to scalping and 70 per cent related to cancelled/postponed events or purchasing issues such as online technical difficulties.¹¹⁵ Consistent with these findings, the Victorian Minister for Consumer Affairs informed the committee that the number of issues reported to Consumer Affairs Victoria by consumers and event organisers regarding ticket scalping was low.¹¹⁶

4.84 This low number of reported complaints about activities associated with the re-sale of tickets does not marry with media accounts nor with the level of concern raised by the sporting organisations. It is clear that more work is required to determine the exact extent of the problem created in Australia by ticket scalpers and fraudsters.

Recommendation 3

4.85 The committee recommends that the ACCC, as lead agency, coordinate with the states' Fair Trade Offices to obtain a more accurate understanding of ticket scalping practices within the industry across Australia and the significance for Australia, if any, of overseas trends. The aim would be to:

- **allow consumers to present their views on, and recount their experiences of, purchasing event tickets;**
- **obtain a better understanding of measures that have proven to be effective in protecting consumers from unscrupulous ticket scalping in Australia;**
- **identify ways to bring greater consistency across all states when dealing with ticket scalping; and**

113 *Submission 16*, p. 4. See also ACCC answer to question on notice No. 1, received 18 March 2014 and earlier paragraph 4.52 of this report.

114 *Submission 16*, p. 4. See also ACCC answer to question on notice No. 1, received 18 March 2014.

115 See earlier paragraph 4.39.

116 *Submission 19*.

- **draw on overseas experiences that could be used to inform government decisions on future regulation of the secondary ticket market if required.**

Recommendation 4

4.86 The committee recommends that the ACCC consult with the states' Fair Trade Offices to review the procedures for reporting and acting on complaints or concerns about purchasing tickets to sporting or entertainment events, in order to ascertain:

- **whether information sharing about ticket scalping could be improved between the states and federally;**
- **whether consumers are confused about procedures for reporting complaints, including the appropriate agency to receive and act on complaints (the relevant state or federal jurisdiction);**
- **whether there is jurisdictional overlap that causes unnecessary duplication or conversely gaps that undermine consumer protection; and**
- **the extent to which consumers are reluctant to report complaints related to purchasing tickets for sporting or entertainment events.**

4.87 If the consultations uncover weakness, the committee recommends that the ACCC work cooperatively with the states towards remedying the identified deficiencies.

Recommendation 5

4.88 The committee also recommends that, based on the results of the consultations and if required, the ACCC revise the advice it provides to consumers regarding the purchase of event tickets in both the primary and secondary markets.

4.89 A better understanding of the nature and scope of unscrupulous ticket scalping is particularly important given the development of sophisticated software that can manipulate online ticketing systems and purchase tickets in large numbers. In this regard, a number of submissions noted the existence of 'bots-net', and its effect on the sale and re-sale of tickets. Scalpers use Bots to buy up large quantities of tickets online before genuine consumers have the opportunity to secure tickets.¹¹⁷ According to Ticketmaster, scalpers use this type of advanced computer program 'to siphon tickets off the primary market'.¹¹⁸

117 See also ACCC answer to question on notice No. 1, received 18 March 2014. The ACCC understood that the computer programs can be used 'to bypass security measures (such as CAPTCHA screens) to obtain premium tickets and sell them to brokers in secondary markets'.

118 *Submission 8*, p. [5] and also ACCC answer to question on notice No. 8, received 18 March 2014.

4.90 Ticketmaster has made significant investment in developing technology to address this practice and win the 'scalping arms war'.¹¹⁹ It explained that because of investments that companies such as Ticketmaster have made in technology, there were ways to stop this from happening. According to Ticketmaster, it blocks 'thousands of IP addresses each year, particularly in the US, where we suspect botnet activity'. It explained:

The reason we all need to fill out slightly crumpled letters when we are trying to buy tickets and need to recognise words that sometimes are a bit hard to recognise...is precisely to stop botnets that simulate human behaviour because these programs are not always, or rarely, able to recognise these sorts of symbols and enter them.¹²⁰

4.91 While Ticketmaster has made sizable advances in this area and believed that the issue was of a very limited nature in Australia, it would welcome any support federal legislation could provide to outlaw this practice fully.¹²¹ Indeed, Ticketmaster would like to see, and has been strongly advocating for, this practice to be outlawed and for it to be made easier to prosecute people who conduct themselves in this way. In its view, it was not always clear that current laws against fraud and similar activities fully cover activities related to the use of sophisticated software to bulk purchase tickets.¹²²

4.92 The LPA supported Ticketmaster's view. It stated that although ticketing agents regularly upgrade their security software to protect against bots, they face 'an ongoing battle as technology is consistently evolving and sophisticated scalpers are constantly updating their own technology'.¹²³ According to the LPA, Federal resources could be best committed to investigating how the use of computer bot programs and fraudulent activities could be minimised.¹²⁴ It also suggested that, if the law could be enforced effectively, a possible initiative would be to introduce Federal legislation to ban the use of computer bot programs.¹²⁵

4.93 The ACCC informed the committee that it had not received complaints from consumers or industry raising specific concerns about the use of 'botnets'. It was aware, however, of international concern about these computer programs being used to syphon tickets, which, 'in some instances has resulted in criminal prosecutions in the USA by the Federal Department of Justice'. The ACCC noted further that:

119 See for example, *Submission 8*, p. [5].

120 Mr Christoph Homann, *Committee Hansard*, 20 February 2014, pp. 7–8.

121 *Submission 8*, p. [5].

122 *Committee Hansard*, 20 February 2014, pp. 7–8.

123 *Submission 7*, pp. 4–5.

124 *Submission 7*, pp. 2 and 5.

125 *Submission 7*, p. 4.

Botnets are often inexpensive and easily available, and those who use them may be located outside Australia, making it difficult to detect'.¹²⁶

Recommendation 6

4.94 The committee recommends that, in light of the growing sophistication in software, the Federal Government ensure that the effects of such advances on the primary and secondary ticket markets are monitored.

Conclusion

4.95 Clearly, onselling event tickets via the internet helps consumers and suppliers by providing more access to tickets, easy transfers and improved ticket sales. This secondary market, however, also provides opportunities for unscrupulous ticket resellers to exploit the market to the detriment of consumers.

4.96 While there is much scope for improvement through industry self-regulation in both the operation of the primary market and the secondary market, the committee believes that for industry-wide codes of standards or practice to work effectively, there must be greater transparency in both markets. In this regard, the committee believes that informed and better educated consumers can provide the impetus for change.

4.97 The committee also believes that competition in both the primary and secondary markets is required to ensure that all those involved in the sale and resale of tickets are under pressure from consumers to provide an effective, fair and safe means of purchasing event tickets. This is particularly important as the two ticketing agencies that dominant the primary market in Australia could move into the secondary market.

4.98 Ideally, if the states want legislation to curb ticket scalping, they should aim at consistency and complementarity in legislation; and coordination and cooperation in implementing and enforcing the laws. In this regard, the committee sees a leadership role for the Commonwealth through the Council of Australian Governments to encourage the states and the Commonwealth to achieve this complementarity in their approach to stamping out unscrupulous ticket scalping.

4.99 Also, the lack of firm data on the extent of ticket scalping in Australia, especially the prevalence of counterfeit and cancelled tickets, was a marked feature of the evidence before the committee. Clearly, if more needs to be done to protect consumers, then the state and commonwealth governments must have an accurate picture of the nature and extent of ticket scalping and of future trends. While accepting that the problem of ticket scalping in the UK is far more significant in that country than Australia, the committee believes that international trends need to be monitored and assessed for their effect on Australia. This includes possible links between organised crime and ticket scalping. The committee urges the ACCC,

126 ACCC, answer to question on notice No. 8, received 18 March 2014.

with the assistance of the state offices of fair trade, to work together to gather statistics and report on trends in ticket scalping both within Australia and internationally.

4.100 Finally, 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. The committee has made recommendations to encourage these participants to continue in their endeavours 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.

Senator Mark Bishop
Chair