

Additional comments by Nick Xenophon, Independent Senator for South Australia

1.1 Watching the Australian Test Cricket team battle it out against England in the Ashes or attending your favourite band's concert are rites of passage for many Australians. Waiting at a computer screen, the mouse poised for action as soon as the clock strikes nine is a familiar situation for sports fans and concert goers alike. Unfortunately, the disappointment upon discovering that tickets have already sold within minutes of going on sale is also a familiar situation for fans, with this disappointment heightened when they subsequently see tickets for sale on auction sites for two, three, sometimes ten times the original ticket price.

1.2 One submitter told the committee:

[I]t was not possible to buy tickets within 10 seconds of them going on sale due to ticket allocations being allocations being exhausted. However a number of tickets were available on on-line trading sites such as eBay within less than half an hour at far higher prices. I appreciate that high demand concerts will sell out quickly, however the sheer number of tickets that are available through resellers on the same day is beyond reasonable. It is clear that there is a cottage industry of individuals seeking to rip-off genuine music lovers.¹

1.3 Ticket scalpers are to blame for this. They are the individuals and groups who buy tickets for popular events with the sole intention of re-selling them for a massive profit. There is a huge difference between ticket holders who need to re-sell their tickets for legitimate reasons (such as illness or unexpected travel) and those who are purposely taking advantage of consumers desperate to see their favourite team or band.

Why is ticket scalping happening?

1.4 Currently consumers are able to purchase tickets through the primary market, which includes official ticketing agencies such as Ticketek and Ticketmaster or directly from fan clubs or stadium memberships. A number of concerns about the primary market were raised with the committee and examined in Chapter 3 of the majority report. An overwhelming concern however was the current lack of transparency on the part of event holders and ticketing agencies regarding the number of tickets available for purchase by the general public and the amount of tickets reserved for fan clubs or sponsors. eBay cited the example of an overseas Justin Bieber concert where 93 per cent of tickets had been set aside for sponsors, leaving only 7 per cent of tickets available to the general public.² This, together with some consumers purchasing tickets in bulk, frustrates the public and increases the opportunity for scalpers to take advantage of a wider audience.

1 Mr Carl de Vos, *Submission 5*, p. 1.

2 eBay, *Submission 9*, p. 5.

1.5 While there is some policing of suspicious bulk purchases by primary market sellers, the fact scalping is still taking place demonstrates the use of fraud investigation officers and the like does not go far enough to stop the on-selling of tickets at inflated prices. What is needed is greater consistency and enforcement in anti-scalping regulation in Australia.

The regulatory framework

1.6 As acknowledged by the committee the current state-by-state approach to regulating the re-selling of tickets is fragmented and difficult to enforce, particularly where a ticket is purchased in one state for an event in another. While the Australian Consumer Law provides some protection to consumers at a federal level in the form of prohibitions against misleading and deceptive conduct and representations, it is apparent these provisions are not acting as deterrents to scalpers. As noted by the Coalition of Major Professional and Participation Sports Inc (COMPPS):

The Australian Consumer law has provided a framework of general principles for consumers to uphold but it fails to provide an effective mechanism to prevent or punish ticket scalping. Without clearly defined regulations within the Competition and Consumer Act it is difficult to pursue ticket scalping as an offence under the Australian Consumer Law.³

1.7 The lack of workable and effective regulation is allowing ticket scalpers to act with relative impunity in the Australian market. Victoria has had anti-scalping legislation in place for over three years, however during that time only five individuals and one operator of a ticket selling website have been found guilty of offences pursuant to the legislation.⁴

1.8 Opponents of regulatory intervention cited insufficient evidence of wide spread ticket scalping as justification for leaving current regulations the way they are. eBay told the committee:

[T]he actual incidence of counterfeit ticket being listed for sale on ebay.com.au is practically non-existent, and is certainly insufficiently high to warrant regulatory intervention.⁵

1.9 This is in stark contrast to a 2013 survey conducted by Galaxy Research which estimated that 500,000 Australians between the ages of 18 and 64 had been scammed when purchasing tickets during the last 12 months.⁶

3 COMPPS, *Submission 17*, p. 8.

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

5 eBay, *Submission 9*, p. 8.

6 *Computerworld*, '500k Australian's scammed by dodgy ticket sellers: survey', 17 September 2013,

http://www.computerworld.com.au/article/526675/500k_australians_scammed_by_dodgy_ticket_sellers_survey/

What needs to be done

1.10 Participants in the secondary market for ticket sales such as eBay and Gumtree were quick to point to shortfalls in the primary ticket market (such as lack of transparency and bulk ticket purchases) as the main reason why fans become frustrated by ticket unavailability. While these factors contribute to the problem of ticket scalping there is certainly more that can be done from a secondary market perspective.

1.11 For example, there have been instances where tickets have been purchased through the secondary market but were not delivered, or the ticket may have been for a different seat than had been advertised. Tickets can also be cancelled by the promoter when they become aware the ticket has been on-sold. However this is generally only the case where on-selling of tickets is against the promoter's terms and conditions.

1.12 The COMPPS provided the committee with the example of the 'Australian Open Fan Marketplace'—a secondary market for 2014 Australian Open tickets operated by Tennis Australia. Consumers who wished to sell their ticket were able to do so through this marketplace and were provided with a direct refund by Tennis Australia. A new barcode for the sold ticket was then issued for the new buyer. Over 1,300 tickets were sold through the Australian Open Fan Marketplace.⁷

1.13 There ought to be a national approach to ticket scalping with amendments to the Australian Consumer Law. Such amendments should be based on elements of existing state laws, and be strengthened to provide the following framework:

- a) That ticket re-selling is permitted with a specified cap above the ticket price of, say, 10 per cent to take into account the administrative costs associated with purchasing a ticket from the primary market;
- b) That primary market tickets should include, as part of a statutory consumer protection clause, prohibition of ticket re-selling subject to the conditions referred to in A or where a ticket holder has a legitimate reason to resell their ticket;⁸
- c) That authorities have the power to block unauthorised sites that sell scalped tickets;
- d) That secondary market sites, such as eBay are required to co-operate and provide details of the identity of scalpers in order to allow for the efficient enforcement of anti-ticket scalping measures;
- e) There should be a consumer education campaign particularly in social media to warn of scalping and the remedies available;
- f) Primary markets in tickets should be required to be more transparent of the tickets, and classes of tickets, on offer and when those tickets are for sale.

7 COMPPS, *Submission 17*, p. 11.

8 *Committee Hansard*, 20 February 2014, p. 3.

These details should indicate how many tickets are actually available to the general public compared to sponsors or club members.

Recommendation

1.14 That there be federal laws amending the Australian Consumer Law to outlaw ticket scalping and to empower consumers on the basis set out in paragraphs a) to f) above.

**Senator Nick Xenophon
Independent Senator for South Australia**