

The Senate

Economics
References Committee

Ticket scalping in Australia

March 2014

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Senate Economics References Committee

Members

Senator Mark Bishop, Chair	Western Australia, ALP
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Senator John Williams	New South Wales, NATS
Senator Nick Xenophon	South Australia, IND

Secretariat

Dr Kathleen Dermody, Secretary
Ms Leonie Lam, Research Officer
Ms Morana Kavgic, Administrative Officer

PO Box 6100
Parliament House
Canberra ACT 2600
Ph: 02 6277 3540
Fax: 02 6277 5719
E-mail: economics.sen@aph.gov.au
Internet: www.aph.gov.au/senate_economics

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Recommendations

Recommendation 1 **paragraphs 4.73-4.74**

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 best practice to address the criticism.¹ The committee notes particularly the desirability of having greater transparency in the way in which tickets are issued and distributed.

The committee supports the Ticket Brokers Association's suggestion that an industry-wide standard of conduct be established. It recommends that the Australian Competition and Consumer Commission (ACCC) be consulted during the development of this code.

Recommendation 2 **paragraph 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 needs 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.

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.

Recommendation 3 **paragraph 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

1 COMPSS is the Coalition of Major Professional and Participation Sports and the LPA is Live Performance Australia, which is the peak body for Australia's live performance industry.

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

Recommendation 4

paragraphs 4.86-4.87

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.

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

Recommendation 5

paragraph 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.

Recommendation 6

paragraph 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.

Chapter 1

1.1 On 11 December 2013, the Senate referred the matter of ticket scalping in Australia to the Economics References Committee for inquiry and report by 26 March 2014. In particular, the committee was to examine:

- (a) the prevalence of ticket scalping and its impact on ticket prices and sales;
- (b) the effectiveness of current state-based consumer protection legislation, and how these measures can be improved, including through a federal approach;
- (c) issues of illegality, including the prevalence of counterfeit tickets; and
- (d) any related matters.¹

Conduct of inquiry

1.2 The committee advertised its inquiry on its website and in the *Australian*. The committee also wrote directly to the Commonwealth, state and territory governments, major sports and entertainment event holders, promoters, ticketing companies, online marketing platforms, consumer protection agencies and relevant academics drawing attention to the inquiry and inviting them to make written submissions.

Submissions

1.3 The committee received 21 submissions, which are listed at Appendix 1, as well as additional information and answers from the Australian Competition and Consumer Commission (ACCC) to a series of written questions. They are also listed at Appendix 1. On 20 February 2014, the committee took evidence from Mr Christoph Homann, Managing Director, Ticketmaster Resale International, and Ms Maria O'Connor, Managing Director, Ticketmaster Australasia.

Background to inquiry

1.4 ‘Ticket scalping’ is the unauthorised onselling of tickets to sporting or entertainment events, usually at a price higher than the ticket’s original face value. The scalper purchases the tickets with the deliberate intention of making a profit, though may be forced to sell at a loss. This practice can be traced back to the days when individuals touted tickets outside various venues or at the local hotel or club. With advances in technology, ticket scalping has been transformed and is now a very different and more sophisticated type of operation. The emergence of online auction sites, such as eBay, has facilitated the easy on-selling of tickets. Although ticket

1 *Journals of the Senate*, No. 10, 11 December 2013, p. 335.

scalping has been in existence for many decades, recent accounts of this practice have raised concerns and generated public debate about its regulation.

1.5 In 2013, the Australian media reported on a number of high profile events where scalping had attracted particular attention with unauthorised ticket sellers asking exorbitant prices for tickets. For example, the *Daily Telegraph* revealed that it had investigated ticket scalping and discovered that hundreds of tickets to the Ashes Test in Sydney and the Pink rock concert had been snapped up by scalpers and were being offered online for twice the price.² The South Australian *Advertiser* noted that within hours of the Bruce Springsteen's February concert selling out, tickets to the show were on offer for almost double their face value, after scalpers hijacked an exclusive internet presale.³ Similarly, the media reported that tickets for the entire Australian tour by the British band Radiohead had sold out in minutes and moments later scalpers were on the internet offering tickets at grossly inflated prices angering many fans.⁴ Headlines such as 'Rolling Stones tour: Scalpers selling Adelaide tickets for \$3,000' and 'Bruce Springsteen Tickets Scalped As Pre-Sale Crashes' heightened concerns in some sectors of the Australian community about the activities of ticket scalpers.⁵

1.6 These more recent high profile incidents shone a critical light on ticket scalping in Australia and prompted this inquiry. In this report, the committee considers:

- findings of a comprehensive 2010 report by the Commonwealth Consumers Affairs Advisory Council into ticket scalping in Australia;
- recent trends in, and the merits of, a secondary market for re-selling tickets;
- distinction between genuine resellers and ticket scalpers;
- major concerns about the operation of ticket scalpers in Australia, including the undermining of sound social policy objectives, detriment to consumers from over-priced, cancelled or counterfeit tickets and venue security;

2 *Daily Telegraph*, 'Crackdown on scalpers as tickets skyrocket', 27 July 2013.

3 *The Advertiser*, 'Senator Nick Xenophon declares war on scalpers as One Direction fans ripped off', 11 September 2013, <http://www.adelaidenow.com.au/news/south-australia/senator-nick-xenophon-declares-war-on-scalpers-as-one-direction-fans-ripped-off/story-fni6uo1m-1226716963142>, (accessed 12 December 2013).

4 On the Record, 'Radiohead fans up in arms over ticket scalping', 30 March 2012, <http://www.ontherecord-unisa.com.au/?p=2035>, (accessed 12 December 2013).

5 ABC News, 'Rolling Stones tour: Scalpers selling Adelaide tickets for \$3,000', 9 December 2013, <http://www.abc.net.au/news/2013-12-09/sa-scalpers-selling-rolling-stones-tickets-for-3k/5143280> and The Music.com.au, 'Bruce Springsteen Tickets Scalped As Pre-Sale Crashes', 22 August 2013, <http://themusic.com.au/news/all/2013/08/22/brian-springsteen-tickets-scalped-as-pre-sale-crashes/>, (accessed 12 December 2013).

- deficiencies in the primary market that foster a secondary market and encourage ticket scalpers—corporate packages, sponsorship deals, bulk purchases of tickets and restrictions on refunds or transfers of tickets;
- efforts by promoters and event holders to improve practices in the primary market to deter ticket scalping—terms and conditions of sale, allocation and distribution of tickets;
- measures to protect the interests of consumers and other stakeholders through government initiatives including State and Commonwealth legislation; and
- the effectiveness of current legislation, industry self-regulation and consumer education.

1.7 The main issues before the committee focus on: the nature and extent of the harm caused by ticket scalping; the effectiveness of state legislation in tackling ticket scalping; and whether there is a need for a national approach, and if so, the form it could or should take.

Acknowledgements

1.8 The committee thanks all those who assisted with the inquiry, especially those who made written submissions.

Chapter 2

Ticket scalping in Australia

Commonwealth Consumers Affairs Advisory Council Report

2.1 In November 2010, the Commonwealth Consumers Affairs Advisory Council (CCAAC) produced a report on ticket onselling in the Australian market. It found that ticket onselling could be advantageous for both consumers and suppliers:

For consumers, the benefits include providing an alternative avenue to access tickets, particularly for popular events, offering convenience and allowing tickets to be transferred. For suppliers, ticket onselling can assist increases in ticket sales, improve crowd attendance and promote publicity for events.¹

2.2 CCAAC considered that the existing consumer protection regulatory framework in Australia was adequate to protect consumers from unfair trading practices in the resale market for event tickets. Furthermore, it found that the level of unauthorised onselling in Australia was low, due to:

- only a few events in Australia selling out each year—a precondition for a strong secondary market;
- the low number of onsold tickets for popular events compared to the total number of tickets sold; and
- ticket onselling being less common in Australia than in some other markets, such as the United States (US) and the United Kingdom (UK).²

2.3 The CCAAC report suggested that problems related to ticket onselling were centred on 'consumer dissatisfaction demonstrated by consumer's perception of unfairness rather than on significant levels of consumer detriment'.³ While it believed that the broad issue of ticket onselling had positive and negative effects for consumers and suppliers, it concluded that currently onselling did not cause a significant level of consumer harm. Even so, it was of the view that, if the broad issue of onselling did in the future lead to consumer detriment, industry could use mechanisms to prevent onselling.⁴

1 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, p. iv.

2 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, pp. v and 13.

3 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, p. 3.

4 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, p. 37.

2.4 In this regard, CCAAC recognised that industry had the ability to respond to specific concerns raised by some consumers about unauthorised onselling in a number of ways.⁵ It explained further that industry can and does use a variety of mechanisms to address these concerns, such as 'the transferability of tickets, transparency of ticket allocations and fair access to tickets'. The report stated that 'promoters and sporting clubs, if they chose to, could use technology to prevent unauthorised onselling'.⁶ According to the report, technology would 'continue to assist in reducing ticket onselling' and that future technological advances would 'eventually enable solutions to eliminate the practice completely'.⁷

Recent trends

2.5 Ticket scalping is not new but the advent and growing importance of the internet, which facilitates the convenient online sale of tickets, has opened up access to a much wider secondary market. Online secondary ticket platforms such as eBay, Gumtree and more recently viagogo dominate this marketplace and provide a framework in which ticket resellers operate. For example, viagogo explained to the committee that with the development of marketplaces such as viagogo, people now had 'greater access to a wide selection of tickets for events all over the world and they can buy and sell tickets in a secure environment'.⁸

2.6 Those with a genuine reason for reselling their ticket as well as rent seekers chasing a profit tend to use the internet to resell their tickets. The increasing online sale of tickets has made it difficult to contain the activities of scalpers which are now more visible. The major sporting organisations were particularly concerned with, what they described as 'the burgeoning prevalence of online ticket scalping sales', which was making it increasingly hard for them to minimise the practice.⁹

Significance of secondary markets

2.7 eBay informed the committee that a survey it had commissioned with Newspoll showed that 'the vast majority of consumers bought their ticket via an official ticketing agency (i.e. Ticketek or Ticketmaster): 68 per cent for sporting events and 75 per cent for concerts. Other places where consumers could purchase tickets included fan clubs, stadium memberships and other avenues'.¹⁰

5 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, p. 37.

6 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, p. 41.

7 Commonwealth Consumers Affairs Advisory Council, *Consumers and the ticket market: Ticket onselling in the Australian market*, Final Report, November 2010, pp. 41–42.

8 *Submission 14*, p. 1.

9 COMPSS, *Submission 17*, p. 9.

10 *Submission 9*, p. 4.

2.8 Even so, submissions recognised the legitimate role that a secondary market has in providing a service for ticket purchasers who have a genuine need to onsell their tickets.¹¹ For example, Australia's major sporting bodies do not oppose the onselling of tickets at face value where there is a valid reason for doing so—a bona fide purchaser who intended to use a ticket but is no longer able to do so and seeks to resell that ticket.¹²

2.9 Indeed, the reasons for persons wishing to resell their tickets could be varied but include circumstances where their favourite team is no longer playing in the event, where unexpected work or family commitments have arisen or the person has become ill or indisposed and cannot attend the event.¹³ A secondary ticket marketing place provides the opportunity for such a person to recover in full or in part their outlay while allowing another person to benefit from an otherwise unused ticket. Live Performance Australia (LPA), the peak body for Australia's live performance industry that represents over 390 members, stated:

...it is important to allow consumers the opportunity to onsell tickets in a **legitimate secondary marketplace** if they genuinely can no longer attend an event. Without legitimate avenues for genuine onselling, consumer confidence would be severely eroded and there would be a great deterrence to purchasing tickets in advance, which would have a detrimental impact on the live performance industry.¹⁴

2.10 According to Ticketmaster, the overwhelming majority of event attendees in Australia recognise the value of resale. The secondary market can also work in favour of artists and venues in that 'no one wants empty seats'.¹⁵ Ticketmaster informed the committee that, at the moment, fans unable to attend an event cannot easily return tickets. As an example, it cited sports events where a resale market would allow fans to maximise the use of their season tickets. It stated:

People feel more comfortable committing to a season ticket when they know that they can give it up or resell the right to use it for certain events.¹⁶

2.11 The same reasoning applies to the entertainment industry where the ability to resell tickets may even boost ticket sales by offering encouragement to people to buy a subscription season ticket knowing that they could resell a ticket for a performance they cannot attend. The Ticket Brokers Association, which comprises six

11 See for example, LPA, *Submission 7*, p. 2; Ticketmaster, *Submission 8*, p. [1 and 3]; AIMIA Digital Policy Group, *Submission 15*, p. [2]; The Treasury, *Submission 16*, p. 2.

12 COMPSS, *Submission 17*, p. 10 and The Coalition of Major Professional & Participation Sports, submission to the Review into ticket scalping—onselling and consumers, 5 August 2010.

13 See for example, AIMIA Digital Policy Group, *Submission 15*, p. [2].

14 *Submission 7*, p. 2 (emphasis in original).

15 *Submission 8*, p. [3].

16 *Submission 8*, p. [3].

of the largest professional ticket brokers in Australia, also drew attention to wider economic benefits of an effective and reliable secondary market which results in international and domestic tourists buying tickets.¹⁷

Distinction between ticket scalping and ticket resale

2.12 Clearly, there are cases where ticket purchasers have legitimate reasons for seeking to resell their tickets and hence want access to a secondary market.¹⁸ In this regard, it should be noted that Ticketmaster sought to make the distinction between ticket scalping and the resale of tickets.¹⁹ Ticketmaster attributed scalping to a distinct group of people who, 'through unlawful or shady means, try to siphon tickets off the primary market with the sole purpose of reselling those at a profit'.²⁰

2.13 Indeed, in some cases, it would appear that professional scalpers use state-of-the-art technology to purchase tickets. NSW Fair Trading noted that modern ticketing technology allows up to 20,000 consumers to simultaneously purchase tickets online.²¹ One article referred to 'the bots'—computer programs that conduct automated tasks and were able to purchase tickets en masse.²²

2.14 Evidence before the committee overwhelmingly supported a market where, to recover the costs associated with purchasing tickets, individuals could resell tickets they no longer needed for a variety of reasons. The committee regards such people as genuine resellers and not as ticket scalpers. Thus, while there was general agreement on the need to have an effective means whereby ticket purchasers with a legitimate reason could offer their tickets for resale, witnesses rejected the notion of having a secondary market open to abuse by ticket scalpers. For example, the sports organisations objected strongly to racketeering in the resale of tickets. When the committee refers to ticket scalpers, it means people who deliberately set out to purchase tickets and then resell them with profiteering as their sole intention.

17 *Submission 11*, p. [6].

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

19 *Committee Hansard*, 20 February 2014, p. 1.

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

21 NSW Government Fair Trading, 'Entertainment', http://www.fairtrading.nsw.gov.au/ftw/Consumers/Buying_services/Entertainment.page, (accessed 9 February 2014).

22 For more detail on the use of sophisticated software in purchasing tickets see chapter 4, paragraphs 4.88–4.92.

Effects of scalping

2.15 Over recent years, media reports and event holders have raised concerns periodically about ticket touting, suggesting that genuine fans were losing out to scalpers.²³

Consumer dissatisfaction—inflated ticket prices

2.16 The Coalition of Major Professional & Participation Sports (COMPSS), which represents Australia's premier sporting organisations, maintained that scalped tickets do not necessarily reflect the fair market value of the ticket.²⁴ It argued that ticket scalping distorts the market—scalpers buy tickets in bulk and on-sell them, which often creates a false demand. COMPSS stated:

If scalpers had not purchased the tickets in the first place, there would be no need for such inflated prices as the sports would still have the tickets to sell at face value price to fans.²⁵

2.17 Indeed, a common consumer complaint is that tickets sell out within minutes of going on sale and are then offered at highly inflated prices on auction web sites.²⁶ Events such as Radiohead's 2012 concert epitomised the concerns raised by patrons and fans. According to the promoter, Chugg Entertainment, it was frustrated at non-fans profiting at the expense of genuine fans and issued the following statement:

We are doing what we can to police this, but unfortunately for all of the deterrents that we are able to put in place (like additional terms and conditions of sale) it is difficult for promoters, ticketing agencies and venues to enforce.²⁷

2.18 A similar situation arose with the Pink, Bruce Springsteen and One Direction concerts.²⁸ In May 2013, CHOICE, the public face of the not-for-profit Australian

23 See footnotes 3, 4 and 5 in chapter 1 and 27, 28 and 29 below.

24 The members of COMPSS include: the Australian Football League, Australian Rugby Union, Cricket Australia, Football Federation Australia, National Rugby League, Netball Australia, and Tennis Australia.

25 *Submission 17*, p. 6.

26 *Submissions 1; 2; 3; 5; 6*, p. 2; *7*, p. 2; and *13* (confidential).

27 *Herald Sun*, 'Radiohead sells out Australian shows in seconds, scalping blitz begins', 1 March 2012, <http://www.heraldsun.com.au/entertainment/radiohead-sells-out-australian-shows-in-seconds-scalping-blitz-begins/story-e6frf9hf-1226286120962>, (accessed 12 December 2013).

28 The *Advocate* and *Sydney Morning Herald*, 'Fans losing to online scalpers buying tickets in bulk', 1 September 2013, <http://www.smh.com.au/digital-life/digital-life-news/fans-losing-to-online-scalpers-buying-tickets-in-bulk-20130830-2swcs.html>; The *Advertiser*, 'Senator Nick Xenophon declares war on scalpers as One Direction fans ripped off', 11 September 2013, <http://www.adelaidenow.com.au/news/south-australia/senator-nick-xenophon-declares-war-on-scalpers-as-one-direction-fans-ripped-off/story-fni6uo1m-1226716963142>, (accessed 12 December 2013).

Consumers Association, reported on instances of ticket scalping where for example, tickets to One Direction, priced at \$79, sold out within hours but were available on eBay, an online marketplace, for \$4,000.²⁹ One entertainment publication also noted that:

Premium tickets to next year's sold-out Rolling Stones stadium concert in Adelaide have appeared online for nearly six times their original cost. ABC reports fans who missed out on tickets and still want to catch the Stones' first Adelaide appearance in two decades, will have to fork out a hefty \$3,000 to online scalpers.³⁰

2.19 While the committee received only a few submissions from retail consumers, their views were consistent with accounts of scalpers profiteering from the resale of tickets reported in the media and by consumer protection agencies, such as CHOICE.³¹

2.20 The submitters recounted their individual experiences of attempting to purchase tickets at the very start of a ticket sale only to discover that the tickets had already been 'snapped up' and available on eBay at inflated prices.³² For example, Mr Keith Sawers submitted his request on line for four tickets to the Rolling Stones concert three minutes after they went on sale. The site, however, responded with the message that there were middle tier tickets available. When he tried to purchase third tier seats only five minutes after the tickets went on sale, he was advised that none was available. He explained:

Later that day, I searched Ebay and gumtree for tickets and there were lots for sale at 3 and 4 times the original price. I even found one site located in Canada advertising tickets for the Sydney concert. They had single tickets onsale for \$1000 each, and advertised they had 8 for sale. Ticketek site said there was a limit of 4 tickets per transaction. How can someone in Canada buy 8 tickets to a Sydney show when a resident of NSW cannot get them?³³

2.21 Mr Carl de Vos experienced the same exasperation when trying to purchase tickets to Bruce Springsteen and the Rolling Stones and was struck by the fact that:

29 CHOICE, 'How we are run', <http://www.choice.com.au/about-us/how-we-are-run.aspx> and see also <http://www.choice.com.au/reviews-and-tests/money/shopping-and-legal/shopping/ticket-pricing/page/scalping-and-cancellations.aspx>, (accessed 13 December 2013).

30 MusicFeeds, 'Rolling Stones Australian Tour Tickets Being Scalped For \$3,000', 9 December 2013, <http://musicfeeds.com.au/news/rolling-stones-australian-tour-tickets-being-scalped-for-3000/>. See also <http://www.choice.com.au/reviews-and-tests/money/shopping-and-legal/shopping/ticket-pricing/page/scalping-and-cancellations.aspx>, (accessed 12 December 2013).

31 See *Submissions, 1, 2, 3 and 10*.

32 Mr Matthew Kirk, *Submission 1*, and Mr Keith Sawers, *Submission 2*.

33 *Submission 2*.

...it was not possible to buy tickets within 10 seconds of them going on sale due to ticket 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.³⁴

2.22 Another submitter informed the committee that in April 2013, he contacted the Football Federation of Australia (FFA), Melbourne Victory Football Club, Ticketek, eBay, and the State Government regarding the distribution of tickets to the Melbourne Victory v. Liverpool football match. He informed the committee that ticket allocations for both Melbourne Victory members and the general public sold out in minutes, with many tickets appearing almost immediately on eBay at inflated prices. According to Mr Doug West:

None of the involved parties to this event—FFA, Ticketek nor Ebay—showed any interest in taking action on this computerised scalping process, leaving many football fans without tickets, as they either could not afford the higher prices or refused to pay the inflated prices which would have had them supporting the scalping process.³⁵

2.23 Most of Australia's major sporting codes have encountered ticket scalping.³⁶ COMPPS cited a number of cases that occurred in 2013 from the Australian Football League (AFL), Cricket Australia (CA), Tennis Australia, Australian Rugby Union, National Rugby League (NRL) and Football Federation Australia. They included:

- three tickets for the AFL Grand Final with a face value of \$260 each and a total value of \$780 offered for \$3,500—a breach of the *Major Sporting Events Act 2009*;
- a ticket for the first day of the Ashes Test in Sydney on 3 January 2014 offered for sale at \$350—tickets on sale on ticketek.com for \$130;
- a ticket for the Australian Open Tennis Men's Final offered for sale at a cost of \$1,388.89 which was more than three times the public sale price—tickets for the Australian Open are often advertised by unauthorised online on-sellers even before they actually go on sale to the public;
- platinum tickets for the 2013 British and Irish Lions Test Matches against the Wallabies in each of Brisbane, Melbourne and Sydney had a face value of

34 Submission 5. See also *Herald Sun*, 'Bruce Springsteen fan sues Ticketek and Frontier Touring over "inferior" seats', 9 November 2013, <http://www.heraldsun.com.au/news/law-order/brian-springsteen-fan-sues-ticketek-and-frontier-touring-over-inferior-seats/story-fni0fee2-1226756513146>, (accessed 12 December 2013).

35 Submission 3.

36 Submission 17, p. 4.

\$295 yet were being scalped on secondary markets such as eBay and viagogo for up to \$999;

- bronze category tickets to the British and Irish Lions Test Matches with a face value of \$99 offered for sale by scalpers at prices in excess of \$700; and
- 2 Category A tickets for A-League All Stars v Manchester United in July 2013 with a face value of \$379 (\$189.50 each) on sale on eBay within 90 minutes of going on sale for \$2,200.³⁷

2.24 Clearly, there are sectors of the Australian community that believe that the current operating environment for onselling tickets to major sporting and entertainment events is unfair and disadvantages consumers.

Negates sound social policy

2.25 The scalping of tickets not only means that consumers may pay a higher price for tickets to sporting or entertainment events, but that the promoters' intentions may be thwarted. The LPA noted that when ticket scalping occurs for popular shows and is highly publicised, it can have a potentially negative effect on the relationship between event organisers and genuine consumers. It explained:

Event organisers expend a great deal of energy on setting a fair price for tickets that allow fair access to genuine consumers. This customer service objective is undermined when scalpers sell tickets for sold out shows at exorbitant prices on unauthorised onselling websites, leaving consumers with the perception that they have been denied fair access to events.³⁸

2.26 A flourishing secondary market may also undermine important social considerations of artists and promoters in setting discount ticket prices. For example, one reason for under-pricing tickets is to open up access to events to members of the public who normally could not afford to pay the market value of a ticket. The unauthorised sale of tickets at higher prices can thus frustrate the efforts of event holders to target certain audience demographics, such as young fans or families, through ticket pricing.³⁹

2.27 COMPPS told the committee that sports organisations take care to devise their ticket strategy. They seek to ensure that tickets are 'affordable, accessible, competitive in price with other similar sports and entertainment events'. The sporting bodies aim to provide 'great value for money for purchasers, many of whom attend several of the events that are provided by the sports'.⁴⁰ In some cases, maximising revenue is not the key driver. COMPPS explained:

37 *Submission 17*, pp. 4–5.

38 *Submission 7*, p. 2.

39 *Submission 13* (confidential), pp. [5–6].

40 *Submission 17*, p. 4.

The collateral benefits of having a large and enthusiastic crowd flows through to areas such as sponsor satisfaction, merchandise sales, providing a great television spectacle and growing sustainable long-term supporters of the game. Affordable, highly discounted family tickets issued by several of the sports are the best example of this. Each of the sports sets its ticket prices so that it attracts a broad spectrum of supporters.

The emphasis on **optimising attendance** means that in many cases, the sports charge less than they would if they sought to **maximise revenue**.⁴¹

2.28 Indeed, many sporting organisations pride themselves on their family friendly events and price their tickets accordingly. Such an approach not only encourages families to attend but helps to secure the future of the respective sport by fostering in younger generations an interest in the sport.

2.29 Similarly, artists and the promoters of concerts and theatrical events may under-price tickets for a range of strategic reasons which may benefit them and their patrons in the long term. One submitter informed the committee confidentially that:

The choice to underprice may be based on the recognition by the particular artist or sporting body of the constraints of their 'fan base', or could be an attempt to maintain important egalitarian principles associated with the artist or the event (such as the desire to facilitate access to all consumers regardless of socio-economic divides).⁴²

2.30 In this way, unauthorised onselling may defeat good social policy and result in scalpers reaping dividends while denying people, who could not afford the scalpers' price, access to the event.

2.31 Under-priced tickets for concerts, which may prompt quick sales and lead to additional performances, may also assist the promotion of an album or song or generate interest in a show and draw future audiences. Thus, under-pricing should not be assumed to indicate an inefficient market.⁴³

Consumer detriment from cancelled tickets

2.32 Scalping may be a breach of the contract between the original purchaser and the event holder. For example, one of the conditions of sale spelt out clearly on NRL tickets is that the tickets may not be 'resold at a premium nor used for advertising, promotion or other commercial purposes or to enhance the demand for other goods or services'.⁴⁴ COMPPS informed the committee that if a ticket is sold or used in breach of these conditions, the bearer of the ticket may be denied admission.⁴⁵

41 *Submission 17*, p. 4 (emphasis in original).

42 *Submission 13* (confidential), p. [5].

43 LPA, *Submission 7*, p. 2 and *Submission 13* (confidential), p. [6].

44 *Submission 17*, p. 9.

45 *Submission 17*, p. 9.

2.33 On its website, Ticketek states quite clearly that one of the conditions of sale of tickets (including any resale or subsequent assignment) is that:

Tickets may not, without the prior written consent of Ticketek and the seller, be resold or offered for resale at a premium (including via on-line auction sites) or used for advertising, promotion or other commercial purposes (including competitions and trade promotions) or to enhance the demand for other goods or services, either by the original purchaser or any subsequent bearer. If a ticket is sold or used in breach of this condition, the ticket may be cancelled without a refund and the bearer of the ticket may be refused admission.⁴⁶

2.34 While performers and event holders have the option to commence legal proceedings against ticket scalpers for breach of the sale conditions of their tickets, such a process is both timely and costly.⁴⁷ At present, a practical measure to prevent scalping is to enforce the ticket's terms and conditions by cancelling the ticket thereby refusing the ticket holder access. Indeed, as a deterrent to ticket scalping, promoters have cancelled tickets that were being offered or had been re-sold in contravention of the terms and conditions under which the tickets were originally purchased. In effect, such action renders the tickets worthless and places the ticket holder at risk of being denied access.

2.35 In February 2011, Mr Peter Kell, then deputy chair ACCC, released a public statement noting that tickets sold by authorised sellers often carried conditions that restricted their resale or transfer above face value. According to Mr Kell, if the tickets were resold in breach of those conditions, they may be cancelled or the ticketholder refused entry to the event. He explained that consumers not only risk being turned away but they may not get the seats they ordered or even get their tickets.⁴⁸

2.36 Since then, there have been a number of instances where consumers have had their tickets invalidated. COMPSS referred to situations where consumers had not been able to take possession of the tickets they had bought for the 2014 Australian Open and 2013/14 Ashes series. In the lead up to these events, both Tennis Australia and Cricket Australia (CA) experienced a significantly increased number of people

46 Ticketek website, 'Ticketek Online Terms and Conditions of Sale'
<http://premier.ticketek.com.au/content/buyers/termsofsale.aspx>, (accessed 12 December 2013).

47 For example, COMPSS informed the committee that 'It has proven simply too expensive and time consuming for the sports to pursue their contractual rights against these unauthorised online ticket on-sellers, especially when these on-sellers base their operations outside of Australia and often ignore correspondence sent by the sports. Moreover, traditional ticket scalping has now transitioned from simply offering tickets to sporting and entertainment events where demand exceeds supply, to a situation where unauthorised secondary on-sellers (such as Viagogo) are effectively setting up as "ticket sellers/box offices" (including under the guise of sponsorship of participating clubs)'. *Submission 17*, p. 9

48 'ACCC warns sports fans to be vigilant when buying tickets online', 10 February 2011,
<http://www.accc.gov.au/media-release/accc-warns-sports-fans-to-be-vigilant-when-buying-tickets-online>, (accessed 13 December 2013).

arriving at the on-site box office or contacting the relevant organisations wanting to obtain the ticket they had purchased. In these circumstances, Tennis Australia or Cricket Australia, as the case may be, were then placed in the difficult situation of having to advise the consumer that no ticket existed or that it had been cancelled. COMPSS cited the First Ashes Test in Brisbane in November 2013 where:

Cricket Australia identified a scalper when six people tried to access the same one seat. Cricket Australia cancelled all the original purchaser's tickets (more than 500 tickets bought through at least six different accounts). At every Test we refused entry to this scalper's 'customers', including one man in Perth who bought his tickets though a sports travel company in the UK. This company had been previously warned by CA about unauthorised reselling.⁴⁹

2.37 It also gave a second example that occurred during the Second Ashes Test in Adelaide in December, where:

...a customer fraudulently purchased 150 tickets per day in Adelaide by falsely claiming that they were for a large medical conference. The tickets were used to run a corporate function that took place across the road from the Adelaide Oval. During discussions with Cricket Australia after they were refused entry, clients confessed that they had paid \$500 per head and had travelled from interstate for a \$50 ticket.⁵⁰

2.38 COMPSS provided a further example that involved 45 persons holding tickets to an NRL match that they had purchased from a range of online auction sites and sales outlets. The NRL had, however, detected the tickets as part of a scam and cancelled them. All the fans had paid above face value for the cancelled tickets and on match day many were forced to leave the venue or purchase a legitimate ticket from the box office. According to COMPSS, the fans 'suffered great financial loss, emotional stress and disappointment. The entire situation reflected badly on the sport, the ticket agent, on-line auction and the venue'.⁵¹ Stadium Queensland also commented on the practice of cancelling tickets purchased from unauthorised sellers:

In recent years, a number of promoters responsible for sellout events have included a prohibition on ticket re-sale in the conditions of sale and that any re-sold tickets may be cancelled. In these circumstances, promoters have monitored the advertising of tickets for re-sale in order to cancel such tickets, where there is sufficient information available about the specific seat number of the ticket to enable this to occur. In this situation, it is important for consumers to be aware of the possibility that their funds may

49 *Submission 17*, p. 10.

50 *Submission 17*, p. 10.

51 *Submission 17*, p. 5. In its submission, COMPSS provided a full account of how the person who sold the tickets was able to purchase a large number of tickets.

be lost and tickets cancelled if tickets are purchased from anyone other than the authorised ticket seller for an event.⁵²

2.39 Because of the anonymity afforded to buyers and sellers on online sites, there may be no way of alerting purchasers to the fact that their tickets have been cancelled. The disappointed ticket holder is ineligible for a refund from the ticketing agency and generally has none of the protections normally afforded consumers.

2.40 While the scalpers escape any detriment and indeed retain their profits, the purchasers of the tickets are punished and the event holders have the unenviable task of informing disappointed fans that their tickets were unusable. Moreover, in such cases, the end purchasers may not be aware of the cancellation until refused entry at the venue, increasing the risk of disgruntled consumers venting their anger at venue staff, jeopardising their safety and welfare.⁵³

2.41 EBay also noted that, because a ticket reseller could deliberately number the advertised seats incorrectly to avoid detection, the promoter may cancel the wrong tickets.⁵⁴ Thus persons holding tickets purchased legitimately through the authorised ticket seller may find themselves barred from entry.⁵⁵

Consumer detriment from counterfeit tickets

2.42 Purchasing tickets from the secondary market also creates the potential for fraud where a buyer may not receive the tickets as advertised or any tickets at all.

2.43 COMPSS informed the committee that for sessions or events that are sold out, the incidents of counterfeit or non-existent tickets was becoming more frequent and creating difficulties for the individual customer, venue owner, promoter and authorised ticketing agent. It cited the 2014 Australian Open where a customer paid \$900 for a \$69 ticket at a sold out session, only to find he or she was unable to obtain the ticket purchased from the unauthorised seller.⁵⁶ The Treasury has also referred to the risk of counterfeit tickets being sold on the secondary market as a matter of concern, though in its view the problem was being addressed.⁵⁷

2.44 Based on its experience, the Ticket Brokers Association found that in Australia:

...the majority of fraudulent instances involving the sale of any goods (including tickets) take place on Gumtree and other classifieds sites, where

52 *Submission 6*, p. 3.

53 *Submission 13* (confidential), p. [8] and eBay, *Submission 9*, p. 8.

54 *Submission 9*, p. 8.

55 *Submission 9*, p. 8.

56 *Submission 17*, p. 10.

57 *Submission 16*, p. 2. The Treasury referred to the findings of the 2010 CCAAC report.

transactions are not widely monitored and where buyers undertake sole risk. In such circumstances, buyers risk not knowing with whom they are transacting nor can they determine the legitimacy of the tickets (especially in the case of electronic tickets) and the propensity for fraudulent transactions is much greater.⁵⁸

2.45 Interestingly, the Ticket Brokers Association noted that buyers may also engage in fraudulent activity. It stated that its members could cite:

...a number of instances where buyers have falsely claimed chargebacks from their credit card companies, either asserting that the goods were not received or that the relevant transaction was not authorised. Little to no assistance is provided by law enforcement and monies lost are ultimately written off.⁵⁹

2.46 Racketeering in the resale of tickets also reaches beyond Australia's borders and can sometimes cause quite substantial losses and significant disruption. For example, in February 2011, the ACCC's immediate concern was the 2011 Rugby World Cup in New Zealand. It urged sports fans to be vigilant when buying tickets online noting that they may not receive the tickets at all.⁶⁰ In April 2012, New South Wales Fair Trading issued a warning to 'unsuspecting consumers' who faced losing costs associated with travelling to exotic venues or events as well as the value of any tickets purchased. It cited the case of a consumer who had travelled from Sydney to Hong Kong for the 2011 Hong Kong Rugby Sevens but was denied entry to the game. She had purchased tickets from a seller that bought and sold tickets online but at that time did not hold agreements with promoters and venues to sell tickets to their events.⁶¹

2.47 A recent report by the UK Metropolitan Police on ticket fraud found that such criminal activity was committed by organised criminal networks that create legitimate-looking websites, take payments for event tickets and then fail to supply them. Although accounts varied, the report found that some estimates indicate that as many as one in seven UK ticket buyers were defrauded by sham websites, and in 2010 it was estimated that half a million Britons fell victim to bogus ticket sellers. The Police reported that the true scale of ticket fraud was 'unknown because the majority of those defrauded did not file a report with the police or Action Fraud'.⁶² It

58 *Submission 11*, p. [4].

59 *Submission 11*, p. [4].

60 'ACCC warns sports fans to be vigilant when buying tickets online', 10 February 2011, <http://www.accc.gov.au/media-release/accc-warns-sports-fans-to-be-vigilant-when-buying-tickets-online>. (accessed 13 December 2013).

61 NSW Fair Trading, 'Landmark legal action a game changer for ticket resellers', 3 April 2012, http://www.fairtrading.nsw.gov.au/ftw/About_us/News_and_events/Media_releases/2012_media_releases/20120403_landmark_legal_action_a_game_changer_for_ticket_resellers.page, (accessed 13 December 2013).

62 Metropolitan Police, *Ticket Crime, Problem Profile*, February 2013, p. 5.

made clear that it was difficult to prove that a website was fraudulent until victims came forward.⁶³

2.48 The Police report also found that one of the difficulties confronting law enforcement was that the UK did not have legislation outlawing or regulating the resale of tickets (except for football and the London 2012 Olympic and Paralympic Games). Thus websites could not be suspended unless authorities were confident that fraud was going to be committed. It also noted that suspended websites could easily re-emerge and that websites hosts and registrars based overseas were often not compliant with UK law enforcement requests, and some would not act without a court order.⁶⁴

2.49 As noted earlier, the 2010 CCAAC report noted that ticket onselling was more prevalent in the US and UK. Even so, according to a survey by Galaxy Research undertaken in September 2013, an estimated 500,000 Australians aged between 18 and 64 were, during the previous 12 months, scammed when purchasing tickets online.⁶⁵ They reported that tickets either did not turn up or were for the wrong seat with 81 per cent of those scammed buying their tickets from eBay or Gumtree.⁶⁶

2.50 The experiences of eBay, LPA and Ticketmaster do not support the findings of this research. eBay stated that the incidence of counterfeit tickets being available on its website, was 'practically non-existent' and 'certainly insufficiently high to warrant regulatory intervention'.⁶⁷ The LPA suggested that its members have also indicated that counterfeit tickets were practically non-existent as ticketing agents had 'invested in technology that easily identifies counterfeit tickets'.⁶⁸

2.51 Ticketmaster shared the view that the sale of counterfeit tickets was not an issue of 'any significance in Australia'. It indicated that the risk would be further reduced through technological advances. It also noted that 'the ability of companies like Ticketmaster to authenticate and reissue barcodes, even for sales in the secondary market, would further minimise the opportunity for illegal practices in the ticketing market. Ticketmaster warned, however, that if 'unnecessary regulation restricts and limits the resale market in Australia, and pushes consumers to offshore sites, we would expect the risk to consumers to increase substantially'.⁶⁹

63 Metropolitan Police, *Ticket Crime, Problem Profile*, February 2013, p. 6.

64 Metropolitan Police, *Ticket Crime, Problem Profile*, February 2013, p. 5.

65 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/, (accessed 12 December 2013).

66 Ticket marketplace viagogo commissioned the research.

67 *Submission 9*, p. 8.

68 *Submission 7*, p. 5.

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

2.52 The ACCC was unable to comment on the reliability of the Galaxy Research. Even so, while it acknowledged that many consumers contact their local fair trading or consumer affairs agency to report a complaint, the ACCC provided the following statistics on bogus tickets.

2.53 Between 1 January 2013 and 31 December 2013, the ACCC received 196 reports of scams involving counterfeit or non-existent tickets. Of these contacts, 160 (81.6 per cent) complained of losing money to these scams, totalling a reported \$70,933 for the year. Activities involving counterfeit or non-existent tickets were a small component of the total number of scams reported in 2013 to the ACCC (including via the Scamwatch website). In 2013 over 91,000 scam contacts were received with an estimated loss of \$90 million.⁷⁰

Security at venues

2.54 An increased risk to security at the venue was another reason put forward for the need to regulate the secondary market. Regulation would give the event organisers and venues increased control over who could gain access to the event.⁷¹ Viagogo rejected this proposition. It argued that secondary ticket marketplaces were 'equally capable of instituting measures deemed necessary to reduce security risks'. It noted that a managed marketplace such as viagogo's 'registers customers and has fully trackable data'. In this way, it would know who its customers were, and could work in partnership with football clubs and other event organisers to segregate rival fans by ensuring that only home supporters were able to buy resold tickets in the home section of the stadium if there were legitimate security concerns for a particular event'.⁷²

2.55 Clearly, the secondary marketplace is not without its drawbacks, especially when unscrupulous ticket sellers engage in profiteering to the detriment of consumers and event holders or ticketing agencies cancel resold tickets in an effort to curb the unauthorised resale of tickets.

Conclusion

2.56 Without doubt the activities of ticket scalpers pose problems for event holders and their promoters, but more importantly for consumers who may pay inflated prices for their tickets; have their tickets cancelled and are subsequently denied entry to the event; or fall prey to a fraudster and not receive the tickets at all.

2.57 In the following chapter, the committee considers the efforts being taken in both the primary and secondary markets to curtail the activity of unscrupulous ticket resellers.

70 ACCC, answer to question on notice No. 2, received 18 March 2014. For more information see Appendix 2.

71 *Submission 14*, p. 2.

72 *Submission 14*, p. 2.

Chapter 3

Reducing the detrimental effects of ticket scalping

3.1 The committee received submissions from event holders and promoters, ticketing agencies, online ticket marketing places and consumers. Their views differed on the merits or otherwise of ticket scalping and how, or if, the re-sale of tickets should be regulated. A number of submitters were of the view that there were practices in the primary market that undermined consumer confidence in the efficiency and fairness of the market and fostered conditions that encouraged ticket scalping. In contrast, others maintained that the activities of unscrupulous people in the secondary market posed risks to the interests of event holders, promoters and consumers. In this chapter, the committee examines the strengths and weaknesses in both the primary and secondary markets.

Problems and remedies in the primary markets

3.2 According to some submitters, promoters themselves are in part to blame for consumer discontent because of how they allocate and distribute tickets. For example, the online ticket platforms looked at the deficiencies in the primary market as a significant factor in creating a demand for a secondary market that could give rise to unscrupulous conduct. In their view, an inefficient primary market presents opportunities for the resale of tickets that encourages rent seeking behaviour as reported by the media and cited earlier.

3.3 The Ticket Brokers Association (TBA) catalogued behaviours in the primary market that it believed resulted in consumer dissatisfaction and could be remedied. They included:

- a tendency by music festival promoters to substitute artists (including headlining artists), with no right of refund, purportedly in reliance on the ticketing agent's terms and conditions of sale which permit such substitution—these terms tended to mislead consumers about their rights under the consumer guarantees under the Australian Consumer Law;
- an increasing tendency by ticketing agents not to refund booking and credit card fees when a promoter must provide a refund;
- a tendency by some ticketing agents to impose significant fees for the replacement of tickets—for example, in the case of the 2014 Soundwave music festival, Oztix has imposed a \$40 per ticket fee for lost or damaged tickets;
- the imposition of liquidity requirements for new and emerging event promoters for large scale events, given a demonstrated increased risk of failure;

- at the general public onsale, a tendency by event promoters, such as Frontier Touring, to hold back the best tickets as part of its 'packages', only to release the unbundled tickets months later, purportedly 'due to the finalisation of production information';
- a tendency by promoters to announce only one or two shows when they have a contract in place for four or more concerts—results in some of the keenest and most desperate fans buying among the worst seats minutes before the next concert is announced;
- possible misleading and deceptive conduct pertaining to supposed 'VIP' benefits offered by event organisers, which do not meet customers' expectations, as occurred with this year's Big Day Out; and
- ticket prices printed on tickets from Ticketek and Ticketmaster not reflecting the total average cost per ticket after transaction and credit card fees, but rather the ticket's face value. Transaction fees can be as high as \$11.30 in the case of Ticketek, with credit card surcharges incurring from an additional 1.95 per cent. This is problematic in instances of resale, where the ticketing terms prohibit the resale above face value at risk of the tickets being cancelled.¹

3.4 Mr de Vos referred to a lack of transparency in the way event holders and ticketing agencies operate. He noted that legitimate ticket sellers and concert promoters 'reserve batches of the best seats and sell them off on other trading websites themselves at greatly inflated prices'.² In his view, they conspire to 'inflate ticket prices' and their conduct is 'anti-competitive and an abuse of market power'.³ Similarly, viagogo argued that the problems associated with limited access to tickets do not arise from ticket resale but stem from the original allocation of tickets.⁴

3.5 Five practices in the primary market were singled out for particular criticism—corporate and hospitality packages, sponsorship deals, allowing bulk purchases, poor timing when placing tickets on sale and restrictions on ticket refunds or transfers.

Corporate and hospitality packages

3.6 Viagogo observed that often only a small number of tickets are made available to ordinary fans through the box office with the majority allocated to large corporate interests.⁵ EBay also referred to corporate and hospitality allocations whereby promoters regularly hold back significant volumes of tickets for corporate interests, sponsors and hospitality packages, which reduced the number of tickets

1 *Submission 11*, pp. [5–6].

2 *Submission 5*.

3 *Submission 5*.

4 *Submission 14*, p. 2.

5 *Submission 14*, p. 2.

available to the general public in the first place.⁶ Ticket Brokers Association (TBA) gave the example of the AFL which, it argued, maintained a virtual monopoly on the sale of grand final tickets thereby effectively stifling any secondary market. It explained:

Those from the general public who wish to purchase tickets have no option other than paying between \$1,495 and \$2,395 for a food and beverage package including a grand final ticket. Ticket only sales are not available to the general public for the AFL Grand Final.⁷

By contrast, AFL and eligible Club members are not required to purchase tickets as part of a package. The cost of an AFL or club member's ticket ranges from between \$150 and \$399. TBA is aware that some brokers have privately sold club and AFL membership tickets for the AFL Grand Final to members of the general public for an average price per ticket of between \$500 and \$800.⁸

3.7 The TBA rejected any notion that the difference in sale price between the limited number of individual Grand Final tickets resold privately and the AFL's ticket packages was the result of the high value attributed to the hospitality benefits put together by the AFL. It noted:

Each year at the time of the grand final, TBA's members are inundated by desperate fans who are content to pay a premium per ticket, but who are reluctant to purchase the AFL packages, which are widely perceived as exorbitant, and which are seen to include a meal and basic entertainment at a significant surcharge.⁹

3.8 One submitter, Mr George Peterson, referred to his experience buying a ticket from the AFL Event Office for \$1,500. In his words, they had 'a pretty crappy breakfast function' and his seat was right up the back—'back row of the top deck of the stand'. The following year he was happy to pay \$750 to 'a mate who buys tickets sometime from this guy' without the 'rip-off breakfast'.¹⁰

3.9 COMPSS provided a different view on such corporate packages. It explained that Sports have contractual arrangements under which tickets are provided to authorised third-parties who are entitled to onsell them as part of an agreed package. This agreement is 'in accordance with the terms and conditions outlined on the ticket for the purposes of corporate, travel, accommodation and supporter hospitality'.

6 *Submission 9*, p. 4.

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

8 *Submission 11*, p. [3].

9 *Submission 11*, p. [3].

10 *Submission 4*. Also refer to discussion at paragraphs 2.25–2.29 of this report.

According to COMPSS, this arrangement provides 'a significant revenue stream to the sports in addition to the value of the ticket'.¹¹ It stressed that:

These authorised agencies are entitled by the terms of their contract to purchase tickets and provide additional benefits to create a package deal. It provides a service for supporters who seek an enhanced level of service at events.¹²

3.10 The committee has noted comments by event holders including sports organisations about the care they take to devise their ticket strategy. In particular, their aim to provide 'great value for money for purchasers, many of whom attend several of the events that are provided by the sports'.¹³ It would help patrons and fans to have a better understanding of the number of tickets tied to hospitality packages and those available as tickets only to individuals. They would then be in a much better position to appreciate how tickets are allocated and, if unhappy, to complain to the event holders or sporting organisations.

3.11 Also, as part of their ticketing strategy, event holders and promoters should ensure that their hospitality bundles do indeed offer value for money and are not used to disadvantage consumers who have no desire to buy a package but have no option but to purchase it.

Pre-sale and sponsorship deals

3.12 Allocating tickets for various sponsorship deals also reduces the number of tickets available for fans or patrons who have no connection to the sponsors. eBay drew attention to the practice of making tickets available for priority purchase through presales, which, in its view, were 'often based on arrangements with third party partners that fail to give real priority access to genuine fans'.¹⁴ For example, eBay cited an overseas example where it was alleged that, with a Justin Bieber concert in February 2013, 93 per cent of tickets had been set aside for other partners leaving only 7 per cent of tickets available for purchase by the public.¹⁵

3.13 With regard to sponsorship arrangements, Tickemaster explained that without sponsorship deals, such as 'Telstra says "Thanks" for Bon Jovi', the shows would not happen. It explained that such sponsorship deals are no different from the Commonwealth Bank sponsoring a sporting event. Ticketmaster stated:

11 *Submission 17*, p. 10.

12 *Submission 17*, pp. 10–11.

13 LPA, *Submission 7*, p. 2; COMPSS, *Submission 17*, p. 4.

14 *Submission 9*, p. 4.

15 eBay, *Submission 9*, p. 5 and *Computerworld*, 'Online ticket scalping regulation won't work', 17 September 2013.

If you are a customer of a bank, a credit card or a telco, you get access to tickets before everybody else. That has been established practice for the last 15 years, but they are limited to a number.¹⁶

3.14 Ticketmaster explained that such arrangements were usually capped at 30 per cent of the house and there had 'to be an equal spread across all the states not just 'the good states'. According to Ticketmaster, the arrangement also had 'to be evenly spread over A reserve, B reserve and C reserve. It stated further:

They are available for only a short time, so that you do not inhibit the sales to the general public or whoever has been designated as the consumer. It is very well documented. It is very well advertised, so that people know what their rights are when things go on sale.¹⁷

3.15 Despite Ticketmaster's assurances that sponsorships arrangements were well documented and advertised, the Ticket Brokers Association of Australia suggested that the government should:

...seek to foster a culture of transparency and encourage event promoters to fully disclose the allocations that are being made available to corporate clients and/or directly to secondary market exchanges, ideally by way of self regulation.¹⁸

3.16 The committee agrees with the view that, as with corporate and hospitality packages, greater transparency in the allocation of tickets for sponsors would provide consumers with a clearer understanding of the availability of tickets. Not only may it help to dispel misconceptions about the way in which tickets are prioritised and set aside for special deals but provide an incentive for event holders to think more carefully about their ticketing strategy.

Bulk purchases

3.17 A number of witnesses identified the ability of a buyer to purchase tickets in bulk as another weakness in the primary market that enabled ticket scalpers to prosper. EBay suggested that 'failing to pre-qualify/identify purchasers and/or impose limits on the number of tickets that any individual can purchase in the primary tickets market causes concern'. It stated further that some promoters also impose caps but fail to set-up systems to enforce the measures effectively.¹⁹

3.18 Ticketmaster informed the committee that for most events, particularly for those where at least a moderate to high demand was expected, a cap was already imposed so a person 'would have to go to substantial effort to get more than two or

16 Ms Maria O'Connor, *Committee Hansard*, 20 February 2014, p. 4.

17 Ms Maria O'Connor, *Committee Hansard*, 20 February 2014, p. 4.

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

19 *Submission 9*, p. 4.

four tickets'.²⁰ Ms Maria O'Connor, Ticketmaster, explained that if there were limits and 'we saw activity of more than four tickets at a time we would investigate where those tickets came from'.²¹ She stated further:

In the business, promoters predict demand and cap ticket sales to so many tickets per transaction. We enforce that absolutely. We will even track one credit card to see how many transactions were done. People ring up with different names. We have a fraud officer and it is their job to track who is buying tickets. It is absolutely enforced if that is the condition of sale.²²

3.19 Stadium Queensland informed the committee that:

Promoters have also taken the initiative to help genuine fans get access to tickets for high demand events and reduce the possibility of unscrupulous companies buying large quantities of tickets through online sale processes for the express purpose of profiteering from ticket re-sale. Examples of the initiatives taken by promoters include pre-registration for tickets and placing a cap on the number of tickets that can be purchased online in one transaction.²³

3.20 The LPA also noted that limiting the number of tickets per transaction was part of the concerted efforts by industry stakeholders to implement measures to deter illegitimate ticket scalping in the live performance industry.²⁴

3.21 The committee notes the promoters and event holders' endeavours to limit the number of tickets that an individual can purchase. Clearly, the reports of batches of tickets going on sale in the secondary market indicate that the promoters and event holders could do more to tighten up the systems designed to prevent bulk purchases.

Poor timing of ticket sales

3.22 EBay referred to a common practice whereby all publicly available tickets are dumped onto the market simultaneously, usually at 9 a.m. Australian Eastern Standard Time on a Monday morning, causing phone lines and Internet sites to collapse under the pressure. It cited the following recent examples that occurred in 2013—Rugby's Lions Tour of Australia, which reportedly sold out in 15 minutes and Manchester United vs A Leagues stars (football).²⁵ It suggested that ticket releases should be staggered by, for example, releasing tranches to fans with fan clubs first.²⁶

20 Mr Christoph Homann, *Committee Hansard*, 20 February 2014, p. 9.

21 *Committee Hansard*, 20 February 2014, p. 9.

22 *Committee Hansard*, 20 February 2014, p. 5.

23 *Submission 6*, p. 3.

24 *Submission 7*, p. 4.

25 *Submission 9*, p. 5.

26 *Submission 9*, p. 20.

3.23 A number of submitters similarly expressed their annoyance at tickets selling out within minutes of going on sale but then surfacing on eBay for 'triple the price'.²⁷

3.24 Ticketmaster explained that the promoter decides 'when the tickets go on sale, what time they go on sale, how much they cost, what the ticket limit is, how many shows there will be and what the price barriers are'. The ticketing agency then executes the plan as given.²⁸ Ticketmaster informed the committee further that the purpose behind releasing tickets on the market all at once was to get as many sales as possible in the shortest time. It explained:

...so that you can get on the phone to the US, probably the night before, to get the second show or the third show, and get the momentum. Quite often, what happens is you put a show on sale and it sells out and you then have a week off before you put a second show up and you lose momentum and you do not actually sell the tickets. I know it sounds strange to encourage 300,000 people to come and transact with you at the same time, but that is how the industry operates.²⁹

3.25 Furthermore, Ticketmaster informed the committee that staggering ticket release would not be helpful, and was 'more likely to increase the chances of ticket scalping'. It stated that even if staggering sales could be done 'fairly and equitably', it would:

...only create perceptions that supply is limited and could therefore create more demand (and drive the price up even further). If there is excess demand there is excess demand, and supply is finite.³⁰

3.26 This statement, however, offers no explanation for tickets appearing almost immediately on the internet at highly inflated prices.

3.27 Mr de Vos suggested that withholding the sale of tickets until closer to the event thereby denying scalpers the opportunity to purchase and resell the tickets has been a recent positive initiative to combat scalpers.³¹ The LPA also drew attention to the combined efforts by industry stakeholders to implement measures to deter illegitimate ticket scalping in the live performance industry. They included delaying the dispatch of tickets and staggering their release and increasing protection through advancing technology; such as barcoded ticketing systems and website security features.³²

27 Submissions 1, 2, 3, 5 and 10.

28 Ms Maria O'Connor, *Committee Hansard*, 20 February 2014, p. 6.

29 Ms Maria O'Connor, *Committee Hansard*, 20 February 2014, p. 5.

30 Answer to question taken on notice, 20 February 2014.

31 Submission 5, p. 1.

32 Submission 7, p. 4.

Refunds

3.28 One submitter suggested that legally the promoter should be the only person able to sell tickets and anyone unable to use their ticket should be able to sell the tickets back to the promoter for resale.³³ eBay also suggested that promoters should provide more extensive rights to refunds, noting further that most other sellers of goods and services provide refunds for unused goods.³⁴ In this regard, LPA, the peak body for the live performance industry, has produced a consumer code of practice for ticketing. The code was developed in conjunction with the ACCC to educate people on their rights and who they can go to if they want a refund or want to complain.³⁵

3.29 The code explains that there are a few limited circumstances in which consumers have an automatic right to a refund including if the event to which they purchased an authorised ticket is:

- cancelled;
- re-scheduled; or
- significantly re-located.³⁶

3.30 According to the code, in many cases, the option to provide a refund lies at the discretion of the LPA member. It advises, however, that 'in the interests of maintaining good faith with the Consumer, refunds are sometimes provided when there is no strict legal requirement to do so'. The code also notes that discretionary refunds may be offered in circumstances where an incident out of the consumer's control has fundamentally affected his or her enjoyment of the event, and, despite being notified by the consumer, the LPA member has failed to address the incident. Such happenings may include offensive behaviour by another customer, a technical failure, or any other factor that significantly affects the consumer's enjoyment of the event.³⁷

3.31 The committee found it difficult, however, to reconcile Ticketmaster's response to eBay's suggestion about consumers having more extensive rights to

33 Mr Keith Sawers, *Submission 2*.

34 *Submission 9*, p. 20.

35 Ms Maria O'Connor, *Committee Hansard*, 20 February 2014, p. 6.

36 Live Performance Australia, *Live Performance Australia Ticketing Code of Practice, Consumer Code*, pp. 8–9,
https://liveperformance.com.au/sites/liveperformance.com.au/files/resources/live_performance_australia_ticketing_code_of_practice - consumer_version - 1_february_2012.pdf,
(accessed 11 February 2014).

37 Live Performance Australia, *Live Performance Australia Ticketing Code of Practice, Consumer Code*, pp. 8 and 10,
https://liveperformance.com.au/sites/liveperformance.com.au/files/resources/live_performance_australia_ticketing_code_of_practice - consumer_version - 1_february_2012.pdf,
(accessed 11 February 2014).

refunds, and the guidance offered in the LPA code of conduct. Ticketmaster informed the committee that 'the nature of the industry does not allow refunds because promoters are required to pay artists "up front"'. It explained:

The live entertainment industry is unlike any other retail in so far that every seat purchased is not of the same quality as others in the venue. Therefore, allowing refunds has the potential of enticing patrons to keep returning and buying tickets for new performances of the same event. This would cause untold problems for promoters and producers who guarantee artists fees and venue rental many months ahead of the event.³⁸

3.32 The committee understands that a system that creates difficulty for a person to obtain a refund, especially for tickets to a popular event, creates an incentive for a secondary market. Thus, the existence of a secondary market often reflects a failure in the primary market: the secondary market is able to meet a consumer need that the primary market is not satisfying.

Other remedies

3.33 Aside from placing limits on the number of tickets available and cancelling onsold tickets, promoters have introduced other measures to reduce the incidence of unauthorised onselling of tickets. They include requiring tickets to have names of purchaser (or other means of identification) on it, and using more sophisticated methods of marketing and issuing tickets to consumers.³⁹

3.34 Also as a means of promoting consumer interests, the LPA has two codes of conduct—industry code and, as mentioned earlier, a consumer code. It should be noted that the industry code makes clear that with advance booking arrangements LPA members should seek to maximise fair access to tickets for a prospective consumer by:

- providing adequate booking facilities;
- making as much information available as possible at the time about the number and type of events that will occur; and
- disclosing appropriate information about the particular seats or seating area for a given event that the prospective consumer may purchase.⁴⁰

3.35 While the code addresses some of the concerns raised in evidence to the committee, it is silent on matters such as transparency and providing information to the consumer on the allocation of tickets.

38 Answer to question taken on notice, 20 March 2014.

39 See for example, COMPSS, *Submission 17*, p. 9.

40 Live Performance Australia, *Live Performance Australia Ticketing Code of Practice, Industry Code*, Fifth edition—effective, 1 February 2012.

Summary

3.36 Promoters and event holders were of the view that the problems identified in the primary market could or were being addressed especially by imposing caps on the number of tickets allocated for sponsors and on individual purchasers. Rather than focus on difficulties in the primary marketplace, they considered that the conduct of those operating in the secondary market caused significant problems for consumers. Their criticism was directed at the resellers and their agents.

Problems and remedies in the secondary market

3.37 Some submitters favoured action that would prohibit online market places such as eBay from allowing scalping as the most obvious and effective measure to tackle the problem of ticket scalping.⁴¹ For example, one submitter argued that ticket scalping was rife on eBay and that eBay could not police it. He was of the view that the current laws 'need to be looked at and changed'.⁴² Another wanted 'far greater controls in place to restrict the operation of scalpers' and suggested that operators such as eBay cease to allow tickets to be scalped.⁴³ Such action included withdrawing tickets with unreasonable write-ups; cancelling scalpers' eBay account and/or their ticketek or ticketmaster account.⁴⁴

3.38 Such measures would include requiring the scalper to disclose to eBay specific information such as receipt or seat numbers to enable the relevant enforcement agency to take any appropriate action to prevent scalping from occurring.⁴⁵ Other measures would require online market places to disclose the original, listed ticket price so that 'a potential purchaser is informed of the profit being sought by the scalper'.⁴⁶ Another suggestion involved banning auction style listings and requiring sellers to list their desired price so that potential buyers could make their best offer instead.⁴⁷

3.39 Viagogo was of the view, however, that regulating the secondary market would lead to unintended consequences. It maintained that:

- Introducing restrictions on resale violates the basic principle of property ownership. Once someone has bought something—whether that's a house, a car, stocks, or a ticket—it is their right to resell it if they wish. Viagogo

41 See for example, Mr Carl de Vos, *Submission 5*, p. 2 and *Submission 13* (confidential).

42 Mr Matthew Kirk, *Submission 1*.

43 Mr Carl de Vos, *Submission 5*.

44 *Submission 5*, p. 2.

45 *Submission 5*, p. 2.

46 *Submission 5*, p. 2.

47 *Submission 5*, p. 2.

maintained that independent research supported this view, which has shown that eight out of 10 Australians agree with viagogo.

- Introducing restrictions on resale just makes it more complicated for people to use the new safe and secure ticket marketplace platforms. These restrictions would dissuade them from doing so, and they would therefore return to using the old black market sales channels of auction sites, classified ads, and scalpers outside pubs, clubs and venue car parks, where little or no consumer protection exists.
- Similarly, the concept of imposing price caps, while well intentioned, just results in sellers reverting to selling their tickets in places where price caps cannot easily be enforced, and where the chances of consumers having a bad experience are high.⁴⁸

3.40 Finally, viagogo argued that the appropriate solution to ease concerns about ticket resale would be 'to encourage, not discourage, the use of safe, secure and guaranteed ticket marketplace platforms' that would have all the safeguards needed to protect buyers and sellers.⁴⁹

Safe and secure online platform

3.41 The committee has highlighted the risks to consumers in the secondary market such as exorbitantly priced tickets or, more worryingly, bogus tickets. As noted in the previous chapter, however, there was general agreement that counterfeiting was not as yet a significant problem in Australia. Even so, the LPA stated that:

While instances of fraud are infrequent, it is a concern for the industry as it becomes **easier for fraud to occur online** via risky and insecure unauthorised websites. Several Members reported that they have come across instances of duplicated and cancelled tickets being advertised online recently.⁵⁰

3.42 Drawing on its members' perspective, the Ticket Brokers Association, criticised the 'unfair media treatment' of the secondary resale market that likened ticket broking to criminal activity. It suggested that such sensationalist reporting did not provide any critical analysis of satisfactory and safer secondary market alternatives such as eBay.⁵¹

3.43 The online platforms that facilitate the resale of tickets, such as eBay and viagogo, maintained that they have in place measures to reduce the potential for consumer detriment. They are conscious of the importance of providing a safe and secure environment in which people can transact the resale of tickets. The Ticket

48 *Submission 14*, pp. 2–3.

49 *Submission 14*, p. 3.

50 *Submission 7*, p. 5 (emphasis in original).

51 *Submission 11*, p. [4–5].

Brokers Association noted that all sellers on eBay are required to offer PayPal as a payment option. It explained:

Under PayPal's Buyer Protection Policy, up to \$20,000 protection is afforded for eligible purchases including tickets, in the event they are not received or are deemed 'significantly not as described'. Each of our members is an eBay Top Rated Seller, with eBay customers providing the highest possible rating in categories such as 'item as described', 'communication', 'speed of postage' and 'postage costs'.⁵²

3.44 Viagogo stated that people purchasing tickets from its marketplace can do so without worry about being defrauded because it offers a guarantee. It claimed that its secure ticket marketplace has 'virtually eliminated ticket fraud'. According to viagogo, it enforces strict security controls, such as delivering tickets by a secure method (either electronically, by courier or at one of its pick-up points). Another safeguard under its arrangements means that the seller receives payment only after the buyer has confirmed receipt of the tickets and attended the event.⁵³

3.45 Recognising that there is a legitimate need for the reselling of tickets, a number of submitters suggested that rather than try to shut down the secondary market, ticket selling agencies could become involved in an after-market for tickets.⁵⁴ In this market, ticket purchasers would be allowed to sell their unwanted ticket within 'a certain price ceiling to willing buyers'.⁵⁵

3.46 As noted earlier, promoters and event holders appreciated that there is a place for a secondary market. For example, Australia's major sporting bodies, which do not object to the onselling of tickets for legitimate reasons, believed that such tickets should be sold at face value and through an authorised ticket-seller or alternatively, via a system that is established to allow this form of onselling.⁵⁶

3.47 The LPA drew attention to the concerted efforts by industry stakeholders to implement measures to deter illegitimate ticket scalping. They included setting up authorised re-sale marketplaces which were 'secure and hence more appealing to consumers than high risk unauthorised websites'.⁵⁷ The LPA informed that committee that its members, which include producers, music promoters, venues, performing arts companies and ticketing companies, 'authorise resellers and establish fan-to-fan marketplaces to provide a secure avenue for consumers to onsell in the secondary market'. According to the LPA, such mechanisms are also 'an effective free market

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

53 *Submission 14*, p. 1.

54 Mr Carl de Vos, *Submission 5*, p. 2 and Ticketmaster, *Submission 8*, p. 1.

55 *Submission 5*.

56 COMPSS, *Submission 17*, p. 11.

57 *Submission 7*, p. 4.

solution for deterring consumers from using unauthorised reselling sites by providing a safe and secure alternative to find tickets to sold out events'.⁵⁸

3.48 COMPSS gave the example of Tennis Australia that, in conjunction with its authorised ticket agent, Ticketek, had recently introduced the 'Australian Open Fan Marketplace', described by COMPSS as 'a safe and secure online platform for fans to resell tickets to the 2014 Australian Open'. It explained further:

This was the first official secondary ticketing market operated by an Australian sport, and provided a platform for consumers to purchase valid tickets to the event. By linking to the original ticket transaction, Ticketek was able to facilitate a direct refund back to [the] seller, as well as issue new tickets and barcodes to the new buyer. There was no cost to list tickets for sale on Australian Open Fan Marketplace and ticket prices were set at face value to ensure they are affordable for everyone who wants to see the tennis. This was a service provided to fans and no additional profit was made by Tennis Australia or Ticketek. It allowed genuine customers who are unable to attend a session to resell their ticket/s and ensured that they were not out of pocket. In excess of 1,300 tickets were sold through the Australian Open Fan Marketplace across all 25 sessions of the event.⁵⁹

3.49 Ticketmaster recognised that consumers wanted existing ticketing companies to engage in the secondary market to create a safe and reliable marketplace in which to sell unwanted tickets.⁶⁰ In its view, the ticketing industry must establish such a marketplace and that it could meet customers' needs without creating friction with the primary ticketing market.⁶¹ In its view, resale was the solution and furthermore:

The best way to protect consumers, stop fraudsters and curb the growth of unscrupulous secondary sites is to provide consumers with a legitimate alternative that meets their needs, accompanied by industry-wide self-regulation measures.⁶²

3.50 Ticketmaster indicated that it intended to take a leadership position on creating a safe and reliable re-sale market by launching an Australian resale marketplace this year.⁶³ It has begun testing its new TM+ systems that would allow tickets to be resold on the Ticketmaster website. Ticketmaster would then become a participant in the secondary market as well.⁶⁴ It explained further that its secondary ticketing offer would mean that every ticket holder would have 'a convenient way to resell tickets'. The scheme would 'meet the highest antifraud methods, including

58 *Submission 7*, p. 2.

59 *Submission 17*, p. 11.

60 *Submission 8*, p. 3.

61 *Submission 8*, p. 1.

62 *Submission 8*, p. 1.

63 *Submission 8*, p. 1.

64 *Submission 8*, pp. 3–4, *Submission 9*, p. 5.

authentication of bar code [and] protect every transaction with a 100 per cent money back guarantee'. It would also provide buyers and sellers with full transparency on matters such as the face value of the ticket.⁶⁵

Competition in the secondary market

3.51 The online resale platforms and ticket brokers took the view that a secondary market made a valuable contribution to the industry. In this regard, eBay noted that Ticketek and Ticketmaster were the two dominant companies selling sport, concert and theatre tickets in Australia. In contrast, it referred to the more competitive secondary market with operators such as Showbiz, viagogo, Facebook, Localbroker, Gumtree, My Tickets and Seatwave among others.⁶⁶ eBay argued that a secondary market helped to create competitive pressure on the primary market. It stated:

The competition and transparency posed by new market entrants, actually prompt the primary market to design new and more efficient means of ensuring fans can get hold of tickets in the first place. If such competitive pressures were removed or reduced through regulation, the already-limited options available to consumers would be further reduced, and the incentive to innovate and improve services in the primary market would greatly diminish.⁶⁷

3.52 As noted previously, eBay supported the existence of a strong secondary market with many sellers, arguing that this competitive environment would generate 'lower prices than would be achieved without the possibility of resale or with restrictions on licenses limiting the number of sellers'.⁶⁸

3.53 The committee has drawn attention to some practices in the primary market that have given rise to consumer dissatisfaction and posed risks to the interests of consumers—corporate and hospitality packages, sponsorship deals, bulk ticket purchases, and the conditions governing the transfer or refund of unwanted tickets. The existence of a fair, reliable and effective secondary market certainly provides the impetus for the primary market to perform better. The committee would be concerned if a lack of competition in the secondary market gave rise to poor practices in that market or diminished the secondary market's role in exerting pressure on the primary market to maintain high standards in consumer protection.

Ticket scalping and regulation

3.54 Evidence presented to the committee varied on the need to, and the mechanisms for, regulating the resale of tickets. Some submitters, such as online ticket-marketing platforms eBay and viagogo, suggested that the solutions to curbing

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

66 *Submission 9*, pp. 4–5.

67 *Submission 9*, p. 3–4.

68 *Submission 9*, p. 15.

ticket scalping, as distinct from the legitimate resale of unwanted tickets, should be directed at improving practices in the primary market. They argued that measures, which would involve much greater transparency in the primary market and prevent bulk purchases of tickets, would reduce the opportunities for ticket scalping. Promoters and event holders informed the committee that great care is taken in devising ticketing strategies to ensure consumers receive value for money. They informed the committee that, in a concerted effort to thwart ticket scalpers, industry stakeholders were implementing measures such as imposing caps on the number of tickets a single person could purchase.

3.55 Event holders and the ticketing agencies suggested that the secondary market, which enables ticket resellers to profit at the expense of the consumer, was the source of the problems associated with ticket scalping. They would prefer measures to be taken against the operators of ticket reselling platforms to prevent ticket scalpers using this forum. The online platforms and the ticket brokers rejected the notion that the secondary market needed to be regulated. In their view, they were working to make sure that the secondary market was a safe and secure environment for consumers.

3.56 Event holders and promoters recognise the value of having a secondary market. Indeed they saw a legitimate role for a re-sale market—but by authorised resellers. Thus, some have or are intending to enter this market with the emphasis on providing a safe and secure but also lawful market.

3.57 Despite the efforts of those engaged in the primary and secondary markets to deny ticket scalpers the opportunity to exploit consumers, a number of State governments have responded to concerns about activities in the ticket selling market by introducing legislation. For example the New South Wales (NSW) Government is of the view that:

...despite strategies employed by promoters and event managers, there continues to be consumer detriment from ticket scalping, which limits the availability of tickets for music and sports 'fans', and the sale of counterfeit or invalid tickets through the secondary ticketing market.⁶⁹

3.58 The following chapter looks at the legislative measures in place, and being contemplated, to regulate ticket scalping.

69 *Submission 12*, p. 1.

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 administrating 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 dominate 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

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 COMPSS 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**

APPENDIX 1

Submissions received

Submission Number	Submitter
1	Mr Mathew Kirk
2	Mr Keith Sawers
3	Mr Douglas West
4	Mr George Peterson
5	Mr Carl de Vos
6	Stadiums Queensland
7	Live Performance Australia
8	Ticketmaster
9	eBay Inc
10	Mr Shane O'Connell
11	Ticket Brokers Association of Australia Inc
12	NSW Government
13	Confidential
14	Viagogo Inc
15	Australian Interactive Media Industry Association
16	The Treasury
17	The Coalition of Major Professional and Participation Sports
18	ACIL Allen Consulting
19	Hon Heidi Victoria MP, Victorian Minister for Consumer Affairs
20	Basketball Australia
21	South Australia Police

Additional information received

- Answers to questions on notice asked at a public hearing held in Sydney on 20 February 2014, received from Ticketmaster on 7 March 2014.

APPENDIX 2

Public Hearings and Witnesses

SYDNEY, 20 FEBRUARY 2014

HOMANN, Mr Christoph, Managing Director of ticket resale, Ticketmaster International

O'CONNOR, Ms Maria, Managing Director, Ticketmaster Australasia