

# Ticket Scalping Bill 2018

## Contents

<b>Part 1 — Preliminary</b>		
1.	Short title	2
2.	Commencement	2
3.	Terms used	2
4.	Resale restrictions	4
5.	Application of Act	4
<b>Part 2 — Resale, supply or advertising of tickets</b>		
6.	Ticket scalping	5
7.	Invalid resale restrictions	5
8.	Supply of tickets not to be made contingent on other purchases	5
9.	Prohibited advertisements	5
10.	Ticket resale advertising	6
<b>Part 3 — Online purchase of tickets</b>		
11.	Prohibited conduct in relation to the use of ticketing websites	7
<b>Part 4 — Miscellaneous</b>		
12.	Functions of Commissioner	8
13.	Application of the <i>Fair Trading Act 2010</i>	8
14.	Infringement notices and the <i>Criminal Procedure Act 2004</i>	10
15.	Regulations	10
16.	Review of Act	10

	<b>Part 5 — Transitional provision</b>	
17.	Transitional provision	12
	<b>Defined terms</b>	

Western Australia

LEGISLATIVE ASSEMBLY

## **Ticket Scalping Bill 2018**

**A Bill for**

**An Act to restrict the resale of event tickets and to prohibit the use of software designed to circumvent security measures on ticket selling websites, and for related purposes.**

The Parliament of Western Australia enacts as follows:

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## **Part 1 — Preliminary**

### **1. Short title**

This is the *Ticket Scalping Act 2018*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation.

### **3. Terms used**

In this Act —

***advertisement*** means any advertisement, whether paid or not;

***advertising publication*** means any website, on-line facility, newspaper, magazine or other publication or service containing advertisements to which members of the public have access (whether or not a member of the public is first required to pay a fee or subscription, register or become a member);

***authorised ticket seller***, in relation to an event, means —

- (a) if the event organiser has authorised a person to supply tickets for admission to the event on behalf of the event organiser, or to resupply tickets for admission to the event after acquiring them from the event organiser — that person; or
- (b) in any other case — any event organiser for the event;

***Commissioner*** has the meaning given in the *Fair Trading Act 2010* section 6;

***event*** includes the following —

- (a) a sporting event;
- (b) an entertainment event, including a concert, a performance at a theatre or the opera, and a dance event;

- 1 (c) a festival;
- 2 (d) a cultural event or display;
- 3 (e) an arena event;
- 4 (f) any other form of public performance, exhibition,  
5 display or public gathering;
- 6 **event organiser**, in relation to an event, means —
- 7 (a) the person who authorises the first supply of tickets for  
8 admission to the event, whether or not that person is also  
9 a performer, the promoter of the event or the operator of  
10 the event venue; or
- 11 (b) a person within a class of persons declared by the  
12 regulations to be the event organiser in relation to a class  
13 of events to which the event belongs;
- 14 **original ticket price**, in relation to a ticket for admission to an  
15 event, means the amount for which the ticket was purchased  
16 when first offered for retail sale by the event organiser or an  
17 authorised ticket seller (and includes, if a booking fee or other  
18 commission was payable to an authorised ticket seller in relation  
19 to that sale, the amount of that fee or commission);
- 20 **owner**, of an advertising publication, includes any person who  
21 carries on the business or undertaking of the advertising  
22 publication;
- 23 **prohibited advertisement** means a ticket resale advertisement  
24 that does not comply with section 9;
- 25 **resale restriction** has the meaning given in section 4;
- 26 **sell** includes offer or advertise for sale;
- 27 **supply** includes offer to supply and advertise for supply;
- 28 **ticket resale advertisement** means an advertisement for the sale  
29 of a ticket for admission to an event by a person other than an  
30 authorised ticket seller.

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1 **4. Resale restrictions**

2 (1) For the purposes of this Act, a ***resale restriction*** is a term or  
3 condition of a ticket for admission to an event that limits the  
4 circumstances in which the ticket may be resold.

5 (2) A term or condition that limits the circumstances in which a  
6 ticket may be resold includes a term or condition that provides  
7 for the ticket to be cancelled, surrendered or rendered invalid if  
8 the ticket is resold or if the ticket is resold in certain  
9 circumstances.

10 **5. Application of Act**

11 (1) This Act applies to tickets for admission to events in Western  
12 Australia that are subject to a resale restriction.

13 (2) Subject to subsection (1), this Act extends to conduct, and other  
14 acts, matters and things, occurring or existing outside or partly  
15 outside Western Australia (whether within or outside Australia).

1           **Part 2 — Resale, supply or advertising of tickets**

2       **6.       Ticket scalping**

3           A person must not sell a ticket for admission to an event for an  
4           amount which exceeds the original ticket price by more than  
5           10%.

6           Penalty: a fine of \$20 000.

7       **7.       Invalid resale restrictions**

8           A resale restriction is void to the extent that it provides for the  
9           ticket to be cancelled, surrendered or rendered invalid if the  
10          ticket is resold for an amount not exceeding 110% of the  
11          original ticket price.

12      **8.       Supply of tickets not to be made contingent on other**  
13      **purchases**

14      (1)   A person (the *supplier*) must not supply a ticket for admission  
15      to an event to any other person (the *recipient*) under an  
16      agreement that makes the liability of the supplier to supply the  
17      ticket to the recipient contingent on payment by the recipient to  
18      the supplier of an amount in consideration for the provision to  
19      the recipient of any other goods or services.

20      Penalty for this subsection: a fine of \$20 000.

21      (2)   Subsection (1) does not apply to the supply of a ticket under —

22           (a)   an agreement that has been authorised by the event  
23           organiser for the relevant event; or

24           (b)   any other agreement of a kind prescribed by the  
25           regulations.

26      **9.       Prohibited advertisements**

27      (1)   A ticket resale advertisement must not specify an amount for the  
28      sale of the ticket that is more than 110% of the original ticket  
29      price.

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- 1 (2) A ticket resale advertisement must specify —  
2 (a) the original ticket price; and  
3 (b) details of the location from which the ticket holder is  
4 authorised to view the event (including, for example,  
5 any bay number, row number and seat number for the  
6 ticket).

7 **10. Ticket resale advertising**

- 8 (1) The owner of an advertising publication must ensure that no  
9 prohibited advertisement is published in the publication.

10 Penalty for this subsection: a fine of \$20 000.

- 11 (2) It is a defence to a charge of an offence under subsection (1) to  
12 prove that —

- 13 (a) the advertisement was received by the person charged,  
14 or by a person acting on that person's behalf, in the  
15 ordinary course of carrying on the business or  
16 undertaking associated with the advertising publication;  
17 and  
18 (b) the agreement relating to the publication of the  
19 advertisement between the person charged and the  
20 person placing the advertisement was subject to terms or  
21 conditions prohibiting the publication of prohibited  
22 advertisements; and  
23 (c) the person charged, or a person responsible for  
24 managing the advertising publication on that person's  
25 behalf, as soon as practicable after becoming aware that  
26 the prohibited advertisement had been published in the  
27 publication, took reasonable steps to ensure that the  
28 advertisement was removed from the publication; and  
29 (d) the person charged took such other steps as were  
30 reasonable in the circumstances to ensure that no  
31 prohibited advertisement was published in the  
32 publication.



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**Part 3 — Online purchase of tickets**

**11. Prohibited conduct in relation to the use of ticketing websites**

- (1) In this section —  
*security measures*, in relation to a website, include any measures of a kind prescribed by the regulations for the purposes of this definition.
  
- (2) A person must not use any software to enable or assist the person to circumvent the security measures of a website to purchase tickets in contravention of the published terms of use of the website.  
Penalty for this subsection: a fine of \$100 000.
  
- (3) For the purposes of subsection (2), terms of use of a website are published if they are published on the website.

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**Part 4 — Miscellaneous**

**12. Functions of Commissioner**

- (1) The functions of the Commissioner include the following —
- (a) to promote the operation and effect of this Act;
  - (b) to conduct educational activities associated with promoting compliance with this Act;
  - (c) to receive complaints and information concerning potential breaches of this Act and, if the Commissioner considers it warranted, to investigate any matter and to take any action in respect of those complaints or that information considered to be appropriate by the Commissioner;
  - (d) to publish (in any form) statements identifying and giving warnings about conduct or practices that are in breach of this Act, including by identifying persons who engage or are likely to engage in such conduct or practices;
  - (e) to perform other functions associated with the operation or enforcement of this Act, or otherwise conferred on the Commissioner under, or for the purposes of, this Act.
- (2) The Commissioner must not make or issue a statement under subsection (1)(d) that identifies a specific person unless satisfied that it is in the public interest to do so.

**13. Application of the *Fair Trading Act 2010***

- (1) The following provisions of the *Fair Trading Act 2010* apply, with any modifications that are necessary for the purposes of this Act, as if those provisions were a part of this Act —
- (a) sections 60 and 61;
  - (b) Part 6, other than sections 64 and 65 and Division 4A;

- 1           (c) Part 7, other than sections 96, 97, 98, 100 and 108 and  
2           Division 4;
- 3           (d) Part 8, other than section 116.
- 4       (2) For the purposes of subsection (1), the *Fair Trading Act 2010* is  
5       to be read as if —
- 6           (a) a reference to “this Act” or “this or any other Act” were  
7           a reference to this Act; and
- 8           (b) the words “or another Act”, “or any other Act” (other  
9           than in section 60(1)) or “or another Act that confers  
10          functions on the Commissioner” were deleted; and
- 11          (c) a reference to “the Department” were a reference to the  
12          department of the Public Service principally assisting  
13          the Minister in the administration of this Act; and
- 14          (d) the words “or a police officer assisting in an  
15          investigation under section 88D” in paragraph (c) of the  
16          definition of **authorised person** in section 63 were  
17          deleted; and
- 18          (e) the words “the *Fair Trading Act 2010*” were inserted in  
19          the definition of **investigator** in section 63 after the  
20          words “designated under”; and
- 21          (f) the words “the *Fair Trading Act 2010*” were inserted in  
22          section 66 after the words “the document provided  
23          under”; and
- 24          (g) sections 77(6), 89(2A) and (5A), 95(5), 106(3)(c) and  
25          112(3)(c)(ii), (da) and (f) were deleted; and
- 26          (h) the words “or 4A” in section 88(1) were deleted; and
- 27          (i) the words “or 88E” in section 89(2) were deleted; and
- 28          (j) the words “or 100” in sections 94(1)(a), 105(1) and  
29          106(3)(b) were deleted; and
- 30          (k) the definition of **regulated person** in section 112(1)  
31          were deleted.

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1           (3) Subject to subsection (2), any definition contained in the *Fair*  
2           *Trading Act 2010* of a term used in the provisions applied by  
3           subsection (1) also applies for the purposes of those provisions.

4           **14.       Infringement notices and the *Criminal Procedure Act 2004***

5           (1) If this Act is a prescribed Act for the purposes of the *Criminal*  
6           *Procedure Act 2004* Part 2, this section applies in relation to the  
7           service of an infringement notice under that Part by an  
8           authorised officer in relation to an alleged offence under this  
9           Act.

10          (2) The infringement notice must be served within —

11               (a) 21 days after the day on which the authorised officer  
12               forms the opinion that there is sufficient evidence to  
13               support the allegation of the offence; and

14               (b) 6 months after the day on which the alleged offence is  
15               believed to have been committed.

16          (3) The *Criminal Procedure Act 2004* Part 2 is modified to the  
17          extent necessary to give effect to this section.

18          **15.       Regulations**

19          (1) The Governor may make regulations prescribing matters —

20               (a) required or permitted by this Act to be prescribed; or

21               (b) necessary or convenient to be prescribed for giving  
22               effect to the purposes of this Act.

23          (2) The regulations may provide for offences against the regulations  
24          and prescribe penalties for those offences not exceeding a fine  
25          of \$5 000.

26          **16.       Review of Act**

27          (1) The Minister must review the operation and effectiveness of this  
28          Act, and prepare a report based on the review, as soon as  
29          practicable after the 5<sup>th</sup> anniversary of the day on which this  
30          section comes into operation.

- 1       (2) The Minister must cause the report to be laid before each House  
2       of Parliament as soon as practicable after it is prepared, but not  
3       later than 12 months after the 5<sup>th</sup> anniversary.

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**Part 5 — Transitional provision**

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**17. Transitional provision**

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This Act does not apply to a ticket purchased from an authorised  
4 ticket seller before the day on which Part 2 comes into  
5 operation.

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**Defined terms**

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
advertisement .....	3
advertising publication .....	3
authorised ticket seller .....	3
Commissioner .....	3
event .....	3
event organiser .....	3
original ticket price .....	3
owner .....	3
prohibited advertisement .....	3
recipient .....	8(1)
resale restriction .....	3, 4(1)
security measures .....	11(1)
sell .....	3
supplier .....	8(1)
supply .....	3
ticket resale advertisement .....	3