



Western Australia

Ticket Scalping Act 2021

As at 09 Sep 2021

No. 17 of 2021

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Ticket Scalping Act 2021

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Western Australia

Ticket Scalping Act 2021

No. 17 of 2021

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.

[Assented to 9 September 2021]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Ticket Scalping Act 2021*.

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 the day after that day.

3. Terms used

In this Act —

advertisement means any advertisement, whether paid or not;

advertising publication means any website, online 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;

- (c) a festival;
- (d) a cultural event or display;
- (e) an arena event;
- (f) any other form of public performance, exhibition, display or public gathering;

event organiser, in relation to an event, means —

- (a) the person who authorises the first supply of tickets for admission to the event, whether or not that person is also a performer, the promoter of the event or the operator of the event venue; or
- (b) a person within a class of persons prescribed by the regulations to be the event organiser in relation to a class of events to which the event belongs;

original ticket price, in relation to a ticket for admission to an event —

- (a) means the amount for which the ticket was purchased when first offered for retail sale by the event organiser or an authorised ticket seller; and
- (b) includes, if a booking fee or other commission was payable to an authorised ticket seller in relation to that sale, the amount of that fee or commission;

owner, of an advertising publication, includes any person who carries on the business or undertaking of the advertising publication;

prohibited advertisement means a ticket resale advertisement that does not comply with section 10;

resale restriction has the meaning given in section 5;

sell includes to offer or advertise for sale;

supply includes to offer to supply and to advertise for supply;

ticket resale advertisement means an advertisement for the sale of a ticket for admission to an event by a person other than an authorised ticket seller;

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ticket scalping means selling a ticket for admission to an event for an amount which exceeds the original ticket price by more than 10%.

4. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

5. Resale restrictions

- (1) For the purposes of this Act, a ***resale restriction*** is a term or condition of a ticket for admission to an event that limits the circumstances in which the ticket may be resold.
- (2) A term or condition that limits the circumstances in which a ticket may be resold includes a term or condition that provides for the ticket to be cancelled, surrendered or rendered invalid if the ticket is resold or if the ticket is resold in certain circumstances.

6. Application of Act

- (1) This Act applies to tickets for admission to events in Western Australia that are subject to a resale restriction.
- (2) Subject to subsection (1), this Act extends to conduct, and other acts, matters and things, occurring or existing outside or partly outside Western Australia (whether within or outside Australia).

Part 2 — Resale, supply or advertising of tickets

7. Ticket scalping

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

Penalty: a fine of \$20 000.

8. Invalid resale restrictions

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

9. Supply of tickets not to be made contingent on other purchases

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

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

- (2) Subsection (1) does not apply to the supply of a ticket under —
- (a) an agreement that has been authorised by the event organiser for the relevant event; or
 - (b) any other agreement of a kind prescribed by the regulations.

10. Prohibited advertisements

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

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

11. Ticket resale advertising

- (1) The owner of an advertising publication must ensure that no prohibited advertisement is published in the publication.
Penalty for this subsection: a fine of \$20 000.
- (2) It is a defence to a charge of an offence under subsection (1) to prove that —
- (a) the advertisement was received by the person charged, or by a person acting on that person's behalf, in the ordinary course of carrying on the business or undertaking associated with the advertising publication; and
 - (b) the agreement relating to the publication of the advertisement between the person charged and the person placing the advertisement was subject to terms or conditions prohibiting the publication of prohibited advertisements; and
 - (c) the person charged, or a person responsible for managing the advertising publication on that person's behalf, as soon as practicable after becoming aware that the prohibited advertisement had been published in the publication, took reasonable steps to ensure that the advertisement was removed from the publication; and
 - (d) the person charged took such other steps as were reasonable in the circumstances to ensure that no prohibited advertisement was published in the publication.

Part 3 — Online purchase of tickets

12. Prohibited conduct in relation to 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.

Part 4 — Miscellaneous

13. 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.

14. Application of *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;

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

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

Notes for this section:

1. Subsection (1) incorporates into this Act certain provisions of the *Fair Trading Act 2010* that provide for or in relation to the following —
 - (a) powers of the Commissioner;
 - (b) investigation and enforcement;
 - (c) criminal and civil proceedings;
 - (d) miscellaneous matters.
2. Subsection (2) makes certain modifications to those provisions in their application as part of this Act.

15. *Infringement notices and Criminal Procedure Act 2004*

- (1) If this Act is a prescribed Act for the purposes of the *Criminal Procedure Act 2004* Part 2, this section applies in relation to the service of an infringement notice under that Part by an authorised officer in relation to an alleged offence under this Act.
- (2) The infringement notice must be served within —
 - (a) 21 days after the day on which the authorised officer forms the opinion that there is sufficient evidence to support the allegation of the offence; and
 - (b) 6 months after the day on which the alleged offence is believed to have been committed.
- (3) The *Criminal Procedure Act 2004* Part 2 is modified to the extent necessary to give effect to this section.

16. *Regulations*

- (1) The Governor may make regulations prescribing matters —
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for giving effect to the purposes of this Act.

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

17. Review of Act

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review, as soon as practicable after the 5th anniversary of the day on which this section comes into operation.
- (2) The review must address whether sections 7, 9 and 12 have been effective in reducing the practice of ticket scalping.
- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary.

Part 5 — Transitional provision

18. Transitional provision

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

Defined term	Provision(s)
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	9(1)
resale restriction	3, 5(1)
security measures	12(1)
sell	3
supplier	9(1)
supply	3
ticket resale advertisement	3
ticket scalping	3

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