

South Australia

# Fair Trading (Ticket Scalping) Amendment Act 2018

An Act to amend the *Fair Trading Act 1987*.

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Fair Trading (Ticket Scalping) Amendment Act 2018*.

### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Fair Trading Act 1987*

### 4—Insertion of Part 4A

After section 37 insert:

## **Part 4A—Regulation of event ticket transactions**

### **Division 1—Preliminary**

#### **37A—Interpretation**

In this Part—

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

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

*event organiser*—see section 37C;

*resale restriction*—see section 37B.

#### **37B—Tickets to which Part applies**

- (1) This Part applies to tickets to sporting or entertainment events in this State that are subject to a resale restriction.
- (2) A *resale restriction* is a term or condition of a ticket that limits the circumstances in which the ticket may be resold or prohibits the resale of the ticket.

- (3) A term or condition that limits the circumstances in which a ticket may be resold or prohibits the resale of the ticket includes a term or condition that provides for the ticket to be cancelled or rendered invalid if the ticket is resold, or if the ticket is resold in certain circumstances.

### **37C—Meaning of *event organiser***

- (1) The *event organiser*, in relation to an event, is the person who authorises the first supply of tickets for the event, whether or not that person is also the performer, the promoter of the event or the operator of the event venue.
- (2) The regulations may declare any other person (or class of persons) to be the event organiser in relation to the event or in relation to any class of events to which the event belongs.

## **Division 2—Resale of tickets**

### **37D—Interpretation**

In this Division—

*first purchaser*, in relation to a ticket, means the person to whom the ticket is first supplied by an authorised seller;

*original supply cost*—see section 37E;

*prohibited advertisement*—see section 37F;

*sell* includes offer or advertise to sell;

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

*ticket resale advertisement* means an advertisement for the sale of a ticket by any person other than the authorised seller;

*transaction cost*—see section 37E.

### **37E—Meaning of *original supply cost***

- (1) The *original supply cost* of a ticket is the amount for which the ticket was sold to the first purchaser by an authorised seller, excluding any transaction cost.
- (2) The *transaction cost* is the cost of any commission, booking fee, payment surcharge or ticket delivery fee incurred by the first purchaser of the ticket in connection with the purchase of the ticket.
- (3) If no amount was paid by the first purchaser of the ticket in consideration for the ticket, the original supply cost is taken to be an amount determined by the authorised seller of the ticket as the recommended retail price of the ticket.

- (4) In any proceedings, an apparently genuine certificate purporting to be signed by the Commissioner and certifying as to the recommended retail price of a ticket determined by an authorised seller for the purposes of subsection (3) is, in the absence of proof to the contrary, proof of the matter so certified.

### **37F—Meaning of *prohibited advertisement***

- (1) A *prohibited advertisement* is a ticket resale advertisement that does not comply with this section.
- (2) A ticket resale advertisement must not specify an amount for the sale of the ticket that exceeds 110% of the original supply cost of the ticket.
- (3) A ticket resale advertisement must specify the following particulars:
  - (a) the original supply cost of the ticket;
  - (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).

### **37G—Restriction on ticket resale profit**

A person must not sell a ticket to any other person for an amount that exceeds 110% of the original supply cost of the ticket.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

Expiation fee: \$550.

### **37H—Supply of tickets not to be made contingent on other purchases**

- (1) A person (the *supplier*) must not supply a ticket 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 any amount in consideration for the provision to the recipient of any other goods or services.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

Expiation fee: \$550.

- (2) This section does not apply to the supply of a ticket under an agreement authorised by the event organiser or under any other agreement of a kind prescribed by the regulations.

### 37I—Ticket resale advertising

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

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;  
(b) in the case of a natural person—\$20 000.

Expiation fee: \$550.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that—
- (a) the agreement between the defendant and the person placing the ticket resale advertisement was subject to terms or conditions prohibiting the publication of prohibited advertisements; and
- (b) the defendant, 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
- (c) the defendant took such other steps as were reasonable in the circumstances to ensure that no prohibited advertisement was published in the publication.
- (3) The regulations may exclude an advertisement or publication of a kind described by the regulations from the application of this section.
- (4) In this section—

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

*advertising publication* means any website, newspaper, magazine or other publication 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);

*owner*, of an advertising publication, includes any person who conducts the business or undertaking of the advertising publication, but does not include a person of a class prescribed by the regulations.

### 37J—Defence for certain ticket sales

- (1) It is a defence to a charge of an offence against this Division involving the sale or supply, or an advertisement for the sale or supply, of a ticket if the defendant proves—
- (a) that the ticket was or was advertised to be (as the case may require) sold or supplied as a fundraiser for approved purposes; and
- (b) the whole of the net proceeds of the sale or supply of the ticket were, or were to be, applied for the approved purposes.

- (2) For the purposes of subsection (1)—
- (a) the following are *approved purposes*:
- (i) a religious, educational, charitable or benevolent purpose;
  - (ii) the purpose of promoting or encouraging literature, science or the arts;
  - (iii) the purpose of providing medical treatment or attention, or promoting the interests of persons who have a particular physical, mental or intellectual disability;
  - (iv) the purpose of establishing, carrying on or improving a community centre, or promoting the interests of a local community or a particular section of a local community;
  - (v) the purpose of sport, recreation or amusement;
  - (vi) the purpose of promoting animal welfare;
  - (vii) the purpose of conserving resources or preserving any part of the environmental, historical or cultural heritage of the State;
  - (viii) the purpose of promoting the interests of students or staff of an educational institution;
  - (ix) a political purpose;
  - (x) the purpose of promoting the common interests of persons who are engaged in, or interested in, a particular business, trade or industry; and
- (b) the *net proceeds* of the sale or supply of a ticket are the gross proceeds of the sale or supply less the expenses incurred in conducting the sale or supply.

### **37K—Certain resale restrictions void**

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

## **Division 3—Online purchase of tickets**

### **37L—Prohibited conduct in relation to use of ticketing websites**

- (1) A person must not engage in prohibited conduct in relation to the use of a ticketing website.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

- (2) A person will be taken to have contravened subsection (1) if the person uses any software (including, but not limited to, software prescribed by regulations) to enable or assist the person to circumvent the security measures of the website and to purchase tickets in contravention of the terms of use of the website that are published on the website.
- (3) The security measures of a website include any measures of a kind prescribed by the regulations.

#### **Division 4—Public disclosure of ticketing information**

##### **37M—Minister may require notification of number of tickets available for general public sale**

- (1) The Minister may, by notice in the Gazette, declare that a specified event organiser (or a specified class of event organisers) is required to give public notice of the total number of tickets for the event that are to be made available by authorised sellers for general public sale.
- (2) The public notice must be given within the time and in the manner specified in the declaration.
- (3) The total number of tickets specified in a public notice required under this section must be a number that the event organiser believes, on reasonable grounds, is not more than 10% greater or less than the total number of tickets that are to be made available for general public sale before the day on which the event is held (including any number of tickets made available before the public notice is given).
- (4) A ticket is not made available by an authorised seller for general public sale if the authorised seller requires a person to do either of the following in order to acquire the ticket:
  - (a) pay a fee (in addition to the price of the ticket and any transaction cost such as a commission, booking fee, payment surcharge or ticket delivery fee);
  - (b) register for access to any pre-sale, publication, competition or other special offer.
- (5) The regulations may make further provision for the circumstances in which a ticket is, or is not, made available for general public sale for the purposes of this section.
- (6) The Minister may not make a declaration under this section unless—
  - (a) the Minister is satisfied that each event organiser for an event to which the proposed declaration applies has been notified (whether by public notice or otherwise) of the Minister's intention to make the declaration; and
  - (b) the event organiser has been given a reasonable opportunity to make submissions in relation to the proposed declaration; and
  - (c) the Minister has considered any such submission; and

- (d) the Minister is satisfied that it is in the public interest to make the declaration.
- (7) An event organiser must not fail to comply with a requirement made in a declaration under this section.  
Maximum penalty:
  - (a) in the case of a body corporate—\$100 000;
  - (b) in the case of a natural person—\$20 000.
- (8) The Minister may, by further notice in the Gazette, vary or revoke a declaration made under this section.

## **Division 5—Review of Part**

### **37N—Review of Part**

- (1) The Minister must cause a review of the operation of this Part to be conducted not before 18 months, and not later than 2 years, following the commencement of this Division.
- (2) The review must be completed, and a report on the results of the review provided to the Minister, within 3 years following the commencement of this Division.
- (3) The Minister must, within 12 sitting days after receipt of the report, cause copies of the report to be laid before each House of Parliament.

## **Schedule 1—Related amendment and transitional provision**

### **Part 1—Amendment of *Major Events Act 2013***

#### **1—Repeal of section 9**

Section 9—delete the section

### **Part 2—Transitional provision**

#### **2—Transitional provision**

- (1) Sections 37G to 37K (inclusive) of the principal Act do not apply in relation to a ticket sold or otherwise supplied to a first purchaser by an authorised seller before the commencement of this clause.
- (2) In this clause—

*principal Act* means the *Fair Trading Act 1987* as amended by the *Fair Trading (Ticket Scalping) Amendment Act 2018*.