



New South Wales

# Fair Trading Amendment (Ticket Scalping and Gift Cards) Bill 2017

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Fair Trading Act 1987* with respect to the supply of tickets to sporting or entertainment events and the expiry dates for gift cards. In particular, the Bill:

- (a) prohibits the resale of certain tickets to sporting or entertainment events for a profit, and
- (b) prohibits the publication of advertisements for the resale of event tickets for a profit, and
- (c) prohibits the use of software to bypass the security measures of a ticketing website in order to purchase tickets for an event, and
- (d) requires certain event organisers to publicly disclose the number of tickets made available for general public sale for certain events, and
- (e) prohibits the sale of gift cards with an expiry date that is earlier than 3 years after the date of sale of the gift card, and
- (f) prohibits the imposition of any charge or fee that reduces the value of the gift card after its sale.

The Bill also makes related amendments to the *Fair Trading Regulation 2012* to create exceptions to the proposed prohibition relating to the sale of gift cards, and to provide for the issue of penalty notices in connection with a contravention of the prohibition.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## **Schedule 1 Amendments relating to ticket scalping**

**Schedule 1 [1]** inserts proposed Part 4A (comprising proposed Divisions 1–4 and sections 58A–58L) into the *Fair Trading Act 1987* (the *principal Act*).

**Proposed Division 1** contains preliminary provisions dealing with interpretation and application of the proposed Part.

**Proposed sections 58A and 58C** define certain words and expressions for the purposes of the proposed Part.

**Proposed section 58B** provides that the proposed Part applies to tickets to sporting and entertainment events held in New South Wales that are subject to a resale restriction. A *resale restriction* is a term or condition of a ticket that limits or prohibits resale of the ticket (including any term or condition that provides for the ticket to be cancelled or rendered invalid if it is resold).

**Proposed Division 2** deals with the prohibition of the sale and supply of tickets for a profit.

**Proposed sections 58D–58F** define certain words and expressions for the purposes of the proposed Division.

**Proposed section 58G** prohibits the sale of a ticket for an amount that exceeds the original supply cost of the ticket (plus transaction costs not exceeding 10% of the original supply cost).

**Proposed section 58H** provides that a person must not (unless authorised by the event organiser or by regulations under the principal Act) supply a ticket to another person under an agreement that makes the supply contingent on the purchase by that other person of any other goods or services.

**Proposed section 58I** requires any person conducting the business or undertaking of an advertising publication to ensure that no advertisements are published in the publication for the resale of tickets for an amount that exceeds 110% of the original supply cost of the ticket. It is a defence to a prosecution for an offence of failing to ensure that no prohibited advertisement is published in an advertising publication if the defendant establishes that certain steps were taken, including making the placement of ticket resale advertisements subject to terms or conditions prohibiting the publication of such advertisements and taking reasonable steps to remove any advertisement that contravenes the prohibition.

**Proposed section 58J** provides that 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.

**Proposed Division 3** (section 58K) prohibits the use of software in order to bypass the security measures of a ticketing website and purchase tickets through the website in contravention of the terms of use of the website.

**Proposed Division 4** (section 58L) provides for public notification by event organisers of the number of tickets for an event that are made available for general public sale.

**Schedule 1 [2]** extends the application of certain remedy provisions of the *Australian Consumer Law (NSW)* to matters involving a contravention of a provision of proposed Part 4A.

**Schedule 1 [3]** inserts into the principal Act a savings provision that excludes from the application of proposed section 58G, 58H, 58I or 58J tickets first sold or otherwise supplied before the commencement of the section.

## **Schedule 2 Amendments relating to gift cards**

**Schedule 2.1** makes amendments to the principal Act that:

- (a) prohibit the sale, to a consumer in New South Wales, of a gift card with an expiry date that is earlier than 3 years after the date of sale of the gift card, and
- (b) prohibit, after the sale of a gift card to a consumer in New South Wales, the imposition of any charge or fee that reduces the value of the gift card, and
- (c) void any term or condition of a gift card that would be in contravention of those prohibitions, and
- (d) deem a gift card with a purported expiry date that is earlier than 3 years after the date of sale of the gift card to have an expiry date that is 3 years after the date of sale, and
- (e) extend the application of certain remedy provisions of the *Australian Consumer Law (NSW)* to matters involving a contravention of any of the proposed provisions, and
- (f) allow the regulations under the principal Act to create exceptions to the proposed provisions.

**Schedule 2.2** makes amendments to the *Fair Trading Regulation 2012* that:

- (a) create exceptions to the gift card expiry date provisions enacted by Schedule 2.1, and
- (b) allow an authorised officer to issue to a person a penalty notice for offences against the prohibitions contained in those provisions.



New South Wales

# Fair Trading Amendment (Ticket Scalping and Gift Cards) Bill 2017

## Contents

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		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendments relating to ticket scalping</b>	<b>3</b>
<b>Schedule 2</b>	<b>Amendments relating to gift cards</b>	<b>8</b>



New South Wales

# Fair Trading Amendment (Ticket Scalping and Gift Cards) Bill 2017

No. , 2017

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## A Bill for

An Act to amend the *Fair Trading Act 1987* with respect to the supply of tickets to sporting or entertainment events and expiry dates for gift cards.

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**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

2

This Act is the *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017*.

3

**2 Commencement**

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This Act commences on a day or days to be appointed by proclamation.

5

<b>Schedule 1</b>	<b>Amendment of Fair Trading Act 1987 No 68</b>	1
	<b>relating to ticket scalping</b>	2
[1] <b>Part 4A</b>		3
	Insert after Part 4:	4
	<b>Part 4A Regulation of event ticket transactions</b>	5
	<b>Division 1 Preliminary</b>	6
<b>58A Definitions</b>		7
	In this Part:	8
	<i>authorised seller</i> , in relation to an event or a ticket for an event, means:	9
	(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	10 11 12
	(b) in any other case—any event organiser for the event.	13
	<i>event organiser</i> —see section 58C.	14
	<i>resale restriction</i> —see section 58B.	15
<b>58B Tickets to which Part applies</b>		16
	(1) This Part applies to tickets to sporting or entertainment events in New South Wales that are subject to a resale restriction.	17 18
	(2) A <i>resale restriction</i> is a term or condition of a ticket that limits the circumstances in which the ticket may be resold or prohibits resale of the ticket.	19 20 21
	(3) A term or condition that limits the circumstances in which a ticket may be resold or prohibits 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.	22 23 24 25
<b>58C Event organisers</b>		26
	(1) The <i>event organiser</i> , 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.	27 28 29
	(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.	30 31 32
	<b>Division 2 Resale of tickets</b>	33
<b>58D Definitions</b>		34
	In this Division:	35
	<i>first purchaser</i> , in relation to a ticket, means the person to whom the ticket is first supplied by an authorised seller.	36 37
	<i>original acquisition cost</i> —see section 58E.	38
	<i>original supply cost</i> —see section 58E.	39
	<i>prohibited advertisement</i> —see section 58F.	40

	<i>sell</i> includes offer or advertise for sale.	1
	<i>supply</i> includes offer to supply and advertise for supply.	2
	<i>ticket resale advertisement</i> means an advertisement for the sale of a ticket by any person other than the authorised seller.	3 4
	<i>transaction cost</i> —see section 58E.	5
<b>58E</b>	<b>Original supply cost and original acquisition cost—meaning</b>	6
(1)	The <i>original supply cost</i> of a ticket is the amount for which the ticket was sold to the first purchaser by an authorised seller.	7 8
(2)	The <i>original acquisition cost</i> of a ticket is the original supply cost of the ticket, plus the transaction cost.	9 10
(3)	The <i>transaction cost</i> is the cost (not exceeding 10% of the original supply 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.	11 12 13 14
(4)	If no amount was paid by the first purchaser of the ticket in consideration for the acquisition of the ticket, the original supply cost and the original acquisition cost are each \$0.	15 16 17
<b>58F</b>	<b>Prohibited advertisement—meaning</b>	18
(1)	A <i>prohibited advertisement</i> is a ticket resale advertisement that does not comply with this section.	19 20
(2)	A ticket resale advertisement must not specify an amount for the sale of the ticket that is more than 110% of the original supply cost of the ticket.	21 22
(3)	A ticket resale advertisement must specify the following particulars:	23
(a)	the original supply cost of the ticket,	24
(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).	25 26 27
<b>58G</b>	<b>Prohibition on ticket resale profit</b>	28
(1)	The first purchaser of a ticket must not sell the ticket to any other person for an amount that exceeds the original acquisition cost of the ticket. Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).	29 30 31 32
(2)	A person (other than the first purchaser) must not sell a ticket to any other person for an amount that the person knows, or ought reasonably to know, exceeds the original acquisition cost of the ticket. Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).	33 34 35 36 37
<b>58H</b>	<b>Supply of tickets not to be made contingent on other purchases</b>	38
(1)	A person (the <i>supplier</i> ) must not supply a ticket to any other person (the <i>recipient</i> ) 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: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).	39 40 41 42 43 44 45

(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.	1 2 3
<b>58I</b>	<b>Ticket resale advertising</b>	4
(1)	The owner of an advertising publication must ensure that no prohibited advertisement is published in the publication. Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).	5 6 7 8
(2)	It is a defence to a prosecution for an offence of failing to ensure that no prohibited advertisement is published in an advertising publication if the defendant establishes that:	9 10 11
(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	12 13 14
(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	15 16 17 18
(c)	the defendant took such other steps as were reasonable in the circumstances to ensure that no prohibited advertisement was published in the publication.	19 20 21
(3)	The regulations may exclude an advertisement or publication of a kind described by the regulations from the application of this section.	22 23
(4)	In this section: <i>advertisement</i> means any advertisement, whether paid or not. <i>advertising publication</i> 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). <i>owner</i> , of an advertising publication, includes any person who conducts the business or undertaking of the advertising publication (but does not include any person of a class prescribed by the regulations).	24 25 26 27 28 29 30 31 32
<b>58J</b>	<b>Certain resale restrictions void</b>	33
	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.	34 35 36
<b>Division 3</b>	<b>Online purchase of tickets</b>	37
<b>58K</b>	<b>Prohibited conduct in relation to use of ticketing websites</b>	38
(1)	A person must not engage in any prohibited conduct in relation to the use of a ticketing website. Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual).	39 40 41 42
(2)	A person <i>engages in prohibited conduct</i> in relation to the use of a ticketing website if the person uses any software to enable or assist the person to circumvent the security measures of the website and to purchase tickets in	43 44 45

contravention of the terms of use of the website that are published on the website. 1  
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- (3) The *security measures* of a website include any measures of a kind prescribed by the regulations. 3  
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#### **Division 4 Public disclosure of ticketing information** 5

##### **58L Minister may require notification of number of tickets available for general public sale** 6 7

(1) The Minister may, by order published on the NSW legislation website, require a specified event organiser (or a specified class of event organisers) 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. 8  
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(2) The notice must be given within the time and in the manner specified in the order. 12  
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(3) The total number of tickets specified in a 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 notice is given). 14  
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(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: 20  
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(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), 23  
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(b) register for access to any pre-sale, publication, competition or other special offer. 26  
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(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. 28  
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(6) The Minister may not make an order under this section unless: 31

(a) the Minister is satisfied that each event organiser for an event to which the proposed order applies has been notified (whether by public notice or otherwise) of the Minister's intent to make the order, and 32  
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(b) the event organiser has been given a reasonable opportunity to make submissions in relation to the proposed order, and 35  
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(c) the Minister has considered any such submission, and 37

(d) the Minister is satisfied that it is in the public interest to make the order. 38

(7) An event organiser must not fail to comply with a requirement made under this section. 39  
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Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units (in the case of an individual). 41  
42

#### **[2] Section 61 Interpretation** 43

Insert “, Part 4A” after “Part 4” in the definition of *local contravention* in section 61 (1). 44

<b>[3] Schedule 5 Savings and transitional provisions</b>	1
Insert at the end of the Schedule, with appropriate Part and clause numbering:	2
<b>Part Provision consequent on enactment of Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017—ticket scalping amendments</b>	3
	4
	5
<b>Application of amendments</b>	6
Section 58G, 58H, 58I or 58J (as inserted by the <i>Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017</i> ) does not apply to a ticket sold or otherwise supplied to a first purchaser by an authorised seller before the commencement of the section.	7
	8
	9
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<b>Schedule 2</b>	<b>Amendments relating to gift cards</b>	1
<b>2.1</b>	<b>Fair Trading Act 1987 No 68</b>	2
<b>[1]</b>	<b>Part 4B</b>	3
	Insert after Part 4A (as inserted by Schedule 1 [1]):	4
	<b>Part 4B Gift cards</b>	5
<b>58M</b>	<b>Interpretation and application</b>	6
(1)	In this Part:	7
	<i>expiry date</i> of a gift card means the date on which the gift card ceases to be redeemable.	8 9
	<i>gift card</i> means a card or voucher (in hard copy or electronic form) that is redeemable for goods or services in New South Wales.	10 11
	<i>redeemable value</i> of a gift card means the value of the goods or services for which the gift card is redeemable.	12 13
(2)	For the purposes of this Part, a gift card is not sold to a consumer in New South Wales if the gift card is sold online or by phone and:	14 15
(a)	the gift card is to be delivered to the consumer at an address that is outside New South Wales, or	16 17
(b)	the contact details of the consumer provided in connection with the sale of the gift card include a residential address that is outside New South Wales.	18 19 20
(3)	This Part does not apply:	21
(a)	to any class of gift cards that may be prescribed by the regulations, or	22
(b)	to any class of persons that may be prescribed by the regulations, or	23
(c)	in any circumstances that may be prescribed by the regulations.	24
<b>58N</b>	<b>Prohibition on gift card expiry dates of less than 3 years</b>	25
(1)	A person must not sell to a consumer in New South Wales a gift card with an expiry date that is earlier than 3 years after the date of sale of the gift card. Maximum penalty: 50 penalty units.	26 27 28
(2)	A person who sells a gift card to a consumer in New South Wales, or who has agreed with the seller to redeem that gift card, must not impose any administrative charge or fee that reduces the redeemable value of the gift card after the sale of the gift card. Maximum penalty: 50 penalty units.	29 30 31 32 33
(3)	A term or condition of a gift card sold to a consumer in New South Wales is void to the extent that it would make the sale of the gift card, or the imposition of a charge or fee, an offence under this section.	34 35 36
(4)	If the expiry date of a gift card is void because of subsection (3), the expiry date is taken to be 3 years after the date of sale of the gift card.	37 38
<b>[2]</b>	<b>Section 61 Interpretation</b>	39
	Insert “, Part 4B” after “Part 4A” in the definition of <i>local contravention</i> in section 61 (1).	40

<b>[3] Schedule 5 Savings and transitional provisions</b>	1
Insert at the end of the Schedule, with appropriate Part and clause numbering:	2
<b>Part Provision consequent on enactment of Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017—gift cards amendments</b>	3
	4
	5
<b>Application of amendments</b>	6
Part 4B of this Act (as inserted by the <i>Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017</i> ) does not apply to a gift card sold before the commencement of that Part.	7
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	9
<b>2.2 Fair Trading Regulation 2012</b>	10
<b>[1] Clause 23A</b>	11
Insert after clause 23:	12
<b>23A Exceptions to gift card expiry date requirements</b>	13
For the purposes of section 58M (3) (a) of the Act, Part 4B of the Act does not apply to the following:	14
	15
(a) a card or voucher supplied in substitution for goods returned to the supplier of the goods,	16
	17
(b) a prepaid card or voucher redeemable for phone credit, internet access or the like,	18
	19
(c) a debit card, credit card, prepaid travel card or any similar product supplied by a financial institution,	20
	21
(d) a card or voucher supplied as part of a customer loyalty program.	22
<b>[2] Schedule 1 Penalty notice offences</b>	23
Insert in appropriate order in the matter relating to <b>Offences under the <i>Fair Trading Act 1987</i> (other than the ACL)</b> :	24
	25
	26
Section 58N (1)	\$550
Section 58N (2)	\$550