

Unfair Trading Practices – Supplementary Consultation

Submission from Live Performance Australia

1. INTRODUCTION

Live Performance Australia (LPA) welcomes the opportunity to provide feedback to the Unfair Trading Practices Supplementary Consultation.

LPA's submission is informed by feedback received from our Members, including ticketing companies, venues (e.g. commercial theatres, metropolitan and regional performing arts centres, stadiums and arenas), commercial producers and promoters, performing arts companies and festivals. We understand some LPA Members are making their own submissions to the consultation process.

2. ABOUT LPA

LPA is the peak body for Australia's live arts and entertainment industry. Established over 100 years ago in 1917 and registered as an employer organisation under the *Fair Work (Registered Organisations) Act 2009*, LPA has around 400 Members nationally.

LPA has a broad membership that covers all performing art forms (including contemporary and classical music, music and arts festivals, musical theatre, theatre, comedy, dance, opera, cabaret, and circus/physical theatre) and organisations of all sizes (spanning small-medium organisations and not-for-profit organisations to large commercial entities).

Our Members include: commercial and independent producers, music and comedy promoters, performing arts companies, venues (performing arts centres, commercial theatres, stadiums and arenas), arts festivals, music festivals, service providers (such as ticketing companies and technical suppliers), independent cinemas and exhibition providers.

3. INDUSTRY CONTEXT

Australia's concert and event ticketing industry is mature, sophisticated and invests in the latest technology to deliver high standards of customer service and support for ticket buyers, event promoters and venues. It is a competitive industry with a range of service providers operating in the market, catering for audiences of a few hundred to many hundreds of thousands.

According to LPA's Ticket Attendance and Revenue Report, there were more than 30 million ticketed attendances to live arts and entertainment events in 2023.¹ This is the highest attendance figure

¹ EY (2024), *Live Performance Industry in Australia, 2023 Ticket Attendance and Revenue Report*, for Live Performance Australia, October 2024. Report available [here](#).

recorded in the 19 years LPA has released these statistics and reflects strong interest from Australian audiences to experience live events of all kinds.

3.1. Primary ticket market

Australia's primary ticket market includes providers of different scale and capabilities, ranging from in-house ticketing capability through to commercial agreements with third-party ticketing providers. Events held at stadiums and arenas are typically ticketed by one of the major ticketing companies selected by the venue operator through a commercial arrangement.

There is a mixed approach in theatres and performing arts centres – some self-ticket while others engage the services of a third-party ticketing provider. Performing arts companies generally self-ticket using their own systems, particularly to manage and service customers that purchase tickets as part of an annual subscription season.

Similarly, arts festival generally self-ticket, whereas music festivals typically choose a ticketing provider for their event.

3.2. Secondary ticket market

The secondary ticket market is where consumers can resell their tickets. Some primary ticketing providers offer resale services on their platforms, providing consumers with a safe and authorised channel to resell tickets for events they can no longer attend. Tickets offered for resale are reissued so the buyer can have full confidence in their validity and admission to the event.

The secondary market also includes unauthorised resellers and the use of platforms such as Viagogo, Facebook Marketplace or Gumtree. It is in this area where consumers are most exposed to risk of fraudulent practices.

Different jurisdictions in Australia have introduced regulations to control ticket resale, including restrictions on resale of tickets above 110 per cent of their face value. However, there is a lack of national uniformity across the states and territories, and social media platforms in particular are prone to fraudulent activity and scams.

3.3. Ticketing Code of Practice

LPA's [Ticketing Code of Practice](#) (Ticketing Code) operates as a best practice guide for the Australian live performance industry. The Ticketing Code sets standards for consumer protection to encourage consumer confidence and is consistent with Australian Consumer Law (ACL).

The first edition of the Ticketing Code came into effect on 1 November 2001. It is reviewed regularly in consultation with LPA Members and the Australian Competition and Consumer Commission (ACCC); the eighth and current edition came into effect on 1 January 2021.

LPA Members are required to comply with the Ticketing Code as a condition of their membership. For non-members, compliance is voluntary. LPA regularly educates and reminds its Members through briefing sessions, conference presentations and electronic communications about the requirements of the Ticketing Code, ACL and other relevant laws.

LPA is actively engaged with our Members in resolving consumer questions or complaints about ticketing which are brought to us.

4. KEY ISSUES

4.1. Dynamic pricing

There is a demonstrable lack of understanding within government about so-called ‘dynamic pricing’ and its application within the live performance industry. Some of the public commentary to date has been misleading and has the potential to confuse consumers and undermine confidence in ticket purchasing.

‘Dynamic pricing’ is a strategy for setting ticket prices to reflect demand. It has been long established practice across the live performance industry, and others, to set prices to reflect likely demand. Factors which influence dynamic pricing can include:

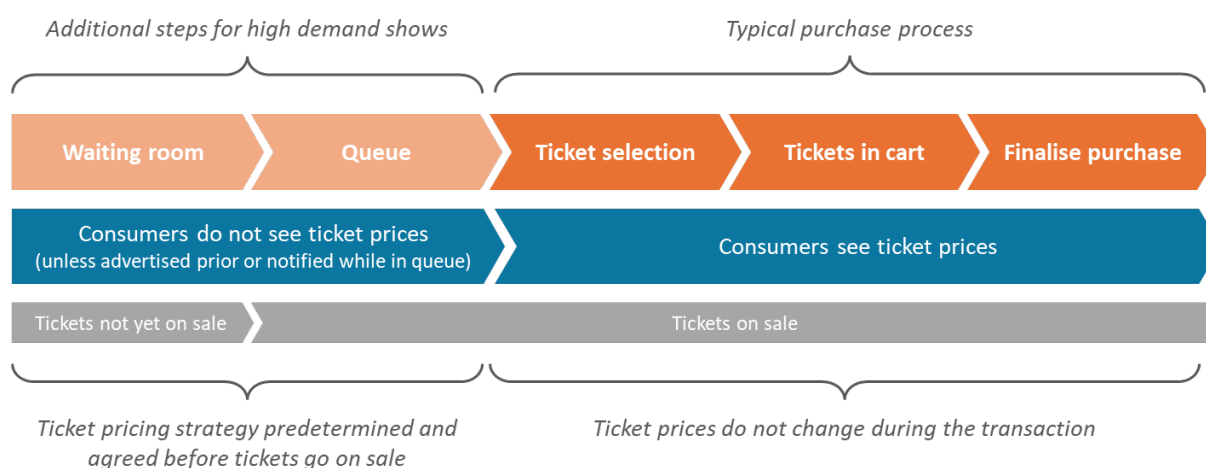
- Day of the week, or time of day of the performance
- Seating location within the venue
- Popularity of the artist/production.

Ticketing companies act as agents and receive instructions from their clients (i.e. the artist, promoter or producer) about ticket prices and strategies. They do not arbitrarily set or adjust prices without the consent of the artist or producer. Pricing points and strategies are set in advance of tickets going on sale.

In circumstances of high demand for tickets, dynamic pricing is an important tool to combat ticket scalping. It ensures that the ticket price is aligned to market demand, and that any uplift driven by demand is retained for the benefit of the artist or producer. The resale of tickets at hugely inflated prices on the secondary market only benefits the reseller. However, if tickets are demand priced upwards in the primary market for high demand events, then there are direct flow on benefits through higher income to artists or producers. If artists and producers were not able to adjust pricing to reflect high demand, then they may decide to price higher due to the lack of flexibility to increase price to meet demand, or alternatively ticket scalpers would be able to game the lower pricing by purchasing tickets at the original price and reselling them at a higher price point in response to the high demand.

Prices do not change during the transaction. Prices do not change when consumers are selecting their tickets or after adding tickets to cart. When a consumer is making their ticket selection, the price displayed is the price they will pay when the tickets are added to their check-out basket. **The ticket price in the cart is how much a consumer pays.** See Figure 1 for more information.

Figure 1: Typical online ticketing experience for consumers



Most of the public discourse around dynamic pricing assumes ticket prices only go up. For high demand events, the price point at which consumers wish to buy tickets may no longer be available when they are out of the queue and are able to select tickets. Understandably, this may be disappointing for consumers who do not wish to pay above a certain amount for tickets. Unfortunately, for high demand shows there is only a finite number of tickets and demand often exceeds supply.

On any given day, there are thousands of events on sale, and the reality is there is not strong demand for many of these events. To stimulate demand, producers and promoters make a decision to adjust the ticket price. Consumers benefit by paying less for a ticket. For producers and promoters, any extra tickets sold at the discounted price benefits the overall financial position for that event and improves the event experience by increasing the number of paid attendees at the venue.

If promoters or producers request changes to ticket prices, it is done so within the parameters of the agreed strategy. For example:

- Once capacity targets have been reached (e.g. 60% of tickets for a performance have sold)
- Limitations on price movements (e.g. ticket prices increase or decrease by no more than \$5)
- Allocating a proportion of tickets for dynamic pricing (e.g. 10% of total inventory)
- Recategorisation of seating reserves (e.g. recategorising seats originally offered as B-Reserve to C-Reserve).

Unlike in other industries, a conscious decision is made to change prices and that change typically occurs manually, not algorithmically. Analytical tools offered by ticketing providers may be used to provide recommendations on optimal pricing levels.

The consultation paper draws a distinction between dynamic pricing and surge pricing, even though conceptually the two are fundamentally the same – that is, prices are driven by demand. The two terms are often used interchangeably. However, LPA's understanding is that in industries where surge pricing is the more common nomenclature, prices fluctuate algorithmically in real time and take into account a broader range of factors including external market factors. For example, ride sharing, hotel and airfare pricing is often influenced by major events in a particular destination as opposed to any particular service or enhancement that is being provided by the vendor to the consumer.

LPA strongly urges the government to discontinue the use of the term 'dynamic pricing' and clearly define the unfair practice so that it does not capture legitimate pricing strategies commonly employed in the live performance industry. Any such action needs to be based on evidence of the problem.

Continued misuse of the term 'dynamic pricing' risks causing unnecessary confusion within the live performance industry, as well as misdirecting policy attention away from genuinely unfair practices.

As explained above, ticket prices do not change during the transaction. However, if this practice occurs in other contexts or industries, LPA would be concerned by this misleading and deceptive practice.

4.2. Drip pricing and hidden fees

The ACL requires businesses to represent the price of goods and services as the minimum quantifiable single price. This requirement is reinforced in LPA's Ticketing Code²:

² LPA Ticketing Code of Practice – Industry Code, p13

The Australian Consumer Law also requires all price representations to reflect the total price payable as a single figure, inclusive of any mandatory charges which the Consumer must pay to acquire the Ticket, including booking or transaction fees, credit card charges and GST.

Where there are optional charges, or compulsory charges that cannot be calculated at the time the price representation is made (for example, a delivery charge that varies depending on the means of delivery selected), the existence and amount of these charges must also be clearly indicated, disclosed or displayed up front with any price representation. The amount of that charge must then be incorporated into the total minimum price representation as soon as it is calculable.

It is common practice for a 'transaction fee' to be charged to consumers when buying event tickets. As this fee applies per transaction (i.e. the amount is the same if a consumer buys 2 tickets or 10 tickets), it cannot be represented in the single price. Transaction fees support ticketing companies and venues' customer service functions, plus investment in technology and associated security measures, and general operational expenses.

There have been misleading public statements from the government about so-called 'hidden fees' with respect to event ticketing; transaction fees are disclosed upfront by the major ticketing companies and venues on event webpages.

Optional extras are not hidden fees. During a transaction, consumers may be presented with the option to purchase additional goods or services (such as pre-purchased food and beverages, merchandise, postal delivery). Generally, consumers select whether they wish for these optional extras to be included in their purchase.

Given the ACL's established requirement for single price representations and prohibition on engaging in misleading and deceptive conduct, **LPA does not believe there is a need to separately prohibit drip pricing, as it is already prohibited where it is misleading or deceptive. More education and best practice guidelines may be required to ensure compliance with the existing provisions across the economy.**

If the government banned the ability for companies to charge 'per transaction' fees, LPA Members indicated this would have a significant financial impact, particularly in terms of providing customer service or reduced activity. For some LPA Members, the loss of revenue from transaction fees to cover the cost of ticketing services would need to be recouped in other ways, and ultimately this would result in higher ticket prices for consumers.

However, for LPA's not-for-profit Members, the banning of transaction fees would fundamentally change their business model. The loss of revenue from transaction fees would mean there is less revenue to cover operating costs. This may result in job losses and reduced activity in terms of the number and size of productions staged.

4.3. Distortive and manipulative practices including dark patterns

LPA has serious concerns about the banning of practices that are employed for legitimate business reasons and which may be considered distortive, manipulative or 'dark patterns'.

Countdown timers

The use of countdown timers is common when purchasing tickets online. Most LPA Members set 10 – 30 minutes for consumers to complete a transaction, with some timers resetting to the maximum time when additional items are added to cart. Their data show that consumers comfortably complete transactions within this timeframe.

Typically, when tickets are added to cart, they are no longer available for purchase by others. Despite adding tickets to cart, some consumers may not wish to proceed with completing the transaction. In addition, often tickets are added to cart by bots with the express intent of holding inventory and thus denying genuine customers from buying tickets. Countdown timers mitigate the risk of tickets remaining in a cart indefinitely. These tickets are released from the cart, so that:

- other consumers can purchase those tickets
- event promoters/presenters have an accurate understanding of sold and unsold inventory for an event.

Countdown timers are not used to place pressure on consumers to buy tickets, but rather they are an essential tool for managing inventory. Countdown timers are also important from a data security perspective, so that customers' personal information is not exposed to threats from bad actors.

It is also worthwhile noting that some LPA Members do not display countdown timers to consumers, however they are working in the background for the same reasons set out above.

Scarcity information

Many LPA Members provide information about the level of inventory remaining for a particular performance. This may include statements such as 'limited availability', 'not many left', 'allocation exhausted' or the use of a traffic light system to denote which performances have good or limited availability.

This information is provided in a static (not flashing) manner. As with countdown timers, this information is not provided to place pressure on consumers. It is provided so that consumers can efficiently make decisions about their ticket purchase.

LPA believes the prohibition of scarcity information in an event ticketing context would cause consumer detriment, due to inefficient and unproductive use of time in searching for tickets that may no longer be available. Scarcity information assists consumers in making better informed choices about the availability of tickets, including for those times when there may be less demand and better choice of different pricing options. We note where a company provides scarcity information that is misleading (e.g., to create a false sense of demand or urgency for the consumer), that could be addressed under the current ACL prohibition on misleading and deceptive conduct.

4.4. Online account requirements

When buying event tickets online, setting up an online account is usually a requirement. An account allows customers to save time from having to re-input information in future transactions. It also supports additional services such as self-ticket exchange, ticket distribution and gift vouchers. Many LPA Members also provide a guest check out option.

Regardless of whether a consumer purchases a ticket via an account or as a guest, the ticketing company or venue requires personal information (such as name, address, email address and mobile phone number). This information is required for legitimate business reasons – for example, to inform customers of important information such as event cancellation, pre-event reminders, prohibited items, road works near the venue, etc.

Address information is useful for supporting chargeback claims that a company may receive. Some Members noted the difficulties in dealing with credit card fraud and ticket scalping when customers have completed their ticket purchase as a guest.

Performing arts companies that are the recipient of recurrent government funding may ask for certain information from customers to meet their government reporting requirements. For example, companies may have key performance indicators related to audience engagement and diversity.

As part of the check out process, customers generally have the option to opt in to receiving marketing material. Companies are also bound by both the *Privacy Act* and *SPAM Act*. LPA considers the provisions in existing legislation adequate for dealing with personal information and marketing material. However, greater education may be required to inform businesses of their obligations under the *Privacy Act* and *SPAM Act*.

If companies were mandated to provide a guest check out option, they would incur costs to implement this functionality as part of their website. Some Members indicated this could take 12-18 months to implement, while others indicated the timeframe would be much shorter as the ticketing system used supports this functionality.

4.5. Barriers to accessing customer support

The live performance industry strives to provide quality customer service. In dealing with customer complaints, LPA's Ticketing Code states³:

Members should:

(a) have an Australian phone number and email address (or email contact form) to which queries and complaints can be lodged. The phone number and email address (or email contact form) should be easy to find (e.g. on the Member's website home page).

LPA Members provide various avenues for customers to contact them if they have a query or concern. These avenues include in person at the box office and via phone, email or an online contact form. These contact details can be found on the promoter, venue or ticketing company's website.

Most LPA Members set internal standards to respond to customer queries within a certain timeframe (e.g. within 24 or 48 hours), and some queries are triaged to ensure urgent queries are addressed promptly. However, it must be recognised that sometimes it can be challenging for venues or ticketing companies to respond to all queries in a timely manner, particularly when there is a large volume of queries.

LPA believes it should be for the business to decide the way(s) in which to offer customer support. It should be noted that some LPA Members have made a conscious business decision to only offer online customer support to protect their staff from abuse from customers. Under work, health and safety laws, employers have an obligation to provide a safe workplace, and a risk assessment has determined that moving customer support functions online as the best way to meet this obligation.

LPA would be extremely concerned if the government prescribed the way in which business were to provide customer support. This would increase the costs of doing business. It would also unfairly affect Australian businesses with increased regulatory and administrative burdens, while overseas businesses may deliberately flout Australian laws. It should be up to individual businesses to determine how they best meet their obligations to consumers in accordance with the requirements of the ACL.

³ LPA Ticketing Code – Industry Code, p5

4.6. Subscription-related practices

Many performing arts companies offer subscription packages, whereby consumers can select the number of productions they would like to attend as part of the company's annual season. Buying a package often affords the consumer a range of benefits – for example, free exchanges, discounts relative to the single ticket price and no transaction fees. Consumers pay for the package upfront or by instalment and there is no ongoing commitment beyond the package purchased for that year.

LPA understands that the government's focus on subscriptions-related practices is not intended to capture subscriptions offered in the performing arts. **Any government measures must explicitly exclude subscriptions offered in the performing arts.** Government must also ensure that a prohibition on the unfair subscription practices is clearly defined so that it does not unintentionally capture practices by industries that use the term 'subscription', but where the context is not the focus of government intervention.

5. Conclusion

LPA recognises the need for a robust framework to protect consumers from harm. However, LPA is concerned by the lack of evidence to demonstrate unfair trading practices with respect to price changes during a transaction, as well as singling out the event ticketing industry for practices that do not occur.

In summary, LPA recommends that:

- Government discontinue the use of the term 'dynamic pricing' and clearly define the unfair practice so that it does not capture legitimate pricing strategies commonly employed in the live performance industry;
- Government policy interventions on unfair trading practices (e.g. dark patterns) should exclude practices that are employed for legitimate business reasons;
- Government increase education, awareness and enforcement of existing consumer protection laws;
- Individual businesses should determine how they best meet their obligations to consumers in accordance with the requirements of the ACL; and
- The proposed bans on subscription-related practices should explicitly exclude subscriptions offered in the performing arts.

Key contact

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