

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

Competition and Consumer Act 2010

Competition and Consumer (Australian Consumer Law—Electronic Ticket Resale Service) Information Standard 2022

Section 134 of the Australian Consumer Law, which is contained in Schedule 2 to the *Competition and Consumer Act 2010* (the Act), provides that the Commonwealth Minister may, by written notice published on the internet, make an information standard for goods or services of a particular kind.

The purpose of the *Competition and Consumer (Australian Consumer Law—Electronic Ticket Resale Service) Information Standard 2022* (the Information Standard) is to set out information disclosure requirements for electronic ticket resale services.

The market for event tickets in Australia consists of a primary market, where tickets are sold by primary ticket providers authorised to provide the first supply of tickets (such as a ticketing company or event venue), and a secondary market, where tickets are resold after being first purchased through a primary ticket provider. The secondary market in tickets is often referred to as ticket resale. Ticket resale provides consumers with an opportunity to recover the full or partial cost of tickets that they can no longer use and allows other consumers to access tickets to sold out events they may not have otherwise been able to attend.

The secondary market for event tickets is substantially facilitated through electronic platforms such as websites and mobile phone applications (mobile app).

Some consumers using electronic ticket resale services may be unaware that they are buying a ticket in the secondary market, and may not have timely or easy access to information about the price they could have paid, had they purchased the ticket through a primary ticket provider. A consumer may use an electronic ticket resale service after clicking on a listing in their search results after searching for tickets to an event. Without adequate disclosure from the electronic ticket resale service, this process can result in consumers having the perception that a ticket resale website or mobile app is the primary ticket provider. This perception can lead to some consumers purchasing tickets from a reseller at a higher price than they would have otherwise paid had they purchased similar tickets through the primary ticket provider.

On 31 August 2017, Commonwealth, State and Territory Consumer Affairs Ministers, through the former Legislative and Governance Forum on Consumer Affairs (CAF), noted that the Commonwealth Department of the Treasury would undertake a regulatory impact assessment on options to address issues in the secondary market for event tickets.

Public consultation on a Consultation Regulation Impact Statement took place in November and December 2017. During the consultation process, 16 submissions were received from stakeholders, and 377 consumer comments were recorded via the Treasury website.

On 26 October 2018, Commonwealth, State and Territory Consumer Affairs Ministers, through the former CAF, agreed to require ticket resale services to disclose the face value of tickets and to disclose the fact that they are not an original ticket seller. This was agreed to ensure consumers are aware they are buying from a reseller, informed of any differences between the face value of a particular ticket and the resale price, and able to make an informed decision about whether to buy tickets from an electronic ticket resale service.

A Decision Regulation Impact Statement was published in November 2018 and assessed as compliant with Council of Australian Governments Regulation Impact Statement requirements by the Office of Best Practice Regulation.¹ Consultation on an exposure draft of the Information Standard occurred from 24 December 2019 to 14 February 2020. Eleven submissions were received from stakeholders including industry organisations, consumer groups and individuals.

The Information Standard requires a person who is providing an electronic ticket resale service to continuously display information on their electronic platforms in order to inform consumers that they are a ticket resale service and not the primary ticket provider. The Information Standard also requires the disclosure of information about the price of a ticket in the primary market.

Details of the Information Standard are set out in [Attachment A](#).

The Information Standard is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Australian Consumer Law, contained in Schedule 2 to the Act, is made pursuant to the Intergovernmental Agreement for the Australian Consumer Law. The Australian Consumer Law therefore facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and all States and Territories, while authorising the Information Standard to be made for the purposes of the scheme. Accordingly, the Information Standard is not subject to disallowance by virtue of subsection 44(1) of the *Legislation Act 2003*, or sunseting by virtue of subsection 54(1) of that Act.

The Information Standard commences the day after the end of the period of six months, beginning on the day the instrument is registered on the Federal Register of Legislation.

¹ The Decision Regulation Impact Statement *Ticket Reselling in Australia* is available here: <https://obpr.pmc.gov.au/published-impact-analyses-and-reports/ticket-reselling-0>.

Details of the *Competition and Consumer (Australian Consumer Law—Electronic Ticket Resale Service) Information Standard 2022*

Part 1 – Preliminary

Section 1 – Name of the Information Standard

This section provides that the name of the instrument is the *Competition and Consumer (Australian Consumer Law—Electronic Ticket Resale Service) Information Standard 2022* (the Information Standard).

Section 2 – Commencement

This section provides that the Information Standard will commence on the day after the end of the period of six months beginning on the day the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Information Standard is made under the *Competition and Consumer Act 2010* (the Act).

Section 4 – Definitions

This section contains definitions of key terms used in the Information Standard. Notably the term *market* takes the meaning given at section 4E of the Act, whilst the terms *service* and *supply* take the meanings that are given at section 2 of Schedule 2 to the Act.

The term *event* should be interpreted broadly and should not be limited to the list provided at the definition.

Section 5 – Inconsistency with State and Territory Laws

This section provides the Information Standard does not operate to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with the provisions of Part 2, which contains the electronic ticket resale service display requirements.

Part 2 – Electronic ticket resale service display requirements

Section 6 – Display requirements

Subsection 6(1) sets out two conditions that together define the kind of service to which the Information Standard applies. If a service meets both the conditions, the person providing that service must ensure they comply with the obligations set out in subsection 6(2).

Subsection 6(1) – Defining the kind of service

Condition 1 – paragraph 6(1)(a)

This condition captures services that provide information to a person (the **consumer**) in relation to the supply, in a secondary market, of a ticket for admission to an event hosted or located in Australia.

Condition 2 – paragraph 6(1)(b)

This condition qualifies the first condition by describing the method by which the information in the first condition must be supplied. Firstly, the information must be supplied by an electronic platform, such as a website or mobile app. For example, information supplied by a newspaper or in-person would not meet this condition. Secondly, the electronic platform must function for the sole or dominant purpose of facilitating a market in tickets for admission to events.

Example 1 – kind of service

Company A runs a mobile app which offers a service where people can list information on an electronic notice board, advertising goods or services for sale. The goods and services can be sold at a fixed price or by way of auction. The mobile app offers the service in relation to hundreds of different categories of goods and services such as cars, garden supplies, jewellery, real estate, tickets, and books. It is difficult to discern which category contains the most listings.

The listing service provided on this mobile app would not meet the condition at paragraph 6(1)(b) because the dominant purpose of the mobile app is facilitating the listing of many categories of goods and services, not facilitating a market in tickets for admission to events.

Example 2 – kind of service

Company B runs a website which offers a number of ticketing services to consumers. People can use the website to list information about tickets for admission to Australian or international events that they wish to sell, having first purchased those tickets from a primary ticket provider. People can also use the website to view information about the tickets that are listed for sale on the website.

The website also offers some other services such as facilitating the exchange of tickets between people who have listed a ticket for sale and people who wish to buy a listed ticket. The website also offers an underwriting service that guarantees to buyers and sellers of tickets that they will get the money or tickets owed to them in transactions facilitated through the website.

As Company B's website is an electronic platform that has the dominant purpose of facilitating a market in tickets, it meets the condition at paragraph 6(1)(b) in relation to the means by which the information mentioned in paragraph 6(1)(a) is supplied.

Example 3 – kind of service

Company C runs a mobile app that facilitates a market in tickets for admission to sporting events in Australia. Company C are authorised to provide the first supply of tickets to sporting events; the dominant purpose of their mobile app is to supply tickets in the primary market. However, Company C also uses its mobile app to facilitate the resale of its tickets in the secondary market. A person can use the mobile app to list a ticket that they originally purchased from Company C and sell it to a new buyer. Company C does not buy back the tickets. Company C's mobile app merely provides a third-party platform to facilitate the resale of its tickets between a buyer and a seller.

The service provided on Company C's mobile app would meet the conditions in subsection 6(1). Although the dominant purpose of Company C's mobile app is to supply tickets in the primary market, paragraph 6(1)(b) applies to an electronic platform whose dominant purpose is to facilitate a market in tickets; this includes the primary market in tickets and the secondary market in tickets. As the mobile app provides information in relation to the supply of tickets in the secondary market, and the dominant purpose of the website is to facilitate the primary market in tickets, the website must display the information set out in subsection 6(2) on the relevant parts of the mobile app that facilitate the resale of tickets in the secondary market.

Subsection 6(2) – Display requirements

Subsection 6(2) of the Information Standard sets out the obligations that must be complied with by a person providing a service that meets the conditions in subsection 6(1).

A person must display the statement at paragraph 6(2)(a) on their electronic platform so that it can be easily seen and read by any person. This is intended to clearly indicate to a consumer viewing the electronic platform that they are using a ticket resale service, and that they are not buying a ticket from a primary ticket provider.

Paragraph 6(2)(b) requires information about the total price of a ticket in the primary market to be supplied to consumers. The intention of this paragraph is to ensure that consumers have adequate information about how much a ticket to an event would have cost from the primary ticket provider.

The price of a ticket in the primary market is required to be displayed continuously. This means that whenever a purchase price for the resale of a ticket is displayed, the total price that a person would reasonably be expected to have paid in the primary market must also be displayed.

The total price should be worked out by reference to the actual price that a person would reasonably be expected to pay to purchase that ticket from the person authorised to provide the first supply of tickets for that same event.

This could be determined by reference to the price stated on the ticket, also known as the face value of the ticket. If no price is displayed on the face of the ticket, the total price could be determined by:

- the amount for which the ticket was originally sold by the primary ticket provider; or
- the amount specified for the ticket in an advertisement or website.

If the original price of the ticket is not available, a person may be required to compare the characteristics of the ticket to similar tickets sold by a primary ticket provider. These characteristics would include, but are not limited to:

- the event to which the ticket grants admission;
- the time, date, and location of that event;
- the seat number or viewing position at the event to which the ticket relates; or
- if there are multiple releases of tickets to an event, then the relevant release. For example, a ticket purchased in an ‘early bird’ period may be cheaper than tickets purchased at a later date after the ‘early bird’ period has ended.

The total price does not need to include the cost of sending the ticket from the primary ticket provider to a consumer. The example to subsection 6(2) illustrates this. If a ticket to an Australian event is sold by a primary ticket provider for \$108 including \$8 postage, the total price a person would reasonably be expected to pay to purchase the ticket from a person who is authorised to provide the first supply of tickets, excluding postage, is \$100.

A person that supplies a service to which the Information Standard applies by virtue of subsection 6(1), that does not comply with the display requirements in subsection 6(2), may commit a strict liability offence pursuant to section 204 of Schedule 2 of the Act or be liable to a civil penalty pursuant to section 137 of Schedule 2 of the Act.

Example 1 – display requirements

Company D runs a website which primarily allows consumers to list information about tickets for admission to events in Australia that they wish to sell, having first purchased those tickets from a primary ticket provider. People can also use the website to view information about the tickets that are for sale. The service provided on Company D’s website meets the conditions in subsection 6(1). Company D is responsible for complying with display requirements in subsection 6(2) rather than a consumer listing a ticket for sale.

Company D intend to list a ticket for sale on behalf of a seller and are looking to verify the total price a person could reasonably be expected to pay for that ticket in the primary market. The ticket is a season ticket to the ballet in Melbourne. Company D determines that the event organiser originally charged \$700 for the ticket, which covered admission to 6 performances. However, only one performance remains in the season. The price of a ticket to the final performance, in a similar seat, is

advertised by the event organiser for \$200. Company D determine that \$200 is the total price a person would reasonably be expected to pay to purchase a season ticket with one event remaining from the event organiser.

Company D could comply with the requirement in paragraph 6(2)(b) by prominently displaying \$200 as the total price of the ticket alongside the listed resale price on its website.

Example 2 – display requirements

Sam purchased a ticket to an event in Townsville from the website of a primary ticket provider, named Great Time (a fictitious company). Sam paid \$200 for the ticket, including \$10 in postage. When Sam received the ticket, the price of \$200 was printed on its face; \$200 is the face value of the ticket.

After receiving the ticket, Sam realised she would not be able to attend the event. Sam decides she would like to sell her ticket for \$150. In addition to Great Time’s website being the primary ticket provider, their website also facilitates the resale of tickets, by allowing a consumer that has purchased a ticket from Great Time, to list that ticket for resale to a new buyer.

To list a ticket, Great Time requires a person to provide an estimate of the total price that the consumer would reasonably be expected to pay to purchase the ticket from the primary ticket provider. Sam considers that the total price is \$200 (the face value of the ticket). The \$10 cost of postage is not included in the total price.

Great Time reviews the total price Sam provided and confirms that it aligns with the price to purchase the ticket from them as the primary ticket provider. Great Time then lists Sam’s ticket on their website and clearly display the total price of the ticket as \$200, alongside Sam’s chosen resale price of \$150. Great Time’s website also prominently states that “This is a ticket resale service. You are not buying from a primary ticket provider.”. Great Time has therefore met the requirements under subsection 6(2). Sam sells her ticket for \$150 and posts it to the new buyer.