

**LIVE PERFORMANCE AUSTRALIA**

**TICKETING CODE OF PRACTICE**

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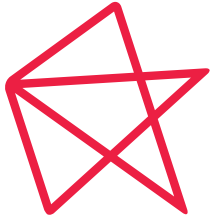
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## **PART A: INTRODUCTION**

### **1. RELATIONSHIP TO THE CONSUMER CODE**

The Live Performance Australia Ticketing Code of Practice (**Code**) operates as a best practice guide for the Australian live performance industry. It applies to the purchase and use of Tickets and related matters.

The Code consists of two companion documents:

- (a) this **Industry Code**, which provides guidelines for industry participants including regarding Complaint handling procedures, ticket proceeds handling protocols, advertising, ticket pricing, ticket resale and other industry practices; and
- (b) the **Consumer Code**, which provides information for Consumers regarding their rights, as well as the process by which the Code is monitored and reviewed.

This Industry Code also sets out practical guidance for meeting the obligations and procedures set out in the Consumer Code.

The Consumer Code may be accessed at the *LPA website*.

Any questions regarding the Code may be directed to LPA.

### **2. CONSUMER LAWS**

The Code should be read in conjunction with the Consumer Laws.

Nothing in this Code excludes or restricts any rights or remedies a Consumer may have under the Consumer Laws.

### **3. DISPLAY AND PROVISION OF THE CONSUMER CODE**

Members must, as far as practicable, make Consumers aware of the existence and application of the Consumer Code.

Members must:

- (a) make a copy of the Consumer Code available on the Member's public website;
- (b) refer to the Consumer Code in the context of Complaint handling procedures.

Members must also engage in appropriate activities, as requested by LPA from time to time, to promote awareness among Members and the general public of the Consumer Code and its operation.



#### **4. STAFF TRAINING**

Members must take reasonable steps to ensure that their employees, agents and contractors are aware of and comply with the Code.

Members must take reasonable steps to ensure that their employees, agents and contractors are aware of the procedures for handling Complaints and resolving disputes set out in the *LPA Complaints Handling and Dispute Resolution Policy*, and are able to explain those procedures to contractors, service providers and the general public.

#### **5. MONITORING AND REVIEW**

The Monitoring and Review process for the Consumer and Industry Codes is set out in section 9 of the Consumer Code. Key aspects are summarised below.

##### **CODE REVIEWER**

LPA appoints a Code Reviewer for a minimum period of three years.

The Code Reviewer must be independent from LPA and Members and have the necessary specialist expertise, including in competition and consumer law, to perform the following functions:

- (a)** to conduct the review and report on compliance with the Code referred to below;
- (b)** as part of the functions under paragraph (a), to deal with Complaints from Members or members of the public, when appropriate, as set out in section 7; and
- (c)** to conduct the review and report on improvements to the Code referred to below.

##### **REVIEW AND REPORT ON COMPLIANCE**

Every two years, in consultation with LPA and Members, as appropriate, the Code Reviewer undertakes a review and prepares a report on the level of Members' compliance with the Code. Members are required to complete a survey regarding compliance which forms the basis of the Code Reviewer's report.

##### **REVIEW AND REPORT ON IMPROVEMENTS**

Every three years, in consultation with LPA and Members, as appropriate, the Code Reviewer undertakes a review of the operation of the Code and prepares a report on any recommended improvements or changes to the Code.

For the purposes of the triennial review, the Code Reviewer:

- (a)** invites written submissions on the operation of the Code and on any amendments that are considered necessary or desirable to improve the operation of the Code; and
- (b)** undertakes such other consultations as the Code Reviewer considers appropriate.

The Code Reviewer allows a period of at least one month for the making of submissions.



## **PART B: COMPLAINTS HANDLING AND DISPUTE RESOLUTION**

### **6. COMPLAINTS RESOLUTION PROCEDURES**

Each Member must develop and publicise procedures for:

- (a)** dealing with Complaints from Consumers; and
- (b)** resolving disputes between the Member and Consumers.

The procedures must apply to any Complaint about a matter covered by the Consumer Code which adequately identifies the nature of the Complaint and the identity of the person complaining.

The procedures must comply with the requirements of *Australian Standard AS ISO 10002:2018 Customer Satisfaction – Guidelines for Complaints Handling in Organizations*.

#### **PRINCIPLES**

In developing their Complaints handling and dispute resolution procedures, Members must have regard to the following principles.

The procedures should:

- (a)** accord with the standards set out in the Code;
- (b)** define the categories of Complaints and disputes they cover and explain the way in which each will be dealt with;
- (c)** recognise the need to be fair to both the Complainant and the Member to whom the Complaint relates;
- (d)** specify by position who, in the first instance, will handle Complaints on behalf of the Member; and
- (e)** indicate time frames for the handling of Complaints and disputes.

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);
- (b)** make information regarding how to make a Complaint readily accessible to Consumers;
- (c)** provide reasonable assistance to Complainants in the formulation and lodgement of Complaints;
- (d)** deal with all Complainants in a polite and courteous manner;
- (e)** deal with Complaints fairly and reasonably having regard to all the circumstances;
- (f)** deal with Complaints as soon as practicable, making every effort to reach a prompt settlement;
- (g)** provide a written response to a Complainant, when the Complaint was made in writing;
- (h)** ensure that adequate resources are made available for the purpose of responding to Complaints and resolving disputes; and
- (i)** maintain a register of the number and type of Complaints received, how they were resolved and the time taken to resolve them, and report this information to the Code Reviewer on request.



## 7. ESCALATION OF COMPLAINTS

### LPA COMPLAINTS OFFICER

#### MEMBERS

In the event that the Complaint cannot be settled between the Member and the Complainant, the Member may report the Complaint to the LPA Complaints Officer at [complaints@liveperformance.com.au](mailto:complaints@liveperformance.com.au).

If the Complaint is reported to the LPA Complaints Officer and is subsequently resolved or withdrawn, the Member must inform the LPA Complaints Officer as soon as is reasonably practicable.

#### COMPLAINANTS

If a Complainant is unsuccessful in resolving a Complaint through the Member's Complaints handling procedures or if the Complainant believes the Member has breached the Code, then the Complainant may refer the Complaint to the LPA Complaints Officer, who will deal with the Complaint in accordance with the Code and the *LPA Complaints Handling and Dispute Resolution Policy*.

The Complaint and the Member's response will be promptly considered by the LPA Complaints Officer who will contact the Complainant and the Member and attempt to resolve the matter.

The vast majority of Complaints should be resolved by this stage. However, if the Complaint:

- (a) cannot be resolved by the LPA Complaints Officer; or
- (b) the LPA Complaints Officer makes a decision in respect of the Complaint and either the Member or the Complainant notifies the LPA Complaints Officer that it is not satisfied with that decision, then the LPA Complaints Officer will promptly refer the matter to the Code Reviewer and provide the Code Reviewer with all written material relating to the Complaint which is held by the LPA Complaints Officer.

### CODE REVIEWER

If a matter is referred to the Code Reviewer, the Code Reviewer will:

- (a) if considered necessary, request from the Complainant any further information and documentation (in addition to that provided by the LPA Complaints Officer) as to the specific breaches alleged to assist in determining the nature of the Complaint;
- (b) request the LPA Complaints Officer to provide the relevant Member with full details of the Complaint and allow the Member a reasonable period to provide a response and any further information and documentation (in addition to that provided by the LPA Complaints Officer) as to the specific breaches alleged to assist in determining the nature of the Complaint;
- (c) to the extent that the Member's response makes allegations against the Complainant, request the LPA Complaints Officer to provide full details of that response to the Complainant and allow the Complainant reasonable time within which to reply;
- (d) either alone or, if deemed necessary by the Code Reviewer, with up to 2 additional persons appointed by the Code Reviewer (**Independent Reviewer**) conduct an independent determination of the Complaint; and
- (e) provide all the information and materials referred to above to any additional persons appointed as the Independent Reviewer.



The person/s comprising the Independent Reviewer must:

- (a)** be independent of the Member and the Complainant;
- (b)** not have any commercial interest in the outcome of the Complaint;
- (c)** if additional persons are appointed by the Code Reviewer, be recruited from outside the live performance industry;
- (d)** be suitably qualified to hear and resolve complaints; and
- (e)** have an understanding of Competition and Consumer Law.

### **INDEPENDENT REVIEWER**

On completion of the above, the Independent Reviewer must:

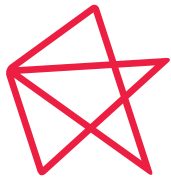
- (a)** allow the Complainant and/or the Member to make oral representations to the Independent Reviewer if:
  - (i)** the Independent Reviewer considers it necessary or desirable for oral representations to be made; or
  - (ii)** the Complainant or the Member asks to make oral representations.
- (b)** consider the views of both the Complainant and the Member;
- (c)** form a view on the merits of the Complaint, specifically:
  - (i)** whether the Complaint is wholly or partly justified;
  - (ii)** whether the Complaint is wholly or partly unjustified; or
  - (iii)** whether some other view is appropriate and if so, what view and for what reason;
- (d)** inform the Complainant and the Member of that view, making such recommendations as may be appropriate in the circumstances; and
- (e)** where applicable, formulate a recommendation for the Executive Council on disciplinary measures in accordance with section 8.

### **RECORDS**

LPA will maintain a register of Complaints referred to the LPA Complaints Officer which will include details of:

- (a)** the Member involved;
- (b)** the Complainant;
- (c)** the nature of the Complaint;
- (d)** how the Complaint was resolved;
- (e)** the time taken to resolve the Complaint; and
- (f)** any disciplinary measures imposed by the Executive Council under section 8.

If the Code Reviewer considers it appropriate, the Code Reviewer may include details of the Complaints referred to the LPA Complaints Officer in the compliance report prepared by the Code Reviewer in accordance with section 9 of the Consumer Code.



## **8. DISCIPLINARY MEASURES**

If the Executive Council or the Independent Reviewer determines that a Member has breached the Code, the Executive Council may impose one or more of the following disciplinary measures:

- (a)** a written warning stating that if the Member commits any further breach of the Code the Executive Council will order that the Member's name be removed from the Register of Members in accordance with the AEIA Rules;
- (b)** an order directing the Member to correct an aspect of business practice within a set period of time. After such time, if no corrective action has been taken, the Executive Council may order that the Member's name be removed from the Register of Members in accordance with the AEIA Rules;
- (c)** an order that the Member's name be removed from the Register of Members in accordance with the AEIA Rules; or
- (d)** any other penalty determined by the Executive Council, provided that it is consistent with the AEIA Rules.

LPA must notify the Member and the Complainant (if applicable) in writing of the Executive Council's decision in respect of each breach and the reasons for that decision.

## **9. APPEALS**

The Member may appeal to the Executive Council within 21 days of receipt of the Executive Council's notice of decision under section 8.

If the Member appeals within the 21 day period, the decision under appeal does not take effect until the appeal is determined.

The appeal must be considered by a General Meeting in accordance with the AEIA Rules.

In considering an appeal, the General Meeting will consider all information submitted to the Executive Council in connection with the breach of the Code and may seek further information or clarification on any relevant issue, setting out the timetable for such information to be provided and when the final determination of the appeal will take place.

LPA must notify the Member in writing of the General Meeting's decision in respect of each breach and the reasons for that decision.

Subject to section 10, the decision of the General Meeting is final and following the decision, LPA will not consider any further submissions in relation to that appeal.

## **10. OTHER REMEDIES**

The process set out in this Part B does not prevent any Member or Complainant from seeking any other legal remedy that they are entitled to seek under any applicable law, including the Consumer Laws. If a Member or a Complainant commences action to seek some other form of legal remedy during the course of any dispute resolution procedure set out in this Code, then the dispute resolution procedure under this Code will end, unless the Member and Complainant agree otherwise.





## **PART C: INDUSTRY PROTOCOL FOR TICKET PROCEEDS RECEIVED IN ADVANCE OF EVENT**

### **11. TRUST ACCOUNT**

Consumers have an interest in Ticket Proceeds, being the money paid for their tickets, until such time as the Event is held.

In order to ensure that this money is available for Consumers in the case that the Event does not proceed or in the case of insolvency of a relevant party, the Authorised Seller or Presenter in receipt of Ticket Proceeds must comply with the requirements set out in this Part C.

#### **BEFORE EVENT**

Ticket Proceeds must be held in trust for Consumers until the Event has been held.

As soon as practicable after receipt, all Ticket Proceeds must be deposited into a Trust Account that has been opened specifically for that purpose.

No other monies may be deposited into the Trust Account or mixed with the Ticket Proceeds, but:

- (a)** the Trust Account may be a general account containing Ticket Proceeds in relation to multiple Events, provided that a separate ledger account is maintained in respect of each Event;
- (b)** other money that is collected as part of the Ticket transaction (for example donations or prepayments for programs or car parking) may be paid into the Trust Account, provided that there are clear policies and procedures regarding:
  - (i)** the types of monies that may be deposited into the Trust Account;
  - (ii)** how and when transfers of these monies may be made out of the Trust Account; and
  - (iii)** how regularly reconciliations will be performed.

The Trust Account may be operated solely by the Authorised Seller or Presenter or, where practicable, may be jointly controlled by two or more of those parties.

The Terms and Conditions must make it clear that Consumers will be entitled to a refund in the case that the Event does not proceed.

#### **CANCELLATION OR REFUND**

Where the Event is cancelled or a refund is otherwise required and the Ticket Proceeds are not being held by the Authorised Seller, an amount sufficient to satisfy all refund obligations must be returned to the Authorised Seller by the party holding the Ticket Proceeds (after deduction of any commission, booking fees or other amounts to be paid by the Authorised Seller). The Authorised Seller must use that money to make those refunds.

Section 24 describes the situations when Resale Platform Operators must provide a refund to Secondary Purchasers.

## **AFTER EVENT**

After an Event is held, the Ticket Proceeds may be distributed to the Presenter, Venue Manager, Authorised Seller or other parties in accordance with the settlement arrangements set out in the relevant agreement(s) between them.

### **12. INVESTMENT POLICY**

Authorised Sellers must have an investment policy which sets out how the Authorised Seller invests Ticket Proceeds and must make that investment policy available to other parties who have a commercial interest in the Ticket Proceeds (not Consumers) on request.

Care must be taken not to trigger the financial services licensing provisions of the *Corporations Act 2001* (Cth). For example, the provisions dealing with custodial or depository services might apply if the Ticket Proceeds are held in anything other than a basic deposit product (for example, a savings account, interest bearing account or particular term deposit).

### **13. AUDITING PROCEDURE**

A party who has a commercial interest in the Ticket Proceeds (i.e. not a Consumer) but is not a co-signatory to the Trust Account must have the right, acting reasonably, to request an audit or other form of legally binding assurance at any time to verify that the sum of money in the Trust Account matches the Ticket Proceeds recorded in the Ticket Proceeds holder's ledger.

The auditor used should be agreed between the parties. The cost of any audit should be borne by the party requesting the audit.

### **14. AGREEMENTS**

All ticketing arrangements and agreements in respect of an Event (for example, the agreement between the Presenter and the Venue Manager, the agreement between the Presenter and the Authorised Seller, the agreement between the Venue Manager and the Authorised Seller and/or the ticketing arrangements of a self-ticketing Venue Manager or Presenter) must ensure implementation of the requirements outlined in this Part C above.

### **15. ADVANCE ACCESS TO TICKET PROCEEDS**

In limited circumstances in the Primary Ticket Market, it may be reasonable for Ticket Proceeds to be released by an Authorised Seller to a party with a commercial interest in the Ticket proceeds (i.e. not a Consumer) prior to the Event being held.

Advance access to Ticket Proceeds obtained in the Primary Ticket Market may only be provided in the circumstances outlined in this section 15 below. See section 24 regarding protocols in the Secondary Ticket Market.



### **BANK GUARANTEE**

The proposed recipient of the Ticket Proceeds has provided to the holder of the Ticket Proceeds a guarantee from a bona fide financial institution in a form that is sufficient to secure an amount equal to the Ticket Proceeds advanced.

### **GOVERNMENT FUNDING**

The proposed recipient of the Ticket Proceeds:

- (a) is a Member in receipt of recurrent government funding (at least triennial); and
- (b) has provided the holder of the Ticket Proceeds with written assurance that it will satisfy all refund obligations immediately if and when required.

### **GOVERNMENT VENUES**

The recipient of the Ticket Proceeds is a government venue which has an explicit guarantee that the government will cover any refunds if and when required.

### **OTHER**

The recipient of the Ticket Proceeds has:

- (a) demonstrated the ability to satisfy all refund obligations if and when required; and
- (b) provided a written assurance (in a form acceptable to both the holder of the Ticket Proceeds and the Authorised Seller if a different party) to satisfy all refund obligations immediately if and when required.

### **OBLIGATIONS OF RECIPIENT**

The directors and management of the recipient of the Ticket Proceeds must undertake appropriate risk management to ensure that there are sufficient funds to cover refunds immediately if and when required at any time, including adherence to a risk averse investment policy where appropriate.

All other relevant parties are entitled to request reasonable evidence of appropriate risk management practices.

## **16. BREACH**

The failure by any Member to comply with this Part C of the Industry Code will be regarded as a serious breach and may be subject to the disciplinary measures set out in section 8.

## **PART D: ADVERTISING AND TICKETING**

### **17. ADVERTISING MATERIAL**

Advertising and promotional material in respect of Events must be clear and accurate and must comply with Consumer Laws.

Advertising and promotional material must give details, so far as is practicable, of:

**(a) Main attraction(s) or performer(s)**

In some areas of the live performance industry, it is standard practice to use understudies or substitutes (temporary or permanent) where the main performer is unavailable or unable to perform, or where the performer is not contractually required to perform. Presenters are not required to notify Consumers through websites or advertising of temporary changes to the main attraction or performers or the use of understudies. However, Consumers must be advised of the use of any understudies or temporary substitute at the Event. Presenters are required to notify Consumers of permanent changes to the main attraction or performers through websites and advertising.

**(b) Support act(s) or performer(s), where known**

When Events are ticketed well in advance, support acts may not have been finalised at the time of booking or may change. For a series of Events, different support acts may be used at different times during the series. Consumers must be made aware of the identity of the support acts, where known. If this is not known, Consumers must be made aware of where they can obtain the information prior to the Event. Consumers must be made aware of any changes to the advertised support act(s) or performer(s) at the Event.

**(c) Presenter, where possible**

Consumers need this information to know who to contact to confirm if a Ticket seller is an Authorised Seller or to make a Complaint.

**(d) Venue(s) configuration and seating arrangements**

Where the normal configuration of the Venue is significantly varied for a particular Event, the configuration to be used must be disclosed in promotional material (for example, if the Venue is changed from a stage facing the audience to “in the round”).

**(e) Any restricted viewing limitations**

This information must also be made clear to the Consumer prior to the purchase of a Ticket.

**(f) Scheduled Event date(s)**

Presenters are not required to notify Consumers of potential date(s) for an Event which may be released subsequent to the initial advertised dates, depending on demand.

**(g) Authorised Sellers**

The Authorised Sellers for the Event including any advance booking facilities.



## **18. FAIR ACCESS TO TICKETS**

Presenters and Authorised Sellers must seek to maximise fair access to Tickets by prospective Consumers by:

- (a)** providing information about pre-sale arrangements and how Consumers can access such arrangements;
- (b)** disclosing the particular categories of seats or seating areas that prospective Consumers may purchase prior to the public onsale date;
- (c)** managing anticipated demand on the public onsale date by:
  - (i)** providing adequate booking facilities; and
  - (ii)** disclosing Ticket purchase limits or other anti-Ticket scalping strategies being applied to Ticket purchases.

## **19. EVENT INFORMATION**

Authorised Sellers and Resale Platform Operators must provide Consumers who have purchased Tickets with information regarding:

- (a)** the name and address of the Venue;
- (b)** the date of the Event;
- (c)** the commencement time of the Event (the time the first act commences and/or the time the doors open); and
- (d)** in the case of Authorised Sellers, any specific conditions of entry for the Event or the Venue; in the case of Resale Platform Operators, any specific conditions of entry for the Event or the Venue, to the extent the information is known to them.

## **20. PRICE REPRESENTATIONS**

### **PRICING CLARITY**

All price representations must comply with Consumer Laws.

All price representations made to Consumers, whether on the Ticket, in advertising or other marketing material or at the point of sale, must be clear, accurate and not misleading to Consumers.

The Australian Consumer Law prohibits engagement in misleading or deceptive conduct and the making of false or misleading representations.

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.

The practice known as 'drip pricing' must be avoided (i.e. where a price is advertised at the beginning of a purchasing transaction and then additional fees and charges are incrementally disclosed throughout the transaction).



The Australian Consumer Law further prohibits 'bait advertising', where goods or services are advertised at a particular price but they are not available at that price or only in very limited quantities. If Tickets are advertised at a particular price, they must be available at that price for a reasonable period of time and in reasonable quantities.

Disclaimers, conditions and limitations (particularly in small print) are unlikely to be sufficient to prevent an advertisement from being misleading or in breach of other relevant Consumer Laws. Generic phrases such as "Additional fees and charges may apply" or "Conditions apply" should be avoided.

### **PRICE ON TICKET**

Except for declared major events in Victoria, the law does not require the sale price of the Ticket to be printed on the Ticket but most industry participants choose to do this.

Where Tickets do not display any price, it is recommended that a mark or code is printed on the Ticket to indicate that the Ticket is authorised by the Presenter for sale either as part of a package or special offer or via an Authorised Seller.



## **PART E: CANCELLED, RESCHEDULED AND SIGNIFICANTLY RELOCATED EVENTS DUE TO INTERVENING CIRCUMSTANCES**

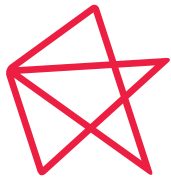
There may be instances when Members are unable to present Events due to Intervening Circumstances. This may result in Events being cancelled, rescheduled or significantly relocated. **Where an Event is cancelled, rescheduled or significantly relocated for reasons other than Intervening Circumstances, Members must provide refunds as outlined in the Consumer Code.**

Where an Event has been cancelled, rescheduled or significantly relocated due to Intervening Circumstances, the Consumer Guarantee provisions of Australian Consumer Law are impacted. Consumers may not be entitled to a refund under the Consumer Guarantees. Whether Members need to provide Consumers with a refund or other remedy will generally depend upon the Ticket Terms and Conditions at the time of sale. However, Consumers may have rights under other laws (refer to section 23, sub-section 'Other Laws'). Members are expected to treat Consumers fairly and consistent with the Ticket Terms and Conditions at the time of sale.

### **21. CONDUCT AND REPRESENTATIONS**

Australian Consumer Law prohibits misleading or deceptive conduct, and the making of false or misleading representations. Members must not mislead or deceive Consumers (including potentially misleading Consumers by omission or silence) about the operation of the Ticket Terms and Conditions, consumers' rights, or the operation of the Event, such as by:

- making representations about postponing or rescheduling Events if there is no intention to deliver the Event or there are no reasonable grounds for making the representation that the Event will be rescheduled;
- misrepresenting the legal effect of any Ticket Terms and Conditions that relate to cancellation (or the legal effect of the absence of such terms);
- representing that different remedies offered for cancelled or rescheduled events are equal remedies, when they may not have equivalent values;
- deducting fees from refunds paid, except where expressly permitted to do so by applicable Ticket Terms and Conditions or otherwise by law;
- representing that the Ticket Terms and Conditions would relieve them from honouring refund clauses, where this is not the case;
- representing that particular terms apply as a result of the Intervening Circumstance, where this is inconsistent with the Ticket Terms and Conditions as a whole;
- purporting to retrospectively impose Ticket Terms and Conditions that did not apply at the time the Ticket was purchased; or
- making blanket statements or generalised representations that Consumers are not entitled to a refund after the cut-off date, when Consumers may have legal rights under the Consumer Guarantees, contract law or other laws.



If an Event is to be rescheduled, Members must take genuine and reasonable steps to reschedule the Event as soon as possible. These steps may include (and are not limited to):

- discussing and negotiating possible new dates with the artist(s)/performer(s) and venues;
- negotiating contract terms and varying contracts with the artist(s)/performer(s), venues, contractors and service providers; and
- if applicable, consulting with the union on relevant industrial matters.

If arrangements to reschedule the Event cannot be made within a reasonable timeframe (preferably within 6 months of the original Event date), Members should consider cancelling the Event in order to provide certainty to Consumers.

## **COMMUNICATIONS**

If an Event is cancelled, postponed or significantly relocated due to Intervening Circumstances, Members should advise Consumers of the remedies available, the process for accessing those remedies and other pertinent information (such as the rescheduled Event date or new Event location), as soon as practicable.

Ideally, this information should be provided when announcing the Event cannot proceed. However, this is not always possible due to factors such as uncertainty around when the Intervening Circumstance will end, when usual activities can resume, and artist, performer and/or venue availability.

In these circumstances, within one month of announcing the Event cannot proceed:

- **For cancelled Events** - Members should advise Consumers about the remedies available and the process for obtaining those remedies.
- **For rescheduled Events** - Members should advise Consumers about:
  - the rescheduled Event date (if known), the remedies available and the process for accessing those remedies; or
  - if the rescheduled Event date is not known, the proposed date (i.e. month and year) of the rescheduled Event, the remedies that will be available, how and when Consumers may access those remedies, and the estimated timeframe for confirming details about the rescheduled Event and remedies.
- **For relocated Events** - Members should advise Consumers about:
  - the new Event location (if known), the remedies available and the process for accessing those remedies; or
  - if the new Event location is not known, the general vicinity of the relocated Event, the remedies that will be available, how and when Consumers may access those remedies, and the estimated timeframe for confirming details about the relocated Event and remedies.

Where Members cannot confirm details with Consumers within one month of announcing the Event cannot proceed, Members are strongly encouraged to provide Consumers with regular updates about progress.





## **22. CANCELLED EVENTS**

### **REMEDIES**

If an Event is cancelled due to Intervening Circumstances, the remedies available to Consumers will generally be those included the Ticket Terms and Conditions applicable at the time of sale, subject to any rights Consumers may have under common laws (refer to section 23, sub-section 'Other Laws').

Possible remedies include:

- **Refund** – Either a full refund or a partial refund (e.g. less transaction/handling/booking fees or delivery charges) depending on the Ticket Terms and Conditions at the time of sale. Even where the Consumer Guarantees do not require a refund, the Ticket Terms and Conditions may still require refunds be offered to Consumers. Consumers will have the contractual right to enforce the Ticket Terms and Conditions in place at the time of sale.
- **Exchange to a different Event** – A Ticket, valued at or above the price of the original Ticket, to a different Event presented by the same Presenter.
- **Credit note/voucher** – A credit note/voucher at or above the price paid for the Ticket for use towards Tickets to another production by the same Presenter. The credit note/voucher should only be offered if the Presenter has sufficient productions available in the foreseeable future and should have an expiry date that allows the Consumer a minimum of 12 months in which to use the credit after the Intervening Circumstances end. The voucher's expiry may need to be extended if the Intervening Circumstance does not end when anticipated. This option may not be practicable in some circumstances. Presenters should check with their ticketing agent to ascertain whether this option is feasible.

Members may ask Consumers whether they are willing to forgo the above remedies and donate the price paid for the Ticket. Members must not ask Consumers to donate the price of the Ticket without offering any of the above remedies. If Members seek donations from Consumers, Members must:

- ensure they can accept donations (or facilitate the collection of donations on behalf of registered charities or Presenters) in accordance with relevant laws, including State and Territory fundraising laws;
- inform Consumers who will receive the donated amounts; and
- not misrepresent how funds will be used.

### **TIMEFRAME FOR OFFERING REMEDIES**

Members should use reasonable endeavours to advise the remedies available to Consumers and the process for accepting a remedy, as soon as practicable (preferably, at the time or within one month of announcing the Event cancellation).

Members should provide Consumers with a minimum of 4 weeks, from the date of notifying Consumers of the remedies for the cancelled Event, to accept a remedy. If a Consumer requests a remedy after the cut-off date, Members must provide a remedy consistent with the Ticket Terms and Conditions applicable at the time of sale.



## **23. RESCHEDULED OR SIGNIFICANTLY RELOCATED EVENTS**

### **REMEDIES**

If an Event is rescheduled or significantly relocated due to Intervening Circumstances, the remedies available to Consumers will generally be those included the Ticket Terms and Conditions applicable at the time of sale, subject to any rights Consumers may have under common laws (refer to section 23, subsection 'Other Laws').

Possible remedies include:

- **Exchange to the rescheduled or relocated Event** – The opportunity to attend the rescheduled or relocated Event.
- **Refund** – If Consumers cannot or do not wish to attend the rescheduled or relocated Event and they request a refund before the cut-off date referred to below, either a full refund or a partial refund (e.g. less transaction/handling/booking fees or delivery charges) depending on the Ticket Terms and Conditions at the time of sale. Even where the Consumer Guarantees do not require a refund, the Ticket Terms and Conditions may still require refunds be offered to Consumers. Consumers will have the contractual right to enforce the Ticket Terms and Conditions in place at the time of sale.

Members may ask Consumers whether they are willing to forgo the above remedies and donate the price paid for the Ticket. Members must not ask Consumers to donate the price of the Ticket without offering any of the above remedies. If Members seek donations from Consumers, Members must:

- ensure they can accept donations (or facilitate the collection of donations on behalf of registered charities or Presenters) in accordance with relevant laws, including State and Territory fundraising laws;
- inform Consumers who will receive the donated amounts; and
- not misrepresent how funds will be used.

### **RESCHEDULED / RELOCATED EVENT INFORMATION**

Members should use reasonable endeavours to advise Consumers, as soon as practicable, of the rescheduled Event date (preferably within 6 months of the original Event date) or the new Event location.

Members must provide the following information:

- The rescheduled Event date or relocation details and other applicable details – i.e. date, time, location, and where applicable any other major changes to the Event that are known at the time; and
- A clear explanation of the Consumer's options – e.g. either to attend the rescheduled or relocated Event or to receive a refund; and
- The process for requesting a refund, including cut-off date for refund requests and the consequences for failing to request a refund by the cut-off date (i.e. they will not be entitled to a refund unless under the Ticket Terms and Conditions or required by law); and
- What Consumers need to do if they wish to attend the rescheduled or relocated Event – e.g. whether they need to do anything or whether they need to confirm that they wish to attend the rescheduled or relocated Event; and
- Whether the original Ticket will be valid for the new date or a new Ticket will be issued.

## **TIMEFRAMES FOR OFFERING REFUNDS**

### **Postponed Events**

In the period between the date of announcing the Event postponement and the date of announcing the rescheduled Event, Members are not obliged to provide refunds to Consumers unless required by the Ticket Terms and Conditions or required by law. However, Members should consider refund requests received in this period on a case-by-case basis and taking into account the Consumers' personal circumstances (e.g. financial hardship, health conditions or inability to travel at other times, such as from interstate or overseas).

Members should inform Consumers of the rescheduled Event date as soon as practicable (preferably within 6 months of the original Event date).

### **For Events where there is 8 weeks or more between the date of announcement of the rescheduled/relocated Event and the rescheduled/relocated Event**

Members should provide Consumers with a cut-off date, being a minimum of 4 weeks from the date of the announcement of the rescheduled or relocated Event, to request a refund.

If a Consumer requests a refund after the cut-off date, Members are not obliged to provide a refund (unless required by the Ticket Terms and Conditions or required by law) as after the cut-off date, it will be considered a change of mind. However, Members may provide a refund at their discretion after the cut-off date and all reasonable requests should be considered.

### **For Events where there is less than 8 weeks between the date of announcement of the rescheduled/relocated Event and the rescheduled/relocated Event**

Members should use the mid-point between the date of the announcement of the rescheduled/relocated Event and the date of the rescheduled/relocated Event as the earliest possible cut-off date for refund requests.

For example, if the date of the announcement of the rescheduled/relocated Event is made 6 weeks prior to the date of the rescheduled/relocated Event, Members should provide Consumers with a cut-off date of at least 3 weeks from the date of the announcement of the rescheduled/relocated Event to request a refund.

If a Consumer requests a refund after the cut-off date, Members are not obliged to provide a refund (unless required by the Ticket Terms and Conditions or required by law) as after the cut-off date, it will be considered a change of mind. However, Members may provide a refund at their discretion after the cut-off date and all reasonable requests should be considered.

## **CONSUMER GUARANTEES**

Nothing in this section excludes or restricts any rights or remedies a Consumer may have under Australian Consumer Law and the Consumer Guarantees in relation to the rescheduled or relocated Event. Consumers will still be entitled to remedies in accordance with Consumer Guarantees set out in section 10 of the Consumer Code.

However in the case of Intervening Circumstances, the application of Consumer Guarantees is not always straight forward. This is because under Australian Consumer Law, a Consumer may not be able to claim against a supplier of a service where the supplier has failed to comply with a Consumer Guarantee as a result of actions, omissions or representations of other persons or entities or for causes outside of their control. Members should seek their own legal advice on this issue depending on their circumstances and the nature of the Intervening Circumstances.

## **OTHER LAWS**

The common law recognises circumstances where a contract can be 'frustrated'. A contract may be frustrated where, through no fault of any party to the contract, the contract becomes incapable of being performed because performance in the circumstances would either be impossible or make the contract radically different from that intended by the parties. The event(s) which cause the contract to be frustrated must be severe and not merely alter the circumstances under which the contract is performed (such as cause delay or increase costs). If a contract is frustrated, the contract is discharged and comes to an end. While under the common law, the parties bear their own losses, there is legislation in some States that varies the common law position to address the harshness of it and provide more equitable outcomes to the parties. It is a complicated area and legal advice should be obtained where frustration of contract is being considered.



## **PART F: SECONDARY TICKET MARKET**

### **24. CONDUCT AND REPRESENTATIONS**

The Australian Consumer Law prohibits misleading or deceptive conduct, and the making of false or misleading representations. Resale Platform Operators must not:

- make representations that are inaccurate or false;
- mislead or deceive Secondary Purchasers; or
- induce the purchaser of the original Ticket in the Primary Ticket Market to breach the Terms and Conditions. Inducement generally requires some form of persuasion or procurement. Merely providing the means (i.e. via a resale platform) for an original purchaser to resell a Ticket is generally not considered inducing the original purchaser to breach.

Resale Platform Operators must not use words, phrases or language that imply the Resale Platform Operator is the Authorised Seller, unless the Resale Platform Operator is in fact the Authorised Seller. Certain words and phrases (e.g. “official”, “selling fast”, cheapest in [location]”, “less than [X]% of tickets left” and “sold out”) in certain contexts may be considered misleading or deceptive. Resale Platform Operators must ensure that the use of such words or phrases and the context in which they are applied are clear, accurate and not misleading.

Resale Platform Operators should include a clear and prominently displayed statement on their website and in advertisements that their Resale Platform sells Secondary Tickets.

### **25. TICKET INFORMATION**

In some Australian jurisdictions (e.g. New South Wales and South Australia), there is legislation which specifies the information which must be disclosed when a Secondary Ticket is listed for sale. Resale Platform Operators must ensure they comply with the prescribed legislation.

Unless otherwise required by law, Resale Platform Operators should require the following Ticket information from Resellers and should include this information when the Secondary Ticket is listed for sale:

- (a) The information specified in Section 9;
- (b) Face value of the original Ticket;
- (c) Type of Ticket – e.g. general admission, A-Reserve, B-Reserve;
- (d) Section/block, row and seat, if the ticket is for a particular seat;
- (e) Any restrictions on the Ticket – e.g. restricted view, concession, age;
- (f) Other pertinent information – e.g. whether identification matching the name on the Ticket is needed to enter the Venue or whether delivery of Tickets will be delayed until closer to the Event date;
- (g) Any specific conditions of entry for the Event or Venue – e.g. no bags/phones/ cameras are permitted inside the venue.



Resale Platform Operators should provide a notice that the Terms and Conditions applicable to the Ticket may prohibit or restrict the resale of the Ticket.

If an Authorised Seller is part of the same entity as or affiliated with a Resale Platform, the Authorised Seller should not take or acquire Tickets, or use their allocation from the Primary Ticket Market, and resell them on the Secondary Ticket Market.

## **26. REMOVING LISTINGS**

Resale Platform Operators should take reasonable steps to remove the advertising and listing of a Secondary Ticket from their Resale Platform if:

- (a)** it is prohibited to resell or offer to resell a Ticket under any applicable laws;
- (b)** a Ticket is advertised at a price which breaches any applicable laws;
- (c)** Tickets are not officially on sale to the general public or via presales in the Primary Ticket Market;
- (d)** the Resale Platform Operator knows or suspects that the Ticket offered for resale is a Speculative Listing; or
- (e)** the Resale Platform Operator knows or suspects that the listing of the Ticket contains inaccurate or misleading information.

Resale Platform Operators must refuse to allow listing of Tickets by Resellers which engage in fraudulent activity (e.g. selling fake tickets, selling multiple copies of the same Ticket or listing Tickets that have been purchased with a stolen credit card) or repeatedly breach the Resale Platform Operator's terms and conditions.

## **27. PROTOCOLS FOR TICKET PROCEEDS**

If a Resale Platform Operator holds monies from Secondary Purchasers, it must:

- (a)** not release this money to the Reseller until a reasonable period (at least 5 working days) after the Event has been presented; and
- (b)** provide a refund to Secondary Purchasers for the full amount paid for the Ticket if:
  - i.** the Event is cancelled;
  - ii.** the Secondary Purchaser does not receive the Tickets paid for; or
  - iii.** the Tickets are invalid (e.g. Tickets have been cancelled by the Presenter, multiple copies of the same Ticket) and the Ticket bearer was refused entry into the event.



## **28. FRAUD**

If Resale Platform Operators become aware of fraudulent activity (e.g. selling fake tickets; selling multiple copies of the same Ticket; listing Tickets that have been purchased with a stolen credit card), they should:

- (a)** report the incident to relevant authorities;
- (b)** ban those Resellers from being able to use their Platform again;
- (c)** not forward Ticket Proceeds to the Reseller;
- (d)** provide a refund to Secondary Purchasers for the full amount paid; and
- (e)** encourage Secondary Purchasers who have been affected by fraudulent activity to report the incident to relevant authorities.

## **29. RESALE PLATFORM OPERATORS' TERMS AND CONDITIONS**

Resale Platform Operators should clearly set out the terms and conditions that apply to Secondary Purchasers and Resellers. These may include customer service standards that outline what Resellers and Consumers can expect when dealing with the Resale Platform Operator.

For those Resale Platform Operators which offer Resale Platform Guarantees, they should clearly describe the circumstances when:

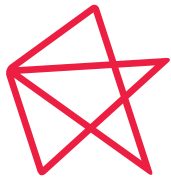
- (a)** a Secondary Purchaser will and will not receive a refund or other guarantee; and
- (b)** a Reseller will and will not receive payment.

Resale Platform Operators must ensure that their terms and conditions, including any Resale Platform Guarantees, comply with all applicable laws. Resale Platform Operators should make these terms and conditions publicly available.

## **30. CANCELLING TICKETS**

An Authorised Seller or Presenter may be entitled to cancel Tickets or refuse entry to Ticket holders in certain circumstances. For example, an Authorised Seller or Presenter may be entitled to cancel Tickets where a Ticket is issued fraudulently or where it is resold contrary to any applicable laws relating to the resale of Tickets. However, an Authorised Seller or Presenter may not be entitled to cancel Tickets if they are sold in accordance with applicable laws. For example, in New South Wales an Authorised Seller or Presenter cannot cancel a Ticket if the Ticket is resold at a price that complies with prescribed laws.

Whether or not a refund needs to be given to the original purchaser when a Ticket is cancelled will also depend on the particular circumstances giving rise to the cancellation and must be in accordance with the Consumer Laws.



## **PART G: OTHER MATTERS**

### **31. PRIVACY**

The handling and use of a Consumer's personal information is regulated by the Privacy Act 1988 (Cth) (Privacy Act) and Members should ensure they comply with the Privacy Act when dealing with Consumer's personal information.

LPA provides information and support to Members to assist them in complying with the Privacy Act. Guidance regarding the Australian Privacy Principles is available on the LPA website.

Information is also available on the Office of the Australian Information Commissioner's website.

### **32. ON-LINE DISCOUNT TICKET PROVIDERS**

On-line and last minute discount ticket providers may present difficulties for Venue Managers if they issue Tickets and/or ticket vouchers that are unfamiliar to Venue Managers' staff.

To avoid misunderstandings and Complaints, Members utilising on-line discount ticket providers should ensure that they have advised the Venue Manager accordingly and have provided adequate opportunity for the Venue Manager to brief its staff regarding the Tickets and/or ticket vouchers provided by the on-line discount ticket provider.

Members utilising on-line discount ticket providers must ensure that the on-line discount ticket provider complies with the Code and in particular with the requirements of section 11 above.



## **PART H: DEFINITIONS AND INTERPRETATIONS**

### **33. DEFINITIONS**

In this Industry Code, the following terms have the meanings set out below:

**AEIA**

The Australian Entertainment Industry Association, being an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cth).

**AEIA Rules**

The *Rules of the Australian Entertainment Industry Association*, as amended from time to time and registered with the Fair Work Commission.

**Australian Consumer Law**

The Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Authorised Seller**

A person or organisation who or which is authorised by the Presenter or Venue Manager to sell Tickets for an Event. In some cases, the Venue Manager or Presenter may be the Authorised Seller.

Includes reference to a person authorised by the Presenter to sell Tickets as part of a package with travel, hospitality or accommodation benefits.

**Code**

The Live Performance Australia Ticketing Code of Practice comprising the Consumer Code and this Industry Code.

**Code Reviewer**

A person appointed by the Executive Council as referred to in the Consumer Code.

**Complainant**

A Consumer who makes a Complaint.

**Complaint**

A Complaint is a statement made to LPA or a Member that any product, service or situation is unsatisfactory or unacceptable.

**Consumer**

A person who purchases a Ticket to an Event.

Includes a person who holds a Ticket to an Event where this Code refers to matters occurring during an Event.

Includes a person who is intending to purchase a Ticket to an Event where this Code refers to matters occurring prior to the purchase of a Ticket.

**Consumer Code**

The Consumer Code component of the Live Performance Australia Ticketing Code of Practice.

Available on the LPA website.

**Consumer Laws**

The Australian Consumer Law and State and Territory consumer protection legislation.

**Event**

A live performance including but not limited to theatre, opera, dance, concert, festival, spectacular or arena event.

Does not include a sporting event.

**Executive Council**

The Council vested with the management of the AEIA, in accordance with the AEIA Rules.



**Industry Code**

The Industry Code component of the Live Performance Australia Ticketing Code of Practice.

Available on the LPA website.

**Intervening Circumstance**

- An act, default or omission of (or a representation made by) a person other than the Member (or an agent or employee of the Member); or
- A cause outside of human control which occurs after the time when a Ticket is sold.

This may include an act of God, state of emergency (e.g. bushfires or floods), public health emergency (e.g. pandemics), travel warnings (e.g. travel restrictions or advice to not travel) and government directives (e.g. forced venue closures or mass gatherings restrictions).

**LPA**

Live Performance Australia (being the business name used by AEIA and under which AEIA operates).

**LPA Complaints Officer**

An employee of LPA appointed to the role.

**General Meeting**

A general meeting of Members, held in accordance with the AEIA Rules.

**Member**

A financial member of AEIA in accordance with the *Fair Work (Registered Organisations) Act 2009* and the AEIA Rules.

Membership includes persons and organisations in the live performance industry who or which make Tickets available for sale, whether to the general public or otherwise.

**Presenter**

A person, organisation, promoter, producer or Venue Manager which presents Events.

Actions of a Presenter's staff are taken to be actions of the Presenter.

**Primary Ticket Market**

The market in which Tickets are sold by the Presenter or an Authorised Seller.

**Reseller**

A person who is seeking to resell, or reselling, a Ticket. Includes a person selling a Ticket via a Resale Platform.

Includes any person or organisation, not being an Authorised Seller or otherwise approved by an Authorised Seller, who or which resells or offers to resell a Ticket at a premium price (i.e. higher than the original price) with the intention of reselling the Ticket in order to make a profit or gain some other financial benefit.

Includes any person or organisation who or which is considered to be a ticket scalper under any applicable legislation in Australia.

**Resale Platform**

Any platform used to facilitate the sale of Secondary Tickets.

**Resale Platform Guarantees**

Guarantees offered by Resale Platform Operators for Tickets sold via their Resale Platform.

These guarantees are separate and in addition to the Consumer Guarantees under the Australian Consumer Law.

**Resale Platform Operator**

The owner and/or operator of any Resale Platform.

**Secondary Purchaser**

The purchaser of a Secondary Ticket from a Reseller.



**Secondary Ticket**

Any Ticket resold by a Reseller.

**Secondary Ticket Market**

The market in which Secondary Tickets are bought and sold.

**Speculative Listing**

An offer to sell Secondary Tickets when the person offering to sell these Tickets does not have the legal title to the Tickets or the right to sell the Tickets.

**Terms and Conditions**

The terms and conditions which apply to the sale of the Ticket in the Primary Ticket Market and/or entry to the Event or Venue.

**Ticket**

A revocable licence granted to the Consumer to be admitted entry to an Event or to a Venue, subject to the applicable Terms and Conditions, evidenced by any ticket, voucher, coupon, card, badge, document or other form of identification device such as an electronic barcode, wristband, member's card or a credit card.

The right of admission to the Event may also include the right to be admitted to a designated area or a designated seat.

**Ticket Proceeds**

Money paid by Consumers for their Tickets.

**Trust Account**

The account for Ticket Proceeds opened and maintained in accordance with section 11 of this Industry Code.

**Venue**

The place where the Event is held.

**Venue Manager**

The owner, proprietor or manager of a Venue.

The actions of the Venue Manager's staff are taken to be actions of the Venue Manager.

### **34. INTERPRETATION**

In this Industry Code, where the term "should" is used in relation to an obligation, then the obligation is considered to be best practice and may not be strictly required in all cases.