

16th March 2001.

The Australian Competition and Consumer Commission
470 Northcourse Avenue
Dickson
ACT 2602

FILE No:

DOC:

Please find attached our formal notification for "Exclusive Dealing Notification" under section 47(6) of the Trade Practices Act. In addition we have attached our check for \$1,000 being the required fee for lodgement.

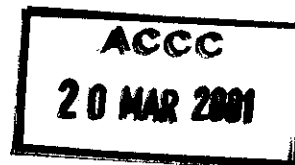
If you have any queries please contact me on 0418 561 332.

Thanks for your consideration and we look forward to your early advice.

Yours sincerely,



Peter J DIHM
Chairman
Baseball Victoria
For
Australian Baseball Federation Inc.



Form G

Commonwealth of Australia
Trade Practices Act 1974 --- Sub-section 93(1)
**EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition and Consumer Commission:

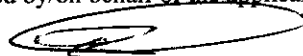
Notice is hereby given, in accordance with sub-section 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d) of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice. Australian Baseball Federation Inc
TIA Baseball Australia
(See Direction 2 on the back of this form)
(b) Short description of business carried on by that person
See Attachment 1
(c) Address in Australia for service of documents on that person
48 Archibison St. St. Leonards N.S.W 2065
 2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
See Attachment 2
(b) Description of the conduct or proposed conduct

(See Direction 4 on the back of this Form)
 3. (a) Class or classes of persons to which the conduct relates
See Attachment 4
(b) Number of those persons-- See Attachment 4
(i) At present time
(ii) Estimated within the next year See Attachment 4
(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses
Not Applicable
 4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice. Baseball Victoria TIA Baseball Australia
Licensing and Merchandising Enterprises
Mozbourne Ballpark Merton St ACTON Meadows 3028
- Dated 16th MARCH 2001

Signed by/on behalf of the applicant giving notice



(Signature)

Peter J. Ditch

(Full Name)

Member Management Committee

(Description)

Attachment 1.

Question 1 (b):

Short Description of Business carried on by that person.

The Australian Baseball Federation is an association incorporated pursuant to the provisions of the Associations Incorporation Act 1985 of South Australia whose purpose and objects are, amongst other things, to:

- (i) conduct, encourage, promote, advance, standardise, control and administer all forms of the sport of Baseball in and throughout Australia;**
- (ii) provide for the conduct, encouragement, promotion and administration of the sport of Baseball through and by various member States or other organisations for the mutual and collective benefit of the Members and the sport of Baseball;**
- (iii) at all times to act on behalf of, in the interests of and in conjunction with the Members and sport of Baseball;**
- (iv) Promulgate and secure uniformity in, such rules as may be necessary or appropriate for the management and control of the sport of baseball and related activities in and throughout Australia;**
- (v) Pursue through itself and others such commercial arrangements, including but not limited to, sponsorship and marketing opportunities, as are appropriate to further the objects of the Federation, its members and affiliates and the sport of Baseball;**
- (vi) has the power, amongst other things, to produce, develop, create, license and other exploit, use and protect its Intellectual Property;**
- (vii) owns and has the right to license the marks, symbols, designs, likenesses and visual representations (called the “National Marks” and to use the National Marks for commercial purposes.**

Attachment 2.

Question 2 (a):

Description of goods or services in relation to the supply or acquisition of which the notice relates:

The Australian Baseball Federation is seeking to implement a National Licensing program to cover the following items:

- (i) Uniform Pants;**
- (ii) Uniform tops;**
- (iii) Uniform Jackets;**
- (iv) Uniform Caps Competition Balls**

In addition the ABF is seeking to implement a preferred supplier program in relation to hardware items used in the Sport of Baseball. Items intended to be covered in this area are, but not limited to, the following

- (i) Baseball Bats (Wood, Composite and Aluminium);**
- (ii) Fielding Gloves;**
- (iii) Batting Gloves; Batting Helmets**
- (iv) Catchers Equipment**
- (v) Umpiring Equipment**

Attachment 3.

Question 2 (b):

Description of the conduct or proposed conduct:

Licensed Products:

The items listed as Licensed are all used in the game of baseball and the ABF intends to make it a condition of competition that in relation to “Licensed Products” only Licensed products are to be used in all activities under its control.

It is important to note that the rules of baseball administered by the ABF (through its Members, Affiliates and registered players) as they currently stand, specify that all players must wear a registered uniform. Each club competing in a sanctioned competition registers its uniform colours and logos with the responsible Association in which the club is competing. Such Association is affiliated to the ABF through its State association

These rules apply to events, competitions, matches or games and sanctioned under the ABF, member states and their affiliates.

Please note that such activities as T-Ball and Coach Pitch will not be included initially in the Licensing program.

Each registered member (player) will be issued with a set of interim logos to place on their existing apparel. This will ensure that players will not have to purchase new items of uniform in order to comply with the requirements of the ABF.

However, once the existing uniform part needs replacing it will only be replaced by a part purchased from a licensed supplier.

In relation to Baseballs only licensed balls which meet the minimum requirement set by each competition can be used for competition purposes. Competitions cannot have an exclusive ball program and any licensed ball that meets the competition minimum requirements can be used in competition. However, a competition may have a preferred supplier program for licensed products.

Compliance is a major issue and Affiliation and participant in ABF programs will be dependent on compliance. Penalties will be incurred for non-compliance.

In relation to the suppliers we aim to invite all current suppliers to join the program

Preferred Supplier Program:

The Preferred Supplier program is designed to encourage participants to purchase their requirements from preferred Suppliers. However, it is not a requirement of the competition that only preferred supplier products can be used.

We realise that all of the items covered in the preferred supplier program are subject to personal choice. Therefore, it would be restrictive to license these products and tell players that these are the only brands they can use.

What we propose is to enter into a number of preferred supplier agreements with suppliers where we will be encouraging all members and participants to use the designated product.

Unlike the licensed products where there may be penalties for non-compliance we can only encourage use of preferred products by the introduction of incentives. This encouragement will take the form of advertising and promotions in conjunction with the preferred suppliers

Attachment 4.

Question 3 (a):

Class or classes of persons to which the conduct relates.

The ABF it member States, affiliates and registered players are covered by this program.

All participants who compete in competitions and activities sanctioned by the ABF.

Question 3 (b)

Number of those persons

(i) At present

It will cover all member states and their affiliate associations and their registered members

Currently the ABF members are the State Associations of

Victoria,	and 15 Associations
New South Wales,	and 20 Associations
Queensland,	and 9 Associations
Western Australia,	and 10 Associations
South Australia,	and 12 Associations
Northern Territory	and 5 Associations
Australian Capital Territory.	3 Associations

These cover the registrations of 60,000 members.

(ii) Estimated in the next twelve months.

We believe that the number in the next twelve months will be similar to the above.

Comments in Support of Notification Application.

The following comments are offered in support of the ABF application for notification under the Third Line Forcing pursuant to section 47(6) of the Act.

The Australian Baseball Federation Inc. is an incorporated body under the provisions of the Associations Incorporation Act 1985 of South Australia whose purpose and objects are, amongst other things, to:

- (viii) conduct, encourage, promote, advance, standardise, control and administer all forms of the sport of Baseball in and throughout Australia;
- (ix) provide for the conduct, encouragement, promotion and administration of the sport of Baseball through and by various member States or other organisations for the mutual and collective benefit of the Members and the sport of Baseball;
- (x) at all times to act on behalf of, in the interests of and in conjunction with the Members and sport of Baseball;
- (xi) Promulgate and secure uniformity in, such rules as may be necessary or appropriate for the management and control of the sport of baseball and related activities in and throughout Australia;
- (xii) Pursue through itself and others such commercial arrangements, including but not limited to, sponsorship and marketing opportunities, as are appropriate to further the objects of the Federation, its members and affiliates and the sport of Baseball;
- (xiii) has the power, amongst other things, to produce, develop, create, license and other exploit, use and protect its Intellectual Property;
- (xiv) owns and has the right to license the marks, symbols, designs, likenesses and visual representations (called the “National Marks” and to use the National Marks for commercial purposes.
- (xv) All registered players in Australia pay a National registration fee to the ABF via their State Association.
- (xvi) ABF and its member states have requested Baseball Victoria to administer the program on its behalf on an exclusive basis for commercial purposes associated with the program
- (xvii) Baseball Victoria through its registered trading entity will license suppliers of Baseballs, Uniform Pants, Uniform Tops, Uniform Jackets and Uniform Caps. These will become know as the licensed product range and will have the National Mark affixed to them
- (xviii) ABF and member states will purchase licensed products to meet their organisational and sporting needs

In order to implement and conduct the program the Australian Baseball Federation has requested Baseball Victoria (BV) to undertake the management function on a fee for service basis. Baseball Victoria will establish a registered trading name, (Baseball Australia Licensing and Merchandising Enterprises) to operate the program. In addition Baseball Victoria and the Federation (on behalf) of its member states will enter into a formal management agreement.

It is important to note that all member states have agreed to implement this program.

The program as structured under IBLA has been changed and redefined under the Baseball Victoria model. Below is an outline of the new program.

It is intended to conduct the program from two aspects. These are

- (i) Licensed Products
- (ii) Preferred Supplier Programs.

Licensed Products:

The products to be covered in this category are as follows:

- | | | | |
|-------|-------------------|---|----------------------------------|
| (i) | Uniform Pants, | } | |
| (ii) | Tops | } | Referred to as playing uniforms. |
| (iii) | Jackets | } | |
| (iv) | Caps | } | |
| (v) | Competition Balls | } | |

It is important to note that the rules of all competitions specify that players must wear registered uniforms. Each club competing in a sanctioned competition registers its uniform colours and logos with the responsible Association in which it (the club) has teams competing.

These rules will only apply to events, competitions, matches or games conducted and sanctioned under the ABF, Member States and their affiliates.

Each registered member will be issued with a set of interim logos to place on their existing Uniforms. This will ensure that people do not have to purchase new uniforms just to be in the program. However, once their existing uniform or parts there of need replacing then the products purchased will only be purchased from a licensed supplier.

In relation to Baseballs, only licensed balls which meet the minimum standard set by each competition can be used. Competitions cannot have exclusive ball programs and any licensed ball that meets the competitions minimum standard can be used in the competition. However, a competition may have a preferred supplier program for balls.

In relation to the suppliers of the licensed products we aim to invite all current suppliers to join the program. The fee for a National License for Uniforms will be \$6,000 or 7.5% of Sales whichever is the greater. Fees to be paid quarterly in advance. A regional license can be obtained to service a designated area. The cost of a regional license will be \$3,500 or 7.5% of Sales whichever is the greater.

To ensure reasonable price control and competition the number of suppliers will not be limited. However, as the program progresses the ability of licensees to perform and provide quality products in a timely manner will be taken into account in the granting of licenses.

T Ball and Coach Pitch programs will not be included at this stage. The disadvantages greatly outweigh the advantages as the programs stand at present.

The ball issue will be a similar to that of uniforms in relation to cost. A national license will be \$5,000 or 5% of sales with a regional license being \$3,000 or 5% whichever is greater. A ball supplier is free to bring in whatever balls they wish. However if they want their balls used in competition then the particular ball must meet a specified minimum standard as defined by the individual leagues. All balls sold by the licensed suppliers will need to have the national logo affixed.

The above is the outline of the licensed products program. From a player point of view the program may involve some slight increases in uniform costs. However, by having an open number of licensees the effects will be stronger competition and suppliers will be inclined to keep prices competitive.

From a suppliers point of view the cost of entering the program is not prohibitive. In addition all fees will be on a quarterly basis (in advance) to assist in the cashflow aspects of their businesses. The uniform manufacturers are mainly Australian based and manufacture their products in Australia. In relation to the Balls all are made overseas and imported.

Preferred Supplier Program.

In addition to the products we wish to license, there are, other products that are used within our sport. These are items such as Baseball Bats (Wood, Composite and Aluminum), Fielding Gloves, Batting Gloves, Batting Helmets and other Protective Equipment etc.

We realize that these products are often subjected to personal choice. Therefore it would be restrictive to license these products and tell people that they can only use certain brands.

What we propose is to enter into a number of preferred supplier agreements with suppliers where we will be encouraging all baseball members to use the designated products. Unlike the licensed products where there may be penalties we can only encourage through incentive programs for our members to choose the designated products. This encouragement will take the form of advertising and promotion etc. in conjunction with our preferred suppliers.

An example would be that we will not accept advising from a company not in the program, in competition with one of our preferred suppliers.

As you can see this is a significant departure from the program that was previously put to you. We strongly believe that by structuring our program in this fashion we will not be involved in any practices that will violate your regulations.

Summary.

This program is very important to our sport. The actual program will generate small amounts of returns for the ABF and its member states (between \$60K to \$100K gross in the first year it. None the less will it provide funds for the sport which have been generated outside of the direct levy on the membership (as happens with registration fees). This is an important issue for all states. In addition it will provide us the opportunity to be able to look at other national programs and use the experience of this program to demonstrate to others that Baseball has its act together and can deliver on a National basis. This has been the catch cry of potential sponsors etc. which has lead to the downfall of our national league.

By structuring our program in the manner outlined above we believe that we are operating no differently to organisations such as the AFL and Rugby etc. We have attempted to put together the basis of an efficient and workable program that will provide on-going benefits to our sport and the people we deal with for a long time.

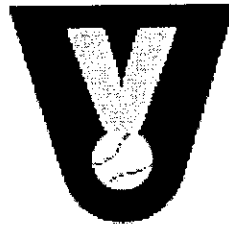
Attached I have included a copy of our agreement with the ABF for the Management of the program. This includes issues in relation to compliance and distribution of the Monies.

I look forward to your advice. If you wish to discuss any issue further or to clarify any points please contact me on 0418-561-332 or e-mail tootrain@netspace.net.au

Thanks for your time and consideration.

Yours sincerely

Peter J DIHM
Chairman
Baseball Victoria.



Baseball Victoria (BV) hereby seeks approval from the Australian Baseball Federation (ABF) to operate as manager of the National Licensing and Merchandising program (NLP).

In 1996 BV undertook a review of it's marketing programs and presented a comprehensive paper to affiliated clubs identifying a number of strategies which if implemented would bring much needed " outside funds " to the sport.

Licensing was one of these strategies. With the assistance of a marketing consultant, BV approached the major uniform manufacturers in Australia and offered them the opportunity to join the program.

Clubs and manufacturers alike were sceptical that such a program would not succeed with non-compliance being the main concern.

BV commenced the program with U14 and above required to purchase uniform pants, tops and jackets from licensed suppliers.

This allowed clubs to continue the practice of " club volunteers " manufacturing tops and pants for tee ballers.

Personal approaches to potential licensees proved successful and after some negotiations with regard to the license agreement the program commenced.

Licensees were charged an upfront fee of \$ 500 per category (Pants, tops & jackets)

The initial program did not include caps.

Therefore a full license was \$ 1500 plus 2.5% of gross sales from licensed products.

Initially Greatrex Industries, BallPark, Born to Play K2, Ausport and Triple Play joined the program.

Triple Play opted out of the program in year two, as they believed that sales did not justify the cost in Victorian market.

Licensees were provided with unlimited access to clubs and complementary advertising in all printed publications (Competition booklets, fixtures, Internet etc)

The issue of compliance was raised a number of times, however, the association was quick to act on those clubs found violating the agreement and responded to the licensees requests as required.

BV also undertook to approve balls into the competition on the basis that number of selected balls would be approved for competition (exclusivity). However, balls for practice etc were not regarded as exclusive and clubs could purchase from their own preferred supplier.

Initially the ball manufacturers paid an upfront royalty plus \$ 5.00 per dozen. This proved hard to administer as clubs purchased and advised that balls were for training etc and therefore were not subject to royalty.

This was changed in year two with an up front payment and no royalty payments.

Senior leagues required a ball purchased from a licensed supplier which meet the standard set by BV (85 % virgin wool with a doubled insulated cork centre)

In year one a ceiling price was set. This was also removed in year three.

Both programs were successful and is estimated that 98 % compliance was achieved.

BV has built a record of credibility with those suppliers who held license agreements.

THE PROGRAM

It is understood by all parties concerned in the original program experienced some difficulties with the introduction of the National Program.

The issue of compliance within our baseball community was questionable. States and associations within states failed to comply and would appear some did not force compliance upon those who did not comply.

“Third line forcing” was a major issue with a number of potential hardware suppliers offered preferred supplier status.

You cannot demand or expect a member to purchase a hardware item, which is not their preferred manufacturer.

BV will initially introduce a re vamped program as detailed in this document.

1. Uniform tops, playing pants, jackets and caps will be the first articles of apparel offered to licensees
Other articles of apparel such as undershirts, socks, tee shirts etc will be introduced at a later date.
2. A full National License will be offered at \$ 6000 minimum annual payment with 7.5% royalty payment on sales if greater than the quarterly minimum guarantee. The difference to be paid within 30 days of the quarter ending.
3. Regional licences will be offered at \$ 3500 with the same royalty requirements as a full license.(as per point 2)
4. Specific licenses such as caps or pants alone will be offered at \$ 2000 per article or 7.5%.(as per point 2)
5. Licenses for supply of balls will be offered at \$ 5000 for a national license or 5% with Regional licenses offered at \$ 3000 or 5% (as per point 2)
6. After a visit to the IBLA office and discussions with a number of potential licensees there is enough confidence to believe that the figures in (attachment 1) are achievable in year one of a renewed National program.
Obviously the success of the program will be centred on the re affirmed commitment and compliance from all states and affiliated associations.

It is paramount to the success of this new approach that each state and in turn association confirm in writing their unqualified support and promise of compliance.

Suggest penalties for non compliance are recorded in (Attachment 2)

7. BV will undertake to contact all potential licensees and offer a new agreement as outlined in this document. This will be followed with a personal visit.
8. The ACCC issue should not be a problem as the ACCC's main objection was to the exclusivity of product particularly hardware.
9. Interim logos will be issued to states on application of registered numbers. Licensed suppliers will be issued with logos, which will be strictly audited by BV on a quarterly basis. (Cap manufacturers may be give approval to embroider logo's)
10. Les Flower Executive Director of Victorian Baseball will be the appointed Manager of the program and Victorian Baseball Association staff utilised to assist in the ongoing maintenance of the program.
11. It is envisage that the manager will be required to allocate a substantial amount of time initially to achieve the objectives of the program. The VBA board have give their support for this allocation of time (Attachment 3)
12. The VBA is aware that the ABF is concerned as to the ongoing administration of baseball in Victoria and the management of the NLP could have major implications on the VBA.
13. The VBA Board has agreed that should the NLP fail to proceed for any reason, VBA will immediately re introduce the program that was suspended (Not cancelled) when Victoria agreed to join the NLP.
14. The VBA clubs have been quite outspoken re the cost of playing baseball and have given the Board the mandate to enter into business agreements and relationships that are financially beneficial to the sport.
The VBA office has recently been re structured to enable the Executive Director to be released to look at new and innovative ways of attracting revenue to the association from outside sources
15. BV has a track record of being a most cohesive and professionally run organisation and believes that, as managers of the NLP will provide expertise leadership and confidence, which will lead to manufacturers renewing their agreements.

- 16 The financials (attachment 4) reveal that each state has the potential to receive income from the NLP in year one, which will give them confidence to support this program. In year one some extraordinary expenses will be incurred such as purchase of interim logos, printing, legal and travel costs. BV is prepared as an act of goodwill in year one to forgo any royalty payments. I believe that ABF would also agree to a similar act of goodwill.
In year one VBA and ABF allocation to be distributed to states with lower registered numbers.
- 17 In years two and beyond the allocation of royalties should be in line with that accepted by Member State in August 2000.
Costs associated with the business
Management fee to BV
ABF allocation 20%
Residue to states on proportional basis based on player registrations.
- 18 BV is entering a period of consolidation and is focussed on supporting it's membership (Clubs and Associations) particularly in the areas of recruitment and player retention.
With the professional support and that of the BV Board the ABF can be assured that the focus of the VBA will not be diminished in any way with it's involvement as managers of the NLP.

Attachment 1

Estimated income year one

Licensed suppliers (Full)

Ballpark (QLD)		
Born to Play (Vic)		
Greatrex Industries (SA)		
Hyperactive Merchandising (NSW)		
Sportswear (Qld)		
Star Sportswear (NSW)	6 @ \$ 6000	\$ 36.000

Licensed suppliers (Regional)

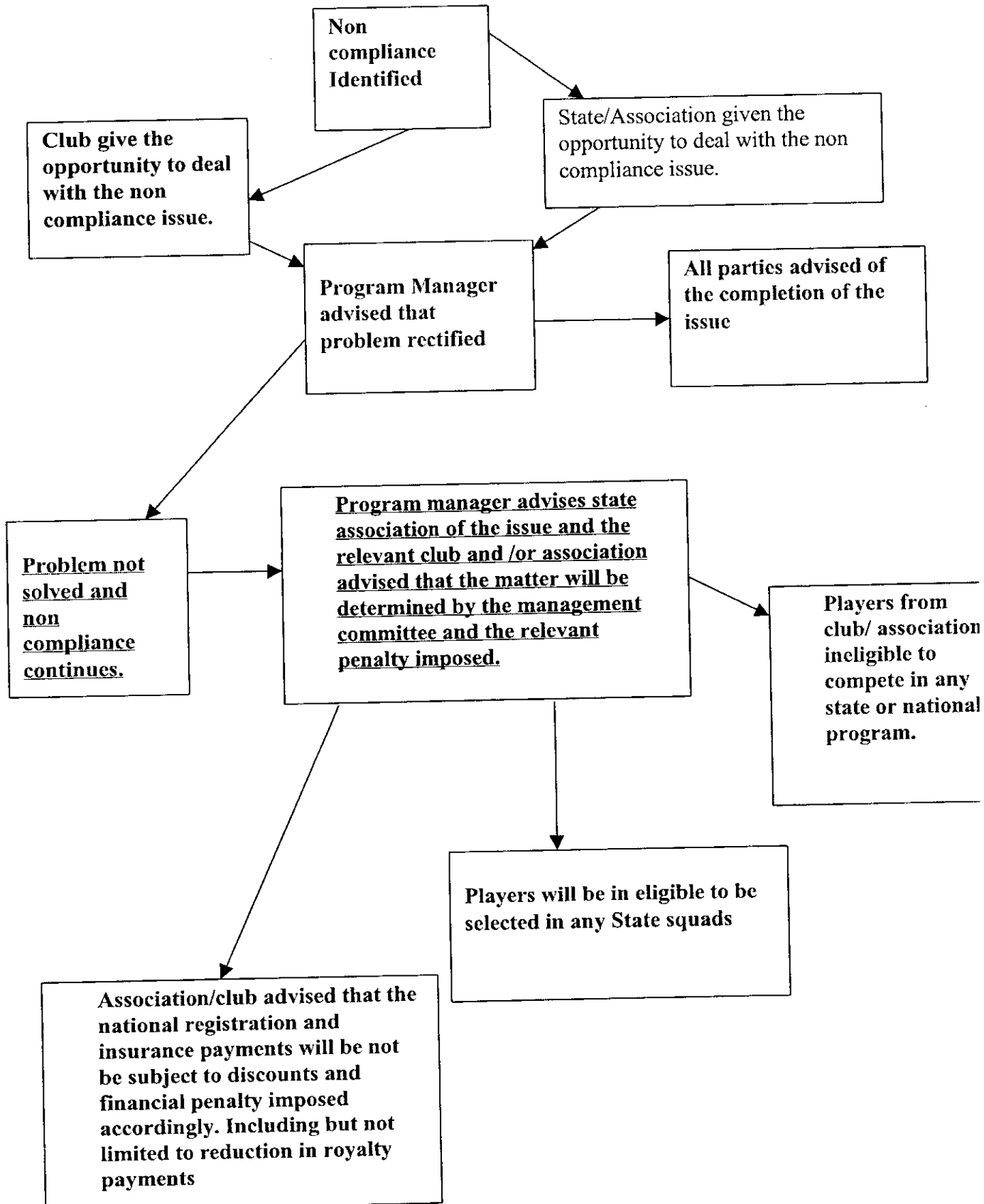
Diamond One (NSW)		
Emmsee (S.A.)		
Gaza (NSW)		
HP Sports (WA)		
Portague (WA)		
Western Bred (WA)	6 @ \$ 3500	\$ 21.000

Ball Licenses

Rawlings		
Diamond Ace		
Oliver		
Madison (Louisville)		
Mizuno		
Easton		
Wilson	5 @ \$ 5000	\$ 25.000
<u>Regional Ball Licenses</u>	4 @ \$ 3000	\$ 12.000

<u>Estimated Income</u>	<u>\$ 94.000</u>
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ATTACHMENT 2



Attachment 3

1. Implementation Stage

- Initial contact to all licensees by phone 16 hours
- Negotiation of license agreements and fine tuning of paper work 20 hours
- Personal visits to each state . 6 days 60 Hours
- 96 hours
- Servicing of licensees/Administrative duties 10 hours per week

Attachment 4

Income \$ 94.000 (See Attachment 1)

Expenses Year One

- Airline Cost to Sydney \$ 576.40
- Perth \$ 1306.80
- Adelaide \$ 545.60
- Brisbane \$ 910.80

Subtotal	\$ 3339.60 X 2	less 40 % =	\$ 4007
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Accommodation /Meals

1 night WA,NSW,QLD bed nights x 2 \$ 180 per day \$ 1080

Interim Labels

120.000 interim labels @ 10c \$ 12.000

Labels for uniforms \$ 6.000

40000 logos @ 12c

Printing of information kits \$ 1000

Legal Cost Est \$ 5000

Management Fee \$ 40.000

Estimated expenses	\$ 69087
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Estimated Net income \$ 24913

Attachment 5

Distribution of net Profit

Year One

ABF	Nil	
NSW		\$ 11.000
VIC	Nil	
BQI		\$ 4000
BWA		\$ 3000
SABL		\$ 2800
ACTBA		\$ 1500
NTBL		\$ 1500
IBLA		2 ½ % of purchases by IBLA

Year Two net income

ABF	NIL	
NSWBL	40 %	
VIC	20 %	
BQI	15 %	
BWA	12 %	
SABL	8 %	
ACTBA	\$1.000	
NTBL	\$1.000	
IBLA		2 ½ % OF PURCHASES

- Payments will be made quarterly to States. All subsequent quarterly instalments will be completed upon demonstrated compliance by that state.
- No minimum guarantees are provided. Payments are subject to the involvement and compliance of states in the program

Distribution of net income

Year two Should net income reach \$ 80.000

ABF	\$ 16.000	20%
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\$ 64.000	80 % TO STATES
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NSW	40 %	of residue after payment of expenses and ABF allocation
VIC	20 %	
BQI	15 %	
BWA	12 %	
SABL	8 %	
ACTBA	\$1000	Min payment
NTBL	\$1000	Min Payment
IBLA	2 ½ %	of purchases of licensed products

Percentage figures will be calculated upon ABF registered members who have paid a National registration fee to the Federation .

****(Percentage figures quoted above are only a guide to potential distributions)**

Net Income between \$ 80.000 and \$ 100.000 will be distributed as per the above formula

When the net income surpasses \$ 100.000.

The Australian Baseball Federation will receive the first \$ 15.000 of the net amount over \$ 100.000 as a lump sum payment.

There after the program managers will receive 15 % of the net amount over \$ 115.000 with the residue being distributed as per the agreed formula.