

18 June 2002

Mr Warren Wilson
Managing Director
TAB Ltd
Harris Street
ULTIMO NSW 2007

WITHOUT PREJUDICE

Dear Sir

SKY CHANNEL SERVICES

I refer to your letter of 27 May 2002 concerning planned changes to Sky Channel fees, terms and conditions.

The Australian Hotels Association (NSW) does not "welcome" these changes and, in fact, feels that the statements by Sky Channel are misleading and deceptive. We feel that the statements should be withdrawn and corrected. They do not state the real situation in respect of my members. There is effectively no reduction and essentially my members are not benefited in any way and nor are consumers.

On the wider issue of Sky Channel relationships with Association members we, as you know, have a long standing concern and the recent proposed changes only add to that concern.

We have taken some advice and are advised that much of your conduct is likely to be in breach of the Trade Practices Act.

We are advised that the relevant provisions of the Trade Practices Act 1974 are:

- **MISUSE OF MARKET POWER (Section 46)**
- **UNCONSCIONABLE CONDUCT (Section 51AA and AC)**

The Act prohibits businesses with a substantial degree of market power using that power for the "purpose" of damaging others in the market or in other markets.

The Act also prohibits one business dealing unconscionably with another in the supply or acquisition of goods or services.

The manifestations of the use of market power and use of bargaining power by Sky Channel include:

- A take it or leave attitude to contracts;
- Standard form contracts;
- Refusal to negotiate;
- Refusal to take into account the different commercial circumstance between small and large customers and in particular small customers in regional NSW;
- Use of an inappropriate basis for charging, namely literage;
- High charges, which have no relationship to commercial reality;
- Forcing the customer to meet all establishment and running costs, with the result that many make a loss on their wagering operations;
- Threats to take away the services, without any compensation for the establishment costs;
- Generally using the TAB service as a commercial lever.

- **FRANCHISING CODE OF CONDUCT (Section 51AD, 51AE)**

It is likely that the arrangements Australian Hotels Association (NSW) members have with Sky Channel are franchises and hence the mandatory Franchise Code of Conduct applies. This Code gives rights to franchisees, dispute resolution mechanisms and other protections.

Sky Channel has largely ignored this Code and it may be that that issue will be raised with the ACCC.

- **ANTI COMPETITIVE AGREEMENTS BETWEEN SKY CHANNEL AND FOXTEL AND BETWEEN SKY CHANNEL AND THE RACING CLUBS (Section 45)**

One of the underlying issues that provide Sky Channel with its market power is that Association members have no alternative source of supply of racing broadcasts. Foxtel is a possibility and ironically most Association members would receive Foxtel broadcasts for football, etc. but are not permitted by Foxtel to access racing. Presumably that is as a result of an agreement between Foxtel and Sky Channel as Sky Channel provides Foxtel with the racing broadcasts.

The Australian Hotels Association (NSW) has requested the ACCC to look at the agreement between Foxtel and Sky Channel as to whether such agreement is in breach of the Trade Practices Act.

You will see from this letter that our members are most unhappy with Sky Channel services and are looking at various remedies.

Due to our need to work together I am writing to you to let you know of our concerns and the possible options we are considering. It may be that we should discuss these issues.

We would also like to explore the issue of the Australian Hotels Association (NSW) negotiating with you on behalf of its members and in relation to Sky Channel and TAB services. We understand that there are some Trade Practices Act issues in relation to this but these may be able to be overcome.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Thorpe", with a long horizontal flourish extending to the right.

JOHN THORPE
President

APPENDIX 2

PUBTAB AND CLUBTAB OUTLETS

Licensed Outlets Sale's Incentive Update

After 12 months of intense competition we are pleased to announce this year's members of **The Top Ten Club** and **The Rookies' Club**. Our congratulations are extended to this exclusive group who will be treated to two unforgettable days away on August 6 & 7, 2002. **So who are they?**

PubTAB			The Top Ten Club - Qualifiers			ClubTAB		
Outlet	Name	Rank	Outlet	Name	Rank	Outlet	Name	Rank
1634	CASTLE HILL TAVERN	1	966	CABRA-VALE EX SERVICEMENS CLUB	1			
831	SANDS HOTEL, MAROUBRA SOUTH	2	1485	GEORGES RIVER 16FT SAIL CLUB	2			
2048	MARRICKVILLE TAVERN	3	2095	BATHURST ST PATRICKS SPORT CLUB	3			
544	SPORTSMANS HOTEL, BLACKTOWN	4	1089	TUGGERAH LAKES MEMORIAL CLUB	4			
1511	GLADSTONE HOTEL, DULWICH HILL	5	1295	DRUMMOYNE SAILING CLUB	5			
1670	DOLPHINS HOTEL MOTEL, TWEED HEADS	6	1724	MAROUBRA SEALS SPORT & COMM CL	6			
2170	KOOKABURRA HOTEL	7	1255	EASTERN SUBURBS LEAGUES CLUB	7			
1914	CLOVELLY HOTEL	8	932	CLUB NOVA CARDIFF	8			
1390	ROYAL HOTEL, WYONG	9	1934	MATRAVILLE RSL CLUB	9			
589	RANCH HOTEL MOTEL	10	1314	AVOCA BEACH BOWLING CLUB	10			
The Rookies Club - Qualifiers								
2394	HURSTVILLE RITZ HOTEL	1	2240	UMINA BEACH BOWLING CLUB	1			
2275	SOUTH TWEED TAVERN	2	2323	BOWLERS CLUB OF NSW	2			

And how did these Hotels and Clubs qualify? *It took hard work and commitment in delivering an outstanding sales result.* More specifically the criteria was:

- **The Top Ten Club.** The 10 Hotels & 10 Clubs that achieved the top TAB sales growth (in dollars) for the last financial year. *Condition of entry in this Club was that your PubTAB or ClubTAB must have been opened and trading prior to July 1, 2000;*
- **The Rookies' Club.** The 2 Hotels and 2 Clubs that achieved the highest average weekly TAB sales between January 1, 02 and June 30, 02. *Only PubTABs & ClubTABs that began trading between July 1, '00 & December 31, '01 were eligible.*

Each qualifying Hotel & Club receives two double passes to a 5 Star function. This includes a Gala Function in the Treasury Room at The Hotel Intercontinental, Sydney, accommodation at The Hotel Intercontinental and a fully catered Harbour Cruise to recover from the award dinner. We will be in touch with the winners shortly with all the details, but make sure that you keep the 6th & 7th of August free

TAB Wagering is please to provide these incentives to recognise and reward the efforts of those Hotels and Clubs who have made a valuable contribution to our continued growth. We look forward to sharing this getaway with all of the qualifiers to relax and say thanks.

Below is information on how your sales finished up last Financial Year at June 30.

Sales Result at: # 2265 FAMILY HOTEL			
Weekly Sales \$26,253	Weekly Tickets 2,939		
Variation on Last Year 63.6%	Variation on Last Year 59.7%		
YTD Fixed Odds 6,341	YTD PhoneTAB Deposits \$36,689		
Your Rankings			
Sales 368 of 1594	Fixed Odds Ranking 798 of 1594		
Tickets 266 of 1594	PubTAB Channel 209 of 989		

Let's play

Need more information? Please contact Robert Ilievski on 131 785



APPENDIX 3

LEGAL OPINION



Our Ref. JNM:010006
Your Ref.
Direct Line 9236 8522
Direct E-mail j.miller@jdklegal.com.au

John Miller
Douglas Hamilton
Kim Stapleton

9 August 2001

Mr Brian Ross
Chief Executive
Australian Hotels Association (NSW)
Level 5, Prince Centre
8 Quay Street
SYDNEY NSW 2000

*By Facsimile Number: (02) 9281 9765
Facsimile Message of 7 page(s) inclusive of this page*

Dear Brian

TAB AGENCY AGREEMENT

I have read the two agreements sent to me. I will refer to the existing agreement as the Present Agreement and its proposed successor as the New Agreement.

Note:

- (a) I don't know if both agreements are in a standard form but I will assume that they are.
- (b) Where the two agreements have similar provisions I have only made reference to them if I think they are unsatisfactory in some way. In the main, therefore, I have endeavoured to contrast the New Agreement with the Present Agreement to highlight the different arrangement now proposed by the TAB.
- (c) Sections describing the Present Agreement are in brackets and, where necessary, there is a comment by me concerning each provision.
- (d) References to "you" and "your" are to the hotelier.

1. Ambit of the Agreement

The New Agreement covers all Wagering Services which means TAB activity under its Off-Course Totalizator Licence and its Sports Betting Licence: Since 1997 the TAB's activities have been broadened in two ways:

Level 5, 1 Castlereagh Street phone + 61 2 9236 8588
SYDNEY NSW 2000 fax + 61 2 9236 8599
DX 1288 Sydney e-mail jdk@jdklegal.com.au



Liability is limited by the Solicitors
Act 1984 (NSW)

Mr Brian Ross
Chief Executive
Australian Hotels Association (NSW)

9 August 2001

- (a) under its Off-Court Totalizator Licence the TAB formerly could only conduct a tote on horse and greyhound race meetings. Under this licence it can now offer a tote on a myriad of sporting events (from camel racing to Rugby League);
- (b) under its Sports Betting Licence it can engage in a range of betting activities (ie not just a tote) on the same myriad of sporting events.

The New Agreement makes it clear that these services may be conducted by TAB in any form including by telephone, the internet or interactive technology.

(When the Existing Agreement was entered into, the TAB could only conduct a Totalizator on race meeting events).

Comment:

In itself, there doesn't seem to be an issue that the TAB can provide more services to you. I can't see any problem with this. Do you? The agreement may be terminated on a month's notice (see paragraph 2) anyway.

2. Period of Appointment as an Agency

This is a **monthly** appointment although the TAB can terminate it **without notice** for a number of reasons which include:

- (a) default by you;
- (b) a breach of warranty by you under Clause 12.4 (there is no Clause 12.4));
- (c) where you or an associated person is insolvent, fails to carry out TAB's instructions, is dishonest or the TAB considers you untrustworthy;
- (d) another agreement with you is terminated (presumably in relation to another hotel);
- (e) there is a change of shareholding if you are a company; or
- (f) weekly average sales over a 6 month period are less than a nominated figure or "such other amount as TAB may ... determine".

(The Present Agreement was initially for 2 years with 2 year roll-overs but contains similar monthly termination provisions.)

Mr Brian Ross
Chief Executive
Australian Hotels Association (NSW)

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Comment:

1. *There is no performance criteria in the present Agreement. This is significant for although the Agreement contains provisions which would enable the TAB to quite easily terminate an Agency, sales turnover is a commercial criteria and in a commercial context, a contracting party in terminating a contract would prefer to deal with a failure to achieve sales than issues such as breach, dishonesty, etc.*
2. *There are no provisions entitling you to terminate for specific default by the TAB – but you can always give one month's notice.*

3. **TAB's Obligations**

(a) **Equipment Supplies**

The TAB is to supply such equipment and supplies as it determines that you need, repair, maintain and replace it, but:

- (i) you must ensure it is maintained in good working condition and is routinely maintained; and
- (ii) if you don't do so, you are liable for any loss the TAB thereby suffers.

(In the Present Agreement (i) and (ii) do not apply.)

Comment:

There is an inconsistency between the obligation of the TAB to repair, maintain and replace equipment and your obligation to keep it in good working order and condition. This should be clarified.

(b) **Commission**

The TAB is to pay you commission on such terms and when it decides. "Commission" means:

- (i) the total of \$5.00 per new Betting Account; and
- (ii) \$0.50 per account betting withdrawal; and
- (iii) 1.08% of account betting deposits; and
- (iv) 1.125% of all Totalizator investments where the weekly average sales is less than the performance criteria (in this case, \$7,500.00); and

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(v) 2.125% of all Totalizator investments where the average weekly sales is greater than the performance criteria (\$7,500.00); and

(vi) 1.35% of all sports betting and fixed odds bets,

but the TAB can change any or all of (iii) to (vi).

(Under the Present Agreement, the TAB pays a commission of 2% on bets or such other amount as it determines.)

Comment:

Under both Agreements, the commission arrangements are unsatisfactory in that TAB can change the commission amounts and it can change its mind as to how and when it will pay them. Just because the Present Agreement is unsatisfactory does not justify the continuation of this unsatisfactory provision in the New Agreement.

(c) Pay Settlements

The TAB is to pay you "any Settlement Amount on such terms and frequency as is required" (?). A Settlement Amount is the total of all receipts less winning bets less account betting withdrawals.

(Under the Present Agreement, the TAB is obliged to settle accounts with you by reimbursing you for winning bets you have paid.)

Comment:

Again, the provision is unsatisfactory as the term and frequency of payment is unclear. It is "as is required" but it doesn't say by you or the TAB. Settlements should take place on a regular basis such as weekly or monthly.

4. Your Obligations

(a) Hours of Operation

You must operate your Agency while the TAB's Wagering Service is available but not if that means you are operating outside your normal trading hours.

(Under the Present Agreement, you could be required to operate additional hours just to meet the requirements of the TAB Agreement.)

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Australian Hotels Association (NSW)

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Comment:

Insofar as you can't be required to trade outside your usual hours, the New Agreement is to be preferred.

(b) Promotion

You must participate in TAB's promotional and marketing activities at your cost.

(Under the Present Agreement, there is no equivalent obligation.)

Comment:

1. *The Present Agreement has a general "bear all cost" (Clause 2(t)) but it probably doesn't extend to promotion and marketing; and*
2. *It is very unusual for an agency to bear such costs; and*
3. *The obligation is unlimited.*

(c) Cost of Betting Tickets

You pay the TAB for betting tickets in excess of your actual usage over each quarter.

(There is no equivalent provision in the Present Agreement.)

Comment:

No comment.

(d) Security Guarantee

You must lodge a Security Guarantee with the TAB for an amount which the TAB decides. The Rules are:

- (i) for an Existing Agency, the security will be the greater of \$5,000.00 or 12.5% of average weekly sales over the last 12 months (and not be less than \$5,000.00);
- (ii) it need not be a cash security deposit (but if it is, interest is not payable on it);

Mr Brian Ross
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Australian Hotels Association (NSW)

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- (iii) the TAB can increase the amount on one month's notice; and
- (iv) the TAB may access the security deposit to pay your liability to the TAB incurred through the Agency.

(The Present Agreement contains similar provisions.)

Comment:

It seems to me quite unacceptable that the TAB can simply change the amount of the security deposit because it determines that it will do so. This is most uncommercial.

(e) Sale of Hotel

Under the New Agreement, you must give the TAB not less than four weeks' notice of your intention to complete the sale of the hotel and, if you fail to do so, TAB is entitled to retain the Security Guarantee as compensation for costs, expenses and losses incurred.

(Under the Present Agreement, there is a similar provision.)

Comment:

The provision should be (if at all) that the TAB retain the Security Guarantee but only upon proof that it has suffered loss by way of costs, expenses and other losses.

(f) Compliance

The New Agreement provides that you must comply strictly with all applicable laws "codes of conduct and policies" for the conduct of the Agency and not allow any staff to be involved in illegal gambling or wagering, not accept bets from minors or after the closing time and comply with responsible gambling codes of conduct.

(The Present Agreement does not contain a provision in this form.)

Comment:

The provision itself is, today, not objectionable.

Mr Brian Ross
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Australian Hotels Association (NSW)

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4. *TAB Access to Premises*

The TAB may enter your premises (your hotel) to inspect documents, records, accounts, etc which relate to the conduct of the Agency and you must provide this material.

(There is no similar provision in the Present Agreement but under that Agreement, TAB may suspend the appointment of the Agent and conduct the Agency (which means they must have access at least to the Agency if not to your hotel)).

Comment:

Both the provisions in the Present Agreement and the New Agreement are unusual and may not be acceptable.

5. **Obligations on Termination**

When the Agreement is at an end, you must account to the TAB for any money that you have and hand to the TAB its equipment and supplies and remove signage. The TAB must give you the Security Guarantee or any remaining part of it.

Comment:

The clause is probably reasonable subject to these things:

1. *In removing equipment supplies the TAB should cause minimum damage and disruption to your hotel and hotel business; and*
2. *The Security Guarantee should be returned promptly, say 7 days; and*
3. *You should be aware of the provision in the New Agreement that the asset value of the Agency including any goodwill is the property of TAB.*

6. **Limited Liability of TAB**

The New Agreement provides that the TAB will not be liable for any damage, loss or expense which you incur under the Agreement except where the loss is suffered by you because the TAB has failed to rectify repair, maintain or replace equipment or supplies and the loss was due to the negligence of the TAB and the loss could have been avoided.

Mr Brian Ross
Chief Executive
Australian Hotels Association (NSW)

9 August 2001

7. **Liability of the Agent**

Under the New Agreement, you indemnify TAB for any claim, loss, liability or expense which it suffers by reason of your act or omission or breach.

(There is no similar provision in the Present Agreement.)

Comment:

There is no reason why the liability of each party should not be corresponding and the restricted liability of the TAB broadened to match the indemnity which you are required to give it.

Brian, I am not sure whether the above is what is called for – that is, whether there was any particular issue your members are interested in. Please phone to discuss the matter should you wish to do so.

Yours sincerely



John Miller

APPENDIX 4

CONCERN OF COUNTRY NSW OVER RACING PROBLEMS

Opinion

Horses for courses? Not if the TAB has its way

THERE'S a crisis in the bush that has nothing to do with drought, flood or fire.

It's a crisis resulting from privatisation that is threatening one of the oldest industries in rural NSW - horse racing. TAB Limited has inflicted a virtual creeping paralysis on the race clubs of country NSW through its bid to stock up the number of TAB meetings to look after its profits and shareholders.

The non-TAB or community meetings traditionally held on Saturdays have been eroded from 724 to 285 since 1988. It was these weekend meetings which gave many towns a focus and supported the racing industry.

There were few property owners who did not have a horse or two about the

place. They took them to the races on Saturday at Glen Innes, Armidale, Tamworth, Quilindi, Inverell and the likes.

The Saturday racing scene was a very important part of the social and economic fibre in many country towns.

Glen Innes now has just one meeting a year.

Armidale is down to 13. Tamworth's non-TAB meetings have slowly been lost - all in the name of shareholder returns.

The TAB has to fill its calendar with sufficient meetings to make a profit and return a dividend, but it is doing this by cutting out the Saturday meetings in the bush, forcing them to race TAB meetings midweek.

The Northern Daily LEADER

WHAT WE SAY

Somewhere along the line someone has forgotten to tell the TAB just how important country racing is.

It is an industry that supports people and their communities - trainers, jockeys, breeders, owners, feed suppliers and so on.

Bush racing is also an industry that supports the metropolitan and provincial racing scene and from this aspect the winding down may come back and bite the TAB.

Provincial meetings, that is Wyong,

Gosford and Newcastle, for example, rely heavily on bush-trained horses to make up the numbers for the midweek meetings.

The introduction of transitional classes in country NSW, where good horses get ridiculous weights appears to have been designed to force the owners of these horses to take their steeds to the provincial meetings if they want to race.

Some clubs want to continue to fight where others just don't have the energy any more and appear doomed to fade from the scene as the TAB erodes their base.

Coupled with increasing costs and lower levels of prizemoney on offer, the TAB is doing its best to bleed country racing in NSW dry.

Some suggest that country NSW will be the home of picnic racing in the future because there will be no alternatives. Others believe that with innovation, such as twilight TAB meetings on Saturdays, there is still a hope.

But it appears that any innovative ideas from the bush will only grow to fruition if the TAB thinks it can make an extra dollar out of it.

In 1988 there were 89,434 acceptors for 7720 races outside metropolitan courses.

In 2002 there were 66,340 acceptors in 6044 races. Those figures hardly give anyone confidence about making a living out of racing in country NSW.

your letters



MAIL
PO Box 525
Tamworth NSW 2340



INTERNET
Have your say at www.iamtamworth.youngkids.com.au



FAX
Leader Letters to
the Editor 02 67667631



EMAIL
editor.rld@ruralpress.com
(cleared daily)

APPENDIX 5

TABLE

TAB Ready Reckoner

Commissions as at 1/7/02

Weekly Sales	Commission	Sky Channel Fees	Paper & Toner Costs	GST Payable on commission	Weekly Profit/Loss	Annual Profit/Loss
\$5,000.00	\$53.75	\$289.38	\$13.00	\$5.38	-\$254.01	-\$13,208.26
\$6,000.00	\$64.50	\$297.50	\$13.00	\$6.45	-\$252.45	-\$13,127.40
\$7,000.00	\$75.25	\$297.50	\$13.00	\$7.53	-\$242.78	-\$12,624.30
\$8,000.00	\$166.00	\$297.50	\$13.00	\$16.60	-\$161.10	-\$8,377.20
\$9,000.00	\$186.75	\$297.50	\$13.00	\$18.68	-\$142.43	-\$7,406.10
\$10,000.00	\$207.50	\$306.13	\$13.00	\$20.75	-\$132.38	-\$6,883.76
\$11,000.00	\$228.25	\$306.13	\$13.00	\$22.83	-\$113.71	-\$5,912.66
\$12,000.00	\$249.00	\$306.13	\$13.00	\$24.90	-\$95.03	-\$4,941.56
\$13,000.00	\$269.75	\$306.13	\$13.00	\$26.98	-\$76.36	-\$3,970.46
\$14,000.00	\$290.50	\$306.13	\$13.00	\$29.05	-\$57.68	-\$2,999.36
\$15,000.00	\$311.25	\$306.13	\$13.00	\$31.13	-\$39.01	-\$2,028.26
\$16,000.00	\$332.00	\$306.13	\$13.00	\$33.20	-\$20.33	-\$1,057.16
\$17,000.00	\$352.75	\$306.13	\$13.00	\$35.28	-\$1.65	-\$86.06
\$18,000.00	\$373.50	\$306.13	\$13.00	\$37.35	\$17.02	\$885.04
\$19,000.00	\$394.25	\$306.13	\$13.00	\$39.43	\$35.70	\$1,856.14
\$20,000.00	\$415.00	\$306.13	\$13.00	\$41.50	\$54.37	\$2,827.24
\$21,000.00	\$435.75	\$306.13	\$13.00	\$43.58	\$73.05	\$3,798.34
\$25,000.00	\$518.75	\$306.13	\$13.00	\$51.88	\$147.75	\$7,682.74
\$30,000.00	\$622.50	\$345.50	\$13.00	\$62.25	\$201.75	\$10,491.00
\$35,000.00	\$726.25	\$345.50	\$13.00	\$72.63	\$295.13	\$15,346.50
\$40,000.00	\$830.00	\$345.50	\$13.00	\$83.00	\$388.50	\$20,202.00

Sky Channel Fees based on 20 to 27 Kegs per week

Extra Wages or equipment and rental costs not included

Commission- 1.075% to \$7500 - 2.075% over \$7500 Weekly Turnover

DFS Printing- UTILIZING BOTH SIDES OF PAPER
 (Consumables) all races,trot & greyhound meetings @ two races per page
 (-based on) All fixed odd racing
 All R/L & AFL
 Major sports tab events ONLY
 Supplimentary Form sheets on Saturdays ONLY

GST- Not Included on consumables or Sky fees (claimed back)

5. A NOTE ON THE OPT OUT PROCESS FOR THOSE MEMBERS WHO DO NOT WANT TO ENGAGE IN THE CONDUCT SOUGHT TO BE AUTHORISED.

AHA APPLICATION IN RELATION TO COLLECTIVE NEGOTIATION WITH TAB Ltd.

THE COLLECTIVE NEGOTIATION PROCESS.

The AHA is a democratic organisation .Its Constitution reflects that culture. There is no compulsion in the Constitution to abide by AHA resolutions. In practice many members who disagree with AHA resolutions do so openly and with no penalty.

Its members have long expressed great concern about dealings between its members and the TAB Limited, including its SKY CHANNEL operation.

The AHA proposes to act a ‘bargaining agent ‘for its members in their dealings with TAB LTD. The AHA expects to put the views of its members on a collective basis and will seek to alter the current terms and conditions dictated by TAB Ltd. The AHA hopes to enter into a partnership relationship with TAB Ltd .This will only happen through the auspices of the AHA and not by individual members.

The AHA is of the view that the ‘one fits all’ regime dictated by the TAB Ltd is both inappropriate and works against the effective operation of the wagering industry in NSW and to the detriment of the customer.

If authorisation is granted the AHA will immediately consult its members canvassing options for new contracts with TAB Ltd, when contracts come up for renewal. It may be that the membership will split into various bargaining groups or a single bargaining group. The AHA already has a sub –committee that focuses on Sky Channel issues and that committee would oversee any collective negotiation.

If any member or group of members do not want to be part of any bargaining group they are free to opt out and opt back in if they want to. Members will be expected to opt out in writing. No penalty will accrue to any members opting out. Should more 25% of any bargaining group opt out, the AHA executive will consult the members to assess whether the collective negotiation process should continue.

It should be appreciated that all this is new to the AHA and some of the rules will need to be worked out once authorisation is granted, within the framework laid down by the ACCC.

AHA (NSW)

SEPTEMBER 2002

**4. CORRESPONDENCE BETWEEN TAB AND TWO AHA (NSW)
MEMBERS IN RELATION TO DISPUTES WITH TAB/SKY OVER
CHANNEL SERVICES.**



Sky Channel Pty Ltd
 ACN 009 136 010
 79 Frenchs Forest Road, Frenchs Forest NSW 2086
 Telephone: (02) 9451 0888 Facsimile: (02) 9452 2222

LICENCE AGREEMENT

THIS AGREEMENT is made 1 JULY 1997 (Date)

BETWEEN: 29 MOORE ST HARBOURD 2096 "Owner" - "Licensee"
Delete Not Applicable (Address)

AND: **SKY CHANNEL PTY. LIMITED**, having its principal office at 79 Frenchs Forest Road, Frenchs Forest, 2086, ("the Licensor")

Subject to the terms and conditions of this Agreement, the Licensor agrees to cause the transmission of the Works to the Licensee by satellite.

The following are the key features of SKY CHANNEL:

- The Licence is for a period of five (5) years ("initial term").
- The Licensor will make all reasonable efforts to ensure clear and comprehensible reception of SKY CHANNEL programmes.
- The Licensor will actively promote SKY CHANNEL to enhance the benefits derived by the Licensee.
- The Licensor will be responsible for all maintenance.

The Licence is for premises ("the Premises") at:

HARBORO HOTEL
(name of establishment)

29 MOORE ST HARBOURD NSW
(street number) (street name) (town/suburb)

2096 Telephone 02 99053434 Facsimile 02 99051923
(postcode)

The contact name is:

JOHN THORPE
(first name) (street name)

The quarterly fees are: \$

Northern Australia Special Equipment/Remote Area Service Charge: \$

TOTAL QUARTERLY FEE \$ 3771.00

The Licensee acknowledges that the Licensee has reviewed and approved the terms and conditions set out in the succeeding pages of this Agreement and agrees to be bound by them.

SIGNED FOR AND BEHALF OF SKY CHANNEL PTY. LTD.:

SIGNED BY OWNER - LICENSEE:
Delete Not Applicable

John Thorpe
 John Thorpe

PRINT NAME:

PRINT NAME:

WITNESSED BY:

WITNESSED BY:

PRINT NAME:

PRINT NAME:

OFFICE USE ONLY	SITE No. <u>20242</u> BPV TIER <u>4</u>	SITE TYPE <u>HZ-PTAS</u> BILLING
	PROGRAM QTY <u>2</u>	OPERATIVE DATE <u>26 MAY 1997</u> FREQUENCY: - MTH <input checked="" type="checkbox"/> QTR
	REP No. <u>9224</u>	



Sky Channel Pty. Ltd.
A.C.N. 009 136 010
231 Frenchs Forest Road
Frenchs Forest, N.S.W. 2086

+ 13c per month decoder

PRICE LIST - PUB/CLUB TAB

Annual Licence Fee	Weekly Fee	Monthly Fee	Quarterly Fee
0 - 9,999	\$202.30	\$876.65	\$2,630.00
10,000 - 19,999	\$237.46	\$1,029.00	\$3,087.00
20,000 - 29,999	\$290.08	\$1,257.00	\$3,771.00
30,000 - 39,999	\$343.23	\$1,487.33	\$4,462.00
40,000 - 49,999	\$396.38	\$1,717.66	\$5,153.00
50,000 - 59,999	\$426.00	\$1,846.00	\$5,538.00
60,000 - 69,999	\$437.23	\$1,894.66	\$5,684.00
70,000 - 79,999	\$455.62	\$1,974.33	\$5,923.00
80,000 - 89,999	\$474.08	\$2,054.33	\$6,163.00
90,000 - 99,999	\$492.46	\$2,134.00	\$6,402.00
100,000 - 199,999	\$510.92	\$2,214.00	\$6,642.00
200,000 - Plus	\$529.31	\$2,293.66	\$6,881.00

Price List Effective 1 July 1996

11. Assignment

The Licensor shall be entitled to assign the benefit of this Agreement without consent by the Licensee. The Licensee shall not transfer, assign or set over the benefit of this Agreement to any other person without the prior consent of the Licensor, which consent shall not be unreasonably withheld by the Licensor if such assignment is to occur upon the transfer of the business of the Licensee and the Licensor is reasonably satisfied that the assignee is a person of financial standing and good reputation. The Licensee agrees that it shall not, nor shall it attempt or purport to, assign transfer or sell the business conducted by the Licensee at the Premises unless as a condition of any such assignment, transfer or sale, the assignee thereof enters into an agreement on the same terms mutatis mutandi as this Agreement.

12. Termination

This Agreement shall continue in force until terminated by six months notice in writing by either party, provided that the Licensor may terminate this Agreement by notice in writing to the Licensee immediately:

- (a) upon breach of any provision of this Agreement by the Licensee;
- (b) upon the presentation of any petition for the bankruptcy of the Licensee or, in the case of any Licensee which is a corporation, any petition for the winding up of such corporation or the appointment of any liquidator, provisional liquidator, receiver or receiver and manager;
- (c) if the Licensee creates or purports to create any mortgage, charge, lien or other encumbrance in respect of the encoding device or receiver dish provided by the Licensor hereunder; and
- (d) if the Licensee does anything or fails to do anything which would entitle a receiver to take possession of any assets of the Licensee.

13. Force Majeure

The Licensor and the Licensee will be released from their respective obligations in the event of national emergency, war, prohibitive government regulations or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this Agreement impossible, whereupon all moneys due under this Agreement shall be paid immediately and the Licensee shall forthwith return or cause to be returned to the Licensor the decoding device and receiver dish provided by the Licensor hereunder, provided that this Clause shall only have effect at the discretion of the Licensor except when such event renders performance impossible for a continuous period of not less than 6 calendar months.

14. Severance

If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, it shall be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect, unless the Licensor in its absolute discretion decides that the effect of such declaration is to defeat the original intention of the parties, in which event the Licensor shall be entitled to terminate this Agreement by notice in writing to the Licensee.

15. Procedure on Termination

Upon termination of this Agreement, the Licensor may take delivery of and remove the Equipment. The costs of such removal shall be to the account of the Licensee. The Licensor shall be under no liability to repair or reinstate the Premises (or any part thereof) damaged or disrupted in connection therewith. The Licensee authorises the Licensor or its representative to enter any premises of the Licensee in which such Equipment is located or installed, during normal business hours, to remove or collect the same.

16. Whole Agreement

This Agreement contains the whole agreement between the parties and the Licensee acknowledges that it has not relied upon oral or written representation made to it by the Licensor or its employees or agents and has made its own enquiries in to all matters relevant to this Agreement and the Licence hereunder.

17. Notices

Any notice given pursuant to this Agreement shall be given in writing signed by any Director, Manager or Secretary of the Party giving notice and such notice shall, if sent by prepaid mail, be deemed to be received by the party to whom it is addressed four days after the date of posting thereof and, if sent by telex, on receipt of the answerback of the recipient.

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of N.S.W.

6. Maintenance and Repair

The Licensor shall use all reasonable efforts to maintain and keep the Equipment in good and substantial order and repair and make good all such parts thereof that may be broken or damaged. The Licensee undertakes not to adjust, interfere or tamper with the Equipment at any time for any purpose.

7. Conditions of Licence

It is a condition of the continuation of the licence of the Works hereunder that the Licensee shall:

- (a) obtain and keep in force any licence or permit necessary under the Radio-Communications Act in respect of the installation and operation of a receiver dish of a kind necessary to receive the Works, as transmitted from time to time by the Licensor;
- (b) comply with any conditions to such licence or permit, or to any exemption as may have been granted in relation thereto, as may be granted to the Licensee pursuant to the Radio-Communications Act, in respect of the operation of any receiver dish used by the Licensee in connection with this Agreement;
- (c) not permit or suffer any abridgement, alteration or editing of the programme of the Works as compiled by the Licensor (including any sponsored programmes, advertisements or endorsements), without the prior approval of the Licensor;
- (d) unless otherwise agreed by the Licensor, at all times ensure that the exhibition of the Works is in a manner compatible to the enjoyment of the Works and in a manner which will enhance the reputation of the Licensor, by the provision of adequate and comfortable seating, the control of background noise or interruption, the provision of appropriate services and the availability of refreshments;
- (e) at all times comply with the spirit and intent of the Broadcasting Services Act, 1992, as amended from time to time and shall not do, permit, suffer or allow any act or omission which would or may result in the Licensor breaching or participating in or facilitating arrangements which are inconsistent with spirit and intent of the Broadcasting Services Act, 1992; and
- (f) permit the Licensor and its servants and agents to enter at any time upon the the Premises for the purposes of inspecting and testing the condition of and servicing and maintaining the Equipment and further shall permit the Licensor to remove such Equipment or any part thereof from the Premises; and
- (g) use the Equipment solely for the reception and exhibition of the Works in accordance with this Agreement.

8. Promotion

The Licensor may provide to the Licensee a schedule of the Works to be available for public performance pursuant to this Agreement and the Licensee may:

- (a) at the cost of the Licensee, advertise the scheduled Works, in a manner approved by the Licensor;
- (b) join in any promotion nominated by the Licensor, including the display of any promotional posters, materials or advertisements and the distribution of any printed brochures, pamphlets or advertisements, as provided by the Licensor to the Licensee; and
- (c) promote and participate in (without cost to the Licensee) any promotional campaigns, games, lotteries or competitions conducted in connection with such scheduled programmes (subject to any necessary licence or permit pursuant to applicable gaming legislation).

The Licensee acknowledges that the Works will be transmitted in conjunction with advertisements (and that the Licensor will be entitled to all revenue therefrom) and agrees to participate (without cost to it) in any campaign agreed between the Licensor and any advertiser. The promotion of any programme by the Licensor does not create an obligation upon the Licensor to transmit or continue to transmit such a programme.

9. No Disparagement

The Licensee acknowledges and agrees that:

- (a) the Works may be transmitted in connection with, and for the purpose of, promoting various products, including products supplied by the Licensor or related corporations; and
- (b) the Licensee shall not act in any manner, nor suffer or permit any employee of the Licensee to so act, so as to deprecate or disparage such products.

10. Extension of Term

This Agreement and the licence granted hereunder shall continue for further successive periods of one year after the initial term, if:

- (a) the Licensee has complied with all provisions of this Agreement; and
- (b) the Licensor has not given notice to the Licensee requiring termination of the Agreement.

The Licensor may nominate an increased fee in respect of each such extended term, which fee shall be paid by the Licensee in accordance with Clause 3 hereof, provided that the Licensee may terminate this Agreement within thirty (30) days of notice of such increased fee.

TERMS AND CONDITIONS OF PUBLIC PERFORMANCE LICENCE

WHEREAS:

- A. The Licensor is and will be the licensee in Australia in respect of the copyright subsisting in various cinematograph films, television broadcasts and sound broadcasts ("the Works") and has the right in Australia to authorise the Works to be seen and heard in public.
- B. The Licensee desires that the Works be seen and heard in the Premises for the purposes of and in connection with its business and the Licensor has agreed to authorise such performance as provided herein.
- C. The Licensor agrees to cause the transmission of the Works to the Licensee by satellite, for reception by the Licensee by encoded receiver.

NOW IT IS AGREED

1. Grant of Licence

The Licensor hereby licenses the Licensee to perform the Works within the Premises for a period of five years from the date of completion of installation of the radio communication receiver and decoding device pursuant to Clause 2 or otherwise from the date hereof ("Effective Date") subject to earlier termination. The licensee acknowledges that the Works licensed pursuant to this Agreement do not necessarily include all programmes transmitted by the Licensor and that the Licensor may transmit programmes at times or with content that the Licensor deems special and outside of the licence envisaged by this Agreement.

2. Provision of Equipment

The Licensor agrees, subject to any special agreement to the contrary, and solely for the purposes of the Licensee receiving and exhibiting the Works as transmitted by the Licensor by satellite pursuant to this Agreement to provide the Licensee:

- (a) a decoding device; and
- (b) a radio-communication receiver (a "receiver dish") for installation at the Premises for the Initial Term; and
- (c) all other ancillary equipment including but not limited to L.N.C.'s, cabling, splitters and line amps ("the Equipment").

The Licensee warrants it will not use the Equipment for any other purpose other than receiving and exhibiting the Works in accordance with the terms of this Agreement. The Equipment will be held by the Licensee as bailee at will of the Licensor.

The Licensor warrants that all reasonable efforts shall be made so as to ensure that the Works are received upon transmission in a clear and comprehensible state and the Licensee acknowledges that from time to time technical problems may arise (whether or not caused by the Licensor or its agents) such as to interfere with such transmission, the occurrence of which shall not give rise to any cause of action or reduction of fees or permit termination of this Agreement. The Licensor expressly limits any liability for loss or damage arising in connection with or resulting from the failure or non-performance of the Equipment provided hereunder, to the repair or replacement thereof.

3. Subscription Fees

In consideration of the licence pursuant to Clause 1 and the supply of the Equipment pursuant to Clause 2, the Licensee agrees to pay the fees specified as from the Effective Date. Fees shall be payable within fourteen (14) days of presentation of an invoice by the Licensor in advance in respect of each quarter or shorter period (ending 30 June, 30 September, 31 December and 31 March in each year) by remittance to the address specified hereinbefore or such other address or in such manner as is from time to time notified by the Licensor. Fees for shorter periods will be apportioned. The fees payable may be adjusted by the Licensor in its entire discretion from time to time, and any increase shall include the percentage by which the charge of Optus for the financial year current at the time of each such review, and levied under the Customer Service Agreement between Optus and Nine Network Australia Limited (or its related companies) which regulates the use of the transponder of the Optus Space Satellite used for transmission hereunder, has increased against the same charge of Optus for the preceding financial year. Unpaid moneys shall bear interest at a rate of 2% per annum above the prime rate quoted by the bankers to Licensor accrued weekly and calculated as at the start of each week during the period of default.

4. Security Bond

A \$500 bond is payable and must be attached to the signed licence agreement. The bond will be refunded upon completion of the first twelve months from the effective date. No interest is payable on the bond.

5. Conditional Agreement

This agreement is conditional upon:

- (a) the grant to the Licensor or a related corporation and the continuance of a licence under the Radio-Communications Act in respect of the transmission of the Works by satellite; and
- (b) the erection of a receiver dish at the Premises in accordance with any applicable planning permission or authority (the issue and maintenance of which the Licensee warrants shall occur and at all times be complied with) and in conformity with any licence or exemption in respect of such receiver under the Radio-Communications Act.



Sky Channel Pty Ltd
ABN 77 009 136 010
79 Frenchs Forest Road
Frenchs Forest NSW Australia 2086

11 April 2002

Ms Trish King
Harbord Beach Hotel
29 Moore Street
HARBORD NSW 2096

Dear Trish,

Re: SKY CHANNEL LICENCE AGREEMENT
Harbord Beach Hotel Site ID:20242

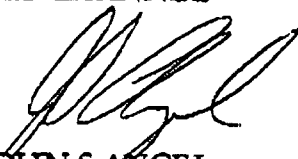
We wish to advise your current Sky Channel Licence Agreement is due for renewal on 24 May 2002. Accordingly, our Representative will be making contact with you, in the near future, in order to make arrangements for the ongoing supply of Sky Channel.

As you may also be aware, Sky Channel has a strong commitment to service excellence. Since our inception we have been constantly striving to provide the best live coverage of Thoroughbred, Harness and Greyhound racing, the result of which has seen Sky Channel become Australia's first and foremost satellite telecaster.

Furthermore, Sky Channel is now an integral business partner of the Australian Racing Industry, enabling us to bring you the best coverage available. Additionally, we have greatly increased our telecasts of quality International Sporting Events. It is our intention to build even further on this already extensive coverage and to bring to you, the best live television and racing coverage in Australia.

We would also like to thank you for your support over the years and we welcome the opportunity to be of service to you in the future.

Yours sincerely
SKY CHANNEL



JOHN S ANGEL
National Sales Manager