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Mr T .Grimwade
General Manager, Adjudication
ACCC
PO Box 1199
DICKSON ACT 2602.

13 SEPTEMBER 2002

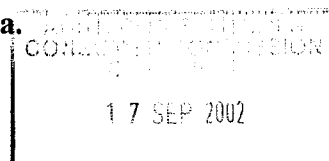
Dear Mr Grimwade,

Application Number A90837 - AHA (NSW) re collective negotiation with TAB LIMITED.

Thank you for your letter of 4 September 2002 and our subsequent discussions of 6 September 2002. This letter also answers your letter of 6 August 2002 and the Freehill's letter of 10 September 2002.

I attach the following,

1. Amended Forms A and B, including a cheque for \$1500.00
2. Response to your letter of 6 August 2002.
3. List of current AHA (NSW) members.
4. Correspondence between TAB and two AHA (NSW) members in relations to disputes over TAB/SKY CHANNEL services.
5. A note on the 'opt out' processes for those members who do not want to engage in the conduct sought to be authorised.
6. A note on the Detriment / Benefit considerations in relation to this application- this supplements the response to the letter of 6 August 2002.
7. A media release about developments in Victoria.



In your letter of 4 September you seek confirmation of the ACCC's understanding of the features of the Application as set out in that letter. I confirm that that is the correct understanding.

The letter from Freehill's of 10 September 2002 raises concerns about the nature of the Application and quotes from the Notes of Interview of 31 July 2002. Those discussions were wide ranging and discussed issues of history as well as the current Application. It is unfortunate that Freehill's have not waited until the response to the ACCC letter of 4 September, a letter they obviously have, before raising these issues again. I trust that they will not keep raising the same issues in order to delay their response.

The AHA (NSW) asks the ACCC that in its assessment of this Application that it seeks information from TAB Limited about any agreements it has with Foxtel in relation to the supply of racing broadcasts for re- broadcasting by Foxtel. Such agreements would appear to prevent Foxtel from supplying racing broadcast to AHA (NSW) members, even though they do subscribe to Foxtel for other sports broadcast services. It is suggested that such agreement may be in breach of the Trade Practices Act.

I trust that the above material is of assistance. If you need more, please do not hesitate to contact me. I have also attached some material from the AHA (NSW) Website providing some additional information about the Applicant.

Yours truly,



HANK SPIER

Director.

Welcome, Guest

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Role of the AHA (NSW)

Mission Statement

The AHA (NSW) aims to be the leading hotel and hospitality industry association providing leadership and a responsible approach in representing the interests of members and other stakeholders to the Government and community. The AHA (NSW) aims to provide cost effective support to the industry in promoting professional and ethical business standards and management practice and in developing industry market opportunities.

Function of the Australian Hotels Association (NSW)

The AHA (NSW) is a political lobby group seeking change for the benefit of the hotel industry. The AHA (NSW) builds its strength by maintaining:

- strong personal links with Government and Opposition members at State, Federal and Local Government levels;
- a strong media profile with a professional public relations campaign; and
- a corporate image program for today's modern hotel.

The many other services we offer to members (only) include:

- Engaging in negotiations with trade unions on various matters
- Co-operating in industry programs such as the underage drinking awareness program and act as a good corporate citizen on behalf of members
- Liaising with industry suppliers to bring the best possible deals to members
- Researching and advising on a range of legal matters concerning hoteliers
- Offering the only insurance policy specifically designed for hotels
- Organising seminars on relevant and topical issues
- Providing a forum for member hoteliers to meet and discuss ideas and problems
- Circulating industry developments and news through magazines, bulletins, reports and meetings
- Monitoring social and community issues - problem gambling, responsible service of alcohol, smoking
- The AHA (NSW) also provides the opportunity for industry suppliers to become Associate Members or Corporate Sponsors.

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Structure of AHA (NSW)

The Australian Hotels Association (NSW) Executive and Council

NSW is divided into various Sub-Branches from which one member is elected delegate. Each delegate is required to attend bi-monthly meetings of the State Council of the AHA (NSW), which is the governing body of the Association. Delegates return to their regions to conduct Sub-Branch meetings to inform local hoteliers of issues discussed and matters which have arisen from the Council Meeting.

From the Council delegates an Executive Committee or Board is elected which meets every month. The Executive consists of the President, two Senior Vice Presidents (one General Division, one Accommodation Division), Vice President, Secretary/Treasurer, three elected country delegates and three elected metropolitan delegates. All these positions are voluntary and are held by hoteliers dedicated to successfully steering the hotel industry of New South Wales into the future.

2001/2002 Executive Members

President	John Thorpe
Senior Vice President	Bevan Douglas
Senior Vice President (Accommodation Division)	David Travers
Vice President	John Daly
Treasurer	Bruce Woods
Metropolitan	Paul Dirou Robert French Phillip Webster
Country	Rob Broomham Doug Brown Nick Elliott
Chief Executive	<i>Brian Ross</i>



2001 Executive Body

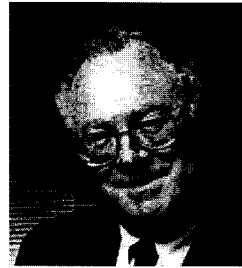
Seated (left to right): *Brian Ross, Chief Executive; Bevan Douglas, Senior Vice-President; John*

Thorpe, President; David Travers, Chairman Accommodation Division.

Standing (left to right): *Paul Dirou, Metropolitan Representative; Nick Elliott, Country Representative; Doug Brown, Country Representative; Bruce Woods, Secretary/Treasurer; John Daly, Vice-President; Rob Broomham, Country Representative; Patrick Griffin, Accommodation Division Representative and Robert French, Metropolitan Representative.*



John Thorpe (President)



Brian Ross (Chief Executive)

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History of the AHA (NSW)

The AHA (NSW) can trace its origins back to 1873. Its long history has been played out against a background of fluctuating fortunes for both the hotel industry and the liquor trade, and mirrors the social changes that have revolutionised drinking habits and the Australian way of life over the past one hundred years.

[INDEX](#)[The Beginning](#)[ULVA Uproar](#)[AHA \(NSW\)](#)[Powerful & United](#)

The Association has not always been a stable, secure organisation. Its history is characterised by the frailty of the unity that brought New South Wales hotelkeepers together at times of crisis in their industry. Before 1900 the strength and dynamism of the Association seemed to depend more on the level of activity of its opponents than on any intrinsic coherence or purpose of its own.

The Beginning

In 1873, New South Wales, with a population of almost 540,000 had over 2,400 licensed publicans. The same year the temperance campaign was having a serious effect on the public with campaigners trying to achieve a total ban on liquor in New South Wales.

Deciding that only united action could overcome this threat to their livelihood, Charles Darton of the Occidental Hotel, Wynyard called on licensed victuallers to form an association that would protect and defend its members and "establish unity of feeling and action amongst them".

The United Licensed Victuallers Association (ULVA) was formed with Charles Darton being elected its first president. By October 1875 the Association had elected a new president, Joseph Olliffe of the Hyde Park Hotel and was able to report that it had 427 members, five branches and 310 pounds income. The Association had worked extremely hard during the general elections to secure the return of those sympathetic to the trade, and members believed that it was their activities that had helped defeat the Parkes Government.

ULVA Uproar

The decision of government in July 1956 to legalise poker machines in non-proprietary clubs, profits being taxed and the resultant revenue diverted to the hospitals fund was a body blow to the ULVA.

Hotelkeepers seemed powerless to defend their trade against the now unrestricted competition from the clubs.

The ULVA reacted quickly. Recognising that it would have to meet social changes head on, it commissioned Asher Joel Advertising to investigate both the hotel trade and consumer attitudes. Joel's report, presented to President Plasto in 1958, criticised many aspects of the trade, but his criticisms inspired the creation of a ULVA program to modernise the industry.

Central to the program was a new emphasis on tourism, improved standards of hotel service and management, and a vigorous public relations campaign. The ULVA compiled and distributed a list of hotels and their tariffs (leading to the publication in 1962, of the AHA accommodation guide), represented the interests of residential hotels, and took part in co-operative arrangements with the Australian National Travel Association and other tourist industry bodies. Owners and licensees

w/ also encouraged to refurbish hotels.

Well trained staff was seen as an essential first step in attempts to improve hotel service and management. The Association supported scholarships at the East Sydney Technical College and encouraged hotelkeepers to employ graduates of its courses. Hotel Progress, a guide to hotel management and promotion, was distributed by the Association from 1960.

By the end of the decade this new, more professional approach to hotel management was to lead to the Association's co-sponsorship of the Hotel and Catering Trade Fair.

The public relations and advertising campaign was designed both to support these initiatives and to increase goodwill. The Association made strong representations to parliament, its activities were publicised through all available media outlets, the publishing program was maintained and a number of charitable causes were supported. The Association sponsored Marlene Matthews at the 1958 Commonwealth Games and supported the NSW Olympic Federation's drive for funds in 1960.

AHA (NSW)

Other activities of the Association reflected its new found dynamism. In keeping with its modern image, in 1959 the ULVA became known as the NSW Branch of the Australian Hotels Association. In 1960, it obtained registration as an industrial union of employers and in 1962, Mr Terry Ludeke was appointed its Industrial Advocate.

The following year the AHA (NSW) persuaded the government to enforce the use of badged glassware throughout New South Wales, and achieved the abolition of the meal break in trading hours.

From 1963 hotels were able to trade straight through from 10am to 10pm. The AHA (NSW) established its own trading company in 1961, set up a federal secretariat in 1964 and, by 1967, had moved to its own premises in Clarence Street.

Although Len Plasto and his council had commissioned the Asher Joel study and formulated the organisation's initial response, after the 1958 election of office bearers, a new Council, led by Barry McInerney, acquired the responsibility for implementing the bulk of the modernisation program, McInerney, an ex-serviceman, who was born in 1917 and educated in Cootamundra, was an experienced hotel administrator, having already held three hotel licenses. He proved a wise choice as President and remained in that position until 1983.

A new General Secretary, Ron McDonald, was also appointed in 1960 following the retirement of Dick Hadfield. There can be no doubt however, that the old Council had laid the groundwork on which McInerney and his team were to build. Both councils were resolute in their determination to see the industry through its difficulties.

The program of reform and renewal undertaken in the late 1950s and early 1960s was perhaps the most extensive the Association had ever devised. But the problems which McInerney's Council faced were, in many respects, similar to those which the ULVA and its predecessors had encountered in the 19th century and the first half of the 20th century. While the pace of economic, social and technological change was considerably accelerated in the 1950s and 1960s, change and adaptation remained a constant theme in the development of the hotel trade and its Association.

By the late 1960s the traditional 'men only' hotel was almost a thing of the past. It had been replaced by the sophisticated comforts of new and rebuilt hotels. In 1970 Murwillumbah's Royal

Herbert was issued with the first NSW tavern licence following the 1969 amendments to the liquor act which introduced this new form of licence, while in 1974 the King's Head became the first tavern to operate in strata title premises.

Tourism was expanding rapidly and hotels were able to take advantage of the accommodation boom brought about by the R and R scheme for United States soldiers serving in Vietnam by the opening of the Opera House during the 1973 Royal Tour. In 1970, Marjorie Hunter of the Cosmopolitan Hotel, Erskine and Clarence Streets, became the first woman elected to the AHA (NSW).

Metric conversion was achieved smoothly, without the forecast difficulties in bottle and glass sizes. Close and cordial relationships were established with successive state premiers and ministers for justice and a spirit of co-operation allowed the Association to forge new bonds with representatives of registered clubs, the retail liquor trade and the tourism and accommodation industry. Hotelkeepers responded generously to fundraising appeals on behalf of the Smith Family, the Olympic Federation and the victims of Cyclone Tracy.

The public relations campaign had been a great success as evidenced by the favourable press coverage given to the charitable impulses of hoteliers and to the Association's centenary celebrations in 1973.

Powerful & United

The Commonwealth Government too, at last seemed to appreciate the importance of the liquor trade when a survey of the manpower and training needs of hotels revealed that, in NSW, the trade employed 10% of the workforce and, as part of the travel industry, generated 8% of national income. Recognition appeared complete when, in 1976, Australia hosted the first International Hotel Association Congress to be held in the southern hemisphere.

Underlying these gains, however, were indications that the industry had yet to overcome a number of difficulties. The referendum held in November 1969 on the question of Sunday trading had been lost, and a proposal that a motel division of the AHA (NSW) be established was thwarted when it was discovered that the Motel and Motor Inn Association had already been established and registered industrially.

Similarly a major theme of the Association's activities throughout the 1970s and beyond was the fight against what it saw as unfair trading conditions brought about by the privileges and opportunities afforded to other sections of the retail liquor trade which were not available to hotels.

In 1974 the NSW Government proposed the introduction of a bed tax to finance a Tourism Development Assistance Fund. Although this particular legislation was withdrawn following strenuous efforts by the AHA (NSW) and the Australian National Tourist Association, the industry remained affected by Government revenue raising measures and, despite the best efforts of the Association, there were almost annual rises in excise and taxes on beer, wine and spirits. From 1974, too, inflation became a major problem for the industry, prompting the Association to conduct a national survey on the costs and profitability of hotels.

Increasingly the hotel industry had to operate within an economic and legislative structure that was becoming more complex and hotelkeepers and their Association once more had to find new skills and strategies to meet new problems. Orderly marketing, which had for so long been the centrepiece of the Association's program for industry stability, itself became the subject of attack under the federal government's restrictive trade practices legislation.

Association activities during this period were also affected by the Prices Justification Tribunal, by the increasing complexity of industrial legislation, and by the fierce discounting of packaged liquor practised by a number of chain stores. The share of the liquor market held by hotels continued to decline and, at the same time, anomalies in the method of valuation meant that hotels were paying considerably more for water rates than other licensed premises. It was during the 1970s, too, that governments directed attention to the mounting road toll, leading to the introduction of a maximum permitted breath alcohol level and eventually to random breath testing.

The AHA (NSW), for the most part, took these challenges in its stride. A firm of management consultants, Coopers and Lybrand, was commissioned to undertake a new, more detailed industry study which would lead to recommendations on the policies to be adopted by the Association. The constitution was rewritten to meet the requirements of the Conciliation and Arbitration Act, a research and statistics officer was appointed, hotelkeepers were encouraged to take part in the Green Door, Bottle Mart and other co-operative buying schemes, parliamentarians were subjected to frequent lobbying on the shortcomings of the Liquor Act and other issues and Council members gave evidence to the 1979 Select Committee that enquired into liquor trading.

The Association also mounted its own campaigns advocating road safety and the exclusion of underage drinkers from hotels and a number of cost saving schemes for members were introduced, including travel, insurance and superannuation services. Hoteliers were to reap the rewards of the Association's diligence. A 1977 government decision allowed the payment of licence fees by instalment, Sunday trading was introduced in 1979 and hotels were even able to open two hours early on Anzac Day, 1980 without the dire consequences predicted by the temperance lobby. A concerted campaign during 1981 prevented the imposition of higher excise duty in the federal budget of that year, a number of hoteliers were able to forestall rent increases.

By 1984 AHA (NSW) action had led to a reduction in water rates for metropolitan and Newcastle hotels. A new, simplified liquor act was introduced in 1982 meeting many of the demands of the Association, including compulsory training for hotelkeepers. The spread of PubTab and associated wagering and sports services helped secure the viability of many hotels as did the legislation, in 1985, of video games machines. Indeed it seemed as though innovative marketing had at last permeated the hotel industry.

The AHA (NSW) and the industry it represents, would be almost unrecognisable to the far-sighted men who in 1873 established the (ULVA) of New South Wales. The enormous social changes that have occurred over the period have been accompanied not only by a revolution in the drinking and leisure habits of Australians but also by the rise of a new breed of hotelier and a growing awareness of the social and economic importance of the industry. But the readiness of the AHA (NSW) to defend the trade, the professionalism and unity of the industry, and, above all, the good reputation enjoyed by the hotelkeepers of New South Wales would be appreciated by those early organisers as a fitting reward for their efforts.

1. AMENDED FORMS , A ,B.

Form A

Commonwealth of Australia
Trade Practices Act 1974 ---- Sub-section 88(1)

EXCLUSIONARY PROVISIONS: AMENDED APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section

- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.
- (Strike out whichever is not applicable).

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of Applicant

AUSTRALIAN HOTELS ASSOCIATION (NSW.).

...

(See Direction 2 on the back of this Form)

(b) Short description of business carried on by applicant...INDUSTRY ASSOCIATION REPRESENTING HOTELS AND TAVERNS IN NSW.

.....

(c) Address in Australia for service of documents on the applicant

SPIER CONSULTING P/L
92 JERVOIS STREET, DEAKIN, ACT 2600

spierconsulting@netspeed.com.au

...

.....

2. (a) Brief description of contract, arrangement or understanding and, where already made, its date

.....

(b) Brief description of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions

..... The AHA (NSW) seeks authorisation for a collective bargaining group represented by the AHA (NSW) to collectively withdraw services to TAB Limited and Sky Channel, should contractual negotiations break down and not recommence within 7 days.

.....
.....
.....

(See Direction 4 on the back of this Form)

(c) Names and addresses of other parties or proposed parties to contract, arrangement or understanding

. TAB Limited and associated companies, including. Sky Channel...

.....

3. Names and addresses (where known) of parties and other persons on whose behalf application is made

All current and future AHA-NSW members.and being those who wish to engage in the proposed conduct...

A list of current members will be supplied by the Applicant...

.....

4. (a) Grounds for grant of authorisation

SEE SUBMISSIONS BY APPLICANT.

.....

(b) Facts and contentions relied upon in support of those grounds

SEE SUBMISSIONS BY APPLICANT

...

(See Notice 1 on the back of this Form)

5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above-mentioned contract, arrangement or understanding.

(a) Is this application to be so expressed....

NO.....

(b) If so, the following information is to be furnished: --

(i) the names of the parties to each other contract, arrangement or understanding

.....

(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application

.....

.....

(See Direction 5 and Notice 2 on the back of this Form)

6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

NO

.....
.....
(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

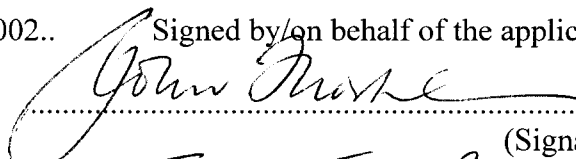
.....
.....
(c) If so, by whom or on whose behalf are those other applications being made?

.....
.....
7. Name and address of person authorised by the applicant to provide additional information in relation to this application

Hank Spier, 92 JERVOIS STREET, DEAKIN, ACT 2600...

Dated.....SEPTEMBER... 2002..

Signed by/on behalf of the applicant


.....
(Signature)

JOHN THORPE
.....
(Full Name)

RESIDENT AHA (NEW)
.....
(Description)

Form B

Commonwealth of Australia

Trade Practices Act 1974 ---- Sub-section 88(1)

AGREEMENTS AFFECTING COMPETITION: AMENDED APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section

- to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- (Strike out whichever is not applicable)

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of Applicant... AUSTRALIAN HOTELS ASSOCIATION (NSW)...

.....
.....

(See Direction 2 on the back of this Form)

(b) Short description of business carried on by applicant... INDUSTRY ASSOCIATION REPRESENTING HOTELS AND TAVERNS. IN NSW.

.....
.....

(c) Address in Australia for service of documents on the applicant... SPIER CONSULTING P/L, 92 JERVOIS STREET, DEAKIN ACT 2600 spierconsulting@netspeed.gov.au...

.....
.....

2. (a) Brief description of contract, arrangement or understanding and, where already made, its date

. The AHA (NSW) seeks authorisation to conduct collective negotiations on behalf of any group of AHA (NSW) members (a collective bargaining group) with TAB LIMITED and Sky Channel in relation to the provision of wagering and /or broadcast services. Such contractual negotiations will potentially encompass all aspects of the supply arrangements, including price. SEE APPLICANTS SUBMISSIONS.

.....
.....

(b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding

TAB LIMITED and associated companies, including Sky Channel.

.....
.....
.....

(See Direction 4 on the back of this Form)

3. Names and addresses (where known) of parties and other persons on whose behalf application is made

All current and future AHA (NSW) members and being those who wish to engage in the proposed conduct.

...
.....
.....

4. (a) Grounds for grant of authorisation

SEE SUBMISSIONS BY APPLICANT.

.....
.....
.....

(b) Facts and contentions relied upon in support of those grounds

SEE SUBMISSIONS BY APPLICANT.

.....
.....

(See Notice 1 on the back of this Form)

5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above mentioned contract, arrangement or understanding.

(a) Is this application to be so expressed.....NO.....

(b) If so, the following information is to be furnished:

(i) the names of the parties to each other contract, arrangement or understanding...

.....
.....
.....

(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application...

.....
.....
.....

(See Direction 5 and Notice 2 on the back of this Form)

6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

..NO.....
.....

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

.....
.....
.....

(c) If so, by whom or on whose behalf are those other applications being made

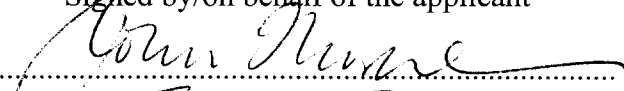
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.....
.....

7. Name and address of person authorised by the applicant to provide additional information in relation to this application...HANK SPIER ,92 JERVOIS STREET, DEAKIN,ACT 2600, 02-62812030

.....
.....

Dated.....SEPTEMBER. 20002

Signed by/on behalf of the applicant



(Signature)

JOHN THORPE

(Full Name)

PRESIDENT - ATTA. (INSEV)

(Description)

2. RESPONSE TO ACCC LETTER OF 6 AUGUST 2002

5 September 2002

Mr T Grimwade
General Manager
Adjudication Branch
Australian Competition and Consumer
Commission
P O Box 1199
DICKSON ACT 2602

Dear Mr Grimwade

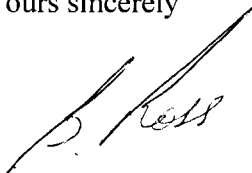
RE: Australian Hotels Association (NSW) Collective Negotiation Authority

The Australian Hotels Association (NSW) thanks you for the meaningful discussions to date in relation to the industry problem related to wagering services in New South Wales hotels.

The following document provides detailed answers to the points raised by the ACCC in its letter of 6 August 2002.

However, your letter also requests evidence of Board approval for this course of action by the Association. Subsequently, attached is an extract of Board Minutes and Council Minutes obtaining to this event (Appendix 1).

Yours sincerely



BRIAN ROSS
Chief Executive



RESPONSE BY THE

AUSTRALIAN HOTELS ASSOCIATION (NSW)

TO REQUESTED FURTHER INFORMATION

AND EVIDENCE

IN SUPPORT OF THE APPLICATION FOR

COLLECTIVE NEGOTIATION AUTHORITY

5 SEPTEMBER 2002

MARKET INFORMATION

1. In discussions with the TAB over the past two years the TAB has indicated that there are a combined 1594 PubTABS and ClubTABS outlets. (See appendix 2) The Australian Hotels Association (NSW) estimates that these are divided into 2/3 hotels and 1/3 clubs.

As for street agencies, the Association believes that there are presently 339 street agencies. Overall, this would give a total of 1933 TAB outlets of all types presently trading in New South Wales.

It is impossible to determine the extent of the competition that occurs between these outlets and types of outlets (Pub, Club and Agencies) because the TAB presently does not allow any form of meaningful communication between the sectors.

2. The submission states that there are 1635 members in New South Wales, graded into large, medium and small categories. The primary criteria as to how these categories are assessed is linked to the amount of employment provided by the hotels (ie the nature of the Association as an industry body is calculated as employers of labour and members pay membership fees according to the amount of people they employ).

Large - More than 70 employees

Medium - Less than 70 but more than 15 employees

Small - Less than 15 employees.

Overall, there are 137 large hotels, 84 medium and 1414 small members (mainly country).

3. The Australian Hotels Association (NSW) recently had legal opinion carried out on the latest TAB/SKY Channel contract. This is the most detailed information available from the industry and is provided at Appendix 3.

B) Contract Negotiations – The Australian Hotels Association (NSW) would use collective negotiation to introduce a clear and transparent sales program by the TAB when it conducts its contracts for PubTABS and SKY Channel agreements with members.

At present contract negotiations are unfair as each contract is done individually and there is no way any hotelier can compare his SKY Channel/PubTAB offer with any other hotelier even if they are in exactly the same trading situation. Consequently, it is very hard under this regime for hoteliers to feel they are being treated fairly and openly and they always express to the Association nagging doubts that they are paying too much for the services provided. Similarly, the TAB also encourages its representatives to do individual arrangements and this then depends on a negotiating ability of the hotelier.

This whole approach of secrecy and lack of uniform approach to what is an every day business operation of the industry causes endless friction.

The current regime also means that the Australian Hotels Association (NSW) has no ability to monitor the general contract situation and thus is powerless to advise members on offers and their correctness or otherwise.

The Association cannot tell a member that he has a good deal, or otherwise, because the TAB simply provides no open process for the Association to be sure of market rates and costs pertaining to a hotelier's local area. This is particularly evident in cases of new licensees taking over existing hotels when the TAB insists on new contracts being signed.

For example, any suburb of Sydney or any major country centre will have a number of PubTAB sites. Even though these will all be operating in a similar market environment there is no communication medium or commonsense approach taken by the TAB to help the Association be aware of general expectations on costs or trading ability. As a result the Association cannot assist industry stability by supporting the TAB product.

PUBLIC BENEFITS

4. The major benefit of a more open and competitive PubTAB/SKY Channel market would allow presently uneconomic sites to operate eg country and small rural hotels would be able to offer wagering to regional patrons because they would be able to better afford the cost of SKY Channel. This would assist country people to enjoy the same accessibility as residents of Sydney to wagering services and racing broadcasts.

This is especially important considering the corresponding decline in picnic races which has reduced the racing opportunities in the districts for those rural people who enjoy racing as a lifestyle benefit. The modern racing industry makes country people more reliant on electronic coverage because of the reduction in actual non-metropolitan race meetings. (Appendix 4 shows the concern of country NSW over racing problems)

Overall, the open negotiation system would simply build confidence in the product. The Association would be better able to endorse the product and through collective bargaining a significant reduction in SKY Channel would allow more hoteliers to support the NSW Racing Industry.

A further public benefit that would arise from the Australian Hotels Association's (NSW) campaign is greater protection for the public in the arena of responsible gambling. Presently the NSW Government has introduced the Responsible Gambling Program. Hoteliers and their key staff undertake this (Responsible

Gambling Conduct Course) as part of their allowance to operate poker machines. The Association would like to extend this management to cover the operation of all PubTABS in this State. However, at present because of the secretive nature of the TAB contracts which cover operator rules, operator conduct and general behaviour there is presently not even an open arena in which the Association can ensure responsible wagering for the public.

5. Please see Appendix 5 for a description of the typical transaction costs for hotels operating PubTABS in New South Wales.
6. The public benefits associated with the primary boycott conduct are the same as those relating to collective negotiation. However, the Association would obviously prefer collective negotiation simply because this avoids the likely public disruption that would result from the more hard-nosed boycott approach.

OTHER INFORMATION

7. A selection of AHA (NSW) Members that may be contacted for further information.

Arthur Summons
Tolland Hotel
Bourke St
Wagga Wagga NSW 2650

Ph 02 6922 6266

(Major country hotel, situated in Riverina region)

Sean King
Harbord Beach Hotel
29 Moore St
Harbord NSW 2096

Ph 02 9905 3434

(Major city hotel)

Col Waller
Berry Hotel
120 Queen St
Berry NSW 2535

Ph 02 4464 1011

(Small country hotel, South Coast)

Wally Fletcher
Paterson Tavern
25 Prince St
Paterson NSW 2421

Ph 02 4938 5196

(Rural hotel, Hunter Valley)

8. In its discussions with the ACCC the Association indicated that the breakeven point for PubTABS in hotels was approximately \$18,000. This figure has been reached by the Australian Hotels Association's (NSW) Sub-committee on wagering which is made up of experienced hoteliers all of whom run PubTABS in various markets. From their practical experience and from the anecdotal evidence of other members over the past 2 years, it

has become the Sub-committee's view that for the typical hotelier operating a PubTAB in the NSW market, taking into account consumables, commissions, SKY Channel costs –the realistic breakeven is \$18,000 turnover per week.

**EXTRACT OF MINUTES OF THE AUSTRALIAN HOTELS ASSOCIATION
(NSW) EXECUTIVE MEETING – 13 JUNE 2002**

**EXECUTIVE MEETING
Thursday 13th June 2002**

Attendees:

John Thorpe
Bevan Douglas
John Daly
Bruce Woods
Paul Dirou
Phil Webster
Doug Brown
Rob Broomham
Nick Elliott
Brian Ross

Apologies

Rob French

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Paper from Hank Spiers on TAB / SKY

Bevan Douglas reported on the report and recommendations received to date from Hank Spier's. It was agreed that the AHA (NSW) proceed with a 'letter of demand' to the TAB and instruct Hank Spiers to proceed with the application to the ACCC. The application will be on the grounds of the TAB's abuse of market power and the breaching of the franchise code of conduct.

President stated that if Executive have any queries to speak with Bevan.

T. Senior-Vice President spoke of the Sky Channel fees/ Pub Tab commission situation and said the AHA (NSW) had sought advice on this issue in regard to the Trade Practices Act.

The President spoke of the advice the AHA (NSW) had received and then read delegates a letter that was addressed to the Mr Warren Wilson, Managing Director - TAB Ltd.

Motion: That the AHA (NSW) Council approves the letter (as read out above) concerning the TAB to be sent to Mr Warren Wilson.

Nominator: Bob Bourne

Secunder: Pat Gurr

Carried Unanimous Decision

Bob Bourne raised a number of issues for further discussion including, consumables, commission and betting accounts.

Ron Roberts asked whether Hank Spier (Consultant) could review the pricing of the CMS as well. The President replied those prices were set by IPART.

Robert Lees asked whether the letter could be read out at Sub-Branch meetings. The President replied it would be best kept in-house at this stage.

Wayne Sampson advised there was concern amongst members based on TAB/Sky Channel discussions at the Coffs Harbour Regional Meeting.

9. Harm Minimisation Report

Paul Dirou informed delegates of a presentation Rowan Cameron gave to the Gaming Industry Consultative Committee (GICC). The Presentation detailed an overview of where the GameChange Program was at and where it was heading.

Paul Dirou briefed delegates on the current status of the Macquarie University Research Program. There was general discussion relating to the research, particularly the integrity and independence of the research.

Delegates were also advised that a revised Gaming Code of Conduct will be distributed shortly.

Motion: Harm Minimisation Report is accepted.

Nominator: Phil Webster

Secunder: Bruce woods

Carried.

The President congratulated Nick Elliott for his efforts in securing a \$70 000 federal grant for Pubstay.

Nick Elliott briefed delegates on the Pubstay grant and outlined what changes will occur over the next 6 -12 months.