



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2001/390-03
Contact Officer: Nadia Cooke
Contact Phone: (03) 9290 1478

6 April 2006

Don Knapp
Chief Executive
Australian Baseball Federation
PO Box 10468
SOUTHPORT BC QLD 4215

Dear Mr Knapp

**Re: Notification N90853 lodged by the Australian Baseball Federation Inc. (ABF)
- additional information and response to submissions**

Thank you for the information you have provided in relation to the above notification to date.

I appreciate the time and effort devoted by the ABF to providing information in respect of the merchandise licensing program the subject of the notification (**the Licensing Program**). However, I note that our understanding of the way in which the Licensing Program operates is based primarily on the ABF's original submission in support of its notification lodged in 2001. To assist the Australian Competition and Consumer Commission (ACCC) in its current assessment of the notification, it would be appreciated if you could provide the following additional information.

Compliance with the Licensing Program

The ACCC has previously been advised that an ABF representative in each state and territory is assigned to act on its behalf in investigating complaints regarding the Licensing Program. If non-compliance is brought to the attention of an ABF representative, the ACCC has been advised the following procedures are undertaken:

- **First notice:** an infraction notice is sent to the non-complying member's club asking them to advise within seven days how the problem is to be rectified.
- **Second notice:** if the matter is not resolved within seven days a second infraction notice is delivered asking why penalties or sanctions should not be applied.



- **Third notice:** in cases where infraction has not been rectified and blatant non-compliance is identified, a letter is sent to the member inviting them to a meeting where the appropriate penalty is applied.

1. What are the current procedures for non-compliance with the Licensing Program?
2. In practice, how are these procedures implemented?
3. Since assuming responsibility for the Licensing Program on 1 January 2005, has the ABF been required to follow non-compliance procedures for any matter? Please provide details.

I note that the ABF anticipates increased compliance with the Licensing Program going forward.

4. Does the ABF intend to maintain current non-compliance procedures in the future? If not, please describe how the ABF intends to enforce compliance with the Licensing Program.
5. What resources will be required to ensure compliance?

Baseball Victoria's submission to the ABF dated 23 February 2001, which sought the ABF's approval to act as manager of the Licensing Program, was attached to the ABF's 2001 submission to the ACCC in support the notification. Attachment 2 of that submission, which is attached for your information, suggests the following penalties may be applied for Licensing Program non-compliance:

- Players ineligible to compete in any state or national program and ineligible for selection in any state squads.
 - Clubs and associations ineligible for national registration and insurance payment discounts and possible financial penalties including but not limited to reduced royalty payments.
6. What are the current penalties that may be imposed for non-compliance with the Licensing Program?
 7. Since assuming responsibility for managing the Licensing Program on 1 January 2005, has the ABF imposed any penalties on players, clubs, leagues or associations for non-compliance? If so, please provide details.

Funds raised by the Licensing Program

The ABF has previously submitted that in 2001-02, gross income from the Licensing Program was \$72,000. However the ABF submitted that set up costs and expenses incurred included:

- \$23,640 for the production of logos
- \$1486 GST
- legal costs of \$5096.22
- management fees of \$40,000.

The ABF also submitted in August 2003 that income from the Licensing Program for the 2002-03 financial year was \$57,583. Management fees of \$40,000 were again paid to Baseball Victoria.

Profit and loss statements detailing the funds raised by the Licensing Program have also been provided for the period 1 July 2004 to 31 December 2005.

8. If possible, please provide details of revenue raised by the Licensing Program for the 2003-04 financial year.
9. If possible, please provide details of expenditure associated with the Licensing Program for the 2003-04 financial year.
10. Please provide details of all funds transferred to state and territory associations as a result of the Licensing Program from the program's inception (excluding the management fees paid to Baseball Victoria).

I note that the accounts provided to the ACCC indicate that \$17,822.80 was written off as bad debt by Baseball Victoria between 1 July and 31 December 2004.

11. If you are aware of any reason for this bad debt write off, please provide details.
12. Does the ABF expect any bad debt write offs to occur in future? If so, please estimate the proportion of licensing income this will affect.

Administration costs

As noted above, the management fee paid by the ABF to Baseball Victoria for operating the Licensing Program up to July 2004 was \$40 000 per annum, and \$25 000 was paid in fees for the six months to 1 January 2005.

13. Now that the ABF manages the Licensing Program, what does the ABF estimate to be the annual cost of administering the program? Please identify the cost sources.
14. How does the ABF intend to cover these costs?

National baseball league

In your letter to the ACCC dated 14 March 2006, you submitted that an Australian national professional baseball league is expected to be introduced next year, with the support of Major League Baseball. You also advised that revenue from the Licensing Program is expected to increase as a result of the league's launch.

15. Please specify the reasons for the increase in revenue expected to occur as result of the introduction of a national baseball league.

In order to expedite the ACCC's consideration of this matter, please provide the information requested by **Friday 28 April 2006**.

You are also invited to comment on the submissions made by interested parties in relation to this review of the ABF's notification. In addition to the submissions emailed to Alan Weir on 23 March 2006, the ACCC has received one further submission, from Hills Junior Baseball Association Inc, which is attached for your information. All public submissions in relation to

the current review are available on the ACCC's website <www.accc.gov.au> by following the links 'Public registers', 'Authorisations (s. 89) and notifications (s. 95) registers' and 'Notifications register'.

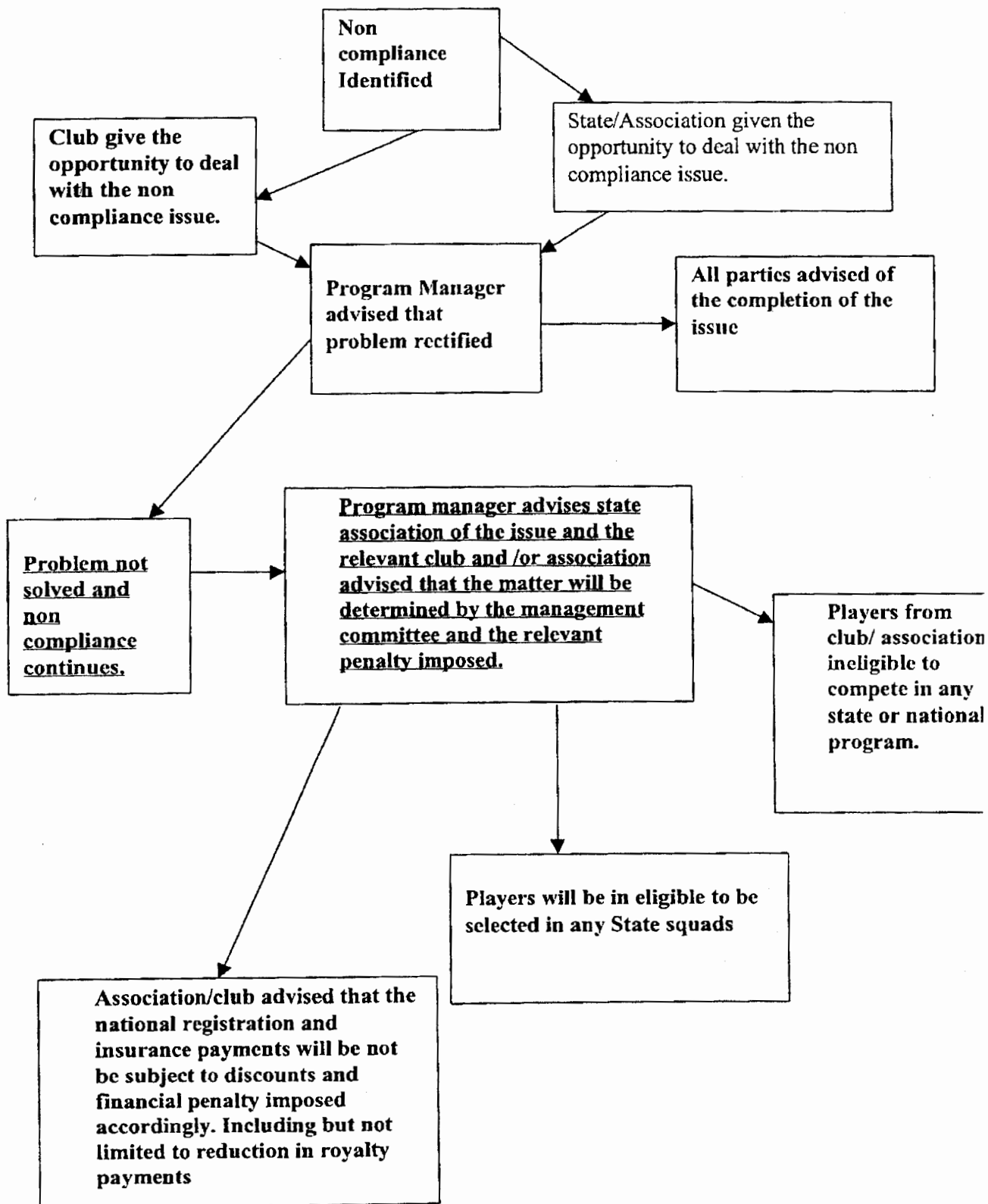
This letter has been placed on the ACCC's public register and website. If you would like to discuss any of the issues raised in this letter, please do not hesitate to contact Nadia Cooke on (03) 9290 1478 or via email at nadia.cooke@acc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'GJ' or 'Gavin Jones'.

Gavin Jones
Director
Adjudication Branch

ATTACHMENT 2



Simmonds, Martine

From: Peter Schmidt [peter@ozebaseball.com]
Sent: Monday, 27 March 2006 1:01 PM
To: Adjudication
Cc: johnyardhere@yahoo.com.au
Subject: Attn Nadia Cooke/Gavin Jones

Attachments: ACCC.pdf; "AVG certification"



ACCC.pdf (227 KB)



_AVG
tification_.txt (213 KB)

Dear Nadia,

Attached is a submission from the Hills Junior Baseball Association regarding Notification N90853 lodged by the Australian Baseball Federation Inc.

My apologies for the delay in making this submission. I hope we are in time to have it considered.

If you would like to discuss it, I can be found on 02-9651-2877 or by return email.

Best Regards
Peter



Hills Juniors

HILLS JUNIOR BASEBALL ASSOCIATION, Inc
19 Geraldine Ave, Baulkham Hills, NSW, 2153.
Ph: 9639 3859 ... Fax: 9651-2674
Email: johnyardhere@yahoo.com.au

Mar 23, 2006

Re: Notification 90853 – lodged by Australian Baseball Federation

General Manager,
Adjudication Branch
Australian Competition and Consumer Commission
P.O. Box 1199
Dickson ACT 2602

Ref: C2001/390-03

Dear Sir or Madam,

I am writing in respect of the above matter on behalf of the Hills Junior Baseball Association, representing about 1,100 junior players in the Hills District of Sydney, NSW.

We believe, regardless of the acknowledged ongoing need of our sport for additional funds, that the BALME structure is a flawed mechanism for achieving that goal. This submission is written in the context of a segment of the NSW Junior baseball community. Although the experience of members in other states may be different, it is worth noting that between 40% and 50% of baseball participants nationally reside in NSW.

Introduction

We don't believe that BALME delivers a net public benefit in NSW...

Indeed, given the trivial funding that has flowed to our peak State body (Baseball NSW), and the fact that none of this has found its way to any local club since the programme's inception, we contend that there has been no public benefit at all, net or otherwise. The only potential benefit available after the collapse of IBLA is money, and the programme has singularly failed to deliver it.

There are some, albeit minor, public detriments flowing from the programme...

The detriments are in two specific areas:-

- The first is the additional cost of licensed items. Apart from ongoing fees and the cost of reporting, there is a startup cost to any vendor participating in the programme. These three cost elements guarantee that the licensed product will always be dearer for members than it would otherwise be.
- The second is the compliance cost. Because our sport runs on volunteers, this may not be quantifiable, but it is nonetheless a drain. Club administrators already have enough to deal with in fundraising, financial reporting, GST, membership records, member protection, insurance, ground maintenance, media management, recruitment, internal affairs, and a host of other tasks which all take time and energy. Another layer of bureaucracy is

unwelcome at best, especially when nobody at this level can see any benefit from it.

We remain unconvinced that the ABF's management of the programme will change the situation from past years...

Changes to the structure of the programme, whereby the ABF has regained control of it from VBA, perhaps signal a change. Certainly, the somewhat confusing financial statements provided as part of the ACCC's invitation to comment, show absolutely no administrative, collection or enforcement expenses at all. If this is an indication that the ABF intends to absorb all administrative expenses of the programme, and return the vast bulk of licensing revenue to the States, we may reconsider our position. However, while admin costs remain anywhere near the expected \$25K pa, the programme is mathematically incapable of delivering value to the NSW baseball community.

There is one other issue we would like the ACCC to consider. It is the alternatives available to the ABF to achieve BALME goals that can (now) only be financial in nature.

The National Royalty Policy contains reference to licensing as only one limb of an integrated strategy. It declares other opportunities for generating and distributing funds, including sponsorship, profits from merchandising, and loyalty schemes. The ABF also has the ability to simply increase capitation fees. These latter initiatives make sense. They are presumably within the scope of the ABF's current administrative infrastructure; they do not impose an additional compliance burden on individual members or clubs; and they will be immediately revenue-positive.

Product licensing is the "black sheep" in this list. It does come with an additional compliance burden, it will require an expansion of fixed admin costs, and it is unlikely to be a net contributor to the Royalty Pool. Even worse, it is in fact the one item class with a history of being a financial drain on the overall NLM Policy framework.

History

The initial BALME agreement, and the policy initiative behind it, were both created in the heady days leading up to and after the 2000 Olympics in Sydney. During this period, the sport of baseball believed it was in good shape to leverage its Olympic status. We hoped to start moving from a 2nd tier sport to a mainstream sport (as basketball had done in the 1980's), and many decisions of our peak national body were based on this goal, which at the time seemed achievable.

The real opportunity revolved around the IBLA, and a pledge of support (both financial and otherwise) from Dave Nilsson:- one of the very few Australian baseballers who had made it in the Big Leagues in America. This dream collapsed in 2001¹

Even the original BALME document² showed a revenue allocation to IBLA [in the second paragraph of the First Schedule] of "2.5% of purchases of licensed products...". This strengthens our view that BALME was a creation of well-meaning administrators who were complying with negotiated contractual requirements of IBLA.

¹
<http://www.australianbaseballhistory.webcentral.com.au/Baseball%20Web%20Pages/Dysfunctional%20National%20Baseball.htm>

²
http://www.baseball.com.au/site/baseball/abf/downloads/aa_2003/Mar2001.htm

IBLA has since collapsed and the company involved has been liquidated. For the bulk of the period that the BALME agreement has operated, players and clubs have been paying a premium for their equipment which has barely covered the administrative costs of collecting it. There has certainly been no substantial financial support of any baseball-related activity in NSW.

The original stated goals of the BALME agreement were “... *to implement and manage the NLM Program to further the objectives of the ABF and the sport of baseball.*” In the context of IBLA, those goals may well have included intangible benefits such as a greater awareness of the sport, but without IBLA, the remaining objective now can be nothing but raising revenue. It is therefore against that objective alone that the programme’s performance must be measured.

Background Data & Assumptions

There were 20,065 registered players in the latest AGM "Voting Entitlement" spreadsheet posted on the BNSW website. We believe this is for the 2004/5 year.

Of those, 10,047 were in the Sydney basin:- 6,836 juniors and 3,211 seniors. The remaining 10,018 players were registered in Country NSW.

The 6,836 juniors represented approx 630 teams, of which 280 were liveball players aged 11 or older, and 350 teams playing teeball or other transition games.

From this data, it is reasonable to derive metrics as follows:-

- The player base is about 20,000 players in NSW
- About half of these are Sydney-based, with the remainder coming from regional NSW.
- About a third of the total player base are senior players, and two thirds are juniors (15 or younger)
- Of the juniors, about 45% are liveball players aged 11 or older, with the remaining 55% being aged 10 or younger.

We’ve extrapolated these metrics state-wide. In summary, they are:-

	City	Country	Total
Junior Players	6,836	6,816	13,652
Senior Players	3,211	3,202	6,413
	<u>10,047</u>	<u>10,018</u>	<u>20,065</u>
Juniors under 11	3,760	3,749	7,509
Juniors 11 and older	3,076	3,067	6,143
	<u>6,836</u>	<u>6,816</u>	<u>13,652</u>

Table 1

Uniforms

In general, it is reasonable to expect that clubs will buy uniforms for players aged 10 or younger (and provide them to players on loan), whereas the parents at most clubs will

be expected to pay for uniform items for those aged 11 and older. It is also the custom of most senior clubs to require adult players to buy their complete uniform.

A typical uniform set for a player aged 10 or younger is:-

Cap..... \$5 - \$15.....Average: \$10
Pants \$14 - \$30.....Average: \$22
Top \$8 - \$28.....Average: \$18
...for a total of \$50

A typical uniform set for a player aged 11 or older is:-

Cap..... \$5 - \$15.....Average: \$10
Pants \$30 - \$36.....Average: \$33
Top \$20 - \$50.....Average: \$35
Socks Not licensed
Cleats (shoes) Not licensed
...for a total of\$76

A typical uniform set for a senior player is:-

Cap..... \$11 - \$25.....Average: \$18
Pants \$30 - \$46.....Average: \$38
Top \$35 - \$75.....Average: \$55
Undershirt \$8 - \$16.....Average: \$12
Socks Not licensed
Belt Not licensed
Cleats (shoes) Not licensed
...for a total of\$123

Our experience is that a junior uniform kit bought by a club and loaned out will last between 3 and 5 years before it requires complete replacement. Amortisation is by wear and tear, losses in unreturned items at the end of a season, and sporadic changes to uniform design.

For the junior players aged 11 and above, parents can expect to replace the entire uniform set every two years as the kids grow:- the cap is the only thing that might last, but in practice these tend to become soiled and unusable, or lost, every two to three years as well.

For seniors, some players will participate both summer and winter: some will do so for different clubs in different uniforms: some will play only one season per year: and some will play only a few years before moving on to other activities. On balance, we feel that an assumed 3-year life for senior uniforms is reasonable.

Using these assumptions, we can derive the following:-

	Unit Cost	Expected Life (years)	Annual Cost	Number of players	Total NSW expenditure (estimated)
Juniors under 11	\$ 50.00	4	\$ 12.50	7,509	\$ 93,862.50
Juniors 11 and older	\$ 76.00	2	\$ 38.00	6,143	\$ 233,434.00
Seniors	\$ 123.00	3	\$ 41.00	6,413	\$ 262,933.00
					<u>\$ 590,229.50</u>

Table 2

Balls

It is difficult to estimate the level of revenue to suppliers from ball sales. Baseballs are more durable than cricket or tennis balls (which generally only last one match). On the other hand, losses from balls hit outside the field can be considerable:- a single Major League game in the USA can expect to consume well over a hundred.

Although the higher grades will start a game with new balls, most non-elite and junior games will use the same balls for many weeks before replacing them.

We've chosen the following criteria:-

Juniors, <1112 per 16-week season@ \$30/dozen..... = \$1.87/game
Juniors, >1124 per 20-week season@ \$70/dozen..... = \$7.00/game
Seniors,36 per 20-week season@ \$70/dozen..... = \$10.50/game
Elite,6 per game@ \$70/dozen..... = \$35.00/game

Using the player numbers above, and assuming an equal balance between player & team metrics in both City & Country, we can derive the following:-

	Teams	Playing weeks	Games	Cost per game	Total NSW expenditure (estimated)
Juniors under 11	699	16	5592	\$ 1.87	\$ 10,457.04
Juniors 11 and older	559	20	5590	\$ 7.00	\$ 39,130.00
Seniors	713	20	7130	\$ 10.50	\$ 74,865.00
Elite seniors	54	18	486	\$ 35.00	\$ 17,010.00
					<u>\$ 141,462.04</u>

Table 3

This makes no allowance for junior rep games, development activities, clinics and private purchases, non-elite seniors playing in winter, nor for NSW expenditure on teams competing at the National Championships each year. If all of these activities were included, we estimate ball consumption would increase by about 20-30%

Other Equipment

The original BALME document considered only uniform items and balls as being products subject to licensing. However, there is a clear statement in the Third Schedule that other products could be added later. It is our belief that if enforceable procedures were put in place, the scope of BALME would indeed have been expanded by now.

The NSW baseball community spends at least six figures on other equipment each year. The next most significant expenditures will be firstly gloves, and then bats, which combined could well run to a million dollars annually, in NSW alone. In addition, specialist players like catchers have significant additional expenditure in personal protection gear: clubs buy items like bases, batting tees, training gear and suchlike: and umpires (or their clubs) will pay \$250 or more to outfit each participant.

We could attempt to estimate this expenditure, but it isn't required. New products have not yet been added to the Third Schedule.

Validity of our assumptions?

For our case to be credible, our assumptions must be reasonable. We accept that we have had to *make* assumptions, because we do not have the resources to commission appropriate market research, nor are we in a position to ask those who know the answers (equipment vendors, importers etc) for the correct data. This submission has been prepared at short notice, by unpaid volunteers working in their spare time for nothing more than the love of the game.

Still, we believe the assumptions are reasonable. We've used prices from Ausport, a licensed ABF supplier, and player numbers from data available to us.

We have made other (less provable) assumptions, but they relate only to the estimated service life of uniform items, and the consumption rate of baseballs in club competitions. We accept that these figures might be "wrong", but not by a factor of three or four, which is what would be needed to undermine our case.

Conclusion

We have shown above, using conservative assumptions, that the baseball community in NSW spends at least \$700K annually on products which are subject to license fees, and probably more than that. At the 5% rate used under the original BALME agreement, this should have returned something like \$36,000 annually to the programme, from NSW purchases alone. If we accept that NSW is between 40% and 50% of the national membership, we should expect somewhere between \$72K and \$90K to be the annualised gross revenue, on total national sales of \$1.46M to \$1.83M.

The accounts provided by VBA and the ABF declare nothing even close to this figure for Australia-wide activities. In the 12 months to December 2004, revenue was \$32,819, and in the (presumably) six months to 30/6/05 it was \$19,424:- assume \$38,846 annualised.

It is our belief that license fees are being paid only by willing members to willing licensed suppliers who in turn honestly remit the funds to the BALME account without prompting. At least half the potential revenue is "escaping". We've observed that compliance activities in NSW have been almost non-existent, and further believe that increasing the uptake of the programme will require a considerable increase in enforcement. The programme struggles to support its current operating costs, so where is the evidence that it can afford additional compliance measures?

Although the impost on individual players might appear to be small (around \$1.80 per player per annum in NSW on average), that's not an adequate reason to maintain the scheme in the absence of any discernible benefit at all.

We don't believe that the current scheme will ever deliver value to the baseball community in its current form. At an annual administrative cost of between \$25,000 and \$40,000 (the only two numbers in evidence so far), the scheme would need to generate between \$115,000 and \$130,000 annually to just break even, from the perspective of a NSW member.

The calculation is as follows:-

- \$1.80/player from all 20,000 NSW members = \$36,000 annual contribution.
- NSW receives 40% of net BALME income. For 40% net to NSW to be worth more than \$36Kpa, BALME net income must be more than \$90K pa.

- Admin fees of either \$25K or \$40K require the gross income to be more than \$90K plus either of these two figures (\$90K + \$25K = \$115K, or \$90K + \$40K = \$130K).

With gross income for 2004 and 2005 of less than \$40K each, where's the evidence that BALME will get anywhere near six figures, anytime within the next decade?

If the ABF truly believes that a financial levy of \$36,000pa needs to be placed on NSW for the betterment of the sport, then it should simply encourage Baseball NSW to increase capitation fees for all members by \$1.80pa, and then return that money directly to whatever development plans are contemplated, without any additional administration or compliance expenses.

The BALME scheme is just a very complicated, expensive, and inefficient way of achieving the same thing. Ultimately, it's simply unnecessary. Whatever reasons justified its introduction have long since ceased to have relevance.

Regards,



Peter Schmidt
President, HJBA.