



LAWYERS

TO Ms Stephanie Lovett DIRECT LINE +61 2 9263 4206  
AT ACCC OUR REF LXW:GDE:240451  
FACSIMILE (02) 6243 1211 YOUR REF C2004/479  
DATE 22 April 2004 PAGES  
FROM Luke Woodward / Graeme Edgerton

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Dear Ms Lovett

**EXCLUSIVE DEALING NOTIFICATION LODGED BY CAMS (N40702)**

We enclose copies of the following correspondence relevant to the above notification:

1. Letter from Allens Arthur Robinson, solicitors for CAMS to Gilbert + Tobin dated 7 April 2004.
2. Letter from Gilbert + Tobin to Allens Arthur Robinson dated 15 April 2004.

Regards,

Luke Woodward / Graeme Edgerton

AAR MELBOURNE 32

# Allens Arthur Robinson



**Date** 7 April 2004  
**Page** 1 of 4  
**From** David Brewster  
**To** Luke Woodward / Graeme Edgerton, Gilbert & Tobin,  
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Dear Sirs

## Australian Rally Championship (ARC) Super Series 2004

Please see attached.

**Attach**

Our Ref PDB:305330233

ap/m M0111499183v1 305330233 7.4.2004

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AAAR MELBOURNE 32

Allens Arthur Robinson



7 April 2004

Gilbert & Tobin  
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Dear Sirs

**Australian Rally Championship (ARC) Super Series 2004**

We refer to your letters dated 24 March 2004 and 31 March 2004 in relation to the above matter.

**1. Alleged third line forcing**

Our client, the Confederation of Australian Motor Sport Ltd (CAMS) does not accept that its conduct raises issues under the third line forcing provisions of the *Trade Practices Act 1974 (Cth) (TPA)*. CAMS is a not-for-profit company limited by guarantee. Even if, which is not admitted, any relevant services provided by CAMS are provided in trade and commerce, such services are not provided or refused on condition that Elf WRF fuel is acquired from a particular person.

However, in order to avoid on-going issues in relation to this matter and to obtain commercial certainty, CAMS has notified the Australian Competition and Consumer Commission (ACCC) pursuant to section 93 of the TPA that it proposes to require that Elf WRF fuel is used by competitors in the Australian Rally Championship who use turbocharged or supercharged four-wheel drive vehicles if those competitors wish to accrue points in the competition.

Under CAMS' proposal to stipulate a specified fuel, we are instructed that competitors with turbocharged or supercharged four-wheel-drive vehicles who do not use the control fuel would still be permitted to participate in the Australian Rally Championship without accruing points, as long as such competitors notify the stewards at the relevant events that they are not using the specified fuel.

**2. Alleged misrepresentations**

**(a) 'Pump Fuels'**

Our client previously wrote to your client on 2 March 2004 noting that it plans to review the title 'Pump Fuels' to Article 2.1 of Schedule G of the CAMS 2004 Manual of Motor Sport and may modify this title in the future. We note that the content of Article 2.1, which

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Allens Arthur Robinson

appears immediately below the heading Pump Fuels; makes it clear that there is no requirement that such a fuel be dispensed from a fuel station pump.

**(b) 'FIA Fuels'**

We are instructed that the FIA has advised CAMS that the Elf WRF fuel complies with Article 252.9.1 of Appendix J to the FIA International Sporting Code. Further, we are instructed that Elf WRF was the control fuel for the 2003 FIA World Rally Championship.

**(c) Fuel Quality Standards Act 2000 (Qth) (FQS Act)**

We are instructed that our client makes no representations on the [www.cams.com.au](http://www.cams.com.au) web site that the Elf WRF fuel complies with the FQS Act and determinations under that Act and, further, is under no obligation to make any express representations concerning the Elf WRF fuel and its compliance with the FQS Act or any determinations under that Act.

In any event, the Elf WRF fuel is the subject of a grant of an approval under section 13 of the FQS Act by the Minister for the Environment and Heritage (the **Approval**). In the Minister's Notice under section 17A of the FQS Act concerning his decision to grant the **Approval** (the **Notice**), the Minister states that the fuels the subject of the **Approval** are 'not expected to impact significantly on ambient air quality' given the quantities used, and further states that the risk of contamination arising from the presence of MTBE in the fuels is minor under the terms of the **Approval**. The Minister concludes that the use of the fuels for motor sport activities is 'not expected to have an adverse impact on the environment'.

Given these explicit and clear conclusions in the Minister's Notice, and the existence of the **Approval**, CAMS is under no obligation to make any representations concerning the composition of Elf WRF fuel and the compliance of the fuel with the FQS Act. We also note that these findings by the Minister are contrary to your claims as to the environmental and public health and safety issues associated with use of Elf WRF.

Our client notes that the proposed supplier of the Elf WRF fuel, Hi-Tec Fuels Australia Pty Ltd, is authorised to supply the fuel under the **Approval**.

**3. Representations as to the characteristics of ET 102**

We are instructed that in early 2003 your client provided CAMS with a sample of ET 102 for the purpose of CAMS ascertaining whether the fuel met the requirements of Schedule G of the CAMS Manual of Motor Sport in terms of being within the prescriptions of the FIA, Appendix J, Article 252.9.1.

In July 2003 CAMS subsequently confirmed with your client that the fuel provided as being a sample of ET 102 was in compliance with the FIA prescriptions. Presumably on the basis of this confirmation, your client has subsequently represented, including on its web site, that ET 102 meets CAMS and FIA regulations.

It has come to CAMS' attention that the fuel now being supplied by your client under the name ET 102 is different in composition to the sample that was provided to CAMS in 2003. Your client has failed to advise CAMS of any change to the composition of ET 102 nor has it provided CAMS with any testing results in relation to ET 102 as currently composed.

AAR MELBOURNE 32

Gilbert & Tobin

Allens Arthur Robinson 

Accordingly, CAMS is unaware whether ET 102 as currently composed complies with CAMS or FIA requirements. For this reason, irrespective of the proposed requirement regarding the use of Elf WRF, our client is unable to advise competitors that they can use ET 102 fuel.

Yours faithfully



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Partner: Luke Woodward  
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FAXED

15 April 2004

BY FACSIMILE: (03) 9614 4661

Allens Arthur Robinson  
Stock Exchange Centre  
530 Collins Street  
Melbourne VIC 3000

Attention: David Brewster

Dear Sirs

**AUSTRALIAN RALLY CHAMPIONSHIP SUPER SERIES 2004**

We refer to your letter dated 7 April 2004.

This letter denies that CAMS is in breach of the third line forcing and misleading and deceptive conduct provisions of the *Trade Practices Act 1974* (Cth) (TPA) and indicates that CAMS has notified the Australian Competition and Consumer Commission (ACCC) pursuant to section 93 of the TPA in relation to certain proposed conduct.

We have been provided with a copy of CAMS Exclusive Dealing Notification dated 2 April 2004 by the ACCC.

For the reasons set out below, ET Racing Fuels has concerns about the continuing conduct of CAMS in breach of the third line forcing and misleading and deceptive conduct provisions of the TPA. We note that the CAMS and ARC websites have been amended following our letters of 24

and 31 March 2004. However, our client is not satisfied that the actions undertaken by CAMS to date and the response set out in your letter adequately deal with its concerns.

Moreover, we note that the conduct of CAMS in specifying a particular brand of fuel that competitors must purchase (whether in order to accrue points in the ARC or to participate in the ARC at all) is in breach of CAMS' own rules. Clause 68 of the National Competition Rules published by CAMS provides that:

*"No limitation on the brand of fuel at meetings shall be permissible, and any Supplementary Regulation purporting to limit competitors or drivers to fuel of any one brand shall be null and void".*

We respond in detail below to the issues raised in your letter and set out the conduct that ET Racing Fuels maintains is necessary for CAMS to undertake to alleviate the continuing damage being caused to the business of ET Racing Fuels.

#### Third line forcing

##### (a) Proposed authorisation

We note that you have approached the ACCC seeking authorisation for conduct, which you describe as "proposed conduct", in the following terms:

*"CAMS proposes to require that competitors registered to compete using turbo/supercharged four-wheel drive vehicles in Australian Rally Championship events use Elf WRF fuel, if such competitors wish to accrue 'points' which are used in the calculation of placings and awards in the Australian Rally Championship."*

We also note from your letter that an extra obligation is placed on competitors to notify stewards that they are not using Elf WRF fuel and do not want to accrue points in order for them to participate in the event.

This conduct would be in breach of sections 47(6) and 47(7) of the TPA. CAMS provides a right to participate in the Australian Rally Championship (ARC) and accrue competition points for persons seeking to enter various classes of vehicle, including 4WD turbocharged and supercharged cars. A requirement to purchase Elf WRF fuel if competitors wish to accrue points is in breach of section 47(6) of the TPA. A refusal to award points to competitors if they do not purchase Elf WRF is in breach of section 47(7) of the TPA. Moreover, CAMS has indicated that it will refuse the right of participation to entrants of 4WD turbocharged and supercharged cars if

these persons do not acquire or do not agree to acquire Elf WRF fuel and do not notify ARC stewards of this decision. This conduct is also in breach of section 47(7) of the TPA.

ET Racing Fuels is concerned that this conduct will continue to cause ET Racing Fuels substantial loss and damage as it prevents ET Racing Fuels from supplying fuel to competitors in the ARC who wish to accrue points. As the ARC is a competitive event, it is likely that all competitors entering the event will wish to accrue points. Consequently, the distinction sought to be drawn between accrual of points and entry in the event is not a material one.

**(b) Response to existing third line forcing**

You have claimed that CAMS has not engaged in third line forcing because the services provided by CAMS are not provided in trade or commerce and that such services are not provided or refused on condition that Elf WRF fuel is acquired from a particular person.

It is insufficient to claim that the activities of CAMS in relation to the ARC are not in trade or commerce on the assertion that CAMS is a not for profit company limited by guarantee. The ARC is a substantial commercial event in which competitors are required to pay entrance fees and which attracts numerous commercial sponsors such as Globalstar Australia, Elf, WhereIs, Subaru, Toyota and Mitsubishi. Conduct by CAMS to restrict the products which are available for purchase and use by competitors in the ARC is clearly conduct in trade or commerce.

It is also incorrect to state that the services offered by CAMS in relation to the ARC are not provided or refused on condition that Elf WRF is acquired from a particular person.

CAMS provides a right to participate in the ARC for persons seeking to enter various classes of vehicle, including 4WD turbocharged and supercharged cars. Under the "proposed conduct" notified by CAMS to the ACCC, the service offered by CAMS is specified as the awarding of competition points rather than the right of participation, however, as outlined above this is a distinction without a difference. CAMS has indicated that it will only provide this right of participation to persons seeking to enter 4WD turbocharged and supercharged cars if these persons acquire Elf WRF fuel. CAMS has also indicated that it will refuse the right of participation to entrants of 4WD turbocharged and supercharged cars if these persons do not acquire or do not agree to acquire Elf WRF fuel.

The ARC website allows orders for Elf WRF to be sent "directly to Elf". It appears from the Exclusive Dealing Notification lodged by CAMS that Hi-Tec Fuels Australia Pty Ltd (Hi-Tec Fuels) distributes Elf WRF to ARC competitors. Hi-Tec Fuels is one of only five "regulated persons" allowed to supply Elf WRF in Australia. Of the five distributors, one is located in NSW



(Hi-Tec Fuels), one is in Victoria, one is in South Australia, one is in Queensland and one is in Tasmania.

Both section 47(6) and 47(7) prohibit refer to an acquirer obtaining goods or services either "directly or indirectly from another person". These provisions are breached whether CAMS requires an acquisition directly from one or more of the five distributors of Elf WRF, directly from Elf, or indirectly from Elf through one or more of the five distributors.

(c) **Continued third line forcing**

Our client is concerned that despite our letters of 24 March and 31 March 2004, and despite the Notification to the ACCC in relation to the "proposed conduct" of CAMS for which CAMS has not yet obtained statutory exemption, CAMS continues to engage in the practice of third line forcing with consequent loss to ET Racing Fuels.

CAMS posted Technical Bulletin B04/038 (the Bulletin) on its website on 26 March 2004 which removed the explicit requirement in CAMS rules on persons entering turbocharged and supercharged 4WD vehicles in the ARC to use a control fuel.

However, the Bulletin was not prominently placed on the CAMS website, the language used in the Bulletin suggested that the change to CAMS rules was only temporary, and no change was made to the statement on the ARC website that Elf WRF was the "control fuel" for all 4WD turbo-charged and super-charged cars driven by registered drivers in the ARC Super Series.

A change to the ARC website has only recently been made. However, the ARC website refers only to Elf WRF and does not specify that alternative fuels may be used and which fuels these are.

Assuming competitors were able to find the Bulletin on CAMS website, a reasonable competitor would be confused as to what fuel he or she was able to purchase, and whether these requirements were liable to be changed before any fuel purchased could be used. Visitors to the ARC website are offered the option of purchasing Elf WRF and no other fuel. Visitors are provided with a link to the Bulletin but with no explanation about its meaning, effect or likely duration. The net effect of this conduct is in effect a continuing requirement on competitors entering 4WD turbocharged and supercharged cars in the ARC to use Elf WRF fuel.

Our client has been contacted by a number of competitors who are confused about whether they are able to purchase ET 102 racing fuel for use in the ARC. We understand that competitors have also sought clarification from CAMS but have not been provided with a response.

In these circumstances, it appears that CAMS is taking advantage of obfuscation and conflicting representations in order to maintain the control fuel requirement.

The need for a clear, unambiguous statement about the change in CAMS rules is obvious in the light of the likely confusion of competitors outlined above. In addition, the need to a clear, unambiguous statement is highlighted by comments made by Peter Lawrence, Manager of Technical Services at CAMS. In a letter to ET Racing Fuels dated 2 March 2004, Mr Lawrence states that:

*"... it is in fact correct to say that all 4WD, turbocharged Rally Cars entered into the Australian Rally Championship must use the fuel known as Elf WRF. Under CAMS rules, the use of any other fuel will render entrants of such cars liable for prosecution and exclusion from the event."*

Presumably similar language was used by Mr Lawrence and others within CAMS in highlighting to competitors the requirement on them to use Elf WRF. Clear words are needed to remove any impression that competitors may have that they would be "liable for prosecution" or "exclusion from the event" if they used any fuel other than Elf WRF.

As noted in our letter of 31 March 2004, the third line forcing conduct engaged in by CAMS has the potential to cause significant loss and damage to ET Racing Fuels as competitors have not been adequately informed that there is no requirement to purchase Elf WRF and they may confidently purchase ET 102 racing fuel for use in the ARC Super Series.

Given the deficiencies in addressing the third line forcing conduct of CAMS, our client required CAMS to take the following steps:

1. Publish a prominent clarification on the CAMS website which indicates that the requirement on competitors to use a control fuel has been removed, rather than suspended, and that competitors may use any fuel which meets the requirements of Schedule G of the 2004 CAMS Manual of Motor Sport, including ET 102 Racing Fuel.
2. Remove or procure the removal of the reference on the ARC website to Elf WRF being the "control fuel for all 4WD turbo-charged and super-charged cars driven by registered drivers in the ARC Super Series in 2004 and 2005".
3. Include or procure the inclusion of a statement on the ARC website on the page headed "Buy Fuel" (<http://rally.com.au/BuyFuel.aspx>) to the effect that competitors may use any fuel which meets the requirements of Schedule G of the 2004 CAMS Manual of Motor Sport, including ET 102 Racing Fuel.

4. Offer all manufacturers of fuels which comply with the requirements of Schedule G of the 2004 CAMS Manual of Motor Sport the option of offering their fuel for sale through orders placed on the ARC website, on the same terms as those offered to Elf.

In response to these requests, CAMS has published the Bulletin on the CAMS website, removed the reference to a "control fuel" on the ARC website and provided a link to the Bulletin. For the reasons set out above, this conduct is inadequate because it is liable to cause confusion and does not clearly identify alternative fuels which are available for competitors to use.

We reiterate that our client requires the steps in 1 to 4 above to be taken. In order to facilitate this process, we have drafted a form of words in relation to points 1, 2 and 3 above which should be placed prominently on the CAMS and ARC websites respectively. The wording appears in a Schedule attached to this letter.

#### **Misrepresentations**

We respond below to the points you have made in relation to the misrepresentations identified in our letter of 24 March 2004.

In doing so, we note that CAMS has now removed from its website the list of fuels in compliance with Schedule G of the CAMS 2004 Manual of Motor Sport. This action has contributed to the third line forcing conduct identified above as it prevents entrants in the ARC from determining which fuels they could purchase as an alternative to Elf WRF.

Please inform us where any other list of compliant fuels is published and how members of the public seeking to enter CAMS events may now determine whether a fuel they wish to purchase complies with Schedule G.

#### **(a) Pump Fuels**

We note that you claim that there was no misrepresentation in listing Elf BFK-07 as a "Pump Fuel" on the CAMS website on the basis that:

- a "Pump Fuel" as defined by CAMS does not have to be dispensed from a service station pump; and
- CAMS may change the title of "Pump Fuel" as set out in its letter of 2 March 2004.

Several responses may be made to these claims. The clear meaning of the term "Pump Fuel" is that it is available from a service station pump. Elf BFK-07 is not so available, and, in relation to

the fuels the subject of the grant of approval by the Minister for the Environment and Heritage dated 12 March 2004 (Approval), we note that the Approval prohibits such fuels from being so available on the basis that the storage of these fuels in underground tanks has the potential to contaminate groundwater with the ordinarily prohibited ingredient MTBE.

"Pump Fuel" is defined in the CAMS 2004 Manual of Motor Sport as being:

*"A fuel produced by an oil company for sale in the Australian general transport fuel market. Such a fuel must comply with the Regulation for petrol made under the Federal Government Fuel Quality Standards Act 2000".*

Elf BFK-07 and the fuels the subject of the Approval are not available for sale in the Australian general transport fuel market. The Approval specified that the relevant fuels may only be supplied:

- to an individual who has been issued with and presents a valid and current motor sport club/organization licence and/or identification card (where that motor sport club/organization relates to land-based motorsport); or
- to an individual for the purpose of testing or tuning an engine.

Moreover, we are instructed that excise has not been paid on Elf BFK-07 or the fuels the subject of the Approval such as would allow them to be used in the Australian general transport fuel market.

In its letter of 2 March 2004, CAMS emphasizes that it will not be changing the definition of Pump Fuel, but that it *"plans to review this title in the future"* and may change the name to *"a name such as 'Street Fuel' or suchlike that reflects the requirement for compliance with the Federal Government Fuel Quality Standards Act"*. A change of name to Street Fuel would continue to be misleading for the reasons set out above. The representation that "Pump Fuels" comply with the FQS Act is separately misleading and is dealt with in more detail below.

**(b) FIA Fuels**

We note that you claim to have been advised by the FIA that Elf WRF fuel complies with Article 252.9.1 of Appendix J to the FIA International Sporting Code. As noted in our letter of 24 March 2004, this article provides, among other things, that FIA Fuel *"must be commercial petrol which comes from the service station pump"*. While such fuel may be commercial petrol available from service station pumps in other countries, and we make no concession about that, this is clearly not the case in Australia as outlined above.

The Approval prohibits Elf WRF from being available at the pump and from being commercially available other than for supply to limited classes of persons. These limitations are based on Elf WRF exceeding environmental and safety requirements set by the Fuel Standard (Petrol) Determination 2001 (Petrol Determination).

A representation by CAMS that Elf Fuel as supplied in Australia complies with Article 252.9.1 of Appendix J to the FIA International Sporting Code carries with it implied representations about its availability, impact on the environment, and impact on occupational and public health and safety. These representations are misleading without further clarification from CAMS.

(c) Fuel Quality Standards Act 2000 (Cth)

As noted above, Elf BFK-07 is listed as a "Pump Fuel" on the CAMS website which is an express representation that it complies with the Petrol Determination made under the *Fuel Quality Standards Act 2000* (Cth) (FQS Act).

Further implied representations of compliance with the FQS Act flow from the description of Elf WRF as an "FIA Fuel" as defined in CAMS 2004 Manual of Motor Sport, on the basis that such fuels are available from the pump and are commercially available in Australia. In order for a fuel to be generally commercially available from a bowser in Australia such fuel would have to comply with the FQS Act.

You have referred to the Approval granted in relation to Elf WRF. Clearly the Approval was necessary because Elf WRF did not otherwise comply with the Petrol Determination. No indication has been given by CAMS on its website of the extent to which Elf WRF exceeds the environmental and health and safety limits for fuel ordinarily set by the Petrol Determination or that a grant of approval was necessary.

This conduct identified in (a), (b) and (c) constitutes express and implied representations in trade or commerce which are misleading or deceptive or are likely to mislead or deceive in contravention of section 52 of the TPA. We refer to our comments made in our letter of 24 March 2004.

**Characteristics of ET 102**

You note in your letter that in July 2003 CAMS confirmed that a sample of ET 102 provided to it in early 2003 was compliant with Article 252.9.1 of Appendix J to the FIA International Sporting Code.

You then note that ET 102 is now of a different composition to the sample provided in 2003. We are instructed that ET 102 is manufactured under strict quality control conditions and that the only change to the composition of ET 102 since early 2003 is in the level of oxygen in the fuel. At the time a sample was provided to CAMS, the oxygen content of ET 102 was 1.4% mass by mass. ET 102 is now a pump fuel and is permitted by the Petrol Determination to have a maximum oxygen content of 2.7%. As a result, the oxygen content of ET 102 has been increased to 2.7%. The level of oxygen in ET 102 remains below the maximum level regulated by the FIA of 3.7%. In all other respects, ET 102 is the same as the sample provided to CAMS.

There is no basis for any claim that ET 102 does not comply with FIA regulations nor for refusing to inform competitors entering 4WD turbocharged and supercharged that they are able to use ET 102 in the ARC.

Your letter makes vague allegations about representations made by ET Racing Fuels "on its website". ET Racing Fuels does not have a website. We note that the website of CAMS, until recently, correctly identified ET 102 as being a FIA Fuel. There is no basis for ceasing to identify ET 102 as an FIA Fuel. The conduct of CAMS in removing the reference on its website to ET 102 as being a compliant fuel is itself misleading or deceptive as it constitutes a representation that ET 102 was previously compliant but is now non-compliant with Schedule G to the CAMS 2004 Manual of Motor Sport.

As outlined above, a clear and unambiguous statement is required informing competitors entering 4WD turbocharged and supercharged cars in the ARC that they can use ET 102.

#### **Copy of tender**

You have not responded to our request in our letter of 24 March 2004 for a copy of the 2003 tender for supply of fuel for the ARC. Please provide us with a copy of this tender.

#### **Next steps**

CAMS continues to be in breach of the third line forcing provisions of the TPA and, by reason of section 93(7A) of the TPA, has not obtained statutory protection in relation to the "proposed conduct" which it has notified to the ACCC.

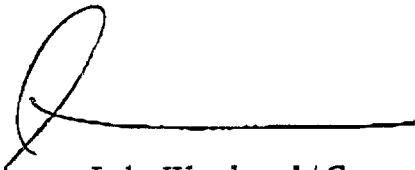
The current statements on the CAMS and ARC websites in relation to the use of a control fuel by competitors entering 4WD turbocharged and supercharged cars continue to be misleading and deceptive.

Accordingly, ET Racing Fuels requires CAMS to undertake the steps set out in our letter of 31 March 2004 and reproduced above. The form of words to be placed on the CAMS website appears in the Schedule to this letter. Given the ongoing damage to the business of ET Racing Fuels, our client requires CAMS to take this action by no later than 12.00pm on Friday 16 April 2004.

We note that CAMS has removed the lists of Pump Fuels and FIA Fuels previously appearing on its website. Please inform us where any other such list is published and how members of the public seeking to enter CAMS events may now determine whether a fuel they wish to purchase complies with Schedule G.

Given the continuing damage to our client caused by the actions of CAMS, we look forward to your urgent response.

Yours faithfully  
GILBERT + TOBIN



Luke Woodward / Graeme Edgerton

## SCHEDULE

Form of words to be published prominently on CAMS website [www.cams.com.au](http://www.cams.com.au) and ARC website [www.rally.com.au](http://www.rally.com.au).

### **CAMS website**

On 26 March 2004, CAMS removed the requirement on competitors entering turbocharged and supercharged 4WD vehicles in the Australian Rally Championship to use a control fuel. Competitors entering such vehicles may use any fuel which meets the requirements of Schedule G of the 2004 CAMS Manual of Motor Sport. Such fuels include Elf WRF and ET 102 Racing Fuel [and any other compliant fuel]. The next event in the ARC is the Subaru Rally of Canberra on 8-9 May.

### **ARC website**

There is no requirement on competitors in the ARC to use a control fuel. Competitors may use any fuel which meets the requirements of Schedule G of the 2004 CAMS Manual of Motor Sport. Such fuels include Elf WRF and ET 102 Racing Fuel [and any other compliant fuel].