



Our Ref: 241933

12 March 2008

BY REGISTERED POST AND EMAIL

Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Attention: Mr David Hatfield, Acting General Manager

Dear Mr Hatfield

Exclusive Dealing Notifications lodged by the National Association of Speedway Racing ("NASR")

We refer to your letter dated 4 March 2008, which specifies several queries relating to the provision of personal accident insurance by NASR as a member benefit.

We are instructed to respond to your queries as follows:

- The cost of a NASR licence varies in price depending upon the race category required, with the maximum fee being \$175. Can you please explain how the amount of the licence fee was arrived at and what services are accounted for by the licence fee? Does the licence fee include an amount to cover the cost of the personal injury insurance negotiated by NASR and offered as a member benefit? If so, how much? If not, how does NASR fund the insurance premium?*

The response to the first query raised by ACCC covers a number of issues, which we will deal with in turn.

Membership benefits

The licence fee payable to obtain NASR membership is calculated on the basis of all membership benefits. NASR members obtain the following benefits:

- licence to compete in NASR events;
- Choice Hotels Association Card;
- Entertainment Book, available at a discounted rate;
- Leaded Fuel Passbook, which permits purchase of leaded fuels under the exemption granted to NASR under the *Fuel Quality Standards Act 2000* (Cth);
- NASR News, a full colour magazine style newsletter produced three times a year;
- discounted membership of the Paraplegic Benefit Fund Australia;
- personal accident insurance (see item 2);
- guarantee of appropriate public liability insurance at NASR approved venues and events; and
- administration and management of the sport of speedway racing.

However, the value of many of the benefits of NASR membership cannot be quantified in a simple way, unlike an insurance premium. For example, the additional benefits of supporting NASR through membership are the resources and efforts of NASR as the controlling body of speedway racing, in developing and enhancing safety and risk management protocols and procedures to the benefit of members and the sport generally. Amongst NASR's achievements within the speedway racing field are:

- development of a risk management program, including track inspections, track risk audits and a track operators manual;
- development of National Racing Rules and Regulations;
- operation of National Racing Series;
- management of NASR National Safety Training Seminars nationally;
- development of a 5-star National Track Standard Rating System;
- development of a speedway racing code of conduct;
- development of a National Media Accreditation process;
- introduction of the Australian Speedway Hall of Fame;
- development and implementation of a drug and alcohol policy including testing techniques for both drugs and alcohol, chain of evidence requirements and relevant offences and penalties;
- introduction and growth of junior-level speedway racing categories;
- marketing and promotion of speedway racing generally, to raise the profile and professionalism of the sport;
- introduction of an annual National Safety Conference; and
- formation of the Speedway Safety Advisory Committee.

The management and conduct of all the above activities by NASR improve the sport of speedway racing, both in terms of profile and safety. These actions would not be possible but for the support of NASR members, through payment of NASR membership fees.

The above illustrates that the provision of personal accident insurance by NASR is but one of a number of significant membership benefits which are provided in consideration of the licence fee. The licence fee is calculated on the basis of a number of factors, including the outgoings of the organisation for undertaking the above activities.

Additionally, there would be significant practical issues involved should NASR be required to verify that each participant in a speedway racing event, including drivers, mechanics and officials, had the appropriate level of insurance cover. Given the inherent dangers involved in the sport of speedway racing, the potential consequences of failure to procure and maintain appropriate personal accident insurance are extremely substantial. As such, NASR would be required to review the personal accident insurance policy of each participant at each event, to ensure that the personal accident insurance was current and of an appropriate level. This would put a significant administrative burden on NASR and the relevant tracks as well as impacting the efficient operation of each speedway event.

We acknowledge that the licence fee varies in price depending on the race category or membership type (ie, driver, official, mechanic). However, this variation does not arise from a simple "pass through" of the insurance premiums paid by NASR for personal accident insurance.

NASR insurance cover

The personal accident insurance provided as a member benefit covers all national and state executives of NASR, all committee members, employees and driver, mechanics, officials, visitors and others who are members or licence holders of NASR. The insurance covers attendance at an authorised event or meeting organised by, recognised by or under the direct control of NASR and/or any of its affiliates including necessary and direct travel to and from such authorised event or meeting.

NASR pays a minimum annual premium for the personal accident insurance. This applies regardless of the number of actual NASR members in any given period. The insurance premium is adjusted annually on the basis of actual NASR membership, however NASR bears the risk that membership will be lower than the figure assumed for the purpose of calculating the minimum premium.

The actual premium paid is calculated on the basis of actual NASR members, calculated at different rates for different categories, with such rates dependent in general on the potential earnings for competitors in each category, the relative NASR administrative resources expended on each category, as well as the inherent risks associated with each category. However, as stated above, the variation between licence fees for different categories does not arise from a simple "pass through" of the insurance premiums paid by NASR for personal accident insurance. For example, the premium payable by NASR for all senior drivers is the same, regardless of category, whereas the licence fee payable varies between \$85 (vintage) and \$175 (AA driver). This variation is based on a number of factors, including that:

- Vintage cars participate as demonstration vehicles only, and therefore require less safety and risk management activities of NASR;
- AA drivers are the professional level drivers who have more prize money, the opportunity to participate in the national series of events, and in general more opportunities to race throughout the year;
- B drivers are state-based and therefore have lower prize money and participate in less events; and
- E drivers only participate in 3 to 4 special events per year.

2. *As licensees are able to get their own appropriate insurance, why isn't a discount on the licence fee available in these circumstances?*

We note that it is common business practice for organisations to charge a "standard fee" for membership of that organisation, regardless of whether individual members use all benefits offered as part of that membership. A simple example would be membership of a gymnasium, which typically includes access to all gymnasium facilities. The standard membership fee applies regardless of whether an individual member uses only certain facilities within the gymnasium. It is also common practice that a membership fee would be less than the aggregate actual commercial value of all benefits offered under that membership.

As specified under item 1, the calculation of the licence fee is based upon the numerous benefits associated with NASR membership. No one membership benefit can be easily quantified within the licence fee structure. Whilst NASR provides personal accident insurance by paying a premium for each NASR member, these premiums are not merely passed through to each NASR member. Accordingly, it does not follow that if a member obtains their own personal accident insurance, that the premium paid by NASR for that specific member should be deducted from their licence fee.

3. *How did NASR choose QBE as the insurance provider? When did NASR negotiate its policy with QBE?*

NASR has appointed Marsh Insurance Brokers ("Marsh") as its insurance broker for personal accident insurance and public liability insurance. NASR has engaged Marsh to conduct this process on an annual basis. The relevant policy is negotiated on an annual basis with a tender process carried out biennially. NASR and Marsh prepared and circulated a tender document for consideration by approximately 8 insurance providers in March 2006. QBE was selected as having provided the most competitive quotation in respect of the insurance cover required by NASR.

We note that NASR is currently going through a similar tender process, and this tender process should be completed by April 2008. We confirm that QBE does not have a favoured position as the provider of NASR's insurance cover, and accordingly it could be replaced by a different insurance provider following the upcoming tender process. Please note that, in the recent past, NASR has utilised insurance providers other than QBE.

The tender process that NASR undertakes is open to insurance providers other than QBE. In addition, there is no barrier to alternate insurance providers entering the relevant market, or remaining in the relevant market, and continuing to offer insurance cover to NASR members, non-members and participants in motor sports generally. It is clear that there are potential insurance customers that extend beyond NASR's short term insurance arrangements. Insurance providers are also free to respond to future tenders that NASR carries out.

NASR notes that there are not many insurance providers which are willing to provide personal accident insurance for such an inherently dangerous sport. In 2006, of the 8 insurance providers approached, only 4 provided a quotation.

4. *How many NASR licensees acquire their own personal injury insurance rather than rely on the insurance provided by the NASR licence?*

To the best of NASR's knowledge, a very small minority of NASR members acquire their own personal accident insurance. It is difficult for NASR to identify how many NASR members have acquired their own personal accident insurance, as NASR does not receive this information.

5. *In the event of an accident, who makes the claim to QBE? Is there any relationship between the driver and QBE with respect to the insurance arranged by NASR?*

Members do not have the details of the relevant insurer, however information relating to the personal accident insurance cover is publicly available on NASR's website. If a member wishes to make an insurance claim, they contact NASR, which provides the claim form from the relevant insurer for the member to complete. Therefore, NASR liaises with the relevant insurer and Marsh.

6. *Do you consider it is a detriment for licensees who purchase their own personal injury insurance, for example to cover NASR approved and non-NASR approved races, but do not receive a reduction in the licence fee to reflect the fact that they do not require the NASR arranged insurance?*

We refer to our response under item 2. We note that, to the best of NASR's knowledge, a very small minority NASR members acquire their own personal accident insurance, over and above the personal accident insurance offered as a member benefit.

Additionally, NASR cannot advise on the level of personal accident insurance that may be available, or the premiums payable, in respect of non-NASR approved races. Speedway racing events that have not been approved by NASR are unlikely to have the high level of safety and risk management processes that have been developed and implemented by NASR. In NASR's experience, many insurance providers are reluctant to provide cover to participants in speedway racing events. In fact, the validity of NASR's personal accident insurance is expressly predicated on NASR's stringent safety and training processes.

NASR considers that there are significant public benefits to offering personal accident insurance as a member benefit. As specified in the Form G notifications, speedway racing is an inherently dangerous activity and it is imperative that all drivers hold adequate personal accident insurance before they compete. As noted above, it would be almost impossible at a practical level for NASR to ensure that personal accident insurance cover was maintained by each participant, and to verify the quality of personal accident insurance cover obtained from third party insurers at each event.

The personal accident insurance cover is dependent on NASR's approved risk management policies and procedures and in turn supports the safety framework established by NASR. An additional public benefit of ensuring that all members, whether officials, drivers or mechanics, are covered by adequate personal accident insurance is that there is an enhanced level of safety and governance within the sport of speedway racing.

Summary

We trust that the above is sufficient to address any concerns the ACCC may have regarding the provision of personal accident insurance as a benefit of NASR membership.

Please do not hesitate to contact the writer should you have any queries in relation to any of the above.

Yours faithfully
KELLY & CO

per:



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