

Bourke, Monica

From: Luke Dale [ldale@kellyco.com.au]
Sent: Tuesday, 27 May 2008 5:46 PM
To: Palisi, Joanne; Tim McAvaney
Cc: Bourke, Monica
Subject: RE: NASR notifications [SEC=UNCLASSIFIED]
Follow Up Flag: Follow up
Flag Status: Red

Dear Joanne,

We confirm that the NASR licence is non-exclusive. The notified conduct does not propose to impose a licence condition that NASR licensees must not hold or race under licences from bodies other than NASR.

Rather, the notified conduct imposes conditions solely relating to recognised categories of speedway racing, and approved or sanctioned tracks and venues. There is no impediment to NASR licensees holding additional licences of any kind, provided that they comply with the requirement to race in a recognised category and at events hosted at approved or sanctioned tracks and venues. For example, some drivers may already hold both a NASR licence and a licence from the Victorian Speedway Council Inc. The holding of a VSC licence would not itself affect the validity of the NASR licence.

Please do not hesitate to give me a call if you require any further clarification on this point.

Kind regards,

Luke

Luke Dale

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-----Original Message-----

From: Palisi, Joanne [mailto:Joanne.Palisi@accg.gov.au]
Sent: Tuesday, 27 May 2008 4:49 PM
To: Luke Dale; Tim McAvaney
Cc: Bourke, Monica
Subject: RE: NASR notifications [SEC=UNCLASSIFIED]

Thanks Luke. I think part of our confusion has been your description of the NASR licence as non-exclusive in the initial notification and in subsequent correspondence. From my way of reading your most recent response it is proposed that the NASR licence be exclusive in that drivers will not be able to hold, and race under, licences from bodies other than NASR if they wish to hold a NASR licence.

Regards
Joanne

From: Luke Dale [mailto:ldale@kellyco.com.au]
Sent: Tuesday, 27 May 2008 5:07 PM
To: Palisi, Joanne; Tim McAvaney
Cc: Bourke, Monica
Subject: RE: NASR notifications [SEC=UNCLASSIFIED]

29/05/2008

Dear Joanne,

We refer to your email dated 26 May 2008.

At present, a NASR licensee may compete in recognised categories at non-NASR approved tracks and venues, without affecting the validity of their licence. The notified conduct proposes to impose as a condition of the NASR licence that:

- the licensee must compete in speedway racing categories approved by NASR; and
- the licensee must compete only at venues and tracks which are sanctioned or approved by NASR.

As stated in our earlier email, if the notified conduct is approved by the ACCC, NASR would be entitled to terminate a NASR licence, or refuse to grant or renew a NASR licence if either of the above conditions were breached by a NASR licence holder.

We confirm that this will operate independently of the holding of any alternative or additional speedway racing licence. That is, if a NASR licence holder participated in a non-recognised category or at a non-NASR approved or sanctioned track or venue, this would be a breach of the NASR licence conditions regardless of whether the competitor also held an alternative or additional speedway racing licence. The holding of an alternative or additional speedway racing licence relevant to that category or event would not affect NASR's right to terminate the NASR licence.

As highlighted in the original notifications and our subsequent correspondence, NASR believes there are significant public benefits that will be derived from the notified conduct.

We hope that this clarification assists. We look forward to hearing from the ACCC in due course.

Kind regards,

Luke

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-----Original Message-----

From: Palisi, Joanne [mailto:Joanne.Palisi@acc.gov.au]
Sent: Monday, 26 May 2008 12:12 PM
To: Luke Dale; Tim McAvaney
Cc: Bourke, Monica
Subject: RE: NASR notifications [SEC=UNCLASSIFIED]

Thanks Luke. We propose to put your email on the public register.

Further to your response, can you please confirm that under the notified conduct a driver who has a NASR licence can also hold and obtain an alternate licence at the same time, and participate in non NASR organised events/tracks without affecting their NASR licence.

When you indicate that the notified conduct proposes to require drivers to participate only in recognised categories and at NASR approved or sanctioned tracks and venues, does this mean under their NASR licence? ie. they can obtain alternate licences to participate at non NASR approved tracks / categories and this wont affect the validity of their NASR licence.

Similarly, when you state that the notified conduct would give NASR the right to refuse to grant a NASR licence or to terminate a NASR licence, should a driver participate in a non-recognised category or at a non-NASR approved or sanctioned track or venue, is this because they have done so under their NASR licence? ie they have not participated in the event/venue with an alternate licence.

Regards
Joanne

From: Luke Dale [mailto:ldale@kellyco.com.au]
Sent: Friday, 23 May 2008 5:17 PM
To: Bourke, Monica; Tim McAvaney
Cc: Palisi, Joanne
Subject: RE: NASR notifications [SEC=UNCLASSIFIED]

Dear Monica,

We refer to your email dated 21 May 2008 regarding the ACCC's assessment of the Form G notifications lodged by NASR and other entities associated with speedway racing.

We confirm that the ACCC's understanding of how the notified conduct will work is accurate, save for some minor clarifications. You have stated that the NASR licence is "non-exclusive" and that a driver may obtain a licence to race in a non-recognised category and/or hold multiple licences to participate at non-NASR approved or sanctioned tracks and venues. We confirm that the NASR licence is non-exclusive, in that it does not prevent a driver from obtaining additional licences if he or she wishes to do so. However, the notified conduct proposes to require drivers to participate only in recognised categories and at NASR approved or sanctioned tracks and venues. The consequences of contravening the notified conduct is set out below. As specified in the notifications and our subsequent correspondence with you, NASR considers that the notified conduct supports the overall safety and risk management profile of speedway racing that has been implemented by NASR, and will provide substantial public benefits for competitors and spectators.

As further clarification, we note that the number of tracks and venues that are sanctioned or approved by NASR has increased from 66 to over 70 since the notifications were lodged. In addition, we confirm that the notifications of Perth Motorplex and Avalon Raceway describe proposed conduct only. These tracks want the option of being able to state that only NASR licence holders may race at their premises, and that anyone wishing to enter the pit area at their tracks also needs to hold a suitable NASR licence. Again, it is submitted that this will provide substantial public benefits.

In response to your first question, we confirm that the validity of the NASR licence and the validity of the personal accident insurance cover do not exist independently. However, the termination of a NASR licence, and consequently the personal accident insurance cover provided as a member benefit, would not apply retrospectively. Under the proposed notified conduct, if a driver has participated in a recognised category but at a non-NASR approved track or venue, NASR would be entitled to terminate that driver's NASR licence. However, should the driver be involved in an incident at such an event, the personal accident insurance would be valid for that event. The personal accident insurance would not be voided or terminated retrospectively. Should NASR choose to exercise its right to terminate the driver's NASR licence subsequent to that event, the personal accident insurance cover would also terminate at that time and would not be valid for future events (unless the driver subsequently obtained a new NASR licence, or the driver's licence is later reinstated).

In response to your second question, we note that the notified conduct has not yet been implemented, pending the outcome of the ACCC's assessment of the notifications. We confirm that, once implemented, the notified conduct would give NASR the right to refuse to grant a NASR licence or to terminate a NASR licence, should a driver participate in a non-recognised category or at a non-NASR approved or sanctioned track or venue. As previously advised, NASR anticipates that clubs and associations responsible for each speedway racing category will be responsible for ensuring that drivers in the recognised categories race only at NASR approved or sanctioned tracks and venues. Additionally, NASR has an up-to-date listing of

approved and sanctioned tracks and venues on its website and intends to circulate listings or newsletters regarding which tracks and venues are approved or sanctioned by NASR, as required. As indicated in our previous correspondence with you, there are compelling public benefit arguments that support the need for NASR to be able to regulate speedway racing categories and the safety standards of tracks and venues.

We trust that this satisfactorily addresses the ACCC's enquiries. If you have any further concerns or questions, please do not hesitate to contact us.

We look forward to your response.

Kind regards,

Luke

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-----Original Message-----

From: Bourke, Monica [mailto:Monica.Bourke@accc.gov.au]

Sent: Wednesday, 21 May 2008 4:11 PM

To: Luke Dale; Tim McAvaney

Cc: Palisi, Joanne

Subject: NASR notifications [SEC=UNCLASSIFIED]

Dear Luke and Tim,

As you are aware, the ACCC is progressing with its assessment of the notifications lodged by NASR and others regarding the offer and supply of NASR licences and NASR approval of tracks and venues.

We have compiled a series of points below which outline our understanding of how the notified conduct will work. Could you please confirm that these points accurately reflect the conduct proposed by NASR under the notifications:

- The notified conduct requires NASR licence holders to only race in recognised categories. NASR submits that almost all current speedway categories are recognised by NASR and new categories can be approved provided certain requirements are met. NASR advises that its licence is non-exclusive and a driver may obtain a licence from another organisation in order to race in a non-recognised category.
- NASR advises that there are approximately 110 speedway tracks in Australia, 66 of which are approved by NASR and covered by NASR's public liability insurance scheme. Other tracks and venues are able to apply to become approved by NASR. NASR will approve a track or venue if it meets certain objective criteria including NASR's national track rating system and that it holds public liability insurance. NASR advises that it will accept public liability insurance from an alternate insurance provider, on condition that it is equivalent or better than the public liability insurance NASR provides.
- The notified conduct requires NASR licence holders to only race at approved tracks and venues. If a competitor wishes to race at a non-approved track, they may not do so under the NASR licence. NASR advises that its licence is non-exclusive, and drivers may hold

multiple licences in order to participate at non-NASR approved tracks and venues. The insurance provided as a member benefit to NASR licensees will continue to be valid for drivers at non-NASR approved tracks and venues provided the races are in recognised categories.

- Individual speedway racing tracks determine the criteria upon which drivers are able to race at their venues. Perth Motorplex and Avalon Raceway have notified that only NASR licence holders may race and enter the pit area at their tracks.
- NASR provides personal accident insurance as a member benefit of its licence. NASR advises that its insurance applies at all authorised events. NASR defines an authorised event as any race or event in a speedway racing category recognised by NASR. NASR advises that the insurance cover provided as a member benefit applies to any such event, regardless of whether the race or event occurs at a track or venue which is approved by NASR. Therefore, the insurance component of the NASR licence will still apply for races at non-NASR approved tracks, provided the event is an authorised event.

We note that the conduct described in the Form G is more restrictive based on the above understanding of how the notified conduct will operate in the future. Can you please confirm this.

Further, we would appreciate any comments you may have on the following questions:

- NASR advises that the conduct requiring NASR licensees to race only at sanctioned or approved tracks and venues may affect the validity of the NASR licence, but not the validity of the NASR personal accident insurance cover. Can you please explain how this works in practice given the bundling of the NASR licence and insurance?
- How does NASR, in practice, enforce the requirements that NASR licence holders only race at approved tracks and venues? What are the consequences for a NASR licence holder if they do race at non-approved tracks under their NASR licence?

It would be appreciated if you could provide a response by **Monday 26 May 2008**.

Regards,

Monica Bourke
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Australian Competition and Consumer Commission

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