

**Formula Motorsports Group Pty Ltd.  
22 Barry Road, New Gisborne.  
Victoria 3438**

**Sunday, July 13, 2008**

**Australian Competition and Consumer Commission.**

This submission is in response to the ACCC's draft notices proposing to revoke third line forcing notifications N93297, N93298, N93301, N93302, N93303, and also not to take any further action at this time, in respect of third line forcing notifications N93304 and N93305 and exclusive dealing notifications N93299 and N93300.

In light of the above decisions, I respectfully ask the ACCC to clearly articulate to the market, what conduct is allowed or not allowed, in light of the issues raised throughout the "Notification Processes".

This is especially important given the large number of participants and organisations in the speedway market, who have substantial commercial interests at stake.

Given the above, could the ACCC make directions with respect to the following issues:

- 1) NASR continually promotes the notion that they are the "Controlling body for Speedway in Australia", Is this now misleading in the market place, given;
  - a) The ACCC draft decisions (N93297, N93298, N93301, N93302, N93303).
  - b) The evidence that other speedway activity operate outside the NASR umbrella, and
  - c) It is unclear as to "by who's authority do NASR act"
- 2) In light of the ACCC investigations, is the ACCC satisfied that a sufficient level of disclosure and transparency has been provided by NASR to the market, in relation to the issue of "Membership to NASR".

In particular, are those drivers, crew, general public and others, who have purchased licenses and insurance over the past nine years, and who have formally agreed to abide by the rules of NASR Incorporated, actually members of any NASR organization. It should be noted that;

- a) The original NASR concept called for drivers, crews, etc to be members of a NASR Incorporated association however it is unclear whether this was continued.

b) I formally notified NASR of the confusion in the market place in my correspondence to NASR dated the 13/1/04 and the 17/5/04. (see attachments A & B).

If NASR has not provided the required level of disclosure to the market, either in the initial set up of the NASR structure or its membership scheme, what recourse do the drivers, crew or others have, in relation to payments made, and what actions should NASR now take to clearly inform the market?

- 3) In light of the ACCC investigations, is the ACCC satisfied that a sufficient level of disclosure and transparency has been provided by NASR to the market in relation to the issue of the bundling of licences and insurances into NASR "Member benefits".

I contend that if the costs and benefits of the NASR personal accident scheme cannot be clearly evaluated against other insurance products, the market cannot make an informed decision as to what insurance best suits an individual needs.

Further more, I believe that each person insured under the NASR scheme, should be provided with the full documentation (Policy wording, not the PDS).

- 4) In light of the ACCC investigations, is the ACCC satisfied that real competition in the market in relation to personal accident insurance, can be achieved, if NASR track operators continue to restrict access to the pits to only NASR licence/insurance holders.

I contend that true competition in the market will only be achieved if all track operators are directed to accept all personal accident policies and any other types of cover, so long as the individual participant is satisfied he or she has sufficient cover to meet his or her personal circumstances.

- 5) NASR already has a monopoly control over the speedway industry.

This is essentially the result of the extended period of time in which NASR and others have been engaging in conduct which the ACCC now proposes to revoke.

Much of this conduct in the market has been previously referred to the ACCC, but for some reason, nothing seems to have changed in the market, despite a number of enquiries by the ACCC.

In the attached correspondence from the ACCC, (see attachments C,D and EF), it should be noted that it has taken NASR some eight (8) years before they (NASR/Track Operators and others) made notification to the ACCC in relation to their conduct in the market.

NASR's monopoly can be assessed by the following:

- a) The greater majority of major tracks in capital cities around Australia are NASR tracks.
- b) All the major National Series and National Championships (Sprintcars, ASCF Sedans, Speedcars, V8 Dirt Modifieds) are held at NASR tracks. (See the NASR website)
- c) All the major State based series are held at NASR tracks. (This can be verified by also accessing the NASR web site).
- d) The above classes and events as referred to in a) – c) above are:
  - i) The most commercially viable classes in Australia.
  - ii) The largest competitor/crew/public group of licence/Insurance holders.

iii) All the major "big prize money" events and series throughout Australia.

iv) Supported by the largest sponsorship base.

- 6) Most major competitor groups effectively act, and see themselves as an agent of NASR in that they facilitate the purchase and distribution of NASR memberships ?, licenses and insurance.

This in my experience, has made it much harder to successfully promote speedway events at Rolling Thunder Raceway simply because it is not a NASR track.

Some competitor organisations such as the Sprintcar Racing Association of Vic Inc (SRA), who is the state member club of the SCCA, have in the past only distributed NASR Licence/Insurance/Medical Certificate forms to its drivers and crew members, and have not included the SCCA licence and Medical Certificate forms.

I think this is systematic of most driver groups who have accepted, for one reason or another, that NASR is the controlling body for speedway in Australia. Of course, any rejection of this concept may limit the driver group from competing at NASR tracks.

Given the recent decisions of the ACCC, is the conduct outlined above, still allowed to continue?

I contend that driver groups such as the SRA/SCCA should only deal with its own administrative matters and individual drivers, crew and others, who wish to purchase a NASR product (licence & insurance), should deal directly with NASR otherwise the driver groups are effectively paying the postage and administrative costs of NASR.

- 7) Pit entry to NASR tracks by non NASR members has always been confusing and has been an issue of discontent.

The current concept adopted by NASR tracks to get around any possible third line forcing/exclusive dealings issues is that they (NASR tracks) do not actually restrict access of non NASR members, instead they charge an outrageous pit entry fee, then give NASR members a discount.

For example, Premier Speedway at Warrnambool, entry to the pits is \$70, however if you have a NASR licence, the entry fee is reduced to around \$30.

When you consider that most drivers, crew and others, probably enter a number of different track pit areas, perhaps in excess of 20 occasions each race season, It becomes very evident why many participants simply pay the NASR fee as they are financially better off in the long term.

I contend that this conduct should not be allowed on the basis that it only goes to further entrench the monopoly by NASR in the market.

This then poses the following issues to the ACCC for clarification.

- a) Can tracks, other than Avalon Raceway and the Perth Motorplex, continue to engage in the concept whereby non NASR competitors have to pay a higher gate entry over NASR Members?. I further contend that if allowed, it will have the same effect in the market to restricting pit entry to only NASR members although to a lesser degree
- b) In light of the ACCC 's decision not to revoke notifications N393304 and N93305, does this then mean that other NASR tracks cannot restrict non NASR members entry to their pit area?

It should be noted that previously, Non NASR participants can enter the pit areas at NASR tracks if they pay an additional pit entry fee whilst NASR's previous advice indicates that NASR tracks cannot sell personal accident insurance at the pit gate to non NASR participants.

This effectively means that non NASR participants have in the past been able to enter the pit areas at NASR tracks without personal accident insurance. This suggests that NASR's previously emotive position, whereby participants (crews etc) in the pits must be covered by NASR PA insurance is a bit of a shame.

The end position is that, if non NASR participants simply pay a higher pit entry fee, the need for Personal Accident insurance goes out the window!

- 8) Given the ACCC decision not to revoke notifications N393304 and N93305, does then mean that NASR registered drivers and cars, can only race at NASR tracks.

Or alternately, are those drivers and cars, who may opt to have dual licenses and registration (e.g. SCCA licences and registration), are permitted to race at a non NASR tracks such as Rolling Thunder Raceway in Victoria.

If NASR registered drivers and cars are restricted to NASR tracks only, it would;

- a) Almost certainly force me (Speedway Promoter) out of the market as I could not survive without promoting the main classes of speedway.
- b) Compromise a large number of drivers/car owners by making them decide as to which tracks they wish to race at, and given that the major events are at NASR tracks, it leaves little choice in the end.
- c) Seriously reduce competition in the market place resulting in loss of financial remuneration for drivers, race team owners and non NASR speedway promoters.

I contend, that if NASR registered drivers and cars were restricted to NASR tracks only, and not have the opportunity to compete at other non NASR venues, the overall effect will be to lessen competition in the market at all levels.

Further more, it would lessen the possibility of other organizations, that may wish to compete in the market by seeking appropriate government recognition and develop appropriate industry support.

Yours sincerely

Ray Solomon for



Formula Motorsports Group Pty Ltd.

Rolling Thunder Raceway.

# ATTACHMENT A

**FORMULA SPEEDWAY PROMOTIONS PTY LTD.**  
ACN 104 630 186 ABN 90 234 066 172  
22 Barry Road, New Gisborne, Victoria, 3438.  
Tel: 0407 801 513. Fax: 0354 281 524.  
Email: [ray@formula-motorsports.com](mailto:ray@formula-motorsports.com)

—PRIVATE AND CONFIDENTIAL— 

The Manager.  
National Association of Speedway Racing.  
184 Magill Road, Norwood.  
South Australia. 5067.

13/01/04

Dear Sir,

I wish to purchase a NASR Racing License and ask that the following issues be clarified as a matter of urgency.

- 1) I am a current member of the Sprintcar Racing Association of Victoria with a registered Sprintcar, which is operated by Formula Speedway Promotions Pty Ltd.
- 2) I have been advised that I cannot purchase a NASR license without becoming a member of NASR, and purchasing FAS personal accident insurance as outlined in the FAS Accident Plan and Speedway License Form.

I currently have 5 policies with Combined Insurance Company of Australia, some of which I have had for over 20 years. These provide personal accident and hospital cover with the overall benefits in excess of \$900 per month for disability and \$1680 per month for hospital cover, which is paid regardless of any other insurance cover or medical benefit payments.

Given the above information, Could you please provide written advice in relation to the following matters?

1. Is it a mandatory requirement that I become a member of NASR if I wish to purchase a NASR License?
2. Is it a mandatory requirement that I purchase FAS personal accident insurance if I wish to become a member of NASR?
3. Is it a mandatory requirement that I purchase FAS personal accident insurance if I wish to obtain a NASR license?

If NASR membership and FAS Insurance is mandatory for me to obtain a NASR license, could you please provide me with a full copy of the FAS personal accident insurance policy including all terms and conditions.

- 3) **The Sprintcar Racing Association of Victoria** has provided me with a copy of the FAS Accident Plan and Speedway License Form. Upon reading it, I am not sure what organisation I maybe joining, if any, as the form does not imply an "application for membership" to any organization and does not provide details of any company or business registration details.

Given the above, could you please advise me if the FAS Accident Plan and Speedway License Form is an Application for Membership to NASR and to which NASR entity if any, I will be joining.

Could you also provide the NASR entities business registration details including ABN, and copies of any Rules, Regulation and or Constitutions.

- 4) Since the introduction of NASR, I have attended many Speedways around Australia and usually enter the pit area as a car owner or crew. Some Speedways have accepted my Combined Insurance personal accident policies and some have not.

Those Speedways that did not accept my Combined Insurance, then usually ask for additional monies for access to the pits and have indicated that it is for personal accident insurance cover.

Can you please confirm whether this additional money is for FAS Personal Accident Insurance cover and if so what insurance policy was I covered under.

- 5) **Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement.**

Many of my friends who enter the pit area and pay additional money believe they have purchased personal accident insurance cover and when I have questioned them further, they are of the belief that the signing of this agreement is the means by which the insurance is purchased.

Can you confirm whether the signing of this agreement has any relevance at all with the purchase of FAS personal accident insurance.

As a car owner and crew member, I fully support the signing of the agreement, however I am concerned that it may not have the legal relevance for which it was intended because most people who sign the declaration have no idea what they have signed. This is because:

- The document is in legal terms and is very hard to understand unless you had some legal or business background. In my view, it should be written in plain English and in larger print.
- The process of signing the agreement at the pit gate does not allow time for a full reading of the document and understanding of its contents.

The reason why I raise this issue is to formally advise you of the lack of knowledge and understanding of the **Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement** by track operators, competitors, crew members and the general public. This lack of understanding is wide spread and requires urgent action to promote a full understanding of the agreement.

To illustrate this lack of understanding, I once signed the **Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement** at Premier Speedway one night, I then asked the attendant at the pit gate "what have I signed and could he explain it to me". He replied "it was to allow me into the pits". I indicated, "I'm sure there was some legal implication to my signing the document". He then became agitated and said "how should I know".

6) Finally, I wish to investigate additional insurance options and ask whether NASR/FAS provide cover for the following:

- Competitor-to-Competitor Insurance.
- Driver to Team Owner Insurance.
- Loss or Theft of race car/ spares/ tools etc. (100% of the time)
- Do you have a **Release and Waiver of Liability, Assumption of Risk and Indemnity Agreement** that can be used by race team owners to provide some acceptance of risk by their crew and others who help on the race car both at the track and whilst loading and traveling etc.
- Insurance to cover Car or Team owners against claims by crew members or others if they are injured whilst working on the racecar away from the race track.

7) In summary

- I wish to purchase a NASR Racing License.
- If absolutely necessary, I will join NASR so long as I know what entity I am joining and understand the terms and conditions of membership.
- I will not purchase FAS personal accident insurance, as there is little chance of me ever deriving any real benefits from it.
- I wish to explore other insurance options.

I welcome the opportunity to discuss the above matters, I can be contacted on 0407 801 513

Yours sincerely

Raymond Solomon  
Director.  
Formula Speedway Promotions Pty Ltd.

# ATTACHMENT B

FORMULA SPEEDWAY PROMOTIONS PTY LTD.  
ACN 104 630 186 ABN 90 234 066 172.  
22 Barry Road, New Gisborne, Victoria, 3438.  
Tel: 0407 801 513. Fax: 0354 281 524.  
Email: [ray@formula-motorsports.com](mailto:ray@formula-motorsports.com)

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The Manager.  
National Association of Speedway Racing.  
184 Magill Road, Norwood.  
South Australia, 5067.  
Attention: Mr. Tim McAvaney

07/05/04

Dear Sir,

Thank you for your correspondence dated the 8<sup>th</sup> of March and the information contained therein. Regrettably, many of the issues referred to in my original correspondence dated the 13<sup>th</sup> January 2004 were still not answered, so I again write in the hope that you will not be so vague in your future responses.

- 1 In your correspondence dated the 8th of March 2004, you indicate that:  
*"Applicants to NASR membership all receive a NASR licence as the two are linked as the NASR licence also acts as proof of membership".*

Thank you for confirming that there is membership to "NASR", however you failed again to advise me which NASR entity you are referring to. It would seem that this basic fact is the "best kept" secret in speedway.

I cannot believe that your vagueness and unwillingness to identify which NASR entity drivers and crews are members of, is just an oversight. One could easily get the impression that this is an orchestrated strategy to confuse the speedway industry given the fact that the FAS Accident Plan and Speedway Licence Form:

- a) Does not clearly indicate that it is an "Application for Membership" to any NASR entity. In my view, it is what it says it is, an application for FAS insurance and a speedway licence, nothing more.
- b) Does not clearly identify the entities business/Incorporation business registration number. To which entity is this money being paid?
- c) Contains a section whereby persons completing the form, compulsory sign that they agree to observe and abide by the rules and regulations of NASR Inc, even though the form does not indicate that it is an Application for Membership of NASR Inc and does not contain a business registration number.
- d) I note that the 2002-2003 form contains the NASR company logo and FAS logo and is returnable to N.A.S.R at 184 Magill Road Norwood SA, whilst the 2003-2004 form does not contain the NASR company logo and is returnable to N.A.S.R Inc (with ABN) at 184 Magill Road Norwood SA. Does this mean that this Incorporated Association is a recent invention by NASR Pty Ltd.



- e) I also not that the latest 2003-2004 form includes a reference to Associate Members and State Fees. Still the form does not have a section for Application of Membership. Could you also advise me what are these State fees that are refer to.

In light of the above, can you confirm in the clearest possible terms, whether the thousands of competitors and crew around Australia that currently have or had NASR licenses since NASR's inception in 1998, are now or were members of NASR and which entity they are or were members of, if any.

Now that you have been advised that there is confusion in the market place regarding the payments for so called NASR's memberships, insurance and licences, both in the past and now, I believe it would be in your best interest and indeed its your obligation to remedy this situation forthwith.

2. Further, in your correspondence of the 8<sup>th</sup> of March 2004, you indicate that: ***"It is not a mandatory requirement to purchase FAS Personal Accident insurance if you wish to purchase a NASR licence, however the alternative cover must be of equal of better standard as described in the NASR rule book"***.

As you are aware, I have a number of personal accident policies other than FAS. I will be employing an Independent Insurance expert to evaluate my current policy with your FAS personal accident insurance.

So a direct comparison can be made, could you please provide me with a full copy of the FAS Personal Accident policy.

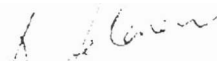
3. Further, in your correspondence of the 8<sup>th</sup> of March 2004, you indicate that: ***"When individuals pay an extra charge at the pit gate, a portion of this is forwarded to NASR to cover the individual for the day (day insurance). This is covered under our Personal Accident scheme"***.

Given the many times that I have been charged additional monies at the pit gate over and above the price charged to those people with NASR/FAS, can you inform me whether I ever been covered under this Personal Accident Scheme day insurance arrangement.

4. I would also be interested to know in the clearest possible terms, if current drivers or crew who have signed the ***FAS Accident Plan and Speedway Licence Form*** in anyway have a legal interest or ownership in the NASR building at 184 Magill Road, Norwood.
5. I will be forwarding a copy of this letter to State based clubs as I believe they should not be in any doubt regarding the above issues especially when they are collecting and passing on monies to a NASR entity that you, the General Manager of NASR cannot articulate clearly which NASR entity is receiving the money and which NASR entity, if any, the drivers and crew are members of.

If you wish to discuss the above matters, I can be contacted on 0407 801 513.  
I would appreciate a speedy response to the above issues.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ray Solomon', is placed over a light grey rectangular background.

Ray Solomon



## ATTACHMENT C

**Australian Competition & Consumer Commission**

Our Ref: MR98/203

Mr Jim Knight  
29-31 Apollo Drive  
HALLAM VIC 3804

GPO Box 520J  
Melbourne VIC 3001

Level 35 The Tower  
Melbourne Central  
360 Elizabeth Street  
Melbourne VIC 3000

Ph (03) 9290 1800  
Fax (03) 9663 3699

Dear Mr Knight,

Following receipt of your facsimile and attachments of 4 January 1999, I contacted the National Association of Speedway Racing ("NASR") and Mr David Lander, the promoter of Parramatta and Newcastle raceways.

My inquiries indicate that it is not a condition of racing at NASR promoted/aligned venues in Australia for drivers and team owners to obtain a NASR licence. However, where team owners and drivers are not members of the NASR, they are required to have FAS or an equivalent level of insurance cover to race at NASR promoted/aligned venues in Australia. This information confirms the advice provided by this office to Mr Solomon on 28 September 1998.

I have advised the NASR and Mr David Lander that where individual promoters choose to impose conditions at speedway tracks that limit the use of the track, they may be at risk of breaching the provisions of section 47(6) of the *Trade Practices Act 1974*. However, you should also be aware that an exclusive dealing arrangement, including third line forcing, can gain immunity from action by the Commission or any other party if the party engaged in the conduct lodges notification of the arrangement with the Commission. Where the Commission is satisfied that the public benefit flowing from the conduct outweighs any public detriment, immunity comes into effect 14 days after lodgement of the notification.

Based on the information available to me, I do not propose taking any further action in respect of this matter. Please note that my assessment of this matter does not preclude you from initiating private action under the Act or otherwise.

Finally, the NASR's legal representative, Mr Garry Winter of Phillips Fox in Adelaide requested details of the persons who brought this matter to the attention of the Commission. While I did not provide such details, I advised Mr Winter that I would request you to contact him regarding this matter. Mr Winter may be contacted on telephone (08) 8210 5811 or facsimile (08) 8231 0014.

Yours sincerely,

 Tony Mineely  
Deputy Regional Director  
31 March, 1999

# ATTACHMENT D



Australian Competition & Consumer Commission

Our Ref: MR98/203  
Contact Officer: Kay Ramadan

GPO Box 5701  
Melbourne VIC 3001

Level 35 The Tower  
Melbourne Central  
360 Elizabeth Street  
Melbourne VIC 3000

Ph (03) 9240 1800  
Fax (03) 9263 3600

Ms Sarah Coffey  
Solicitor  
Macpherson & Kelley  
PO Box 343  
DANDENONG VIC 3175

Dear Ms Coffey

Re: **National Association of Speedway Racing ("NASR") Incorporated & NASR Pty Ltd, promoters of speedway racing**

I refer to your letter dated 17 November 1999 sent to the Commission's Melbourne and Brisbane Offices regarding the above matter.

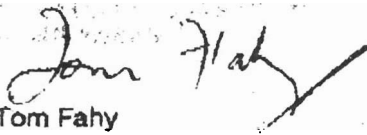
In that letter, you allege and provide evidence to indicate that NASR has entered into agreements with its promoter members whereby the promoter members agree to exclude all competitors from their race tracks who are not NASR members.

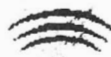
The material you provided appears to contradict NASR's previous advice to this office regarding its conduct. The alleged conduct of NASR and/or its members raises likely implications under the third line forcing provisions (sections 47(6) and 47(7)) of the Act. Further, the conduct could raise possible implications under sections 45 and 47 of the Act should such conduct be deemed to have the purpose or effect of substantially lessening competition within the relevant market, by preventing other racing bodies and their competitors from racing at NASR tracks.

I have written to NASR advising that it is not appropriate for NASR to continue to engage in the conduct outlined above without such conduct being authorised or notified. Your clients should be aware that the Commission may grant immunity from Court action to parties for particular notified conduct, should it consider that the likely benefit to the public from such conduct outweighs any public or anti-competitive detriment that the conduct may cause. I have enclosed for your information a brochure summarising the authorisation/notification provisions.

I will contact you again when I receive a response from NASR regarding its intentions in this matter.

Yours sincerely

  
Tom Fahy  
Regional Director  
2 March 2000





Australian Competition &amp; Consumer Commission

## ATTACHMENT E

Our Ref: D99/10231

GPO Box 520/  
Melbourne VIC 3001Level 35 The Tower  
Melbourne Central  
360 Elizabeth Street  
Melbourne VIC 3000Ph (03) 9290 1800  
Fax (03) 9663 3699

Ms Kay Anwyl  
Secretary  
Australian Saloon Car Federation Inc  
PO Box 1051  
IRYMPLE VIC 3498

Dear Ms Anwyl,

Thank you for your letter of 27 August 1999. You raise concerns about the National Association of Speedway Racing Pty Ltd's ("NASR") requirement that its members take out insurance cover with the Federation of Australian Speedway ("FAS").

The requirement by NASR for its members to have FAS insurance has previously come to the attention of this office. Previous inquiries directed to NASR indicate that while FAS insurance is a condition of NASR membership, it is not necessary to be a member of NASR to race at a speedway track. It is also my understanding that it is mandatory to have FAS insurance or an equivalent standard of cover in order to race at any track.

Section 47(6) of the *Trade Practices Act 1974* ("the Act") specifically prohibits the practice commonly referred to as 'third line forcing'. Third line forcing occurs when goods or services are supplied on condition that the person being supplied acquires other goods or services of a particular kind or description, directly or indirectly from a particular third party. Based on the information provided, it is unlikely that the condition which requires FAS insurance in order to become a member of NASR constitutes a breach of the Act.

In my view, by paying the FAS insurance component of NASR membership, members are not acquiring insurance in a personal capacity, insofar as the contract for insurance does not cover members as individuals, but rather as NASR members. It would be difficult to sustain that members were acquiring goods or services from another person, because it is essentially NASR that has acquired the insurance and a member's contribution is limited to being a club member. However, if NASR made it compulsory for drivers/team owners to contract with FAS in a personal capacity in order to become NASR members, such conduct may raise issues for consideration under the Act.

Under the circumstances, I will not be pursuing this matter further. Please note that my views are merely guidance and assistance in respect of the Act and should not



be taken as legal advice. My decision not to take further action does not preclude you from exploring your legal position. If you wish to determine whether you have a right of action under the Act or otherwise, you should discuss this matter with your legal adviser.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gavin O'Brien', with a long horizontal stroke extending to the right.

Gavin O'Brien  
Assistant Director – Compliance  
23 September, 1999