

I, Glenn Lawless support the draft ACCC decisions for the following reasons

### **EXECUTIVE SUMMARY**

I support the concept of Speedway having a Nationally Accredited Speedway Racing Organization. I believe Speedway should be controlled by Incorporated Associations, both nationally and State based, which are democratic and transparent

Speedway participants who fund these Incorporated Associations by purchasing licenses, memberships and insurances, should have a direct say on how the funds should be applied in the best interest of the organization in the future.

Speedway should not be controlled by any Pty Ltd Company. I note that the current governing body NASR has two components. When dealing with NASR one never knows whether they are dealing with someone from NASR Inc or NASR Pty Ltd. I note that NASR Pty Ltd was registered three months prior to NASR Inc.

Speedway Participants should be able to purchase a license from the association of their choice and this license should not be linked to any particular PA insurance policy.

Speedway Participants should be confident that when purchasing a license or memberships from an individual organizations that these funds are applied to further develop the sport in a manner that they see fit, rather than the monies going to any Pty Ltd company

Speedway participants should be able to purchase personal accident (PA) insurance from the supplier of their choice to meet their specific needs and maximize competition in the insurance market.

Speedway promoters/associations should accept a range of PA insurances that meet a minimum standard as determined by the sports stake holders.

Speedway Promoters should be able to purchase Public Liability insurance from the supplier of their choice so long as the insurance meets the minimum industry standard and receive a copy of the Policy. This I believe is in the public's best interest.

Speedway Promoters should be able to engage any competitor group/s or event/s without the requirement to purchase PL Insurance from the one supplier.

Speedway Safety is the responsibility of all people. The Speedway Community must be encouraged to participate in all matters of Safety. I believe the current governance structure of the sport, is an impediment to broad engagement in safety.

### **CURRENT MATTERS**

NASR Pty Ltd is able to gain an unfair commercial advantage through it's role as an insurance broker and it's capacity to mandate insurance levels. This situation is exasperated by tying a NASR license with insurance it provides.

NASR derives it's authority to delegate to NASR tracks and organizations from CAMS with confusing references to a delegation from the FIA. It is unclear if the FIA authority is a result of the delegation from CAMS or an independent delegation directly through the FIA.

The structures of NASR Inc and Pty Ltd create an inherent conflict of interest.

It is not clear if this structure is of any financial benefit to the sport or provides any public benefit. It appears that the sport holds limited assets. Given that the sport turns over millions of dollars annually, why does the sport not own the Sports Headquarters and have a reasonable level of investments for a sport boasting to have in excess of 10,000 registered participants, yet the private company attached to the Sport generates a profit and is believed to own the assets.

A number of the applicants are believed to be members of NASR Pty Ltd and therefore NASR Inc and therefore potentially able to benefit from NASR Policies.

### **COMPETITION**

I support the concept of competition within the speedway market

There are a number of non-profit organizations that provide licensing appropriate to Speedway racing. These alternative licenses are not conditional on the acceptance of PA insurance from any one supplier.

The difference between the NASR license and one obtained from the VSC, for example, is not material in the sense that doctor's certificates are still required prior to issue.

There should be no impediment to participate in the sport on the basis of from whom a license is obtained.

People should be free to choose the most appropriate license for their circumstances.

The selection of a certain license should not restrict participants from certain tracks.

Third line forcing creates anti-competitive pressures in the sport.

### **INSURANCE**

The applicants have argued that a NASR license guarantees an appropriate level of safety.

As the commission observed, the situation is more correctly described as guaranteeing a certain level of insurance coverage.

NASR offers allegedly "Free" personal accident insurance with its licenses as a "member" benefit. In fact, the purchase of a license does not make you a "Member" of NASR Inc. However in a letter from NASR dated 28<sup>th</sup> April, I was informed that NASR Pty had 17 shareholders and that NASR Inc had 10,400 members.

Clearly NASR buys the insurance cover, and a portion of the payments made to NASR Inc for a license contributes to the payment for this Insurance cover.

This level of insurance coverage seems to have been determined by NASR.

This application, if successful, would prevent participants with equivalent insurance coverage from competing without going to the expense of purchasing an additional NASR license.

It is neither clear nor transparent what portion of payments made to NASR Inc are for the license or the insurance.

### **POTENTIAL CONFLICTS OF INTEREST / ANTI COMPETITIVE BEHAVIOR / LACK OF TRANSPARENCY.**

The constitution of NASR Inc (the non-profit entity) states in (Clause 9.7) that its Committee of Management must comprise the same people as the Board of Directors of NASR Pty Ltd, a

private company NASR Inc has outsourced license administration and insurance services to NASR Pty Ltd. It is claimed in the NASR Inc 08/09 Annual that the administration costs is \$420,000 p.a. with the purchase of insurance by NASR Inc costing in excess of \$364,942 .

This situation creates an inherent conflict of interest in decision-making.

The financial relationship between both bodies is not transparent. It is believed that there is a loan of in excess of \$100,000 owed to NASR Inc by NASR Pty Ltd.

NASR Inc has not lodged a financial return to Consumer Affairs in South Australia for the last decade as it claims it's income is membership based and therefore not classed as reportable income yet in it's 08/09 Annual Report NASR Inc lists license income at \$991,366, which accounts for 91% of it's total income of \$1,086,000. Clearly this most significant income stream is not membership fees and nor is the insurance free. The only reference to membership is that of \$48,000 which is for a Pit Membership. This equates to 4% of total income./

NASR also provides public liability insurance to racing tracks around the country. NASR mandates a minimum level of public liability insurance for racing tracks in order for them to be able to conduct events. NASR has established this level.

It is not clear on what basis the level of PL insurance has been set.

It is not clear that that one form of insurance is not cross-subsidizing the other. If so, it may be that Personal Accident premiums are cross subsidizing the Public Liability Insurance enabling NASR to reduce the premium to tracks on it's Public Liability. When tracks purchase the NASR product, NASR is then able to excise a degree of control of the tracks and in turn the drivers. The club to which I am a member is not a member of NASR, yet when racing at tracks with NASR Public Liability Insurance, we are required to adopt NASR Policies and Procedures, which are at odds on occasion with the policies and procedures with our personal accident insurance and licence.

The Confederation of Australian Motor Sport from who NASR derives it's authority has been asked through the Minister for Sport and the Australian Sport Commission to undertake due diligence of the NASR Corporate Structure as it may be deemed to be outside the authority of CAMS to delegate Sporting Power to such an entity.

The Office of Consumer Affairs in South Australia has been asked to review the NASR Structure.

### **Safety before Profit**

The notion that only NASR has the capacity and expertise to govern safety in the speedway sector is incorrect. In particular:

Prior to NASR, the then National and State organization (Inc Assoc's) had developed their own racing rules and regulations including safety standards and processes.

When NASR was first introduced, they simply adopted the existing rules and regulations from the National speedway organizations throughout Australia.

Officials from these national organizations currently administer all events, (other that the WSS Sprintcar and other selected events), and provide the staff and control mechanisms. .

In 2008, after a sprintcar accident at Rolling Thunder Raceway, (non NASR track), the Promoter, Sprintcar Racing Association of Victoria Inc and the Sprintcar Control Council of

Australia Inc SRA, investigated the accident and within weeks introduced revised chassis cage specifications on a National basis.

The club in which I am a member takes safety very seriously. The SDAV believe they are responsible for their own safety. With the support of the VSC, the SDAV decided to collect data to better understand the nature of risk to our competitors and others. In order to do this, the SDAV set up a process whereby they would collect actual data.. With over 15,000 recorded race laps, the SDAV was able to develop a risk matrix which enabled them to establish appropriate mitigation strategies. The strategies have resulted in a reduction in the number of incidents and therefore the number of injuries has also reduced.

The SDAV with the support of the VSC chose to adopt the AIMSS Safety matrix as it was felt the data driven approach implemented by the SDAV would further enable the SDAV to improve driver. The SDAV has written to the AIMSS requesting to become a member, regrettably no response has been received.

The data identified a number of risks to SDAV drivers which enabled the SDAV to recommend mitigation strategies. The prime area of concern is that of fire, requiring drivers to have the ability to exit their race car quickly without impediment. This research further highlighted that moist collisions were of a lateral nature. This information identified the use of Head and Neck restraints as potentially placing SDAV drivers at greater risk. The SDAV wrote to NASR advising of the issues and was informed that the NASR Policy required drivers to wear such devices. When presented with the data, and requesting a response, no response was forth coming. When asked how the SDAV could appeal the decision, the SDAV was advised there was no appeal process. The SDAV then wrote to the SFI seeking the basis of the information used by NASR to mandate the use of the head and neck devices, The SFI's current position states, "

*"Based on all available information and data, head and neck restraints certified to SFI Spec 38.1, when used in conjunction with a full containment seat, are entirely appropriate for Sprintcars. These restraints are required for use in all open cockpit categories by this country's largest short oval track sanctioning body, the United States Auto Club (USAC), and have been for several years. They are also used by nearly all professional short track drivers regardless of sanction.*

*It must be remembered that head and neck restraints are designed to prevent one particular type of injury, basal skull fracture. This injury results from a frontal or near frontal (30 degree maximum) impact, not from a side or roll over type impact. Side and roll over impacts are best managed by head surrounds and, in the absence of head surrounds, roll cage padding.*

*SFI Spec 38.1 is designed specifically to measure the effectiveness of head and neck restraints in frontal impact situations. Seating position is not an issue in these laboratory sled tests as data would indicate that the effects on the human body of a frontal impact are virtually the same regardless of seating position."*

When NASR was asked to explain the structure of the license system and provide evidence relating to the SDAV , Hot Rods as to why the class was recognized as an A class which required items such as Head and Neck devices, no such response was received. When asked to intervene, CAMS responded with "if you find it too unsafe, don't race."

The drivers of the SDAV are members of the VSC. As the licensing body, the VSC have viewed the SDAV information and recommended the SDAV drivers make their own decisions in relating to wearing head and neck devices. The VSC took the initiative to provide additional water tanks to the tracks where the SDAV race.

A group of interested parties including the CEO of the Sprintcar Control Council, the President of the Victorian Speedway Council and others have begun meeting to review known safety data using the Australian Institute of Motor Sport Safety Matrix. We believe that by reducing the number of Incidents, number of Injuries will be reduced and by reducing the number of injuries you will reduce the cost of treatment and subsequent losses. This can only be done by considering policies in relation to people, vehicles and the environment. Regrettably NASR's Safety Processes do not accommodate such thinking.

#### Conclusion

I believe the Governance of the Sport of Speedway is currently dysfunctional. The fact that the Sport is spending it's money in a Commission is testament to it's inability to communicate openly and respectfully.

I believe an open transparent body, with the interest of all stakeholders at it's core is required for the sport to move forward.

I ask the accc to adopt it's draft decisions thereby limiting the further integration of the sport into the control of NASR Pty Ltd.

I am hopeful that CAMS and the Australian Sports Commission will also review their current delegation and institute proceedings which will ensure a more representative transparent structure is put in place for the benefit of all.

Glenn Lawless