

**Australian Competition
&
Consumer Commission**

PRE-DECISION CONFERENCE

Minutes

**Notifications N94032-34
Brisbane International Speedway Pty Ltd,
Murray Bridge Sporting Car Club & Motorcycle Club Incorporated and
Premier Speedway Club Warrnambool**

22 February 2010

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-decision conference but a summary of the matters raised. A copy of this document will be placed on the ACCC's public register.

Pre-Decision Conference:

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Murray Bridge Sporting Car Club & Motorcycle Club Incorporated and
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22 February 2010

Australian Competition and Consumer Commission Offices located in Melbourne, Brisbane, Sydney and Perth by video conference facilities

Attendees:

Melbourne

Australian Competition and Consumer Commission

Ed Willett, Commissioner

Richard Chadwick, General Manager, Adjudication Branch

Joanne Palisi, Director, Adjudication Branch

Monica Bourke, A/g Assistant Director, Adjudication Branch

Louie Liu, Graduate, Adjudication Branch

Premier Speedway Warrnambool

David Mills, General Manager

National Association of Speedway Racing

Dale Gilson, General Manager

Paul Trengove, Competition Manager

*Murray Bridge Sporting Car Club & Motorcycle Club Incorporated Murray Bridge
Speedway*

Tim McAveney, General Manager

Avalon Raceway

Jeff Drew, General Manager

Victorian Speedway Council

Aaron Meakins, President

Lynne Watson, Secretary

Sprintcar Control Council of Australia

Jim Muir, Public Officer

Greg Foster, Technical Officer

Australian Speedway Accident Fund

Graeme Anwyl, Chairman

Norman Fisher, Trustee

Confederation of Australian Motor Sport Limited (CAMS)
Graham Fountain, Chief Executive Officer
Robert Gregory, Partner, Maddocks

ASCF Speedway Sedans Australia Inc
Neil Sayer

Formula Motorsports Group
Ray Solomon

Other participants
Glenn Lawless
Rob Harris

Brisbane

Brisbane International Speedway
John Kelly, General Manager
Cathy Kelly

Perth

Perth Motorplex
Kevin Prendergast, General Manager
Gary Mioceovich, Director

Sydney

National Association of Speedway Racing
Steven Green, Board member

Motorsport Insurance
Andy Ticehurst

Sprintcar Association of NSW
Mark Richards, Vice President

Conference commenced: 1.30 pm AEDST

Commissioner Ed Willett welcomed attendees, made some introductory remarks outlining the purpose of the conference, declared the pre-decision conference open and invited the party that called the conference, David Mills of Premier Speedway, to make an opening statement.

Mr David Mills opened by providing some information about the sport of speedway and the Premier Speedway Racing Club. Mr Mills opposes the draft notices proposing to revoke the notifications. Mr Mills made the following comments throughout the conference:

The sport of speedway needs a peak body to oversee the sport. The National Association of Speedway Racing (NASR) provides a Code of Conduct, driver licensing, personal accident insurance and a public liability insurance scheme.

- Speedway racing should be the same as sports such as the AFL and cricket which has a peak body to administer the sport.
- A venue promoter must exercise due diligence in its operations and a consistent set of rules assists venue operators achieve this. Premier Speedway considers NASR's standards are appropriate.

The racing schedule at a venue depends upon a number of factors, for example the number and type of vehicles and the suitability of the venue to host the category of racing. These factors are relevant for any venue.

Premier Speedway will allow drivers licensed under other organisations to race at its track as long as they have a NASR licence.

Without the notified conduct, a driver would be able to arrive at the gate just prior to a race event with any personal accident insurance policy. The venue operator cannot be sure that the policy provides appropriate cover to the driver. A peak body is needed to set this standard.

- Mr Mills considers that Premier Speedway is being penalised for running a successful venue because in the draft notices the ACCC classifies the track as a 'premier' track.

Premier Speedway holds a NASR AAA safety rating. Events must be safe for competitors and spectators. Guidelines are needed to ensure the safety of teams and the public.

In response to questions by Commissioner Willett about why Premier Speedway argues that safety might not be achieved by accepting alternate licenses at the venue, Mr Mills responded that each venue operator should have the right to determine what events are held at their track. Mr Mills submitted that he would imagine that all events held at the MCG for example would be required to meet certain criteria.

- Mr Mills submits that the notification will assist the venue to operate in an efficient manner.

Commissioner Ed Willett invited each attendee to address the conference.

Mr Paul Trengove, Mr Dale Gilson and Mr Tim McAveney (Murray Bridge Speedway) made the following introductory and general comments throughout the conference:

NASR is the governing body of speedway racing, internationally recognised by the Federation Internationale de l'Automobile (FIA) through the delegation from the Confederation of Australian Motor Sport (CAMS). NASR likened its position to various peak sporting bodies including the AFL Commission. NASR advised that the National Dirt Racers Association (NDRA) is not a peak

body of the sport, and the Victorian Speedway Council (VSC) operates only in Victoria.

There should be only one body to oversee the sport, particularly because the sport is dangerous by nature. There should be a single set of safety standards applied across the sport. Mr Trengove submits that the ACCC did not place appropriate weight on recognising NASR's current role in the industry.

Mr Trengove submits the ACCC's assessment of the types of events held at the notifying tracks, and their classification as 'premium', is incorrect. Mr Trengove provided further information about alternative tracks and the types of events hosted at various tracks. Mr Trengove noted that some national events are NASR owned and controlled, therefore drivers are required to hold a NASR licence to compete. A tender process is undertaken to determine which track holds a particular round of the event.

The notified conduct would not prevent alternate licensing bodies and their affiliates from hosting events at the notifying tracks, provided all drivers also hold a NASR licence. Mr Trengove notes that there are over 100 tracks in Australia for drivers to race at, and drivers are not restricted from racing at other tracks.

Mr Trengove notes that most drivers already hold a NASR licence.

A NASR day licence is available for all categories to practice. AA and A licence categories cannot race under a day licence due to safety reasons.

Mr Trengove submits that the notified conduct is the most effective means for achieving safety as competitors will be required to comply with NASR's rules and regulations, drug and alcohol policy, safety apparel standards. Further, all licence holders are guaranteed to hold adequate personal accident insurance and have passed a medical exam. NASR can impose penalties through its judicial system.

In response to questions from Commissioner Willett about the effectiveness of NASR's Tribunal judicial system, Mr Trengove responded that suspended NASR drivers could still attempt to get a licence from an alternate body and race, however the banned driver would not be able to race under its NASR licence at the notifying tracks. The effectiveness of NASR's judicial system is increased if all tracks only accept NASR licences.

Mr Trengove submits the ACCC considered an irrelevant market for speedway administration. In response to questions by Commissioner Willett about whether NASR considered that there is no speedway administration market, Tim McAveney of Murray Bridge Speedway (former General Manager of NASR) responded that there is no alternative licensing body at a comparable level to NASR.

In response to questions by Commissioner Willett about whether the notifications are seen as a step for NASR to establish itself as the sole governing body, Mr McAveney confirmed that this was correct.

From a track point of view NASR provides all the checks and balances so that venue operators can be sure they are running a safe event.

In response to questions by Commissioner Willett about whether there were further benefits to extending such arrangements to all tracks, Mr McAveney advised that this would be a track operator's decision.

Mr Gilson of NASR noted that, over time, NASR would like to see the notified arrangements rolled out across the industry. As in all sports, the more tracks that operate under the auspices of one body the better.

- The sport cannot operate effectively without a peak body.

In response to questions from Commissioner Willett about separating the personal accident insurance component from its licence, Mr McAveney responded that legislative reforms placed restrictions upon NASR selling insurance. NASR decided to purchase a group insurance policy so that the retail relationship was between NASR and the insurance provider, and not the individual driver. Mr McAveney submits it would be administratively expensive to separate the licence and insurance.

- Commissioner Willett asked NASR to provide further detail in relation to the restriction on offering its licence and personal accident insurance separately.

Mr Jeff Drew, Avalon Raceway submits that it has had experience dealing with multiple licensing bodies and prefers dealing with one body. Avalon Raceway currently has immunity to require all drivers and pit crew to hold a NASR licence, and notes that this has been operating well.

- Commissioner Willett asked why the burden of ensuring that all drivers/pit crew are appropriately licensed or hold the appropriate insurance could not fall onto the event organiser? Mr Drew responded that there would still be an element of uncertainty that the event organiser may not have the expertise to ensure this.

Mr Drew notes that Avalon Raceway holds practice days and a NASR day licence is accepted. A NASR day licence is not accepted to race in an event for a high-powered category.

Mr Aaron Meakins and Ms Lynne Watson, Victorian Speedway Council submit the following:

The notified conduct adds a further restriction and unnecessary costs to its members, in particular undergoing a second medical examination and licence fee. This can amount to a couple of hundred dollars over a racing team.

Similar to NASR, the VSC has a safety structure and assesses safety and discipline issues as they arise.

The VSC advised it informs NASR when one of its drivers/pit crew members has had their licence suspended under the VSC rules. The VSC

submits it has never received such information from NASR. The VSC recognises fines and suspensions of alternate licensing bodies if informed.

NASR recognises all VSC's categories of racing, including the car specifications for those categories, and VSC trained officials. Further, some clubs have dual NASR and VSC affiliations and in Victoria, stewards are trained by a combined structure.

The VSC proposed to offer its licence nationally, however its members voted against the proposition.

The VSC allows its drivers to choose any provider of personal accident insurance.

- There is more than one provider of motorsport personal accident insurance in Victoria. Competition in this market keeps the prices competitive. The VSC submits that all policies are comparable in the coverage and benefits.

The VSC was established in the 1960s and currently has approximately 500 members. Membership has remained fairly constant over the years.

Mr Jim Muir, Sprintcar Control Council of Australia (SCCA) provided a written submission at the conference which is available from the ACCC's public register. Mr Muir supports the draft notices. The SCCA is recognised by NASR as the controlling body of sprintcars and conducts all sprintcar racing according to the SCCA Racing Rules, Regulations and Specifications. Further:

- Minimum standards of personal accident insurance could be established and the SCCA could then make sure its members meet this standard
- The provision of personal accident insurance as a member benefit of the NASR licence stifles competition for personal accident insurance. Drivers can only make a claim under one insurance policy.
- The SCCA considers that minimum health, safety and personal accident insurance requirements could be established by a panel of qualified personnel to maintain high standards of safety.
- The SCCA submits that NASR's standards in assessing track safety have gone backwards due to a lack of finances.
- The SCCA submits that the sole reason for the creation of the NASR licence is to sell personal accident insurance and to establish a monopoly.
- The SCCA submits that the NASR drug and alcohol policy is not compliant with the CAMS or FIA in that it is not the approved Australian Sports Anti Doping Authority (ASADA) policy. The SCCA's drug policy is ASADA approved.

Mr Graeme Anwyl and Mr Norman Fisher, Australian Speedway Accident Fund made the following comments:

Under a NASR licence drivers are 'forced' to take NASR's personal accident insurance policy. They are not able to take a cover which best suits their needs.

The ASAF has always maintained a high standard policy and is now fighting to remain in the market.

The various personal accident insurance policies are comparable.

- Every VSC track is as safe as a NASR track.

Mr Graham Fountain, CAMS submits that it is in the public interest and beneficial for the reputation of the sport to operate under one governing body. A risk exists if standards are fragmented under multiple bodies with different safety standards applying for different events. Mr Fountain also made the following comments:

There is benefit in a single, not-for-profit organisation operating as the sole governing body for a sport.

- NASR has invested in developing the sport and appropriate standards.

A separation of power between the judiciary and the owner of events is important. Further, the sport requires a safety system commensurate to the level of risk.

- Mr Fountain provided further information about its delegation overseeing four-wheeled motor sports. CAMS looks to the commercial aspects of the sport, that is increasing participation, streamlining information technology and the retention of standards through investment in the development of the sport.
- Mr Fountain notes that CAMS is legislatively obliged to do all things practical in sport to make it safe.
- CAMS' delegation to NASR is an annual delegation subject to an annual presentation and report to CAMS.

Mr John Kelly and Ms Cathy Kelly, Brisbane International Speedway submit that speedway clubs need a standard set of rules in place to ensure proper health and safety checks have been made. Brisbane International Speedway made the following comments:

- Brisbane International Speedway is a privately owned speedway.

There are many benefits to holding a NASR licence. Brisbane International Speedway offers discounted pit entry to NASR licence holders.

Different bodies cannot be relied upon to share information, particularly about driver suspensions, which may impact the safety of other drivers on the track.

Mr Ray Solomon, Formula Motorsports Group provided a written submission at the conference. Mr Solomon supports the draft notices and made the following comments:

A national body should be not-for-profit. NASR is a for profit body and operates to benefit its shareholders. Many track operators are shareholders of NASR.

- There is confusion about which organisation a licence holder becomes a member of NASR – that is NASR Inc or NASR Pty Ltd?

NASR's operations are not open or transparent. Mr Solomon submits that most competitors feel pressured to purchase a NASR licence even though most competitors already hold a speedway licence from their member club and insurance from a supplier of their choice. Independent promoters who wish to promote any major event also feels pressure into becoming a 'NASR track' which requires the promoter to purchase NASR public liability insurance.

- Mr Solomon notes that he has banned drivers for inappropriate behaviour at the Bacchus Marsh speedway track in the past.

Glenn Lawless provided a written submission at the conference which is available from the ACCC's public register. Mr Lawless supports the draft notices and made the following comments:

Mr Lawless supports having one national governing body of speedway racing, however it should be a transparent, democratically elected and a not-for-profit body.

Mr Lawless submits that track/venue promoters should accept a range of licences/insurance policies that meet a certain minimum industry standard.

Mr Lawless submits that it is unclear if the FIA authority is a result of the delegation from CAMS or an independent delegation directly through the FIA. Mr Fountain of CAMS responded that CAMS' delegation process is on behalf of the FIA. CAMS makes a recommendation to the World Motor Sport Organisation for the delegation.

- The Constitution of NASR Inc states that its Committee of Management must comprise the same people as the Board of Directory of NASR Pty Ltd. The financial relationship between the two entities is not transparent. The sport holds limited assets. Further, there is confusion as to whether or not purchasing a NASR licence makes you a member of NASR.

The difference between licences offered by various licensing bodies is not material.

- Mr Lawless submits that other bodies are capable of governing safety in speedway racing and provided examples.

Rob Harris submits that he supports the draft notices and submits there is great confusion among industry participants regarding the different roles of NASR Inc and NASR Pty Ltd.

Mr Kevin Prendergast, Perth Motorplex opposes the draft notices and made the following comments:

Perth Motorplex is the most modern venue in Australia. It was built by the Western Australian government and is privately operated. Perth Motorplex regularly runs speedway and drag racing events, and its facilities may be used for special events such as monster trucks or rock concerts. For each event type, the Perth Motorplex has an event permit from the relevant peak organisation and competitors entering the event are licensed by that organisation.

Perth Motorplex chooses to operate under NASR as the peak body as it provides appropriate licensing and safety standards.

If licences are accepted from various licensing bodies, there is confusion about what rules would then be applied to the event. Mr Prendergast submits that one consistent set of rules is required for race events.

Speedway competitors who race at Perth Motorplex are not restricted from racing at alternative tracks.

- Mr Prendergast submits that NASR's judicial system is essential for disciplining competitors acting inappropriately. NASR's regime ensures that drivers can be suspended for inappropriate behaviour.

Venue operators and the administrators of the sport must work together to cohesively administer the sport from all angles – that is by having a judicial system on one side and with the reinforcement of sanctions applied by tracks.

In response to questions from Commissioner Willett about the Motorplex's public liability insurance arrangements, Mr Prendergast advised that the venue is insured for its everyday operations and holds public liability insurance for speedway racing through NASR.

In response to questions from Commissioner Willett about why it was a problem for a non-NASR event to be held at the venue, Mr Prendergast responded that the Motorplex promotes all its events and runs a number of top level events which are owned by NASR.

Andy Ticehurst supports the draft notices and considers that minimum industry standards could be set and accepted by tracks where the licence provider has demonstrated that these standards have been met. Further, Mr Ticehurst submits that the sport needs a governing body that is transparent.

Mark Richards, Sprintcar Association of NSW supports the draft notices. Mr Richards notes that NASR recently increased its licence fee and the Sprintcar Association of NSW did not receive a breakdown of costs after it was requested. Mr Richards is concerned that the price of the NASR licence will continue to increase. Mr Richards also notes that NASR may have trouble financing their operations if it were to remove the insurance component from their licence.

Neil Sayer, ASCF Speedway Sedans Australia Inc opposes the draft notices. Mr Sayer notes that its members race under a NASR licence and members can get other insurance if they wish. Mr Sayer considers that NASR provides appropriate safety standards for minimising risk of injury.

Mr Sayer is the Chairman of the NASR Board and Speedway Sedans Australia is a shareholder of NASR.

Commissioner Ed Willett confirmed that no party wished to make any further comments. Commissioner Willett closed the conference by noting that parties could provide further submissions to the ACCC by Friday 19 March 2010 and that the ACCC would provide participants with a record of the conference, which would also be placed on the ACCC's public register.

Conference closed: 4.15 pm AEDST