



N.A.S.R. Incorporated, trading as Speedway Australia

Undertaking date: 10 March 2022

Undertaking type: s.87B undertaking

Section: section 45 of the Competition and Consumer Act 2010 (Cth)

Industry: Motor sports

Company or individual details

- **Name:** N.A.S.R. Incorporated

ACN: 151 048 396

Undertaking

The Australian Competition and Consumer Commission (ACCC) has accepted a court enforceable undertaking from N.A.S.R. Incorporated, trading as Speedway Australia (**Speedway Australia**) in relation to concerns arising out of an agreement between Speedway Australia and the Sprintcar Control Council of Australia (**SCCA**) that may have hindered or prevented the 'VSC Sprintcars' class of sprintcar racing from competing at speedway racing tracks affiliated with Speedway Australia. Speedway Australia's affiliated tracks are estimated to represent the majority of speedway tracks in Victoria.

The ACCC was concerned that the agreement, and steps taken to give effect to it, may have had the purpose, effect, or likely effect of substantially lessening competition in one or more markets related to speedway racing in Victoria in contravention of section 45 of the *Competition & Consumer Act 2010*.

The undertaking aims to ensure tracks affiliated with Speedway Australia are also able to host racing events that include divisions or classes that are not approved by Speedway Australia, without fear of losing access to the rights and benefits conferred by their Speedway Australia affiliation. Speedway Australia is the national governing body for speedway racing in Australia. It provides affiliation and inspection services to tracks, speedway licences to drivers and facilitates Public Liability Insurance for affiliated tracks.

The SCCA is an association which determines the technical and safety specifications for the 'SCCA Sprintcar' and 'SCCA 360 Sprintcar' classes. The SCCA has a number of state-based member clubs, which administer the SCCA's sprintcar classes.

The Victorian Speedway Council (**VSC**) registers, licences and governs the VSC Sprintcar class in Victoria.

In early 2000 Speedway Australia entered into an agreement with the SCCA which recognises the SCCA as the sole governing authority for sprintcar racing in Australia. Since about mid-2018 Speedway Australia has taken steps to give effect to the agreement, including by:

- removing the VSC Sprintcar class, which is not governed or controlled by the SCCA, from the list of classes covered under the Speedway Australia Public Liability Insurance (**PLI**) policy;
- ceasing to issue licences to VSC Sprintcar drivers who were not affiliated with an SCCA member club;
- refusing to issue affiliated tracks with meeting permits for events that included the VSC Sprintcar class;
- communicating to at least one affiliated track operator that Speedway Australia would not allow the track to access and be covered by Speedway Australia's PLI policy for race meetings involving the VSC Sprintcars, unless the track agreed to pay an SCCA member club a sum of money to sanction the event; and
- requiring VSA Sprintcar drivers to obtain licensing and registration from Speedway Australia, the SCCA and/or an SCCA member club, as a precondition to being eligible to participate in events at Speedway Australia affiliated tracks in Victoria.

Speedway Australia acknowledges the ACCC's concerns and has undertaken to:

- not prohibit its affiliated tracks from conducting racing events that include divisions or classes that are not approved by Speedway Australia;
- not remove, restrict or deny, or threaten to remove, restrict or deny, a speedway track operator's access to rights and benefits of existing or proposed affiliation with Speedway Australia on account of the track operator having conducted, or intending to conduct, racing events that include divisions or classes that are not approved by Speedway Australia;
- amend its *Speedway Australia Track Public Liability Insurance Commitment Form* to clearly reflect this position;
- write to Speedway Australia affiliated tracks, explaining the steps Speedway Australia has taken to address the ACCC's concerns and providing tracks with the amended Speedway Australia PLI commitment form;
- write to the SCCA, explaining the steps Speedway Australia has taken to address the ACCC's concerns; and

- establish and implement a Competition and Consumer Compliance Program and maintain the program for three years.

The undertaking does not require Speedway Australia to issue a meeting permit (which allows a track to access Speedway Australia's PLI policy) for a racing event that includes races for divisions or classes that are not approved by Speedway Australia.

Attachments

 [N.A.S.R. Incorporated - s87B Undertaking - Signed by Chair 10 March 2022](#)

07 MAR 2022

CANBERRA

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth)
by N.A.S.R. Incorporated ACN 151 048 396.

Person(s) giving the Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by N.A.S.R. Incorporated ACN 151 048 396 (**Speedway Australia**), for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**) (**Undertaking**).

Summary

2. This undertaking is given in relation to the ACCC's concerns arising out of a contract, arrangement or understanding between Speedway Australia and the SCCA that may have hindered or prevented the 'VSC Sprintcars' class of sprintcar racing from competing at speedway racing tracks affiliated with Speedway Australia. Speedway Australia's affiliated tracks are estimated to represent the majority of speedway tracks in Victoria. The ACCC is concerned that the contract, arrangement or understanding, and steps taken to give effect to it, may have the purpose, effect, or likely effect of substantially lessening competition in one or more markets related to speedway racing in Victoria. This undertaking aims to ensure tracks affiliated with Speedway Australia are also able to host racing events involving divisions or classes that are not approved by Speedway Australia.

Background

Speedway racing

3. Speedway racing is a form of motorsport which involves cars racing around a typically oval shaped, dirt or clay surfaced track (a speedway track). Speedway racing is divided into divisions, based on the type of car involved (eg, 'sedan', 'open wheel', etc). A 'sprintcar' is the type of open-wheeled racecar used in the sprintcar divisions of speedway racing. Sprintcars are divided into classes, based on technical and safety specifications.

Speedway Australia

4. Speedway Australia is a not-for-profit Incorporated association and the governing body for speedway racing nationally, operating under the direction of the Speedway Australia board of directors.
5. Speedway Australia provides or facilitates a number of services including, relevantly:
 - a) affiliation of speedway tracks;
 - b) inspection of speedway tracks and race facilities to ensure compliance with operating standards;
 - c) provision of public liability insurance to affiliated speedway tracks; and
 - d) provision of speedway licences for drivers (which include personal accident insurance cover for drivers participating in events recognised by, or under the direct control of, Speedway Australia and/or its affiliates).
6. Speedway Australia relies on racing division governing bodies to determine the technical and safety specifications for each speedway race class. The governing bodies for the sprintcar divisions have relevantly included the Sprintcar Control Council of Australia Inc. (SCCA) and the Victorian Speedway Council (VSC).

CA/

The Sprintcar Control Council of Australia Inc.

7. The SCCA is a not-for-profit incorporated association which determines the technical and safety specifications for the 'SCCA Sprintcar' and 'SCCA 360 Sprintcar' classes, nationally.
8. The SCCA has a number of state-based member clubs, including the Sprintcar Racing Association of Victoria Inc. (SRA), which administers the SCCA's sprintcar classes in Victoria.

The Victorian Speedway Council

9. The VSC is a not-for-profit incorporated association which licenses, registers and governs certain classes of speedway racing in Victoria including the 'VSC Sprintcar' class. The VSC determines the technical and safety specifications for the 'VSC Sprintcar' class. The VSC Sprintcar class is administered by the Victorian Sprintcar Association (VSA).

Speedway tracks

10. Speedway track operators host racing events at speedway tracks. Speedway track operators typically structure racing events to include a mix of different speedway divisions (eg. speedway sedans, sprintcars, etc), to attract spectators who buy tickets to watch them race. Sprintcars are popular with spectators.
11. Speedway track operators require public liability insurance (PLI).

Speedway Australia public liability insurance

12. Speedway Australia holds a PLI policy that can be accessed by affiliated speedway track operators. To become affiliated, a speedway track operator must, amongst other things, agree to:
 - a) acquire Speedway Australia's PLI for an entire policy year; and
 - b) permit only Speedway Australia approved divisions or classes to participate in any racing event conducted at the track during the policy year.
13. To access Speedway Australia's PLI, an affiliated track operator notifies Speedway Australia and pays for coverage prior to a racing event. Speedway Australia issues a meeting permit to the track in relation to the event (**meeting permit**). The meeting permit lists the Speedway Australia approved divisions or classes that are covered by Speedway Australia's PLI policy for the racing event.
14. From about June 2017 until July 2018 the 'VSC Sprintcar' class was included on the list of permitted divisions that could be covered under Speedway Australia's PLI policy.

ACCC concerns

15. In or about March 2000, Speedway Australia and the SCCA made a contract or arrangement, or reached an understanding, to the effect that Speedway Australia would recognise the SCCA as the sole governing authority for sprintcar racing in Australia. Since about mid-2018, Speedway Australia has taken steps to give effect to that contract, arrangement or understanding, including by Speedway Australia:
 - a) removing VSC Sprintcars from the list of classes covered under the Speedway Australia PLI policy;
 - b) ceasing to issue licences to VSC Sprintcar drivers who were not affiliated with an SCCA member club;
 - c) refusing to issue affiliated tracks with meeting permits for events that included VSC Sprintcars;

- d) communicating to at least one affiliated track operator that Speedway Australia would not allow the track to access and be covered by Speedway Australia's PLI for race meetings involving the VSC Sprintcars, unless the track agreed to pay SRA a sum of money to sanction the event; and
 - e) requiring VSA Sprintcar drivers to obtain licensing and registration from Speedway Australia, the SCCA and/or SRA as a precondition to being eligible to participate in events at Speedway Australia affiliated tracks in Victoria.
16. The ACCC considers that, in the circumstance that Speedway Australia requires its affiliated tracks to permit only divisions or classes approved by Speedway Australia to participate in any racing event conducted at the track, the contract, arrangement or understanding between the SCCA and Speedway Australia referred to at paragraph 15, and the steps taken by Speedway Australia to give effect to that contract, arrangement or understanding, may have the purpose, effect, or likely effect of substantially lessening competition in markets for sprintcar races, and for governance and administration services acquired by sprintcar owners and drivers, in Victoria.
17. Specifically, the ACCC is concerned that the arrangement or understanding between the SCCA and Speedway Australia has the purpose, effect or likely effect of preventing or inhibiting:
- a) competitors of the SCCA and its member clubs, including the VSA and VSC, from entering or expanding in the relevant markets and competing with the SCCA and its member clubs; and/or
 - b) speedway track operators in Victoria from obtaining sprintcar races other than those provided by the SCCA, its member clubs and their affiliated drivers.
18. The ACCC is concerned that, by engaging in the conduct set out at paragraph 15, which the ACCC considers has the purpose, effect or likely effect set out at paragraph 16, Speedway Australia may have contravened section 45 of the CCA.
19. Speedway Australia acknowledges the ACCC's concerns and has offered this Undertaking to the ACCC to resolve those concerns.

Commencement of this Undertaking

20. This Undertaking comes into effect when:
- a) this Undertaking is executed by Speedway Australia, and
 - b) this Undertaking so executed is accepted by the ACCC.
- (the Commencement Date).
21. This Undertaking has effect for three years after the Commencement Date (the Term).
22. Upon the Commencement Date, Speedway Australia undertakes to assume the obligations set out in paragraph 23 below for the Term of the Undertaking for the purposes of section 87B of the CCA.

Undertaking

23. Speedway Australia undertakes that it will:
- a) not prohibit its affiliated tracks from conducting racing events that include divisions or classes that are not approved by Speedway Australia;
 - b) not remove, restrict or deny, or threaten to remove, restrict or deny, a speedway track operator's access to rights and benefits conferred by their existing affiliation (or proposed affiliation) with Speedway Australia (including access to Speedway Australia's PLI policy



for racing events conducted by the track for Speedway Australia approved classes or divisions) on account of the track operator having conducted, or intending to conduct, racing events that include divisions or classes that are not approved by Speedway Australia. For the avoidance of doubt, this undertaking does not require Speedway Australia to issue a meeting permit (which allows a track to access Speedway Australia's PLI policy) for a racing event that includes races for divisions or classes that are not approved by Speedway Australia;

- c) within 30 days of the Commencement Date, amend its *Speedway Australia Track Public Liability Insurance Commitment Form* to clearly reflect its position as set out in paragraph 23(a) and (b) of this Undertaking (**the Amended Commitment Form**), and provide a copy of the Amended Commitment Form to the ACCC;
- d) within 35 days of the Commencement Date, send or cause to be sent a written communication to Speedway Australia affiliated tracks, in a form agreed with the ACCC, which explains the steps Speedway Australia has taken to address the ACCC's concerns and Speedway Australia's position as set out in paragraph 23(a) and (b) of this Undertaking, and provides tracks with the Amended Commitment Form;
- e) within 35 days of the Commencement Date, send or cause to be sent a written communication to the SCCA, in a form agreed with the ACCC, which explains the steps Speedway Australia has taken to address the ACCC's concerns and Speedway Australia's position as set out in paragraph 23(a) and (b) of this Undertaking;
- f) within 40 days of the Commencement Date, provide the ACCC with copies of the correspondence sent in accordance with paragraphs 23(d) and 23(e) of this Undertaking;
- g) within 6 months of the Commencement Date, establish and implement a Competition and Consumer Compliance Program (**Compliance Program**) in accordance with the requirements set out in "Annexure A", being a program designed to ensure Speedway Australia is aware of its responsibilities and obligations under Part IV of the CCA (for the sake of clarification, "Part IV of the CCA" does not include Part IVB, Part IVC or Part IVD of the CCA);
- h) maintain and continue to implement the Compliance Program for a period of three years; and
- i) provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure A.

ACCC Enquiries

- 24. For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with Speedway Australia and Speedway Australia must respond to such enquiries within a reasonable period of time.
- 25. If requested by the ACCC during the Term of this Undertaking, Speedway Australia will, at its own expense, cause to be produced and provided to the ACCC copies of such documents (excluding any legally privileged documents) in its power, possession or control evidencing Speedway Australia's compliance with the obligations set out in this Undertaking.



Acknowledgments

- 26. Speedway Australia acknowledges that:
 - a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
 - b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications;
 - c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

9/27

Executed as an Undertaking

Executed by N.A.S.R. Incorporated ACN 151 048 396 pursuant to section 127(1) of the Corporations Act 2001 by:

	
Signature of director	Signature of a director/company secretary (delete as appropriate, or entire column if sole director company)
DARREN TINDAL	GUY W THOMPSON
Name of director (print)	Name of director/company secretary (print)
Date 20-2-2022	Date 25-2-2022

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Competition and Consumer Act 2010 (Cth) on:

10 March 2022

Date

and signed on behalf of the Commission:



Chair

Rodney Graham Sims

10 March 2022

Date

Competition And Consumer Compliance Program

N.A.S.R. Incorporated ACN 151 048 396 (**Speedway Australia**) will establish a Competition and Consumer Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Training

1. Within 6 months of this Undertaking coming into effect, and thereafter at least once a year for 3 years, the Board of Directors and General Manager of Speedway Australia will attend practical training focusing on Part IV of the *Competition and Consumer Act 2010* (Cth). For the sake of clarification, "Part IV of the CCA" does not include Part IVB, Part IVC or Part IVD of the CCA.
2. Speedway Australia will ensure that the training referred to in paragraph 1 above is administered by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law (the **Trainer**).

Complaints Handling

3. Within 6 months of this Undertaking coming into effect, Speedway Australia will develop procedures for recording, storing and responding to competition and consumer law complaints.

Provision of Compliance Program documents to the ACCC

4. Speedway Australia will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than 5 years from the date of this Undertaking coming into effect.
5. If requested by the ACCC during the period of the Undertaking, Speedway Australia will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
 - a) a written statement or certificate from the Trainer who conducts the training referred to in paragraph 1, verifying that such training has occurred; and
 - b) an outline of the complaints handling system referred to in paragraph 3.