

## WHY IT'S TIME TO GO

Mr Doohan has put his name to an emailed letter dated 7 September 2018 responding to KNSW's push to disaffiliate with the National Organisation. While the letter addresses some of the issues raised by KNSW, it is a long way short of providing the answers most karters are looking for.

Karters want to race in a competitive and cost effective manner. That has not been the case since KA Ltd took the reins and instituted its "tax on everything in karting" policy when it comes to generating income.

Whilst no one should argue with the need for KA to generate an income, that income should find its way back to benefit all karters, not just those within the administration of the sport or those who chose to race at the highest level. To make it abundantly clear, in my opinion, there is a very real need to have an elite level of racing competition. It just shouldn't be at the expense of everything else.

We all know that the single biggest issue and cost for karters has been the use of high grip or 'sticky' tyres. We also know who were awarded those tyre contracts. What we don't know is why. Why hasn't the tyre testing been made public. Why hasn't Mr Robert Crawford's report (the engineer) and his recommendations been made public? Why weren't his recommendations followed?

We don't know the answer to these questions because KA won't release the documents. Like a lot of things they don't think us karters should know, these matters are "commercial in confidence". A very convenient and common phrase for KA Ltd.

### ***The email of 7 September 2018***

KA has a long history of failing to respond to correspondence from KNSW, yet it responded almost immediately with respect to the issue now before them. It did so however, in breach of its "rule A1" in the rulebook. KA is not meant to correspond directly with club members. That aside, let's address some of the points raised in that letter.

On page 2 the letter states:

- 1. Their stated process is pushing an all or nothing – one in all in approach that they think should bind all Clubs. They fail to mention that **any Club that wants to be affiliated with AKA Ltd, will be able to do so through a replacement association.*****

The whole notion of affiliation is a misnomer. A state is an ordinary member of KA, a club is also a member. That IS affiliation. The constitution doesn't provide that you also have to sign an affiliation form, that was dreamed up to pursue control by stating you agree to KA rules.

How can KNSW be accused of failing to mention that a Club can affiliate with a body (this replacement association) that does not yet exist? What any Club can do, is set out clearly in their Club's constitutions and the respective constitutions of KA and

KNSW. Any Club is free to disaffiliate from KNSW at any time. They are all independent organisations. There is no provision for some separate style of Club affiliation with KA. A club is already member of KA.

What Clubs need to do is ask what they **can't do** if they disaffiliate from KNSW. At this present time, they will not be able to run race meetings as KNSW is the recognised state sporting organisation (SSO) in NSW as far as the Department of Sport and Recreation are concerned. At this point in time, KA cannot issue a Club a permit to race in NSW, nor can any other association which it may form in the future. They will need to apply to the Department of Sport and Recreation to get that far.

What needs to be remembered is the approach that the Board of KNSW have adopted. Like KA, the Board of KNSW have the power to make the decisions that affect the association. That includes the decision to disaffiliate from KA without reference to its members.

Rather than just use this power, they have sought a mandate from its member clubs in order to take the present course and they have provided the reasoning for doing so. I will address this reasoning in more detail below.

### **Issue 1 – Financial Control**

On page 2 it is stated:

*Their financial model appears to be particular unsound. KNSW admit that their costs will go up because they are “having to pick up insurance costs” but if everything goes as they hope it will, charges to clubs and licence holders might go down but only if you give them the numbers”*

This is illogical. KNSW's insurance cost will relate directly to the number of events that are held and the number of participants taking part.

KNSW's increase in expenses relates directly to the initial cost of insurance. KNSW has to incur the immediate cost of obtaining that insurance. This cost however is recouped shortly thereafter by not having to forward to KA its fee for providing the insurance on collecting licence renewals.

Also note that it is the States which issue the licences. KA simply grab their cut, which is pure profit.

Note that in 2017 (see pages 35 & 36 of the KA Annual Report 2017), the difference between the cost of insurance (\$410,782) and the revenue from the issue of Licences (\$978,812) is **\$568,030**, which is the lowest it has been since 2013. No doubt due to the drop in licences being issued. In the previous years the income is listed below:

<b>Year Ending</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Insurance	\$ 82,769	\$ 430,572	\$ 405,509	\$ 468,048	\$ 410,782
<b>Net Licence Income</b>	<b>\$ 43,994</b>	<b>\$ 827,142</b>	<b>\$ 1,181,128</b>	<b>\$ 786,580</b>	<b>\$ 568,030</b>

If anything, the financial ramifications for KNSW and its members are positive. It will remove a layer (the KA profit) from the cost of a licence. Ask yourself how much of the above KA Ltd profit has filtered down to KNSW and its member clubs.

To say “KNSW does not incur any costs for insurance as AKA Ltd provides it to them free of charge” is plain and simply untrue. KA have it listed in black and white as a “revenue item”.

KNSW does not need KA to organise insurance or issue race licences. There is nothing onerous in doing this. KNSW have already ticked this box with the staff it has in place.

### *Employee Expenses*

KNSW members will also remove themselves from having to contribute to the Employee expenses of KA. Those figures have increased to exorbitant levels for an organisation with as small a turnover as KA’s. From 2013 the Employee Expenses and Consultant’s fees are listed as follow:

Year Ending	2013	2014	2015	2016	2017
Employee Expenses	\$ 112,089	\$ 384,169	\$ 584,853	\$ 744,842	\$ 758,200
Consultants Fees	\$ 6,500	\$ 64,069*	\$ 161,000.00	\$ -	\$ -
Total	<b>\$ 118,589</b>	<b>\$ 448,238</b>	<b>\$ 745,853</b>	<b>\$ 744,842</b>	<b>\$ 758,200</b>

\* The 2015 report has a figure of \$99,858 for Consultancy fees

Of particular note is a Special Purpose Expenditure in 2016 of \$221,000, the details of which are unknown (commercial in confidence perhaps). These could be further employee/consultant type expenses or again something completely different. It is certainly an unusual accounting entry.

The Employee expenses of KNSW in 2017 were \$177,450. This pales into insignificance when compared to the Employee/Consultant Expenses of KA.

KNSW would not need to spend any of the above amounts that KA have expended to achieve their purposes. Again, removing this layer of cost to the NSW karter.

### *Royalties*

KA have made it known that they make no apology for increasing the cost of karting. In the letter that Mr Doohan signed dated 10 August 2018, it is stated that “we have deliberately and successfully broadened the AKA revenue base that we inherited in 2013”. In plain English, this translates to ‘we have tried and have succeeded, in placing a tax/levy on everything associated with karting’. **That is their primary business plan.**

It does not take a genius to work out that most of the tyres specified have become single use items. Again, you can hardly be described as some business guru if you specify single use items (to increase turnover) and increase the royalty (tax) on the said soft tyres.

Similarly, introducing third line forcing arrangements with selected engine suppliers to protect and secure royalties is hardly business genius. For example, you can buy a Mini Rok for significantly less overseas, than you can in Australia. This is all due to these restrictive business practices that KA have adopted.

Just how much KA pushes this business model is evident in how they treated the Subaru Club. At one stage, the Subaru Club were running some of their sprint races within the Wollongong Kart Racing Club sprint meetings. The Subaru Club members ran two weight classes on WKRC race days and provided between 20 and 30 karters at every meeting that they attended. KA prevented this from continuing without providing any logical reasoning. Note that neither the Subaru engine nor the Dunlop SL1 tyres attract a royalty.

Some time later, along comes the new saviour of Sprint racing, the 4SS class with the Torini and Briggs motors and Vega tyres. Both the engines and the tyres now provide a royalty to KA and are suddenly now suitable for Club Sprint racing. What a surprise!

Now how has this affected karting?

Note the correlation between the increase in royalty income and the fall in licence income that occurs between 2015 and 2016. That means as KA taxed harder, the numbers of people obtaining licences decreased. This decline has continued and we are now at a point where independent tracks such as Indy 800 (Butterfly Farm) are attracting more entrants than the Sydney Metro Clubs. Newcastle just had 68 for their premier club event!!!

Year Ending	2013	2014	2015	2016	2017
<b>Royalties</b>	\$ 86,118	\$ 144,152	\$ 158,606	\$ 962,234	\$ 815,370
<b>Net Licence Income</b>	\$ 43,994	\$ 827,142	\$ 1,181,128	\$ 786,580	\$ 568,030

#### *AKC and Travel Expenses*

Keeping a track of the AKC and travel expenses is quite difficult. The financial reports are not consistent from year to year with respect to the manner in which each expense is reported. Using the descriptors given, lets just say that the costs are significant. This is how much is spent on just 250 or so karters who compete at the national level

Year	Travel/Accom	AKC	CIK	CIK Revenue	AKC Revenue	Net result
<b>2013</b>	\$ 18,945	\$ -	\$ 21,127	\$ 19,391		-\$ 20,681
<b>2104</b>	\$ 86,760	\$ 36,344	\$ 144,379	\$ 85,313		-\$ 182,170
<b>2015</b>	\$ 14,797	\$ 563,532			\$ 426,481	-\$ 151,848
<b>2016</b>	\$ 253,225	\$ 410,347			\$ 416,452	-\$ 247,120
<b>2017</b>	\$ 243,610	\$ 406,002			\$ 413,606	-\$ 236,006
					<b>Total</b>	<b>-\$ 837,825</b>

What all this demonstrates is the total imbalance of the financial situation between KA and KNSW. Disaffiliating certainly seems to be the only logical manner in which to redress this imbalance.

NSW has been criticised for having the highest costs of any state. Given that they are the largest state and employ the most staff, that is to be expected. However, NSW is not the only state experiencing budgeting issues. AKA Qld have also budgeted for a loss. The difference is that NSW is not prepared to allow the situation to continue. No business minded individual would allow for such a situation to continue.

KNSW's present method of collecting money was inherited by the present board and it has been approved and structured by the NSW State Karting Council. That is, the Clubs of NSW. That funding model was not an issue when we still had karters attending meetings. In 2015, KNSW were even looking at establishing a Track Development Fund of their own when they had surplus funds. Those days are gone and the karters have stopped attending and Karting Shops are struggling to make ends meet. KNSW did not create the present environment.

I don't have access to the other State Bodies' accounts but the financial situation cannot be healthy given the significant drop in numbers. It's hard to live within your means when your "customers" are leaving in droves. Have a look at the attached graphs.

If budgeting is required, clearly given the figures above, that has to come from the National Level, not the State Level.

### **Issue 2 – The Actions of the KA Board and its CEO**

KNSW has documented the instances and I won't address this issue further.

### **Issue 3 – AKA Inc**

AKA Inc should not exist. By now it should have been wound up in accordance with the directions of the NKC.

The existence of AKA Inc was brought to the attention of the present KNSW board when KA's solicitors sought to sell the property at Penrith.

Mr Doohan purports that *“AKA Ltd has formally raised with KNSW, on a number of occasions, our view that the Trust should dispose of the Penrith property and that the Trust be wound up, but no response has been forthcoming from KNSW”*

That is a distortion of the facts. KNSW on learning that AKA Inc still exists, had sought clarification from KA Ltd as to the status of AKA Inc. To date, KA Ltd has failed to provide details about the AKA Inc to KNSW.

After the questions were asked of KA Ltd, the only response KNSW has received was a statement to the effect that they do not recognize the board of KNSW and will not provide any details. Such is the tone of the discussion led by the CEO of KA.

Upon the legal issues being raised with KA, the CEO of KA has filed 3 years worth of Annual Returns on 5 August 2018. This is no coincidence and there are serious legal issues with what has taken place.

That is the reason why KNSW have asked the questions they have asked in their letter of 28 August 2018. This letter and the relevant attachments were sent out to KNSW members. Despite what is contained in the Annual Return form, (which the CEO of KA has signed and filed), it appears unlikely that any AGM of AKA Inc has taken place since 2012.

In my opinion as a legal practitioner, (and other legal practitioners who have viewed the same document) the approach by KNSW is beyond reproach. The questions they have sought answers to, are legitimate and need to be addressed by KA Ltd.

#### **Issue 4 – The TDF fund**

Mr Doohan states that:

*“The AKA Track Development Fund Trust (“Trust”) was established pursuant to a Deed dated 21 October 2005. The trust deed gives power to the Trustees of the Trust to appoint New Trustees and to transfer the relevant assets of the Trust to them. As part of the transfer of the entire operations of AKA Inc. to AKA Ltd. it was necessary for AKA Inc to appoint a New Trustee of the Trust. This was completed on 12 November 2013, whereupon:*

- a) AKA Inc as the Trustee, appointed AKA Ltd as the New Trustee of the Trust and transferred all assets of the Trust to the New Trustee; and*
- b) AKA Inc as the Trustee, relinquished all control of the Trust to the New Trustee.*

***The Deed** was signed under the common seal of AKA Inc and by AKA Ltd”*

From the time that I was involved at a SKC level in 2015, the then board of KNSW and the SKC has been seeking a copy of this document (“**the Deed**”). To this day KNSW has not been provided with a copy of the Deed which is claimed to have assigned the rights of AKA Inc as Trustee of the TDF to AKA Ltd.

If there has been no assignment, then the rightful Trustee of the TDF is still AKA Inc. KNSW is still a member of AKA Inc and will continue to be, despite any disaffiliation with KA Ltd.

If KA Ltd has “the Deed” that they speak of, then all they need to do is provide it to KNSW and shut them up, once and for all.

If indeed it can now provide this document (as the author of Mr Doohan's email clearly stated) I think someone needs to explain how it is that by letter to KNSW dated 6 April 2017, the CEO of KA states:

*"To be clear, there was no "transfer(assignment)" of the Trust Deed"*

Now if KA Ltd form a 'new NSW Association', that new association will not have access to the TDF. It is quite simply, not a beneficiary under the Trust Deed. It doesn't matter if AKA Ltd or AKA Inc are the rightful Trustees. The Beneficiaries cannot be changed by the Trustee.

#### **Issue 5** – KA the known quantity

As stated earlier, KA has no authority to issue permits within NSW, so it can hardly be business as usual.

If KA Ltd establishes a new association, how will it be a lower cost association, given that the work involved will still need to be completed by employees such as the four fine individuals that presently issue our licences and permits at KNSW headquarters.

KA spent over three quarters of a million dollars on Employee expenses in 2017 to run what is basically a handful of events. They don't even run the Rotax Pro Tour. That is all done by IKD.

How on earth given the history of KA Ltd's expenditure and addiction to royalties, will these lower costs be delivered?

Do you really believe that this is possible?

#### **Issue 6** – CAMS

This is really a non issue. There is absolutely no reason to waste \$25,000 of karter's money to affiliate with CAMS. I cannot see how that would be of any value to KNSW.

No one needs a delegation from CAMS to run CIK, and NSW does not need any operational arrangement with CAMS at all. As is outlined in one of the court cases- CAMS says it is the peak motorsport body in Australia. There is no law that says that. Look no further than the original NASCAR and AUSCAR that Bob Jane ran.

It is the same with the FIA, they are the self-proclaimed world motorsport authority and the CIK is a division of that. Look no further than Indy Car, NASCAR etc. They have nothing to do with the FIA.

#### **THE WILLINGNESS TO TALK**

Those who attended the meeting were appraised of how difficult (read 'impossible') it has been for KNSW to negotiate the terms of the memorandum of understanding "MOU". This is the most important document between the two Associations and it

was due to be reviewed in 2016. The KNSW Chairman has addressed this issue quite well in his open correspondence with the members dated .....

KA Ltd has not been willing to entertain any negotiation of the MOU. In the words of the KA CEO, "you have more important things to deal with".

Attempts to arrange clandestine meetings between one member of a board is not "reaching out". Having a former KNSW Chairman contact KNSW Club Presidents is not "reaching out".

## **LOOKING FORWARD**

The AKA Ltd constitution does not provide for separate Club affiliation despite what is being put forward by the author of Mr Doohan's letter.

KNSW is asking for a mandate to do what the karters in NSW want them to do.

KNSW have a plan. It is simple.

**It is to rejuvenate the sport within the State of NSW for the benefit of all karters.**

It will be run in an open and consultative manner.

- You the karter will know how much money KNSW make from a set of tyres.
- You will know why tyres were selected.
- You will be asked to provide your opinion.
- You will be consulted.
- The testing procedures will be known and the results will be published so that you can understand why a decision was made.
- There will not be mates getting back door deals or former colleagues getting plush consultation jobs.

Insurance is sorted. It is like for like. Insurers and Brokers compete for this type of business and it is easily obtained and readily available.

You have 3 excellent Member protection officers who have the sports interests at heart and who have a wealth of karting and business experience combined. These aren't guys that are looking to be flown around the country, accommodated and fed at the expense of the karting community.

There will be rules that make sense.

There will be volunteers such as myself who will be willing to contribute their time and assets to a true "non profit" association.

What it won't be is Anarchy as put by a KA Official on Facebook.

It is time to RESET and start again.

## **IF YOU DECIDE TO GO – The Scare tactics**

Safety Grants are just that. Grants. They do not have to be repaid unless you have signed some agreement which provides that you have to do so.

TDF loans are between AKA Ltd (or AKA Inc) and KNSW. Clubs are not beneficiaries under the trust. Only the State Bodies are. KNSW will deal with the loans once the identity of the Trustee is determined. Clubs with loans need not be alarmed. The KNSW Board has sufficient legal knowledge to deal with any threats from KA Ltd. Ilona Alsters is no fool and the karting community of NSW and Australia should be thanking her for efforts. All of which is provided free of charge, not the \$450+ per hour, her services are likely charged out for by her employers.

KNSW has sufficient funds and assets to repay loans where appropriate.

As to the Plus 1 project, I think we are better off working on the Plus 10 project or Plus 100 project. Clubs like Newcastle should getting 168 to the Newcastle City Cup, not 68.

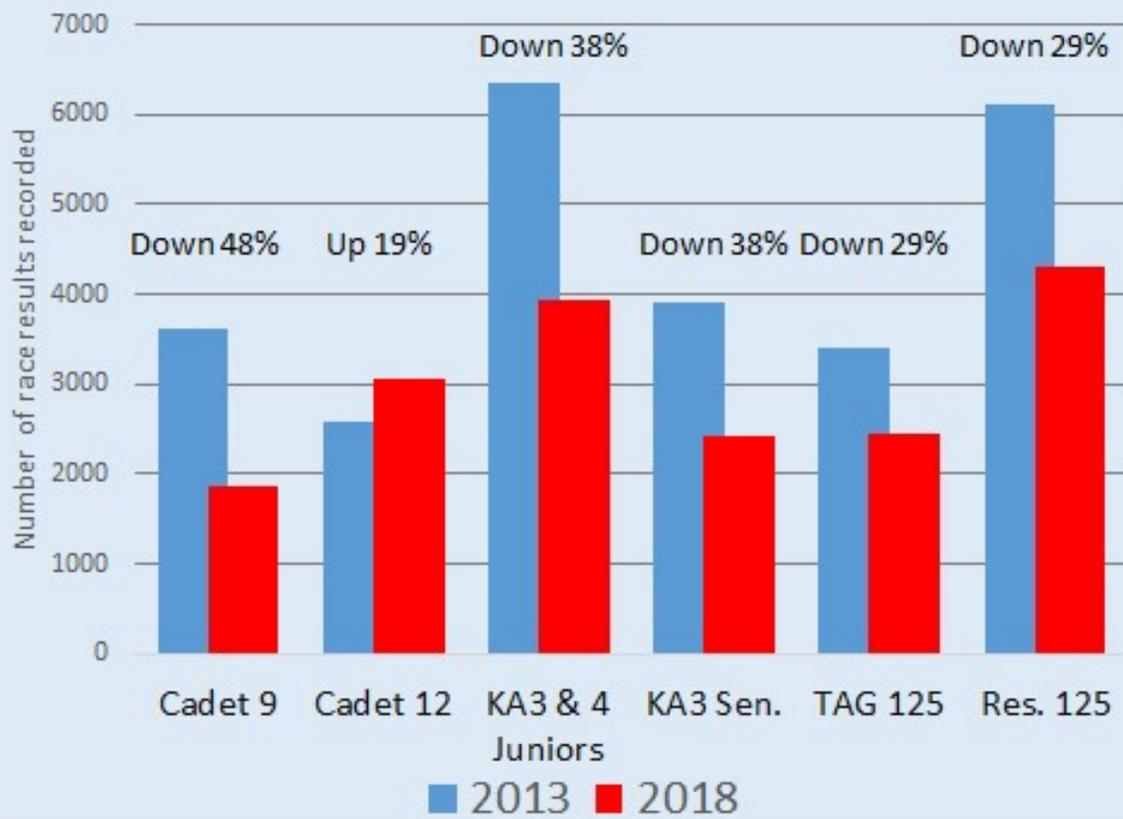
We all know that there is something seriously wrong with karting administration at the moment, but there is nothing wrong with this awesome sport. Have a look at how successful the 4SKANSW Club has been in 2018. They use tyres that attract no royalty and an engine that similarly attracts no royalty. It's cheap. It's fun and it's simple. That's why it attracts drivers of all abilities including those who've raced at a National Level as well as those just starting out. It's just the way karting should be.

We just need to back the Board of KNSW, which we voted in unanimously, to do what the sport needs. They are an impressive collection of individuals who are entitled to receive our full support.

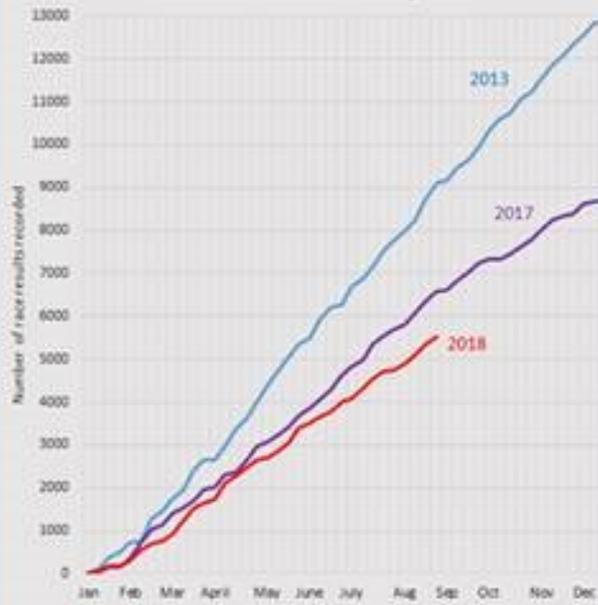
Yours in karting

Mitch Lozina

Participation comparison between 2013 and 2018  
All States  
January to the end of August results (8 months)



New South Wales KA Participation



Data is from Speedhive and the CM-S

Victoria KA Participation



Data is from Speedhive and the CM-S

Queensland KA Participation



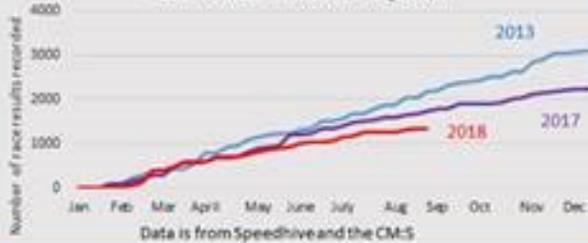
Data is from Speedhive and the CM-S

Western Australia KA Participation



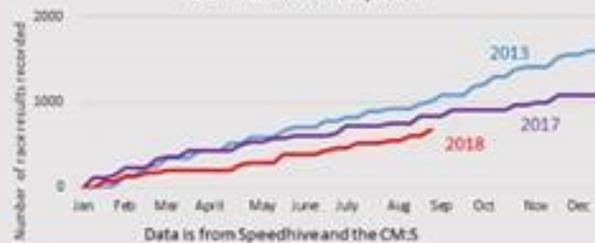
Data is from Speedhive and the CM-S

South Australia KA Participation



Data is from Speedhive and the CM-S

Tasmania KA Participation



Data is from Speedhive and the CM-S