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Mr Bruce Billson
Australian Small Business and
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GPO Box 1791
CANBERRA ACT 2601
Via: inquiries@asbfeo.gov.au

Australian Small Business and Family Enterprise Ombudsman

REVIEW OF PUBLIC LIABILITY INSURANCE AND A DISCRETIONARY MUTUAL FUND FOR OPERATORS IN THE TOURISM SECTOR

Dear Mr Billson,

Townsville Enterprise Limited welcomes the opportunity to provide a response to the Small Business and Family Enterprise Ombudsman's Review of Public Liability Insurance for Tourism Operators, and the suitability of a Discretionary Mutual Fund as a durable mechanism in response to insurance challenges.

Our submission will have particular focus on:

1. The Situation
2. Potential Solutions
3. Review of the Discretionary Mutual Fund
4. Case Studies from Townsville North Queensland Tourism Operators:
 - Jet Ski Hire Magnetic Island
 - Horseshoe Bay Water Sports
 - North Queensland Tours
5. Recommendations

Townsville Enterprise is the principal economic peak body and regional tourism organisation (RTO) representing Townsville North Queensland, which includes the five Local Government Areas of Townsville, Charters Towers, Hinchinbrook, the Burdekin and Palm Island. Townsville Enterprise is the primary engine for economic development, charged with leveraging the region's assets and strengths to drive jobs, growth, infrastructure investment, visitation, and quality of life.

The cost of insurance is forcing many tourism and hospitality businesses to self-insure. In addition to the ever-increasing cost of property insurance, tourism operators are finding that public liability renewal notices have seen significant premium increases or in some cases cover was outright refused. We have already seen tourism businesses in North Queensland, particularly in the adventure sector, close their doors because they are unable to obtain or afford public liability insurance.

According to the Australian Tourism Industry Council almost 4% of tourism businesses do not have public liability insurance with the average rise in premiums for businesses able to obtain insurance cover is 35%. Given the state of the industry and incumbent challenges faced from an unprecedented global health crisis, this is currently an issue of critical importance to amusement, leisure, and recreation sectors.

Following comprehensive consultations with our region's tourism industry, Townsville Enterprise believes the risk environment for public liability litigation can only change through government intervention.

This submission provides the insights and key metrics into the region's amusement, leisure, and recreation sectors and several challenges impacting the viability of business operations for many operators.

The Situation

Approximately 3.3% of tourism businesses do not have Public Liability, either because they cannot access it, or they can't afford the premiums. Staggeringly, there has also been an average rise in Public Liability insurance costs of approximately 35%. Currently the adventure-based tourism experiences are feeling the brunt of these price rises or challenges in obtaining insurance. The issue at this stage is only just starting to become more widespread, with show operators (jumping castles etc), motor-based water sports and high adventure experiences like zip lines just the start.

Conversations with insurance companies suggests that if trends continue this could flow into more mainstream businesses like dive operators, construction industry, events and more. We are at risk of becoming a 'vanilla' nation from an experiences and tourism point of view.

We believe the issue is starting to be exaggerated due to a "no win, no fee" litigation arrangement. We understand from our tourism operators that across all insurance brokers and agents that this is causing a major increase in claims which is why insurance companies are ultimately reviewing how they measure risk and the appetite they have to insure perceived 'high risk' activities.

Potential Solutions Previously Proposed

Research has suggested varied solutions across all levels of Government, including:

- Review the 'no win, no fee' litigation arrangements
- Introduction to cap public liability payouts
- Government intervention and review of both state and federal legislation could review tort law and associated liability payments in case of fault or breach of duty of care
- New Zealand model is recognised as the most successful. It works as operators fall under the Accident Compensation Corporation (ACC) a government funded New Zealand insurer that provides injury cover to all residents and visitors and provides health and rehabilitation services to anyone who is injured because of an accident. In return citizens and visitors waive their right to litigate as it is a no-fault scheme. This is one of the reasons why New Zealand has become the adventure tourism capital – it has enabled significant investment into the tourism industry.
- Government funded, insurance industry-supported educational program with the tourism industry to support increased risk mitigation measures within businesses
- Mutual Benefit Fund (industry led, but seed funded through Government) through an overarching association such as AALARA

A review of the Discretionary Mutual Fund

Urgent action from all levels of Government is needed to immediately resolve the insurance crisis, businesses are closing doors right now. It is understood that setting up a DMF would provide a solution to industry within 3-6 months, but the success in solving the underlying issues will only work if there is a level of underwriting from the federal government, AALARA's membership structure provides options for adventure tourism businesses, all levels of Government are willing to accept the DMF as an insurance option (GBRMPA, local councils), but also that mainstream industry (clients of these businesses) are willing to except DMF insurance cover (for example school tours, corporate bookings etc) in lieu of a certificate of currency.

We recognise that the New Zealand model is the most successful. We recommend this model be the ultimate and longer-term solution for the tourism and leisure sector. It works as operators fall under an Accident Compensation Corporation (ACC) a government funded New Zealand insurer that provides injury cover to all residents and visitors and provides health and rehabilitation services to anyone who is injured as a result of an accident. In return citizens and visitors waive their right to litigate as it is a no-fault scheme. This is one of the reasons why New Zealand has become the adventure tourism capital – it has enabled significant investment into the tourism industry.

Case Studies from Townsville North Queensland Tourism Operators

JET SKI HIRE MAGNETIC ISLAND

Ash and Andrew Eslick have operated Jet Ski Hire Magnetic Island for the past seven years. As members of Townsville Enterprise, we have worked closely with the couple during this time. They operate an incredibly professional outfit as well as volunteer much of their time to the Magnetic Island community through roles with Tourism Magnetic Island. The Eslick's have gone above and beyond to take appropriate risk mitigation including trackers and geo-location cut off speeds on their jet skis. In the 30 years that the business has operated it has never made a claim - this is their story:

"In May 2021 we were told our insurance company would not be renewing our policy, at this point we had been operating for over seven years with no claim history and this was beyond a shock. When we first took over the business we were insured in Australia until one year we were told that we didn't fit the scope anymore for that underwriter. We were then forced to look offshore due to quotes from some of Australia's 'big' insurance players being completely unreasonable and unattainable - two separate Australian companies had offered a policy with a 400% increase."

"We managed with our broker to secure insurance from a company in Poland that reflected our premiums at the time. We thought we were safe. A pandemic didn't help and come May 2021 we were told repeatedly about the issues facing the insurance industry, that Australia had one of the highest claim rates in the world due to 'no win no fee' lawyers, and that we were simply too high risk. Our broker told us we would not find insurance and they were right, the insurance we needed as required by the Queensland State Government did not exist - \$20 million public liability insurance combined with our activity was too high risk.

"Not only was there was no variety, but we had no options. We were no longer being offered insane premiums; we weren't being offered anything no matter what we put on the table. Nothing about our individual business was being taken into account, we were being treated as a number. We spoke to hundreds upon hundreds of brokers, and we contacted every jet ski related business in Australia, many

of whom we had already spoken to in the 12 months leading up to this as they began to face these same issues.

"Our broker managed to pull a group of similar businesses together to essentially sell the entire market to an underwriter, which now has a complete monopoly - there's no security in a monopoly. We are now operating with increased restrictions which affect our ability to capitalise on our business. Age restrictions have been the most detrimental despite no evidence to back up why? A 16-year-old can have a recreational PWC licence, yet we cannot hire to that same 16-year-old a heavily restricted and 100% supervised jet ski - the restrictions simply do not add up.

"We have invested and installed geo-fencing, collision prevention software, and GPS systems, our safety management system was pulled apart and reconstructed to be even more solid, we have done everything right and come next year there is still no guarantee for our family."

Percent increase in insurance premiums

"Paying a 300% increase from an offshore company with a substantial investment into new operating systems that essentially got us across the line with our new underwriter. When looking for insurance in Australia 2-3 years ago Australian companies were quoting us premiums that were in excess of 400%."

Anecdotal feedback on why insurance could not be provided

"Blanket no, no one in the world would look at our business because we are 'high risk'."

Strain on business/personal

"I don't think there's words that would fully convey how detrimental these events were to our health and wellbeing. We are a young family who turned our life upside down in Brisbane eight years ago including selling our home, investing a significant sum of money into a business, and moving North for a desperate change after Andrew spent years serving in the military. We have invested repeatedly in our business and in setting our life up on Magnetic Island, this is where we want to be and what we want to be doing. The week we were told our insurance would not be renewed was the week we were set to begin building our home on our block, something we had been dreaming of for over four years and were 100% funding ourselves due to the turbulence of the tourism industry and banks needing two years post-Covid books."

"When this happened, everything was immediately put on hold, our entire life and everything we have worked for completely stopped by nothing of our own doing. Add to that, the pressure of supporting a family doesn't begin to describe the fear I felt when I thought about our two-year-old son - we are responsible for his future and we had no idea how we would continue to provide for him and give him the life we want him to have. The strain on our marriage, friendships, and family was immense and even now knowing we are somewhat safe for another year I still feel worried when I think about our insurance renewal next year.""

Anything else worth noting

"Public liability limits need to be reconsidered; a model similar to New Zealand is in desperate need to safeguard adventure tourism in Australia. It's simply not comprehensible that the government requires us to have a level of cover that does not exist. If the government is going to set requirements, then they should be liable for making sure it exists. Why is the government not setting boundaries for how Australian insurance companies operate? It is essentially the government closing down Australian businesses. No one is safe."

HORSESHOE BAY WATER SPORTS

Dom and Kristen Spataro have owned and operated Horseshoe Bay Water Sports for 4.5 years, while the business itself has been in operation for close to 30 years. The small business relies on the tube riding component of their business as the main source of income for the family. They have strong risk management systems in place and have not had any issues in securing insurance in the past. Until September 2021 - this is their story:

"We didn't have a good feeling after Brent from Barra Fun Park contacted us in late December 2020 to see who we were insured with and let us know and what he was facing. Our feeling got worse when Andrew and Ash Eslick from Jet Ski Hire Magnetic Island faced not having their policy renewed in June. We contacted our broker to see if we would face a similar problem. At that stage we were four months away from our policy ending and our broker told us they couldn't advise us one way or the other."

"Fast forward to September and our policy renewal arrived and we thought maybe we had dodged a bullet. Unfortunately, that was not the case, on 24 September 2021, we received a phone call from our broker informing us that our policy would not be renewed. We hadn't even sent the application back. Even though we had suspected it may happen when it did it was like a kick in the stomach. We were in the middle of school holidays and flat out and so we knew we were going to lose a week of trying to find another insurer."

Anecdotal feedback on why insurance could not be provided

"Andrew and Ash advised us to contact the Brisbane head office and speak to the broker they had used to gain insurance. We contacted him on 27 September 2021 to see what changes we would need to make to be considered an acceptable risk, only to be told that they were getting a blanket no from insurers and that they were not prepared to take the risk on tubing/inflatables."

Responses from insurers:

- Offshore Market Place (current insurer) - Not renewing any high-risk business
- AIB Australia - Declined insurance due to tubing activities
- ATC - Declined insurance due to tubing activities
- Precision Underwriting - Declined insurance as falls outside their risk appetite
- Sports Over - Declined due to tubing activities.

Strain on business/personal

"Tears were shed, we gave up a life in Melbourne, sold our home, gave up jobs, moved our children from the only home they had known, all their friends and family for what? We understood when we purchased a business that there was going to be a reduction in income and there would be challenges but we never imagined we would lose it all because we couldn't get insurance. We had survived floods, the likes that had never been seen in 100 years. We were surviving a pandemic that locked the nation and the world down, but we will not survive this."

Percent increase in insurance premiums

"Our most promising lead, insurance wise, has stated we will need to make some additions to gain cover which means we will have to make several purchases, which we will willingly undertake as soon as cover is ensured. At this stage however, we are not prepared to outlay additional funds for a business that may not be operating on top of the premium raise that is estimated to be around 300% more than we paid for our current policy."

Anything else worth noting

"While we are in contact with three brokers, we may not get insured in time for a seamless changeover which means that we will be closed in four days. It is heartbreaking and depressing as we are already getting booking enquiries for break ups and Christmas parties that we can't officially take because we are in a state of limbo. It is devastating to think that our little business, that is island iconic, and operating here for over 30 years (albeit with changes dictated by insurance policy prices) will cease to exist as we are now considered uninsurable."

"We have contacted other businesses currently in a similar position, businesses that have been in our position and made it through the other side (for now), and some that haven't. In a sense we have been fortunate that there is a road map, if you will, to follow but that doesn't make it any less stressful. We aren't sleeping, barely eating as the stress of the situation takes its toll but we are trying our best to stay hopeful and upbeat as our twins are currently completing Year 12 block exams, so we are trying to keep the stress of this situation separate from them as they have enough on their plates. However, despite our best efforts, they are aware and therefore also affected.

"In summary, the whole situation is a nightmare and while we will be devastated both personally and professionally, we will not be the only ones to feel the loss. We have hosted the local football club breakup every year, parties for people with special needs, international student groups from Pimlico State High School, students from Clontarf Academy, and families young and old. I am biased but I cannot imagine the beachfront at Horseshoe Bay without us on it."

N.B. Since the time of writing, Horseshoe Bay Water Sports have had to close their doors indefinitely.

NORTH QUEENSLAND TOURS

North Queensland Tours operate a small 4WD tours to the Paluma and Hinchinbrook area from Townsville and have been unable to secure Public Liability insurance. They have worked through several brokers with no success. They have had to close the tour component of their business without this insurance and whilst they would love to reopen their doors in the new year (when hopefully business returns once borders reopen), without insurance they will be forced to stay closed permanently.

Townsville Enterprise Recommendations

Townsville Enterprise believes that a DMF could be a viable solution for the short term, but the fundamental challenge around rising claims will still exist and need to be addressed. Securing Public Liability will also flow into other sectors (construction, childcare etc). In conjunction with the DMF, there should be:

- A review into the 'no win, no fee' litigation arrangements
- Introduction to capped public liability payouts
- Government intervention and review of both State and Federal legislation could review tort law and associated liability payments in case of fault or breach of duty of care
- Government funded, insurance industry-supported educational program with the tourism industry to support increased risk mitigation measures within businesses

Summary

Governments of the day have a fundamental obligation to support small business - the engine room of the state and national economy. Adventure based tourism experiences are feeling the brunt of the price rises and difficulty in obtaining insurance - meaning we are at risk of becoming a nation that offers 'vanilla' experiences. Compounded with the challenges that COVID-19 has caused, the tourism industry simply cannot survive without real solutions to the rising insurance challenges

The risk environment for public liability litigation can only change through government intervention.

Townsville Enterprise welcomes the opportunity to make this submission and assist to inform the Ombudsman's understanding of the significant challenges facing tourism businesses unable to obtain public liability insurance.

Yours sincerely,

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