# Coversure response to the Australian Small Business and Family Enterprise Ombudsman's interim report The Show Must Go ON

The following observations and comments are provided to assist the Australian Small Business and Family Enterprise Ombudsman (the Ombudsman) in further understanding the issues associated with the commentary on the availability of insurance for the Leisure, Amusement and Entertainment industries.


**Summary**

There are some factual errors and comment about Coversure in the report published on 20th October 2021.

Commercially provided insurance for the Leisure Amusement and Entertainment industries is available for limits up to $20 million from S&P rated insurers.

The cost of insurance is related to the cost of risk transfer. The high cost of insurance can be related to the high cost of risk transfer across these industries sectors over the last 10 years.

The use of risk management and risk mitigation is not widely evident across the industries. While statutory compliance has improved significantly in the last 10 years this has not been transferred to public safety practices and procedures.

There would appear to be immediate and reasonable savings available in the cost of risk transfer from the impact to public safety from industry wide training and risk mitigation.


**Factual Corrections**

**Clause 1.2.5** of the report states that the Coversure arrangement "will also have some categories of activity excluded, for example class four and five rides" This statement is incorrect in respect of the Class 4 & Class 5 risk. Coversure regularly offers policies for Class 4 and Class 5 amusements.

Coversure records of the June to October quotations and placements indicate that there has been very few risk that have been declined terms due to classification of operational activity.

Operational activities that have not met underwriting guidelines include some equine activities, Segway operation and canyoning.

While some risk present with only rudimentary risk management and risk mitigation Coversure has made significant inroads to assisting the proposers with improving the longer terms outcomes for both the operators and the safety of their patrons.

**Clause 1.1.8** reports that from an ALLARA report "40 members collectively owned 297 pieces of plant and only had a total of 3 claims". Coversure is aware of one AALARA member alone who themselves has had more than 3 claims in the past 2 years. The accuracy of this sample would suggest a closer review of the evidence used.

It should be noted that Coversure is not an insurer however it has not declined any claims via its current facility, any statements to this effect are incorrect. Coversures previous facility insurer was Lloyds of London that is both APRA approved and regulated. There is record of a declined claim on this prior facility for failure to meet required Australian Standards.

**Commentary**

There are commercially available insurance solutions for almost all Leisure, Amusement and Entertainment activates for Limit of Liability up to $20 million. It is without doubt that as the market rates stabilise there will be additional market entrants and while downward pricing pressure will be directed by the resultant loss ratios that develop it would not be expected that the market will be supplied by only one insurer in the medium to long term.

Premiums are driven by the cost of risk transfer from the insured operator to an insurer. Premium rates and rating design that is used by Coversure has been driven by actuarial and underwriting analysis of over 10 years claims experience with a significant focus on the past 5 years results. The rate model now in use has been updated in both rates and methodology to focus premium calculations on risk management and risk mitigation behaviours. Coversures believes its own data and industry based statistics justify the current cost of risk transfer.

The issue of unaffordability is a vexing one. We may ask what is a reasonable cost to pay for the level of risk transfer that is required by a business. It may well be that these industries have been surviving on a less than economic cost of risk transfer for some time. If the true risk cost associated with these activities is $X then any risk transfer (including insurance) solution that is priced at below $X it will require either ongoing economic support or a structural change in the industry.

Presuming that this industry cannot expect long term and ongoing economic support to keep it operating and hence the viable option we have identified is structural change. This may be unpalatable to some participants as it will require them to change this business processes and practices dramatically. It may be necessary to promote legislative changes to maximise the benefits of any changes that are achieved.

Risk mitigation and reduction is a cornerstone of the Coversure approach to underwriting these business. Risks Coversure has reviewed to date often have very rudimentary statutory recording and certification that is presented as a form of risk management. Many businesses have not completed detailed risk assessments to generate planned business processes and operational policies. Training of staff on the business policies and processes is often limited.

To deliver lower cost of risk transfer it would appear essential that the risk is either removed or mitigated. Risk could be removed by operational actions or by legislative reform to liability compensation.

Undoubtedly one of the most critical outcomes for the combined leisure and amusement industries must be the safety of the public. Finding economical methods of risk transfer for these businesses will achieve little if the long term unless a better, safer and more consistent outcome can be provided to the public

While not within the scope of business consider by Coversure there does appear to be an emerging, or existing, limitation of insurance capacity for licences entertainment venues such as night clubs and multi day music festivals that include provision of alcohol.

**DMF Proposition**

The DMF proposition appears to focus on delivery of cheaper insurance substitutes and addresses little that will deliver any increased safety and risk mitigation for the public.

While increases in premiums have been highlighted in the justification for a DMF there is limited evidence showing the claims data for these industries justifies the lowering of the risk transfer cost.

The report does not appear to address the possibility that the premium rates being utilised are reasonable and prudent for a longer terms stable industry solution. Perhaps the path to "affordable premiums " is via risk mitigation and risk management by the amusement businesses as well as legislative reform to eliminate the risk and liability for amusement and leisure operators.

We are of the opinion that a successful DMF needs a number of key components, without them it may be susceptible to natural market action in the insurance cycle.

1. Strong starting statistics to know the actual risks and exposure it will be taking on
2. Strong experience underwriting and claims management teams in place, or protection of "simple homogeneous risk".
3. A very committed group of long terms members who will stay with the DMF concept through the insurance cycles and commercial competition
4. Committed re-insurers who will maintain balance excess layer support to the DMF though the long term
5. Adequate funding for the risk and exposure for both working loss and catastrophic loss scenarios
6. Depoliticised policy and business management were the DMF is free to execute it mandate without interference
7. Be accepted as security as a non-rated and non-insurance solution by the businesses and customers relying on its ongoing outcomes.

Many DMF's have come and gone, other have thrived however few, if any, have been initiated by the use of public money in the face of commercially available alternatives. The test of DMF's viability may lay in its ability to raise capital from its potential members as a direct contribution to their future long term cooperative behaviour.

It is particularly noteworthy that the proposition that reinsurance capacity is available to support a DMF. Evidence indicates that until recently other insurance markets have not been able to source reinsurance capacity for such a venture. The availability of "drop down" reinsurance may well be problematical in the event the DMF exhausts its available funds. Without confirmed reinsurance the investigation into a DMF is academic only.

While regulated in Australia a DMF would not be rated with any third party agency verifying its claims paying ability and financial standing. As such any recommendation from an insurance consultant for the DMF to be utilised as a substitute for commercial insurance were a claims paying rating was available would need to be carefully measured. There is little value in a DMF that cannot be accepted a security for activities on Crown Land or other commercial premises due to the absence of a rating.

The insurance market for amusements operators has clearly been influence by both the claims results and the actuarial reviews of underwriters as to the prudent risk margins required to operate a portfolio of amusement ride business. The aggregation of risk within each policy has almost certainly been an influence on the current market. However there are underwriters providing solutions to amusement operators with at least three providers regularly offering policies for amusement businesses. There is limited current market options for high risk categories of amusements. This situation is not uncommon where aggregated exposure and high risk are combined in any industry.

Commercial insurance will provide a market solution and this will be influenced by risk management and risk avoidance that may be delivered in the form of legislative reform.

**Focused Solutions**

**Risk Management**

In order to reduce the short, medium and long term costs of risk transfer risk management and mitigation should be the driving focus. Not only does this deliver genuine opportunities to reduce risk transfer costs but also an enhanced confidence in public safety.

There appears to be a current absence of standardised "active" risk management delivered from any of the industry associations or bodies to their members.

Statutory inspections and certification of amusement equipment has provided the first level of risk protection to the industry. These requirements are not uniform around Australia and as highlighted by the 2019 Freds Pass Show case where an uncertified amusement was allowed to operate at a regional show.

The inspection and certification of inflatables also varies significantly around Australia with some operators relying on overseas manufactures certificates to confirm compliance to the relevant Australian Standards.

Risk management needs to extend beyond the aggregation of documents and certificates into a cohesive risk mitigating action plan that is executed by the business. This is no different to the requirements of the building industry and those adopted by cleaners and other historically high risk occupations.

Risk management is not just about having a collection of documents and checklists with "ticks" on them.

Most operators who have had a previous claims cannot document the review of the occurrence to a risk review, change in operational polices and the training of staff on updated procedures.

**Training**

Many business keep rudimentary records of operator training however the compliance and record keeping varies greatly.

Few operators record the full content of the training documents, other than operator training records, used to brief staff or provide basic training on company policies and risk avoidance

There is no national accreditation or on-line “train & test” accreditation I lace for basic operation and risk mitigation.

There are commercial solutions available for Amusement Park Ride Operators.

**Common Issues in Risk Mitigation**

A recent review of amusement parks by Coversure resulted the following comments:

Concerns include:

1. Low cost parks operating without adequate close supervision of patrons and activities including
    a. unattended swimming pools
    b. insufficiently staffed water slides
2. Minimal or no CCTV to log allegations of, or actual, claims and injuries
3. Use of equipment and amusements (including their installation) that have not been verified in Australian to comply with Australian Standards
4. Under developed risk analysis, staff procedures and staff training.
5. Inadequate or unconsidered adverse weather (not limited to wind events) alerts, warnings, safety or protection

Some examples of gaps in risk management and mitigation (this is not an exhaustive list):

1. A commercial booking agency for amusement operators conduct business without contracts of engagement with amusement operators
2. Many operators do not utilise signed contacts of engagement or terms of supply and trade for provision of services
3. Staff training limited to operator training only
4. Reliance of overseas issued Australian Standards compliance without consideration of set up in Australian conditions
5. Absence of Australian Standards safety compliance for installation of amusements and safety devices
6. Operational policies are not updated for modern issues such as family violence and social media exposure
7. Operations manuals do not match actual activity
8. Adverse weather policy and procedures are inadequate or uncoordinated relying on Beaufort Scale observations and event managers for guidance
9. CCTV is absent or data is not maintained
10. Responses to past claims or circumstances are not actioned or documented
11. Warning signs inadequate or out of date
12. Disclaimer issued without consideration of Section 5L of the Civil Liability Act
13. Waivers used are not updated to changes in Australian Consumer Law

With just a little concerted effort this can all be updated and rectified with an immediate impact on the risk transfer cost associated with Leisure, Amusement and Entertainment business. Coversure would recommend this is an effective use of public funds and will result in direct improvements public safety