

**National Insurance Brokers Association submission to the Australian Small Business and Family Enterprise Ombudsman's Discretionary Mutual Fund Review Interim Report.**

The National Insurance Brokers Association (NIBA) welcomes the opportunity to provide these comments in response to the Australian Small Business and Family Enterprise Ombudsman's (ASBFEO) Discretionary Mutual Fund Review Interim Report.

NIBA commends the Australian Amusement, Leisure and Recreation Association and ASBFEO for their steps to find an industry-based solution for members of the amusement, leisure and recreation and the communities they support. As the report highlights the current hard market is having a huge impact on a wide range of industries all across Australia. If established, NIBA is confident that the DMF will be closely watched by other industries looking to address similar issues.

As the report only represents a conceptual proposal it is difficult to determine whether a DMF is the right solution for the amusement, leisure and recreation industries. Such a decision will likely depend on the claims history and risk profile of the industry and fund members as well as the availability of reinsurance to limit the funds' exposure.

The main areas of concern for NIBA are the discretionary nature of the fund and the ability of customers to make informed decisions when using amusement, leisure and recreation services, risk management within the industry and its impact on the membership of the DMF and the availability of reinsurance.

**Does the DMF meet the needs of users of amusement, leisure and recreation services?**

Based on the information provided in the interim report, there is not enough evidence to determine whether a DMF will provide sufficient protection to users of amusement, leisure and recreation services.

Alternative risk transfer arrangements like a DMF are unlikely to be understood by average consumers without proper education. Of with there is little opportunity for in the environments services such as these operate. As such, users are unlikely to have enough information to make an informed decision when using these services.

Given the risk-averse nature of the Australian population, they are unlikely to accept insurance arrangements where 'the insurer' can simply decline to pay claims. Safety

nets will need to be introduced to ensure that the users of these services will not be exposed if the fund declines to or is unable to pay the claim.

Proposals that allow individuals to purchase personal injury cover in conjunction with a ride or event ticket will need to be carefully managed to ensure they do not contravene the deferred sales model for add-on insurance products or anti-hawking provisions.

### Risk Management & Membership

One of the ways DMF's mitigate risk and prevent avoidable claims losses is to only accept members who meet a predetermined acceptable risk profile. Managing this risk profile is essential for the long-term economic interest of the fund.

Many industry funds do this by excluding members with poor risk management practices. This strengthens the overall position of the fund and avoids the creation of a moral hazard where members with high claims costs are not incentivised to implement stronger risk mitigation due to cross-subsiding by lower-risk members.

What can also occur is that in order to reduce premiums, standards are raised to such a level that a large portion of the industry is unwilling or unable to meet the membership requirements and are excluded from the fund. The results in a concentration of low-risk businesses within the fund and higher-risk businesses out. Without the low-risk businesses to lower the overall risk profile of the industry, those who are not able to access the fund will often face even more difficulties accessing affordable insurance.

Not enough information is known about the claims history within the industry to determine whether or not membership to the DMF would be reserved for a select handful of "good risks" who may already be able to access to insurance.

Despite the report identifying over a thousand members within the amusement, leisure and recreation industries, the assumption that the claims history of the industry would be suitable for a DMF is based on a survey of only forty members.

While NIBA does not doubt that most businesses within their recreation, leisure and amusement industries uphold their duty of care to their customers to the highest levels, it cannot be overlooked that high-profile claims and a small number of less-risk averse members is more than enough to turn insurers away from a market entirely.

The report only focuses on risk mitigation to the end that it serves the interests of the fund, however, no consideration appears to have been given for what increased

risk mitigation and stronger sanctions to remove unsafe operators could do to restore insurer confidence in the market.

### Availability of reinsurance

As the report highlighted new mutual funds are usually heavily reliant on reinsurance for the first few years after establishment. However, the same market conditions that led to significant increases in the commercial insurance market may also impact the funds' ability to purchase reinsurance.

The conditions that led to a lack of affordable insurance in the sector are not isolated to the commercial insurance market. Rate hardening in the reinsurance market is predicted to continue through 2022 as a result of low investment returns and reduced risk appetites.

Modelling will need to be done to stress-test the ability of the fund to meet expected claims costs if the rate hardening continues past 2022.

The report highlights the need for a solution that allows businesses within these vulnerable sectors to continue to operate and serve their local communities. Although not the purpose of the report, it is clear to NIBA that the current market conditions felt by many industries have highlighted the need for reform.

Although tort reform and the introduction of a National Industry Insurance Scheme are unlikely to offer any relief in the short term both should be explored as long-term improvements to Australia's insurance landscape.

Please do not hesitate to contact me if you would like to discuss any aspect of this submission.

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