COSBOA COUNCIL OF SMALL BUSINESS ORGANISATIONS AUSTRALIA

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Mr Bruce Billson
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Dear Bruce,

RE: Submission regarding 'The Show Must Go On: Is a discretionary mutual fund the solution to the insurance crisis facing Australia's amusement, leisure, and recreation sector?'

Thank you for the opportunity to provide feedback with respect to your report dated 20 October 2021.

The Council of Small Business Organisations Australia (COSBOA) welcomes your self-initiated review of the Australian Amusement, Leisure, and Recreation Association's (AALARA) proposal to establish a Discretionary Mutual Fund (DMF), and appreciates your office investigating options to ensure insurance coverage is accessible for all small businesses.

The Council of Small Business Organisations Australia (COSBOA)
COSBOA is the national peak body representing the interests of small business. Collectively, COSBOA's members represent an estimated 1.3 million of the 2.5 million small and family businesses that operate in Australia.

As a collaboration of peak organisations across a wide range of industries, COSBOA acknowledges small and medium sized enterprises (SMEs) are major contributors to the Australian economy. SMEs employ 68% of Australia's workforce. In GDP terms, SMEs together contribute 56% of value added. Small and medium businesses are therefore key partners in rebuilding Australia's economy as Australia emerges from the COVID-19 pandemic.

Consultation with members
COSBOA's collaborative consultation on this issue has included discussions with representatives from the National Insurance Brokers Association of Australia (NIBA) and the Newsagents Association of NSW and ACT Ltd (NANA). Our responses are based on the perspectives of these members and our extensive experience with small and medium sized enterprises across Australia.

COSBOA recognises the importance of this serious issue affecting all small businesses and welcomes ASBFEO's work with AALARA to find an industry-based solution to the problem. Whilst not a priority for our members at present, COSBOA recognises that this is an issue of growing concern as more and more small businesses find themselves underinsured or uninsurable due to unforeseen circumstances which are largely out of their control.

Our members NIBA and NANA also support AALARA's endeavours, noting however that while a DMF may seem like an appropriate solution based on a conceptual review of the industry and the unique issues faced, it is ultimately the members and the risk management profile of the industry that will determine whether or not a DMF is a viable option.

In consulting with NIBA it was explained that insurance works by spreading risk across a broad population of policy holders. To be successful the DMF will need enough members in total to achieve this whilst also ensuring that the risk profile is not skewed by having too many members with *higher* risk profiles. If the risk profile of the industry as a whole is too high, then significant risk management strategies will need to be put in place to ensure the DMF remains financially viable which may mean that many members of the industry are not able to access the fund. NIBA further explained that whilst this ensures that all of the "good risks" are captured within the fund, there is a potential to make the industry as a whole even less desirable to insurers and further exacerbating future insurance availability issues for those in the industry who are not DMF members.

The report also highlights that the DMF is likely to be heavily reliant on reinsurance for the first few years after formation. However, the same market forces affecting the commercial insurance market are also affecting the reinsurance market with rates hardening across all major lines including liability with the reinsurer Swiss Reinsurance Co. Ltd predicting that the hard market conditions will continue through 2022. The availability of reinsurance or lack thereof will have a huge impact on the funds' ability to meet projected claims costs, especially during the first few years.

In consulting with NANA they explained the DMF model may provide a solution to AALARA and similar organisations, however the concept relies on finding someone (perhaps a Govt body) with deep pockets to underwrite it and also relies on some secondary insurance of the risk or the risk above a certain pooled claims value. The support from Government may not be there.

When considering the viability of a DMF model for a sector, it is important to consider whether the market has really failed, or whether the market is saying that the risk is so high it cannot be calculated and therefore a realistic price cannot be put on the risk. The risk calculation will include a strong reference to the claims history of the insured. It was noted that AALARA members do not have a spotless record when it comes to major accidents. For example, there have been cases where people have died as a result of amusement ride operators. These claims when finalised run into millions of dollars. There are still cases running in relation to the QLD theme park ride accidents.

The requisite level of public liability coverage is 20 million dollars per participant. Whilst that may not translate into 20 million dollars times the number of participants to determine the

overall value of the risk, once the actuaries get involved there will be a figure and it will be high. That is the figure which will have to be funded for the DMF to work. If there is a claim in the early stages of the DMF's operations, it may be immediately challenged.
For a DMF to be accepted by venues such as Govt owned land such as showgrounds on local and State Government land, there will have to be an across-the-board change to insurance legislation in multiple jurisdictions. This may well be very difficult to achieve. There are additional concerns with respect to private venue owners and whether they will accept anything other than a specific insurance product. There are concerns with respect to whether a DMF will allow for the interest of the venue owner to be noted. Due to the discretionary nature of the DMF claims and payout processes, venue owners may not consider DMF insurance as a satisfactory coverage of their risk. Those injured will always seek to claim against the entity with the deepest pockets and the highest insurance. If the DMF does not provide rock solid coverage both to the insured and protection to the venue owner as well, then venue owners may reject the DMF.

In terms of whether the DMF may be appropriate for other industries. Some small business groups in other sectors have capacity to negotiate with multiple brokers directly to obtain the most reasonably priced insurance coverage for individual businesses. With the exception of some location specific increased risks, for example natural disasters and disastrous weather events, insurance requirements for other sectors do not usually involve the same high level of risk that is involved for AALARA members. It could be argued that the increasing risk for more and more small business sectors places them in the higher risk category and a DMF may be appropriate.

COSBOA members also noted small business operators have the opportunity to review their insurance policies annually and ensure their day to day industry work practices are appropriately balanced to mitigate risk and implement risk management strategies. Member associations often support in this process. This is a continual conversation with brokers to help ensure small businesses have access to the lowest premiums possible. They retain the capacity to choose how they spend their money to obtain the best possible insurance coverage.

COSBOA welcomes our involvement in continued small business stakeholder consultation on behalf of our members in a wide range of industries with respect to the important issue of insurance coverage. Our members appreciate ongoing involvement with the Office of the Australian Small Business and Family Enterprise Ombudsman, and further opportunities to provide relevant feedback in the future.

Yours sincerely,

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[redacted]

3 November 2021