



Business Council of
Co-operatives and Mutuals

Submission in response to the ASBFEO Discretionary Mutual Fund Review
Interim Report

3 November 2021

Dear Ombudsman,

The Business Council of Co-operatives and Mutuals (BCCM) congratulates you and your office on this timely and comprehensive review of the potential role of a Discretionary Mutual Fund in the Australian amusement, leisure and recreation sector.



In producing this Interim Report into an innovative response to market challenges in the amusement, leisure and recreation sector, the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) has explored issues common to other hardening insurance markets and the analysis and findings will be of significant value to businesses in many industries. SMEs and family enterprises will be hardest hit by changes in insurance markets so this review will be important for informing potential industry strategies and policy initiatives to support the resilience of small business.

The BCCM is the national peak body for co-operatives and mutuals, a sector with combined memberships of more than 31 million (National Mutual Economy Report 2021). The cooperative and mutual movement plays an important role across the Australian economy, including in the provision of risk protection and insurance products to millions of individual consumers and thousands of small businesses. BCCM's membership includes the following mutuals that provide discretionary risk products to their members: Capricorn Mutual, CivicRisk Mutual, Employsure Mutual and Unimutual.

We provide some general comments, followed by responses to specific consultation questions.

General comments

1. A solution but not a panacea

Discretionary Mutuals Funds have been used effectively and successfully by groups of small businesses to access affordable and appropriate risk protection across many industries in Australia.

DMFs can be a solution when markets fail or harden so that businesses can minimise disruption and continue to operate sustainably. While they are a potential solution, DMFs are not a panacea and most of the preconditions for setting up a sustainable mutual risk pool are common to any form of insurance or risk protection market. Furthermore, in markets such as disaster cover, flood or fire protection, or professional liability, it is vital that risk is mitigated through all available avenues. This requires a holistic and practical response from industry, where the level of risk has inflated pricing to unsustainable levels.

The BCCM welcomes the focus in the Interim Report on the development of industry guidelines on best practice and on capacity building. One of the outcomes could be freely available template documents and case study materials that can be used as a self-help tools by other industry groups. The BCCM and its network of members are the best placed industry partners to lead/support these activities.

2. Description of Mutual Capital Instruments (MCIs)

The BCCM suggests the description of MCIs in 6.2.4 of the Interim Report is amended if used in the final report, as follows:

In an IDM, each member of the mutual has one vote, regardless of the level of premiums paid into the mutual.



2019 amendments to the Corporations Act 2001 mean that a mutual entity has been defined for the first time as a company with one-member no-more-than-one-vote governance. As a result of these amendments, mutual entities, provided they have amended their constitution to enable it, are now able to issue Mutual Capital Instruments (MCIs). Member control is protected because, in line with the new definition of a mutual entity, MCIs can only ever provide holders with a maximum of one vote.

Importantly, the purpose of a mutual that is issuing MCIs can be further protected through both its constitution and through the terms of issue of the MCIs. In late 2020, in response to the passing of the MCIs enabling legislation, Australian Unity became Australia's first mutual to issue MCIs.

In doing so, Australian Unity amended its constitution to "ensure Australian Unity remains a mutual and is protected from undue influence." These amendments include:

- MCI Members will have no right to vote on winding up the organisation;*
- MCI Members will not be able to propose or vote on any demutualisation proposals;*
- MCI Members would have no access to profits, above the original purchase price and interest owed, in the unlikely event that the organisation was wound up; and*
- If a future board ever seeks to dilute any of the three measures outlined above, appropriately substantial levels of member information, quorum levels and voting thresholds would have to be met.*

Responses to consultation questions

1. Is there a need for action by government? Is there a proven incapacity for the industry to self-support a solution?

We suggest that, in determining whether government support is warranted, of the factors proposed in the interim report a viable business case and member support are most important. The fact that a market is deemed to have failed or significantly hardened only indicates there may be appetite for an industry group to find a mutual solution, not that a mutual should be supported. In some failed markets, there will be no viable mutual solution and other policy and industry measures will be required. Government should not intervene to the extent of seeking to generate mutuals in failed markets, rather it should be ready to respond constructively to proposals from industry that are based in self-help, including member 'skin in the game' (willingness to co-invest).

7. Is there sufficient evidence that a DMF, if appropriately formed and governed, could work for the various stakeholder groups?

Given there is no completed proposal, the BCCM believes it is too early to judge whether a leisure industry mutual should be supported by government. Per above, the fundamentals are a business case (evidence of feasibility), demonstrated member/industry support and a robust member-owned structure for the mutual with the right balance of member representation and expertise in governance.

10. Does the timeline appear reasonable?

Notwithstanding unpredicted hardening of markets and rapid disruption to businesses and their industry, we caution pushing timelines on formation of a mutual. Co-design with members is an



important element that may take additional time. Rushing formation may lead to sustainability challenges for the start-up and the requirement for more government underwriting. It is imperative to provide evidence of member buy-in, since mutuals are joint business undertakings and require a commitment by the members to use the products and services to be feasible.

The development of education and information resources and self-help tools to educate industries and business owners about mutual solutions could assist with proactive industry responses to the increasing challenges of affordable risk protection and business insurance.

We welcome ASBFEO engaging with the sector through the peak body, the BCCM, to develop such materials leveraging the suite of self-help tools already developed by the BCCM.

- 9. Are the design, risk management, and governance suggestions appropriate?;
- 14. Are the governance and reporting proposals appropriate? Is the suggested board make-up likely to provide the best results for the DMF?;
- 21. Are the key success features identified accurate? Are there other features that should be considered? ;
- 20. What else should be considered in the process of the final proposal development?;

A mutual board requires both member representation and expertise. Independent directors can be appointed as required to fill skills and knowledge gaps. The principle of member democracy is important to enshrine in the proposal.

- 23. How important is contestability of service offerings? Are there other ways to ensure contestability?

Very important. Members in general meeting or the board must be able to make key appointments.

- 25. Should the DMF include a constitutional protection against demutualisation? Should government introduce a protection against demutualisation for the broader sector?

The BCCM is supportive of co-operatives and mutuals adopting protections against demutualisation but also believes this is a decision for members of each co-operative and mutual.

It is a stated policy of the BCCM that the laws governing Australian co-operatives and mutuals should be brought into line with global best legislative practice in relation to demutualisation through the introduction of a new legislative framework for the protection of legacy assets. Demutualisation only occurs where it is permitted in law. BCCM's policy blueprint "A Strong Economy: It's every Australian's business" (attached), states:

Maintain legacy assets for the purpose they were intended

Over generations, people have invested and built assets for the benefit of their communities.

Voluntary legislation can ensure that these legacy assets are preserved for the purpose they were intended and not the subject of asset raids.

It would empower members to decide what should happen to assets on a solvent dissolution and prohibit capital distribution beyond what members have contributed.



We would be pleased to provide further information on the matters raised in this submission.

Yours sincerely,

[Redacted signature]

Contact:

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