

Terms of Reference: Review of Discretionary Mutual Fund proposal for Australian Amusement, Leisure and Recreation Industry.

Background

Following the then Australian Small Business and Family Enterprise Ombudsman's (ASBFEO) 2020 Inquiry into the insurance market for small businesses, this Office has been approached by a number of business sectors still unable to secure insurance coverage. The 2021 Budget partially implemented recommendation 8 from this Office's Insurance Inquiry, by establishing a reinsurance pool for cyclone and flood coverage in Northern Australia. The ASBFEO is continuing to investigate other options to ensure insurance coverage for all small businesses.

The Australian Amusement, Leisure and Recreation Association (AALARA) has engaged heavily with this Office and across government to highlight the inability of businesses within their sector to secure insurance, and gain support for the establishment of a Discretionary Mutual Fund (DMF) for the sector. AALARA has entered into a partnership with Aon to establish an industry-owned and operated discretionary mutual fund to provide accessible and affordable insurance for the benefit of their members.

As identified in the ASBFEO Insurance Inquiry report, and by AALARA in their ongoing advocacy, the lack of insurance coverage will lead to the closure of businesses in the amusement and leisure sector, significant job losses (particularly in regional areas), and loss of economic activity generated by metro and regional shows, and amusement parks.

Due to this Office's ongoing engagement with and past examination of small business insurance issues, and to further the Office's ongoing advocacy for small business, ASBFEO will undertake a self-initiated review of AALARA's proposal to establish a DMF as a potential practical solution to the critical and immediate need for continuing insurance. Related industries with similar pressing insurance challenges need also be considered. ASBFEO will provide advice to government on the merits of the proposal, the possible supports government could offer to the amusement, leisure, and recreation service and experience providers, and related public policy considerations.

The aim of this review is to allow this Office to provide further advice to Government on the need to support businesses in securing critical insurance products and investigate whether the DMF model that AALARA and Aon are proposing will resolve the insurance issues in the sector.

Context

The 2021 Budget included a measure to support access to insurance for northern Australia communities that have been or have been identified as at substantial risk of being impacted by natural disasters.

While this measure is very welcome for northern communities, it has provoked a considerable reaction from small businesses and their representative organisations highlighting the need for urgent action on 'their' compelling insurance issues.

There is an appreciation that the insurance sector suffers from hardening and softening in market cycles, and it is widely accepted that the sector is currently facing a hardening global market. The inability of specific businesses to access insurance, often despite the efforts of experienced brokers advocating on their behalf, has been publicised along with the impacts of being forced to cease operations.

The issues in obtaining insurance in Australia however, particularly for small business and family enterprises, appear to be endemic, and have far reaching consequences for business viability, competition, business entry and exits and consumer outcomes. Certain industries, including the

amusement and leisure industry, are likely to be unable to bear additional cost pressures in relation to their insurance coverage and will face large-scale closures. There has recently been significant coverage of the issues faced by the amusement and leisure sector, with many regional media outlets pointing to what they see as the demise of the amusement aspects of regional shows.

AALARA's submission to this Office's Insurance Inquiry in 2020 included advice that many businesses in its sector were unable to source affordable insurance. AALARA advised that many of its members had ceased to trade and were looking for work outside the industry. Very few insurance companies were willing to insure the industry and premiums were rising dramatically, sometimes by up to 150%. AALARA advised that it had conducted a survey in March 2020, gathering responses from 40 AALARA members, and found that the 40 Members collectively owned 297 pieces of plant and had made a total of 3 claims. Only 40.5% of Members had been offered renewal terms.

Scope of inquiry

The Ombudsman will review the proposal to establish a DMF for the amusement, leisure, and recreation industry. This work will build on the Ombudsman's previous inquiry, and include significant engagement with industry through AALARA and related industry stakeholders. This review will investigate whether the DMF model that AALARA and Aon are proposing will resolve the insurance issues in the sector and may form the basis of further advocacy work by the Ombudsman in the insurance space.

As part of the Inquiry, the Ombudsman will seek external expert advice as required, including specialist legal and actuarial advice. The Ombudsman may also seek advice from specialists in mutual insurance, drawing from the mutual insurance sector. The Ombudsman may decide to establish an expert advisory panel.

The Ombudsman's report will consider the framework for establishment of the DMF, the establishment phase (i.e. the first three years) and the DMF's ongoing operations.

In undertaking the review, and with the advice of external experts as required, the Ombudsman will:

1. Examine whether the cover provided by a DMF, and evidenced by a Certificate of Protection, will meet the requirements of members of the amusement, leisure and recreation sector to have public liability insurance as imposed by:
 - a. Governments;
 - b. Licensing and regulatory authorities; and
 - c. Contractual arrangements such as loan agreements, leases, and operating licences.
2. Consider any specific form of cover that the DMF would need to provide or any specific contractual obligations that would need to be included in the DMF's policies in order to satisfy the above requirements.
3. Examine the minimum levels of cover and any requirements that members would be obliged to obtain from the DMF in order to meet legal obligations.
4. Consider whether a DMF comprising of members of the amusement, leisure and recreation sector is likely to be financially viable on an ongoing basis, including identifying:
 - a. The start-up and ongoing costs of the DMF;
 - b. Industry interest and likely levels of participation in the DMF, including whether larger industry participants will join (and impacts if they do not);
 - c. What level of initial capital contribution to the premium pool will be required to ensure that it is self-sustaining (ie can meet claims for a 1 in 200-year event, 1 in 100-year event, and 1 in 50-year event):

- i. If the initial capital contribution is obtained via a loan, the expected time it will take the DMF to repay the loan;
 - d. The prior claims history of the industry, drawing on industry survey data and actuarial assessment;
 - e. How the DMF will operate in practice, including what level of claims will be funded through the DMF and what may be covered through re-insurance purchased by the DMF;
 - f. What form and amount of additional insurance the DMF will likely be required to meet claims that will not be covered out of the premium pool;
 - g. Whether the required additional insurance is available in the current market;
 - h. What the premiums for the additional insurance are likely to be and whether premiums are affordable and commercially reasonable for members of the DMF (including how premium payments will be split between members);
 - i. How the funds of the DMF should be managed to ensure ongoing viability of the DMF.
- 5. Outline appropriate legal and governance structures for the DMF, including considering measures the industry may be able to take in order to reduce the risk associated with the industry, and therefore insurance costs. This may include eligibility criteria for DMF members and ongoing eligibility verification.

Timeframe

The Ombudsman will commence the Inquiry on 7 June 2021, and will report to the Minister by no later than 6 August 2021.

Resources

The Small Business and Family Enterprise Ombudsman's agency will fund the inquiry from its existing budget.

FINAL June 2021.