

VICTORIAN SMALL BUSINESS COMMISSIONER

SUBMISSION TO

VICTORIAN COMPETITION AND EFFICIENCY COMMISSION

INQUIRY INTO STREAMLINING LOCAL GOVERNMENT REGULATION

Introduction

The Office of the Victorian Small Business Commissioner (VSBC) acknowledges that local government influences business growth and investment through its regulatory activities and procurement processes.

Based on its experience with local government over the last six years, the VSBC welcomes the opportunity to contribute to the Victorian Competition and Efficiency Commission (VCEC) Inquiry into *Streamlining Local Government Regulation*.

In this context, the VSBC comments concern some broad observations about the impact of local government generally on small business in Victoria together with more specific comments about local government:

- **dispute resolution mechanisms;**
- **procurement processes; and**
- **local law making.**

Office of the Victorian Small Business Commissioner

The VSBC is an independent Office established by the Victorian Government to promote greater fairness in business through its four main functions:

- information and education;
- review of government practices (including local government);
- investigation of small business complaints; and
- alternative dispute resolution (ADR).

The VSBC is established under its own legislation, the *Small Business Commissioner Act 2003*, which commenced operation on 1 May 2003. The purpose of the *Small Business Commissioner Act 2003* is to establish the VSBC to:

"...enhance a competitive and fair operating environment for small business in Victoria."

The VSBC also has an ADR/mediation function under the *Retail Leases Act 2003* and *Owner Drivers and Forestry Contractors Act 2005*.

The functions and powers of the VSBC are set out under s 5 of the *Small Business Commissioner Act 2003*, as follows:

- (a) *to facilitate and encourage the fair treatment of small business in their commercial dealings with other businesses in the marketplace;*
- (b) *to promote informed decision-making by small business in order to minimise disputes with other businesses;*
- (c) *to receive and investigate complaints by small businesses regarding unfair market practices and mediate between the parties involved in the complaint;*
- (d) *to make representations to an appropriate person or body on behalf of a small business that has made a complaint referred to in paragraph (c);*
- (e) *to monitor and report to the Minister on any emerging trends in the market practices that have an adverse effect on small businesses;*
- (f) *to encourage the development and implementation of small business service charters within government to ensure small businesses receive high quality service;*
- (g) *to monitor the operation and effectiveness of those small business service charters;*
- (h) *as required by the Minister, to monitor and report to the Minister on the impact that legislation in Victoria, government procedures and administration have on small businesses;*
- (i) *as required by the Minister, to assist other branches and agencies of government to develop legislation, government procedures and administration that provide alternative ways in which small businesses can comply with the requirements of the legislation, procedures and administration;*
- (j) *to investigate compliance with industry codes;*
- (k) *to advise the Minister generally about matters for which the Commissioner is responsible;*
- (l) *to advise the Minister on the operation of this Act.*

The Hon. Joe Helper MP, Minister for Small Business, has administrative responsibility for the *Small Business Commissioner Act 2003*.

Since its establishment, the VSBC has seen a continual increase in demand for its services. The number of complaints referred to the VSBC continues to grow and its mediation service is widely used and respected.

To date, over **6,500 matters** have been referred to the VSBC. Disputes valued at over **\$200 million** have been handled, resulting in savings to Victorian small business of millions of dollars and thousands of hours previously wasted in disputes.

During 2008-09, 1,362 disputes were referred to the VSBC, a 16% increase compared to last year (1,174). Notwithstanding the increase in disputes, the success rate of the VSBC in resolving matters, particularly through mediation, remains at around **80%**. Approximately 30% of matters were resolved prior to mediation through preliminary assistance or other investigatory action. In addition, preliminary assistance inquiries increased by almost 5% (7,581) during 2008-09.

General Observations - Local Government Regulation

Small business complaints about local government generally come to the VSBC under s 5 (2) (c) of the *Small Business Commissioner Act 2003*. As indicated above, under this provision, the VSBC has the following function:

*“to receive and investigate complaints by small businesses regarding **unfair market practices** and mediate between the parties involved in the complaint;”*

While the expression “*unfair market practices*” is not defined under the Act, the VSBC has commented on the meaning of this expression in successive *Annual Reports*. In the *VSBC Annual Report 2008-09*, the VSBC stated:

“In the VSBC view, the expression ‘unfair market practices’ is an expression of the broadest possible meaning. It includes any acts or omissions by any private sector or government entity in the course of business dealings or dealings related to business, regulatory or otherwise, within Victoria.”

Accordingly, the VSBC approach is to apply its “unfair market practices” jurisdiction to small business complaints about local government practices.

Over its six years of operation, the VSBC has dealt with various small business complaints concerning local government regulation and procurement. In fact, the VSBC has received over **60** formal complaints from small businesses concerning local government. The subject matter of these complains varies widely, including:

- the (adverse) operation (or non-operation) of local law making (e.g. public drinking – see below);
- the lack of best practice guidelines/codes concerning consistent decision-making;
- problems with planning laws;
- tendering processes/outcomes;
- corporate governance;
- project management;

- contractor insolvency (owing monies to subcontractors); and
- general commercial/contractual disputes.

While most of these complaints have been lodged by individual small businesses, others have been lodged by industry associations, including the Civil Contractors Federation.

The issue of the impact of actions by local government affecting small business has been a recurrent theme in successive VSBC *Annual Reports*. To emphasize the ongoing nature of these complaints, the VSBC has reproduced extracts from its *Annual Reports 2003-09* in **Attachment 1**.

Dispute Resolution Mechanisms

The VSBC considers that one way of streamlining the impact of local government regulation on small business is to **improve** dispute resolution mechanisms for disputes between small businesses and local government.

In order to resolve these disputes, the VSBC supports the use of:

- **preliminary assistance;**
- **pre-litigation mediation;**
- **facilitated meetings;** and
- **promoting informed decision-making** (and improving business conduct).

These processes apply to the private and public sectors. They should also apply to local government.

As indicated above, a key role for the VSBC is providing **preliminary assistance** in dispute resolution. During 2008-09, approximately 30% of matters before the VSBC were resolved by preliminary assistance or other investigatory action.

In respect of **pre-litigation mediation**, one of the main reasons for the success of the VSBC is that it provides a mediation service to resolve disputes before formal, costly, adversarial legal proceedings are commenced.

Small businesses in dispute (with other businesses – or local government) appreciate the VSBC mediation service because of its non-threatening approach and its low cost, speedy resolution of disputes, which helps all parties avoid expensive formal litigation.

Parties also appreciate that the VSBC is an independent statutory office and is not supervised by a court or tribunal.

Pre-litigation mediation helps alleviate the social and emotional toll on parties who might otherwise be forced to wait long periods of time before matters come before the courts. The emotional stress of being in dispute is alleviated by the VSBC being able to mediate the case, on average, within eight weeks of notification. This benefits the parties, tribunal and court systems, and community more generally.

The issue of pre-litigation mediation, and the role of the VSBC, was commented upon in the May 2009 Victorian Parliamentary Law Reform Committee's *Inquiry into Alternative Dispute Resolution*, where it stated [at p. 155]:

"The Committee notes the diversity of views about requiring litigants to participate in ADR before commencing legal action. It acknowledges evidence that the family law and [VSBC] systems are operating to resolve many matters successfully without recourse to the courts."

This is consistent with the November 2009 National Alternative Dispute Resolution Advisory Council (NADRAC) Report entitled *The Resolve to Resolve – Embracing ADR to Improve Access to Justice in the Federal Jurisdiction*, where NADRAC commented on the need for the greater use of ADR. In this context, NADRAC commented [at p. 21] that it was:

"...encouraged by the operation of several innovative ADR programs, including...the [VSBC]."

In November 2009, the Victorian Government formally responded to the Victorian Parliamentary Law Reform Committee's above report. One of the issues in the report concerns encouraging ADR through *Model Litigant Guidelines*.

The *Model Litigant Guidelines* require the State of Victoria, its Departments and agencies (not, currently, local government) to "*behave as a model litigant in the conduct of litigation.*" While the Guidelines require the State/Departments/agencies to "*avoid litigation, wherever possible*", they do not, currently, require the State to positively consider/participate in ADR.

The VSBC has raised this issue with the Attorney-General, recommending that the *Model Litigant Guidelines* be amended to recognise, support and promote the use of ADR, for both court, and non-court, related proceedings.

In its formal response to the above report, the Victorian Government referred to the VSBC and stated:

"The proposal to include ADR in the model litigant guidelines is being developed by DOJ and recommendations will be made to the Attorney-General in late 2009 or early 2010."

In addition to supporting of extension of ADR to the *Model Litigant Guidelines*, **the VSBC considers that any such amended Guidelines should also apply to local government.**

This would mean local government would be required to recognise, support and promote the use of ADR, for both court, and non-court, related proceedings in disputes, including disputes with small business.

In respect of **facilitated meetings**, the VSBC also promotes less formal meetings where more formal mediation processes may not be appropriate. These 'facilitated meetings' are offered when one of the parties has a concern or reluctance about committing to mediation.

The VSBC has conducted facilitated meetings in disputes between small businesses and local government.

The purpose of VSBC facilitated meetings, like mediation, is to bring the parties together to seek to address or resolve issues of concern to them. Such meetings may take the place of mediation, or they may be used as another means of intervention, or 'ice breaker', to bring the parties together. This is particularly the case where a respondent does not consider it can make/offer any compromise because the subject matter may not be amenable to compromise, or may be more policy-related.

The VSBC is achieving successful outcomes in facilitated meetings. These meetings may also play an important information and education role.

In respect of **promoting informed decision-making**, this is consistent with the functions of the VSBC under ss 5 (2) (a) and (b) of the *Small Business Commissioner Act 2003*.

The VSBC has taken proactive steps to inform and educate businesses on how to avoid disputes (with other businesses, and local government) by seeking to **improve business conduct**. This has included producing a report '*Forming and Maintaining Winning Business Relationships*', which is serving as an instructive guide or benchmark for all businesses to improve business conduct (available at www.sbc.vic.gov.au).

The report highlights seven characteristics for success in a business relationship:

ALIGNMENT of a business's values and ethics, internally with day to day behaviour of its employees and externally with its chosen business partners;

COMMITMENT wherever possible to a long term business relationship based on trust rather than a "one off" arrangement;

MUTUAL INTERESTS of each business to achieve the common goal of a profitable, sustainable and on-going relationship;

COMMUNICATION that is clear, transparent and frequent, to ensure that all parties fully understand the others position, that obligations are met and that any issues or problems are raised early;

ACCOUNTABLE AND RESPONSIBLE approach, which means all parties need to agree to their obligations and responsibilities and immediately alert business partners of any problem or mistake;

PROFESSIONAL CONDUCT in all interactions between businesses, which can be the difference between a successful relationship and another not getting off the ground; and

PRE-AGREED DISPUTE RESOLUTION, essential so that any disputes can be dealt with quickly and the relationship can continue with minimum disruption.

The VSBC considers that this improving business conduct report also applies to small business and its dealings with local government.

Local Government Procurement

The VSBC notes that various bodies have introduced different instruments to address local government procurement issues. This includes the CCF (via its *Code of Practice for Tendering and Contract Management 2007*), Local Government Victoria (LGV) (via *Best Practice Procurement Guidelines 2008*) and the Building Commission (BC) (via a review of the *Victorian Code of Practice for the Building and Construction Industry 1999*).

All these initiatives are worthwhile.

Based on its experience, in respect of procurement, the VSBC considers that local government should:

- **publish procurement policies on their websites, and provide information on how business can access and win local government work;**
- **commit itself to assisting small to medium-sized business, and regional, suppliers access and win tenders;**
- **commit itself to complying with the Victorian Government's Fair Payments policy;**
- **respect the rights of both contractors and subcontractors.**

To date, the VSBC has encouraged the development of small business service charters across government departments, rather than local government per se (refer, for instance, to the Department of Innovation, Industry and Regional Development Small Business Service Charter). However, the VSBC has encouraged local government to consider such charters as a means of ensuring that their small business clients and customers also receive high quality service.

In respect of the above Fair Payments policy, the VSBC notes the Victorian Government's 2006 small business policy statement '*Time to Thrive – Supporting the changing face of Victorian small businesses*'. Action 11 of this policy is entitled '*Ensuring small businesses are paid promptly*'.

Under the Fair Payments policy, State (**not** local) government departments and agencies are required to pay suppliers within 30 days of receipt of invoices for goods or services, where the value of the invoice is less than \$3 million. Suppliers not paid in time are entitled to penalty interest payments, at the initiative of the (small business) supplier.

The Victorian Government small business policy states:

"The Victorian Government will extend to major and significant agencies the commitment to paying bills within 30 days (for contracts valued at less than \$3 million). We are also working with Local Government to encourage adoption of this policy across the Local Government sector and will support that sector to examine and address issues in its relationship to small business."

Cash flow is the life blood for small business, particularly in difficult economic times.

The VSBC considers that, in respect of procurement, the Fair Payments policy should be extended across local government.

Currently, after 30 days, small businesses can then seek the imposition of penalty interest payments.

The VSBC considers that shifting the onus on small business to recover penalty interest is potentially unfair and may act as a disincentive towards seeking penalty interest.

The VSBC considers that not only should the Fair Payment policy be extended to local government but that penalty interest should be automatically paid after the said 30 days (rather than at the initiative of the small business supplier).

For consistency, the automatic payment of penalty interest should also apply to government departments and agencies.

Local Laws

The VSBC has had some experience with local government local law making. The VSBC considers that there needs to be **greater vigour and accountability** in respect of local law making.

While Victorian legislation and regulations are subject to formal assessment processes within Government prior to legislation and regulations becoming law, local laws are **not**. Hence, new legislative proposals must undergo Business Impact Assessment (BIA) processes, whilst proposals for new regulations must go through a Regulatory Impact Statement (RIS) process.

Local laws made by local government, however, are not so regulated. Relatedly, and relevantly, neither is their impact on small business.

Rather, local government is given a broad discretion to make laws for their local communities. This is consistent with s 111 (1) of the *Local Government Act 1958*, which states:

“A Council may make laws for or with respect to any act, matter or thing in respect of which the Council has a function or power under this or any other Act.”

The issue of local government law making (rather than its impact on small business per se) has been around for some time.

The VSBC considers that there needs to be greater scrutiny and accountability of local law making, and its impact on small business.

This is demonstrated in the following Case Study.

LOCAL GOVERNMENT LOCAL LAW MAKING

PUBLIC DRINKING

In May 2003, a small business lodged a complaint with the VSBC under the *Small Business Commissioner Act 2003* concerning the City of Yarra. The complaint concerned public drinking in Smith Street, Collingwood.

Following some correspondence, in 2004, the VSBC wrote to the City of Yarra **recommending** the introduction of Local Law 8.

In 2005, a second, related, complaint was lodged with the VSBC by an association of small businesses. The VSBC made further representations to Council about the issue.

In 2008, a third, related, complaint was lodged with the VSBC by representatives who had businesses in Smith Street.

All complaints sought the introduction of Local Law 8 to ameliorate issues concerning public drinking in Smith Street, Collingwood.

In 2009, some six years after the issue of public drinking was first raised with the VSBC, the City of Yarra invoked Local Law 8.

The Case Study demonstrates the lack of accountability (and associated impact on small business) of local government making (or not making) local laws.

Suffice to say, the issue of public drinking was/is a complicated one, involving different, and sometimes competing, interests. However, from a small business impact perspective, it took more than six years for the issue of public drinking to be regulated in the above Case Study.

Conclusion

Since its establishment in 2003, the VSBC has dealt with a number of issues concerning local government regulation and their impact on small business.

In respect of **dispute resolution** (that is, disputes between small business and local government), the VSBC supports the use of:

- preliminary assistance;
- pre-litigation mediation;
- facilitated meetings; and
- promoting informed decision-making (and improving business conduct).

The VSBC considers that the *Model Litigant Guidelines* should be amended to recognise, support and promote the use of ADR, for both court, and non-court, related proceedings. The *Guidelines* should be extended to local government.

In respect of **procurement**, the VSBC considers that local government should:

- publish procurement policies on their websites, and provide information on how business can access and win local government work;
- commit itself to assisting small to medium-sized business, and regional, suppliers access and win tenders;
- commit itself to complying with the Victorian Government's Fair Payments policy;
- respect the rights of both contractors and subcontractors.

The VSBC considers that the government's Fair Payments policy should be extended across local government. Further, that penalty interest should be automatically paid by local government after 30 days (rather than at the initiative of the small business supplier).

In respect of **local laws**, the VSBC submits that there needs to be greater scrutiny and accountability of local law making and, relevantly, its impact on small business.

The VSBC considers that these issues should be considered in the context of streamlining local government regulation and procurement processes.

ATTACHMENT 1

EXTRACTS FROM VSBC ANNUAL REPORTS 2003-09

VSBC COMMENTS CONCERNING LOCAL GOVERNMENT REGULATION AND IMPACT ON SMALL BUSINESS

VSBC ANNUAL REPORTS 2003-09

REFERENCES TO IMPACT ON SMALL BUSINESS OF LOCAL GOVERNMENT REGULATION

VSBC Annual Report 2003-04

[pp.30-31] Specific issues addressed during the year included:

- ...Small Business dealings with Councils;

GOVERNMENT PRACTICES CASE STUDY 1

A small business consultant claimed that he had developed a business idea and presented the idea to a local council with the hope of tendering for the opportunity to develop the idea further, but before being able to do so, another local council took over his concept and developed it without giving any recognition.

The OSBC has written to the two councils concerning the allegations. As at 30 June 2004 had the investigation not concluded.

VSBC Annual Report 2004-05

[p. 5] Following a series of presentations, the Civil Contractors Federation lodged complaints with the VSBC concerning the tendering process, corporate governance and project management of several Victorian water authorities and local councils.

In some instances the Commissioner investigated, mediated and resolved these disputes quickly. With others the VSBC is seeking to make some broader changes to the way local government and water authorities operate so that their processes and practices will not adversely impact small business.

[p.36] Consistent with the importance, and impact, of government practices on small business recognised under the *Small Business Commissioner Act 2003*, and an increasing workload for the VSBC, the Commissioner established the Government Practices Branch in 2004-05. The role of the Government Practices Branch is to ensure that government practices do not have a negative impact on the operations of small businesses and to enhance a competitive and fair business environment for small businesses in Victoria. To this end, the Government Practices Branch examines government legislation, regulation, practices and procedures. This includes all three tiers of government – Commonwealth, State and local government - albeit with a stronger emphasis at the State Government level.

...

Alleged unfair market practices are not restricted to the private sector. Alleged unfair market practices can also relate to governmental activities. During 2004-05, the VSBC received various complaints against government bodies. This includes complaints against government departments, agencies, water authorities, local councils and other bodies. The range of topics concerning unfair market practices varies widely. However, there were two issues which arose in a number of cases. First, the tendering practices of different bodies, in particular, local councils. The complaint in these cases did not necessarily concern the small business being aggrieved with an adverse outcome. Rather, the concern related more to the tender process and the skills required to manage tender processes. Second, subcontractor small businesses being owed monies by contractors becoming insolvent. In these cases, the contractor had been contracted by the principal (usually local council or water authority) to manage a particular project. During 2005-06, the VSBC will continue to address these issues, with regulators, State and local government agencies and industry associations (such as the Civil Contractors Federation).

VSBC Annual Report 2005-06

[p. 2] The capacity to investigate unfair market practices does much to redress imbalance in small and big business relationships. In 2005-06, 45 investigations were referred to the VSBC. Many of the investigations are ongoing, and are not easily resolved. However, with perseverance a reasonable outcome can be achieved for the complainant. Again, there was a wide range of matters investigated, including private sector contractual and franchising disputes, business licensing requirements, local government planning requirements, local law issues, and compliance with onerous regulatory requirements.

...

Since the establishment of the Government Practices Branch in 2004-05, the VSBC has received an increasing number of complaints about governmental activities, whether this be commonwealth, state or local government. To some extent, this reflects an increasing small business awareness of the constructive role which the VSBC can play in these matters, consistent with its broader role under the *Small Business Commissioner Act 2003*. It also reflects the fact that while government is becoming more small business conscious, in terms of the impact of its decision making on small business, there is room for improvement.

The subject matter of government complaints to the VSBC varies widely. However, issues associated with implementation of government services, tendering and project management remain a source of concern to small business. While the VSBC has made some useful inroads into improving these government services to the small business community, ongoing work is required.

During 2006-07, the VSBC will continue to seek to make all levels of government more 'small business friendly'. In particular, the VSBC would like to see local councils and water authorities become more small business conscious in their tendering and project management dealings with small business. In this respect, perhaps guidelines or codes of practice would provide a vehicle for tangible benefits.

[pp. 34-35] As was reported in the VSBC's 2004-05 *Annual Report*, the VSBC now has a dedicated Government Practices branch. The objective of the branch, consistent with the purpose of the *Small Business Commissioner Act 2003*, is to enhance a competitive and fair operating environment for small business in its commercial and related dealings with government. This relates to all tiers of government, including commonwealth, state and local government, and their respective departments and agencies. Since the formal establishment of the VSBC Government Practices Branch in 2004-05, the branch has experienced a steady increase in its workload.

...

During 2005-06, the VSBC received an increasing number of unfair market practice complaints against governmental bodies. The subject matter of these small business complaints varied widely and included issues associated with implementation of government services, tendering and project management issues. The latter issues, in particular, continue to be a source of ongoing concern to small business.

This was a matter commented upon in the VSBC's 2004-05 *Annual Report*:

First, the tendering practices of different bodies, in particular, local councils. The complaint in these cases did not necessarily concern the small business being aggrieved with an adverse outcome.

Rather, the concern related more to the tender process and the skills required to manage tender processes. Second, subcontractor small businesses being owed monies by contractors becoming insolvent. In these cases, the contractor had been contracted by the principal (usually local council or water authority) to manage a particular project.

The issues of tendering practices of councils and contractor insolvency remain difficult issues.

In respect of tendering practices, in February 2006, the Civil Contractors Federation (CCF) and Local Government Professionals (LGPro) released a draft *Code of Practice for Tendering and Contract Management* "...with a view to enhancing the tendering and contract management practices in local governments

and by civil contractors, as well as driving further efficiency improvements in project delivery.” In principle, the VSBC supports the draft code as it may apply to local council tendering and contract management issues.

Relatedly, in April 2006, the Minister for Local Government released for consultation draft *Best Practice Procurement Guidelines* to assist councils and regional library corporations. The draft guidelines “...outline what is current best practice and is largely based on the procurement framework that applies to state government. The draft guidelines set out the all basic principles for procurement and describes a best practice framework supported by appropriate policies.” The VSBC provided some comments to the Department for Victorian Communities about the draft guidelines.

In particular, that local government should:

- Publish procurement policies on their websites, and provide information on how business can, access and win local government work;
- Commit itself to assisting small to medium-sized business and regional suppliers’ access to and awarding of tenders;
- Commit itself to complying with the Fair Payments policy;
- Respect the rights of both contractors, and subcontractors; and
- Formally report on implementation and observance of the guidelines.

The finalisation/implementation of the draft *Code of Practice for Tendering and Contract Management* and draft *Best Practice Procurement Guidelines* may go some way towards addressing the issue of tendering practices of councils.

The same observation applies to the second, above, issue – contractor insolvency. According to the CCF, it is “...of the firm belief that in the interest of protecting Victoria’s small businesses, councils, water companies and Government agencies should be required to take all steps practicable to ensure that Subcontractors are paid by the Principal Contractor.” The VSBC supports this view. To this end, the VSBC has raised the issue with the Australian Securities and Investments Commission (ASIC), in cases of alleged insolvent trading by contractors. The VSBC supports ASIC’s interest in this issue.

Such cases may also involve accusations of perjury, where the contractor has provided the principal with a Statutory Declaration that all subcontractors have been paid. This is a matter for Victoria Police to investigate.

Government Practices Case Study 1 demonstrates the ability of the VSBC to customise its response depending on the particular circumstances of the alleged unfair market practice. In some cases, the Government Practices Branch seeks to resolve complaints through practical discussions with the parties. In other cases, the VSBC will make preliminary inquiries with the respondent in an attempt to resolve the matter. In some cases, the VSBC will organise mediation between the parties,

consistent with the VSBC approach to business-to-business and retail leasing disputes under the *Small Business Commissioner Act 2003* and *Retail Leases Act 2003*. In other cases, the VSBC will organise facilitated meetings between the parties, utilising the services of one of the VSBC mediators/facilitators. Each complaint raises different issues for how the Government Practices Branch seeks to provide the affected small business with some form of practical assistance.

...

[p. 40]

REPRESENTATIONS CASE STUDY 1

A small business, via its industry association, lodged an unfair market practice complaint with the VSBC under the *Small Business Commissioner Act 2003* in respect of another business and local council. The small business/subcontractor was owed monies by the insolvent business. The insolvent business/contractor had been providing services to a local council/principal.

Initially, the VSBC made preliminary inquiries about this matter with the administrator of the contractor and the [CEO] of the local council. These inquiries revealed that the contractor had provided the local council with statutory declarations that all subcontractors had been paid outstanding monies for services provided. In reviewing its role in the case, the local council agreed to examine and improve if necessary its project management policies and practices.

In respect of the issue of allegedly false statutory declarations and the related issue of possible insolvent trading, the VSBC made a formal representation to ASIC about the case, pursuant to s5(2)(c) of the *Small Business Commissioner Act 2003*. The matter remained in progress as at 30 June 2006.

REPRESENTATIONS CASE STUDY 2

A small business lodged an unfair market practice complaint with the VSBC under the *Small Business Commissioner Act 2003* in relation to an unfair competition problem with a local government-funded enterprise. The issue concerned the impact of a new aquatic centre on an existing small business health club.

Initially, the VSBC made preliminary inquiries about the matter with the [CEO] of the local council. The council subsequently agreed to mediate the complaint with the small business, however, the mediation was unsuccessful.

The VSBC then made a formal representation to the relevant government department which had responsibility for developing the funding criteria relevant to these facilities. In so doing, the VSBC was provided with input into the development of the Competitive Neutrality Policy applicable to such facilities.

REPRESENTATIONS CASE STUDY 3

In its 2005-06 *Annual Report*, outlined this case study, however, it had not been concluded as at 30 June 2005. Since then, the matter has been concluded.

Soon after the establishment of the VSBC in May 2003, a property owner alerted the office to a situation where the land valuation by local council of his property was incorrect, and was much higher than the property was worth, resulting in a land tax assessment bill of many thousands of dollars more than it should have been.

However, the property owner did not immediately object to the valuation or alert the State Revenue Office (SRO) to this fact before the allocated time to dispute the assessment, so the assessment stood. The property owner contacted the VSBC and the VSBC met with various local council and SRO representatives to try to resolve the matter. However, according to the *Valuation of Land Act 1958*, there were no means for having the error rectified.

The VSBC later identified that the matter could be resolved under the *Land Tax Act 1958* which states that the Commissioner for State Revenue can exercise discretion to amend Land Tax assessments without necessarily referring to a local council valuation.

The VSBC made representations to the Commissioner for State Revenue seeking his exercise of discretion on the matter. The Commissioner for State Revenue responded to the representations by exercising his discretion to amend the Land Tax assessment reducing the bill from some \$48,000 to \$1,500.

VSBC Annual Report 2006-07

[p. 33] In last year's Annual Report, the VSBC made comments about a draft *Code of Practice for Tendering and Contract Management* produced by the Civil Contractors Federation (CCF) and Local Government Professionals. This has now been superseded by a *Best Practice Guide for Tendering and Contract*

Management produced by the CCF and the Institute of Public Works Engineering Australia. Relatedly, the VSBC commented on some draft *Best Practice Procurement Guidelines* released by the Minister for Local Government. The VSBC understands these Guidelines have not yet been finalised.

GOVERNMENT PRACTICES CASE STUDY 1

A small business, through its industry association, made a complaint with the VSBC in respect of various local councils. The Applicant alleged that “...*the practices of the councils... are contributing to an increased financial burden on the Victorian home-buyer through unnecessary subdivisional construction costs.*”

The VSBC wrote to the councils concerned and the relevant Department about this matter, and received some constructive comments which were conveyed to the Applicant. The Applicant then decided to have its own discussions with the councils, relying on the VSBC’s initial assistance.

VSBC Annual Report 2007-08

[p. 37] One of the functions of the VSBC under the *Small Business Commissioner Act 2003* is to ensure that Government (State and local government, in particular) improves the business environment in which it operates and is conscious of the needs of its small business clients and customers.

...

As in previous years, during 2007–08, the VSBC received a number of complaints against Commonwealth and State Government departments and agencies and local councils. These complaints ranged from procurement practices, relationship issues between small businesses and their industry associations and the government body, and appropriate dispute resolution mechanisms to resolve complaints between small businesses and government.

In respect of local government, complaints concerned tendering and contract management issues, including inconsistency, lack of transparency and lack of innovation. Other issues included the introduction and implementation of local laws, raised by affected small businesses.

These complaints were lodged with the VSBC by both individual small businesses as well as industry associations, such as the Civil Contractors Federation and the Victorian Automobile Chamber of Commerce (on behalf of their respective members).

[p. 38] In respect of local government, the VSBC notes a couple of worthwhile initiatives, vis-à-vis tendering and local laws. The State Government’s Councils Reforming Business (CRB) program is a partnership with the Municipal Association of Victoria. Components of the CRB initiative include the development of a local government procurement strategy, as well as best practice in local law

making. The purpose of the procurement exercise is to improve local government procurement outcomes. The purpose of the local law making exercise is to achieve best practice in regulatory local laws to reduce unnecessary costs and burdens on business. As both issues impact on small business, the VSBC will await developments in 2008-09.

VSBC Annual Report 2008-09

[p. 29] As in previous years, the VSBC received a number of complaints against Government departments, agencies and local councils. These complaints ranged from tendering practices, commercial and related relationship issues between parties, and alternative dispute resolution mechanisms to resolve complaints between small businesses and government.

In respect of local government, as in previous years, complaints concerned local laws and procurement and contract management issues, including inconsistency, lack of transparency and lack of innovation.

Complaints were lodged by individual small businesses and industry associations, including the Civil Contractors Federation and Victorian Automobile Chamber of Commerce.