



FORMING AND MAINTAINING WINNING BUSINESS RELATIONSHIPS

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1. Executive Summary

The Office of the Victorian Small Business Commissioner (VSBC) has been operating since May 2003 under the legislated goal to *enhance a competitive and fair operating environment for small business in Victoria*.

Through investigating complaints regarding unfair business practice and mediating business disputes, VSBC identified some recurring themes involved in the breakdown of business relationships. The VSBC recognised that if these businesses had behaved in a different way, the dispute may never have arisen or may have been resolved earlier, eliminating the need for mediation. VSBC was therefore keen to explore opportunities to increase the effectiveness of business interaction by identifying and communicating behaviours that underpin successful business relationships.

Deloitte was commissioned to undertake an *Improving Business Conduct Study*. The study has been structured to identify and outline those behaviours that underpin successful business-to-business (B2B) relationships, and to highlight the business case for adopting these behaviours.

It is not an objective of this study to promote these behaviours as a code of conduct or to prescribe enforceable behaviours.

Desk-based research was complemented by interviews with Australian business leaders and VSBC stakeholders. Australian business leaders were unanimous in the assertion that successful business-to-business relationships improve commercial outcomes for all parties. Successful relationships drive improved commercial outcomes by decreasing costs and increasing competitive advantage. Business leaders further emphasised that a successful business relationship does not just happen; rather it requires a commitment to some key behaviours as you form and maintain the relationship.

A clear consensus emerged that there are seven main characteristics of successful B2B relationships. Each of these characteristics is integral to long-term, mutually beneficial and sustainable relationships.

The seven main characteristics are:

1. “The **ALIGNMENT** of the values and ethics of a business internally with the day-to-day behaviour of its employees, and externally with its chosen business partner(s).”
2. “A **COMMITMENT** wherever possible to a long-term relationship rather than a one-off transaction.”
3. “The recognition that working towards a common goal based on **MUTUAL INTERESTS** is the best way to achieve a profitable and sustainable outcome for all parties.”
4. “Clear, transparent and frequent **COMMUNICATION** to ensure that all parties fully understand the other’s position, that obligations are met, and that any issues or problems are raised early.”
5. “All parties recognising that they are **ACCOUNTABLE AND RESPONSIBLE** to the other for the success of the relationship.”
6. “**PROFESSIONAL CONDUCT** in all interactions between all parties.”
7. “Rapid and satisfactory resolution of disputes/issues through **PRE-AGREED DISPUTE RESOLUTION PROCEDURES**.”

This report investigates the behaviours that support these characteristics and that drive successful relationships at the point where they are formed, and on an ongoing basis to maintain success.

The report also flags potential mechanisms that will assist in communicating the results of the study to the business community.

VSBC and Deloitte would like to thank all those who provided input to this study. These include all members of the Reference Group (See Appendix B), the Australian business leaders, professional, and industry groups/associations, business mediators, and VSBC staff (See Appendix A) who also gave their time. Without their input this study would not have been possible, and Deloitte and VSBC are grateful for their insight.

2. Why should businesses aspire to improve their business-to-business behaviour?

2.1 DEFINING SUCCESSFUL B2B RELATIONSHIPS

Feedback from the interviewed Australian business leaders indicates that successful B2B relationships are critical to the long-term success of a business. The central themes that define successful business relationships are:

- sustainability over the long term
- mutual benefit, with maximum commercial advantage to all parties
- quick and cost-effective resolution of disputes, with minimum disruption to the continued functioning of the relationship.

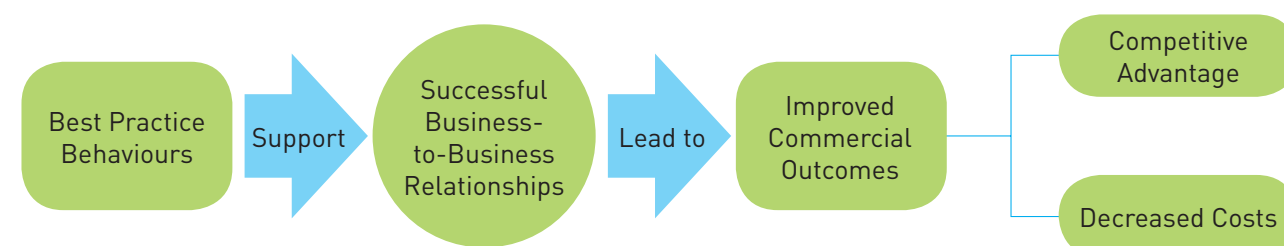
Business leaders further emphasised that a successful business relationship does not just happen; rather it requires commitment to ongoing behaviours to form and maintain the relationship.

It was acknowledged that although some interactions may be one-off and transactional in nature, the parties involved should approach the interaction with the default view to forming a longer-term relationship.

2.2 THE COMMERCIAL BENEFITS OF IMPROVING B2B RELATIONSHIPS

Australian business leaders were unanimous in the assertion that successful B2B relationships improve the commercial outcomes for all the parties involved by decreasing costs and increasing competitive advantage.

Figure 3-1: Schematic of logic for adopting behaviours to improve B2B relationships



1. Decreased Costs

- Successful long-term relationships lead to more efficient interactions between all parties that in turn lead to decreased transactional costs.
- Successful relationships result in improved business partner loyalty that in turn leads to decreased switching costs.¹
- In successful relationships all parties usually pre-agree dispute resolution procedures at the outset. Therefore, when disputes do arise, all attempts are made to settle the dispute as quickly and cost effectively as possible before engaging lawyers.
 - Cost-benefit analysis shows that alternative dispute resolution procedures can be less costly than traditional alternatives such as litigation or drawn out bilateral negotiations.²
 - Evidence suggests that *mediation is much cheaper than litigation ... the mediation of commercial disputes costs 5% of the costs of litigating or arbitrating the same matters.*³
 - Where a continuing relationship is at stake, cost savings are greatest.⁴

2. Competitive Advantage

- The reputation of many businesses is increasingly linked with the reputation of their external partners due to a growing trend of selective outsourcing of non-core capabilities.
- Poor business conduct by these external parties can have a negative impact on the reputation of the business paying for their services.
- Competitive advantage can result from a strong reputation for appropriate behaviour in business relationships. This can assist in increasing the revenues of a business.
- There is an increasing trend, particularly among the younger demographics, towards a generation of "ethicists" (individuals who are more likely to make decisions based on ethical considerations). Therefore, businesses need to demonstrate their commitment to ethical behaviour in order to maintain and build their reputation - relative to their peers - among their key stakeholders.

This will help to:

- Attract and retain the best staff
- Build and/or maintain their brand
- Strengthen relationships with business partners.

¹ Business partner includes supplier, contractor, business customer or any other business with whom they interact.

² Report of the Chief Justice\92s Policy & Planning Sub-Committee on Court-Annexed Mediation, page 9, November 1991.

³ NSW Supreme Court referring to Resolution Of Disputes ACDC (1987) Volume 1, No. 2 at Page 1.

⁴ Chinkin C.R. & Dewdney M.,\91 Settlement Week in NSW: An Evaluation\92 (1992) ADJR at page 93 (see also 1992 and 1993 evaluations).

3. The characteristics of successful business relationships

During our conversations with Australian business leaders we investigated the characteristics of successful B2B relationships.

A clear consensus emerged that there are seven main characteristics of successful relationships. Each of these characteristics is integral to long-term, mutually beneficial and sustainable relationships.

Successful B2B relationships are characterised by:

1. “The **ALIGNMENT** of the values and ethics of a business, internally with the day-to-day behaviour of its employees, and externally with its chosen business partner(s)”

The ability of a business to *Walk the Talk* demonstrates its commitment to behaving in an ethical way and is essential to building a positive reputation. This applies both directly in its internal day-to-day actions as well as indirectly through the external actions of the partners selected. It is critical that a business enters a relationship with other businesses that demonstrate a commitment to a similar set of values to their own.

Businesses can demonstrate their commitment to *Walk the Talk* through the development and communication of organisational values and codes and through recognition of employee behaviour that conforms to those values.
2. “A **COMMITMENT**, wherever possible, to a long-term relationship, rather than a one-off transaction”

Commitment is necessary to build a long-term relationship as it provides a solid basis from which trust can flourish between all parties. Successful relationships are built on an investment of effort that starts with the default view to forming and maintaining long-term associations.
3. “The recognition that working towards a common goal based on **MUTUAL INTERESTS** is the best way to achieve a profitable and sustainable outcome for all parties”

For a relationship to be mutually beneficial there needs to be agreement at the outset on a common goal defined by all parties’ commercial interests. Successful relationships recognise and support the mutual interests of the parties involved.
4. “Clear, transparent and frequent **COMMUNICATION** to ensure that all parties fully understand the other’s position, that obligations are being met, and that any issues or problems are raised early”

Poor communication was one of the most regularly cited reasons for a breakdown in relationships. It is critical that businesses communicate with all parties in a way that is adequate, relevant and timely to build a successful relationship.

5. “All parties recognising they are **ACCOUNTABLE** and **RESPONSIBLE** to the other for the success of the relationship”

All parties need to understand their obligations and responsibilities under the terms of the relationship and be accountable for them at all times. Failure to do so may lead to the breakdown of the relationship.

6. “**PROFESSIONAL CONDUCT** in all interactions between all parties”

While professional conduct should be a prerequisite for any B2B interactions, it was cited as a particular problem when small businesses were dealing with larger corporate businesses, as smaller business sometimes lacks the knowledge, experience and resources. Many of the behaviours associated with professional conduct are common sense, and easy to adopt. They can be the difference between forming and maintaining a successful relationship and the relationship never getting off the ground.
7. “Rapid and satisfactory resolution of disputes/issues through **PRE-AGREED DISPUTE RESOLUTION PROCEDURES**”

All relationships will have disputes at some time or another; the sign of a successful relationship is one that is able to deal with these disputes quickly and cost effectively so that the relationship can continue with minimum disruption.

For this to occur it is essential that all parties agree on dispute resolution procedures at the outset of the relationship. They need to acknowledge that litigation is the last resort and all reasonable efforts should be made before this to settle the dispute internally, preferably through mediation.

An important insight from the meetings with Australian business leaders was that the behaviours they engage in to support the above characteristics vary depending on the stage of the relationship. The two distinct relationship stages identified as being critical were **forming a relationship** and **maintaining a relationship**.

4. The key behaviours that underpin these characteristics

The following behaviours were communicated by Australian business leaders as being necessary to successfully **form** and **maintain** B2B relationships.

While this is not an exhaustive list of all the behaviours that support successful relationships, should businesses engage in some or all of these behaviours, it will lead to a significant improvement in the commercial outcome of a new or existing business relationship.

Quotes from Australian business leaders interviewed for this project are included alongside the behaviours, while case studies are included at the end of each Characteristics section.

We recognise that smaller businesses can be constrained in terms of resources nonetheless, it is important that these businesses understand and apply these behaviours.

“The biggest difficulty is for small businesses to have enough time to disengage from day-to-day operations and focus on how to grow the business; it is essential however that they do, otherwise they will only ever be reacting to changes in market conditions”

– Fred Harrison, CEO, Ritchies

“The behaviours that support successful business relationships need to be seen as relevant by small businesses and not at a level that would bring little or no benefit in complying”

– Chris Seers, President, Small Business Mentoring Service Inc.

1. ALIGNMENT

Businesses FORMING successful relationships:

- enter into relationships with businesses that have similar values to their own
- make sure that business values are on the table for discussion
- confirm that all staff are committed to these values; not just senior management
- understand the competitive advantage the relationship can bring to their business, and invest commensurate to that advantage
- meet with prospective business partners at equivalent levels of seniority
- do their homework to confirm that prospective business partners are genuine and are prepared to *Walk the Talk*; they:
- look for relevant, up-to-date references from mutual contacts
- confirm prospective partners’ reliability, the quality of their products, and their adherence to values and ethics at all levels of the organisation
- trust their instincts and have the courage to walk away from discussions and potential relationships should things not *feel right*.

“We want our people to feel and behave like owners of the business”
– Rohan Jeffs, General Manager of Group Compliance, Woolworths

“The depth to which you go in a relationship depends on the level of competitive advantage the relationship confers on your business” – Mike Hawker, CEO, Insurance Australia Group

“To do business with someone they have to pass the good bloke test; you usually get a gut feel. Trust your instincts and do not be afraid to judge someone based on your own values” – Giam Swiegers, CEO, Deloitte Australia

“Small businesses need to have the courage to stand up for themselves and walk away if the terms on offer are not what they want”
– David Kepper, President, The Liquor Stores Association of Victoria

Businesses MAINTAINING successful relationships:

- live their values in all of their actions
- adopt appropriate goals to guide behaviour
- build these goals into employee performance reviews
- regularly check the extent to which they live their values
- assign responsibility to an employee to monitor business performance against these goals
- report to senior management on a regular basis.

“Organisations need to develop a culture - from the top - of appropriate business behaviour, and this should be driven personally by the CEO” – Dr Phil Burgess, Managing Director Public Policy & Communications, Telstra

“One approach is to survey customers and suppliers on a regular basis, and assign them a score that represents how they view outcomes from their interaction with your business. These scores can then feed into the Key Performance Indicators for employees” – Maureen Joseph, National Manager - Strategic Development Repair Industry, AAMI

“The services provided by external suppliers can have an impact on your brand so it is very important to get these relationships right” – Rob Kella, Chief Risk Officer, Qantas

CASE STUDY 1

The importance of internal alignment of employees' behaviour with businesses' values was demonstrated in a dispute between a Melbourne-based insurance company and one of its contractors.

A contractor raised a complaint regarding the actions of the insurance company to his contact in middle management. The manager's response was, "If you don't like it then sue us".

When VSBC contacted the CEO of the company and explained the background to the dispute he was surprised to hear of this behaviour, as it had not been brought to his attention nor was it consistent with his view of the company's values. The CEO agreed to alternative dispute resolution through VSBC stating, "We do not normally resolve disputes in this way, though we are willing to make an exception in this case". The dispute was resolved in mediation.

This dispute occurred because the insurance company:

- Did not have the processes and systems in place to alert senior management to this type of behaviour. This enabled the middle manager to behave in a way that was not aligned with the values of the firm, without being detected.
- Did not have any pre-agreed dispute resolution procedures with their contractor.
- Did not seek to identify common interests as a basis to resolve a dispute, preferring to call in lawyers immediately.

CASE STUDY 2

A dispute between a health sector organisation and a major international exhibitions and events organiser highlighted the lack of external alignment between the two businesses as well as the danger of having a relationship dependent on contact with one key employee in each organisation.

The relationship was brokered between one key employee at either company and involved the coordinator organising an annual exhibition/convention for the health sector organisation. The health sector organisation would guarantee a certain number of attendees in addition to revenue from ticket sales.

The relationship was successful until the individuals from both organisations responsible for forming the relationship moved on. The breakdown in the relationship led to the nursing organisation contacting VSBC to claim unfair business behaviour in response to the events coordinator aggressively increasing ticket prices.

In mediation it became clear that the incentives in place for the new employee at the events organiser were based on up-selling additional items to the conference attendees. Without the original employees in place, there was a lack of understanding and communication about the original purpose of the relationship.

It became apparent that when it was not possible for the events organiser employee to meet his financial targets through up-selling to the attendees, he sought to increase the ticket prices in an effort to meet his performance targets.

A number of factors contributed to the dispute:

- The financial incentives applied to the employee at the events organiser resulted in a lack of alignment of behaviour to values between the two companies, contributing to the breakdown in the relationship.
- There was a dependence on one key contact at both organisations.
- Once these individuals had left their respective companies, both sides lost sight of the original rationale for the relationship, driving a breakdown in trust.



2. COMMITMENT

Businesses FORMING successful relationships:

- approach every business interaction as a potential long-term relationship rather than just a one-off transaction
- communicate their intentions openly and honestly to all parties
- confirm that all parties have similar intentions
- respect the confidentiality of all parties at all times.

“It is important that businesses nurture a mutually beneficial, long-term relationship, by helping each other’s businesses to grow together” – Alan Wein, Principal, The MEDIATOR Group

Businesses MAINTAINING successful relationships:

- recognise that all business decisions should be based on a long-term philosophy even though sometimes this may be at the expense of short-term financial goals
- always honour their commitments
- keep their promises and deliver what they commit to
- provide timely, relevant and accurate information
- understand and align the expectations of all parties.

“Businesses need to always give their incumbent suppliers the first and last right of refusal with any new business. This demonstrates their commitment to the long-term nature of the relationship” – Fred Harrison, CEO, Ritchies

CASE STUDY 3

A dispute involving a car dealership and an electrical components manufacturer showed the importance of commitment to building a successful relationship.

The electrical components manufacturer was responsible for installing the electric windows and sunroofs in the dealership’s cars. However, when there were problems with these components in a number of the cars, the manufacturer failed to honour its warranty obligations. Despite repeated attempts by the car dealership to reclaim the costs of installing new equipment, the manufacturer refused to comply.

Once VSBC contacted the CEO of the electrical components manufacturer, the dispute was resolved quickly, with them agreeing to honour their warranties and replace the faulty components.

The reasons for the breakdown of this relationship were clear cut:

- The electrical components manufacturer failed to meet its commitments under the terms of the relationship.
- They also failed to communicate properly with their business partner, ignoring the problem and hoping it would go away.

3. MUTUAL INTERESTS

Businesses FORMING successful relationships:

- will view the relationship as a collaborative effort towards a common goal
- identify mutual interests and confirm common goals
- consider the expectations and needs of all parties and ensure that they are understood by all involved
- build business plans with all parties to ensure everyone can meet their obligations
- agree to work together to maximise efficiencies and minimise disputes
- consider using an independent third party to help develop/ broker the agreement
- use contractual obligations and expectations as a starting point from which to improve returns to all parties
- make sure they understand their partners’ business models i.e. how they make money and the effect external factors can have on this.

“The business community is an eco-system; larger businesses need a healthy small business sector for their business to survive”
– Steve Howard, Executive General Manager of Business Development, RACV

“Savvy retailers prefer to enter into an agreement with shopping centres that drive a hard bargain, as it means they will negotiate equally hard on behalf of the shopping centre with other retailers and any suppliers” – Milton Cockburn, Executive Director, Shopping Centre Council for Australia

Rohan Jeffs, General Manager of Group Compliance at Woolworths, emphasises the importance of long-term relationships: *“As long as our suppliers meet the product specifications agreed to in the contract, we will commit to set prices and volumes. In this way our suppliers can commit resources to growing their business based on this revenue stream.”* He goes on to say that: *“Woolworths sees the benefit of mutually beneficial relationships with our suppliers, and we will provide them with support in business planning to meet their obligations should they need it”*

“It is essential that both parties understand each other’s business model, as this means there will be flexibility and understanding should short-term conditions change and impact their business”
– Don Churchill, Managing Director, Fairfax Victoria

Businesses MAINTAINING successful relationships:

- work together towards common goals
- communicate regularly both business opportunities and also any problems/issues
- adopt a collaborative approach to problem-solving
- make every effort to understand their partners' point of view should a dispute arise
- treat all parties as they would like to be treated themselves; in particular they treat all parties with respect
- where appropriate, offer advice and feedback on how all parties can improve their business performance
- are flexible and understanding should changes in market conditions impact on their partners' ability to deliver on commitments.

"In our experience the best commercial outcome is achieved when a company has long-term mutually beneficial relationships with its suppliers" – Peter Griffin, Senior Corporate Manager - External Affairs, Toyota

CASE STUDY 4

The importance of recognising mutual interests as the most effective way to ensure a profitable outcome for all parties is highlighted by the following dispute mediated by VSBC.

The dispute was between an Australian fruit grower, a freight forwarder, and an air freight service provider. It was the first time the fruit grower had shipped fresh produce overseas. The grower was shipping a consignment of produce to a grocery store in Thailand using a freight forwarder to organise the packing and transfer to the airline freight centre.

The grower failed to realise it was his responsibility to ring and check when the consignment had arrived in Thailand and then arrange for the grocery store in Thailand to collect the fruit. Another issue related to advising the freight forwarder of the packing requirements and whether the goods were packed frozen, chilled or at room temperature. The shipment contained a variety of produce which required different packing arrangements. The fruit was left in the freight service provider's storage facility, at inappropriate temperatures, and rotted. The fruit shop in Thailand called the fruit grower to complain the order had not been fulfilled; the grower then set about tracing his goods.

The fruit grower claimed for his loss against the air freight service provider as he believed it was the responsibility of the air freight service provider to inform him of the consignment's arrival, while the airline claimed that it was the fruit grower's responsibility. The fruit grower did not pay the freight forwarder who decided to seek a claim against the airline freight company. The airline freight company rejected his claim.

It became clear that the fruit grower failed to understand his obligations under the terms of the relationship with both the air freight service provider and the freight forwarder. Equally, both the providers failed to ensure that the fruit grower understood his obligations and they were also at fault.

The dispute was resolved with the air freight service provider paying compensation (approximately 50% of the total value of the consignment) to the fruit grower in the form of freight credits. The air freight service provider realised that the commercial benefits of maintaining a long-term relationship with the fruit grower were more important than short-term financial implications, and settled the dispute quickly.

Although the compensation was only for 50% of the value, the fruit grower was happy because the larger company had shown him respect. He continues to use the provider to supply his overseas business.

The fruit grower also understood his business required an ongoing relationship with a freight forwarder and paid 50% of the freight forwarding fee.



CASE STUDY 5

The importance of recognising mutual interests as the most effective way to ensure a profitable outcome for all parties is also highlighted in the following dispute involving a coffee franchisor and its franchisees.

A franchisor ran a coffee business providing coffee machines to its franchisees, maintaining them and also supplying the coffee to be used in the machines. A total of eight franchisees approached VSBC, distressed, as the franchisor was not providing the support it had committed to in the contract.

The franchisor was unable to provide the machines in the time agreed and was unreliable with provision of parts when they were required. The situation had deteriorated when the franchisor started making late payments, was not providing marketing support or referrals, and was not providing the coffee on time.

The issue was not a personal one, with the franchisees saying the franchisor “*is a nice young bloke, we just need our money*”. They sought legal advice and in mediation, five of the franchisees decided to buy the franchise and run it themselves. It became clear during this process that the franchisor was young and inexperienced and had not fully prepared to run his business.

A number of factors contributed to the dispute:

- The franchisor was badly prepared to run his own business; he did not have sufficient funding, business skills, or a robust business plan.
- He did not communicate in a clear, transparent and honest manner with his franchisees. He also did not communicate regularly on a face-to-face basis with them.

The dispute was resolved with the successful franchisees:

- recognising a common goal based on mutual interests; owning the franchise to ensure the viability of their individual businesses
- commitment to a long-term relationship
- engagement of expert legal advice to ensure they were fully informed and that the contract/purchase was in line with their expectations
- formalised their new relationship with a contract and pre-agreed alternative dispute resolution procedures.

4. COMMUNICATION

Businesses FORMING successful relationships:

- make sure that all parties understand each other at all times
- define the relationship, including the expectations and responsibilities/obligations of all parties, clearly and openly at the outset
- confirm goals that will be used to measure performance of all parties
- confirm with business partners exactly how they wish to be communicated with.

This includes:

- the points of communication and at which level of seniority
- the format of communication
- the frequency of communication
- the level of detail communicated.

Businesses MAINTAINING successful relationships:

- communicate in a clear, transparent and honest manner
- are candid and robust in all communication
- make sure that management also shows commitment to open and honest communication
- communicate face-to-face on a regular basis
- ensure that communication occurs between individuals at agreed levels
- reduce dependence on one key contact by ensuring they have a relationship with more than one individual
- make every effort to understand all parties at all times
- ask for regular feedback on their own performance
- do not jump to conclusions without checking all the facts first.

“It is very important that you identify early on the key personnel, at the appropriate levels of seniority, in the company you wish to do business with” – Peter Wilson, CEO, Spotless

“Say what you mean and mean what you say. Always be as open and honest as possible, and never lie” – Dr Phil Burgess, Managing Director for Public Policy and Communications, Telstra

“A landlord/tenant relationship is like a marriage; it is essential that both parties are honest, because once that trust has gone there is very little left to hold the relationship together” – Milton Cockburn, Shopping Centre Council of Australia

“Small businesses need to have multiple points of contact with the other party, at appropriate levels of seniority, so their revenue stream is protected should individuals leave the company” – Mike Hawker, CEO, Insurance Australia Group

“Make sure that you meet regularly with your main suppliers to discuss opportunities as well as any issues... if there are any major issues or disputes in the meantime, meet with the CEO of the other company face-to-face to sort it out” – Fred Harrison, CEO, Ritchies

CASE STUDY 6

A dispute between a retail tenant and landlord included a wide range of complaints from both sides over a number of years.

Initially, mediation was difficult as the mediator was unable to identify the root cause of the dispute. However, after a few hours the tenant revealed the true issue that had led to the breakdown of the relationship. It was a personal issue that had evoked strong emotion. Although the landlord had not been aware of this issue at the time, he apologised anyway for the slight the tenant believed to have been inflicted. Once the apology had been given, resolution of the other complaints followed quickly.

This dispute was the result of poor communication between all parties.

The following problems affecting all parties were identified:

- lack of clear and transparent communication
- not meeting face-to-face on a regular basis
- jumping to conclusions without knowing or communicating.

5. ACCOUNTABILITY & RESPONSIBILITY

Businesses FORMING successful relationships:

- ensure there is an appropriately binding contract
- formalise arrangements/relationships with a written contract
- ensure that all communication is documented, even if verbal in nature
- make sure that they fully understand their obligations and responsibilities
- seek legal advice before signing any contract
- clearly communicate all contract expectations with all parties
- take contracts and negotiations seriously and do not see the contract as *mere paperwork and red tape*
- make sure that all parties fully understand their ongoing obligations and responsibilities under any contract signed
- take steps to ensure that a contract is understood by all parties, especially if it is not written in that party's preferred language
- encourage all parties to seek legal advice before signing to ensure that the contract fully meets their expectations.

"You need to ensure transparency in a relationship through setting clear objectives and expectations for both parties" – Alan Wein, Principal, The MEDIATOR Group

"If you make any changes to the relationship make sure it is recorded" – Janine Allis, CEO, Boost Juice Bars

"Understand what you want out of the relationship before committing to a contract" – David Kepper, President, The Liquor Stores Association of Victoria

Businesses MAINTAINING successful relationships:

- take responsibility/are accountable for results and are up-front about any mistakes or problems
- immediately inform all parties should they make a mistake or discover a problem
- identify ways in which mistakes or problems can be avoided in the future
- are always aware of how advisors or staff may be representing their business
- keep up-to-date on what their advisors are communicating on their behalf
- will speak directly to all parties wherever possible

"Most small businesses go wrong simply through ignorance; it is essential they are fully prepared and understand their obligations from the outset" – Allen Roberts, Executive Director, Confectionary and Mixed Business Association

"Businesses need to encourage a collaborative culture with their partners, so that problems can be discussed openly and dealt with quickly" – Jonathan Sandler, Head of Workplace Relations, ANZ

CASE STUDY 7

The importance of being aware of how your staff are representing your business was highlighted in a dispute between a tenant and landlord.

A tenant raised a complaint regarding rental increases to the estate agent managing the property on behalf of the landlord. The agent threatened the tenant saying that if they pursued the complaint the landlord may not look favourably on them when the tenancy came up for review.

At mediation it became clear that the landlord did not know that his agent was representing him in such an aggressive manner. The agent concerned had a history of bullying behaviour and was subsequently disciplined by the industry professional body for not acting in a professional manner. The tenant and the landlord were then able to resolve the dispute between them.

The absence of a number of behaviours contributed to this dispute:

- The landlord failed to keep up-to-date on what the agent was communicating on his behalf.
- The agent did not act in a professional and fair manner.
- The estate agency that the agent worked for did not have in place the necessary procedures to identify a rogue employee acting in this way.

CASE STUDY 8

The importance of fully understanding your obligations and responsibilities under any executed contract is demonstrated in a dispute between a custodian of crown land and a private individual.

An individual purchased a property that included a number of structures that had been built on crown land. Shortly after completing the purchase the custodian informed the new owner that he would need to remove the structures as they were illegally built on crown land.

The structures had been built on this land a number of years before by the previous owner. The custodian decided to leave them in place and only pursue their removal when the previous owner had passed away. It was written into the contract signed by the new owner when he purchased the property that the custodian would remove the structures when the property changed hands. The individual said he was not aware of this clause in the contract and claimed unfair behaviour.

This dispute arose as a result of:

- the small business failing to fully understand its obligations under the contract it signed
- failing to get adequate legal advice to ensure the contract met its expectations
- the custodian failing to ensure that the small business understood its obligations and responsibilities under the terms of the contract.

CASE STUDY 9

The importance of fully understanding your obligations and responsibilities under any executed contract is also demonstrated in a dispute between a franchisor of a catering business and a franchisee.

The franchisee signed a contract with a catering franchisor thinking that he would be guaranteed \$5,000 worth of work per month immediately. When this failed to materialise the franchisee contacted VSBC claiming unfair business conduct. However, it emerged that within the contract signed by the franchisee it stated that he would be guaranteed to earn \$5,000 per month only after 6 months.

The following mistakes contributed to the breakdown of this relationship:

- The franchisee failed to understand his obligations under the contract he signed.
- He failed to get adequate legal advice to ensure that the contract met his expectations.
- The franchisor failed to ensure the franchisee understood his obligations - an issue not helped by English not being the individual's preferred language.



6. PROFESSIONAL CONDUCT

Businesses FORMING successful relationships:

- have a robust business plan that has usually been validated by a professional advisor
- diversify their revenue stream
- constantly seek to expand their customer base
- try not to become too financially dependent on one business/customer
- prepare for meetings with prospective business partners
- perform adequate research on individuals/businesses with whom they meet
- ensure that their references are relevant and up-to-date
- are honest and straightforward in their communication
- do not promise what they cannot deliver.

Businesses MAINTAINING successful relationships:

- try to be objective at all times
- do not allow emotions to cloud their judgment when making important business decisions
- seek objective/professional advice if they are in doubt
- respond to all requests for information and communication in a timely, accurate and honest manner
- avoid real or perceived conflicts of interest
- keep up-to-date on the latest information and research in their industry, including best practice behaviours and codes of conduct, by making sure they are members of relevant industry bodies and associations.

“A small business needs to make sure that the larger party agrees up-front to a regular system of payments, so that they are never owed too much money; otherwise they can get into cashflow difficulties” – Peter Wilson, CEO, Spotless

“It is important to diversify your revenue streams, wherever possible, so you don’t become financially beholden to one company” – Mike Hawker, CEO, Insurance Australia Group

“It is absolutely essential that you are up-to-date on the latest developments in your industry, including best practice behaviours and any codes of conduct” – Julie McPherson, Group General Counsel, Amcor

“Small businesses should make sure they are involved in the relevant associations and industry groups for their sector, to leverage the resources at their disposal” – Jamie Odell, MD Fosters Australia & Asia-Pacific

CASE STUDY 10

The importance of behaving in a professional manner is highlighted in a dispute between a commercial tenant with a clothing business and his landlord.

A tenant had invested significant capital refurbishing a property that his business operated from, and had a verbal agreement with the landlord that this would be taken into account when the lease next came up for renewal.

This commitment was not honoured and the tenant felt that the landlord’s rental increase demands were unreasonable. The tenant received aggressive legal advice and took the landlord to court for unconscionable conduct. The case was thrown out by the court, resulting in the landlord increasing his rental demands to include legal expenses incurred as a result of the court case.

The failure to engage in a number of behaviours led to the breakdown of this relationship:

- The tenant mistakenly believed he had a legally binding agreement; he did not record his communication/ agreement with the landlord and so could not prove his claims.
- The landlord failed to honour his commitments, not taking into account money invested by the tenant when the lease came up for renewal.
- The tenant was not objective, allowing emotions to cloud his judgment. This resulted in him acting on poor advice from his lawyer and taking the landlord to court.
- The tenant failed to prepare properly for the lease renewal negotiations; he did not speak to other tenants about their experiences with the same landlord and so was not prepared for the landlord’s aggressive negotiating style.

7. PRE-AGREED DISPUTE RESOLUTION PROCEDURES

Businesses FORMING successful relationships:

- recognise that the real test of a relationship occurs when issues arise, not when everything is going well
- agree with all parties on a dispute resolution procedure at the outset
- agree that litigation is the last resort
- insert a Dispute Resolution Clause in the contracts/codes/disclosures that may include:
 - appropriate channels to raise issues/disputes
 - a confidential feedback mechanism for both staff and partners to advise of issues and concerns
 - a commitment to attempt to resolve disputes internally in the first instance
 - recourse to a neutral third party or business mediator should resolution not occur internally.

“Avoid litigation wherever possible to resolve disputes – negotiation and mediation can often give better outcomes” – Julie McPherson, Group General Counsel, Amcor

“No-one wins once the lawyers become involved” – Mike Hawker, CEO, Insurance Australia Group

“It is important to have a confidential channel of communication available for both employees, contractors and customers which is dealt with directly either by a General Manager or someone in senior management” – Tony Chamberlain, President, Chubb

“Alternative dispute resolution gives both parties some control over the outcome, rather than handing over the dispute to a third party to decide” – Alan Wein, Principal, The MEDIATOR Group

Businesses MAINTAINING successful relationships:

- have the courage to inform all parties of any problems or issues quickly when they arise
- have the courage to enter into mediation early to resolve a dispute rather than immediately *calling in the lawyers*
- identify common interests as a basis to resolve the dispute
- deal with issues objectively
- take time to understand all parties' positions
- learn from their mistakes
- monitor complaints/disputes to identify common themes and appropriate solutions
- communicate steps taken to deal with complaints/disputes to all parties
- communicate identified solutions to their partners, if appropriate.

CASE STUDY 11

The following dispute between a master franchisor of a mobile car services business and one of its franchisees demonstrates the importance of a range of behaviours across different characteristics including Communication, Accountability & Responsibility, and Pre-agreed Dispute Resolution Procedures.

A change in ownership of a mobile car services master franchise triggered a breakdown in its relationship with one of its franchisees. The franchisor immediately called in the lawyers when it was discovered that the franchisee had been carrying out additional car services work on the side - something that was in breach of the terms of the franchising agreement. Under the original contract the franchisee was obliged to pay all legal costs in the event of it breaking the terms of the agreement.

Lawyers were engaged and 'ran up' a large bill for the litigation work, refusing to speak directly to the franchisee and demanding that all communication be put in writing. With mounting legal bills, the franchisee contacted VSBC claiming unfair business conduct.

It became clear in mediation that the franchisor was not aware of the way in which their lawyers had been representing them. Resolution of the dispute was only achieved when the lawyers working for the franchisor were brought in as an additional party to the mediation.

The failure to engage in a number of behaviours contributed to the breakdown of this relationship:

- The franchisor called in the lawyers very quickly without attempting to resolve the dispute by alternative dispute resolution.
- The franchisee failed to understand the full extent of their obligations under the contract; in particular the extent to which they were liable for litigation costs if they broke the terms of the agreement.
- The franchisor was not aware of how their legal advisors were representing them.
- Neither party communicated with the other in a clear, transparent manner.
- The two parties did not meet face-to-face on a regular basis to discuss issues.
- Neither party made the effort to understand the other party's point of view.

Appendix A – Interviewees

1. EXTERNAL BUSINESSES

Company	Interviewee	Position
AAMI	Rob Whelan, Maureen Joseph	National Manager - Corporate Affairs & Executive Office, National Manager Strategic Development - Repair Industry
AMCOR	Julie McPherson	Company Secretary, Group General Counsel
ANZ	Jonathan Sandler	Head of Workplace Relations
Boost Juice Bars	Janine Allis	Chief Executive Officer
Chubb	Tony Chamberlain	President, Chubb Australasia
Deloitte	Giam Swiegers	Chief Executive Officer Australia
Deloitte	Dr Chris Nunns	Leadership Advisor
Fosters	Jamie Odell	Managing Director, Fosters Australia & Asia Pacific
Insurance Australia Group	Mike Hawker	Chief Executive Officer
John Fairfax	Don Churchill, David Skelton	Managing Director, Fairfax Victoria , General Manager
Qantas	Rob Kella	Chief Risk Officer
RACV	Steve Howard	Executive General Manager Business
Ritchies	Fred Harrison	Chief Executive Officer
Spotless	Peter Wilson	Chief Executive Officer
Telstra	Dr Phil Burgess	Group Managing Director for Public Policy & Communications
Toyota	Katarina Persic, Peter Griffin, Arie Perzuck	Public Affairs Manager, Corporate Manager External Affairs, Corporate Counsel
Westpac	Anita Wynne	Customer Advocate
Woolworths	Rohan Jeffs	General Manager, Group Compliance

2. PROFESSIONAL AND INDUSTRY ASSOCIATIONS/ GROUPS/GOVERNMENT BODIES

Body	Interviewee	Position
Australian Hotels Association	Brian Kearney	Chief Executive Officer
Confectionary and Mixed Business Association	Allen Roberts	Executive Director
Innovation Economy Advisory Board	David Hanna	Chief Executive Officer
Institute of Company Directors	Paul Gyer	State Manager, Victoria
Shopping Centre Council of Australia	Milton Cockburn	Executive Director
The Liquor Stores Association of Victoria	David Kepper	President
The Pharmacy Guild of Australia	Maurice V. Sheehan	Director, Victoria
Victorian Automobile Chamber of Commerce	David Russell	Senior Manager, Government and Public Affairs

3. BUSINESS MEDIATORS

Body	Interviewee	Position
The Mediator Group	Alan Wein	Business Mediator
Pacific Mediation	Tim Connellan	Business Mediator
External Mediator	Greg Meese	Business Mediator

4. KEY VSBC STAFF

Body	Interviewee	Position
VSBC	Mark Brennan	Victorian Small Business Commissioner
VSBC	Jane Kelly	Manager, Investigations & External Relations
VSBC	David Hildebrand	Manager Government Practices
VSBC	Fiona Lawson	Project Officer
VSBC	Mark Schramm	Manager, Compliance

Appendix B – Reference Group

Name	Position	Organisation
Mark Brennan	Small Business Commissioner	Office of the Victorian Small Business Commissioner (VSBC)
Dr Phil Burgess	Managing Director, Public Policy and Communications	Telstra Corporation Limited
Rohan Jeffs	General Manager, Group Compliance	Woolworths Limited
Kerry Mayne	Director, Victoria	CPA Australia
Chris Seers	President	Small Business Mentoring Service Inc.
George Stamas	Director	GJK Facility Services
David Hanna	Chief Executive Officer	Innovation Economy Advisory Board (IEAB)
Alan Wein	Principal	The MEDIATOR Group
Roger Arwas	Director, Policy and Programs	Office of Small Business- Department of Innovation, Industry and Regional Development (DIIRD)



Appendix C – Additional Documents

1. ORIGINAL LETTER SENT OUT TO AUSTRALIAN CEO’S

Dear Sir

IMPROVING BUSINESS CONDUCT

I am writing to seek your in-principle support and leadership in efforts to improve Victoria’s business environment by tackling unacceptable business conduct.

Investigations conducted by my office over the past three years have highlighted a number of common causes in the development of business disputes.

In this context, it is the behaviour of business, where it is bullying, harassing or the like, that has emerged as a major problem - whether or not the particular conduct would be considered unconscionable according to established judicial tests.

This behaviour is not confined to larger business operations, but occurs across all levels of business. However, bigger corporations have greater opportunities to demonstrate leadership in improving business conduct.

I have attached for your information a brief outline of my office’s experience with this issue, our expectations and our preliminary thoughts on what might be constructively achieved.

On 20 June 2006, I am presenting a paper to the International Council of Small Business Conference in Melbourne. A specific focus of that paper, and my presentation, will be to promote efforts to improve business conduct that will, in turn, benefit the business environment.

I am seeking your in-principle support for our commitment to improving business conduct as explained in the attached document. I will appreciate comments you may have on how your business demonstrates leadership to the business community in this important area of business behaviour. I have written in similar terms to other selected Australian business leaders.

I look forward to receiving your response and if you wish to discuss this matter further, please contact me on (03) 9651 9732 or email mark.brennan@sbc.vic.gov.au

Yours sincerely

Mark Brennan
Victorian Small Business Commissioner

2. ATTACHMENT TO CEO LETTER

IMPROVING BUSINESS CONDUCT BATTLING BUSINESS BULLIES

The purpose of this paper is to outline, in a preliminary way, the benefits of improving Victoria’s business environment by tackling unacceptable business conduct.

The Office of the Victorian Small Business Commissioner (“the VSBC”) is established as an independent body under its own legislation, the Small Business Commissioner Act 2003.

The Act establishes the Office of the Victorian Small Business Commissioner “to enhance a competitive and fair operating environment for small business in Victoria”. The legislation, among other things, provides functions and powers for the VSBC to investigate complaints about unfair market practices and mediate business disputes.

Investigations undertaken by the VSBC indicate substantial scope for improving Victoria’s business environment if there is a reduction in unacceptable business conduct.

Specifically, our investigations have highlighted a number of apparent common causes in the development of business disputes; in particular the issue of unacceptable business conduct characterised by bullying, harassment and other undermining behaviours.

The VSBC is prepared to devote resources to this issue despite whether the particular business conduct would be considered unconscionable by established judicial tests.

The VSBC has encountered recurring instances of these behaviours at a “local” level which are not supported by senior management of the business concerned. To a considerable extent, this may be a consequence of organisational structure where local cost centres report upwards to their chief executive officer (and board). The more multifarious the cost centres, the more unlikely it appears that senior management scrutiny will extend beyond financial results.

That is to say, that so long as the cost centre is profitable, there will be little senior management incentive to enquire further.

Indeed, where the VSBC has conducted investigations which revealed unacceptable behaviour, it was apparent that chief executive officers were not aware of their business being represented in such a manner. Refreshingly, in every case where the VSBC has brought unacceptable conduct to a chief executive officer’s attention, a satisfactory outcome to the investigation has resulted.

The purpose of the VSBC’s examination of “unacceptable business conduct” is to identify the nature of the issue and to clarify whether there is substantial evidence of the impact of such conduct not only on small business but the business community at large. Specifically, the VSBC expects that improved business conduct will:

- reduce the incidence of business disputes
- reduce the cost of business disputes arising from unacceptable business conduct
- reduce the personal and social costs associated with the dispute process
- raise awareness within the business community of appropriate business conduct and encourage mechanisms to improve exchanges between businesses.

In examining business conduct, the VSBC hopes to achieve:

- greater awareness of the benefits of improved business behaviour within the Victorian business community
- a reduction in unacceptable business conduct
- encouragement of businesses to develop mechanisms/tools to tackle unacceptable business conduct.

The VSBC is cognisant that the mischievous might allege that particular conduct is unacceptable when, in fact, the conduct complained about is a legitimate exercise of business acumen or business strategy. However, whilst any business should enjoy a fundamental right of control over positioning and maximising its business opportunities, such a right should not extend to unacceptable business conduct.

The strategic approach of the VSBC in examining business conduct is to work cooperatively with big business. In this respect, the VSBC is optimistic that big business will demonstrate leadership to the business community by embracing and supporting improved business conduct.

Responses to the VSBC letter were received from		Company
Mr Malcolm Shield	Managing Director	PMP Print Limited
Mr Richard Goyder	Managing Director	Wesfarmers Limited
Ms Rita Biviano	HR Services Manager	AXA Asia Pacific Holding
Mr Tony Chamberlain	President	Chubb Australasia
Mr Colin Buckley	Company Secretary	Nissan Motor Co. (Australia) Pty Ltd
Mr Fred Harrison	Chief Executive Officer	Ritchies Stores Pty Ltd
Mr Robert Belleville	Chief Executive Officer	AAMI
Mr John Fletcher	Chief Executive Officer & Managing Director	Coles Myer Ltd
Mr Rowen Craigie	Chief Executive Officer	Crown Limited
Mr Roger Cotton	Chief Executive Officer	National Institute of Accountants
Mr Brian Harrison	Director Human Resources	Philip Morris Limited
Mr Scot Ide	Head of Human Resources, Australasia	Russell Investment Group Pty Ltd
Mr Peter Wilson	Managing Director	Spotless Group Limited
Mr Jeremy Griffith	General Manager, Corporate Relations	St. George Bank Ltd
Mr Greg Gillett	Chief General Manager Strategy & Staff	Bendigo Bank Ltd
Mr Mark Nolan	Chairman	ExxonMobil Australia Pty Ltd
Mr John Young	Chairman & Managing Director	Pfizer Australia Pty Ltd
Mr John Mulcahy	Chief Executive Officer	Suncorp Metway Ltd
Mr John Carr-Gregg	Company Secretary	Aristocrat Technologies Australia Pty Ltd
Mr David Kirk	Chief Executive Officer	Fairfax
Mr Mark Daly	Director, Human Resources	P & O Ports Ltd
Mr Colin Jordan	Managing Director & Chief Executive Officer	RACV
Mr Jonathan Sandler	Head of Workplace Relations	ANZ
Mr Mike Hawker	Chief Executive Officer	Insurance Australia Group
Mr James Millar	Chief Executive Officer	Ernst & Young
Ms Julie McPherson	Company Secretary & Group General Counsel	AMCOR Limited
Mr Murray Green	Director of Corporate Strategy & Communications	Australian Broadcasting Corporation
Mr John Egan	Senior Executive, Office of the President	Toyota Motor Corporation Australia Ltd
Mr Roger Corbett AM	Chief Executive Officer	Woolworths Limited
Mr Milton Cockburn	Executive Director	Shopping Centre Council of Australia
Mr Mike Brett Young	Chief Executive Officer	Law Institute of Victoria
Mr Tom Poulton	Managing Partner	Allens Arthur Robinson
Ms Ingrid Marshall	Group General Manager, Performance Services	Elders Australia Limited
Mr Maurice Sheehan	Director	The Pharmacy Guild of Australia
Mr Ron Kerr	Managing Director	Conundrum Holdings Pty Ltd
Ms Trudie Balthazaar	Acting Director, Corporate Performance	City of Melbourne
Mr John Joyce	Managing Director Buying	ALDI Stores
Ms Katie Lahey	Chief Executive	Business Council of Australia
Mr Gary Liddle	Acting Chief Executive	Vic Roads
Mr Bryan Lancaster	Acting Chief Executive Officer	City of Yarra
Ms Irene McGinnigle	Acting Chief Executive Officer	City of Greater Geelong
Mr David Purchase	Executive Director	VACC

For a copy of the study, or other information, please contact
Office of the Victorian Small Business Commissioner

Level 2, 121 Exhibition Street
Melbourne VIC 3000

Victorian Business Line: **13 22 15**

General Enquiries: **(03) 9651 9316**

www.sbc.vic.gov.au

