

ECONOMIC DEVELOPMENT AND INFRASTRUCTURE COMMITTEE

Inquiry into Manufacturing in Victoria

Melbourne - 28 April 2010

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Mr M. Brennan, Victorian Small Business Commissioner

The CHAIR --- I welcome Mr Mark Brennan, the Small-Business Commissioner, to this all party parliamentary Inquiry into Manufacturing in Victoria. Mr Brennan, you will be providing evidence at the hearing that is protected by parliamentary privilege. Comments you make outside, obviously are not afforded parliamentary privilege. Could you give us your full name, business address, and your position, and whether you are here in a private or business capacity. Given we know you are appearing in a business capacity, your position, thank you.

Mr BRENNAN --- Thank you. My name is Mark Anthony Brennan. My business address is Level 2, 121 Exhibition Street, Melbourne, and my position is Victoria's Small Business Commissioner, and I'm appearing in a business capacity.

The CHAIR --- Thank you. Well, if you have seen our Terms of Reference, do you want to make any introductory comments, or would you like to swing straight into questions?

Mr BRENNAN --- I am happy to make a couple of comments, and then get into a discussion about things.

Firstly, I just want to take the opportunity to, by way of background, say that my office, the Office of the Small Business Commissioner, is set up under an Act of Parliament called the Small Business Commissioner Act of 2003, and one of the members of your committee, the Hon. Marsha Thompson was, in effect, the Minister who put that legislation through, and was a primary architect of the legislation. The legislation enjoyed bipartisan support. I wish to acknowledge over the years the support that has been given to the concept of the Small Business Commissioner by Mr Bruce Atkinson, particularly from the Opposition ranks. And, having that bipartisan support for our office has been very much appreciated and valued, and I am very pleased to see that the key people who have been supporting our office are on this committee.

Having said that, I would just like to make some comments in the context of your inquiry. Just at the outset, I would say that the bare terms of reference, don't necessarily resonate really closely to a lot of the functions that we have, or of the experiences that we've had, but nonetheless, I think I may be able to make some useful comments.

Firstly, it just seems to me - and this is a really big picture comment, I think - the years I've had experience in the government, even before being the Small Business Commissioner, I was Deputy Secretary of Small Business in the Business Department during the 1990s, so I've had quite a lot of experience with both sides of persuasion, being in government, and how they might deal with regulating the business sector. I have come to a firm conclusion that there are really two major issues or responsibilities for government to intervene in the business community. They can be broadly described as education and justice.

Now, the education part of intervening in the business sector is, I think, a

responsibility of government to ensure that businesses have access to all the information they need to be able to operate effectively as a business. Now, that doesn't mean that governments should hold the hand of business all the way down to decision-making, but, at least, I think it is well worth the while and very justified for government to spend taxpayers' money on ensuring that businesses have access to information. And within my office, we have our own sort of mantle, which you may recognise was borrowed from something Bob Hawke said years ago, and we say, that, "No business should fail through lack of access to information." It is a play on a comment that he is quite famous for.

So, we see that as an essential part of government intervention, and that is reflected in our legislation, where we have a function of promoting informed decision-making. Now, we are not resourced to provide information services as such. But, we do promote it, and we promote it very much by getting out into the industry marketplace, making presentations, making people aware of the services that we've got. So, that, to me, is the first core responsibility of government. They should ensure that there is appropriate information for businesses to be able to operate on.

The second one shouldn't be any surprise at all. I call it justice, and governments since the year dot, since governments were ever invented, provided a justice system; they put naughty people away. There has always been a need for a justice intervention on behalf of government. The way that's done in the business sector, the way it's evolved over a period of time, is now away from the traditional courts and tribunal processes, but more into alternative dispute resolution or appropriate dispute resolution, as it is being more popularly termed. From the experience of my office, where we have been very much at a cutting-edge, it is a flagship function of our office to mediate business disputes, whether they be business-to-business, whether they are business to government disputes. And again, I think that's a very appropriate government intervention. It is an historically entrenched one that governments should provide a justice system, and just as they provide a criminal justice system, they should provide a justice system for businesses to be able to resolve difficulties that they get into with other businesses, or with the government in their business activities.

And, in between those two bookends, education or information, and justice or dispute resolution, there are a number of other things that a government of the day might do in terms of dealing with matters of current controversy. For example, bushfire relief for businesses that are impacted by bushfires. So, there are things that might arise during the course, which it is appropriate for government to intervene in. But as fundamentals, it appears to me that these are the two fundamentals that stand the test of time of government being quite entitled and actually having a responsibility to intervene with education and with justice.

The legislation which Parliament passed for us reflects both of those, as I mentioned, with promoting informed decision-making, but also the resolution of disputes. In some respects, if we get the information side of it right, there will be no need to have disputes, because people will know what they're doing, they'll conduct themselves in the right way, and they should be able to avoid getting into a

dispute with another business or with a government agency. That is probably a pious hope that we can achieve such utopian standards as that, but nonetheless, there is no reason why we shouldn't strive to do it.

During the course of our existence, which is now seven years - May 1st coming up will be the start of the eighth year - we have dealt with just over 7,000 matters that have come to us that have been business-to-business or business to government disputes. Probably about 80 percent have been matters under the Retail Leases Act, so you think of the shopping centres and the tenants in the shopping centres, and there was a reason for that, because we took over virtually a pipeline function. There were already retail tenancies laws in Victoria, and when the Small Business Commissioner came into being, a specific role was given to resolve disputes involving retail leases. In that regard, we do touch upon some manufacturing businesses there, because they may have you know, sort of a sample shop or whatever, as part of a factory or whatever, and occasionally, we get matters which are characterised as retail leases, which might involve manufacturing businesses.

We also have specific functions, by way of background, under the Owner, Drivers and Forestry Contractors Act, and here think of the people who mortgage their house to buy a truck and drive Toll or one of the big hirers - again, specific functions there of resolving disputes.

The Small Business Commissioner Act itself, within the Act which I was mentioning right from the start, and which I applaud the Parliament for passing, it's a 16 Section Act. It's a beauty. If you ever want to say you've read an Act from front to cover, this is the one.

Mr ATKINSON --- That one's been read a few times.

Mr BRENNAN --- Yes. I'm very proud of that. It's an Act which has allowed us to be creative in the way we have operated, and to be really open to businesses, no matter what character the businesses are. What has happened over the period of seven years, we have increasingly had matters come to us under the Small Business Commissioner Act. I mentioned that primarily early on, they were retail lease type matters, but we're getting more and more business-to-business disputes in various areas. We have had for the period 2007 to 2008, a 97 percent increase in the number of Small Business Commissioner Acts from the previous year, and 2008/2009, our last Annual Report, there was an increase of 42 percent in the numbers of Small Business Commissioner Acts, so there is an increase in numbers coming under that legislation, and that's the legislation that might capture disputes that manufacturing businesses might get into with other businesses. In that regard, again we have an internal sort of maxim in which we say no to nobody. The only business-related dispute that we won't deal with is one that might have an industrial relations component to it, and as far as I am concerned, it can go somewhere else for those matters.

In terms of the manufacturing sector, we don't keep statistics about that sector about what matters might come to us. It is not easily identifiable from the papers that we

get in. We're very simple in the way we operate. We have very simple forms. The parties only have to identify who they are and who the other party is, and give a brief description of the dispute, and then we get the thing rolling. The brief description of the dispute might be, "I provided him with goods and he hasn't paid me yet." That's enough to kick-start it. We sometimes get an application that might say in the brief description of dispute, "See attached" and there's 25 pages of the Statement of Claim. If people want to do that, that's fine, but they don't need to. Our services are open to people in manufacturing. It is a facility which I think all businesses should be made aware of, and should have front of mind to use, rather than using the traditional court processes. Because, what we provide is what we call prelitigation mediation, and I think a reason for our success rate - I mentioned the rising number of matters we've had - we also have maintained an extremely high success rate of settling these disputes. Over the last couple of years, it has consistently been at the 80 percent success rate. I'm told that international benchmarks for resolving commercial disputes is something like about 60 percent, so we are way above that. The reason we are way above that, is because that international benchmark figure of 60 percent is primarily made up of disputes which are attempted to be mediated after the parties have started their court action. There is no doubt in my mind that once you start court proceedings, that is tantamount to declaring World War 3 on the other party, and you are in an adversarial situation and less inclined to resolve a matter beforehand.

The way in which we resolve matters - and we would do that for any manufacturing business that might have a dispute - is that we write to the CEO of the company complained about, the dispute is with, or the head of the government agency if it is a government agency matter, and we don't write in terms of sort of saying, "Oh, we've heard about you. We're shaking our fist, we're pointing the finger at you, we're coming after you." What we do is we say, "Look, we've got this complaint. I'm just making preliminary enquiries at the moment. Can you help me decide what I should do?" And, then, I set out what my functions are of investigation and mediation. We encourage the parties to come to mediation, so it is coming with a softly, softly approach. Often it is the first that the CEO has heard of the matter, particularly with the bigger companies, or otherwise, they've sort of heard something about it and say it's getting a bit serious now. There's an independent government agency getting involved, and they will get on and do something about it. In fact, that mode of operation has led to settling, on average, about 25 percent of matters a year, of just by what we call preliminary assistance, by making a letter or having a couple of phone calls from our officers talking to the companies, and settling the matter before it even gets to formal mediation.

Once we get to formal mediation - and again, we would be doing this with any manufacturing business - to the extent there is any theme in the way that we mediate, we mediate with a theme of getting a commercially realistic outcome. We are not so concerned with trying to ascertain who is right and who is wrong, it is more about, well can we get a commercial outcome here that, ideally, will enable the parties to continue to do business together, continue their business relationship. And we do say - because it is a powerful part of mediation to get the parties to reflect on what it costs to be standing on principle or you know, sort of wanting a

particular type of outcome - we do stress that if you don't resolve the matter at mediation with us, when you two parties are in control of the outcome, you can reach an agreement, you are in control of what the outcome is going to be, if you don't resolve it there, the matter then goes on to VCAT or a court, and someone else is going to make a decision, and not only will that someone else make a decision for you, it will be a total decision, there will be one winner, one loser, and by the way, loser, you'll probably have to pay the costs of the winner. That is another, to an extent, a theme. It is sort of a secondary theme that flows through there.

So, we try to get people to be realistic about the disputes that they've got, to look at the value that the two businesses in conflict might meet each other, and they should really look at ways of being able to continue their relationship.

Now, so far as - I know one of the matters of interest is about procurement, and so far as we've had experiences there, I think there is still a lot of scope for government agencies to improve the way they go about their procurement processes.

In my Annual Report for last year, I reported on a matter involving - if I could use this by way of example of the types of concerns I have got about the way in which the procurement processes are put in place - it involved a small business which applied to be on the Government's e-services panel. It had been providing e-service related work to government agencies for about 15 years previously, but applied to get on the panel. It didn't get on the panel, and complained to us about it when it couldn't get any resolution from the Government department. We investigated the matter, and found there had been a government Purchasing Board report which had been critical of the particular process. What that report uncovered, the findings report, was that the businesses who were tendering to be on that panel, on the e-services panel, were required to answer 700 questions, and each question basically required about an A4 page response. So you've got about 700 reams, or a ream and-a-half of hardcopy paper which would have been submitted with each application, and something like about 360 odd applications.

Now, I just ask you to turn your mind to a few of the committees choosing people to be on the e-services panel. How on earth do you get your mind around 360 times 700, to be able to come to a fair outcome? The department concerned, when we raised this with them, when we felt that this was unfair, particularly to small businesses, the defence was merely, well, we treated everybody the same, we were consistent. And I said yeah, you are consistently unfair to everybody. I think that is illustrative of where there is still a lot of scope for improvements about the way in which government procurement processes are followed. It can be too easy for the government officials to sort of take the view, oh, business can handle that. But there is a massive requirement of business resources to actually even tender for these things, and when you have a situation like that of a 700 page thing, I think it is monumental. How many small businesses would not have even -

Mr ATKINSON --- Bothered -

Mr BRENNAN --- Wouldn't have even made a bid for it, because they would

have been deterred and daunted by the process in the first instance. I mean, I'm not critical of government officials, in the sense the quality of government officials is very high, obviously, but, sometimes I think there is a lack of appreciation of what burdens there are for business in the processes such as the procurement area. I think there is a real scope for being able to make improvements there.

Mr ATKINSON --- Well, that was a technology example. Would it be your expectation that for manufactured goods, there would be a similar procurement hurdle?

Mr BRENNAN --- I haven't gone down that particular path. But, I would not be surprised if it was identical, because I have seen other types of procurement processes where, in order to make sure the integrity - almost to say there is an over emphasis on those parts of it.

The CHAIR --- Where would you will recommend - sorry we are interrupting you. Finish and then I will ask questions.

Mr BRENNAN --- I'm happy to take them as you go, as you think of them.

The CHAIR --- Bruce asked a question on manufacturing. Where would we go to find out within State Government where such tendering may occur on manufactured goods?

Mr BRENNAN --- I would start with the Victorian Government Purchasing Board. I think the Board's role is - I am pretty sure they wouldn't mind a comment of this nature coming from me, with the experience I've had with them on this e-services thing - that they've probably been underutilised in the way and are part of a process about people getting on to panels or the process of tendering. I think they can feed back a lot more into improving the processes, and I don't think it is tapped into enough to ask the people that are involved with the Purchasing Board, well, where would they see improvements? They are at a receiving end and have a role, but I'm not sure that they are as engaged as much as what they could be in improving the efficiency of the system. Probably, I think people who are on the Purchasing Board have had more of an exposure or had more opportunity to understand the impacts on business of some of these things.

The CHAIR --- Okay.

Mr ATKINSON --- You are actually involved in, and sort of have an intellectual input into other organisations running training programs for quite a range of aspects of business. Are there any training programs for small business in terms of tendering government procurement?

Mr BRENNAN --- Yes, the Department of Treasury puts out a training program for people there, and I think the Department of Innovation, Industry and Regional Development has some training programs. My office doesn't deliver training programs. But, I would encourage that those programs be developed, and they be

developed in consultation with people who are right in the thick of the action, such as with the tendering board people.

The CHAIR --- Would you like to finish what you wanted to say, because then we might run through three of those key items to cover.

Mr BRENNAN --- Yes. I guess just in closing, in talking about our office and the way we can assist business - and I think it is, as I say, a key role of government to be providing the sort of flagship thing that we do with mediation of disputes - is that we have also been very creative in the way we have gone about these things. What we found is particularly with government agencies and local government agencies, that there can be a reluctance to attend the mediation of a matter. A dispute is sort of raised, a complaint is raised about the way something has been handled, often in the procurement area, why didn't I get selected or whatever, that type of thing. As I say, local government agencies, particularly, are reluctant to admit that there is a problem, and they think that by coming to a mediation there is some admission that there is a problem.

So, we've hit upon a useful alternative way of handling that sort of situation, and what we do is we say, well, look, we won't put on a mediation. What we will do is we will have a facilitated meeting, and a facilitated meeting is a meeting. Bureaucrats love coming to meetings after all, so it's got its attraction there - and so, we say we will put on a facilitated meeting. The way I do my mediation, I've got a panel of private sector mediators that I draw from, and they operate on a sessional basis, and the quality of them has been the reason why we have been so successful. I'll ask one of the mediators from our panel to be a facilitator at this facilitated meeting, and the documentation we have for mediations, we have a mediation agreement. Well, we just change that, and we put, "facilitation agreement" and everywhere where the term "mediators" was mentioned in the mediation agreement, we changed that to "facilitator" and they sign up to this meeting, you see. The facilitator conducts the meeting in a manner remarkably similar to a mediation, but everybody is happy because the terminology is okay, and they've just had a meeting and they can go back to their office. The beauty of having a meeting, of having the parties together, is the chances of an outcome are very high. I mean, we average 80% success rate. So, in those situations we've got a real good prospect of settling the matter when previously, say, the government agency wouldn't have even entertained acknowledging that there was a problem at all.

I think part of that issue there is at least in some local government agencies - and I suspect it might even be more broad than what I observed - is that there is this - this might ring very familiar to you - if there is a litigation or a meeting or something sort of serious happening, you sort of have to tell the Mayor and the councillors but, if you go into a meeting you might not have to. So, there is an attraction again with the semantics. You can deal with this, you don't have to go and tell the Mayor or the councillors, oh, look, we've got this dispute. We're going to a mediation, it's all very serious. So the smarter bureaucrats from that point of view can keep the council or the Mayor at bay.

The CHAIR --- Could I be cheeky and suggest that if you offered two facilitated meetings, you're probably even more likely to get them there than one. One meeting to solve a problem or two. I bet you people will opt for two meetings before they solve it.

Mr BRENNAN --- Well, they do find that having an adjourned meeting an attractive outcome, too.

The CHAIR --- Adjourned, yes. Very, very wise. Okay, well, we could run through - perhaps to put on the record, I will run through a couple of things we wanted your advice on, please.

The first is, in your experience what improvements could be made to the way small business and manufactured businesses in particular, obtain information about government grants and assistance? Would that be covered in your remit?

Mr BRENNAN --- To the extent that we have got the function of promoting informed decision-making, it certainly is. Now, the real challenge here to my mind - and I'm talking generally about our experience with small business, but it would extend, I think to the manufacturing sector as well - is that if businesses are members of an industry association, a professional association, a Chamber of Commerce or a trading association, they will get some information feed about what is going on, and governments should use those organisations to feed information in. To the extent that there is a massive number of businesses out there who should be getting information, at least we can say that those members of those sort of associations, will be getting something, and that's a start.

The big challenge is to capture what I call the unaffiliated businesses, the ones who, for whatever reason, won't join, too busy. Or, even start at the \$300 annual subscription or something of that nature, and yet they've mortgaged their house to run their business and they would get information like that.

In terms of looking at about how government can better leverage interest in what it can offer, we tend to sort of say that the key private sector body that can help are the group of accountants, the CPA or the National Institute of Accountants.

The CHAIR --- Yes.

Mr BRENNAN --- Now, the reason for this is that there was a census survey three or four years back now, which found something in excess of 80 percent of small businesses, we're talking presently, saw one professional adviser a year, and it was the accountant. Over 80 percent saw an accountant, and that was for tax, and then it dropped down to the low 20s in terms of small business. Low 20% of small businesses who might see some other professional like a lawyer or a financial planner or a marketer, but, they will go and see the accountant for the tax thing. I've tried to engage the accounting bodies. They are in a unique position to be at least a port of call for maybe 80 percent of people. Mind you, the small businesses will go into that meeting with the accountant, with just a mindset, just do my tax for

me and I'll get out of here.

Mr ATKINSON --- Here is the shoebox.

Mr BRENNAN --- Yes, here is the shoebox, you sort it out, and ensure I don't pay any tax or limited tax. So, to the extent there is a private sector body that has a bit of an advantage there in having access to them, that's the group. We have previously encouraged government agencies who were trying to get information out of us to try to do so through that medium because at least there is a chance that they'll get to those unaffiliated groups that way.

The CHAIR --- Can I interrupt you just for a moment on that. For an accountant to setup an email system it is not necessarily difficult. There would be a lot of kudos for the accountant to be forwarding its clients places where they can go to receive advice or potential grants, I would imagine. Would that be a correct interpretation?

Mr BRENNAN --- I think it would be. It certainly would be a creative accounting business person to do something like that. On the other hand, a lot of these businesses, whether they would even have an e-mail address, still remains an issue.

The CHAIR --- Really?

Mr BRENNAN --- There are a lot of businesses out there, to the extent that they might have an email address or they might have access to the internet - for that survey, saying access to the internet, for example, but it's the kids, it's not the parents who run the business.

The CHAIR --- So in manufacturing you wouldn't have a business e-mail?

Mr BRENNAN --- It could be. Well, they should have, but if they are really small businesses, you'll find that - and not necessarily manufacturing here - it's the children who will know something about it. Yes, the business is connected to the internet but, the kids are playing games on it or whatever, and it is not being used as a business tool, necessarily.

The CHAIR --- Fair enough.

Mr BRENNAN --- That is no reason for saying that you wouldn't do the suggestion of saying that the accountants should email out to people. It would certainly be a very beneficial thing from the accountants' point of view with their clients.

The CHAIR --- They would be seen to be switched on.

Mr BRENNAN --- Yes, and to alerting the clients to things.

Mr ATKINSON --- I am not suggesting we are thinking this way, but it was interesting, in Germany every business that starts up, is actually required to belong to an association. You'd probably be aware of that from the work you have done.

Mr BRENNAN --- Yes.

Mr ATKINSON --- Any thoughts on that concept?

Mr BRENNAN --- A related sort of suggestion that people often have is that people should have some sort of certificate that they have done, some business thing. From my perspective, I would certainly encourage that. Whether it is something which governments should require is maybe another matter, but I would certainly encourage businesses doing that. I often get asked, particularly, say, by a journalist if I'm having some sort of interview, they'll say to me, "What are the major problems facing small business?" I'll say well, there's two that jump out at me year after year, and the same two issues are ahead of all. There are lots of variants of issues, but there's two that always come out at you. And, I'll say one of them all small businesses agree with me on, and the other, they look at me vacantly as if to say, "Well, what on earth would you know?" Now, the one that they agree with me on all the time is cashflow problems, and that's almost perennial, and is likely to be in the future as well. It's a difficult issue for business. They all agree with me on that one. The other one, though, is management skills, and they look at me as if, "What do you mean?" And, I say you don't really know how to run your business. You've got a great product or a great service, a great idea. And, you think if you work 80 hours a work you are going to be okay with it, but, you're not, because, in the one package you're not an accountant, you're not a marketer, you're not a lawyer. You need assistance for all of these things. So, it is getting that sort of message through to the businesses, that, you know, hard work doesn't bring it all and a good idea doesn't bring it all. There's really other aspects, there's a skill thing. That's where the biggest deficiency I think, is in the way smaller businesses operate and I'm sure it would extend into the smaller manufacturing businesses, the same way.

Mr ATKINSON --- Marsha Thompson said the other day - and this is sort of paraphrasing her - who would want to be a small business trying to figuring out where all these grants are and how to access these grants. What is your view of the grant programs that are available and the level of knowledge that small business has, you know, their access opportunities to those grants?

Mr BRENNAN --- I think there is an awareness issue as to what might be available in two respects: one, whether there is anything that can possibly help a particular business. The other issue is why isn't there one that suits what I do? You know, the government should provide a grant for what I do. "I've got a great idea. Why wouldn't they fund me?" The government is not a joint-venture or a bank. In that sense, there is a misunderstanding about what the role of government would be in terms of running grant programs.

People come from either that point of view, unrealistic about what there might be

and so they get possibly turned off before they enquire as far as they might. And maybe that is a reflection on the grants programs that are there, that maybe they are not as easily understood as to what they are about as what they could be. Again, a simplifying of how you apply could be a means of an improvement to the system, of making things more efficient.

But, I think it does come back to businesses being linked in some way with an industry association or have some information feed where they get what's relevant to them being fed into their system in some way, and not relying on folklore or anecdotes or so and so down in the next suburb got a grant for such and such, so why can't I, without them understanding what the particular circumstances are. And, a lot of this falls back to the reluctance to get business advice or legal advice or accounting advice about their business. There is a reluctance by businesses to pay for advice before they mortgage their house, and then they won't pay a few hundred dollars to join an association. Nor will they pay money to go and get advice on what their opportunities might be.

The CHAIR --- Do you think most of them know there are small business offices dotted around the state? Do most businesses know they even exist?

Mr BRENNAN -- The Victorian Business Centres?

The CHAIR --- Yes.

Mr BRENNAN --- Particularly in regional areas, they would know that they exist, but they probably wouldn't know exactly what they do.

Mr ATKINSON --- What percentage of your enquiries would come from them?

Mr BRENNAN --- About 20 percent of our matters are from regional Victoria.

Mr ATKINSON --- But, from the business offices?

Mr BRENNAN --- Referred from the business office, no. I'm talking here of 20 percent of matters that we might have investigated or had a dispute about are regional. The extent of enquiries of the Victorian Business Centre, I couldn't give you figures on that. I don't have any supervisory responsibility for the Victorian Business Centres. But, my feeling is that a lot of businesses take the view well, that's not really for us. They don't enquire. Someone else goes there, other businesses go there, but it's not really mine. Again, it is a problem with the information that they're getting as to why it shouldn't be more welcoming to them.

The CHAIR --- Can we move on to clusters, which is a topic we have examined overseas and here. And, if you're interested, it is in the dot point in front of you. We've received quite a deal of information about manufacturers operating within clusters. From our perspective of writing the report, I would be interested in your comment - is there sufficient information about the distribution of manufacturing businesses in Victoria, their capabilities, and their linkages, and what role do you

see clusters playing?

Mr BRENNAN --- The concept of clusters I think is something again which would be elusive to many businesses as to why it should be beneficial or whatever. Again, it comes back to an educative type function as to make business aware of why there might be advantages in operating that way. I think you would find a lot of businesses would have almost a psychological barrier to participate in something like that. They would see issues like trade secret, competitive, giving away, letting our competitors know what we do, rather than seeing the advantage of looking at a competitor as perhaps your best friend. I think from those points of view, the focus should be if we are wanting to encourage businesses to move into that way of operating, it is again, an information, an education program. Their understanding would be far too deficient to even make a reasonable decision.

The CHAIR --- Who should fund the clusters? Let's pick two. I was chatting before the meeting about natural gas. Say natural gas and cars. Natural gas is a fuel in cars or perhaps aeronautics was one that came up while we were overseas. Victoria doesn't seem to put a lot of time into aeronautical clusters. There's just two that I've picked off the top of my head. Who should fund?

Mr BRENNAN --- I am reluctant to make a comment, for the reason I am not expert enough in that as well. Also, it could be interpreted as me being critical of something which isn't my barley wik. But, what I will say is that in terms of any funding of things which might be of assistance to business, I don't see any reason why there shouldn't be some enquiry made of the bigger businesses as to how they might be able to contribute for the benefit of improving the business environment more generally. I think there is not enough exploration done that way.

Now, why I say that - and I'm not talking about funding things, but in activities that I've been involved in, what I find is that big businesses, when you really put them to the wall about taking a position where it might benefit smaller businesses and in turn might improve the business environment generally, they will come to the party. So, things can be put to business that it's worth them having some investment here that might assist smaller businesses, but, if it improves the business environment generally, it's worth expecting that they should make a contribution.

Mr ATKINSON --- A lot of the work that you are involved with today has obviously come about from a historic position, you are empowered by Acts to do particular things, and obviously that is heavily represented in the work you do today. In terms of the manufacturing sector, is there any role that you think the Office of the Small Business Commissioner might play to encourage, stimulate, support the manufacturing sector? Is there a role of the office that you contemplated for a possible extension for the office to support business more generally, and that might particularly be applicable to the manufacturing sector?

Mr BRENNAN --- Well, there's wish lists and there's realities.

Mr ATKINSON --- We're happy to hear both.

Mr BRENNAN --- The realities are constrained by resources, and because we have got statutory functions, the allocation of resources is really determined by meeting those statutory requirements first. To a considerable extent, our office has operated in a counterpunch role. If someone has complained, we've got to deal with it. There's a statute which says we've got to deal with complaints. So, opportunities to be proactive have been very limited because we just haven't had the resources to do so. And yet, we would like to do so. We did do a significant piece of work a couple of years ago about improving business conduct. It was about the way businesses behaved towards each other, and those behaviours would relate to whether you were running a small shop on a corner or whether you were running a manufacturing business. The study we did was entitled, "Forming and Maintaining Winning Business Relationships." And it essentially was the product of picking the brains of 50 successful Australian leaders in business, and they identified seven behaviours which they felt were essential to productive business relationships and competitive advantage for business. None of those seven behaviours you would say were thunderbolts, "We never thought of that", but they were reinforcements of the way you ought to behave in business if you are going to have productive business relationships.

That was a proactive exercise. I'd like to do more of those sorts of things, whether it is in the manufacturing sector or elsewhere, but while we are increasing the number of matters we get by about 20 percent every year, and our budget does have some movement to it, but, we are still constrained with having to give priority to those other matters, the statutory requirements.

Mr LIM --- This document you just mentioned, is it documented? Can we have a copy?

Mr BRENNAN --- Yes, certainly. I can provide a copy to the committee. The seven behaviours are - as I say, they're ones that wouldn't surprise you to have on the list but, the first one is a thing called "alignment." What the business leaders say is that you shouldn't get into a business relationship with someone who doesn't have the same sort of values as you've got. For example, if a fellow says to you, look, I can supply goods cheaper than anyone else, because there's a truck that parks two blocks away every fortnight and I can help myself to it, and I can sell you the goods cheaper, well, you just don't do business with someone like that.

Then there are things like commitment. They say that you should treat every business relationship, even if you know it's going to be an ad hoc one, as though it's a long-term business relationship. The third one is communication. Here it is not surprising that they would say communication is important. But, they really drill down here and they say you have to establish communication protocols with the business you're going to be doing business with, work out at the outset are you going to communicate at say the CEO level, or owner level, or employee level, at agent level. Is the mode of communication going to be primarily by email or snail mail or telephone? Are you going to meet weekly, monthly quarterly, all of those things which are pretty obvious, but people don't necessarily sort of think about

them.

Another one is that there should be mutual benefit. Don't get into a one-sided business relationship that is really only going to go your way, because things are likely to go wrong. Try to look to get into relationships where there is something genuinely beneficial in it for both parties.

A fifth one is about professionalism. If the person you are doing business with is say a member of a trade, well, expect them to abide by their rules, or if they are a member of a profession, that they'll observe their standards. You've got to do that.

The next one is one about being - I can't think of the word we use now, but it's like being honest. If something goes wrong, don't sweep it under the carpet. You know, come clean straight away and tell the other business, look, we've made a mistake here, but don't sort of try to gloss over it or whatever.

Then the seventh one which I guess to the extent it was a surprise, these 50 Australian business leaders said that pre-arranged dispute resolution procedures are essential to a good work/business relationships. That came as a pleasant surprise to us, of course, with the work that we did.

That report, incidentally, was done with the assistance of Deloitte, as an independent researcher for us, and we had a reference group which included representatives of Telstra, Woolworths, and the small business organisations, which supervised the study. I will certainly make a copy of that available to you.

The CHAIR --- And the name of the study again?

Mr BRENNAN --- "Forming and Maintaining Winning Businesses Relationships":. It started out as being called, Improving Business Conduct, and the reason it started that way was that I had observed a lot of disputes that came to our office could've been avoided if people had behaved better towards each other. Often I found once we brought the thing to the attention of the CEO, they found that the behaviour of someone in their organisation was not what they believed the organisation should be doing at all, and they'd do something about it.

Mr LIM --- I am fascinated by your number one, related to the environment, which would lead to the question which I wanted to raise, anyway, and that out of the so-called successful rate of 80 per cent of dispute resolution, how many is there from the, say, migrant, ethnic communities backgrounds of business?

Mr BRENNAN --- I don't have specific figures there, but it is significant in the sense that a lot of these are retail lease matters, and so we do get a lot of ethnic parties. We provide interpreter services for our mediations, and we do that at our cost, so we are very much friendly towards people who have got a language problem. But, in terms of being able to give you specific figures, we just don't keep statistics of that nature relating to ethnic or even sector, other than the retail leasing or the owner/drivers, which come under a particular piece of legislation. But,

certainly there is a strong use of our office there.

A very good example of how we were able to assist in the ethnic area was under my legislation I can make representations to another body, and in this case I made representations to the ACCC, which involved retailers at the Paramount Centre just down here in Bourke Street in Melbourne, near Bourke and Exhibition Streets. The gist of the matter was that the landlord was offshore, an Asian landlord. The majority of retail tenants in that centre were also of Asian background. All of the pre-lease negotiations were undertaken in Mandarin. Once the leases were signed and came into operation, the property manager would only communicate in English, including when it came to discussing rental increases. The tenants complained to me about this, and I thought the conduct was so serious that I made a representation to the ACCC. The ACCC took the landlord to the Federal Court and won an order against the landlord, which resulted in a return of a quarter of a million dollars in rent to some of the tenants. It found the behaviour of using the language power as unconscionable, and ordered the landlord and the property manager to undertake trade practices compliance courses, and the property manager every year for the next three years. So, virtually go back to school and learn things properly. That was a terrible example of an ethnic exploitation, and they were telling these tenants that these are reasonable increases in rent, and the people were scarcely understanding what they meant by that. In one case, the rent jumped from \$41,000 to \$94,000, massive increases, and they were saying that was reasonable.

Mr LIM --- Could I just follow up on that? The reason I raised this is very important, and will probably revisit a project with the Minister, and that is up to 5 years ago we had a regular sort of course run by the Small Business Office called Under New Management. Probably you are probably aware of that?

Mr BRENNAN --- Yes.

Mr LIM --- And people have found that very, very useful but it somehow lapsed, and maybe did not get the funding or whatever. I talked to them and said we should revisit that, and that is why it is very important to know - you said you don't keep statistics as to how many people have problems from an ethnic background. Now that there is a growing number of them coming from mainland China, particularly, and who come from interstate, and not familiar with the value system, how to handle local government, tendering, banking, you know, and a whole heap of things, taxation and all that and they got into problems. You know, they take for granted about health issues and it becomes a problem and have appeared before the court, explaining themselves. And, if we continued these courses, I think it would be very useful.

Mr BRENNAN --- Those courses are run by the Department of Innovation, Industry and Regional Development, and we certainly do encourage people to go on it. I don't have a role in actually running them. They may well have statistics on the background of attendees. I don't know that.

The CHAIR --- We've got about four more minutes. Would you like to look at

the final dot point in relation to industry capability networks. Would you like to make a comment, if appropriate on that last point?

Mr BRENNAN --- I understand - I think Peter Yates appeared before the committee, from the Industry Capability Network. My relationship with that network has been a very good one in the sense that we will promote people and refer people to Peter's people and vice versa. But, in terms of being able to make even an observation on how things operate there, is not really within my scope at all. So, I would prefer not to comment on it.

Mr ATKINSON --- Just one last want one then: in terms of some of the complaints that are coming to you, putting aside the retail ones, which are obviously the lion's share of your work, are you finding an increasing number of complaints about the difficulties smaller businesses have in getting finance, and access to finance, or are those sorts of grizzles likely to go somewhere else, and if so, where?

Mr BRENNAN --- They won't so much come with access to finance - they will come because they are in a dispute because they didn't get finance, and that will be a third-party issue. They weren't able to get finance. To the extent that say the global financial crisis of last year has had any impact, we did have an increase in the number of matters. Whether they were due to financial stress or not, is hard to tell. But, what we did at least observe again almost anecdotally, was that we had an increased number of telephone enquiries - so, not formal disputes lodged with us, of circumstances where - I'm sorry, going back to the retail leasings, but where tenants had done a runner. We believed that that was an indicator of financial stress, when they just walk out and disappear, it's usually that they've had their problems there. Now, those people would sort of say I would have made good if someone had given me the finance, because I had a great idea. But, they don't really come to us sort of saying can we do something about them getting finance. It is more once they have themselves into hot water we see if we can help get them out of trouble by resolving a dispute.

The CHAIR --- Well, thank you very much, Mr Brennan. We appreciate your evidence. You will be given a copy of Hansard in about a fortnight. You are free to make typographical corrections, and obviously not change the substance of your evidence. Thank you again. It's been really interesting learning about the role you fulfil here in Victoria.

Mr BRENNAN --- Thank you very much for the opportunity of speaking with you.

Witness withdrew