

The Corruption of the Tendering Process - May 1993

CHAIRMAN'S INTRODUCTION

This is the first Report of the Economic Development Committee of the Parliament of Victoria.

The terms of reference for the Committee are broad and far reaching and are outlined in detail in the body of the Report.

The first reference to the Committee deals with the tendering procedures for Government works and the equity in that tendering process.

The second reference relates specifically to the building and construction industry and requires the Committee to review and make recommendations in the planning process in Victoria and to investigate industry productivity and identify, where appropriate, changes to further improve productivity.

With the broad scope and complexity of the references before the Committee, the Committee determined that the most appropriate way in which to manage the reference was to segment the reference into three sections.

The first issue to be addressed by the Committee was to be the tendering process. As a result of that decision this first Report makes recommendations only in relation to the issues of collusive tendering, cover prices and payment of unsuccessful tenderers' fees.

The Committee has not as yet addressed, in detail, the issue of tendering codes of practice.

Whilst some may argue that this Report is premature, the Committee took the view, given the evidence before it, that a task force should be established within the Justice Department to further pursue the three issues of collusive tendering, cover pricing and unsuccessful tenderers fees as identified.

To delay the Report pending the Committee's consideration of tendering codes would be to delay detailed investigation of the three practices identified by the Attorney-General's Task Force, recommended in this Report.

In preparing this Report, the Committee has made direct approaches to Government departments, Ministries and industry and employee organisations. A series of public hearings has been conducted and written submissions received from the industry and general public. The Committee has also drawn heavily on other contemporary inquiries and research studies.

The Committee in tabling this Report acknowledges the support from some sectors of the industry, but also notes that there has not been a significant level of support to the Inquiry from individual employers and to date no submission has been received from the Victorian Trades Hall Council or any union representing employee interests in the building industry.

The Committee also notes, with some concern, the unwillingness of the Australian Federation of Construction Contractors, National Secretariat, to appear before the Committee to clarify evidence submitted by the AFCC's Victorian Division prior to its closure on 8th April. This action evidently casts a shadow on that organisation's membership.

With the tabling of this Report, the Committee emphasises its intention to take further evidence of the code of tendering practice, planning issues and move to the reference on productivity and work practices, and in particular the Committee needs to look with a great deal of scrutiny at the sub-contracting area.

The Committee will be seeking further public input to these issues by way of public hearings and written submission.

In tabling this first Report I would like to acknowledge the support and efforts of the Committee Members and Staff in achieving this report, in what has been a tight time frame.

The Honourable Gerald Ashman, MLC
Chairman
Economic Development Committee

FINDINGS

- - - *procedures for a Code of Tendering;*
 - *evaluation of tender documentation for evidence of corrupt practices; and*
 - *accountability, training and monitoring of officers responsible for evaluating such documentation.*

The Committee finds, in relation to all Victorian Government Departments, statutory authorities and agencies, a lack of uniformity in:

- - *consider, but not be confined to, issues dealing with:*
 - *public versus select tendering;*
 - *opening of tenders;*
 - *monetary limits for use of statutory declarations;*
 - *public scrutiny of tender lists;*
 - *conditions of contract;*
 - *specifications, standards and variations;*
 - *auditing standards;*

- registration of contractors;
- payment of contractors; and
- monitoring procedures;

- ensure uniformity of policy for tendering procedures.

The Committee finds that it will need to further investigate tendering procedures and the development of a Code of Tendering for use by all Victorian Government Departments, agencies and statutory authorities which will:

- - *not been uniform across Victorian Government Departments, statutory authorities and agencies in terms of type of declaration used, minimum monetary threshold applied and cross-evaluation between departments; and*
 - *contributed to industry confusion and potentially illegal practices.*

The Committee finds that the use of statutory declarations in relation to government tendering process has:

- - *not been able to identify in tender documentation any usage of statutory declarations to determine involvement of contractors in collusive tendering.*

The Committee finds that, in regard to tendering for local government projects, it has:

- - *collusive tendering;*
 - *cover pricing;*
 - *payments of unsuccessful tenderers' fees;*
 - *qualifications to tenders; and*
 - *industry association agreements.*

The Committee finds that, in regard to Victorian Government works, corrupt practices have been in existence for many years and have included:

- - *ten companies have admitted involvement in cover pricing;*
 - *four companies have admitted involvement in agreements for unsuccessful tenderers' fees; and*
 - *eighteen companies have refused to sign statutory declarations which state they have not been involved in collusive practices.*

The Committee finds that, in relation to corrupt practices involving tendering on Victorian Government works, at the time of writing:

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- *corrupt practices that occur in the public sector have also occurred in the private sector; and*
- *there is a need for the Committee to further investigate these issues.*

The Committee finds that evidence before it suggests that:

- - *collusive price fixing in the areas of roofing tiles, bricks and plasterboard;*
 - *collusive practices extending to the labour involved in such supply; and*
 - *the need for further investigation of these issues, including market barriers to entry, by the Committee.*

The Committee finds that, in relation to its hearings to date concerning the building and construction industry and the supply of goods and services to that industry, there is evidence of:

- - *work practices affecting efficiency and productivity within the building and construction industry as they relate to both public and private sector works;*
 - *tendering codes;*
 - *sub-contractor activity;*
 - *planning issues; and*
 - *provision of services outside of building and construction areas to government.*

The Committee finds that there is a need to further investigate:

The Committee finds there is a need to further report on its difficulties as they relate to limitations on the powers of Parliamentary Committees in respect of individuals and documentation not extant within the State of Victoria.

- - - *review accountability, training and monitoring mechanisms of officers involved in tendering processes; and*

The Committee recommends that the Victorian Government instruct all Victorian Government Departments, statutory authorities and agencies to:

The Committee further recommends that regulations under the Annual Reporting Act 1983 be amended to include such information.

- - adopt a standard form of statutory declaration for use in tendering for government works and that the form specify information in relation to collusive practices, cover pricing, industry association fees and the retrospectivity of such practices.
 - co-ordinated by the Taskforce (as proposed in Recommendation 3.3).

The Committee recommends that the Victorian Government instruct all Victorian Government Departments, statutory authorities and agencies to:

The Committee further recommends that the use of such standard statutory declarations specifying retrospectivity be:

- - commence usage of an approved form of statutory declaration for local government projects with monetary limits appropriate to particular authorities.

The Committee recommends that the Minister for Local Government require local government authorities to:

- - investigate potentially illegal practices as they relate to contractors, subcontractors and industry associations in regards to Victorian Government works;
 - recover any monies owing to the State as a result of such investigations;
 - initiate, where appropriate, due process; and
 - liaise when necessary with the Economic Development Committee and the Auditor-General.

The Committee recommends that the Attorney-General, using the powers of the Collusive Practices Act 1965 and other relevant Acts, be instructed to set up a Taskforce, to:

- - companies and individuals involved in such supply where the Committee has obtained

preliminary evidence that illegal practices have occurred; and

- companies and individuals involved in the delivery, assembly and on-site labour component of such supplies and goods.

The Committee recommends that, in relation to the supply of building and construction goods and services for government works, the Attorney-General be requested to investigate in the first instance:

The Committee further recommends that the Attorney-General refer any identified illegality to the appropriate State or Commonwealth authority.

Recommendation 2.1

Recommendation 3.1

Recommendation 3.2

Recommendation 3.3

Recommendation 3.4

Finding 2.1

Finding 2.2

Finding 3.1

Finding 3.2

Finding 3.3

Finding 3.4

Finding 3.5

Finding 3.6

Finding 4.1

Finding 4.2

RECOMMENDATIONS