



PARLIAMENT OF VICTORIA

Legislative Council

Environment and Planning Committee

Inquiry into the proposed long term lease of land titles and registry functions of Land Use Victoria

Parliament of Victoria
Environment and Planning Committee

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Committee functions

The Environment and Planning Committee (Legislation and References) is established under the Legislative Council Standing Orders Chapter 23 – Council Committees and Sessional Orders.

The Committee's functions are to inquire into and report on any proposal, matter or thing concerned with the arts, environment and planning the use, development and protection of land.

The Environment and Planning Committee (References) may inquire into, hold public hearings, consider and report on other matters that are relevant to its functions.

The Environment and Planning Committee (Legislation) may inquire into, hold public hearings, consider and report on any Bills or draft Bills referred by the Legislative Council, annual reports, estimates of expenditure or other documents laid before the Legislative Council in accordance with an Act, provided these are relevant to its functions.

Government Department allocated for oversight:

- Department of the Environment, Land, Water and Planning

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This report is available on the Committee's website.

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Chair's foreword

This is a short time frame on this Inquiry and that has necessarily limited the level of detail into which the Inquiry could go.

The Committee has adopted a constructive approach seeking to work with government in its process of commercialisation and to make constructive suggestions for improvements in the model proposed.

We've made recommendations on enhanced privacy and reporting and in favour of greater transparency. Victoria's cadastral system founded on the Torrens Title mechanism has served Victoria well for more than a century and the Committee is aware of the need to ensure that the strengths and certainties provided the current system are preserved.

It is clear the Government has taken on board many of the issues raised in hearings and has modified its proposal in the light of these issues.

In my view a number of issues remain. Outstanding issues include setting the annual indexation for the successful tenderer at the CPI sounds superficially reasonable but carries a number of risks. First, it seems to count out the prospect that efficiencies could deliver increments lower than the CPI. Despite the Government attempting to de-link payments from annual charges, it is unlikely future governments would seek to subsidise lower consumer charges for the commercial service of titles and hence the prospect of lower charges for consumers would appear unlikely for this model.

The objective of keeping taxes and charges on consumers as low as possible, potentially with increases below the CPI, seems to have been ruled out by the Andrews Labor Government. There is also a risk that government in this model would seek to increase charges for title services above the CPI and pocket the difference, given Daniel Andrews' decision to impose more than a dozen new taxes in this period of government despite promises made before the 2014 election. Few would have much trust in Labor using the opportunity of the commercialisation to reap additional revenue.

An additional concern, the Andrews Labor Government seems not to have considered the importance of government data – appropriately de-identified – being used as an instrument of economic policy to drive a range of often yet to be developed uses for publicly collected data. The innovation of the commercial operator should be accepted in my view as an advantage of the commercialisation, but it is a different usage of the data than that stimulated by the release of free of charge government-derived data sets.

The advantages of this approach were considered in the Economic Development and Infrastructure Committee Inquiry into Improving Access to the Victorian Public Sector Information and Data (June 2009). There is no doubt the Inquiry has also dragged the Andrews Labor Government to providing better transition arrangements for public servants. Whatever the up-front costs of transferring staff from Land Use Victoria to the private operator end up being, they will not take full account of the cost

to taxpayers of the additional transition of these terms and conditions. It may be that these are entirely appropriate, but equally these full details should be in the public domain so that the overall costs and benefits can be fully assessed.

I express my thanks and those of the Committee to the Secretary of the Treasury, David Martine, and his officers for providing in camera briefing.

The committee would like to thank Michelle Kurrle, Anique Owen and Pamie Fung for their research and assistance with drafting the report, Joanne Bush for her administrative assistance, and the Committee's Secretary, Michael Baker.

A handwritten signature in black ink, appearing to read 'D. Davis', with a horizontal line underneath.

Hon David Davis MLC
Chair

Acronyms

ACCC	Australian Competition and Consumer Commission
ADI	Authorised Deposit-taking Institutions
ATO	Australian Tax Office
CPI	Consumer Price Index
CPSU	Community and Public Sector Union Victoria
DELWP	Department of Environment, Land, Water and Planning
DTF	Department of Treasury and Finance
ELNO	Electronic Lodgement Network Operators
KPI	Key Performance Indicators
LTO	Land Titles Office
LUV	Land Use Victoria
OAIC	Office of the Australian Information Commissioner
OVIC	Office of the Victorian Information Commissioner
PDPA	<i>Privacy and Data Protection Act 2014</i>
PEXA	Property Exchange Australia Ltd

Findings and recommendations

2 The lease arrangements

FINDING 1: In the Committee’s view, the level of the cap is an important factor in the efficacy of the transaction, and the Government should consider alternative caps that ensure the charges impact minimally on consumers. 21

RECOMMENDATION 1: That the Department of Treasury and Finance make public the details of the commercialisation, including selected provider and sale proceeds, as soon as the transaction is concluded. 21

RECOMMENDATION 2: That the Government publish detailed reasons for the commercialisation, including appropriate content from the scoping study for the proposed commercialisation, and details of other options considered.. . . . 32

RECOMMENDATION 3: That the Government undertake full consultation with all key stakeholders prior to signing contracts and that it publish a summary of stakeholder engagement on the Land Use Victoria website. 34

RECOMMENDATION 4: That the Government seeks input from the ACCC on its proposed commercialisation if it has not already done so, prior to signing contracts. . . 37

RECOMMENDATION 5: The Committee considered the ACCC submission to be of particular value to the Inquiry and considers that the Government should consider all of the concerns raised by the ACCC and should specifically address the following when publishing its detailed reasons for the commercialisation:

- how competition issues had been addressed
- whether effective regulatory arrangements are flexible enough to adapt over the length of the proposed 40-year lease
- whether the risks of maximising sale proceeds had been considered at the expense of regulatory oversight
- whether the CPI annual price cap is the appropriate price metric for the life of the proposed commercialisation. 37

RECOMMENDATION 6: That the Government make public the terms under which the State is able to buyback Land Registry Services prior to the conclusion of the full 40-year lease term. 37

RECOMMENDATION 7: That the Government make public the key performance indicators for service that the private operator will be required to abide by along with a government statement regarding abatements for failing to meet these. 38

3 Implications and risks

FINDING 2: The Committee believes that future legislation changes may be required to address areas where contractual protections to privacy and data security do not go far enough in contrast to legislative protections. 42

FINDING 3: It is unclear to the Committee which agencies will be responsible for regulating and handling complaints made against the private operator for data protection, security and privacy concerns.. . . . 43

RECOMMENDATION 8: That the Government, Registrar and private operator prepare and publish clear information regarding the information rights of Victorians, including where concerns and complaints should be raised in relation to specific services performed by the private operator.. . . . 43

FINDING 4: The Committee is concerned that the Office of the Victorian Information Commissioner may have a limited capacity to investigate matters as it may have to rely on the intermediary role of the Registrar to directly access the private operator. 44

RECOMMENDATION 9: That the Government require the private operator to assist the Office of the Victorian Information Commissioner directly in relation to *Privacy and Data Protection Act 2014* obligations and investigations. 44

FINDING 5: The Committee is concerned that in the instance of a data breach, the private operator would only be required to notify the responsible Minister and, or the Registrar of Land Use Victoria. 44

RECOMMENDATION 10: That the Government include a mandatory requirement for data breaches to be notified in a timely manner to the responsible Minister, the Registrar of Land Use Victoria and the Office of the Victorian Information Commissioner in all instances. 45

FINDING 6: The Committee is concerned that it is not clear how existing freedom of information practices will be impacted by the proposed commercialisation of the registry functions of Land Use Victoria. 45

RECOMMENDATION 11: That the Government clarify how freedom of information practices will be impacted by the proposed transaction, including any areas that may no longer be subject to requests. 45

RECOMMENDATION 12: That the Government include contractual obligations for the private operator to work with the Registrar in responding to freedom of information requests, reviews and complaints. 45

FINDING 7: The Committee supports the storage of data in Australia.. . . . 46

RECOMMENDATION 13: That the relevant departmental annual report contains a statement each year regarding the operation of the commercialised land titles system, including:

- Performance data against KPIs
- Reported data breaches
- Payments made and revenue collected through statutory fees 50

RECOMMENDATION 14: That the Government notify Parliament of any variation to the agreement with the operator. 50

FINDING 8: While acknowledging that the digitisation of the conveyancing system and the commercialisation of the land titles system are separate developments, the Committee is concerned that identified deficiencies in the PEXA system risk affecting consumer confidence in both the conveyancing and land titles systems. . . . 52

1.1 Background to the Inquiry

On 23 May 2018, the Legislative Council referred to the Environment and Planning Committee (the Committee) the following Terms of Reference:

That this House requires the Standing Committee on Environment and Planning to inquire into, consider and report by 7 August 2018 on the proposed long term lease of the land titles and registry functions of Land Use Victoria, with particular reference to –

1. the implications for the ongoing integrity of the land use system in Victoria;
2. the risks to privacy and security of sensitive data held by Land Use Victoria;
3. the likely consequences for the cost and service levels of the titles and registry functions being commercialised;
4. the implications for the people employed at the Land Titles Office undertaking the work the government seeks to privatise;
5. the proposed financial arrangements of the sale and cost and benefit of those arrangements to Victoria in the long term; and
6. other Australian and international experiences of privatising similar services.

1.2 Conduct of the Inquiry

The Committee met on 24 May 2018 to consider its methodology and the conduct of the Inquiry. The Committee appointed a sub-committee for the taking of evidence to manage the short tabling deadline.

The Committee advertised the Inquiry and called for submissions in *The Age* newspaper, through its News Alert Service and on Parliament's Twitter account and Facebook page. It was also advertised on the Parliament of Victoria website. The Committee subsequently received 70 submissions by the submission deadline of 6 July 2018.

The Committee wrote to key stakeholders seeking their input, including:

- Department of Treasury and Finance
- Department of Environment, Land, Water and Planning
- Land Use Victoria
- Property Exchange Australia Ltd
- Infrastructure Partnerships Australia
- Victorian Chamber of Commerce and Industry
- Property Council of Australia (Victoria)

- Urban Development Institute of Australia (Victoria)
- Municipal Association of Victoria
- LGPro
- Victorian Local Governance Association (VLGA)
- Institution of Surveyors Victoria
- Law Institute of Victoria
- Office of the Surveyor-General of Victoria
- Australian Institute of Conveyancers (Victoria)
- Association of Consulting Surveyors Victoria
- The Community and Public Sector Union (CPSU) Victoria
- Office of the Victorian Information Commissioner
- The Valuer-General of Victoria
- The Surveyor-General of Victoria

The Committee then held public hearings on:

- 6 June 2018
- 20 June 2018
- 26 June 2018
- 5 July 2018

The Committee also received an in camera briefing from the Department of Treasury and Finance.

A full list of submissions and witnesses in public hearings are included in Appendices 1 and 2.

1.3 Parameters of the Inquiry

From the reference by the Legislative Council being received by the Committee to the adoption of a final report by the Committee was eight weeks. With the beginning of the Inquiry spent identifying stakeholders and calling for submissions, and the last week or so preparing the final report, this was an extremely short period of time to undertake an inquiry of this nature. Therefore, the Committee has not been able to undertake a forensic examination of the details of the proposed commercialisation.

The Inquiry has also been limited by the Committee's lack of access to the business case or consultant's report on the proposed arrangements, which the Committee understands, given the current stage of the commercialisation process. The Committee requested access to the business case but the request was declined on the basis of commercial confidentiality. As a result of this, the Committee has undertaken this Inquiry through a review of secondary research material and through the submissions and oral evidence given in public hearings.

In order to address the Terms of Reference specifically, the Committee has made comments on particular issues in the proposed commercialisation.

1.4 Overview of chapters

In Chapter 2, the Committee considers the issue of the integrity of the system, which it has interpreted to include the accountability for performance on both efficiency and cost, the security of data and the maintenance of the level of trust that has been placed on the land title system, the Torrens Title system that has been operating since the 1850s.

In considering the perceived potential benefits of the commercialisation, the Committee considers issues such as customer service and technology innovation, which is one of the stated objectives of the commercialisation, and asset recycling and wider infrastructure investment, which provide some of the context for the commercialisation.

In Chapter 2, the Committee also considers the very important issue of the proposed safeguards and oversights that are intended to be in place when the contract is signed. The Government, in its submission to the Inquiry, states that one of the objectives of the commercialisation is to ensure continued State oversight of land titles and registry functions, and maintaining the integrity, security and availability of registry services and systems.¹

In its submission, the Government states that the objectives for the transaction (the commercialisation) are:

1. Harness private sector innovation capability;
2. Use the private sector to accelerate digitalisation and new products and improve service standards and quality for land titles and registry customers;
3. Optimise the long-term value of land titles and registry functions;
4. Ensure continued State oversight of land titles and registry functions, and maintaining the integrity, security and availability of registry services and systems;
5. Ensure continued State ownership of data and appropriate data use for State policy purposes and privacy protections for users;
6. Ensure access to data for public policy purposes;
7. Ensure affected employees' rights and entitlements are protected;
8. Ensure functions undertaken by the private sector are subject to appropriate oversight and monitoring;
9. Reduce risk to the State and minimising any residual liabilities that remain with the public sector; and
10. Ensure retained functions can be effectively and efficiently managed.²

¹ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p 7.

² Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, pp. 1-2.

The Committee notes that after the first three, these are not objectives as much as risk mitigation initiatives in the event of the commercialisation. Objectives 4-10 appear to be simply ensuring that the strengths of the current arrangements are maintained.

In Chapter 2, the Committee also considers some comparative information about other jurisdictions where similar privatisation/commercialisation activities have been either undertaken or considered. Again, the timeframe available to the Committee has made it impossible to undertake a detailed examination of these arrangements. A more detailed examination of the experiences in other jurisdictions would be beneficial prior to committing Victoria to any long-term arrangement. The Committee does acknowledge in this section that while there have been concerns expressed throughout the Inquiry about the potential risks that have been identified and, in some cases, seen come to fruition in other states, the arrangements that have been proposed in Victoria are somewhat different to those undertaken elsewhere.

The Committee also outlines some of the concerns that have been raised during the Inquiry about the commercialisation proposal, including:

- transparency of the process
- consultation issues, including the level and timeliness of consultation and a lack of clarity for some key stakeholders
- economic concerns
- the commercialisation of a natural monopoly
- the potential for State buyback options
- adequacy of proposed safeguards and oversight
- rationale and proposed benefits.

In Chapter 3, the Committee considers the implications for the commercialisation and the risks that may arise from it.

Specifically, the Committee examines some of the privacy and security risks that will need to be managed in any commercialised land titles and registry arrangements. In this chapter, the Committee considers what data is held by the Land Use Victoria registry functions and what standards are applied to the protection of that data, who will be responsible for the oversight and what action will be taken where there is a breach. Concerns regarding the security of and access to the data and other related matters raised during the Inquiry include:

- the potential for reduced public access to public information
- the terms and conditions relating to the retention and use of personal information
- the long-term requirements related to data storage and in-person services
- technology advances (a key reason for the commercialisation)
- the potential for the on-selling of aggregated data
- relationship with the PEXA system, which is in the process of being mandated.

There is also some discussion about freedom of information access in a commercialised land titles and registry system.

Chapter 3 also considers the important area of costs and service levels. This was a concern raised in many submissions to the Committee and remains somewhat unclear in the absence of any contractual documentation.

Issues related to employment concerns are also discussed in Chapter 3, although due to the on-going nature of the negotiations the Committee has been careful not to speculate on issues still under discussion so as not to prejudice negotiations.

As stated earlier, the Committee considers that a significant commercialisation such as this, with its potential to impact on the community, should be subject to more scrutiny than has been possible in the timeframe available to the Committee. To undertake an inquiry without access to the key documentation places the Committee in a difficult position where it cannot be definitive in relation to significant concerns that have been raised during the Inquiry. Therefore, the Committee seeks in this report not to make firm findings about the relative merits of the commercialisation, but simply to raise concerns that need to be addressed both in the contractual arrangements entered into and in the public discourse about the transaction.

2

The lease arrangements

2.1 Current structure

Land Use Victoria (LUV) sits within the Local Infrastructure branch of the Department of Environment, Land, Water and Planning. It is the primary agency delivering titling, registry and property information services including:

- registration of land titles under the Torrens system
- surveying
- valuation and property sales
- planning and property certificates.³

LUV is divided into Land Registry Services and Strategic Land Assessment and Information Units.⁴

The Land Registry Services business division is responsible for:

1. issuing Certificates of Title
2. changing title details (known as title dealings)
3. replacing lost or destroyed titles
4. applications to change property boundaries (including subdivisions or consolidating parcels of land)
5. caveats, covenants and adverse possession claims
6. Crown land registry transactions
7. water register transactions
8. electronic plan and land transaction lodgements (e-conveyancing)
9. LANDATA unit
 - a. title survey and property sales information
 - b. property and planning certificates
10. Systems branch
 - a. core systems and applications,
 - b. contract management of IT vendors and third parties,
 - c. IT helpdesks
 - d. oversight of the IT modernisation program.⁵

³ David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 2.

⁴ John Bradley, Secretary, Department of Environment, Land, Water and Planning, *Transcript of evidence*, 6 June 2018, p. 12.

⁵ Ibid.

2.1.1 Performance

Per annum land registry services process, on average:

1. 850,000 land transactions registrations
2. 9,000 plans of subdivision
3. creation of 65,000 new land parcels
4. 2,000 Crown land transactions
5. 1 million land index searches
6. 200,000 plan searches
7. 2.4 million title services
8. 300,000 property certificates for vendor statements
9. 55,000 planning certificates.⁶

Demand for the registry's services has been increasing over recent financial years, due to a strong property market and related increased demand for services such as planning certificates for subdivisions.⁷

These unanticipated increases in demand have impacted on meeting performance targets and funding for land registry services, including LUV needing a Treasurer's Advance in 2016-17 to cover costs, and recruiting additional staff to register plans and work through the existing backlog.⁸

2.2 Proposed commercialisation

In the 2017-18 State Budget the Government announced it would commission a scoping study to examine options to commercialise the land titles and registry functions of Land Use Victoria.⁹ The scoping study was completed in December 2017 by UBS, lawyers MinterEllison, and Flagstaff Partners and the findings reported to the Government.

Following its consideration of the findings, the Government announced it would conduct a competitive market process to commercialise the land titles and registry functions of Land Use Victoria. The Government confirmed that the private operator will be responsible for selected functions for a concession term of 40 years, after which operational responsibilities will be returned to the state.¹⁰

The Government has announced that the commercialisation transaction for land registry services will be complete in the second half of the 2018-19 calendar year, likely August.¹¹

⁶ Department of Environment, Land, Water and Planning, Presentation to Committee: 'Commercialisation of Land Registry Services: Implications for employees', 6 June 2018, p. 3.

⁷ Department of Environment, Land, Water and Planning, *Annual Report 2016-17*, Melbourne, 2017, pp. 56, 71-72.

⁸ *Ibid.*, pp. 56-58, 72.

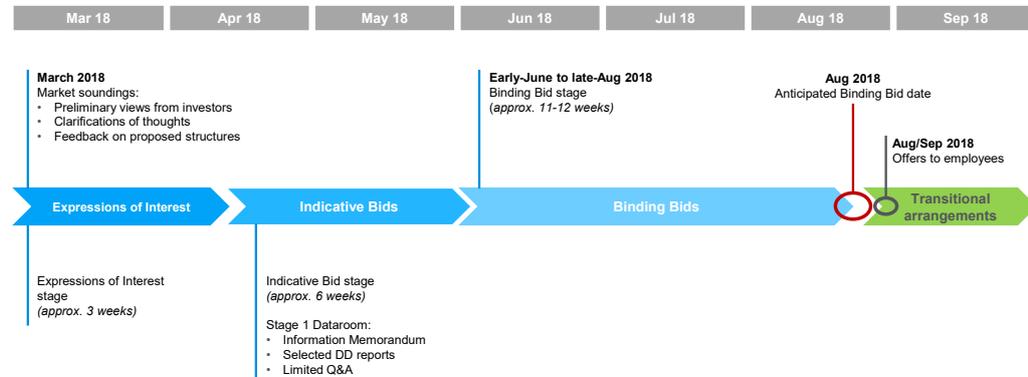
⁹ Budget 2017-18 Paper 3 p. 106; David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 2.

¹⁰ *Ibid.*; Tim Pallas - Treasurer, *Land Use Victoria Proceeds To Deliver Infrastructure Boost*, media release, Department of Treasury and Finance, Melbourne, 7 March 2018; Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59.

¹¹ David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 3.

A proposed process timeline presented to the Committee by the Department of Treasury and Finance is replicated below in Figure 2.1.

Figure 2.1 Process timeline



Source: Department of Treasury and Finance, Presentation to Committee: 'Victorian Land Titles and Registry Commercialisation', 6 June 2018, p. 3.

Based on evidence received by the Committee the proposed commercialisation will include the following functions of Land Registry Services:

1. registration
2. LANDATA (excluding Laverton office)
3. part of systems functions.¹²

The following associated services have been stated in evidence as not included in the sale:

- subdivisions, applications and surveying (incl. Crown land and general law conversion activities)
- Registrar of Titles
- Valuer-General Victoria
- Surveyor-General Victoria
- Land information and spatial services
- government land advice and coordination
- Victorian Government Land Monitor.¹³

¹² Infrastructure Partnerships Australia, *Submission*, no. 49, pp. 3, 5; John Bradley, Secretary, Department of Environment, Land, Water and Planning, *Transcript of evidence*, 6 June 2018, p. 12; Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, pp. 2-3

¹³ Infrastructure Partnerships Australia, *Submission*, no. 49, pp. 2-3; Robert Marsh, Valuer-General, Valuer-General Victoria, *Transcript of evidence*, 20 June 2018, p. 2; Craig Sandy, Surveyor-General, Surveyor-General Victoria, *Transcript of evidence*, 20 June 2018, p. 2; David Webster, Deputy Secretary - Commercial Division, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 4; Ben Stewart, Executive Director - Commercial Transactions, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 6; John Bradley, Secretary, Department of Environment, Land, Water and Planning, *Transcript of evidence*, 6 June 2018, p. 12; Ian Ireson, Chief Executive, Land Use Victoria, *Transcript of evidence*, 6 June 2018, p. 14; Andrew Harman, President, Association of Consulting Surveyors Victoria, *Transcript of evidence*, 6 June 2018, p. 25; Tim Pallas, Treasurer, *Transcript of evidence*, Inquiry into the 2018-19 Budget Estimates, Public Accounts and Estimates Committee, 15 May 2018, p. 10.

In evidence to the Committee both the Valuer-General of Victoria, Mr Robert Marsh, and the Surveyor-General of Victoria, Mr Craig Sandy, stated that the functions of their offices will be largely unaffected by the proposed commercialisation.¹⁴

The Valuer-General expanded, stating that his functions have a “slight area of overlap” with the functions of LANDATA, but that he is unconcerned about the commercialisation impacting his access and integration with this data and information in performing his functions as:

The functions of the titles office, as I understand them to be — those that are proposed to be commercialised — are the transactional functions. The functions that I am responsible for in the slight area of overlap are the functions of LANDATA, which are also proposed to be commercialised. LANDATA is almost like a broker on behalf of my responsibilities as Valuer-General under the Valuation of Land Act to provide and have access to sales and valuation data. I have a right and an obligation to that data, sales data, and I am the data originator for the valuations data, so I cannot foresee a situation where I could be negatively impacted. I can foresee a situation where they may seek my approval or concurrence or otherwise to develop new products et cetera.¹⁵

The evidence received by the Committee for this Inquiry generally viewed the retention of these functions, particularly those of the Registrar of Titles, the Valuer-General and the Surveyor-General, as positive.¹⁶

The Committee has been informed that the state will continue to own and be responsible for the following key and statutory functions, powers and controls:

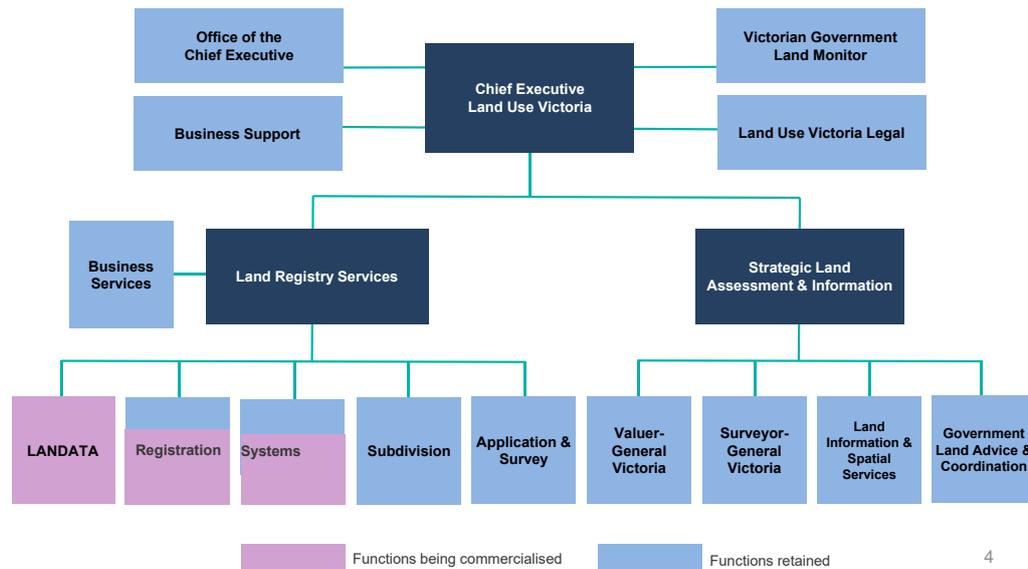
- the Land Titles Register, including registration of all land transactions, approving all changes, and retaining data ownership and control
- the state’s legal protections for land titles or the Torrens title system or the state’s role in guaranteeing titles under the *Transfer of Land Act 1958*
- setting fees for existing and new statutory services
- the Victorian Online Titles System and other IT systems.¹⁷

Mr David Martine, Secretary of the Department of Treasury and Finance, also advised the Committee that the proposed transaction does not involve the delegation or outsourcing of statutory functions or legislative change.¹⁸

Figure 2.2 shows the functions of Land Use Victoria intended to be commercialised and retained by the State based on the evidence provided to the Committee.

-
- 14 Robert Marsh, Valuer-General, Valuer-General Victoria, *Transcript of evidence*, 20 June 2018, pp. 2, 4; Craig Sandy, Surveyor-General, Surveyor-General Victoria, *Transcript of evidence*, 20 June 2018, p. 2.
- 15 Robert Marsh, Valuer-General, Valuer-General Victoria, *Transcript of evidence*, 20 June 2018, p. 3.
- 16 See, for example: Uniting Church in Australia (Victoria and Tasmania), *Submission*, no. 56, p. 3; Adrian Dwyer, CEO, Infrastructure Partnerships Australia, *Transcript of evidence*, 26 June 2018, p. 17.
- 17 John Bradley, Secretary, Department of Environment, Land, Water and Planning, *Transcript of evidence*, 6 June 2018, pp. 12-13; Andrew Harman, President, Association of Consulting Surveyors Victoria, *Transcript of evidence*, 6 June 2018, p. 25; David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 3; Department of Environment, Land, Water and Planning, Presentation to Committee: ‘Commercialisation of Land Registry Services: Implications for employees’, 6 June 2018, p. 5; Tim Pallas, Treasurer, *Transcript of evidence*, Inquiry into the 2018-19 Budget Estimates, Public Accounts and Estimates Committee, 15 May 2018, p. 10.
- 18 David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 2.

Figure 2.2 Proposed commercialisation and retained functions



Source: Department of Environment, Land, Water and Planning, Presentation to Committee: 'Commercialisation of Land Registry Services: Implications for employees', 6 June 2018, p. 4.

Figure 2.3, below, was provided to the Committee by the Department of Environment, Land, Water and Planning. According to Secretary of the Department, Mr John Bradley:

Those services shown (*Landata, Registration, Systems*) ... will transfer to the private operator after the transaction, which will continue to deliver those services. The services shown ... (*in blue*) will continue to be delivered by Land Use Victoria-retained functions. So for the 850 000 land transactions registered each year, the private operator will undertake the administrative tasks of registration preparation, and the Land Use Victoria-retained functions will undertake the statutory function of registration....¹⁹

Figure 2.3 Land registry services divided according to services intended to be commercialised and retained by the State



Source: Department of Environment, Land, Water and Planning, Presentation to Committee: 'Commercialisation of Land Registry Services: Implications for employees', 6 June 2018, p. 3.

¹⁹ John Bradley, Secretary, Department of Environment, Land, Water and Planning, *Transcript of evidence*, 6 June 2018, p. 12.

2.3 Integrity of the system

Throughout the Inquiry, the Committee heard that maintaining the integrity of Victoria's land titles system, which is based on the Torrens Title System is important for Victorians. The system is central to land ownership, land management and the Victorian economy. It underpins key aspects of community life including home ownership, urban development and infrastructure. The Committee heard that the Torrens system is among the world's best title systems, having provided assurance to Victorians for over 150 years.²⁰

The Government has stated that despite the commercialisation of some elements of the system, it will retain a range of key roles and functions including the Registrar of Titles to safeguard the integrity of the land titles system. Some witnesses considered these safeguards to be sufficient.²¹ Others expressed concerns that leasing the land titles registration functions to commercial interests could compromise a system designed to serve the public.²²

2.3.1 Torrens Title System

Established in 1858 in South Australia, the Torrens Title System²³ functions has served Victoria very well by 'accurately and completely' reflecting current ownership and interests about a person's land.²⁴ The Torrens system is often favourably compared to systems such as the General Law title system, which requires a person to produce 'a chain of deeds' to prove ownership or interests in a parcel of land.²⁵ Crucially, the Torrens system is underpinned by government guarantee, which provides compensation to a person who suffers loss of land or interest due to mistakes in the register.²⁶ The Committee heard that in jurisdictions, such as the U.S., where they operate a different system, the purchasing of title insurance is the norm.²⁷

The Torrens system itself is underpinned by the maintenance of an accurate and up-to-date cadastre. A cadastre is a set of records showing land property boundaries and tenure.²⁸ Licensed surveyors are responsible for the cadastre and the Committee heard that Victoria's surveyors have built effective relationships with Land Use Victoria's staff to ensure the quality of records in the system.²⁹ Conveyancers and

20 See for example, The Institution of Surveyors Victoria, *Submission*, no. 62, p. 2.

21 See for example, Infrastructure Partnerships Australia, *Submission*, no. 49.

22 See for example, CPSU Victoria, *Submission*, no. 55, pp. 7-8.

23 Named after Sir Robert Richard Torrens (1814-1884) who was credited with developing the Torrens system in South Australia in 1858 <<http://classic.austlii.edu.au/au/journals/AJLH/2003/13.html>>.

24 Department of Environment, Land, Water and Planning (DEWLP), 'Torrens titles', accessed 15 July 2018, <<https://www.propertyandlandtitles.vic.gov.au/land-titles/torrens-titles>>.

25 Department of Environment, Land, Water and Planning (DEWLP), 'Torrens titles', accessed 15 July 2018, <<https://www.propertyandlandtitles.vic.gov.au/land-titles/torrens-titles>>.

26 Department of Environment, Land, Water and Planning (DEWLP), 'Torrens titles', accessed 15 July 2018, <<https://www.propertyandlandtitles.vic.gov.au/land-titles/torrens-titles>>. See also, Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 7.

27 David McKenzie, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 9.

28 Surveyors Registration Board of Victoria, 'About Cadastral Surveying', accessed 15 July 2018, <<https://www.surveyorsboard.vic.gov.au/content/74/About-Cadastral-Surveying.aspx>>

29 The Institution of Surveyors Victoria, *Submission*, no. 62, pp. 1-2.

property lawyers also described their positive working relationships with staff at Land Use Victoria, whom they considered shared their commitment to the accuracy and integrity of the register.³⁰

The Committee also acknowledges the importance of the role of the Surveyor-General to the system of land titles in Victoria. The Surveyor-General's roles include:

- land surveying
- protection of the cadastre
- land administration
- positioning (geodetic) infrastructure
- geographic place names

By undertaking these roles and responsibilities, the Surveyor-General is the statutory authority on land surveying and cadastral boundaries and, as such, protects the integrity of the system. The Committee is pleased to see that the important role played by the Surveyor-General will not be affected by the commercialisation.

At a public hearing, Ms Lily Tell and Mr David McKenzie, Co-Chairs of the Property Law Committee at the Law Institute of Victoria, told the Committee that Land Use Victoria has served Victoria well. They stated that Land Use Victoria has been 'very good' at managing claims on the Government guarantee fund, ensuring that compensation claims have been minimal.³¹

2.3.2 Current arrangements to safeguard the integrity of the system

During the Inquiry, the Government stated that it will retain a range of key functions to maintain the integrity of the system. Mr David Martine, Secretary of DTF told the Committee at a public hearing:

The state will continue its guarantee of title that underpins the Torrens title system. The Registrar of Titles will retain its existing statutory functions, powers and responsibilities. Together with additional contractual arrangements, the Registrar and the state will have strong oversight of the private operator, including through established approval processes and procedures...³²

Mr Terry Garwood, Deputy Secretary of Local Infrastructure of DELWP told the Committee that the Government had deliberated over which functions to lease to a private operator:

So for us it is really a transfer of non-statutory, administrative functions to a private operator, with strong safeguards around system integrity, privacy and security, costs and fees, service levels, including innovation spends, that ensures the state retains all of the statutory functions ...³³

³⁰ Jill Ludwell, CEO, Australian Institute of Conveyancers (Victoria Divisions), *Transcript of evidence*, 20 June 2018, p. 18. David McKenzie, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 9.

³¹ David McKenzie, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 8; Lily Tell, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018.

³² David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 2.

³³ Terry Garwood, Deputy Secretary - Local Infrastructure, Department of Environment, Land, Water and Planning, *Transcript of evidence*, 6 June 2018, p. 18.

The Government noted in its submission to the Inquiry that the continuation of the State guarantee will mean that: ‘it is not envisaged that title insurance will be required for property purchasers’ in Victoria in the future.³⁴

The Committee heard that the retention of the State guarantee provided some comfort to stakeholders. Infrastructure Partnerships Australia, which describes itself as a leading public policy think-tank that advises government on infrastructure-related policies, expressed its confidence in the proposed arrangement in its submission:

As a result of the scoping study, the Victorian Government announced that it would retain essential services, including the Strategic Land Assessment and Information services ...

Retaining the Registrar of Titles functions will also provide the Victorian Government with a regulatory oversight role over the private operator. Importantly, there will be no changes to the Torrens title system, with the State Guarantee of title that underpins the Torrens title system remaining in place.³⁵

The Government has also outlined regulatory and oversight measures to maintain the system’s integrity. For example, in its submission it states that:

the Private Operator will be subject to detailed service requirements and KPIs to ensure the quality of service is maintained or improved.³⁶

A number of witnesses acknowledged that the Government has sought to support the existing system by retaining more services and roles compared to other jurisdictions such as NSW.³⁷ However, as outlined below, key industry stakeholders also expressed ongoing concerns about the integrity of the system under the proposed arrangement and concerns are likely to remain until the details are made public.

2.3.3 Concerns about the ongoing integrity of the system

At a public hearing, Ms Kellie Dean, President Elect of the Institution of Surveyors Victoria told the Committee that there has been a lack of detailed information regarding the proposal:

We do not have the information to understand what the core services is going to be that is privatised. Currently we know that the subdivision branch assists with some of the registration types, so we are just concerned that if parts of it are commercialised, there may be some parts that are needing assistance from other branches.³⁸

According to the Institution of Surveyors Victoria, key industry stakeholders and the public are not sufficiently aware of what the new arrangement will mean for current service provision and arrangements at Land Use Victoria.³⁹

³⁴ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 7.

³⁵ Infrastructure Partnerships Australia, *Submission*, no. 49, pp. 2-3.

³⁶ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 7.

³⁷ See for example, Uniting Church in Australia (Victoria and Tasmania), *Submission*, no. 56, pp. 3-4.

³⁸ Kellie Dean, President Elect, The Institution of Surveyors Victoria, *Transcript of evidence*, 5 July 2018, p. 14.

³⁹ The Institution of Surveyors Victoria, *Submission*, no. 62, p. 5. See also, Surveying and Spatial Sciences Institute, *Submission*, no. 64, p. 2.

In its submission, the Institution of Surveyors Victoria explained that the separation of functions at Land Use Victoria has been based on an assumption that administrative processes are ‘low risk’ when in fact, they are significant to maintaining the efficiency and integrity of the system:

We understand the Government feels that the registration aspects are administrative by nature and so the associated risks are low. However, it is our view that registration is not purely an administrative function. The long-established processes, policies, legal precedence and most importantly the expertise across the partnership are what provide efficiency and integrity to the registration process...⁴⁰

Similarly, at a public hearing, Mr McKenzie of the Law Institute of Victoria told the Committee that Victoria’s property lawyers are reliant on an integrated service when dealing with complex transactions:

Well, the difficulty is that I think it is possible to draw these distinctions ... So when a big tower goes up you can get somewhere between maybe 250 to 500 new titles. If it goes wrong at the moment, there are multiple checks because there is no Chinese wall between the surveyors ticking off on the plan of subdivision and the people actually issuing the titles. So it is not as easy as to say that there is just this simple interface — ‘We’ll put subdivisions on this side of the fence and we’ll put issued titles on this side of the fence and we’ll put transactions on the other side of the fence’ — because quite often in complex transactions those boundaries are just not simply observed.⁴¹

The Committee heard it is essential that the expertise that relevant Land Use Victoria staff members have developed over the years and the effective working relationships across the organisation, as well as the relationships between Land Use Victoria staff and the key professions are maintained, when the private operator assumes responsibility.

Many witnesses and submissions expressed a concern that a private operator will not maintain the integrity of a system that fundamentally operates in the public interest. At a public hearing, Ms Tell, of the Law Institute of Victoria explained how the leasing of the land titles and registry services to a private operator could undermine the system:

Just the conflict between something that is a public service and a public benefit, and on the other hand making money from it. So it is the motivation; if you are a corporation you are motivated by and your obligation is to shareholders, right, which theoretically conflicts with public service where the obligation is for the public good and the integrity of the title system.⁴²

In a submission, the Surveying and Spatial Sciences Institute, a peak body representing a number of surveying and geospatial professions raised questions about the oversight of the private operator:

If the commercial entity deals in land in its own right, what measures will be in place to ensure that its dealings are not processed with more priority over the dealings of other financial institutions and individuals.⁴³

⁴⁰ The Institution of Surveyors Victoria, *Submission*, no. 62, p. 3.

⁴¹ David McKenzie, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 6.

⁴² Lily Tell, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 8.

⁴³ Surveying and Spatial Sciences Institute, *Submission*, no. 64, p. 2.

Also in a submission, Professor John Quiggan, a Vice-Chancellor's Senior Research Fellow and Australian Laureate Fellow in the School of Economics at the University of Queensland explained that in a mixed economy, some activities are best operated by the private sector:

Broadly speaking the activities most suited to the private sector are those characterized by competitive markets, limited need for regulatory oversight, a wide range of products with constant innovation and significant opportunities for gains in operating efficiency. Conversely, the activities most suited to the public sector are natural monopolies operating in stable environments and requiring close regulation.⁴⁴

Conversely, according to Professor Quiggan, a land titles registry service represents a 'natural monopoly' and is best operated by the public sector.⁴⁵ In a submission, the Australian Competition and Consumer Commission (the ACCC) told the Committee that a private operator in the land titles register with 'existing upstream or downstream interests in related markets' requires government to enact appropriate and effective regulatory arrangements to ensure competition issues are addressed.⁴⁶

According to the Victorian whole-of-government submission, 'Together with additional contractual arrangements, the Registrar and the State will have strong oversight of the Private Operator'.⁴⁷ Key stakeholders including the peak bodies that represent surveyors drew attention to the need for additional oversight and consultation processes to maintain the integrity of the system under the proposed arrangement.

2.3.4 Maintaining the integrity of the system

The Committee heard there are a suite of measures that would reassure key industry stakeholders and the broader community that the integrity of the system will not be undermined under the new arrangement. Mr Tom Champion, President of the Institution of Surveyors Victoria summarised these measures, at a public hearing:

To ensure both our unresolved concerns are met and public confidence in the land titles system is maintained, the ISV would like mechanisms built into the performance requirements of the commercialised system which would provide a system of accountable and verifiable reporting to be provided to the Parliament annually which incorporates both historical and projected costs and cost variances for core and non-core services provided by the new operator; performance against targets for timeliness and quality of service provided; levels of complaints and disputes; efficiency and effectiveness of dispute resolution procedures; human resources measures, including level of skills and training maintained by staff; and employee satisfaction, retention of staff and expertise, with penalties to apply for failure to meet those targets.⁴⁸

⁴⁴ Professor John Quiggan, *Submission*, no. 50, p. 4.

⁴⁵ Professor John Quiggan, *Submission*, no. 50, p. 4.

⁴⁶ Australian Competition and Consumer Commission (ACCC), *Submission*, no. 60, pp. 1-2.

⁴⁷ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 8.

⁴⁸ Tom Champion, President, The Institution of Surveyors Victoria, *Transcript of evidence*, 5 July 2018, p. 13.

At a public hearing, Mr Andrew Harman, President of the Association of Consulting Surveyors Victoria reiterated the longstanding relationship between surveyors and the land titles office for the integrity of the system, and the need for that critical partnership to be maintained:

From our perspective, the maintenance of that cooperative approach in the maintenance of the cadastre is a critical element, because that historically has been our experience —that professional surveyors have worked closely with the titles office, as we historically call it, to get the right answer and to get quality information recorded into the registry. That has been a consultative process historically, and we are anxious that does not cease.⁴⁹

According to Mr Harman, the Association also sees a role for ongoing consultation between industry representatives and the Government, even after the new private operator assumes the land titles and registration functions. He told the Committee, at a public hearing:

I do not believe we want to be the groups who are evaluating the performance. We want to be the groups who are working cooperatively to make sure it works well... We want to be continually consulted and we want to be part of the conversation in partnership, if you like, to make sure the system continues to work well for the state.⁵⁰

In a public hearing, Ms Jill Ludwell, Chief Executive Officer of the Australian Institute of Conveyancers (Victoria Division) also conveyed the importance of the existing working relationship between conveyancers and Land Use Victoria. Ms Ludwell told the Committee that the Australian Institute of Conveyancers would be looking to obtain a commitment from the Government and the private operator that the relationship will be ongoing:

As I said, we have had a good relationship with Land Use Victoria. We sit on committees with them. With any changes, they always come to us to discuss them. We circulate that around to members. So I would hate that to stop. If anyone was to come in and sort of take over that space, we would be looking for some sort of ongoing commitment, because that has been sort of more of a gentleman's agreement than anything else...⁵¹

At a public hearing, Ms Tell, of the Law Institute of Victoria summarised the concerns of the Institute regarding the long-term lease proposal. Ms Tell stated that a primary area of their concern is the role and power of the Registrar. Ms Tell explained that should a registrar refuse a dealing, and he or she is brought before the Supreme or County court to substantiate and uphold their grounds, the Property Law Committee would be curious to see:

[H]ow a privatised system would work when there would be a dual loyalty from a registrar to shareholders as well as to the integrity of the titles office system.⁵²

⁴⁹ Andrew Harmon, Association of Consulting Surveyors Victoria, *Transcript of evidence*, 6 June 2018, p. 28; Kellie Dean, President Elect, The Institution of Surveyors Victoria, *Transcript of evidence*, 5 July 2018, p. 12.

⁵⁰ Andrew Harmon, Association of Consulting Surveyors Victoria, *Transcript of evidence*, 6 June 2018, p. 30.

⁵¹ Jill Ludwell, CEO, Australian Institute of Conveyancers (Victoria Divisions), *Transcript of evidence*, 20 June 2018, p. 19.

⁵² Lily Tell, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 8.

The Institution of Surveyors Victoria suggested some options that would improve oversight of the system and its integrity. For example, the Institution noted in its submission that the NSW Registrar General has a Cadastral Integrity Unit that audits the quality of output from the operator. The Institution suggested that further expanding resources and powers for the Registrar may be an option in Victoria.⁵³

The Committee recognises that key industry stakeholders have built effective working relationships with Land Use Victoria's staff members, and some have ongoing concerns about the proposed arrangement and its potential to disrupt or impact negatively on the smooth functioning of the system.

2.4 Proposed financial arrangements

The State has commenced a competitive market process. Expressions of interest were received early in March 2018, and indicative non-binding bids were received in late May. The binding bid process has commenced, with the Government expected to announce a preferred provider in the second half of 2018.⁵⁴

The Committee has been informed that the land title registry will be commercialised rather than privatised,⁵⁵ a difference that was explained to the Committee by Mr David Webster, Deputy Secretary - Commercial Division, Department of Treasury and Finance:

In a full privatisation generally there are less controls potentially over price. With some full privatisations you set up a whole regulatory function with an independent reviewer, building-blocks approach et cetera, but generally the controls over the new private sector owner are through a much looser regulatory regime. Commercialisation is effectively highly contractual. The fees or levels of performance are embedded in the contract. Generally in the types of contracts we do there are obligations around continuous improvement as standards change through time. And the commercialisation is for a limited period of time, so if the activity that is being commercialised is being commercialised for 40 years, at the end of that all of the assets effectively come back to the state.⁵⁶

Representatives from the Department of Treasury and Finance informed the Committee that the existing revenue the State receives from land registry services functions will be collected by the private operator, but continue to be received by the State as part of Consolidated Revenue. From this revenue the State will pay the private operator a fee for service alongside Key Performance Indicators (KPIs) and service level agreements.⁵⁷

⁵³ The Institution of Surveyors Victoria, *Submission*, no. 62, p. 8.

⁵⁴ Department of Treasury and Finance, Presentation to Committee: 'Victorian Land Titles and Registry Commercialisation', 6 June 2018, p. 3.

⁵⁵ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 18.

⁵⁶ David Webster, Deputy Secretary - Commercial Division, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 4.

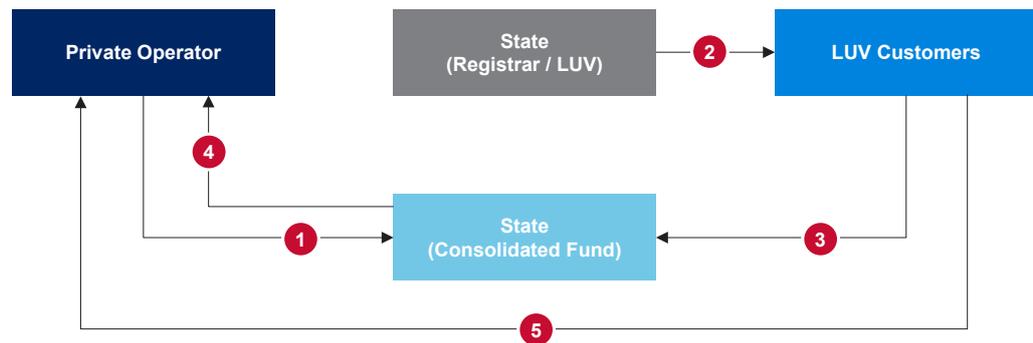
⁵⁷ David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, pp. 3, 8; David Webster, Deputy Secretary, Commercial, Department of Treasury and Finance, *Transcript of evidence*, Inquiry into Budget Estimates 2018-19, Public Accounts and Estimates Committee, 15 May 2018, p. 23; Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, pp. 5-6, 18.

Mr Webster explained to the Committee:

They will be very similar to PPP-type arrangements where there will be a fee for each service provided on a volumetric basis, but there will be a whole heap of key performance indicators and service-level agreements. If the key performance indicators are not met, then there is a series of abatements off the amount that the state pays to the private sector operator, so there is an incentivisation regime as well.⁵⁸

Figure 2.4, below, was provided by the Government in its submission to this Inquiry and depicts how the proposed service fee and revenue structure will work.

Figure 2.4 Proposed service fee and revenue structure



1. The Private Operator will pay an upfront concession licence fee to the State.
2. The State sets statutory fees and charges for customers.
3. Customers will pay the State for statutory products and certain non-statutory products, with fees collected by the Private Operator as collection agent.
4. The State will pay a contractual service fee to the Private Operator.
5. The Private Operator will charge LUV customers directly for certain retail non-statutory products and may retain the proceeds. Increases to these charges will be capped at Melbourne CPI unless otherwise approved by the State.

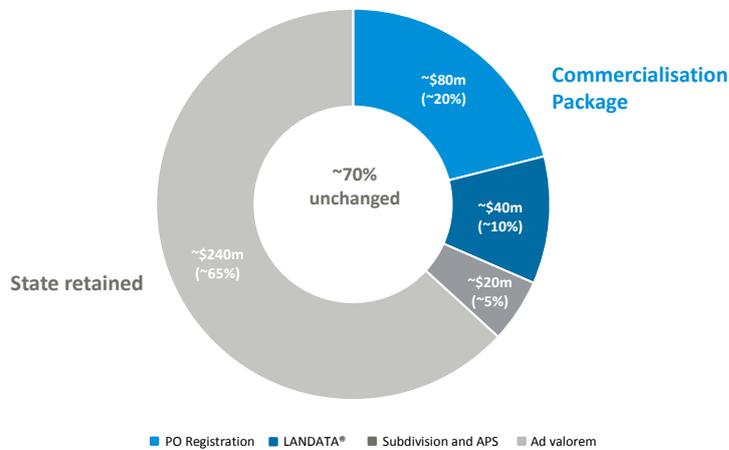
Source: Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 19.

- Under the proposed commercialisation the State will continue to collect existing revenue from Land Registry Services functions.
- Under the proposed commercialisation the State will pay the private operator a volumetric fee for services provided.
- Key performance indicators will apply to services provided by the private operator, including abatements on fees payable if these are not met.

⁵⁸ David Webster, Deputy Secretary - Commercial Division, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 8.

Figure 2.5, below, represents the amount of LUV’s annual revenue which will be affected by the commercialisation.

Figure 2.5 LUV Revenue Breakdown



Source: Department of Treasury and Finance, Presentation to Committee: ‘Victorian Land Titles and Registry Commercialisation’, 6 June 2018, p. 2; Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 3.

- Approximately 20 per cent of Land Use Victoria’s overall annual revenue (\$80 million) will be included by the proposed commercialisation package.

The commercialisation has been reported to be worth an estimated \$2 billion.⁵⁹ However, while provision has been made in budget estimates for the commercialisation, the Committee has been advised that any potential sale proceeds will be commercial-in-confidence until the transaction is concluded.⁶⁰ In evidence to the Committee Mr David Martine stated that this confidentiality is to avoid skewing the competitive process by “[signalling] to the market your expectation of what one might receive.”⁶¹

The Committee notes that while the State will continue to set statutory fees, the commercialisation will enable the private provider to develop non-statutory products and to set the fees for these, capped at the Melbourne CPI. In the Committee’s view, this may limit the incentive for innovation and efficiency as the CPI would enable the private operator to raise prices and still make a profit within the CPI range without efficiencies. A cap that is set high may allow the operator to make inappropriate returns.

The Committee sought information from DTF which shows fees against the CPI for the past 25 years but the data was not available at the time of finalising this report. The Committee considers that such information should be published to enable long term comparisons to be made.

⁵⁹ See, for example: Sarah Tompson and Anthony Macdonald, *Presentations done and dusted in Victoria’s \$2b land titles sale*, The Australian Financial Review, July 9 2018.

⁶⁰ David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, pp. 3-4.

⁶¹ Ibid.

FINDING 1: In the Committee’s view, the level of the cap is an important factor in the efficacy of the transaction, and the Government should consider alternative caps that ensure the charges impact minimally on consumers.

RECOMMENDATION 1: That the Department of Treasury and Finance make public the details of the commercialisation, including selected provider and sale proceeds, as soon as the transaction is concluded.

Mr David Webster informed the Committee of the process undertaken to determine the likely value of a service such as the land titles registry:

Effectively we do a shadow cash flow modelling of the likely profit-and-loss cash flow balance sheet of the activities to be commercialised. We work out what we think the free cash flow is likely to be. There will be a number of macro-economic assumptions which feed into that — interest rates, GDP growth, volume growth in terms of transactions. Then we, based on comparable transactions we are seeing later and recent market intelligence, impute what we think the capital structure that the new owners will apply, which includes cost of debt, cost of equity and the way they [inaudible] capital, and then we back solve in terms of what the net present value of the free cash flow is likely to be.⁶²

The proposed long-term lease is consistent with lease periods for similar, recently commercialised assets in New South Wales (35 years) and South Australia (40 years) (Please refer to later section of this final report for further consideration of land title registry commercialisations in other jurisdictions). The Committee has heard that the long-term nature of the proposed commercialisation is intended to attract long-term investors, such as superannuation and pension funds, which require stable, long-term cash flows.⁶³

The Committee received evidence that it was likely that bids from or with involvement from existing stakeholders such as existing or incoming Electronic Lodgement Network Operators (ELNOs) (e.g. PEXA) or parties involved with preparing the scoping study (e.g. UBS, MinterEllison and Flagstaff Partners) would not be accepted.⁶⁴

2.4.1 Proposed benefits

The Government’s proposed commercialisation of Land Registry Services rests on the provision of two key benefits to the State:

- technological and service innovation
- asset recycling and infrastructure investments.

⁶² David Webster, Deputy Secretary - Commercial Division, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 5.

⁶³ Infrastructure Partnerships Australia, *Submission*, no. 49, p. 5; Adrian Dwyer, CEO, Infrastructure Partnerships Australia, *Transcript of evidence*, 26 June 2018, p. 16; Jill Ludwell, CEO, Australian Institute of Conveyancers (Victoria Divisions), *Transcript of evidence*, 20 June 2018, p. 25; David Webster, Deputy Secretary - Commercial Division, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, pp. 5-6.

⁶⁴ Alan Cameron, Chairman, Property Exchange Australia, *Transcript of evidence*, 26 June 2018, pp. 35-36; Justin Schmitt, Chief Transformation Officer, Property Exchange Australia, *Transcript of evidence*, 26 June 2018, pp. 35-36; David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 7; David Webster, Deputy Secretary - Commercial Division, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 7.

Customer service and technology innovation

Under the proposal an appropriately incentivised private sector is seen as more experienced and capable of innovating, implementing new technologies, and improving service delivery for the public than the State.⁶⁵ In addition, evidence to the Committee has suggested that commercialising the service allows the State to transfer the risk associated with the implementation of new technologies to the private sector who are more equipped to manage it.⁶⁶

The main anticipated service and technology benefits presented by the Government from commercialising Land Registry Services include:

- increased digitisation and a faster transition to e-conveyancing
- continued investment and improved IT systems
- implementation and use of new technologies
- improved customer experiences
- improved service delivery and transaction processing times.⁶⁷

The Government submission to the Inquiry stated:

It is expected the commercialisation will enable private sector innovation, promote private sector investment and better respond to customer demand for technology driven services.⁶⁸

This was supported in evidence to the Committee provided by Mr Martine:

The government's announcement outlined several objectives for the transaction, including optimising the long-term value of the land titles and registry functions. The government also identified the opportunity for the private sector to respond to customer demand for technology-driven services by accelerating digitisation and improving service standards and quality of standards for land titles and registry customers.⁶⁹

⁶⁵ Adrian Dwyer, CEO, Infrastructure Partnerships Australia, *Transcript of evidence*, 26 June 2018, p. 12; Infrastructure Partnerships Australia, *Submission*, no. 49, p. 4; Tim Pallas - Treasurer, *Land Use Victoria Proceeds To Deliver Infrastructure Boost*, media release, Department of Treasury and Finance, Melbourne, 7 March 2018; David Webster, Deputy Secretary, Commercial, Department of Treasury and Finance, *Transcript of evidence*, Inquiry into Budget Estimates 2018-19, Public Accounts and Estimates Committee, 15 May 2018, p. 23; Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 1.

⁶⁶ Adrian Dwyer, CEO, Infrastructure Partnerships Australia, *Transcript of evidence*, 26 June 2018, p. 12; Infrastructure Partnerships Australia, *Submission*, no. 49, p. 5; Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 19.

⁶⁷ John Bradley, Secretary, Department of Environment, Land, Water and Planning, *Transcript of evidence*, 6 June 2018, pp. 13, 21; Ian Ireson, Chief Executive, Land Use Victoria, *Transcript of evidence*, 6 June 2018, pp. 21-22; Adrian Dwyer, CEO, Infrastructure Partnerships Australia, *Transcript of evidence*, 26 June 2018, p. 12; Infrastructure Partnerships Australia, *Submission*, no. 49, pp. 2, 4; Andrew Harman, President, Association of Consulting Surveyors Victoria, *Transcript of evidence*, 6 June 2018, pp. 26, 28; Department of Environment, Land, Water and Planning, Presentation to Committee: 'Commercialisation of Land Registry Services: Implications for employees', 6 June 2018, p. 9; Jesse Hermans, Administrative Assistant and Researcher, Prosper Australia, *Transcript of evidence*, 5 July 2018, p. 19; Gerry Shone, Executive Adviser, Association of Consulting Surveyors Victoria, *Transcript of evidence*, 6 June 2018, p. 28; David Webster, Deputy Secretary, Commercial, Department of Treasury and Finance, *Transcript of evidence*, Inquiry into Budget Estimates 2018-19, Public Accounts and Estimates Committee, 15 May 2018, p. 10; Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 19.

⁶⁸ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 19.

⁶⁹ David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 2.

And Mr John Bradley, Secretary of the Department of Environment, Land, Water and Planning:

In summary, we see this change as delivering better services to the public through continued investment in information technology systems and customer interfaces...⁷⁰

Mr Ian Ireson, Chief Executive of Land Use Victoria, also told the Committee that there is scope for service improvements within Land Registry Services, predominantly through improved use of electronic transactions:

With the digitisation that we have spoken about, there are opportunities to further improve and enhance the service delivery requirements. Currently we are required to register transactions — 95 per cent within five days. As we get more and more transactions coming through electronically those service delivery improvements will be a lot faster. With some of our transactions today we are doing them within 5 minutes, so I would expect that sort of improvement in the service delivery to continue.⁷¹

The Committee expects that more general private sector efficiencies would enable the cost effectiveness of the system to be improved.

In addition, the Committee sees some opportunities for additional data products being released which may act as a general economic and social benefit. A report of the Economic Development and Infrastructure Committee of the Legislative Council entitled *Inquiry into Improving Access to Victorian Public Sector Information and Data*, tabled in 2009, saw significant opportunities for the further publication of de-identified public sector information. In its report it stated that:

The Committee considered evidence that improved access to and re-use of PSI may assist people to make more informed, and better, decisions about their businesses and activities. Improved access to PSI may also help to overcome the 'silo' effect in government, where government agencies do not effectively share or disclose the information they hold to other government agencies. In this context, improved access to and re-use of PSI may lead to improved efficiency in government, business, and for the public generally.⁷²

The Committee also considers that the Government should consider introducing a royalty payment scheme for the commercialisation of land titles non-statutory products, similar to that introduced in South Australia, which has a 12.5 per cent royalty payment on such products. This would further increase the financial benefits to the state, without reducing the incentive to innovate.

⁷⁰ John Bradley, Secretary, Department of Environment, Land, Water and Planning, *Transcript of evidence*, 6 June 2018, p. 13.

⁷¹ Ian Ireson, Chief Executive, Land Use Victoria, *Transcript of evidence*, 6 June 2018, pp. 21-22.

⁷² Economic Development and Infrastructure Committee, *Inquiry into Improving Access to Victorian Public Sector Information and Data*, Parliament of Victoria, June 2009.

Asset recycling and wider infrastructure investment

The proposed long-term lease of Land Registry Services is presented as part of Victoria's ongoing asset recycling programme.⁷³ Under this programme the State identifies mature assets, privatises or commercialises them, and invests the proceeds in new activities. In this case, the funds from the proposed commercialisation of Land Registry Services are intended to help fund further investment in the State's infrastructure projects.⁷⁴

Stakeholder concerns and further discussion of these proposed benefits are further discussed in the **Rationale and proposed benefits** section of this report.

2.4.2 Proposed safeguards and oversights

In the evidence provided to the Committee, stakeholders have made reference to a range of included measures intended to ensure Land Registry Services' core functions continue to operate in the public interest under the private operator.

These include that the State will:

- retain control of statutory functions through the Registrar of Titles
- retain full control over the prices of land registry services and the pricing of non-statutory services
- impose KPIs on the private operator for service standards with financial penalties payable when they are not met
- maintain existing consumer protections to ensure there is no reduction in the rights of property owners or other customers
- retain ownership of the data.

The private operator will:

- remain under the oversight of the State controlled Registrar of Titles
- ensure that land registry and valuation information now available to the public will continue to be available
- be subject to relevant existing privacy and data laws
- continue the delivery of all existing services;
- provide data access to all potential customers on a non-discriminatory basis and give Government agencies access to data for public policy purposes.

Further, the Committee has been advised that under the proposed commercialisation:

- the State will maintain existing consumer protections and rights of property owners

⁷³ Infrastructure Partnerships Australia, *Submission*, no. 49, pp. 1-2; Adrian Dwyer, CEO, Infrastructure Partnerships Australia, *Transcript of evidence*, 26 June 2018, p. 12; David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 2; Jesse Hermans, Administrative Assistant and Researcher, Prosper Australia, *Transcript of evidence*, 5 July 2018, p. 19; Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, pp. 5, 19.

⁷⁴ David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 2; Infrastructure Partnerships Australia, *Submission*, no. 49, pp. 2, 5; Danni Addison, CEO, Urban Development Institute of Australia (Victoria), *Transcript of evidence*, 26 June 2018, p. 2.

- the State will retain ownership of land registry data
- the private operator will ensure that land registry and valuation information and services currently available to the public will remain so
- the private operator will be subject to relevant existing privacy and data laws
- the private operator will provide non-discriminatory access to land registry data, including to Government agencies for public policy purposes.⁷⁵

Mr Martine described the Government's intended oversight measures and safeguards to the Committee:

The state will retain step-in rights to protect data and will enforce compliance with data privacy and protection laws. The state will also retain full control over the future setting of fees for existing and new statutory services by regulation. This includes all key products necessary for transfer of title and both registrations and discharge of mortgage. The state will ensure existing consumer protections are maintained so there is no reduction in the rights of property owners or other customers.

The private operator will be subject to robust key performance indicators to ensure the quality of service provided to land registry customers is maintained or improved. The private operator will be required to continue the delivery of all existing services that form part of the commercialisation. The private operator will also be required to provide access to registry data to all customers on a non-discriminatory basis. Government agencies will continue to be able to access registry data for public policy purposes.⁷⁶

Infrastructure Partnerships Australia provided evidence to the Committee that the proposed commercialisation would be an "operator-regulator model" whereby the private operator provides services with costs and performance overseen and enforced by a regulator (the state-retained Registrar of Titles).⁷⁷

Mr Adrian Dwyer, the CEO of Infrastructure Partnerships Australia, explained to the Committee why this operator-regulator model is considered sufficient, stating that 'where it is possible that you can have a commercially viable service within a well-structured market, where it is possible to have competition, then you can move to a model which has a lower degree of regulation.'⁷⁸ He told the Committee in a public hearing:

But in a model where there are high monopoly-type characteristics like there are with land titles, where there is a single operator and a single system, that is an appropriate structure in which to have an operator-regulator model where you have a continuing interest from the Government, the state, in regulating the outcomes rather than allowing unfettered access to a monopoly market. So that is the right structure to deliver these kinds of services through. It is also one that has been adopted, I think

⁷⁵ Department of Environment, Land, Water and Planning, Presentation to Committee: 'Commercialisation of Land Registry Services: Implications for employees', 6 June 2018, p. 5; David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, pp. 2-3; John Bradley, Secretary, Department of Environment, Land, Water and Planning, *Transcript of evidence*, 6 June 2018, p. 21; Ian Ireson, Chief Executive, Land Use Victoria, *Transcript of evidence*, 6 June 2018, pp. 21-22; Infrastructure Partnerships Australia, *Submission*, no. 49, pp. 3-4; Uniting Church in Australia (Victoria and Tasmania), *Submission*, no. 56, pp. 4-5; Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, pp. 2-3.

⁷⁶ David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 3.

⁷⁷ Infrastructure Partnerships Australia, *Submission*, no. 49, p. 4; Adrian Dwyer, CEO, Infrastructure Partnerships Australia, *Transcript of evidence*, 26 June 2018, pp. 12-13.

⁷⁸ Adrian Dwyer, CEO, Infrastructure Partnerships Australia, *Transcript of evidence*, 26 June 2018, p. 15.

well, in the New South Wales model, where you have a regulator-operator model and continuing oversight, step-in powers and the like for the public sector to ensure that service is delivered in the best long-term interest of taxpayers and users.⁷⁹

2.5 Other jurisdictions

Commercialisation of land title registries has been undertaken by other jurisdictions, most notably several provinces in Canada and, more recently, in New South Wales and South Australia.⁸⁰

In its submission to the Inquiry, the Government informed the Committee that the commercialisation activities in these jurisdictions have informed the proposed model for Victoria.⁸¹

This section will briefly consider the models used in these jurisdictions and how their models differ to that proposed for Victoria.

2.5.1 New South Wales

New South Wales leased their Land and Property Information (LPI) unit for 35 years for \$2.6 billion to a consortium including Hastings Funds Management, Westpac and First State Super in 2017.⁸²

The scoping study for New South Wales' commercialisation has not been made public,⁸³ however, the Committee notes public elements of the commercialisation include:

- Creation of a new regulator to monitor and enforce the operators performance and security of data.
- Government retention of ownership of all data, which must be housed in Australia.
- Valuation services and spatial mapping divisions retained by the State.⁸⁴

The Committee notes that prior to the New South Wales LPI commercialisation fees for statutory transactions were significantly increased and public servants working in the unit were made redundant.⁸⁵

2.5.2 South Australia

South Australia leased their Land Titles Office for 40 years in 2017 for \$1.6 billion.⁸⁶

⁷⁹ Ibid

⁸⁰ Surveying and Spatial Sciences Institute, *Submission*, no. 64, p. 4.

⁸¹ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 6.

⁸² Infrastructure Partnerships Australia, *Submission*, no. 49, p. 6; Name Withheld, *Submission*, no. 46, p. 3; CPSU Victoria, *Submission*, no. 55, p. 23.

⁸³ Name Withheld, *Submission*, no. 46, p. 3.

⁸⁴ NSW Government, *The 35-year Concession of Land and Property Information: LPI Concession Fast Facts*, April 2017; Julian Bajkowski, *NSW puts Land Property Information on the block*, Government News, May 26 2016.

⁸⁵ Julian Kennelly, Media and Communications Manager, CPSU Victoria, *Transcript of evidence*, 5 July 2018, p. 3.

⁸⁶ Infrastructure Partnerships Australia, *Submission*, no. 49, p. 6; Prosper Australia, *Submission*, no. 44, p. 2; Adrian Dwyer, CEO, Infrastructure Partnerships Australia, *Transcript of evidence*, 26 June 2018, p. 13.

The winning bidder was a consortium comprising of Macquarie Infrastructure & Real Assets and one of Canada's largest public sector pension funds.⁸⁷

While details of the contract remain confidential, key elements of the South Australia transaction known to the public include:

- Private operator to take over transactional functions of land titles, land property valuations and other property services.
- Ongoing royalty stream from the sale, worth 12.5 per cent of any money made by commercialising data held by the Lands Titles Office.
- The Registrar-General, Valuer-General and the Surveyor-General continue as statutory officers.
- The Government will continue to set regulated fees and charges with no changes other than the standard annual increases applied.
- Offers of employment were to be made to a number of staff who were currently employed in the office, other staff would either assist with the transition or be redeployed within other Government departments.
- Continue to guarantee indefeasibility of property title, supported by the statutory assurance fund, including no change to Torrens Title or other legal status of land.
- State retention of key legal, policy and regulatory functions and responsibilities.
- The Government retaining ownership of titling and valuation data and associated intellectual property.
- Stringent service delivery standards, data security and privacy protections – with penalties, up to termination of the contract, for breaches.
- Maintaining existing terrestrial and online access arrangements, including the Adelaide office of the LTO and over-the-counter services.⁸⁸

Notably, South Australia's commercialisation included a provision of a monopoly option to bid for the potential future privatisation of the motor vehicle registry and all other government registries. This provision requires either an additional seven year extension or a repayment of \$80m with 10 per cent interest per annum for a total of \$104m.⁸⁹

2.5.3 Canada

Canada privatised parts of their land title registries in some provinces in the 90s, though attempts to privatise land title registries in other provinces have been unsuccessful as privatisation was seen to undermine these provinces' already cost-effective and efficient Torrens title systems.⁹⁰ Fees for the privatised title offices in Canada are, on average, higher than in registries that have remained publicly owned.⁹¹

⁸⁷ Name Withheld, *Submission*, no. 46, p. 4.

⁸⁸ Name Withheld, *Submission*, no. 46, p. 4; Prosper Australia, *Submission*, no. 44, p. 2; Jesse Hermans, Administrative Assistant and Researcher, Prosper Australia, *Transcript of evidence*, 5 July 2018, p. 20.

⁸⁹ *Ibid.*; Julian Kennelly, Media and Communications Manager, CPSU Victoria, *Transcript of evidence*, 5 July 2018, p. 3.

⁹⁰ CPSU Victoria, *Submission*, no. 55, p. 5.

⁹¹ Prosper Australia, *Submission*, no. 44, p. 3.

Ontario

The Government of Ontario partnered with Teranet in 1991 to digitise their land registration system. This partnership was extended by a further 50 years in 2010 for an upfront payment of CAD\$1 billion. This transaction also included:

- annual royalty payments from 2017
- a complete transfer of IT operating costs
- service performance standards.⁹²

Evidence received for this Inquiry has highlighted that Ontario's land registry system was not a Torrens system and was in serious need of reform at the time it was privatised.⁹³

The Committee also notes that Teranet's history in Ontario is varied, with experiences including rural office closures and job losses.⁹⁴

Manitoba

Manitoba commercialised their land title registry with Teranet in 2012 for 30-years.⁹⁵ Elements of the transaction included:

- CAD\$75 million upfront payment
- the transfer of significant systems upgrade liabilities to the concessionaire
- a continuing annual royalty to the province
- a gain share agreement for value-added services.⁹⁶

The Committee notes that Manitoba is under the Torrens titling system.⁹⁷

2.5.4 United Kingdom

The UK has twice attempted and failed to privatise their Land Registry, including for a reported £1 billion sale in 2016, following inquiries and analysis into the effects of privatising the service, as well as public concerns about data security and integrity.⁹⁸ The inquiries into the UK commercialisation found that access to monopoly data may not be maintained or improved, despite the imposition of safeguards,⁹⁹ that “there would be severe consequences for the property, financial, and legal sectors, as well as British citizens more generally, if the Government choose to sell the service” and that “any benefit would not outweigh these consequences.”¹⁰⁰

92 Infrastructure Partnerships Australia, *Submission*, no. 49, p. 6; Department of Treasury and Finance, *Whole-of-government*, *Submission*, no. 59, p. 21.

93 CPSU Victoria, *Submission*, no. 55, p. 5; Name Withheld, *Submission*, no. 46, pp. 1, 5; Adrian Dwyer, CEO, Infrastructure Partnerships Australia, *Transcript of evidence*, 26 June 2018, pp. 14-5.

94 Name Withheld, *Submission*, no. 46, p. 1.

95 Infrastructure Partnerships Australia, *Submission*, no. 49, p. 6; Name Withheld, *Submission*, no. 46, pp. 1-2.

96 Infrastructure Partnerships Australia, *Submission*, no. 49, pp. 6-7; Name Withheld, *Submission*, no. 46, pp. 1-2; Department of Treasury and Finance, *Whole-of-government*, *Submission*, no. 59, p. 21.

97 Name Withheld, *Submission*, no. 46, pp. 1-2.

98 Department of Treasury and Finance, *Whole-of-government*, *Submission*, no. 59, p. 22.

99 Correspondence from the Law Institute of Victoria to the Committee.

100 CPSU Victoria, *Submission*, no. 55, p. 5; Uniting Church in Australia (Victoria and Tasmania), *Submission*, no. 56, p. 2; Correspondence from the Law Institute of Victoria to the Committee.

Instead the UK has chosen to focus on improving the digital aspects of their business within the public sector to maximise the value of the asset to the State and economy.¹⁰¹

Mr David McKenzie, Co-Chair of the Law Institute of Victoria Property Law Committee summarised the issue to the Committee as:

They [the UK] took the view that a registry, to work properly in the Torrens environment, has to be a monopoly and therefore as a monopoly should not be in private hands. That is my understanding.¹⁰²

2.5.5 Differences in the Victorian model

Evidence to the Inquiry has identified areas in which the proposed commercialisation model in Victoria varies from those in other jurisdictions:

- the scope of the transaction is narrower, encompassing a smaller component of the functions registry (e.g. in New South Wales all functionality of the land registry office has been commercialised)
- better safeguards such as:
 - statutory functions and oversight of the private operator’s activities will remain with the Registrar
 - the State retaining full control over prices for statutory land registry services and price monitoring of non-statutory services provided by the private operator
 - the State paying the private operator ongoing service fees for the provision of statutory products and services
 - the State retaining statutory state guarantee of title
 - State-controlled setting of fees and charges for services
 - no changes to legislation to facilitate the commercialisation
 - GST will not be applicable to the majority of transactions or services
 - clearly defined commercialisation parameters which will not extend to other registries (as in SA)
 - no delegation or outsourcing of statutory functions (such as were being considered in the UK).¹⁰³

Mr Martine gave evidence to the Committee that the State believes they have adequately learned from and mitigated problems which have occurred in other states in the Government’s commercialisation proposal:

¹⁰¹ Name Withheld, *Submission*, no. 46, p. 3; Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 22.

¹⁰² David McKenzie, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 8.

¹⁰³ John Bradley, Secretary, Department of Environment, Land, Water and Planning, *Transcript of evidence*, 6 June 2018, p. 21; Ian Ireson, Chief Executive, Land Use Victoria, *Transcript of evidence*, 6 June 2018, pp. 21-22; Uniting Church in Australia (Victoria and Tasmania), *Submission*, no. 56, p. 4; Craig Sandy, Surveyor-General, Surveyor-General Victoria, *Transcript of evidence*, 20 June 2018, pp. 3, 5; Robert Marsh, Valuer-General, Valuer-General Victoria, *Transcript of evidence*, 20 June 2018, p. 5; David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 4; Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, pp. 20-21

...a number of the issues that have emerged in other jurisdictions, both internationally and here in Australia, we are confident have been addressed through the way the transaction will be structured.¹⁰⁴

This opinion was supported by some evidence provided to the Committee provided by stakeholders including the Urban Development Institute of Australia (Victoria) and the Uniting Church in Australia (Victoria and Tasmania).¹⁰⁵

Identified areas that the proposed Victorian model has adopted from other jurisdictions include:

- similar price capping metrics to NSW and SA
- broadly consistent concession period to NSW and SA
- continued State guarantee of title as in NSW and SA
- clear KPIs and service fee abatement for failure to comply, as in NSW.¹⁰⁶

However, the Committee received evidence that the elements that have made commercialising land title registries in other jurisdictions successful are not necessarily the case for Victoria. These include:

- Victoria's system is already almost entirely digital (on track to achieve by 2019)
- Victoria's system already innovates its service provision:
 - electronic survey-based applications (SPEAR)
 - general public document searches online through the LANDATA portal
- Victoria's system self-funds their operations and improvements, and earns revenue for the Government
- LUV has been consistently improving its services to modernise and remain profitable.¹⁰⁷

The Committee also received evidence supportive of elements of the South Australian model which have seemingly not been incorporated into the proposed Victorian model, such as the 12.5 per cent royalty to the State on any money made from commercialising land titles data.¹⁰⁸

2.6 Key concerns

2.6.1 Rationale and proposed benefits

Evidence to the Committee emphasised community and stakeholder questions around the Government's rationale and justification of the proposed commercialisation, particularly focusing on the proposed benefits.

¹⁰⁴ David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 4.

¹⁰⁵ Uniting Church in Australia (Victoria and Tasmania), *Submission*, no. 56, p. 3.

¹⁰⁶ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, pp. 20-21.

¹⁰⁷ Name Withheld, *Submission*, no. 46, p. 1; Surveying and Spatial Sciences Institute, *Submission*, no. 64, p. 4; Name Withheld, *Submission*, no. 46, p. 5; Correspondence from the Australian Institute of Conveyancers to the Committee.

¹⁰⁸ Prosper Australia, *Submission*, no. 44, p. 2; Name Withheld, *Submission*, no. 46, p. 4; Lauren Novak, *State Government privatises lands title services in \$1.6 billion windfall*, The Advertiser, August 10 2017.

Submitters argue that Land Use Victoria and Land Registry Services have traditionally been very efficient, and innovative in their use of technology.¹⁰⁹

Mr Harman of the Association of Consulting Surveyors Victoria noted Land Use Victoria's innovation track record in his evidence to the Committee:

We do note, however, that over the last 10 years, Land Use Victoria have provided strong innovation and leadership in many areas, including the development of the SPEAR system, ePlan and electronic conveyancing...¹¹⁰

Further, stakeholders questioned whether a private operator is inherently able to improve technological efficiency and make good on government claims of further innovation.¹¹¹

The Committee heard that there can be inherent tensions between the public interest and the need for private operators who require a return on their investment.¹¹²

In its submission to the Inquiry, the CPSU argued that: "a private company acts in the interests of its shareholders, meaning if technology investment is deemed too costly, it won't happen."¹¹³

Ms Tell, of the Law Institute of Victoria when asked about what benefits a private operator might bring to the functioning of Land Registry Services stated:

First of all, we have not seen the model, but theoretically when anyone talks about a privatisation they are always talking about greater efficiencies. Whether or not that eventuates you will only know afterward. So if a private operator may be better at providing the service, at providing IT services than a government operator, theoretically it is possible, but we cannot tell that until it happens.¹¹⁴

Ms Ludwell of the Australian Institute of Conveyancers (Victoria Division) concurred, stating that it is difficult to determine what innovations the private operator may bring because the transaction has not yet occurred.¹¹⁵

2.6.2 Transparency of process

The Government has not released the scoping study on which the proposed commercialisation is based, which raises questions of transparency around the leasing process.

¹⁰⁹ David McKenzie, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 4; Jane Hildebrant, *Submission*, no. 52, p. 2; Name Withheld, *Submission*, no. 46, pp. 1, 5; Correspondence from the Law Institute of Victoria to the Committee.

¹¹⁰ Andrew Harman, President, Association of Consulting Surveyors Victoria, *Transcript of evidence*, 6 June 2018, p. 26.

¹¹¹ David McKenzie, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 4; CPSU Victoria, *Submission*, no. 55, p. 4; Name Withheld, *Submission*, no. 46, p. 5; Correspondence from the Law Institute of Victoria to the Committee.

¹¹² Lily Tell, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 8.

¹¹³ CPSU Victoria, *Submission*, no. 55, p. 4.

¹¹⁴ Lily Tell, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 9.

¹¹⁵ Jill Ludwell, CEO, Australian Institute of Conveyancers (Victoria Divisions), *Transcript of evidence*, 20 June 2018, p. 20.

Evidence to the Committee for this Inquiry has expressed concern and disappointment from some stakeholders that important elements of the commercialisation are not being made public, including:

- a full cost-benefit analysis
- analysis of land registry services' current functions and areas where the private sector is anticipated to add value
- the contract of the commercialisation, including relevant provisions such as key performance indicators allowing the public to hold the private operator to account for meeting their obligations
- analysis of the potential issues raised by the commercialisation and how they have been mitigated in practice
- how much the State has spent on advisors and consultants in obtaining initial advice on viability of the proposed lease, including preparing the scoping study
- the proposed financial arrangements of the transaction
- proposed risk management measures, including whether a formal and independent risk assessment of commercialisation of the land registry has been undertaken.¹¹⁶

Mr Martine responded to these concerns at a public hearing:

It is not an unusual thing for scoping studies to remain confidential because if you are going out to market to enter into a commercial arrangement, whether it is an asset sale, a long-term lease or a concession arrangement, as we are discussing this evening, you need to be careful in terms of the amount of information that you are providing potential bidders, particularly around expectations on value and price and how the state would be valuing the particular transaction. Normally scoping studies are provided to the Government of the day as part of its consideration of the transaction.¹¹⁷

Mr Martine also confirmed that many of issues raised during consultation with stakeholders and during the Inquiry have been considered as part of the Government's scoping study and informed their decisions in the creation of the final proposal.¹¹⁸

RECOMMENDATION 2: That the Government publish detailed reasons for the commercialisation, including appropriate content from the scoping study for the proposed commercialisation, and details of other options considered.

2.6.3 Consultation

The Committee has been informed that the Government continues to consult with relevant stakeholders, including the Law Institute of Victoria, the Australian Institute of Conveyancers, the Institution of Surveyors Victoria, Association of Consulting

¹¹⁶ Uniting Church in Australia (Victoria and Tasmania), *Submission*, no. 56, p. 1; Liz Burton, *Submission*, no. 65, pp. 2-3, 5.

¹¹⁷ David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 6.

¹¹⁸ *Ibid.*, pp. 6, 9-10.

Surveyors Victoria, the ACCC, the ATO, the State and Federal privacy commissioners, and relevant units within Land Use Victoria as part of their development of the scoping study and commercialisation proposal for Land Registry Services.¹¹⁹

The Committee notes that those stakeholders who were consulted early in the process reported being satisfied with their experience and that their concerns had, on the most part, been allayed.¹²⁰

However, the Committee notes that during this Inquiry it has received evidence that some key stakeholder groups have not been consulted or provided with the details of the proposed commercialisation.¹²¹ Other stakeholders noted that they only met with the Treasurer or representatives of the Department after they had made submissions raising their concerns.¹²²

Ms Ludwell, of the Australian Institute of Conveyancers (Victoria Division) informed the Committee about her organisation's experience with contacting Treasury about the proposed commercialisation:

Well, I think it was all a bit of a shock when it happened. We just sort of got together and put our submissions in and waited for a reaction. We finally got a reaction; it was slow coming but we actually had a discussion with the Treasurer. A lot of these issues were raised, and he gave us some assurances. But as I said, we have not seen anything further, so I do not know where it is at and where it is going.¹²³

Stakeholders who had been involved by the Department of Treasury and Finance and those who had independently approached the Department both told the Committee that there were periods of six to eight weeks between meetings and indicated that they were not clearly advised as to the extent and timeline for further contact and involvement in the process they could expect going forward.¹²⁴

The Association of Consulting Surveyors Victoria also expressed concerns to the Committee that their consultation experience felt one-sided:

¹¹⁹ Ben Stewart, Executive Director - Commercial Transactions, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, pp. 4-5; Robert Marsh, Valuer-General, Valuer-General Victoria, *Transcript of evidence*, 20 June 2018, p. 4; Craig Sandy, Surveyor-General, Surveyor-General Victoria, *Transcript of evidence*, 20 June 2018, p. 4; John Bradley, Secretary, Department of Environment, Land, Water and Planning, *Transcript of evidence*, 6 June 2018, pp. 17-18; Andrew Harman, President, Association of Consulting Surveyors Victoria, *Transcript of evidence*, 6 June 2018, p. 25; Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, pp. 3-4.

¹²⁰ Andrew Harman, President, Association of Consulting Surveyors Victoria, *Transcript of evidence*, 6 June 2018, pp. 25, 27-29; The Institution of Surveyors Victoria, *Submission*, no. 62, p. 3; Tom Champion, President, The Institution of Surveyors Victoria, *Transcript of evidence*, 5 July 2018, p. 10.

¹²¹ Jill Ludwell, CEO, Australian Institute of Conveyancers (Victoria Divisions), *Transcript of evidence*, 20 June 2018, p. 20; Karen Batt, Secretary, CPSU Victoria, *Transcript of evidence*, 5 July 2018, p. 6; Julian Kennelly, Media and Communications Manager, CPSU Victoria, *Transcript of evidence*, 5 July 2018, pp. 6-8.

¹²² Jill Ludwell, CEO, Australian Institute of Conveyancers (Victoria Divisions), *Transcript of evidence*, 20 June 2018, p. 21.

¹²³ *Ibid.*, pp. 22-23.

¹²⁴ Andrew Harman, President, Association of Consulting Surveyors Victoria, *Transcript of evidence*, 6 June 2018, pp. 25, 27-29; Jill Ludwell, CEO, Australian Institute of Conveyancers (Victoria Divisions), *Transcript of evidence*, 20 June 2018, p. 21; The Institution of Surveyors Victoria, *Submission*, no. 62, p. 3; Tom Champion, President, The Institution of Surveyors Victoria, *Transcript of evidence*, 5 July 2018, p. 10.

It is fair to say that I think DTF were, at that point in time, really seeking information from us. They were not providing a lot of information to us. They were seeking information as they grappled with what it was that they were looking to commercialise.¹²⁵

RECOMMENDATION 3: That the Government undertake full consultation with all key stakeholders prior to signing contracts and that it publish a summary of stakeholder engagement on the Land Use Victoria website.

2.6.4 Economic concerns

The Committee heard that the State intends to retain the revenues derived from the delivery of land title services in addition to the upfront proceeds from the commercialisation. Fees based on the number of transactions will be paid to the private sector provider for the services they provide.¹²⁶ However, without public access to the scoping study or business case for the proposal it is difficult to determine whether this arrangement results in net financial benefit for the State long term.

Evidence provided to the Committee for this Inquiry also raised several concerns about the economic rationale and justification for the process, including:

- reliance on ‘asset recycling’ as a finance strategy generally¹²⁷
- loss of existing revenue generated by land registry services over the length of the 40-year lease, and whether the loss of this for a lump sum in the short term makes good financial sense¹²⁸
- whether the proposed commercialisation “breaks even”¹²⁹
- whether the land titles registry is being undervalued in the transaction¹³⁰
- the potential impact of costs of appropriately regulating the private operator’s activities outweighing the benefits.¹³¹

There were also stakeholder concerns about the potential for payments out of the Consolidated Fund to compensate for omissions, errors or fraudulent transactions.¹³² However, the Committee received evidence that the cost of any claims against the Registrar of Titles for errors made in transactions by the private operator will be claimed back from the private operator.¹³³

¹²⁵ Andrew Harman, President, Association of Consulting Surveyors Victoria, *Transcript of evidence*, 6 June 2018, p. 29.

¹²⁶ David Martine, Secretary, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 3. 8; David Webster, Deputy Secretary, Commercial, Department of Treasury and Finance, *Transcript of evidence*, Inquiry into Budget Estimates 2018–19, Public Accounts and Estimates Committee, 15 May 2018, p. 23.

¹²⁷ Darebin Ratepayers Group, *Submission*, no. 48; Professor John Quiggin, *Submission*, no. 50, p. 3.

¹²⁸ Uniting Church in Australia (Victoria and Tasmania), *Submission*, no. 56, pp. 2-3; Liz Burton, *Submission*, no. 65, pp. 1-3, 5; Karen Batt, Secretary, CPSU Victoria, *Transcript of evidence*, 5 July 2018, p. 2; David McKenzie, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 5; Surveying and Spatial Sciences Institute, *Submission*, no. 64, p. 4; Jesse Hermans, Administrative Assistant and Researcher, Prosper Australia, *Transcript of evidence*, 5 July 2018, pp. 19-20; Correspondence from the Law Institute of Victoria to the Committee.

¹²⁹ Liz Burton, *Submission*, no. 65, pp. 1-2, 4-6; Jesse Hermans, Administrative Assistant and Researcher, Prosper Australia, *Transcript of evidence*, 5 July 2018, pp. 19-20.

¹³⁰ CPSU Victoria, *Submission*, no. 55, p. 17.

¹³¹ *Ibid.*, pp. 18-19.

¹³² *Ibid.*, p. 18; Surveying and Spatial Sciences Institute, *Submission*, no. 64, p. 4; Liz Burton, *Submission*, no. 65, p. 4.

¹³³ Ian Ireson, Chief Executive, Land Use Victoria, *Transcript of evidence*, 6 June 2018, p. 15.

Certain financial elements of the proposed commercialisation transaction are unclear to the public, including whether the transaction “breaks even” over the proposed 40-year term.

Finally, the Committee received evidence criticising the Government’s rationale for the proposed commercialisation as raising funds for infrastructure, arguing that more standard means for raising these funds exist and are being avoided due to not wanting to be seen to be acquiring debt.¹³⁴

In its submission to the Committee, Prosper Australia argued:

Estimated revenue from privatising the LTO is roughly \$1.5 - 2bn. We assume \$300m in revenue and a sale value of \$2bn. This puts the yield of the LTR at 15%. To borrow an equivalent sum (\$2bn) at the 10 year bond rate (3%) would cost the Victorian government \$60m per year in interest. Were the Government to borrow the \$2bn and retain the LTR’s \$300m per year revenue stream, it would save \$240m per annum.

There is no fiscal rationale for privatisation; the Victorian government would be \$240m a year better off if it retained the land titling function as a profitable public monopoly and issued bonds to finance spending.¹³⁵

Information provided by the Government later in the Inquiry, and which was not available to Prosper Australia when it prepared its submission, states that the revenue would be \$80m, rather than the assumed \$300m quoted by Prosper Australia.

2.6.5 Natural monopoly

The Committee also heard a range of concerns about the commercialisation of a monopoly asset.¹³⁶ These included:

- difficulties in private operator realising efficiency improvements lacking a competitive marketplace
- loss of focus on operating Land Registry Services in the interests of the public
- the private operator being unmotivated to maintain or improve public access to data and services
- the potential for increased fees.¹³⁷

In a submission to the Inquiry the ACCC expressed particular concerns about commercialising or privatising public assets and particularly land titles registries. The ACCC Chair’s key concerns about the proposed commercialisation included:

- whether competition issues had been adequately addressed
- whether effective regulatory arrangements had been made and whether this was flexible enough to adapt over the length of the proposed 40-year lease

¹³⁴ Uniting Church in Australia (Victoria and Tasmania), *Submission*, no. 56, p. 3; Jesse Hermans, Administrative Assistant and Researcher, Prosper Australia, *Transcript of evidence*, 5 July 2018, pp. 19-21.

¹³⁵ Prosper Australia, *Submission*, no. 44, p. 3.

¹³⁶ Uniting Church in Australia (Victoria and Tasmania), *Submission*, no. 56, p. 3; ACCC, *Submission*, no. 60, p. 1; Lily Tell, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 2; Karen Batt, Secretary, CPSU Victoria, *Transcript of evidence*, 5 July 2018, p. 2; Professor John Quiggin, *Submission*, no. 50, p. 4.

¹³⁷ CPSU Victoria, *Submission*, no. 55, pp. 3, 12; Professor John Quiggin, *Submission*, no. 50, p. 5; Correspondence from the Law Institute of Victoria to the Committee; Correspondence from the Australian Institute of Conveyancers to the Committee.

- whether the potential for stifled innovation, restricted access to registry services, loss of service efficiencies and price rises had been adequately considered as a potential result of poor regulation
- whether the risks of maximising sale proceeds had been considered at the expense of regulatory oversight or a longer-term competitive market structure
- the more complex and potentially impossible prospect of retroactively imposing a sound regulatory structure after the asset has been transferred
- potential impacts on the successful establishment of the competitive ELNO marketplace, particularly the Government’s proposed ring fencing of resources, stating it is an “inferior option” to complete vertical separation as ring fencing “does not remove an operator’s incentive to discriminate.”
- whether the CPI annual price cap is the appropriate price metric for the life of the proposed commercialisation
- whether State enforced non-discrimination provisions have been adequately considered to prevent the private operator from being able to leverage its market power and the potential for discriminatory access to data to ELNOs and downstream information providers
- whether independent dispute resolution processes have been adequately provided for
- whether compensation or preference arrangements undermine such technological innovation by new entrants.¹³⁸

The ACCC also noted three problems which can arise when competition and regulatory issues are not adequately considered when privatising or commercialising public assets:

- a. worsening or entrenching a market structure that is not sufficiently competitive, or impeding the development of a market structure that could yield considerable benefits if it was made more competitive;
- b. selling a monopoly or near monopoly asset to a bidder with existing or potential upstream or downstream interests in related markets, without ensuring that appropriate third party access arrangements will exist; and
- c. selling monopoly or near monopoly assets without sufficient controls on pricing, to ensure that excess public monopoly returns are not merely transformed into private monopoly excess returns.¹³⁹

The ACCC prefers complete vertical separation¹⁴⁰ from privatised monopolies in order to remove the motivation for the private operator to favour its own operations and stifle competition in related markets (such as information brokering or ELNO markets). It noted that even if these are not established at the time of sale the private operator may be motivated to move into these as a result of their monopoly in a related market.¹⁴¹

¹³⁸ ACCC, *Submission*, no. 60, pp. 1-4.

¹³⁹ *Ibid.*, p. 2.

¹⁴⁰ Vertical separation refers to removing or restricting the ability for one private interest to control two or more stages of production or a process. For example, vertical separation in this case would refer to ensuring that ELNOs, responsible for financial transactions relating to land sales, and land titles transactions relating to land sales, as different stages of the same land sale process, are controlled by separate interests. (Giacomo Bonanno and John Vickers, *Vertical Separation*, *The Journal of Industrial Economics*, Vol. 36, No. 3 (Mar., 1988), pp. 257-265).

¹⁴¹ *Ibid.*, p. 3.

RECOMMENDATION 4: That the Government seeks input from the ACCC on its proposed commercialisation if it has not already done so, prior to signing contracts.

RECOMMENDATION 5: The Committee considered the ACCC submission to be of particular value to the Inquiry and considers that the Government should consider all of the concerns raised by the ACCC and should specifically address the following when publishing its detailed reasons for the commercialisation:

- how competition issues had been addressed
- whether effective regulatory arrangements are flexible enough to adapt over the length of the proposed 40-year lease
- whether the risks of maximising sale proceeds had been considered at the expense of regulatory oversight
- whether the CPI annual price cap is the appropriate price metric for the life of the proposed commercialisation.

2.6.6 State buyback options

The Committee notes concerns raised during the course of the Inquiry about whether there is potential for government buyback of Land Registry Services and under what circumstances this could occur.

Mr McKenzie, of the Law Institute of Victoria raised his concerns at a public hearing:

One of the other things is whether or not there would ever be scope for buyback. Once this has gone, and if you decide that this has not been a good idea, how do you ever get it back? I know that there can always be provisions put in to say that is so, but once a government has lost its expertise in managing this sort of process — I mean it is easy to write the legislation, or whatever, to say, ‘Here are the provisions under which it can be bought back’. To, however, reclaim the expertise that Land Use Victoria had but had been moved is a very long and painful process, I would suggest.¹⁴²

In response, representatives from the Department of Treasury and Finance informed the Committee that if the private operator does not meet agreed performance standards or there are “other things — breaches of security, data protection and the like” the State can terminate the concession, but that this is unlikely to eventuate.¹⁴³

RECOMMENDATION 6: That the Government make public the terms under which the State is able to buyback Land Registry Services prior to the conclusion of the full 40-year lease term.

¹⁴² David McKenzie, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 4.

¹⁴³ Ben Stewart, Executive Director - Commercial Transactions, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 8; David Webster, Deputy Secretary - Commercial Division, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 8.

2.6.7 Adequacy of proposed safeguards and oversight

The Committee heard concerns about the adequacy of the proposed safeguards and oversight. For example, Mr Tom Champion, President of the Institution of Surveyors Victoria raised questions about the potential adequacy of KPIs in maintaining performance and service standards, citing recent experiences in New South Wales:

Probably our closest dealing has been with New South Wales. I believe the view at the moment is that it is a bit too early to tell what the impact is. However, I will say with our consultation with the Registrar-General's office there and their cadastral integrity unit, six months prior to the commercialisation up there they were feeling like they had suitable KPIs in place and that it should be business as usual. At six months after that they were starting to be concerned about quality. They realised that perhaps there were not enough quality KPIs involved in that, and also their own expertise within the regulator side. There were a lot of KPIs put on training and expertise within the operator, but maybe they had not considered the regulator up there and how they were going to maintain staff to audit the operator.¹⁴⁴

Concerns about safeguards and oversight in relation to data is addressed in the next chapter.

RECOMMENDATION 7: That the Government make public the key performance indicators for service that the private operator will be required to abide by along with a government statement regarding abatements for failing to meet these.

The CPSU also raised concerns that the Government was underestimating their ability to keep an eye on the private operator as the Government connection to operations and activities will be severed:

Currently, the Government knows what is going on at all times in LUV because they have full control through their Departmental structure. Once a private company is in charge, the Government is only going to know something is wrong once it has affected Victorian livelihoods.¹⁴⁵

The Committee received evidence from the Department of Environment, Land, Water and Planning that the Auditor-General would only have oversight of the private operators' services which were paid for by the State. This would not extend to revenue collected for non-statutory services such as those provided directly to users through the LANDATA portal. The State will also be constrained in reporting or disclosing information obtained in auditing the private operator's records but that the State "is entitled to publish performance related information and information regarding breaches of concession."¹⁴⁶

Other areas that may require more oversight or safeguards than has been indicated by the Government thus far include:

- monitoring whether existing statute controls of Land Registry Services remain sufficient over the course of the 40-year lease, noting that legislation and regulation of Land Registry Services could raise issues of retrospectivity

¹⁴⁴ Tom Champion, President, The Institution of Surveyors Victoria, *Transcript of evidence*, 5 July 2018, p. 17.

¹⁴⁵ CPSU Victoria, *Submission*, no. 55, p. 8.

¹⁴⁶ Correspondence from the Department of Environment, Land, Water and Planning to the Committee.

- potential efforts by the private operator to make legislative changes or obtain control over functions retained initially by the state which may affect future fees or the long-term retention of Land Registry Services by the State
- safeguards on claims to and maintenance of the integrity of the Consolidated Fund
- monitoring investment in technology is maintained over the length of the commercialisation.¹⁴⁷

¹⁴⁷ CPSU Victoria, *Submission*, no. 55, pp. 7-8; Lily Tell, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 2; Infrastructure Partnerships Australia, *Submission*, no. 49, p. 5.

3 Implications and risks

3.1 Privacy and data protection

Throughout the Inquiry, the Committee heard a number of concerns regarding the impact the proposed commercialisation may have on an individual's privacy, data protection standards and the information rights of the Victorian community.

While privacy and data protection are commonly considered entwined notions, the difference between 'privacy' and 'data protection' was clarified at a public hearing by Ms Rachel Dixon, the Privacy and Data Protection Deputy Commissioner. Ms Dixon stated:

[Privacy] is a right that you have. Data protection is an obligation that the government has. And those are quite different things.¹⁴⁸

In line with this view, the Committee has focussed on the obligations that the Government may place on a private operator in order to safeguard information and uphold stringent data protection standards as a part of the proposed transaction.

Personal information is captured and held by Land Use Victoria for statutory purposes. Some information is currently accessible via the online LANDATA service or from one of LUV's 11 information brokers. Access is available to the legal community, conveyancers, surveyors, valuers, property professionals and the general public.

With regard to the functions that will be transferred to a private operator (as outlined in Chapter Two), LUV employees capture, enter and preserve personal information in a secure electronic database. The personal data collected and stored from these transactions can include a person's:

- first and last name
- telephone number (home and/or mobile)
- residential and postal address
- banking institution and financial information
- property details.

The Government stated in its submission that 'the proposed Transaction ensures the State will continue to retain ownership of all LUV data, and that data held or generated by the Private Operator will be owned by the State'.¹⁴⁹

Despite this, the Committee received evidence from stakeholders that some data protection and information rights remain unaddressed by the Government.

¹⁴⁸ Rachel Dixon, Privacy and Data Protection Deputy Commissioner, Office of the Victorian Information Commissioner, *Transcript of evidence*, 26 June 2018, p. 43.

¹⁴⁹ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 10.

3.1.1 Oversight

Currently, the land titles and registry functions of Land Use Victoria are undertaken by a public sector agency. As such, in accordance with section 13 of the *Privacy and Data Protection Act 2014*, Land Use Victoria is subject to direct regulatory oversight by the Office of the Victorian Information Commissioner (OVIC) for all data protection and privacy matters.

The proposed commercialisation of certain functions alters the way in which OVIC may exercise oversight of functions conducted on behalf of the State by a private operator. The Information Commissioner, Mr Sven Bluemmel, explained in his organisation's submission that the regulatory oversight of data protection, privacy and freedom of information is to shift from a legislative regime to being governed by contractual obligations with limited statutory oversight.

The Committee heard the proposed change in approach has the effect of 'alter[ing] the way in which individuals can expect their information rights, currently protected under statute, to be maintained and enforced.'¹⁵⁰

In line with this, the Government indicated that no legislation would be amended or created as a part of the transaction as all data matters would be covered within the contract or through existing oversight mechanisms.

The Committee understands that the Government does not intend to amend or create legislation as a result of the proposed transaction.

FINDING 2: The Committee believes that future legislation changes may be required to address areas where contractual protections to privacy and data security do not go far enough in contrast to legislative protections.

At a public hearing DTF informed the Committee that it had consulted with OVIC in relation to some of these matters. In its submission, the Government noted that it would impose 'contractually enforceable obligations on the Private Operator relating to privacy, security and data protection, which will extend beyond those imposed under the PDPA'.¹⁵¹

The Government's submission outlined the following contractual requirements that may apply to the private operator:

- store all LUV data in Australia
- comply with directions from the State to take action required to preserve the integrity and security of LUV data
- grant the State robust audit and access rights to LUV data and the Private Operator's systems that handle LUV data
- comply with other specific data security standards and requirements, such as:
 - the Victorian Protective Data Security Framework
 - other prescribed information security standards, such as the AS/NSZ ISO/IEC 27001 standards

¹⁵⁰ Sven Bluemmel, Information Commissioner, Office of the Victorian Information Commissioner, *Transcript of evidence*, 26 June 2018, p. 38.

¹⁵¹ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 10.

- develop (for the Registrar’s review and approval), test and regularly update, disaster recovery, business continuity, cyber security incident response and other plans
- regularly provide training to its personnel on privacy and data security practices, policies and protocols.¹⁵²

The above requirements do not make clear whether OVIC retains oversight of the private operator or whether the Registrar or State will assume oversight for data protection and privacy matters.

3.1.2 Privacy and data protection

In its submission, OVIC identified that pursuant to section 13(1)(j) a contracted service provider is subject to the Information Privacy Provisions as set out in Part 3 of the *Privacy and Data Protection Act 2014*. However, this jurisdiction is limited only to the private operators provision of services included in the State contract – not those undertaken in a private sector capacity.

In addition, section 84(3) of the PDP Act allows for the Governor in Council to declare a body to be a body to which Part 4 (Protective Data Security Standards) would apply. The Government’s submission indicates this process is intended to occur in order to provide a further safeguard. However, it is not clear to the Committee if the requirement to be subject to the same Protective Data Security Standards as LUV forms part of the contractual obligations, irrespective of a future Governor in Council approval.

The complexities surrounding where oversight for data protection and security will fall, be that with the Government, OVIC or the Office of the Australian Information Commissioner, presents a challenge for individuals who interact with the private operator. This concern was shared by OVIC who acknowledged it might become confusing for people to understand where they are to raise concerns or complaints. In its submission, OVIC stated:

[There] is a possibility that the potential applicability of two different regimes with two different government regulators and complaint handling bodies will cause confusion for community members seeking to understand or enforce their information rights. I consider it is important that steps are taken to ensure the regulatory oversight framework is effectively communicated.¹⁵³

FINDING 3: It is unclear to the Committee which agencies will be responsible for regulating and handling complaints made against the private operator for data protection, security and privacy concerns.

RECOMMENDATION 8: That the Government, Registrar and private operator prepare and publish clear information regarding the information rights of Victorians, including where concerns and complaints should be raised in relation to specific services performed by the private operator.

¹⁵² Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 11.

¹⁵³ Office of the Victorian Information Commissioner, *Submission*, no. 42, p. 4.

OVIC also raised the matter of the limited capacity the Commissioner may have in relation to the private operators reporting requirements, including the ability to compel information under Part 6 of the PDP Act.¹⁵⁴

The proposed contract has the effect of implementing a ‘one-step-removed’ regime of oversight whereby the Registrar of LUV would be the primary intermediary in any matters that OVIC currently has capacity to investigate.

Ms Dixon raised this as a concern at a public hearing, explaining that the Registrar would have the ultimate discretion as to whether a matter warranted further follow-up by OVIC, limiting their ability to fully undertake their investigative role.¹⁵⁵

FINDING 4: The Committee is concerned that the Office of the Victorian Information Commissioner may have a limited capacity to investigate matters as it may have to rely on the intermediary role of the Registrar to directly access the private operator.

RECOMMENDATION 9: That the Government require the private operator to assist the Office of the Victorian Information Commissioner directly in relation to *Privacy and Data Protection Act 2014* obligations and investigations.

Currently in Victoria, there are no mandatory requirements for an agency to notify OVIC if there has been a data breach. Ms Dixon noted that where a breach occurs, it is far better for the involved parties to come forward as quickly as possible to remedy the situation. She said:

Obviously our experience as a regulator is that in fact data breaches always go better for everybody where the entity that has suffered the breach comes clean very quickly, because it gives the public a view of whether they need to go and do things like change passwords or actually delete their accounts or whatever else they want to do, but it also then gives other agencies or operators that might be dealing with that entity a way to reduce their risk as well. The earlier that that happens — and of course a mandatory data breach notification actually compels that ...¹⁵⁶

The Department of Treasury and Finance, in discussions with OVIC, indicated that the Operator would be required to notify Treasury and, or the Registrar in the instance of a breach, however those agencies would not have to make a disclosure to OVIC. Ms Dixon explained:

[Under] the proposal from Treasury, in the proposed contract the operator will be required to report breaches to the state — meaning Treasury — and to the Registrar, but there is nothing ongoing.

FINDING 5: The Committee is concerned that in the instance of a data breach, the private operator would only be required to notify the responsible Minister and, or the Registrar of Land Use Victoria.

¹⁵⁴ Rachel Dixon, Privacy and Data Protection Deputy Commissioner, Office of the Victorian Information Commissioner, *Transcript of evidence*, 26 June 2018, p. 41.

¹⁵⁵ *Ibid.*, p. 41.

¹⁵⁶ *Ibid.*, p. 44.

RECOMMENDATION 10: That the Government include a mandatory requirement for data breaches to be notified in a timely manner to the responsible Minister, the Registrar of Land Use Victoria and the Office of the Victorian Information Commissioner in all instances.

3.1.3 Freedom of information

The Committee notes that throughout the Inquiry, it did not receive evidence from the Government, DTF or DELWP on how freedom of information practices would be dealt with regarding the transfer of functions to the private operator. This was also raised by the CPSU at a public hearing, Mr Kennelley said:

‘Well, how does the private company respond under the freedom of information legislation?’. We have not seen how that is going to be structured yet, but the noises are being made that of course that will apply where we have not seen it, so we do not know. But clearly that is one of the concerns we would have about the private entity taking over the operation. Is it going to be subject to exactly the same transparency requirements as the public sector agency is now?¹⁵⁷

At present, and in accordance with section 13 of the *Freedom of Information Act 1982* (FOI Act) every person has a legally enforceable right to obtain access to documents possessed by Land Use Victoria by making a written request (known as a freedom of information request). The timing and outcome of a request relies upon the nature and scope of the documents requested. Should a request be refused on certain grounds the applicant may apply for a review of the decision or lodge a complaint with OVIC.

In its submission, OVIC stated that the FOI Act would not apply directly to the private operator. While the Registrar may maintain constructive possession of some of the documents, there may be certain documents that in the future would fall outside the FOI regime and no longer be accessible to the Victorian public. It remains unclear how these practices may be affected by the proposed transaction.

A further result of the shift from legislative oversight to contractual obligations, OVIC may be limited in its capacity to undertake its full oversight functions over access to Victorian public records.

FINDING 6: The Committee is concerned that it is not clear how existing freedom of information practices will be impacted by the proposed commercialisation of the registry functions of Land Use Victoria.

RECOMMENDATION 11: That the Government clarify how freedom of information practices will be impacted by the proposed transaction, including any areas that may no longer be subject to requests.

RECOMMENDATION 12: That the Government include contractual obligations for the private operator to work with the Registrar in responding to freedom of information requests, reviews and complaints.

¹⁵⁷ Julian Kennelley, Media and Communications Manager, CPSU Victoria, *Transcript of evidence*, 5 July 2018, p. 5.

3.1.4 Storage of data

The Committee notes that DTF indicated at a public hearing that the private operator will be required to ensure that all registry data will continue to be stored in Australia. This was also included in the Government's submission where it stated 'Data must be stored in Australia'.¹⁵⁸ However, it is not clear whether this provision is for the full life 40-year term of the lease.

FINDING 7: The Committee supports the storage of data in Australia.

3.1.5 Costs and service levels

Fees and charges

Throughout the Inquiry, the Committee has heard fears from submitters regarding the potential for the private operator to set its own fees in addition to the concern the Government may increase fees significantly in advance of the sale (as was done in New South Wales). The CPSU, in its submission noted that while the Government had made a commitment to retaining full control over prices for the registry services, it was not clear how this would operate or how long this arrangement would be in place:

“The State Government has committed to retaining ‘full control over prices for state registry services’, yet has failed to specifically outline how. It is possible that the Government may place a cap on fees that is linked to increases in CPI (Consumer Price Index). However, a cap on fees may mean little if the Victorian Government increases fees prior to the sale of LUV in order to attract more buyers...Furthermore, the State Government has not clarified whether they will retain full control over these fees for the entire length of the control.”

At present, statutory fees for LUV land registry services are prescribed by the State through the making of regulations. Pricing is reviewed approximately every 10 years through a Regulatory Impact Statement (RIS) process. The last RIS process took place in 2015 which resulted in a reduction to some of LUV's fees.¹⁵⁹

Non-statutory fees, on the other hand, are currently set based on DTF cost recovery principles and through commercial negotiations with relevant stakeholders and information brokers.

In the Government's submission, the two categories of fees are defined as follows:

- statutory fees – fees imposed in respect of statutory services or statutory products, including lodgement, search fees and certain LANDATA® fees (e.g. fees for RSS (title search), plan search, instrument search)
- non-statutory fees – fees for services and products not imposed in respect of statutory services or statutory products, such as fees for a range of non-statutory search services provided by LANDATA®.¹⁶⁰

¹⁵⁸ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 10.

¹⁵⁹ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 13.

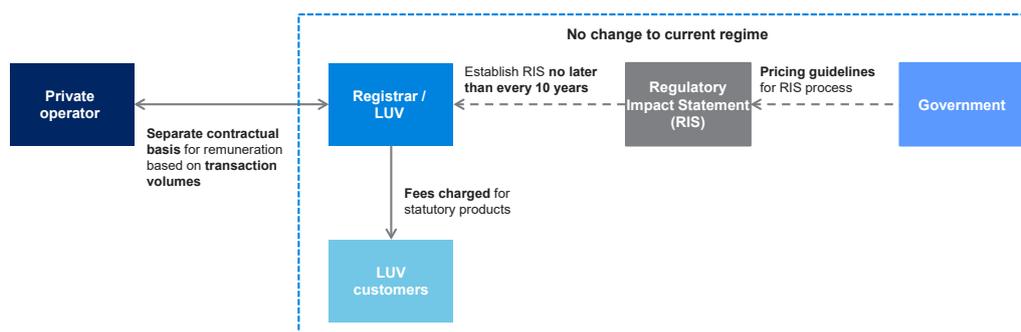
¹⁶⁰ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 13.

DTF has conveyed to the Committee that there are no proposed changes to the mechanisms for setting LUV's fees and the associated charges for statutory products and services and that:

The State will retain full control over the future setting of fees and charges for existing and new statutory services.¹⁶¹

The below diagram summarises the current framework for setting statutory fees that is expected to remain in place post-transaction.

Figure 3.1 Land Use Victoria statutory fee framework



Source: Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p 13.

On 30 March 2018, the Treasurer announced the statutory fee unit to be \$14.45 for the next year; this represents a 1.65 per cent increase from the 2017 fee unit of \$14.22.¹⁶²

Post transaction the Committee was informed that fee increases for non-statutory functions will be limited to the Melbourne CPI, unless otherwise approved by the State.¹⁶³ Further, any potential fee increase between the private operator, information brokers and third parties are subject to the State's consent.

The Committee understands that non-statutory fees may only increase in line with the Melbourne CPI, unless the Government approves a different variance.

Mr McKenzie of the Law Institute of Victoria raised that the potential application of GST to registry products and services could see a 10 per cent uplift in fees charged by the private operator as has been the experience in New South Wales. He said:

One of the things is that if you move the transactional elements, and presumably the costs of the transactional elements will be recovered by a private operator, there are actually GST implications, and it is our concern that by doing so on a simple transaction, apart from the potential of having to provide title insurance, you are now going to have to provide a 10 per cent uplift to cope with the GST.¹⁶⁴

The Government, in its submission, clarified that statutory products are not currently subject to GST; this exemption is expected to continue to apply under the transaction. Further, GST already applies to non-statutory products and is likely to continue to apply under the private operator. The Government's submission explained:

¹⁶¹ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 12-13.

¹⁶² Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 13.

¹⁶³ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 12.

¹⁶⁴ David McKenzie, Co-Chair, Law Institute of Victoria Property Law Committee, *Transcript of evidence*, 20 June 2018, p. 9.

Statutory products are currently not subject to GST under Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999* (Vic). GST exemption for statutory products under Division 81 is expected to continue to apply under the Transaction.

Non-statutory products are currently subject to GST, which is likely to continue to apply when supplied by the Private Operator.¹⁶⁵

It is the Committee's understanding that statutory products will remain exempt from GST under the transaction but GST will continue to apply to non-statutory products provided by the private operation.

The Committee notes there is also the potential for the private operator to propose new products. Such products would be subject to State approval and the cost would need to be non-discriminate and based upon the costs of accessing the existing data. DELWP explained this process at a public hearing:

There is the potential for the new provider on a non-discriminatory basis to come to the state for the approval of new products. This is a new way of analysing property-type information, and if they can find a market for that and the government agrees to those products actually being marketed, then there is a potential upside on that. I stress that is on a non-discriminatory basis, so they have no pricing differential between what the underlying data that they are doing the analysis on to get the new cut looks like. But there is a potential upside there in being able to think about offering new products.¹⁶⁶

OVIC submitted to the Inquiry that for all new products, the private operator should undertake an independent Privacy Impact Assessment (PIA) to assess any impacts a proposal may have on an individuals' privacy. It is not clear what measures the Government requires the private operator undertake when developing new products.

From the information available, the Committee understands that the private operator may propose new products, however the products and pricing would be subject to the Government's approval.

Where the private operator proposes a new product or service, a Privacy Impact Assessment must be undertaken and reviewed by the Office of the Victorian Information Commissioner prior to implementation.

Prosper Australia expressed their concern at a public hearing that the non-statutory fees set for new and existing products between the private operator and information brokers may be increased and flow on to consumers as a result of the commercialisation. Mr Fitzgerald said:

We see billion dollar companies like CoreLogic charging a fortune for aggregated data. What we can understand so far is that, sure, the statutory fees have a government approval rating and non-statutory fees are linked to CPI, but there is a lack of detail surrounding whether the sort of state-wide cost of data analysis will be turned into some sort of product that will be sold at exorbitant costs.¹⁶⁷

Mr Hermans also added that there might be an incentive for the Government to approve higher fees for non-statutory services if the proposed contract includes terms where the State would receive a portion of the profit. This was seen in the South Australian

¹⁶⁵ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 14.

¹⁶⁶ David Webster, Deputy Secretary - Commercial Division, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 6.

¹⁶⁷ Prosper Australia, *Submission*, no. 44, p. 19

transaction where the contract stipulates the SA Government would receive a 12.5 per cent portion of any profit attributed to new non-statutory service developed by the private operator. Mr Hermans said:

[We] do not know what, I guess, the profit-sharing arrangements will be regarding any new data products that emerge out of the private operator running the land titles registry. The DTF did say that if the private operator creates new products, the government will have to approve them and then they cannot do discriminatory pricing off that. They have to do, as I understand it, the same sort of pricing based off previous products. But we do not know whether or not those new products or the revenue from those products will go to the private company through subsequent fees paid by the government or if there is some sort of cut the government gets out of it or who is getting what.¹⁶⁸

In light of the ability for the private operator to innovate and develop new products, it is not clear whether the contract agreement will include a provision for the Government to receive a portion of profits associated with any new product implemented.

Service levels

Some submissions received during the Inquiry contended that the current service level standards might decline due to the transaction. In its submission, the CPSU said:

There is a concern that the Government will not be able to ensure that a private company will be able to commit to continuing this work at the same level or improved efficiency.

In the absence of broader public knowledge of the proposed terms of the commercialisation, DTF informed the Committee that the private operator's service levels would be measured by KPIs that reflect those currently imposed on LUV. Mr Webster outlined the proposed arrangements at a public hearing, he said:

They will be very similar to PPP-type arrangements where there will be a fee for each service provided on a volumetric basis, but there will be a whole heap of key performance indicators and service-level agreements. If the key performance indicators are not met, then there is a series of abatements off the amount that the state pays to the private sector operator, so there is an incentivisation regime as well. At some point if performance is so poor, there will be the ability to terminate the arrangements, but that would be a usual contractual situation.¹⁶⁹

The Committee has not seen the proposed contract, however, the Government's submission highlights four types of KPI's anticipated to be included as part of the transaction. The private operator may be required to meet:

- Accuracy targets for registration examination and pre-lodgement activities
- Availability of critical business systems, measured monthly by the (hours of operation minus scheduled outages minus outage) divided by (hours of operation minus scheduled outages)

¹⁶⁸ Jesse Hermans, Administrative Assistant and Researcher, Prosper Australia, *Transcript of evidence*, 5 July 2018, p 20.

¹⁶⁹ David Webster, Deputy Secretary - Commercial Division, Department of Treasury and Finance, *Transcript of evidence*, 6 June 2018, p. 8.

- Timeliness, with specific response times outlined in the event of a failure
- Incident management and response targets.¹⁷⁰

While these four KPIs address some service areas, it is not yet clear whether the private operator would also be required through KPIs to implement service delivery efficiencies or technology innovations.

At a public hearing Ms Kellie Dean, the President-elect of the Institution of Surveyors Victoria, suggested that independent oversight of the private operator would be required. She said:

Clear lines of decision-making responsibility will be needed, with effective and accountable oversight. Independent oversight of the private operator will be required to ensure that they are meeting any set KPIs appropriately and are not registering dealings with errors or omissions, in a timely manner at the expected current cost.¹⁷¹

The call for an independent oversight mechanism, by the way of a regulatory Committee was echoed by OVIC in the absence of legislative requirements or Parliamentary oversight on changes to contract terms and conditions.

RECOMMENDATION 13: That the relevant departmental annual report contains a statement each year regarding the operation of the commercialised land titles system, including:

- Performance data against KPIs
- Reported data breaches
- Payments made and revenue collected through statutory fees

RECOMMENDATION 14: That the Government notify Parliament of any variation to the agreement with the operator.

The Committee notes that Mr Ireson indicated that most of the registry functions to be transferred are administrative, including; call centre operations, cashier and customer service staff.¹⁷² Despite this, these roles fulfil the first interactions with the system and provide a critical function. Any reduction in the service standards would be detrimental to Land Use Victoria.

Stakeholders expressed concerns that these functions may become automated. If this was the case, there is the potential for complex anomalies to be missed and proceed through to statutory divisions where the error may be identified after registration leading to lengthier processing times and a reduced confidence in the integrity of the system.¹⁷³ The ongoing integrity of the system is discussed in further detail in section 2.3.

The Department of Environment, Land, Water and Planning confirmed to the Committee that the private operator would commence the contract operating out of the existing 2 Lonsdale Street, Melbourne location¹⁷⁴. Further, the private operator

¹⁷⁰ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 14.

¹⁷¹ Kellie Dean, President Elect, The Institution of Surveyors Victoria, *Transcript of evidence*, 5 July 2018, p. 11.

¹⁷² Ian Ireson, Chief Executive, Land Use Victoria, *Transcript of evidence*, 6 June 2018, p. 14.

¹⁷³ Kellie Dean, President Elect, The Institution of Surveyors Victoria, *Transcript of evidence*, 5 July 2018, p. 12.

¹⁷⁴ Ian Ireson, Chief Executive, Land Use Victoria, *Transcript of evidence*, 6 June 2018, p. 21.

would be obligated to retain a Melbourne CBD premises for the first two years of the contract. After this point, DELWP indicated the operator could move to other areas of Victoria. Mr Ireson said:

[If] they move, they have to be in Victoria, but the initial two-year period requires them to be located in the Melbourne CBD area.¹⁷⁵

3.1.6 Relationship with the PEXA system

The Committee learnt during the course of the Inquiry that Land Use Victoria has mandated the transition of all transactions and conveyancing to be conducted electronically by August 2019.

The current timetable for the digitisation of the conveyancing system is:

August 2017

- ADIs must lodge commercial standalone mortgages online
- All refinances must be lodged online where both mortgagees are ADIs

1 December 2017

- Standalone caveats and withdrawals of caveat to be lodged electronically
- Non-ADI standalone discharges of mortgage, standalone mortgages and refinance transactions are to be lodged electronically

1 March 2018

- All survivorship applications, transmission applications and standalone transfers must be lodged electronically

1 October 2018

- All combinations of transactions available in PEXA to be lodged electronically e.g. a case comprising a withdrawal of caveat, discharge of mortgage, transfer and mortgage

1 August 2019

- All transactions to be lodged electronically.¹⁷⁶

At a public hearing, Mr Ireson indicated that as of May 2018, 50 per cent of all transactions were conducted electronically with the intention of this increasing to 70 per cent of all transactions being conducted electronically via the PEXA system by October 2018.¹⁷⁷

The parallel timing of the transition to wholly electronic transactions and the proposed commercialisation of the Land Use Registry functions was a matter raised in all public hearings. However, key stakeholders clarified that the timing of the two matters are separate issues and do not impact on the commercialisation.

175 Ian Ireson, Chief Executive, Land Use Victoria, *Transcript of evidence*, 6 June 2018, p. 21.

176 <<https://www.pexa.com.au/news/australias-digital-transformation>>, accessed 27 July 2018

177 Ian Ireson, Chief Executive, Land Use Victoria, *Transcript of evidence*, 6 June 2018, p. 19.

Further, DELWP highlighted at a public hearing that the two-phased transition of staff to the new operator was in order to facilitate the successful transition to wholly electronic transactions and conveyancing. Mr Bradley said:

Maybe just to expand on that, we talked about the two phases of the staff transfers earlier. The reason for that second phase happening in around October 2019, or after October 2019, is to get us through that stage of 100 per cent online electronic conveyancing in August 2019. That is the logic of this timing.¹⁷⁸

While the Committee acknowledges the two matters are separate, it notes the data security concerns that were raised by stakeholders as a result of the recent PEXA system breaches, which reaffirm the need for stringent data protection oversight of the private operator.

FINDING 8: While acknowledging that the digitisation of the conveyancing system and the commercialisation of the land titles system are separate developments, the Committee is concerned that identified deficiencies in the PEXA system risk affecting consumer confidence in both the conveyancing and land titles systems.

3.2 Employment

In March 2018, DEWLP commenced formal consultation with the CPSU relating to the employment conditions of staff who would be directly affected by the proposed commercialisation.¹⁷⁹ Land Use Victoria as a whole employs 517 Victorian public servants and agency staff who undertake various registration services and property information requests each year. Of those 517 employees, the Government has indicated that around 110 employees from within the Land Registry Services division would be impacted by the proposed commercialisation.¹⁸⁰

DELWP provided the following breakdown for affected Land Use Victoria employees:

- Landata (excluding Laverton division): 18 employees
- Registration services: 48 employees
- Systems services: 44 employees.¹⁸¹

3.2.1 Proposed arrangements

Under the Government's proposal, the 110 affected employees have been provided information about the opportunity to voluntarily transfer employment to the private operator permanently once the transaction contract has been signed.

The Government's submission explains that all affected employees will be matched to a role in the post-commercialised structure with either LUV or the private operator.¹⁸²

¹⁷⁸ John Bradley, Secretary, Department of Land Water and Planning, *Transcript of evidence*, 6 June 2018, p. 19-20.

¹⁷⁹ John Bradley, Secretary, Department of Land Water and Planning, *Transcript of evidence*, 6 June 2018, p. 12.

¹⁸⁰ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 16.

¹⁸¹ Correspondence from the Department of Land, Water and Planning to the Committee.

¹⁸² Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 16.

Employees who are matched with roles undertaken by the private operator will receive an offer of employment, which they may voluntarily accept or refuse. Should staff not wish to be transferred, Land Use Victoria will redeploy the staff in similar roles within other divisions of the Land Use Victoria.¹⁸³

The Committee understands that affected employees may voluntarily choose to accept an offer of employment from the private operator. Affected employees who do not wish to opt-in to the transfer process will remain employed by Land Use Victoria and redeployed in similar public service roles.

The Department of Treasury and Finance informed the Committee that of the 110 affected employees, those who agree to transfer to the private operator would retain the same rights and conditions as their public sector colleagues, including recognition of service and leave entitlements. This is provided for under the *Fair Work Act 2009* (Cth) 'Transfer of Business' requirements which states that the private operator is legally required to recognise employee service with DELWP upon transfer and the public service enterprise agreement will continue to apply.

Further, the Committee heard from DTF that as a term of the transaction, the private operator would be required to provide a two-year terms and conditions guarantee from the date an employee transfers, in addition to a two-year employment guarantee.

The Committee learned later in the Inquiry that due to the ongoing negotiations between the CPSU and the Government, transferring employees would be provided a four-year employment guarantee and right of return to the public service if made redundant at the end of this period.¹⁸⁴ It is not clear whether the initial two-year terms and conditions guarantee is included in the four-year extension agreed to.

The Government noted that for employees who were already on a fixed or maximum term contract for less than two years, the guaranteed employment period would be for the remainder of the employee's current contractual term.¹⁸⁵

The CPSU informed the Committee that employees would be provided with a financial incentive to transfer to the private operator. The Government in its submission confirmed this by stating:

[Employees] matched to the Private Operator structure will be encouraged to accept an offer of employment with the Private Operator by way of an incentive payment from the State.¹⁸⁶

When asked what would take place should an insufficient amount of staff volunteer to transfer to the private operator, the Government suggested that it would be highly unlikely for this to happen as they were making the roles as attractive as possible.¹⁸⁷

Further, the Government's submission explains that the Government will explore using secondments and other transitional methods should a lower than anticipated number of employees opt-in:

¹⁸³ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 16.

¹⁸⁴ Julian Kennelly, Media and Communications Manager, CPSU Victoria, *Transcript of evidence*, 5 July 2018, p. 5.

¹⁸⁵ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 16.

¹⁸⁶ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 17.

¹⁸⁷ John Bradley, Secretary, Department of Land Water and Planning, *Transcript of evidence*, 6 June 2018, p. 14.

If an insufficient number of employees accept offers of employment with the Private Operator, the State may consider seconding employees to the Private Operator for a short period of time to support transition of the business and/or consider other potential transitional arrangements.¹⁸⁸

3.2.2 Consultation process

In accordance with clause 10 of the Victorian Public Service enterprise agreement, DELWP commenced formal consultation with the public sector union and the staff directly affected by the proposed commercialisation. The consultation focussed primarily on the terms and conditions for employees who elect to transfer and accept an offer of employment from the private operator.

From this time, Mr Bradley indicated the Department had undertaken to communicate with the CPSU and affected employees to provide information through various channels on the scope, timing and key themes of the commercialisation. He outlined:

DELWP has communicated to the CPSU and affected employees the proposed scope of the change and the proposed time lines for commercialisation. Since the beginning of that formal consultation formal advice and presentations have been provided to employees and meetings have been conducted with all of our staff affected, employees and the CPSU. We have a website which is available containing all change information and frequently asked questions which we are updating on a regular basis. We have established a designated email inbox to receive and respond to questions and comments as promptly as possible and this is helping us to track key themes of interest to staff. DELWP is currently working to establish expressions of interest in staff matching processes for consultation with employees and the CPSU.¹⁸⁹

CPSU and DELWP negotiations relating to arrangements for staff took place over the course of six weeks and as at 5 July 2018, the agreed arrangements were being circulated to the affected staff for further discussion.

3.2.3 Transition periods

As at 5 July 2018, the expression of interest and staff matching phase undertaken by DELWP had commenced.

Employees that work within the LANDATA unit (excluding the Laverton office), and part of the Registration Services branch of Land Registry Services who choose to accept offers of employment with the private operation will be transitioned over two phases:

- Two-thirds of the staff to transfer over upon the financial close of the transaction (approximately August or September 2018)
- The remaining one-third of the staff to transfer over around October 2019.¹⁹⁰

Mr Bradley explained that the reason for the second phase is due to the Department's transition to 100 per cent online electronic conveyancing by August 2019.

¹⁸⁸ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 17.

¹⁸⁹ John Bradley, Secretary, Department of Land Water and Planning, *Transcript of evidence*, 6 June 2018, p. 13.

¹⁹⁰ Department of Treasury and Finance, Whole-of-government, *Submission*, no. 59, p. 16.

Appendix 1

Submissions

Submission no.	Name
1	Carmel Robertson
2	John McVeigh
3	Don Quattrocchi
4	Nerrida Pohl
5	Ingrid Pezzoni
6	George Neofitou
7	
7a	Mervyn Vogt
8	Peter Hirst
9	Bryan Kavanagh
10	Apollo Yianni
11	Samuel Broad
12	Bruce Poon
13	John Worcester
14	Tohm de la Cortez
15	Kathleen Davies
16	Esther Anderson
17	Jeremy Lawrence
18	Paul Leitinger
19	Rui Santos
20	Gerard Ramnac
21	Maria Ramnac
22	Meryl Waugh
23	David Eames-Mayer
24	Jane May
25	Peter Boardman
26	Maria Hill
27	Julia Burns
28	Peter Malane
29	
29a	Stephen Koci
30	Brian Innes-Will
31	Cathryn Audley
32	Leanne Davis
33	Peter Sikacek
34	Debra Engel
35	Margaret Maxwell
36	Werner Engel

Submission no.	Name
37	Confidential
38	Mary Drost
39	Urban Development Institute of Australia (Victoria)
39a	
40	Darryl Cloonan
41	Zachary Casper
42	Office of the Victorian Information Commissioner
43	Andrew Barrett
44	Prosper Australia
45	Gary Oraniuk
45a	
46	Name withheld
47	Matthew Godwin
48	Anne Laver, Darebin Ratepayers Group
49	Infrastructure Partnerships Australia
50	Prof John Quiggin
51	Alan Manson
52	Jane Hildebrant
53	Diana Barry
54	Margaret Smyrnis
54a	
55	The Community and Public Sector Union (CPSU) Victoria
56	Uniting Church in Australia (Synod of Victoria and Tasmania)
57	Edward Wensing
58	Name withheld
59	Department of Treasury and Finance for the State Government of Victoria
60	Australian Competition & Consumer Commission (ACCC)
61	William Gibson
62	The Institution of Surveyors Victoria
63	Karl Williams
64	Surveying and Spatial Sciences Institute
65	Liz Burton
65a	
66	Sheila Newman
67	Dr Matthew Mitchell
68	Pat Slattery
69	John Wilson
70	David Cantlay

Appendix 2

Public hearings

Wednesday 6 June 2018 – Legislative Council Committee Room, Parliament House, Spring Street, East Melbourne

Name	Position	Organisation
David Martine	Secretary	
David Webster	Deputy Secretary, Commercial Division	Department of Treasury and Finance
Ben Stewart	Executive Director, Commercial Transactions	
John Bradley	Secretary	
Terry Garwood	Deputy Secretary, Local Infrastructure	Department of Environment, Land, Water and Planning
James Kingsland	Executive Director, People and Culture	
Ian Ireson	Chief Executive, Land Use Victoria	
Andrew Harman	President	Association of Consulting Surveyors Victoria
Gerry Shone	Executive Advisor	

Wednesday 20 June 2018 – Legislative Council Committee Room, Parliament House, Spring Street, East Melbourne

Name	Position	Organisation
Craig Sandy	Surveyor-General Victoria	Office of the Surveyor-General Victoria
Robert Marsh	Valuer-General Victoria	Office of the Valuer-General Victoria
David McKenzie	Co-Chair, Property Law Committee	Law Institute of Victoria
Lily Tell	Co-Chair, Property Law Committee	
Jill Ludwell	Chief Executive Officer	Australian Institute of Conveyancers (Victoria Division)

Tuesday 26 June 2018 – Meeting Room G2, 55 St Andrews Place, East Melbourne

Name	Position	Organisation
Danni Addison	Chief Executive Officer	Urban Development Institute of Australia (Victoria)
Hyatt Nidam	Advocacy and Communications Manager	
Adrian Dwyer	Chief Executive Officer	Infrastructure Partnerships Australia
Robert Montgomery	Head of Economics & Policy	
Alan Cameron	Chairman	Property Exchange Australia Ltd
Justin Schmitt	Chief Transformation Officer	
Rachel Dixon	Privacy and Data Protection Deputy Commissioner	Office of the Victorian Information Commissioner
Joanne Kummrow	Acting Public Access Deputy Commissioner	

Thursday 5 July 2018 – Meeting Room G2, 55 St Andrews Place, East Melbourne

Name	Position	Organisation
Karen Batt	Secretary	The Community and Public Sector Union (CPSU) Victoria
Julian Kennelly	Media and Communications Manager	
Tom Champion	President	The Institution of Surveyors Victoria
Kellie Dean	President-elect	
Scott Jukes	Past President	
Karl Fitzgerald	Project Director	Prosper Australia
Jesse Hermans	Administrative Assistant and Researcher	

Minority report

Minority Report

Long term lease of the land titles and registry functions of Land Use Victoria

Samantha Ratnam – Member for Northern Metropolitan Region

Introduction

The call for the inquiry into the proposed privatisation of the land titles office was underpinned by concerns about the rationale for the sale, the impact on jobs and security of employment, security of land titles data, privacy, and the integrity of the system. The substantive summary of key evidence submitted and deliberated on is contained in the majority report, therefore this minority report will focus on the gaps in analysis, discussion and recommendations.

The inquiry into the long term lease of the land titles and registry functions of Land Use Victoria received wide-ranging submissions and heard a breadth of evidence in the short time-frame it had to conduct its work.

Of the 70 submissions received, 63 opposed the proposal privatisation of the titles and registry functions of Land Use Victoria, 4 submitted neutral positions and 3 (including the submission from the Department of Treasury and Finance) that supported the sale.

The evidence overwhelming cited concerns with the purpose and process of the proposed privatisation of key functions of the land titles service in Victoria but did not provide compelling evidence about the need or justification for the proposed lease arrangements. In contrast, serious concerns were raised by key organisations about the outcome of commercialising what is essentially a monopoly service. While the Government is justifying the privatisation of the Land Titles office as an exercise in ‘asset recycling’, many Victorians will be dismayed to learn that the Government is selling this service at potentially a concessional rate to a private bidder and forgoing the usual revenue that it would ordinarily receive over the next 40 years. This will potentially leave future Victorian Governments worse off.

Along with the concerns about the lack of a clear medium to long-term economic rationale, the inquiry heard strong evidence about late or poor consultation with key stakeholders, lack of detail and clarity about the terms of the proposed privatisation, risks to invaluable land titles and personal data, and the future functioning of a highly complex system that has been seen as a world-leader to date while operated publicly.

Privatising a natural monopoly service

The functions of the Land Titles office have the characteristics of a natural monopoly in that there are few if any natural competitors which results in little or no competition in the market when the service is operated in a deregulated environment. This results in a private operator being able to deliver a service without the limitations (particularly on service fees and charges) that competition can theoretically deliver.

The prospect of the services of the commercialised land titles functions being able to set higher fees without regulation was a key concern from peak bodies that rely on interacting with the system particularly the surveying and conveyancing industries.

The concerns about unreasonable and exorbitant price increases (as has been observed in other jurisdictions that have privatised their land titles services) were responded to by the Government in a proposed cap of fees to CPI as the maximum price increase for statutory services when the land titles services are leased. While this has seemed to largely satisfy those concerned about statutory

fees, there a range of non-statutory services and information sets that are routinely accessed for research, analysis and public policy not subject to this cap.

Price gouging and unreasonable increases in fees for these services is likely to limit the utility of this data for public policy and public good motives in future. For instance, aggregated data on property vacancies can be used to address issues like housing affordability by analysing housing supply and trends. Organisations such as Prosper Australia through their submissions, indicated that data was already expensive to access due to the outsourcing arrangements in place for some data and feared that the proposed commercialisation would detrimentally limit the ability of researchers to use this data for critical social and public policy research on issues such as housing affordability.

An unquestioned faith that the private market will reduce costs and innovate

As cited previously, there is a critical concern regarding the proposed privatisation of the land titles system in that it asks an essentially monopolised service to operate in a private profit seeking environment.

A number of witnesses who gave evidence to the inquiry indicated that the private sector could drive innovation and efficiencies. However few could provide examples of how efficiencies or innovation were being stifled under the current operations. This unquestioned belief that profit driven operations are innately better at driving down costs and increasing revenue was challenged by submitters such as Prosper Australia who expressed that there is 'little incentive to innovate'.

The CPSU submitted that Land Use Victoria (LUV) is a monopoly asset which can make it hard for a private company to drive efficiency, particularly because they are operating under motivations other than a commitment to public interests.

The introduction of the online conveyancing system (PEXA) in Victoria has been the most recent and compelling case to date. In a market environment, there has been no competitor to PEXA despite a mandated requirement for all conveyancing transactions to use this system by the 1st of October 2018. There were several serious concerns raised about the impact of this transition on the Victorian conveyancing industry with price rises having already begun:

Ms LUDWELL —With the electronic environment, it is only subscribers who go into this workspace. It is all data; it is not documents. So that has gone from being, say, something like \$35 or \$40 for a settlement to \$110, I think it is at the moment, to do that — to open that workspace and to actually get to the end of the result and get it transacted and get it registered.

Ms Jill Ludwell (affirmed), Chief Executive Officer, Australian Institute of Conveyancers (Victoria Division).

Accountability

The recent data breaches in the online conveyancing system were interrogated by the inquiry committee with representatives of Property Exchange Australia (PEXA). They denied that the recent breaches that resulted in \$250,000 being defrauded through the system were data security breaches of their system. When pressed during the inquiry, PEXA asserted that its own system was not breached:

PEXA is obviously aware that there have been two incidents recently whereby an unknown party gained unauthorised access to a practitioner's email account. In these two instances the unknown party intercepted a change-in-password email sent from the PEXA platform to

the subscriber, which in turn allowed that person to access the subscriber's PEXA account. It was the email account of the subscriber being compromised that enabled access to the subscriber's account with PEXA. As a result the destination account details in the settlement schedule were fraudulently changed. Now PEXA itself has robust fraud protections and strict authentication procedures built into its platform. Given the online environment in which we operate, we are continually reviewing and enhancing these. The PEXA platform was not hacked; practitioners' email accounts were compromised.

Mr Alan Cameron (affirmed), Chairman, and Mr Justin Schmitt (affirmed), Chief Transformation Officer, Property Exchange Australia.

While operators such as PEXA claim that their data security systems are robust, with more growing public concern about the security of private and sensitive personal data, the public are increasingly seeking reassurance about the security of their personal data and want the institutions and services who hold that data to treat it with the utmost confidentiality as well as take upfront responsibility when a breach occurs. PEXA claimed that they hadn't been hacked despite an apparent weakness in their system resulting in the circumstance that resulted in a major theft from an individual. In relation to land titles data, which is some of the most valuable data for Victorians, accountability and responsibility should remain with the government.

Data Security

The majority report canvasses the range of concerns raised throughout the inquiry about the protection of data that I won't repeat in this report. However it is worth noting that while the government has sought to reassure those concerned about data privacy and security with requirements that a future operator comply with Victorian Protective Data Security Standards, and Information Privacy Principles, the Office of the Victorian Information Commissioner submitted that the proposed commercialisation arrangements would reduce Parliamentary scrutiny over the changes to information rights:

At present, privacy and data protection obligations are imposed on LUV by the PDP Acct. These obligations can only be modified by the passage of legislation through the Victorian Parliament. In contrast, under the proposed transaction the Operator will be bound by a combination of legislation and contract. Contracts can be modified by agreement between contracting parties. It is possible that the obligations place on the Operator could be modified by agreement between the Operator, the State and the Registrar without direct Parliamentary oversight.

Sven Bluemmel, Information Commissioner, Submission no.42, page, 4

The Government has not provided a compelling reason as to why they have chosen to regulate this privatisation through contracts versus legislation despite the increased safeguards for the public that would result from legislation. The significance and scale of privatising titles and registry functions warrants the strongest government protections and as such should be enacted through legislation not contractual agreements.

Public good versus private profit

A number of submitters raised concerns about how a privatised system would manage complex situations where a public policy outcome was in tension with a private profit motive.

The Urban Development Institute of Australia (UDIA) for instance cited a process solution that they had been able to work collaboratively with LUV to resolve as it was in the public interest to improve production blockages. They credited good working relationships and a mutual interest in a public policy outcome as key to improving the problem.

The disruption in working relationships and processes that will result from the privatisation of LUV functions could detrimentally impact the potential for collaborative problem solving in future. The other tension cited through this example was about how a public policy goal can be managed when it conflicted with a commercial outcome:

I just believe there are inherently different drivers for government to consider policy than there are for a private operator to consider it for a commercial value. So we would expect that to be made very clear to government from the private operator's perspective — how it would address policy objectives and how it would make sure that it would facilitate the continued production of new housing and the continued economic benefits of our housing system.

Ms Danni Addison, CEO, Urban Development Institute of Australia (Victoria). Transcript of Evidence, 26 June, 2018, p.7

As cited in the majority report, The Law Institute of Victoria also raised the question of:

How a privatised system would work when there would a dual loyalty from a registrar to shareholders as well as to the integrity of the titles office system.

Lily Tell, Co-Chair, Law Institute of Victoria Property Law Committee, Transcript of evidence, 20 June 2018, p.8

The Law Institute of Victoria submitted further that *'a private operator is likely to deal with standard, straightforward transactions to the expected standard, it may not devote the necessary resources required with respect to processing complex transactions, adverse possession, and so forth (which are not likely to be profitable'*

Letter in support of transcript evidence dated 21 August 2017, p.3

This likely tension has not been resolved in the Government's response to date and raises serious concerns about why titles and registry functions that serve a purpose for a public good should be operated by a private operator if it is likely to result in a reduction in the quality and complexity of services available to Victorians.

The Community and Public Sector Union (CPSU) submitted that:

Private companies often associate efficiency with cost cutting. However, inappropriate cuts to LUV could have a negative impact on the quality of service LUV can provide, jeopardise Victorian land titles, and potentially cause destabilisation in the property market'.

Under a private company, public policy is not a framework under which they will operate. If Government mandates don't align with private company interests, then the public will be overlooked in return for financial gain.

The Community and Public Sector Union (CPSU), Submission no.55, p.3-4

While the government has submitted that jobs that are transferred to the new private operator will be guaranteed for a period of time, there are no assurances for job security beyond this period.

Consultation and Transparency

At the time when the inquiry began, little information was publicly available about the scope and details of the proposed privatisation. While some submitters lamented the delay and uncertainty that a Parliamentary Inquiry could cause, it became evident that the Government released more details of the proposed lease in the course of the inquiry presumably because of the increased scrutiny on the process as a result of the inquiry.

There was some frustration expressed about the lack of detail and transparency throughout the consultation phase.

Well, I think it was all a bit of a shock when it happened. We just sort of got together and put our submissions in and waited for a reaction. We finally got a reaction; it was slow coming but we actually had a discussion with the Treasurer. A lot of these issues were raised, and he gave us some assurances. But as I said, we have not seen anything further, so I do not know where it is at and where it is going.

Ms Jill Ludwell (affirmed), Chief Executive Officer, Australian Institute of Conveyancers (Victoria Division).

For instance, Mr Andrew Harman (affirmed), President, and Mr Gerry Shone (affirmed), Executive Advisor, Association of Consulting Surveyors Victoria cited several consultation meetings that had occurred but that the process had slowed down and hindered by confidentiality proposals:

The surveyors' working group received assurances from the Treasurer regarding a commitment to ongoing consultation throughout the process. The DTF response to this has been, it is fair to say, somewhat limited and seems at times to be overly bureaucratic. But there have been no meetings since 5 April and we seem to have been somewhat stalled by the instigation of a confidentiality agreement, so that is two months since our last consultation — a fast-moving process. Despite those concerns, the consultation has been positive but DTF have been quite constrained in the information they are able to provide to us. There has been no provision of the scoping study, of course, as you heard before. Their intention in that process has been to garner information from us — the professional surveyors working in the system — and professionals who are closely associated with the operations of the land registry. We have been very happy to provide that evidence. I would have thought that usually a consultation process would involve the presentation of some sort of proposal to which we would be able to respond, but that has not been able to be the case in this instance. I guess it is difficult to see how government can achieve that when there are commercial-in-confidence matters involved.

The Institution of Surveyors expressed similar sentiments and concerns:

Our dialogue with DTF officers has been constructive to date. However, more recently our engagement has stalled over differences of opinion over a confidentiality agreement proposed by DTF that we believe is unworkable in the context of ISV's core objectives and accountability to our members.

Mr Tom Champion, Institution of Surveyors Victoria. Transcript evidence. 5 July, 2018

The lack of clarity about the model of lease being proposed also made the consultation process difficult as expressed in submissions from organisations such as the Australian Institute of Conveyancers:

Ms LUDWELL — Yes, sure. I think it was just to try and alleviate any concerns we had about the model that they were going to choose. There was no definitive idea of what the model was going to be, but that was the discussion. It was about a 15-minute discussion, I suppose, on what was going to happen, because the other states — for instance, New South Wales and South Australia — had different models. In New South Wales I am not 100 per cent sure whether that was a lease or a sale, but I know in South Australia it was definitely a lease — a 40-year lease or something like that.

Ms Jill Ludwell, Chief Executive Officer, Australian Institute of Conveyancers (Victoria Division), Transcript evidence

The Government's failure to release the scoping study on the proposed commercialisation was detrimental to the committee's ability to evaluate the proposal. The use of reasons such as commercial in confidence to deny public access to key and critical information that is in the public interest undermines the ability of the public to scrutinise the actions of their elected representatives and undermines confidence in decision making.

Not good economic sense

Several submitters raised questions about how the privatisation was financially beneficial to a Government in the long-term.

The sale of the asset is expected to raise in the order of \$2 billion as a one off payment. This amounts to an annual revenue of \$50 million if amortised over 40 years. It is proposed to commercialise thirty per-cent of the functions of Land Use Victoria involving the land titles, registry functions and systems. Annual revenue from these services is in the order of \$120 million or \$4.8 billion over the 40 years of the commercialisation agreement. The value to the State of the revenue generated from these services appears to vastly exceed the revenue from its commercial value.

In the absence of the scoping study it is not known how much of the current revenue will be foregone.

Liz Burton, Submission no. 65, p.4.

Prosper Australia also argued that:

The Victorian Land Titles Registry (LTR) brings in over \$300m in revenue every year for the Victorian Government (\$382m in 2016-17). It has yet to be revealed just what percentage of overall revenue is derived by the core registration and information services' departments. We expect it is the vast majority. Estimated revenue from privatising the LTO is roughly \$1.5 - 2bn. We assume \$300m in revenue and a sale value of \$2bn. This puts the yield of the LTR at 15%. To borrow an equivalent sum (\$2bn) at the 10 year bond rate (3%) would cost the Victorian government \$60m per year in interest. Were the government to borrow the \$2bn and retain the LTR's \$300m per year revenue stream, it would save \$240m per annum. There is no fiscal rationale for privatisation; the Victorian government would be \$240m a year better off if it retained the land titling function as a profitable public monopoly and issued bonds to finance spending.

While the Government released more detailed figures about the value of the services that are proposed to be privatised, the overarching question remains about why the Government seeks a short term financial gain when it significantly risks a system that is critically important to the integrity of land titles in Victoria, data security issues, job losses, price increases and little guarantee of any improved service quality or levels.

Why fix it when it's not broken?

There was overwhelming evidence submitted acknowledging that the current system of registering and managing land titles in Victoria is working well as discussed in the majority report. This was referenced most significantly by those who interact with the Land Titles office regularly.

The CPSU submitted that further that *'[Privatisation] sends a message to the public that the Government is not capable of looking after essential assets, and sets a precedent for further privatisation.'* Submission no.55, p.13.

The inquiry could not adequately answer the question about why Government should sell this vital and valued asset and service. There was little evidence to suggest that this was a long-term financially sound decision given the revenue that future Victorian Governments will forego. While some protections and regulations will be imposed as part of the privatisation, it is unclear if these will be strong enough to prevent a serious and catastrophic data breach in future. Fees for non-statutory services currently offered by Land Use Victoria that are to be commercialised will not be capped. There is potential for increased prices for products that are vital to public policy decision making. It is in the public interest that these products and services are available at affordable levels.

RECOMMENDATIONS

1. That the Government not proceed with the privatisation, lease and commercialisation of the land titles and registry functions of the Land Titles office.
2. That the Government release the scoping study for the proposed commercialisation
3. That should the Government proceed with the commercialisation of functions of the Land Titles office, that it introduces legislation that governs all aspects of regulating the commercialisation including privacy and data protection measures.
4. That any future privatisations must proceed on a more transparent basis. The use of commercial confidence to deny access to key information on transactions of this scale is detrimental to the community and undermine trust in the government.

