

Government Response to the Inquiry into the Proposed Long-Term Lease of Land Titles and Registry Functions of Land Use Victoria

The Secretary
Department of Treasury and Finance
1 Treasury Place
Melbourne Victoria 3002
Australia
Telephone: +61 3 9651 5111
Facsimile: +61 3 9651 2062
dtf.vic.gov.au

Authorised by the Victorian Government
1 Treasury Place, Melbourne, 3002

© State of Victoria 2019



You are free to re-use this work under a Creative Commons Attribution 4.0 licence, provided you credit the State of Victoria (Department of Treasury and Finance) as author, indicate if changes were made and comply with the other licence terms. The licence does not apply to any branding, including Government logos.

Copyright queries may be directed to IPpolicy@dtf.vic.gov.au

ISBN 978-1-925551-22-8
Published February 2019

If you would like to receive this publication in an accessible format please email information@dtf.vic.gov.au

This document is also available in Word and PDF format at dtf.vic.gov.au

Background

Land Use Victoria (LUV) provides titling and registry services, and is the State's key agency for land administration, property information, valuation, land surveying and other land use policy functions.

The Land Registry Services (LRS) business division comprises one component of LUV's responsibilities. It is specifically responsible for recording and registering Victorian land ownership and interests, as well as providing access to information on the register.

LRS's key functions include processing and supporting the registration of property transaction dealings and property information services.

In the 2017-18 State Budget, the Government announced it would commission a scoping study to examine options to commercialise land titles and registry functions of LUV.

The scoping study's terms of reference included:

- examining commercialisation options for core land registration and information services;
- maintaining data protection and privacy;
- continued Government ownership of and access to data; and
- opportunities for ongoing service improvements for registry customers.

The scoping study also considered lessons learnt from land title registry commercialisation transactions in other jurisdictions.

In December 2017, the scoping study and its findings were reported to the Government.

Following its consideration of the findings, on 7 March 2018, the Government announced it would conduct a competitive market process to commercialise the land titles and registry functions of LUV.

On 23 May 2018, the Legislative Council passed a motion requiring the Standing Committee on Environment and Planning (Committee) to inquire into the proposed long-term lease of the land titles and registry functions of LUV, with particular reference to:

- system integrity;
- privacy and data security;
- cost and service level impacts;
- employees;
- financial arrangements; and
- experiences in other jurisdictions.

The Committee held public hearings and received submissions, including a submission from the Government that includes relevant content from the scoping study.

The Committee tabled its report in Parliament on 7 August 2018.

On 27 August 2018, the Government granted a concession to operate certain land titles and registry functions of LUV, delivering \$2.86 billion that will be invested in new schools, hospitals and transport projects.



Victorian Land Registry Services (VLRS) will be responsible for part of the State's land titles and registry functions for a term of 40 years, after which the functions will be returned to public hands.

VLRS is backed by First State Super, which is fully Australian-owned and one of Australia's largest superannuation funds, with more than 800,000 members.

The State will retain full control over prices for statutory land registry services throughout the 40-year term, and price increases will be capped at CPI for current non-statutory services provided by VLRS.

The State will also retain ownership of essential services, including the Subdivisions, Application & Survey, Valuer-General Victoria, Surveyor-General Victoria, Land Information and Spatial Services, Government Land Advice and Coordination and the Victorian Government Land Monitor.

The Registrar of Titles will remain with the State and retain all statutory obligations and powers, having an oversight role over VLRS.

The appointment of VLRS followed a competitive market engagement process to ensure the transaction delivered value for money for Victorians.

Government response

In its report, the Committee made 14 recommendations. The balance of this document sets out the recommendations and the Government's response.

#	Inquiry recommendation	Government response	Comments
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.	Support in full	<p>On 27 August 2018, the Government granted a concession to operate certain land titles and registry functions of LUV.</p> <p>VLRS will be responsible for part of the State's land titles and registry functions for a term of 40 years, after which the functions will be returned to public hands.</p> <p>VLRS is backed by First State Super, which is fully Australian-owned and one of Australia's largest superannuation funds, with more than 800,000 members.</p> <p>The State will retain full control over prices for statutory land registry services throughout the 40-year term, and price increases will be capped at CPI for current non-statutory services provided by VLRS.</p> <p>The State will also retain ownership of essential services, including the Subdivisions, Application & Survey, Valuer-General Victoria, Surveyor-General Victoria, Land Information and Spatial Services, Government Land Advice and Coordination and the Victorian Government Land Monitor.</p> <p>The Registrar of Titles will remain with the State and retain all statutory obligations and powers, having an oversight role over VLRS.</p> <p>See Treasurer's media release, "<i>Land Use Victoria Proceeds Deliver Infrastructure Boost</i>".</p>
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.	Support in principle	<p>The Government considers that significant information, including relevant content from the scoping study, has already been made public by the State at the hearings² for this inquiry, as well as in the Government's written submission³.</p> <p>The Government announced its decision and reasons for commercialisation of the land titles and registry functions of LUV on 7 March 2018⁴.</p> <p>In addition to upfront proceeds being invested in infrastructure, other benefits include enabling private sector innovation, promoting private sector investment and better responding to customer demand for technology driven services.</p> <p>Furthermore, certain costs and risks would be transferred to the Private Operator</p>

¹ <https://www.premier.vic.gov.au/land-use-victoria-proceeds-deliver-infrastructure-boost/>

² https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Land_Titles/Transcripts/1.-FINAL-LandUseVic-20180606-DTF.pdf

³ https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Land_Titles/Submissions/S59-DTF.pdf

⁴ <https://www.premier.vic.gov.au/land-use-victoria-proceeds-to-deliver-infrastructure-boost/>

#	Inquiry recommendation	Government response	Comments
			<p>and the Private Operator would be required to complete the IT modernisation program, and as such, relevant systems would be enhanced at the Private Operator's cost.</p> <p>Various options were considered, including models adopted in other jurisdictions. These included whether new legislation was required or whether a contractual model would be sufficient, the appropriate length of the concession term and which functions of LUV should be retained by the State and which functions could be supported by a Private Operator.</p> <p>The scoping study proposed that the Registrar of Titles remain as a statutory office with a strong oversight role over the Private Operator. In its considerations, the Government determined that a contractual model could achieve this through the retention of legislative functions, including the statutory role of the Registrar and continuation of the statutory State guarantee of title.</p> <p>Various concession terms were considered. A 40-year concession period was decided on as it would provide sufficient time for private sector innovation, whilst maximising bidder appetite. This is broadly in line with the concession terms of both New South Wales (NSW) and South Australia (SA).</p> <p>The scoping study proposed that the Registrar of Titles remain as a statutory office with a strong oversight role over the Private Operator.</p> <p>The scoping study recommended that the State commercialise the high volume functions associated with land registry services which perform the core business of LUV such as the registration of land transactions including transfers, mortgages, caveats and information searches.</p> <p>These services were deemed appropriate for commercialisation, as they were considered likely to benefit the most from private sector expertise to optimise operations, accelerate digitalisation and improve service quality for customers.</p>

#	Inquiry recommendation	Government response	Comments
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.	Support in principle	<p>The Subdivision and Application and Survey functions of LUV were not outsourced as they are more complex and there was less ability for a Private Operator to assist the Registrar with these statutory functions.</p> <p>The Strategic Land Assessment and Information Division of LUV including the Valuer-General Victoria and the Office of the Surveyor-General Victoria were also retained by the State for a number of reasons, including:</p> <ul style="list-style-type: none"> • they mainly service government and municipal clients rather than being customer/public facing; • the Office of the Surveyor-General is the primary government authority for land surveying and the cadastre (land property boundaries and tenure); and • the Strategic Land Assessment and Information Division of LUV including the Valuer-General are not strictly related to title registries. <p>The Government considers that appropriate consultation took place. Both the scoping study and the commercialisation process itself were subject to industry and stakeholder consultation, including state and national bodies representing surveyors, conveyancers and the legal profession.</p> <p>The list of key stakeholders consulted can be found at section 1.5 of the Government's submission⁵ to the inquiry and therefore it is not considered necessary to publish it separately on the LUV website.</p>
4	That the Government seeks input from the ACCC on its proposed commercialisation if it has not already done so, prior to signing contracts.	Support in full	<p>The ACCC was consulted by Government and relevant ACCC approvals obtained by market participants on the land titles commercialisation prior to contracts being signed.</p>

⁵ https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Land_Titles/Submissions/S59-DTF.pdf

#	Inquiry recommendation	Government response	Comments
5	<p>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:</p> <ul style="list-style-type: none"> • 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; and • whether the CPI annual price cap is the appropriate price metric for the life of the proposed commercialisation. 	<p>Support in full</p>	<p>The Department of Treasury and Finance liaised with the ACCC and considered all of the ACCC's feedback.</p> <p>The Government considers that the market structure adopted for the transaction is consistent with, and supportive of, competitive outcomes. In particular:</p> <ul style="list-style-type: none"> • whilst the State has outsourced certain administrative functions of the Registrar, the State has remained the provider of all statutory services, the counterparty to all information broker contracts, the counterparty to the PEXA contract and any new Electronic Lodgment Network Operator (ELNO) contract; and • the concession deed requires non-discriminatory access for ELNOs and information brokers and vertical separation between the provision of services by the Private Operator and the provision of downstream services. <p>The State considers the oversight framework, being a combination of existing legislation and contractual arrangements with the Private Operator, is flexible enough to adapt over the length of the concession term.</p> <p>In setting the framework, the State took into account lessons learnt from other jurisdictions such as NSW and SA. The framework was not compromised for considerations such as transaction proceeds.</p> <p>In Victoria, the State retains full control over the setting of prices in relation to statutory services for customers. Consistent with the <i>Subordinate Legislation Act 1994</i>, it is longstanding practice of the State to determine statutory fees using a Regulatory Impact Statement (RIS) process. This will continue. A future RIS process may therefore have regard to efficient costs of the Private Operator and the State for the provision of all statutory functions. This model provides greater flexibility, allowing future cost efficiencies that may result in price reductions for statutory products.</p>

#	Inquiry recommendation	Government response	Comments
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.	Support in principle	<p>Current non-statutory products, which make up a very small part of revenue, cannot be escalated at greater than Melbourne CPI. A CPI price path aligns price escalation with broader price increases in the economy and prospects of realising efficiencies is considered lower for current non-statutory than statutory products.</p> <p>The State will have full discretion as to whether to approve new non-statutory products and services, with any price path to be agreed at that time.</p> <p>These concerns have also been considered and addressed in the Government's submission⁶. Please refer to sections 3.3, 4.2.1, 4.2.2 and 7.1.</p> <p>The Government's policy is to not recycle assets to the private sector in perpetuity. Consistent with that policy, the Government has not sold the Victorian Land Titles Office, but provided the Private Operator with a concession to operate the business for a 40-year period. At the end of that period, the land titles responsibilities will be returned to public hands.</p> <p>Consistent with the typical approach to Government commercialisations, the contracts entered into with the Private Operator do not include a right for the State to "buy back" the land registry services prior to the conclusion of the 40-year concession.</p> <p>In the event of an unremedied serious breach of contract by the Private Operator, the State retains step in and termination rights and may resume operations of the relevant land registry services if required.</p>
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.	Support in part	<p>The Government will make public the KPIs for the public facing services the Private Operator is delivering. They will be published in the Department of Environment, Land, Water and Planning's (DELWP) annual report.</p> <p>The Government has made a statement regarding abatements in its submission⁷ to the inquiry (refer to section 4.4).</p>

⁶ https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Land_Titles/Submissions/S59-DTF.pdf

⁷ https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Land_Titles/Submissions/S59-DTF.pdf

#	Inquiry recommendation	Government response	Comments
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.	Support in full	<p>There has been no change to the information rights of Victorians.</p> <p>The information rights of Victorians were addressed in the Government's submission⁸ (refer to sections 3.2 and 3.3).</p> <p>Concerns and complaints with the services performed by the Private Operator can be lodged with the Private Operator at Landata.enquiries@delwp.vic.gov.au or in accordance with DELWP's complaint procedure at https://www2.delwp.vic.gov.au/our-department/contact-us</p>
9	That the Government require the private operator to assist the Office of the Victorian Information Commissioner directly in relation to <i>Privacy and Data Protection Act 2014</i> obligations and investigations.	Support in full	<p>The contract with the Private Operator provides that Part 3 (Information Privacy) of the <i>Privacy and Data Protection Act 2014</i> (PDPA) applies to the Private Operator as a 'contracted services provider' in respect of the land registry services provided by the Private Operator. For example, the Private Operator must comply with the Information Privacy Principles and applicable codes of conduct in the same way as the State would have been bound had it provided the relevant service.</p> <p>The Governor in Council has made an order declaring that Part 4 (Protective Data Security) of the PDPA applies to the Private Operator⁹.</p> <p>Declaration under Part 4 of the PDPA will enable the Office of the Victorian Information Commissioner (OVIC) to apply data security standards on the VLRS in relation to security, confidentiality and integrity of public sector data, and access to public sector data.</p> <p>Under its contract with the State, the Private Operator must at the request of the State fully cooperate with OVIC in its handling of complaints or regulatory investigations in connection with the services provided by the Private Operator.</p>

⁸ https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Land_Titles/Submissions/S59-DTF.pdf

⁹ <http://www.gazette.vic.gov.au/gazette/Gazettes2018/GG2018G038.pdf#page=31>

#	Inquiry recommendation	Government response	Comments
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.	Support in principle	<p>The Government recognises the importance of timely notification of data breaches, should they occur.</p> <p>Under its contract with the State, the Private Operator must promptly notify:</p> <ul style="list-style-type: none"> • the Registrar of any data breaches; and • notify the Office of the Victorian Information Commissioner, as well as the State and the Registrar, of any eligible data breach under the <i>Privacy Act 1988</i> (Cth). <p>In the event of a data breach, the Registrar will notify the responsible Minister and the Victorian Information Commissioner.</p>
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.	Support in full	<p>There are no specific areas that will no longer be subject to freedom of information (FOI) requests. The <i>Freedom of Information Act 1982</i> (FOI Act) continues to apply to DELWP, the Registrar and LUV. However, it does not apply directly to VLRS. Therefore, requests will continue to be required to be made to the State.</p> <p>Documents collected or received from the VLRS by DELWP, LUV or the Registrar may be accessed pursuant to the FOI Act. Such documents must be provided by the relevant agency unless an exemption applies under the FOI Act.</p> <p>Under the contractual arrangements between the State and VLRS, VLRS is required to assist the State with FOI requests in a manner that is consistent with the FOI Act.</p> <p>Further, given that DELWP, the Registrar and LUV continue to retain responsibility for all decisions and changes to the land titles register, this means that relevant documents relied upon for such decisions and changes continue to be subject to the FOI Act.</p>
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.	Support in full	<p>Under its contract with the State, the Private Operator must assist the State in respect of FOI requests, including making available to the State any information in the possession of the Private Operator in connection with those matters.</p>

#	Inquiry recommendation	Government response	Comments
13	<p>That the relevant departmental annual report contains a statement each year regarding the operation of the commercialised land titles system, including:</p> <ul style="list-style-type: none"> • Performance data against KPIs; • Reported data breaches; and • Payments made and revenue collected through statutory fees. 	Support in full	These will be published in the DELWP annual report.
14	That the Government notify Parliament of any variation to the agreement with the operator.	Support in part	The Government will make public significant changes to the agreement with the Private Operator, being material changes to the concession term, KPIs related to public facing services, the scope of the services provided by the Private Operator and the use of data.

