

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

Whole of Victorian Government Submission

June 2018

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# 1. Executive Summary

## 1.1 Introduction

On 7 March 2018, the Government announced the commercialisation of certain land titles and registry functions within Land Use Victoria (LUV) (Transaction). Following the announcement, the State commenced a competitive market process to ensure the Transaction meets its objectives (as outlined below), including optimising value for money for Victorians.

The Government determined several essential services will remain in public hands, including the Subdivisions, Application and Survey, Valuer-General Victoria, Surveyor-General Victoria, Land Information and Spatial Services, Government Land Advice and Coordination, and the Victorian Government Land Monitor business units/branches within LUV.

Contract signature is expected to be announced in August-September 2018. The market engagement process timeline is summarised below.



On 23 May 2018, the Legislative Council passed a motion requiring 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 LUV. See Appendix 1 for the full terms of reference.

## 1.2 Objectives

The State's objectives for the Transaction are to:

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.

### 1.3 Land Use Victoria business overview

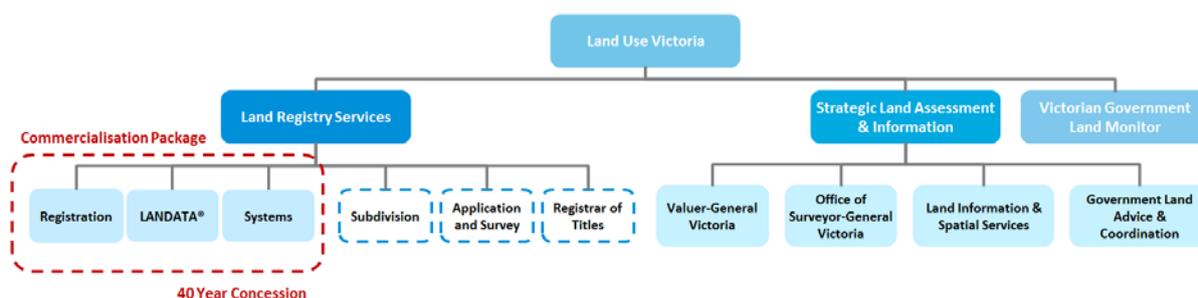
LUV provides titling and registry services and is the State's key agency for land administration, property information, valuation, land surveying and other land use policy functions. It currently maintains around 3.4 million titles stored electronically and processes more than 800,000 dealings each year. The Land Registry Services (LRS) division forms one component of LUV's responsibilities.

### 1.4 Transaction highlights

The Transaction is proposed to be a 40-year concession of the operations of the commercialised LUV functions pursuant to a Concession Deed with the entity that is the successful bidder identified in the market engagement process (the Private Operator).

Under the Transaction structure, certain employees and assets of the Registration, LANDATA® and Systems functions will transfer to the Private Operator. Employee transfers will be voluntary with extensive employee protections.

The figure below shows the Commercialisation Package and State retained functions.

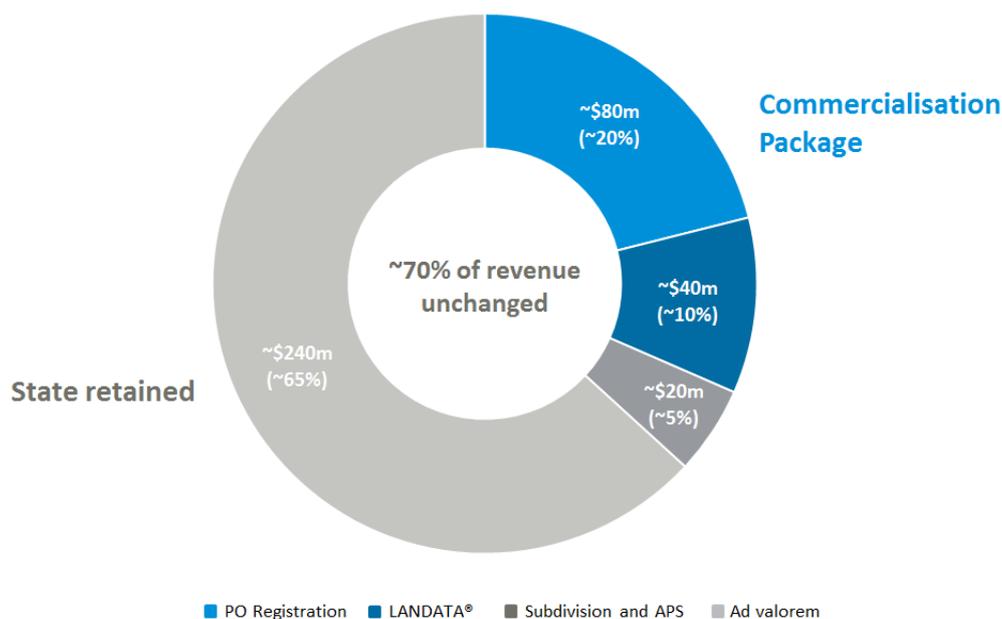


The key functions and services provided by the three commercialised branches are summarised below:

- **Registration** – registers more than 800,000 land transactions annually, with approximately 50 per cent of transactions lodged electronically, approximately 7 per cent of transactions performed over-the-counter, and the remainder lodged in bulk (noting these percentages will change with the e-Conveyancing rollout);
- **LANDATA® (excluding Laverton)** – provides customers with access to title and property information and property sales data; and

- **Systems** – provides a range of IT services to maintain, enhance and develop LUV’s critical business systems, which underpin the delivery of land registration and property information services.

In commercialising the limited number of functions identified above, the State will continue to retain the significant ad valorem revenue stream, as well as the revenues generated by the State-retained Subdivision and Application and Survey functions. The State will pay fees to the Private Operator for the services it provides. See the LUV revenue breakdown per annum below.



Under the proposed arrangements, the Private Operator will:

- conduct the administrative operations underpinning land registration services (excluding plan and survey-based lodgments);
- provide wholesale and retail LANDATA® services and collect, maintain and distribute property sales data through information brokers;
- maintain and develop supporting IT systems; and
- bear the risks and rewards related to the commercialisation package.

## 1.5 Stakeholder consultation

Both the pre-Transaction scoping study and Transaction itself have been subject to extensive industry stakeholder consultation, including state and national bodies representing surveyors, conveyancers and the legal profession.

The stakeholders consulted include the:

- Office of the Victorian Information Commissioner;
- Community and Public Sector Union (CPSU);
- Law Institute of Victoria;
- Australian Institute of Conveyancers;
- Institute of Surveyors Victoria and Consulting Surveyors Victoria;

- Australian Competition and Consumer Commission;
- Foreign Investment Review Board; and
- Australian Tax Office.

## 1.6 Terms of Reference

### 1.6.1 TOR (1) – System integrity

The State will ensure appropriate oversight and implementation of a robust oversight regime to preserve the integrity and security of key LUV registers. Features of the regime include:

- continuation of the statutory State guarantee of title/indemnity that underpins the Torrens title system;
- existing consumer protections in respect of the titles register, will be maintained to ensure there is no reduction in the rights of property owners or other customers; and
- the Private Operator will be subject to detailed service requirements and key performance indicators (KPIs) to ensure the quality of service is maintained or improved.

There will be no change to the Registrar's statutory functions, powers and responsibilities. The Registrar will continue to be an officer of the State, will retain and continue to perform all of the same statutory functions, powers and responsibilities it currently performs, and will have oversight of the services provided by the Private Operator, including the right to approve processes and procedures the Private Operator uses to perform the contracted services.

### 1.6.2 TOR (2) – Privacy and data security

The State will retain ownership over all registry data. Data will be required to be stored in Australia.

Any information accessed by the Private Operator will be subject to privacy and data protection laws and regulations, in addition to strict contractual obligations (including stringent data integrity and security requirements).

Furthermore, the State will have step-in rights to protect data and to enforce compliance with data privacy and protection laws.

The Office of the Victorian Information Commissioner has been extensively consulted.

### 1.6.3 TOR (3) – Cost and service level impacts

#### **Cost:**

There are no proposed changes to the mechanism for setting LUV's fees and charges, which the customers pay for the delivery of statutory products and services.

Accordingly, the State will retain full control over the future setting of fees and charges to the public for existing and new statutory products and services. This includes, for example, all the key products and services necessary for transfer of title and both registrations and discharges of mortgage.

The State will separately pay the Private Operator an ongoing periodic contractual service fee based on an agreed mechanism linked to actual volumes of dealings in the areas subject to the commercialised package, and which are processed through LUV.

The Private Operator will be able to offer non-statutory products directly to the public. Increases in fees and charges for the current non-statutory products offered to customers by the Private Operator will be limited to Melbourne CPI unless otherwise approved by the State.

**Service level impacts:**

The Private Operator will maintain or improve current levels of customer service for users of land services and will be subject to detailed service requirements and KPIs. Failure to meet these KPIs will entitle the State to abate the periodic contractual service fee.

The Registrar will retain its existing statutory functions, powers and responsibilities. Together with additional contractual obligations imposed on the Private Operator, the Registrar and the State will have strong oversight of the Private Operator, including through established approval processes and procedures.

#### 1.6.4 TOR (4) – Employees

The terms of employee transfer are subject to ongoing consultation with employees and the CPSU.

Any LUV employees who permanently transfer to the Private Operator will do so on a voluntary basis.

Offers made to LUV employees by the Private Operator will be required, as a condition of the Transaction, to be on terms that are no less favourable than the employees' current terms and conditions, including the recognition of prior service and leave balances. The relevant *Victorian Public Service Enterprise Agreement* (VPS Agreement) will continue to apply to transferring employees.

LUV employees will, as a term of the Transaction, have a guaranteed employment period with the Private Operator for a minimum two-year period. For employees who are already on a fixed or maximum term contract for less than two years, the guaranteed employment period will be for the remainder of the employee's current contractual term.

For LUV employees who remain with the State/LUV, the terms and conditions of their current employment arrangement will continue to apply.

#### 1.6.5 TOR (5) – Financial arrangements and cost benefit to Victoria in the long term

The Transaction is to be effected by way of a 40-year concession of the operations of the commercialised LUV functions.

There are benefits to the State, including substantial upfront proceeds allowing the State to recycle capital and reinvest in transport infrastructure.

The Private Operator will be responsible for the collection of statutory Registration and LANDATA® fees as collection agent for the State. These fees will be paid into the State's Consolidated Revenue Fund.

The State will pay the Private Operator an ongoing periodic contractual service fee based on an agreed mechanism linked to actual volumes of dealings in the areas subject to the commercialised package, and which are processed through LUV.

#### **1.6.6 TOR (6) – Other Australian and international experiences**

The Victorian Government has the benefit of considering lessons learned from other jurisdictions, particularly the recent NSW and SA processes in Australia and similar experiences abroad.

The lessons learned have been considered and where relevant have been adopted in the design of the Victorian Transaction structure.

## 2. TOR (1) – System integrity

### KEY POINTS:

1. The State will ensure appropriate oversight and implementation of a robust regulatory and oversight regime to preserve the integrity and security of key LUV registers. Features of the regime include:
  - continuation of the statutory State guarantee/indemnity of title that underpins the Torrens title system;
  - existing consumer protections in respect of the titles register will be maintained to ensure there is no reduction in the rights of property owners or other customers; and
  - the Private Operator will be subject to detailed service requirements and KPIs to ensure the quality of service is maintained or improved.
2. There will be no change to the Registrar's statutory functions, powers and responsibilities. The Registrar will continue to be an officer of the State, will retain and continue to perform all of the same statutory functions, powers and responsibilities it currently performs, and will have oversight of the services provided by the Private Operator, including the right to approve processes and procedures the Private Operator uses to perform the services under the contract.

### 2.1 Overview

LUV maintains a number of key electronic registers, including the Torrens Title Register, Crown Land Register, Plantations Register and Water Register.

The Water Register will be retained by the State and those parts of LUV retained by the State will continue to process water share transactions on behalf of the Water Registrar under the *Water Act 1989 (Vic)*.

Post Transaction, the Private Operator will be licensed to use certain data in the electronic registers.

The State recognises the importance of the land title information held by LUV and the service it provides to the community. Maintaining the integrity, security and availability of the registers is a key objective of the Transaction.

As such, the State will ensure appropriate oversight and implementation of a robust oversight regime to preserve the integrity, security and availability of the LUV registers. Features of the regime include:

- continuation of the statutory State guarantee/indemnity of title (which is an indemnity available to compensate persons who have suffered loss in relation to errors on the register) that underpins the Torrens title system;
  - Hence, it is not envisaged that title insurance will be required for property purchasers.
- maintaining existing consumer protections in respect of the registers to ensure there is no reduction in the rights of property owners or other customers;
- the Private Operator being required to use all reasonable endeavours to pursue efficiencies and improvements (including through the implementation of new

- technologies) in relation to the commercialised services throughout the concession term;
- the Private Operator being required to make reasonable investment in the IT systems and new technology in accordance with 'good operating practice' throughout the concession term;
- the Private Operator having contractually enforceable obligations relating to privacy, security and data protection that extend beyond those imposed under the Victorian *Privacy and Data Protection Act 2014* (Vic) (PDPA) (refer to Section 3 for further details); and
- the Private Operator being subject to detailed service requirements, service levels and KPIs to ensure the quality of service is maintained or improved.

## 2.2 Role of the Registrar of Titles

The Registrar will retain and continue to perform 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. Aspects of this oversight regime includes the:

- Registrar and other officers of LUV employed by the State will continue to control the making of registrations in the registers, and correcting the registers;
- the Registrar will continue to determine the manner and form in which the registers are kept;
- the Registrar will be entitled to give directions to the Private Operator to take action required to preserve the integrity and security of the registers; and
- the Registrar will have the right to 'step-in' to perform or rectify a service failure by the Private Operator.

## 2.3 Private Operator obligations

The Private Operator will be required to provide services to the State and Registrar, which assist the State and Registrar to safeguard the integrity and security of the system by:

- implementing data security and privacy requirements;
- proposing efficiencies and improvements to processes, procedures and training programs;
- using all reasonable endeavours to pursue efficiencies and improvements (including through the implementation of new technologies) in relation to the commercialised services throughout the concession term;
- making reasonable investment in the IT Systems and new technology in accordance with 'good operating practice' throughout the concession term; and
- preparing training material and procuring delivery of training to the Private Operator's personnel.

The contractual framework will impose obligations on the Private Operator regarding the services to be delivered and processes to be followed, and will provide an ability for the State and Registrar to oversee and participate in the ongoing governance of the Private Operator.

The Victorian Auditor General will have auditing powers over the Private Operator insofar as they relate to services provided by the Private Operator under the concession in exchange for the contractual service fee. In addition, the State has a contractual right for the whole 40

year concession period and a period of 7 years after that to audit the Private Operator either itself or using the Registrar or any nominated auditor it chooses. The State is able to nominate the Victorian Auditor General as its nominated auditor for this purpose. The audit rights are very broad and include the auditing of the Private Operator's financial and operational records.

## **2.4 IT modernisation program**

LUV has invested in an IT modernisation programme, which is a risk mitigation, optimisation and efficiency-based programme. Expected benefits include a reduction in administration costs, improved capacity and scalability of critical business systems and reduced risk of system failure and outages for customers. This program has been designed to deliver fundamental upgrades to LUV's core technology landscape. The Private Operator will be required to complete the IT modernisation program, and as part of this enhancement, to continue to address the State's needs around data privacy and security.

### 3. TOR (2) – Privacy and data security

#### KEY POINTS:

1. The State will retain ownership over all registry data.
2. Any information accessed by the Private Operator will be subject to privacy and data protection laws and regulations, in addition to strict contractual obligations (including stringent data integrity and security requirements).
3. Data must be stored in Australia.
4. The State will have step-in rights to protect data and to enforce compliance with data privacy and protection laws.
5. The Office of the Victorian Information Commissioner has been extensively consulted.

#### 3.1 Overview

Under the proposed Transaction, the risks to privacy and security of sensitive data held by LUV will be managed by:

- applicable state and federal legislation; and
- contractual obligations imposed on the Private Operator under the Concession Deed, including requirements to comply with technical safeguards.

In practice, the majority of the LUV data (which includes personal information of land owners such as names and addresses) is available to the public from information brokers or through the publicly available searches of the Registrar. 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.

#### 3.2 Legal safeguards

Through Governor in Council declaration, the PDPA will apply to the Private Operator in the same way and to the same extent as it applies to LUV. As a private entity, the Private Operator will also need to comply with the *Privacy Act 1988* (Cth). This means the Australian Privacy Principles apply to the Private Operator, in addition to the Information Privacy Principles set out in the PDPA.

The State will impose contractually enforceable obligations on the Private Operator relating to privacy, security and data protection, which extend beyond those imposed under the PDPA.

The Victorian Information Commissioner will have oversight over the practices of LUV and the Private Operator (to the extent of the provision of the services to the State/LUV) and individuals will have the same rights and access to the same remedies and complaints mechanism at both levels.

The Department of Treasury and Finance (DTF) continues to engage with the Victorian Information Commissioner with regard to the proposed Transaction to ensure privacy and data protection issues are appropriately managed as part of the Transaction.

In addition to the PDPA, the Private Operator faces under contract, more immediate and broader consequences than those which are ordinarily available under the PDPA.

In particular, the Private Operator will be contractually required:

- to store all LUV data in Australia;
- to comply with directions from the State to take action required to preserve the integrity and security of LUV data;
- to grant the State robust audit and access rights to LUV data and the Private Operator's systems that handle LUV data;
- to comply with other specific data security standards and requirements, such as:
  - the Victorian Protective Data Security Framework; and
  - other prescribed information security standards, such as the AS/NSZ ISO/IEC 27001 standards;
- develop (for the Registrar's review and approval), test and regularly update, disaster recovery, business continuity, cyber security incident response and other plans; and
- regularly provide training to its personnel on privacy and data security practices, policies and protocols.

The State will have the ability to act swiftly in the event of any non-compliance with this regime.

### 3.3 Data access

The Private Operator must provide customers with access to registry data on a non-discriminatory basis. Furthermore, any Private Operator retail operations will be appropriately ring-fenced to preserve competition in the delivery of data via a competitive broker market.

Government agencies will also continue to have access to registry data for public policy purposes.

### 3.4 Technology aspects

There will be an auditing regime where compliance with the State's data privacy and security requirements will be checked regularly.

The State will retain ownership of the intellectual property in the relevant IT systems, the core data and will retain control of key aspects of security administration over critical business systems.

## 4. TOR (3) – Cost and service level impacts

### KEY POINTS:

#### Cost:

1. There are no proposed changes to the mechanism for setting LUV's fees and charges customers pay for the delivery of statutory products and services.
2. The State will retain full control over the future setting of fees and charges to the public for existing and new statutory products and services. This includes, for example, all the key products and services necessary for transfer of title and both registrations and discharges of mortgage.
3. The State will separately pay the Private Operator an ongoing periodic contractual service fee, based on an agreed mechanism linked to actual volumes of dealings in the areas subject to the commercialised package, and which are processed through LUV.
4. The Private Operator will be able to offer non-statutory products directly to the public. Increases in fees and charges for current non-statutory products offered to customers by the Private Operator will be limited to Melbourne CPI unless otherwise approved by the State.

#### Service level impacts:

1. The Private Operator will maintain or improve current levels of customer service for users of land services and will be subject to detailed service requirements and KPIs. Failure to meet these KPIs will entitle the State to abate the periodic contractual service fee.
2. The Registrar will retain its existing statutory functions, powers and responsibilities. Together with additional contractual obligations imposed on the Private Operator, the Registrar and the State will have strong oversight of the private operator, including through established approval processes and procedures.

### 4.1 Overview

There are two categories of LUV fees:

- **statutory fees** – fees imposed in respect of statutory services or statutory products, including lodgment, search fees and certain LANDATA® fees (e.g. fees for RSS (title search), plan search, instrument search); and
- **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®.

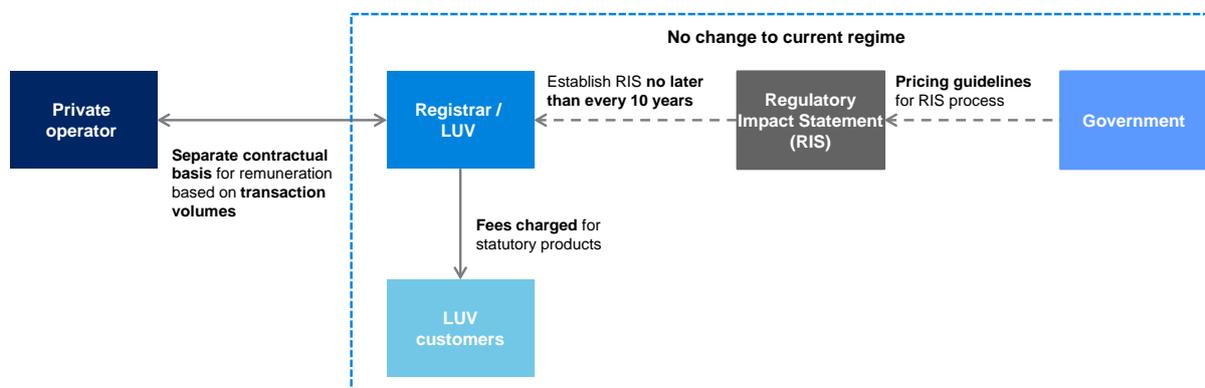
### 4.2 Fee setting

#### 4.2.1 Statutory fees

Fees for LUV statutory land registry services are prescribed by the State by regulation following a Regulatory Impact Statement (RIS) process. Pricing is reviewed at least every 10 years through the RIS process.

There are no proposed changes to the mechanism for setting LUV's fees and charges for statutory products and services. The State will retain full control over the future setting of

fees and charges for existing and new statutory services. The diagram below summarises the fees and charges framework for statutory products.



LRS Fees and various search fees expressed in fee units are updated pursuant to the *Monetary Units Act 2004* (Vic) escalated by the Treasurer's Annual Rate annually on 1 July. The value of a fee unit, as announced by the Treasurer on 30 March 2018 was \$14.45, which represents a 1.65 per cent increase from the 2017 fee unit of \$14.22.

The majority of the statutory fees are set using principles outlined in the DTF Cost Recovery Guidelines. The two exceptions are:

- **mortgage / discharge of mortgage fees;** and
- **ad valorem fee on transfers of land** – current rate of \$2.34 for every \$1,000 of the consideration applicable to a maximum fee of \$3,510 plus 6.65 fee units (maximum fee equates 2017 fee for paper lodgment to property value of approximately \$1.5 million).

The 2015 RIS process resulted in the reduction of the majority of LUV's fees.

#### 4.2.2 Non-statutory fees

Non-statutory customer fees are currently set based on cost recovery principles and commercial negotiations with parties.

Post Transaction, the non-statutory products (other than (1) and (2) outlined below) will continue to be charged at current rates. Increases of rates for current non-statutory products will be limited to Melbourne CPI unless otherwise approved by the State.

For the following non-statutory products or services, any future fee increases between the Private Operator and information brokers are subject to the State's consent:

- (1) for the delivery and handling fee imposed on non-DELWP property certificates; and
- (2) in both 'Titles and Property Information' broker licence fees and 'Property Sales and Valuations' broker licence fees (base fee only) payable to the Private Operator.
  - a. These are not customer fees, but charges between information brokers and the Private Operator. Brokers may pass on any increases, but are competing amongst each other so may not.

### 4.2.3 GST

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.

## 4.3 Service level requirements

The contractual framework will require the Private Operator to meet certain service levels and associated KPIs in the provision of the commercialisation package services. At a minimum, these will be at least as stringent as LUV's current KPIs for the Registration, LANDATA® and Systems branches and will be adjusted in the future to drive better levels of service.

### 4.3.1 Current

LUV currently has two sets of service level targets:

- **public;** and
  - These targets are published in the State Budget (Budget Paper 3: Service Delivery), which provides projections of Government income and expenditure for the coming financial year.
  - These will be retained post Transaction.
- **Internal**
  - In addition to the public service level targets, internal service levels are established by each LUV branch and are documented in the annual LUV Business Plan.

### 4.3.2 New

KPIs will be established to ensure the Private Operator maintains or improves levels of service in a manner consistent with the current end user experience, accelerates digitisation, the introduction of new products and improves quality of service for land registry customers.

The following types of KPIs are anticipated to be included:

- accuracy target for registration examination and pre-lodgment activities;
- availability (availability of critical business systems measured monthly as (hours of operation minus scheduled outages minus outage) divided by (hours of operation minus scheduled outages));
- timeliness (specific response times outlined in the event of a failure); and
- incident management and response.

The KPIs will provide transparency regarding the performance of the Private Operator in its role.

## 4.4 Abatement regime

The proposed abatement regime is simple in application and enables the Registrar to apply abatements arising from identified failures. Failure to meet any KPIs will entitle the State to abate the contractual service fees otherwise payable to the Private Operator by the State pursuant to the contract. Key features of the abatement regime include:

- each service level is assigned a level of ‘criticality’, classified by service level default;
- in the event of a service level breach, the Registrar determines if the Private Operator is at fault (culpable);
- the Registrar determines the seriousness of failure based upon clearly defined criteria;
- abatement amounts are calculated based on the criticality of the service level and seriousness of failure; and
- repeated service level breaches will result in escalated abatements using a multiplier effect. The Registrar will assess the performance of the Private Operator formally on a quarterly basis and, where necessary, impose penalties for failure to meet service levels or KPIs.

## 4.5 Measuring and monitoring

The Private Operator will be required to implement all tools necessary for measuring and recording its performance against the service levels and KPIs using timely and accurate information. Such tools will be required to be:

- objective, accurate and sufficiently detailed to satisfy the obligations outlined in the contractual documentation; and
- automated where possible, so they operate with minimal (or no) human interpretation or intervention.

## 5. TOR (4) – Employees

### KEY POINTS:

1. The terms of employee transfer are subject to ongoing consultation with employees and the CPSU.
2. Any LUV employees who permanently transfer to the Private Operator will do so on a voluntary basis.
3. Offers made to LUV employees by the Private Operator will be required, as a term of the Transaction, to be on terms that are no less favourable than the employees' current terms and conditions, including the recognition of prior service and leave balances. The VPS Agreement will continue to apply to transferring employees.
4. LUV employees, as a term of the Transaction, will have a guaranteed employment period with the Private Operator for a minimum two-year period. For employees who are already on a fixed or maximum term contract for less than two years, the guaranteed employment period will be for the remainder of the employee's current contractual term.
5. For LUV employees who remain with the State/LUV, the terms and conditions of their current employment arrangements will continue to apply.

### 5.1 Overview

All LUV employees affected by the Transaction will be matched to a role in the post-commercialisation structures, either with the State or the Private Operator. The total number of employment positions proposed to transfer to the Private Operator is approximately 110 out of a total of 517 employment positions in LUV.

It is proposed the employees will transfer to the Private Operator in two stages. At present, it is anticipated the first group of employees will transfer on financial close of the Transaction, and the second group of employees will transfer in or around late 2019.

Employees will be managed in line with the provisions of the Government's *Public Sector Industrial Relations Policies 2015* regarding transfer of functions to a private provider.

The transfer of LUV employees to the Private Operator will be on a voluntary basis. Employees who are matched to positions with the Private Operator will receive offers of employment from the Private Operator, which they will have the discretion to accept in order to transfer their employment.

For employees who are matched to positions with the State, the terms and conditions of their current employment will continue to apply.

### 5.2 Protections and entitlements

The precise terms on which it is proposed the affected LUV employees may transfer to the Private Operator remain the subject of consultation with affected employees and the CPSU.

However, to date, it is proposed transferring employees will receive the following protections and entitlements:

- offers made to LUV employees by the Private Operator will be required, as a term of the Transaction, to be on terms that are no less favourable than the employees' current terms and conditions, including the recognition of service and leave balances;
- pursuant to the transfer of business provisions of the *Fair Work Act 2009* (Cth), the relevant VPS Agreement will continue to apply to transferring employees in their employment with the Private Operator;
- employees will have a guaranteed employment period with the Private Operator for a minimum two-year period during which their employment cannot be terminated by the Private Operator without their agreement (subject to a limited exception where they engage in serious misconduct). For employees who are already on a fixed or maximum term contract for less than two years, the guaranteed employment period will be for the remainder of the employee's current term;
- in addition to the pay increases transferring employees will be entitled to receive under the current VPS Agreement (which will continue to apply to them), the Private Operator will be required, as a term of the Transaction, to provide transferring employees with specified minimum pay increases between the nominal expiry date of the VPS Agreement and the end of the two-year employment guarantee period;
- 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. The State has advised the CPSU it is prepared to offer transferring employees a right to return to employment with the State (for the purpose of participating in a redeployment process) if they are made redundant by the Private Operator within four years of the transfer of their employment; and
- transferring employees who are currently members of defined benefit superannuation funds will be able to continue to be members of those funds.

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.

## 6. TOR (5) – Financial arrangements and cost benefit to Victoria in the long term

### KEY POINTS:

1. The Transaction is to be effected by way of a 40-year concession of the operations of the commercialised LUV functions.
2. There are benefits to the State, including substantial upfront proceeds allowing the State to recycle capital and reinvest in transport infrastructure.
3. The Private Operator will be responsible for the collection of statutory Registration and LANDATA® fees as collection agent for the State, which are paid into the State's Consolidated Revenue Fund.
4. The State will pay the Private Operator an ongoing periodic contractual service fee, based on an agreed mechanism linked to actual volumes of dealings in the areas subject to the commercialised package, and which are processed through LUV.

### 6.1 Overview

The Government is conducting a competitive market process to ensure the Transaction optimises value for money for Victorians.

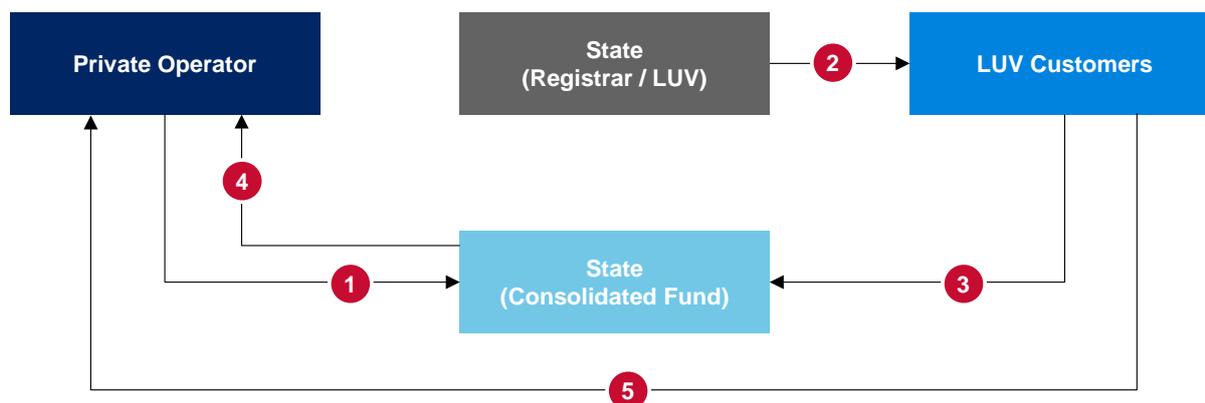
### 6.2 Financial arrangements

The commercialisation process will not involve an outright sale of any part or the whole of LUV, or any of its data. Instead, a subset of existing services provided by the LUV to customers will be provided by the Private Operator under a contractual arrangement.

In addition to the substantial upfront proceeds expected from the commercialisation, the State will retain the significant ad valorem revenue stream. The State will also continue to receive revenues generated by the Subdivision and Application and Survey functions.

The vast majority of the Private Operator's revenue will be derived from the service fee. The service fee arrangement will be based on transaction volumes and a price path formula. A small portion of revenue the Private Operator is expected to earn will be generated from retail non-statutory products provided to customers by the Private Operator (some current or newly developed information search products).

The diagram below illustrates the flow of funds between the State, Private Operator and LUV customers.



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.

### 6.3 Benefits

The Government has previously outlined its policy to review its balance sheet, identifying appropriate opportunities to recycle State assets.

Asset recycling is about making the most efficient use out of scarce Government assets and resources. It can unlock capital out of mature Government businesses and invest the proceeds into new productivity-enhancing infrastructure to meet the needs of a growing population.

The activities that are the subject of the Transaction represent mature, stable, economy linked cash flows, which are highly valued by institutional investors and are expected to generate a value-for-money price in the current market.

In addition to the substantial upfront proceeds, other benefits include:

- private sector driven efficiencies and improvements to processes, procedures and training programs;
- reduction in the State's baseline capital investment obligations (i.e. system upgrades) for the life of the Transaction;
- transfer of operating costs and risks to the Private Operator; and
- taking advantage of strong infrastructure market conditions and building on momentum from the recent NSW and SA land registry transactions.

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

Furthermore, the Private Operator will be required to complete the IT modernisation program, and as such, relevant systems will be enhanced at the Private Operator's cost.

## 7. TOR (6) – Other Australian and international experiences

### KEY POINTS:

1. The Victorian Government has the benefit of considering lessons learned from other jurisdictions, particularly the recent NSW and SA processes in Australia and similar experiences abroad.
2. The lessons learned have been considered and where relevant have been adopted in the design of the Victorian Transaction structure.

### 7.1 Insights from similar transactions applied to the Victorian model

The scoping study was subject to widespread industry stakeholder consultation and also considered lessons learnt from land title registry operations and transactions in other jurisdictions. The following table outlines the insights from both Australian and international experiences from similar transactions and how they have been applied to the Victorian structure.

Insight	Jurisdiction	VIC approach
<b>Australian</b>		
CPI or Treasurer's annual rate capping	NSW and SA	Victoria has adopted similar price capping metrics to NSW and SA, noting that in Victoria any additional increases beyond this, or new fees, are subject to State approval.
Concession length	NSW and SA	The proposed Victorian concession period is broadly consistent with NSW and SA
State guarantee of title/indemnity	NSW and SA	Like NSW and SA, Victoria will also ensure the continuation of the statutory State guarantee/indemnity of title
KPI levels and GST implications in the transaction design	NSW	Clear KPIs are already established/tested to monitor Private Operator performance and give bidders certainty  Service fee abatement for failure to comply with service levels, and step-in for systemic failure  The Transaction has been designed so GST is not applicable to the majority of transactions/services
Potential for privatisation of registries beyond land titles	SA	Parameters of the Commercialisation Package have been clearly established and

Insight	Jurisdiction	VIC approach
		communicated to bidders  No additional registries will be considered in this Transaction
<b>International</b>		
Fees increases	Canada (Teranet)	The State will retain full control over the future setting of fees and charges for existing and new statutory services prescribed by regulation via the RIS process (reviewed at least every 10 years)  Price increases for non-statutory products will be limited to Melbourne CPI unless otherwise approved by the State
Data security / availability	UK (HM Land Registry)	The proposed Transaction model does not involve the delegation or other 'outsourcing' of statutory functions. Statutory functions, powers and discretions will continue to be exercised by the Registrar and a number of other public sector officers in LUV, including the function of making recordings in the titles register  Private Operator must provide data access to potential customers on a non-discriminatory basis and must give Government agencies access to data for public policy purposes

## 7.2 International experiences

A number of international jurisdictions have considered public private partnership (PPP) models for land registry services including Canada, the United Kingdom (UK) and New Zealand (NZ). Victoria has also decided not to proceed with a PPP model.

### 7.2.1 Canada

Ontario province PPP model commenced in 1992 for a 25-year period and was extended in 2013 to 2067.

The provincial government of Manitoba 'sold' its property registry in 2012 to Teranet under a 30-year licensing agreement. Key benefits included:

- (1) Teranet investing over C\$35 million in systems development;
- (2) annual royalty payments of C\$11 million in 2013, increasing to C\$24 million at the end of the 30-year licensing agreement; and
- (3) employees transferring to Teranet with employee guarantee and entitlements.

As part of a broader review of restructuring its highly decentralised land registries conducted from 2015-2017, Nova Scotia also considered moving to a PPP model. After consideration of submissions, and an independent assessment of the business case, it decided not to proceed.

### **7.2.2 United Kingdom**

In January 2014, the UK Government commenced a public consultation on a proposal to create a service delivery company to carry out the day-to-day process of land registration. After considering the outcomes of the consultation, the UK Government announced the proposal would not proceed.

In 2015, following a change in government, the new Government re-opened consideration of privatising the Land Registry.

In 2016, the UK government announced it would focus on a digital data-driven registration business, which would remain in the public sector.

### **7.2.3 New Zealand**

Land Information New Zealand (LINZ) was formed in 1996 following a restructure of the NZ Department of Survey and Land Information. LINZ had responsibility for core government land related regulatory and purchase functions.

In 2013, the NZ government considered privatising LINZ in line with the Ontario model.

However, after undertaking a risk analysis and assessment, the proposal did not proceed.

LINZ is currently working on a Advanced Survey and Title Services project for updating and expanding the range of services offered by the Landonline system for property transactions.

## Appendix 1 – Terms of Reference

On 23 May 2018, the Legislative Council passed a motion:

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.

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This submission has been prepared by DTF solely for the purpose of responding to the terms of reference of the Legislative Council Inquiry. Parliamentary privilege applies to this submission.

The information in this submission does not constitute financial, legal, tax or investment advice and no third party is entitled to or should rely on this information including in relation to any potential future transaction of the State relating to the commercialisation of land titles and registry functions (land titles and registry transaction).

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