

TRANSCRIPT

STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

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

Melbourne — 20 June 2018

Members

Mr David Davis — Chair

Mr Nazih Elasmr

Mr Cesar Melhem — Deputy Chair

Mr Daniel Mulino

Ms Melina Bath

Ms Huong Truong

Mr Richard Dalla-Riva

Mr Daniel Young

Participating Members

Mr Jeff Bourman

Mr Simon Ramsay

Ms Samantha Dunn

Dr Samantha Ratnam

Mr James Purcell

Ms Jaclyn Symes

Witnesses

Mr David McKenzie (affirmed), Co-Chair, Property Law Committee, and

Ms Lily Tell (affirmed), Co-Chair, Property Law Committee, Law Institute of Victoria.

The CHAIR — I welcome Lily Tell and David McKenzie from the Law Institute of Victoria. Lily and David, you are co-chairs of the Property Law Committee of the Law Institute of Victoria. If I could ask you to briefly submit to the committee, we will then follow up with some questions. And thank you for appearing.

Ms TELL — The position of the Law Institute in relation to the privatisation of the land titles office was presented in a letter to the Premier on 21 August 2017. I believe a copy was given to you as the shadow Minister for Planning.

The CHAIR — Indeed, but it might be worth providing a copy — not necessarily tonight — formally to the committee as a piece of evidence. That would be appreciated.

Ms TELL — That is not a problem. Would you like us to summarise some of the points there?

The CHAIR — Yes.

Ms TELL — Okay. Firstly, I understand from the previous submissions there is a model that has been proposed. The committee has not been provided with a copy of the model. We have seen in the press that the understanding is that it is the data that will be privatised.

The CHAIR — To summarise the position, we were provided evidence from the department at an earlier hearing. The Secretary will tell me if that evidence is now in the public domain — it is not yet. Hansard will complete it and it will then be in the public domain. So if you have any further comment beyond tonight on the transcript that was provided to the committee a week ago, we would welcome that.

Ms TELL — All we can do is comment on the general privatisation, as was expressed in our letter of almost 12 months ago. Firstly, can I say from our committee's point of view that we would probably be the number one users of the land titles office as practitioners, simply as users, in our day-to-day commercial lives. But as members of the committee we also see it as an important public service, so we have concerns for the integrity of the system under any privatisation. The first point in the letter was that, at the moment — if the Registrar, for example, refuses a dealing, it is possible to require the Registrar to give reasons and to have the Registrar brought before the Supreme or County court to substantiate and uphold his or her grounds. We would be curious to see how 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.

Another point is transparency and accountability and the cost of using the services. Again there is the conflict between what is owed to the public — the availability of information at a reasonable price — and perhaps what would be owed to shareholders in terms of maximising profitability. I am sure you saw things in the news last week about what is happening in New South Wales.

There are competition concerns. The registry, of necessity, needs to be a monopoly. A private operator may not have the same concerns to protect the consumer that the public always will. I am trying to summarise here and not read it all out. You can see, I think, that for these reasons in the United Kingdom the proposal was abandoned.

A further concern the Law Institute has is in regard to the Consolidated Fund. The titles office has been very good at managing claims on the fund. The worst-case scenario would be looking at the HHH experience. Whether or not it is privatised, obviously the titles office cannot fail, so it would be something that the public would still have to safeguard. There is a concern as to the motivation for a private operator to maintain the integrity there. Do you want to continue on here?

Mr McKENZIE — Yes, sure. I am happy to do that. The issue is that the very core of the Torrens scheme has been, with a few statutory exceptions like fraud, that if an instrument is registered that should not have been registered, the Consolidated Fund rectifies the error monetarily. Land Use Victoria has been very good at ensuring that those claims are minimal. So the problem that we see is the conflict: how much effort you put into compliance against how much risk you take in terms of paying out on claims, and bearing in mind that claims are significant. Given house prices, a claim is going to be for the restitution of the house, for instance.

The CHAIR — Or a large commercial building.

Mr McKENZIE — Worse, or even a whole town. Correct. In a privatised sense you have the balance where probably the appetite for risk is greater. In government organisations probably they tend towards compliance as greater. It is striking the balance that is hard. And we think that this is a situation, as my colleague said, where the cost of failure is extremely high, so a large amount of effort has to go to minimising the risk. We suggest that operators that do not have the government experience in heavy compliance may not do so well in that particular role.

The alternative of course is to actually get rid of the bedrock of the Torrens system, which is that the consolidated funds exist, and then you move to the sort of free-for-all that occurred in the US — not, I might add, by choice but by the fact that their records got burnt in the Civil War — where you have the situation where title insurance is the norm. There is a premium paid by people on each transaction in case their title is found to be defective. That is an added transactional cost as you move towards that system, so you sit there and say, ‘Okay, we’re going to accept that there may not be compliance, and if it goes wrong, either the public fund is going to pay or insurances are going to pay, and if it goes badly wrong’ — as, say, sometimes happens in the building industry where a building insurer goes broke — ‘the government ultimately ends up having to pay that amount as well’.

Data security, privacy and fraud are very topical subjects. Outsourced security has proved problematic for many bureaus, and I do not think I need to elaborate in detail on that.

The other issue that we would like to touch on is the titles office has a fantastic tradition, and anybody who has practised in the legal profession, and I can certainly speak personally, has been quite surprised and sometimes humbled when they walk in with a plan of subdivision and a surveyor who has been doing it for 25 years turns around and says, ‘What you really meant was X, Y and Z’. That is because they used to be surveyors, they have been doing it and they have seen hundreds of these things. They are not following a flow chart; they actually have expertise in the area. Our concern is that the privatisation may well reduce that expertise.

We can see that if you take the standard meatball transaction — which is mortgagee off, transfer, mortgagee on — just like in automated conveyancing now, they are not the transactions that really provide problems. But the trouble with land transactions is not all of them fall into that category, and when they do not fall into that category sometimes it is not recognised that they have not fallen into that category. That is where you really end up with problems, because the people handling it in a script-like manner may not have the expertise to turn around and say, ‘You know what? This transaction’s odd. This is wrong’.

There is another area that we would like to address, and this unfortunately has been hotly contested in New South Wales. 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.

We also note that one of the things that land registry provides, and very well, is an interface through LANDATA to the materials held in the database. So it is quite easy for a simple operator or a simple member of the public to either go to Land Use Victoria and use their online terminals at no charge or alternatively use the website and, if you know enough details about the property, do a single transaction with a credit card and pay a minimal fee. Now, that service is also brokered out, and it is brokered out to the major providers of information — to lawyers, banks and all the other people. We are talking the Info Tracks of this world and the SAI Globals of this world. The fees that they charge are significantly more than the initial fee in LANDATA; they can vary between two and three times as much.

The CHAIR — Is there an additional service or a speedy access that is provided? Just to understand.

Mr McKENZIE — No, that is a good question. I think it is fairly difficult to add an additional service to, say, something like a simple title search or a simple plan of subdivision search.

Ms TELL — It is perhaps a couple of clicks quicker, and you do not have to bring out your credit card necessarily each time if you have a subscription.

Mr McKENZIE — Yes. But it is a hidden cost, and I say it is a hidden cost because — and do not take this the wrong way — in a sense the lawyer does not really care what those fees are because they just pass it straight through to the consumer. It just comes out at the end.

The CHAIR — Disbursement.

Mr McKENZIE — Yes, correct, disbursement — one land search, or whatever it happens to be.

Certainly, to be fair, there are other areas where, yes, there is a greater fee charged and there is additional service, so when you get into the more messy areas like council certificates, land tax certificates and owners corporations certificates, money is charged, but they actually provide a better service. But for the simple basics, the no-frills-type things, the answer has got to be no — no additional gain.

That LANDATA service has sort of mitigated a bit since brokering came into fashion. For instance, you can no longer have an account with LANDATA. You have to do it on a per-transaction basis, and you have to pay for each transaction by your credit card, be it a law firm or whoever. Our concern is that if this area gets commercialised or privatised, the public may lose access to this, if you like, no-frills budget way of just doing your own title search quickly and going down to conveyance it.

Ms LEE — And the question has to be asked: is this information a public entitlement? Perhaps that is a policy discussion and perhaps not for us, but the government of Victoria has been good at, for example, the legislation that is available to the public for free, as it is owned by the public. There is a lot of property information available for free.

Mr McKENZIE — And I think, to hark back to the 150 years before, the cornerstone of the Torrens system was an easily publicly searchable register. I accept that that has varied a little bit from free, where free is a relative concept if it means crawling through the archives and digging your way through the volumes, to electronic presentation where there is an acceptable fee charged, but if it moves beyond the realms of relatively free, the public will be further disenfranchised from land registry operations and it will be more difficult to verify what they hold or what they do not hold.

Land Use Victoria has been very innovative over the time, and their history of computerisation of titles has been, though a while ago, a great success and still is.

The CHAIR — Not initially a great success. There was a long teething period.

Mr McKENZIE — Yes, I would accept that is true. But one of the areas that they have also been good at innovating in is the process called SPEAR, which is probably one of the more laboured acronyms. I will just say it to prove that I know what it is. It stands for surveying and planning through electronic applications and referrals, but everybody knows it as SPEAR. It takes in almost all subdivisions now and extends beyond that so that, for instance, it is very easy for a lawyer to know what is going on on his client's subdivision because with almost every surveyor, if you ring them up and say, 'Add me in as an invitee', you get to see as the transaction progresses through.

Now, in commercialisation I guess there is a real concern that we have: firstly, that the development of these sorts of innovations — and believe me, the days of wandering down with your sheaf of papers to your examining officer have long since gone due to SPEAR — whether or not there would be the innovation to do it, whether that would fall within the remit of somebody in this new model, we do not know; and secondly, is it going to be charged for? In the past it has not been. I guess this is sort of more homily-type material; we sort of approach some of these issues with trepidation, and we approach that on the basis that there are examples of failures of privatisation in various things. I am not going to make a list of them here.

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.

I surely do not need to tell people here that Land Use Victoria annually makes a profit for the government, so what is being substituted here is an ongoing revenue stream for a short-term revenue gain, and I have already talked to the heritage of the Victorian land registry. But they are the concerns of the Law Institute. We have grave concerns, and obviously we do not have all the information, as has been clearly demonstrated. In the absence of that, these are the concerns we have got.

The CHAIR — Thank you for your evidence, both of you. I want to make three points, or ask three questions. To summarise — subject to seeing the actual model and any further comment you want to make — you did not support the commercialisation.

Mr McKENZIE — No.

The CHAIR — No. Can I ask also: in the positive sense, are there any opportunities or innovation that you think could occur with a commercialised model?

Ms TELL — It is theoretically possible that there could be more, not less, staff available. It is theoretically possible of course that the IT systems could be better.

The CHAIR — The mirror to that is: what protections would you want? You may not be able to answer that right now. You may want to see the final model that the government is proposing, but we would certainly be interested to hear any protections or buttressing that you as the Law Institute felt was appropriate.

Ms TELL — Some of those concerns are the ones we have summarised just now.

The CHAIR — I agree, but you may have some more that you want to add.

Mr McKENZIE — I think if you look at it from a philosophical point of view, and it is sort of difficult to take a philosophical point of view to a transactional process, but if you step back from the transaction, lawyers by nature are conservative — that is what we do — so we are not really good on change, and we accept that. But I think one of the things that is important for us is to ensure that a transaction that starts out of a person's desire to buy or sell a house — or do whatever — to the point that it gets registered, has a guaranteed integrity and accountability throughout the length of the transaction. So from a philosophical point of view, where that is going to break down is exactly the interface between the commercialised section and the non-commercialised section.

The CHAIR — My final question is about the GST component: is the GST levied currently in New South Wales and South Australia?

Ms TELL — I do not know. I have not done a transaction in New South Wales or South Australia since it has been privatised.

Mr McKENZIE — Neither have I.

The CHAIR — We would appreciate any advice on that. If that is the case, we would certainly be interested to know. That would be many, many tens of millions of dollars, I would suspect, if that were the case.

Mr McKENZIE — A massive amount, I would have thought.

The CHAIR — Thank you.

Mr MULINO — Thank you for your evidence and thank you for taking the time to put together such a detailed response. I was just going to put a couple of issues that have largely arisen from evidence that we have received which you have not seen yet. We have had a description of aspects of model. Some aspects the two departments were not able to describe in full detail because of the commercial sensitivities, but I would be interested in your thoughts on a couple things that we have had evidence on. As the Chair said, it would be good to get your more detailed responses to those after you have had a chance to review the Hansard transcript. One thing that is clear, I think, is that the scope of this transaction is considerably narrower than in other Australian jurisdictions; so of 500 staff, 400 are remaining in the public sphere, and functions such as the Surveyor-General and the Valuer-General are untouched. One of issues that you have raised was the Registrar of Titles.

My understanding is that that function will remain a public servant. Does the narrowness of the transaction relative to other jurisdictions provide you with some comfort, subject to seeing the detail?

Ms TELL — Obviously it addresses some of the issues that I have just raised — for example, the issue of the integrity of the decisions of the Registrar.

Mr MULINO — And we should clarify this more, obviously, and give you a chance to respond to some detail.

Ms TELL — Correct; once we see the model —

Mr MULINO — My understanding is the Registrar of Titles will, under the proposed transaction structure, remain.

Ms TELL — So the question is: where are the 100 staff?

Mr MULINO — Yes. It is really the people undertaking the transactions that generate the revenue, and as you said, really what we are talking about is taking a revenue stream and in a sense capitalising the value of a revenue stream. My understanding is that it is 110 staff who are largely associated with those transactions. But certainly compared to other jurisdictions the functions of the Surveyor-General and the Valuer-General, as you would have just heard, are fairly clearly protected.

Mr McKENZIE — Well, the difficulty is that I think it is possible to draw these distinctions and say, ‘Okay, we’re going to move subdivisions out of the game’, for instance. But the fact is probably the biggest production of — in fact the only way of producing — new titles, plus or minus Crown grants, is subdivisions. 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.

Mr MULINO — This I think is related to another set of issues around risk, which I would be again interested in your thoughts on once you have had a chance to look at the transcript. One of the issues that was examined in some detail — and we received evidence from the secretaries of both Treasury and DELWP — was the issue of title insurance in foreign jurisdictions. They both very clearly indicated that given that the state will provide a guarantee of title, they were confident that it would not be necessary in Victoria following on from the transaction.

Ms TELL — So the state guarantee will continue in the current form.

Mr McKENZIE — Title insurance is a bit of an interesting beast, to be honest, and I have often made the joke that title insurance is quite often non-title insurance because in Victoria things that are on title are backed by the Consolidated Fund, so what are you actually insuring? Title insurance tends to expand itself in a mushy sort of a way into other things. So if there are illegal buildings, adverse possessions — things like that — that will be covered by your title insurance, which would not necessarily be covered by the fidelity fund.

Ms TELL — But I think in this case when we are talking title insurance, we are talking instead of the fidelity fund.

Mr McKENZIE — Yes. We are talking specifically things on title. But if you lose your expertise, and some of those, I guess, what I would call defects on title, like overlooking an easement, overlooking a potential adverse possession, either incorrect surveying or surveying that has been used for the wrong purpose — which can happen; it starts out as a boundary survey — there is an interconnectedness with all those sort of messy areas where the transactions go wrong, so your landowner might start off getting a title search, then might get a boundary survey and then may go off to get the sort of aerials that have been used for survey going back years to establish, you know, in farms, whether the fence was there or somewhere else. That is why we say it is not so easy just to say this is a simple transactional thing. My experience of property law is most things start out as simple transactional things until they go horribly wrong.

Ms TELL — But we cannot really answer the question until we see which part is —

Mr MULINO — Yes, sure. That is okay. It was an issue that we did ask a few questions on. Just a couple more issues — one is the issue of protection of consumers, which I think you have flagged in the letter, I think, but also in a number of other forums. Again, one aspect of the transaction that was flagged in that evidence was a CPI cap for the term of the lease but then also the government retaining control over price increases. So again I am interested in your thoughts on —

Ms TELL — Have you seen this article from the *Daily Telegraph* about New South Wales — quadrupling fees from \$8.50 to \$30 for a title search? Now, we presume in anticipation of privatisation title searches became two things, a title search and a plan search, about a year ago.

Mr McKENZIE — Yes, and that already doubled it.

Ms TELL — So the price has doubled for the basic title search, because I doubt there is a lawyer or a conveyancer who gets a title search without needing to see a search of the plan as well. But I think in New South Wales they are not allowing consumers, or lawyers even, to go directly to the titles office. Is that correct?

Mr McKENZIE — I am not sure about that.

Ms TELL — You are not sure? You have to go through the intermediaries.

Mr MULINO — Maybe a more general question: would you support something like a CPI cap or some other price cap mechanism in the lease that would put a constraint on what the private operator could do?

Ms TELL — Absolutely.

Mr McKENZIE — Well, it would be better than nothing.

Ms TELL — Well, there is some sort of cap at the moment, isn't there?

Mr McKENZIE — I think at the moment it goes up by whatever the rollover on 1 July is.

The CHAIR — I think it has got to go up by the general fees and charges, yes.

Ms TELL — And we would like to see that retained, yes.

Mr McKENZIE — Or less.

Mr MULINO — And the last issue I was going to flag — and again this is something we can clarify and maybe get a further response from you on — is my understanding is that GST-exempt services will remain GST exempt, but we should clarify that with you and then get your response to see what has been assured is a public transaction is sufficiently cleared.

Mr McKENZIE — Well, I guess the ATO has the ultimate say on that.

Ms TELL — When you do a search through ASIC, there is no GST, but if you do it through one of the intermediaries there is, so I presume it would be a similar situation, or it is now or probably —

Mr McKENZIE — And I think an overall thing when you talk about pricing is the harder and more expensive — I mean, conveyancing in a lot of senses is a race to the bottom in the way of fees at the moment anyway, so one of the concerns is that if you make the certificates harder or more expensive to get, there is more likelihood that they will not be obtained on the basis that it is not going to happen often enough to matter, and that puts the consumer at a disadvantage. The consumer has a right to expect if something is conveyed, it is conveyed properly, and for it to be conveyed properly and safely rather than play the odds means you have got to have full access to the certificate and it has got to be at a reasonable price. That is the concern.

Dr RATNAM — Thanks very much for the presentation and for responding to the queries raised. You mentioned at the start of your presentation about the proposal in the UK being abandoned. To your knowledge, what were some of the factors that really drove that abandonment?

Mr McKENZIE — Competition. Competitive policy in my belief.

Dr RATNAM — Competition?

Mr McKENZIE — Yes. They 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.

Dr RATNAM — So that philosophical opinion as well. In your view, what is the valuable aspect that is kind of driving this sale? From your perspective, because you have spent some time thinking about it, what do you think is the motive around the proposal of the sale? What is the valuable aspect of the thing that is being sold, or in terms of what has been privatised, what do you think is underlying that? Have you all formed a view on that? What aspect of the service is the profitable thing that is being driven?

Ms TELL — So the question is what is valuable, in monetary terms —

Dr RATNAM — That is right, of the parts of the service that are proposed to be privatised, what do you anticipate? It is just to get your views, and you might feel you have not formed a view on this and that is absolutely fine. I am just getting a sense of what is driving the proposal for that aspect to be privatised — so i.e., what is the aspect you think that the government is proposing will make revenue or be commercially —

Mr McKENZIE — Attractive?

Dr RATNAM — Attractive, that is right.

Ms TELL — Why do we think the government finds it attractive?

Dr RATNAM — That is right, yes.

Ms TELL — Well, they saw the price that New South Wales got.

Dr RATNAM — Oh right, okay, the initial sale price, right.

Ms TELL — I think, but I do not know. We have not seen the *Hansard* to know that.

Mr McKENZIE — We cannot speak for what the government might have thought, but I think in general with privatisation isn't the idea that you sell an asset to gain access to funds to invest in other activities? I mean, that is why you do it in theory. You hope by doing so you do not lower the levels of service or create other problems.

Dr RATNAM — Also in your presentation you talked about you anticipate the tension to be between the commercial and the non-commercial aspects of the service. Can you expand that a little bit more, because it was more that you are anticipating that there is going to be a tension when there is a commercial aspect of a service and a non-commercial aspect of a service and that interface between those two; can you expand a bit more in your thinking around that?

Ms TELL — 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 a public service where the obligation is for the public good and the integrity of a title system.

Dr RATNAM — Have you fleshed it out in terms of a potential case study in terms of what that could look like in terms of previous examples, or is it more the kind of philosophical tension that you anticipate becoming a problem?

Ms TELL — Well, there have been what I would consider public service cases. The electricity has been privatised, and I suppose you could look at that as an example.

Mr McKENZIE — It is difficult to come up with a scenario without knowing what the model is, I guess.

Dr RATNAM — Fair enough.

Mr McKENZIE — I guess it is possible to foresee that if the KPIs, for instance, are indicated in volume and responsiveness rather than accuracy, you can end up with problems. As I say, the problem with land is it is a little bit unique, and this is why the Torrens system is a little bit unique. When it goes wrong, it goes horribly wrong, because one of the cornerstones is once it is registered, it is right, and unless you have committed fraud it stays right. The only way it is fixed is recompensing the people that have lost out. That can be a lot. So if a notice, for instance, gets left off a series of titles that there is potentially going to be a motorway, suddenly there is a motorway, then you are going to get everybody going to land registry saying, ‘You didn’t tell us this, and we want money and we want our backyard back’. That is an expensive exercise.

Dr RATNAM — Thank you for that. Just one more question if that is all right. You spoke also about there is a potential for the public to be disenfranchised from this service and information that essentially has been kind of a public good that has been provided in some way. Do you mean mostly in terms of the access in terms of cost being relatively low — is that the worry, that they will be disenfranchised because the cost burden will be too high — or how else do you mean?

Mr McKENZIE — I can give you an example that ran across my office today. A person has been offered the ability to purchase a bit of his laneway out the back, which is what a lot of councils are doing at the moment, and in the past he would have filled in a piece of paper for transfer, done the stamp duty himself, wandered down to the land registry and would have registered it, and he would have got his shiny piece of blue paper back. Now of course he cannot do that because it is a standalone transaction and it has to go through the electronic system. He is completely chopped off from being able to do his own conveyancing. He is a personal friend of mine and he told me he felt pretty disenfranchised by the process: ‘Why can’t I do this?’

The CHAIR — He had other words for it, did he?

Mr McKENZIE — ‘Why can’t I turn up to land registry like I used to be able to do?’

Dr RATNAM — Thank you, that is very helpful. Thanks very much for your excellent submission.

Ms BATH — I am taking all this in with interest, and it is certainly not in my expertise. So it is interesting, Lily and David, in that I have asked the question of a number of presenters in terms of, ‘What do you think the benefits would be of this commercialisation, this privatisation?’. I hasten to say I do not think your answers have been or will be the same as the others. The Valuer-General and the Surveyor-General said really they were too far removed to have a full understanding about the processes and, you know, would there be efficiencies or benefits? Then the department said — I think they sort of breathed for a minute or two — and I cannot quite recall that they were very forthcoming in terms of benefits but they thought that there certainly would not be any deleterious effect, and so if I ask you do you think there will be any benefits for the person on the ground, for the ratepayer, for the property owner, can you see any benefits from this?

Ms TELL — 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.

Ms BATH — Until you have eyes on it; okay.

Mr McKENZIE — I think the other strand that wanders through this which makes it an interesting time to embark on a project like this, is the whole conveyancing landscape is massively changing in the short term. So we have a situation at the moment where 25 per cent of transactions are done electronically. That is supposed to be nearly 100 per cent in October. So a system which is still in its infancy and has issues — and if you do not believe it has issues, try ringing up the PEXA helpline and see how long you sit on it —

Ms BATH — Sorry, the —

Mr McKENZIE — The PEXA helpline, and see how long you sit there, and it is usually an hour. If it is going to increase its volume threefold by October and on top of that you have got this uncertainty as to what is happening at the bedrock of the system, which is transactions in, transactions out, I think you are sort of adding another element to the fluidity that some people might think is interesting.

Ms BATH — Is it viscous enough without creating more viscosity?

Mr McKENZIE — Yes, absolutely it is. I mean, we have had significant changes in the last year. The SRO have changed the whole way the revenue transaction in conveyancing is done. That has had and still has teething problems. PEXA is a big issue. The fact that there is now potentially a competitor for PEXA adds another big issue. Now you are going to get another uncertainty, which is that we are not really sure what is going to happen to the land registry — maybe too much, too quickly.

Ms BATH — I have just got one more question, Chair. You mentioned in relation to the sale and the term of the lease; if it is sold and now as a government we realise that it is not working and we want to bring it back — the issues around there. Do you have any commentary around the time of the lease — of 40 years? Do you have any view on an appropriate lease? Is it long enough, not long enough? It is if it is working and it is not if it isn't?

Ms TELL — I think that is not our expertise — that sort of commercial modelling.

Mr McKENZIE — Certainly after 40 years there is going to be no expertise left in the public service.

Ms BATH — Can I ask a question in terms of educating people. We know there is no-one in the public service. What about that education to create those people within the commercial sense? How do we keep that capacity in our institutions to create those skilled expert workers?

Ms TELL — Within the privatised system?

Ms BATH — Yes. So our universities and institutions — how can they still be the bed of good knowledge, and how do we check that? That is probably a little bit outside of the scope of the reference, but you are talking about it being in a vacuum in the government sector.

Mr McKENZIE — I think that is a really interesting question on several levels. If you look at the progression of any profession or any activity, and IT is probably a good recent one, it started out that every IT system was bespoke, and I would say the vast majority of IT systems are now commoditised — you go out, you buy something and it works. I would say, for instance, that the provision of IT services in the main has moved from somebody who was university educated to somebody who has been given some specific training. The trouble with some of these sorts of services is that the skills you require are only relevant to that government department. The ability to be able to accurately assess and plan a subdivision and determine whether you should be issuing 400 titles is probably not transportable to anywhere else.

The CHAIR — In the jurisdiction — it might be from outside.

Mr McKENZIE — That is true. I accept that. You might go to another registry, but that is all you will be doing. That is sort of why the training for those things traditionally has been seen as being better in-house, because it is tailored specifically to the requirements of that department.

Ms BATH — Thank you.

Mr DALLA-RIVA — Just a quick general follow-up question, thanks, Chair. In relation to any legal proceedings or otherwise that you are aware of in other jurisdictions since the implementation of similar — no, not that you are aware of?

Ms TELL — Only anecdotally — I have heard positive things.

Mr McKENZIE — Anecdotally I think that there have — I am not sure. I would like to go away and —

Mr DALLA-RIVA — Take it on notice.

Ms TELL — Yes, I think we need to do that. It would be interesting if the committee actually seeks that directly from our counterparts in the Law Society of New South Wales.

The CHAIR — Other jurisdictions.

Mr DALLA-RIVA — Yes, I am just asking if you have heard but if you have not, then we could track them down.

Mr McKENZIE — We can make the inquiries, absolutely.

Mr DALLA-RIVA — That would be worthwhile. Thank you.

The CHAIR — We will ask the Secretary to do that — to do likewise.

Mr McKENZIE — We will do it.

The CHAIR — Can I thank both of you for your evidence? It has been very helpful. We may well seek to come back with further follow-up as soon as the transcript is available — I will make sure that Mike makes you aware of that. We would certainly appreciate any further commentary that you might have on the precise commercialisation model that the government is proposing. Thank you very much.

Witnesses withdrew.