

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 — 26 June 2018

Members

Mr David Davis — Chair

Mr Cesar Melhem — Deputy Chair

Ms Melina Bath

Mr Richard Dalla-Riva

Mr Nazih Elasmr

Mr Daniel Mulino

Ms Huong Truong

Mr Daniel Young

Participating Members

Mr Jeff Bourman

Ms Samantha Dunn

Mr James Purcell

Mr Simon Ramsay

Dr Samantha Ratnam

Ms Jaclyn Symes

Witnesses

Mr Adrian Dwyer, Chief Executive Officer, and

Mr Robert Montgomery, Head of Economics and Policy, Infrastructure Partnerships Australia (*both via videoconference*).

The CHAIR — If I can welcome Infrastructure Partnerships Australia’s Adrian Dwyer, Chief Executive Officer, and Robert Montgomery, Head of Economics and Policy, to our hearing from New South Wales, and thank you for your indulgence in undertaking this videoconference in this way.

Mr DWYER — Thank you for having us.

The CHAIR — You will be aware that we have a reference on the commercialisation of the land titles office in Victoria. We welcome any commentary you may wish to make about that, understanding that a number of other jurisdictions have moved on this path and there is a particular model being proposed here, both whether you support such an approach and also whether you think there are appropriate checks and balances, and if so, what they might be.

Mr DWYER — If you will indulge me, Chair, it would be good if I could make an opening statement that I have prepared.

The CHAIR — Please, yes.

Mr DWYER — I will be happy to provide a copy of this opening statement for Hansard just in case I cannot be heard well through the technology.

The CHAIR — Thank you.

Mr DWYER — Again, thank you, Chair, and I wish to thank the committee for the invitation to appear today. As background, my organisation, Infrastructure Partnerships Australia, is an independent public policy think tank and executive network, focused on excellence in social and economic infrastructure. We bring together Australia’s major public and private infrastructure organisations, harnessing deep industry and policy expertise to shape government infrastructure policy towards the best possible social and economic outcomes.

Land titles and registry functions underpin our economy and are essential to the way society functions. Accurate and accessible property rights are essential to trust within our financial system whether you are an individual or a business. Australia has had a proud history when it comes to land registration and land transfer systems, starting with the creation of the Torrens title system back in 1858. This system has allowed for certainty over who holds the title to a piece of land and has simplified transactions and transfers involving land. Moreover, the system provides for state title guarantees, so that any losses due to fraud or error are compensated.

The success of this system is evidenced by its adoption all over the world, from Israel to Singapore and others. Although the Torrens system is much celebrated now, it was considered controversial by some upon its creation. But today, as many states throughout Australia consider changes to the way land titles are managed, we should not forget Australia’s proud history of innovation on this essential element of the economy. Indeed, a key consideration for land title registries in coming years will be digital transformation and the opportunities and risks that this carries. On this, I urge the committee to acknowledge the benefits of service levels that the implementation of new technologies can bring to customers of Land Use Victoria. And I urge the committee to embrace Australia’s innovative past when it comes to land titling and registration when considering the commercialisation package.

Now when it comes to the role of the private sector in this digital transformation, that role is twofold. The private sector has greater incentives and more expertise in rolling out new technologies. But perhaps more importantly the Victorian government, and as a result the Victorian taxpayer, can transfer the risk associated with the implementation of new technologies to private operators who are better placed to manage that risk. Risk transfer should of course always be a focus of any outsourcing arrangement or long-term lease, and in the example of Land Use Victoria, the case for risk transfer is clear.

Noting the short timeline of this inquiry, our submission provides some broad comments on the context and timing of the inquiry, as well as individual answers to the terms of reference. I would like to draw the committee’s attention to a small number of key areas of our submission.

The context of the proposed long-term lease of the land titles and registry functions of Land Use Victoria is important and sees the continuation of Victoria’s successful asset recycling program. As a result of this program Victoria has been able to significantly increase infrastructure funding in order to improve liveability for its growing population. The transaction will see the land titles and registry functions move to an operator-regulated

model. This will separate the roles of service provider and regulator, allowing for clarity of purpose and for the strict enforcement of key performance indicators through the issuing of penalties to the private operator for breaches of agreed service standards.

Regarding perceived risks to the privacy and security of sensitive data held by Land Use Victoria, we submit that there are no additional risks. Meanwhile the transparency provided by a regulator-operator model will serve to protect both users and data. The commercialisation proposal includes several important protections, including the Victorian government's retention of ownership over all registry data, a requirement for all data to be stored in Australia, and the Victorian government holding step-in rights to protect data and to enforce compliance with data privacy and protection laws. These protections are sufficient to ensure the privacy and security of data held by Land Use Victoria and are consistent with protections successfully implemented in other commercially operated land title registries, such as in New South Wales.

I wanted to briefly comment on the implications for cost and service of the titles and registry functions being commercialised. One of the key objectives of the commercialisation of land titles and registry functions is the potential for improvements in service levels for customers. The commercialisation package will allow for private capital and expertise to flow into the land titles and registry functions. The proposed structures will provide greater price certainty for customers — indeed, there is an explicit guarantee that the state will retain control over the pricing of fees and charges for existing and new services.

Far from being exposed to higher prices, over the next 40 years customers will benefit from prices being controlled by contract rather than by convention. A long-term lease will allow a private operator to make long-term decisions in the management of and investment in the land titles and registry functions. This will encourage efficiency in the provision of services and upgrades to technology, all of which will benefit customers. Moreover, any risks related to the procurement of new technologies will not be borne by Victorian taxpayers but rather by the private operator.

Finally, the committee sought views on the experiences from other domestic and international examples where similar transactions have occurred. Long-term leases of similar land registry services are far from a novel idea. In 2017 both New South Wales and South Australia leased their land registry services. New South Wales Land and Property Information was leased for 35 years for \$2.6 billion, while the South Australian land titles office was leased for 40 years for \$1.6 billion. In terms of international comparisons, several jurisdictions, such as Ontario and Manitoba, have considered long-term leases of land titles functions.

Before closing my initial remarks, I would like to express some concern regarding the timing of the inquiry. With the transaction in the market and investors in the process of finalising their bids, the launch of an inquiry creates political-type risks, resulting in uncertainty for investors and in turn for taxpayers. Investor uncertainty depresses interest in an asset, which in turn can leave the state worse off by having fewer bidders to choose from, potentially leading to a lower lease price.

With respect to the committee's reporting time frame, we note the importance of this committee in driving agreement on key aspects of the lease transaction. However, to minimise uncertainty we submit that the committee should expedite its reporting deadline as far as practically possible. This would provide investors certainty over the nature of the transaction and allow the Victorian government time to review and finalise the terms of the lease in a timely manner.

We trust our comments provide useful feedback to the committee's current inquiry. We would be happy to provide further details on the above comments if required. Through you, Chairman, I am happy to take further questions.

The CHAIR — Can I thank you for your contribution. I take on board your points about sort of expediting the activities of the committee as best we can. I understand the points you make about risk, too. Nonetheless, proceeding with a transaction of this type without broad community and parliamentary support is in a sense a risk in itself. Perhaps this ought to have been dealt with by Parliament at an earlier point. We have heard evidence today and in previous hearings of major groups that have not yet been brought into the Treasurer's confidence in terms of the particular model that is proposed. So I would, in a sense, put to you for your comment the concept that, first, broad support in the Parliament is important in itself and to proceed without that is a risk. Secondly, not being clear with the community and stakeholders as to precisely what model you are proposing even at this point is in itself also a risk.

Mr DWYER — I understand those concerns, and as legitimate as they are I would make the case that just being able to expedite the inquiry as much as possible to give certainty will benefit taxpayers. I am not suggesting that the inquiry's role is not important, that Parliament's role is not important, but being able to expedite will assist.

The CHAIR — I just make the point on the way through that with some witnesses at the last hearing we were providing them with a transcript of an earlier hearing because they had not yet been provided with the details of the government's proposed transaction. These are major stakeholder groups. The other point that I want to ask is about the issues of lack of security in terms of transactions. I am thinking here particularly of the need for title insurance. In some of the jurisdictions you mentioned in Canada there have actually been requirements that have developed for title insurance. Do you see that as a risk, and can we be certain that that will not be required here?

Mr DWYER — It has not been a risk that has materialised in jurisdictions in Australia largely because of the construction of the model, which has allowed for the retention of the state guarantee over titles, which is the basis of the system. So I think it is clear that we are in a good position in Australia to be able to learn from other transactions around the world. Certainly the New South Wales model, which is the one I am most familiar with of the other transactions that have occurred, has been a very successful model in allowing for retention of confidence in the system but also being able to drive a private sector expertise into the delivery of technology [*inaudible*]. To the extent that Victoria is able to follow that example I think that we will see the right transfer of risk between the different parties in the transaction.

The CHAIR — I am pleased you have said that. The other point I would make is the parallel process that is occurring with PEXA, where we are moving to a process by which all of the settlements for land will occur electronically. I know New South Wales has gone slower on this process. Do you have a view about the speed at which that is occurring and whether that occurring at the same time as the commercialisation carries an additional element of risk?

Mr DWYER — I have a personal view, which is that I was recently involved in a property transaction — buying my first house in Sydney after 10 years of living here. And I did it through the online system and it was an excellent process that did not require lawyers to meet somewhere in the city in some sort of strange handshake transaction. So my personal experience of the electronic —

The CHAIR — Is a good one.

Mr DWYER — is very good. As regards to the timing, I do not have a view as to the complications around the transaction being timed alongside the rollout of the online settlement platforms. I do not know if that is an area where I can add a great deal of expertise other than my own experience of being a customer.

Dr RATNAM — Thank you very much, Adrian, for your evidence. You have talked in your submission and in your statement today about potentially the private sector having more incentives to roll out new technology and drive innovation. Do you have any evidence to indicate that the existing public operation of Land Use Victoria and particularly the functions that are to be commercialised are holding back productivity growth or innovation?

Mr DWYER — In terms of innovation to the titling systems, I think there is a huge amount of evidence from across other infrastructure-type assets that the private sector, when incentivised properly, has the best opportunity to roll out innovation. If we look at the public transport system in Victoria, one that has been outsourced and franchised, you can see things like the real-time travel information apps, the availability of data, the customer service functions have all innovated in response to the incentives in the contract. Elsewhere, in other areas like safety, you will be familiar with the Melbourne trains Dumb Ways to Die initiative, which was a very strong marketing campaign around safety. That is driven by the incentives in the contracting framework that exposed safety as an area where Metro Trains Melbourne had to improve performance. So there are clear areas of innovation around technology, marketing and service that have been driven by these types of operator-regulator models.

It is also true from the international examples of land title registries. For example, in Ontario, where it was the full digitisation of the system, that had not occurred under public ownership and the substantial risk with that kind of technology rollout. Getting the private sector involved and delivering the right incentives and aligning

those incentives with the public interest allowed for those systems to be rolled out and very well rolled out and risk to be borne by investors rather than taxpayers. So I think there is strong evidence from around the world, not just in land titles but in other areas where we have been able to align private profit incentive with public interest incentive, aligning the public interest objectives has been very successful in driving innovation and driving service.

Dr RATNAM — Thanks very much. What about in terms of the proposition of a heavily monopolised service like we are talking about here? I understand the arguments, and I definitely hear those arguments, around potentially services that are not so heavily monopolised like this. What do you think some of the dangers and drawbacks could be of commercialising essentially a monopolised service in that ability to drive new technology and innovation?

Mr DWYER — I think that is exactly why you have an operator-regulator model so you are able to continually monitor and set the objectives and incentives for that. I think where it is possible that you can have a commercially viable service within a well-structured market, where it is possible to have competition, then you can move to a model which has a lower degree of regulation. But in a model where there are high monopoly-type characteristics like there are with land titles, where there is a single operator and a single system, that is an appropriate structure in which to have an operator-regulator model where you have a continuing interest from the government, the state, in regulating the outcomes rather than allowing unfettered access to a monopoly market. So that is the right structure to deliver these kinds of services through. It is also one that has been adopted, I think well, in the New South Wales model, where you have a regulator-operator model and continuing oversight, step-in powers and the like for the public sector to ensure that service is delivered in the best long-term interest of taxpayers and users.

Dr RATNAM — Does your organisation have need or has had cause in a previous time to access the aggregated data that is collected by an organisation like Land Use Victoria? I am thinking about in future in terms of accessing the aggregated data of these services. Does your organisation have cause or need to be able to access that aggregated data?

Mr DWYER — I cannot recall a time when we have had need to in the past, but certainly if new data products are made available by having a more commercialised approach, yes, it could be something that we would use. We are very focused on the growth of Australia, the growth of cities like Melbourne, bearing in mind Melbourne is going to be larger than Sydney over coming decades. There are huge needs around infrastructure and land use as a result of that growth, so there may very well be opportunities for us to use the kind of data that is provided by Land Use Victoria and the commercialisation functions to inform our work. But I am not aware of any time we have had cause to access land titles data.

Dr RATNAM — My final question, if I may. Are you at liberty to talk about if any of your members would actually be in the business of potentially being interested in this data or potentially, you know, bidding for the commercialised aspect of this service? I have not been able to access a lot of information about your partners of your organisation.

Mr DWYER — In our organisation we have public and private sector membership. On the private sector side of our membership, that is the full life cycle of infrastructure through from procurers, investors, both equity and debt, long-term institutional investors through to operators of infrastructure and associated services. So there would certainly be parts of our membership — we are a very broad tent. There would be parts of our organisation — for instance, superannuation funds — that would be interested in these sorts of assets, similar as they are to other infrastructure assets. In terms of access to data, again we are a relatively broad tent, so I am sure there would be members of our organisation that would be interested in the types of opportunities that broader data would hold.

Dr RATNAM — Thanks very much. If I could ask a follow-up question, have any of those members who potentially are interested in these assets made representations about the benefit for them if they were able to acquire these assets? Are you at liberty to talk about that?

Mr DWYER — I have had no direct discussions with our members around the potential of these assets.

Mr MELHEM — I have not got many questions. I would just like to follow up on the data question Dr Ratnam talked about. The state still remains the owner of the data as part of the transaction. Is that your understanding?

Mr DWYER — Yes, that is my understanding.

Mr MELHEM — So are we talking about some investors or some parties maybe being interested in sort of looking, as part of that aggregate data, at being able to go and use that for other purposes but that that is something that will still have a requirement for the state to agree on how that will be used. Is that your understanding?

Mr DWYER — My understanding is that would be through a formalised access regime.

Mr MELHEM — Yes, so it is not basically whoever the operator decides to on-sell the data to — a third party. If that occurred without the consent of the state, that would be breaching various laws and regulations. Would that be your understanding?

Mr DWYER — Yes, so my understanding is that these would be through an appropriate regime by consent — the opportunities to use the aggregated data.

Mr MELHEM — You talked about the timing of this inquiry, which is raising some concern on the realisation of the value of the commercialisation process and which late in the piece could impact on the price the state could get for the lease. That has been out in the open for the last 12 to 18 months. You raised some concern about the timing of the inquiry, which is something I agree with. Have you got any sort of sense of what impact this is likely to have?

Mr DWYER — It is an issue that I think the committee just needs to be mindful of in the progress of its discussions, largely because any sort of political-type risks endanger or are likely to increase the risk-weighted returns that an investor will seek and therefore reduce the potential price on leases. At this stage I have not seen any evidence of that risk crystallising, but it is an ever-present risk. It also relates to things like tax structures that apply to transactions. It relates to things like potential changes in government in different jurisdictions that could have an impact on the investment environment. So there are a whole suite of risks that feed into judgement around the risk of a particular asset or the risk of a particular jurisdiction.

But in this instance where the committee is making some hopefully very valuable contributions towards the structure of this deal, those clearly have a material impact for investors [*inaudible*]. Any impact on the number of bidders or the strength of those bids clearly has an impact on the amount paid, and we would want to see taxpayers have the opportunity to maximise the dividend received. Equally we want to see customers have the best opportunities to access reliable, safe, secure and affordable services through Land Use Victoria's commercialised services.

Mr MELHEM — Just on the bidders' side, what does your intel tell you? Is there strong interest out there in the private sector, where parties are interested in these types of transactions? Who would likely be the potential investors in that particular class of assets?

Mr DWYER — I might answer that question at the generic level if I can.

Mr MELHEM — No, not generically. I am talking about much more specific —

Mr DWYER — There is clearly a huge amount of interest globally for these types of infrastructure-like assets. So a land titles registry is similar in the type of investment profiles to any other form of infrastructure. It has long-dated incomes; it has exposure to an important and growing economy in Victoria. It is inflation-protected income, which is important for superannuation-type investors that are after long-dated, secure income. We see strong interest. I think there are some threats to that interest. There are changes at the Commonwealth level around the taxation of infrastructure through things like stapled structures and other tax treatments which will have an impact on investor appetite. But certainly there is a huge appetite for this kind of infrastructure asset. I think that Victoria should look forward to strong bids for this asset, but we should also be aware that the reputation of Australia as an investment destination is hard fought and easily lost, so if we see political-type risks or constant changes to taxation, that will depress appetite.

Mr MELHEM — I will finish with my last question. Do you think the state government or the Victorian government have got the balance right in making sure we have got competitive bidders to be able to deliver the service we are hoping they will deliver and deliver some efficiency along the way but, on the other hand, maintain the necessary security and integrity of the system — privacy, for example — and cost? Would you agree or disagree that we have got the balance right?

Mr DWYER — Yes. My understanding is the Victorian government has been through a very detailed scoping process. The components of Land Use Victoria that it is seeking to commercialise are the key parts of that from a commercialisation perspective, and there is a huge degree of protection for consumers across the other functions that Land Use Victoria has. I would say that I am not an expert in the data protection area in terms of the intricacies of that, but certainly the model appears to be consistent with best practice in other jurisdictions. I can confirm from an Infrastructure Partnerships Australia perspective that this appears to be an appropriate balance of the functions that should be commercialised, the regulatory model that has been used [*inaudible*] both around data privacy, continuity of experience and also the kinds of customers that use it.

The CHAIR — Just one further question about political risk: in terms of Australia and political risk, the east–west link project which saw the tearing up of their contract would be an example of infrastructure risk of this type.

Mr DWYER — We have seen a few examples across Australia, one which is East West Link and others in recent times where there have been political not sovereign-type risks on infrastructure where projects have been committed to and then removed from the list of commitments. Thankfully we have got a very strong history in Australia of delivering on commitments and these tend to be small isolated incidents. We would like to see fewer of them, but notwithstanding that we are an attractive destination for investment. There is a huge amount of infrastructure being delivered, particularly across the east coast in Australia at the moment, that makes it an attractive market for overseas investors.

The CHAIR — Have you been briefed as yet on the exact model that is proposed in Victoria? I am very thankful for the parallel example in New South Wales, and that is actually very helpful to us to understand that, but have you as yet been briefed on the precise model that is proposed in Victoria?

Mr DWYER — We have had broad briefings, not in a very precise sense, but obviously we know which parts of the proposed commercialisation will impact on Land Use Victoria.

The CHAIR — So they are more in the way of general comments in the sense that it will depend on the precise document that is released by the government in the end.

Mr DWYER — Yes.

The CHAIR — Did you have further comments around that?

Dr RATNAM — Yes, just a comment, and you are welcome to make a comment in response. Noting in terms of the board of your organisation, I just want to note that there are three deputy chairs, including the CEO of Transurban and the Chief Executive of Urban Infrastructure ANZ at Broadspectrum, but I also wanted to ask about your third deputy chair who is a managing partner in MinterEllison. I just note that MinterEllison were charged with the scoping study in terms of this land sale. I just wanted to make that note for the record. I am not sure you want to make a comment about whether that had any particular influence or drove your submission or it did not if you wanted to state that for the record.

Mr DWYER — No, it did not. The way the constitution of our organisation works is that the board delegates all policy to the CEO and to the secretariat, so this is not something that we get pre-commitment from our board or sign-off from our board. They retain the opportunity to sack me if I get it wrong.

Mr MELHEM — I hope they will not. I hope you keep your job at the end of this one.

The CHAIR — You deserve it. Can I thank you for the evidence you have given. If there is any further material you want to provide at a later point, please feel free. Be clear that we have got a very short deadline here, and to some extent I think the decision of the Legislative Council to provide this reference to the committee was driven by the fact that there was something of a vacuum in terms of explanation by government to the Parliament and the community as to what it intended to undertake.

Mr DWYER — Thank you for the opportunity to present evidence, and of course if you have any other questions in written form or would like to speak to us, we would be happy to help as best we can.

The CHAIR — We appreciate that very much. Thank you.

Witnesses withdrew.