

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 — 6 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 Andrew Harman (affirmed), President, and

Mr Gerry Shone (affirmed), Executive Advisor, Association of Consulting Surveyors Victoria.

The CHAIR — Gerry Shone and Andrew Harman, I welcome you tonight. I am going to ask the Secretary to swear you in. We will get you to make a very brief presentation and then we will ask some questions.

Mr HARMAN — Thank you, Chair. I will be brief. I will just quickly outline what I would like to present. I would like to give you a little bit of background as to who Consulting Surveyors Victoria are, what our interest is in the commercialisation matter, our views on the process to date, what we think, what we know and what we are looking for in the process.

Gerry and I are representing the Association of Consulting Surveyors Victoria, an industry body representing 120 member firms who employ the vast majority of licensed surveyors in Victoria. Our organisation provides learning events, structured training for surveyors, advocacy to government, member services and active liaison with allied industry bodies to support our member firms.

What is our interest in the commercialisation matter? Our member firms and their professional surveying staff provide a service of critical importance to the maintenance of the spatial aspects of the cadastre in Victoria. The work of our members is not generally well-known or understood by the broader community, but it is of critical importance to underpin public confidence in our land tenure system; to provide certainty around title boundaries by execution of our semi-judicial function in expertly creating, documenting and redefining boundaries; and to ensure legal rights of landholders are responsibly and faithfully recorded and protected on modern documentation, such as easements, caveats, restrictions et cetera.

Surveyors have been registered by the state of Victoria for over 150 years to perform these functions. We are here to represent the interests of our member firms. It is true that surveyors consider themselves joint custodians of the land, of the cadastre — the land tenure system here in Victoria. The last presentation talked about custodians, and indeed our members consider themselves to be partners with government and have been licensed by the government to protect the spatial aspects of the integrity of the cadastre.

Our views on the process to date: Consulting Surveyors Victoria has been part of a surveyors' reference group coordinated by the Institution of Surveyors Victoria, the professional body, which has met with the Treasurer twice and the DTF scoping group and their advisers on three separate occasions. Consulting Surveyors Victoria is very appreciative of the opportunities that we have been provided to be part of the process. The surveyors' working group received assurances from the Treasurer regarding a commitment to ongoing consultation throughout the process. The DTF response to this has been, it is fair to say, somewhat limited and seems at times to be overly bureaucratic. But there have been no meetings since 5 April and we seem to have been somewhat stalled by the instigation of a confidentiality agreement, so that is two months since our last consultation — a fast-moving process.

Despite those concerns, the consultation has been positive but DTF have been quite constrained in the information they are able to provide to us. There has been no provision of the scoping study, of course, as you heard before. Their intention in that process has been to garner information from us — the professional surveyors working in the system — and professionals who are closely associated with the operations of the land registry. We have been very happy to provide that evidence. I would have thought that usually a consultation process would involve the presentation of some sort of proposal to which we would be able to respond, but that has not been able to be the case in this instance. I guess it is difficult to see how government can achieve that when there are commercial-in-confidence matters involved.

Despite some shortcomings in the process, Consulting Surveyors Victoria believes there has been a very good level of trust and support by the surveyors' reference group and the DTF scoping group. What we think and what we know is that the surveyors group has received assurances which have given us a deal of comfort about the process. We have heard several of them here tonight: the government's continued guarantee of title; the government retaining ownership of data; and importantly for surveyors, the subdivisions and applications branch being retained by the government, and that is the interface that we primarily have with the operation. We assume and we have heard tonight — the retention of skilled staff; data reselling arrangements from data brokers are to remain in place; and any new information products will need to be approved by a government regulator. We heard that restated here before the hearing this evening. Statutory functions of the Registrar are to remain and no change to the operation of the Office of the Surveyor-General. They are all comforts which we have received throughout the process.

What we think about the benefits for government: apart from the financial windfall, the motivations behind the commercialisation would seem to be to accelerate the application of new technologies for efficiency gains — and we have no problem with that — and improved service delivery to the public. We do note, however, that over the last 10 years, Land Use Victoria have provided strong innovation and leadership in many areas, including the development of the SPEAR system, ePlan and electronic conveyancing, which we have heard about this evening.

Our remaining concerns about the process are around the retention of key staff and expertise. The expertise that is held within Land Use Victoria in their registration function is significant, and it is not a short process to train people adequately to perform the functions.

Another concern for us is security of funding for the provision of a strong government side regulator function and security of that funding for the full term of the concession, and for surveyors protection of the role and resourcing of the Office of the Surveyor-General. We feel that the retention of sufficient capacity within government to assume the functions of the registry in the event of underperformance of a concession holder is a critical element. We could imagine that the skills retained by government could easily be diminished, and it would be difficult for government to step back in and take back the functions that had been part of the concession deed. We do not envisage that there will be a long queue of commercial operators ready to step into the breach in such circumstances.

We are concerned about the development of rigorous KPIs to which the operator will be held accountable, and we are keen to continue to be involved in the formulation of those KPIs with the DTF group. We are concerned about protection against unreasonable fee escalation, but I think we have heard assurances to the contrary here this evening. And we are concerned about any diminution in the concept of government's guarantee of title.

What we seek from the process is continuing input in consultation into the development of the KPIs to which the operator will be held accountable and meaningful and regular dialogue with an industry group post the commercialisation. Such a group in our view should include surveyors, lawyers, conveyancers and possibly the banks.

That is our submission. We are grateful for being part of the process and we wish to continue to be part of the process.

The CHAIR — Can I thank you for your comprehensive submission and just put on record my appreciation to the surveying profession. I think in fact you do provide that guarantee, along with your leader, the Surveyor-General, for our cadastre which underpins our property market. So to change the arrangements, which the government is proposing to do — they say that the legal position will not change but the administration of the services will change — as I understand what you are saying, it is that you see risks in the competence and training of personnel and risks that, even if the legal framework does not change in that sense, there may not be a sufficient group of highly trained people to administer the system.

Mr HARMAN — Yes, correct. I guess capability and capacity to continue to administer the system and a concern around — I think it is fair to say that if things were not to run smoothly it might not be within the first several years of this 40-year concession that we would see a diminution. I fully expect — we fully expect — that there may be short-term efficiencies and increased levels of service to the public.

The CHAIR — There is an upside in that sense.

Mr HARMAN — And that has been reported out of the New South Wales situation by my counterpart in New South Wales. But I think the concern is not in the short term, it is in the medium to long term with the reduction in the state-side capacity and skills and resourcing to properly support the system going forward. I am not sure whether your committee is going to investigate the ongoing funding arrangements for the regulatory policing side of the equation, if you like. It is fair to say that a lot of our concerns have been allayed by the retention of significant parts of the Land Use Victoria operation, on the government side, and it appears to us a greater retention of function within government than has happened in some of the other jurisdictions.

Mr MULINO — Just a couple of quick questions. It sounds as though the consultation to date has been quite effective, albeit with a slight slowdown on the bureaucratic side during the commercially sensitive parts. You have flagged a few issues that you retain an interest in — some that you see as risks. Is it fair to say that

you think most of those issues are manageable if there is continuing discussion, dialogue and input from experts?

Mr HARMAN — Yes.

Mr SHONE — I think funding is probably a critical issue in that. We would have a concern that those parts of government are funded in the long term.

Mr MULINO — Regarding two of those issues that you have flagged: on the fee escalation risk, does the CPI cap the term of the lease on the statutory products? Is that a satisfactory outcome for you in terms of the certainty you were looking for?

Mr HARMAN — That certainly appears to be a satisfactory outcome. The previous presenters have talked about how one of the upsides for the provider might be to deliver different datasets to the market. I am not sure whether or not there would be any government side regulation of what the commercial arrangements behind that were, but I did note from the DTF presentation this evening that any new product offering to the public had to be approved by the government side anyway.

Mr MULINO — And non-discriminatory.

Mr HARMAN — Yes.

Mr MULINO — Are you broadly comfortable with the guarantee of title from the state continuing?

Mr SHONE — Yes. As you may well all be aware, the guarantee of title is only the guarantee of ownership, it is not to dimensions or areas. That is where the government relies on surveyors to provide that. We as surveyors are brought up to really respect the Torrens title system and the real, great benefit of having that guarantee of title to everything. We really think that is a critical part of it all.

Mr MULINO — The last question: you have flagged that Land Use Victoria is performing well and has shown great leadership in many areas, and I think that is broadly acknowledged. Do you also see that there is some scope in some areas for a private operator to potentially innovate and potentially improve processing times or service standards?

Mr HARMAN — Our association is the business association for surveyors, so we fundamentally believe that private enterprise may well be able to make some improvements. We have that belief combined with the concerns about the absolute need to maintain the integrity of the cadastre, which is what, on a professional level, we are all trained to do.

Dr RATNAM — Thanks very much, it has been really informative. Just picking up on a couple of points you mentioned, and I think you have alluded to it somewhat already, but it sounds like you are comforted and consoled by the retention of key staff and expertise, which are the bits that are working quite well. You have raised questions around the security of funding for that regulatory side — that monitoring-of-performance side — that being an open question that the system will work if that regulatory system is funded properly and is maintained. What about the staffing side? If the retention of key staff is a key part of it — and we are just hearing tonight that essentially it is a two-year guarantee — what do you think the implications are of a two-year guarantee that staff can retain jobs but it is unclear what will happen post that two years? So on the one side it is good to have the key staff and personnel going over and the expertise going over, but we know potentially it is two years. It could last longer, but it is a lot less certain. What do you think the implications are if you lose some of those key staff and expertise post-two years?

Mr HARMAN — I do not think we are the right people to talk about the detail, the technical capacity, of who of the 110 people are likely to be transferred across to a private operator, but from what I understand of the commentary — and once again we are not being provided with any detail out of a scoping study to make commentary — from what our understanding is, the functions that are to be commercialised are the higher volume, maybe more administrative functions. The functions that are to be retained, and this might be something for your committee to explore, from what we understand, are to be the more technical and possibly harder to replace skill sets. From the level of information we are provided, that is the impression that we have. But that might be something that your committee might like to test.

Dr RATNAM — Thank you. That is a good thought.

Mr SHONE — The other aspect there is that retention of staff is difficult anywhere, and in private business if you can retain staff for two years, that is pretty good in some ways.

Dr RATNAM — Thanks. Fair enough. Just in that last bit of your contribution you were talking about how perhaps the private sector can make some improvements to the service. Do you have a sense of what some of those improvements might be?

Mr SHONE — From our aspect, no, because we are not the ones that deal with that part of the business. We are more about preparing plans for registration and working with that part of the system, which is staying with government, so we are probably not the right people.

Dr RATNAM — Okay.

Mr HARMAN — Yes, although I do believe that there will be significant drive for a commercial provider to be fully on board with the digitisation of the functions of the land registry and with the electronic conveyancing aspects being escalated. A quicker transition to new technology, I think we will find, would be in the interests of a commercial operator.

Mr DALLA-RIVA — Thank you, gentlemen, again for your presentation. You mentioned the evidence from South Australia — or New South Wales? Where was it you went to?

Mr HARMAN — I have been in communication with colleagues in New South Wales, and the kindred association to our association in New South Wales is actively engaged in a liaison committee around the operations of the land registry there. They have reported improved processing times and there appears to be a positive, cooperative working relationship with the various industry groups in that state. From our perspective, the maintenance of that cooperative approach in the maintenance of the cadastre is a critical element, because that historically has been our experience — that professional surveyors have worked closely with the titles office, as we historically call it, to get the right answer and to get quality information recorded into the registry. That has been a consultative process historically, and we are anxious that that does not cease.

Mr DALLA-RIVA — Can I just ask before we go on to the next question, are you able to provide to the committee some of the contacts that you have in New South Wales so that we can maybe get some of their input —

Mr HARMAN — Yes.

Mr DALLA-RIVA — whether it be through public hearing or video or even just some personal conversations?

Mr HARMAN — I can certainly contact them and see if they are happy to be available to you.

Mr DALLA-RIVA — Just some of their experiences. The other one, which eludes me now because I went down that path and it is 9 o'clock at night, so I am allowed to do this. That is right. There they are. So the question was on Land Use Victoria. You mentioned the bureaucratic impasse, as it were, now with DTF. Have you perhaps looked at —

Mr MULINO — That's too strong a word.

Mr DALLA-RIVA — Well, it is. They are bureaucrats, and having dealt with DTF as both a minister and, trust me, on PAEC, I can say that with some level of confidence. In terms of DELWP, the Department of Environment, Land, Water and Planning, have you had any engagement with them, if you are not getting satisfaction with DTF?

Mr HARMAN — We have an excellent and strong relationship with the part of DELWP that is under consideration here, and we have regular consultations and we have a relationship with them whereby they provide their staff to brief our membership on a very regular basis. We have had no active consultation with DELWP over this particular issue. We have been directed to DTF for our consultation around this issue.

Mr DALLA-RIVA — Yes, well —

Mr HARMAN — As DTF, as I understand it, are running the process.

Mr DALLA-RIVA — Yes, but if you are not getting satisfaction, maybe the —

Mr HARMAN — I do not want it to be said that we are not getting satisfaction. I wanted to —

Mr DALLA-RIVA — Well, it is two months, you said.

Mr HARMAN — It has been two months since our last consultation.

Mr DALLA-RIVA — Well, that is a fair time. Okay. Well, I was just wondering if you had tried other vehicles to try and get some understanding. No?

Mr HARMAN — No, not really.

Mr DALLA-RIVA — That is all right. And have you heard of other peak bodies or industry groups that are also feeling the same level of frustration at the moment?

Mr HARMAN — I am not aware of others that are feeling that. I have not had any such discussion.

Ms BATH — In relation to your organisation with 120 member firms, would you call yourselves the peak body in Victoria?

Mr HARMAN — Yes. For the industry, yes. We are not a professional association. We are an industry association.

Ms BATH — Thank you. So just for clarity, you were not engaged in the scoping study in any form? Were you consulted or did you consult or were you asked to communicate?

Mr HARMAN — Consulting Surveyors Victoria was part of a group which was led by the Institution of Surveyors Victoria, and together we have been consulted as part of the scoping study. So our first consultation I think would have been October-ish 2017.

Ms BATH — And it was a two-way street in terms of information you could provide, your opinion or —

Mr HARMAN — Yes, we were able to provide our —

Ms BATH — your potential improvements?

Mr HARMAN — Yes, we were there to provide our expert input into the process. It is fair to say that I think DTF were, at that point in time, really seeking information from us. They were not providing a lot of information to us. They were seeking information as they grappled with what it was that they were looking to commercialise.

Ms BATH — Thank you. There will still be statutory functions that operate under Land Use Victoria; we are going to outsource the commercialised aspects of it. The communication between those two entities is still important, because there will be overlap. I am not an expert in this field, as you can probably see. You identified also underperformance there, within the new operator — or there is the need to make sure that there is not underperformance — so eyes on that and who is looking at it. Could you make some suggestions in relation to that so that there is not a loss of performance, we will say, or communication between the two entities — the government versus the new operator, whoever they might be. Or is that part of the conversation you want to have and you have not had?

Mr HARMAN — I agree. I think that is critical that there is a seamless integration — it will not be seamless, but that there is good communication between those entities. We do not know enough about it to comment. We do not understand clearly enough at this point in time the nature of the division between the state side and commercial side. There is a capacity for uncertainty between responsibilities on certain matters, that when they get complex they might get referred back to government, and where that line will be drawn, we do not have enough information to comment.

Ms BATH — I guess one last question relates to the KPIs and the checking of performance of the new entity. I note you mentioned before the conveyors, surveyors, lawyers — and I missed the fourth one.

Mr HARMAN — Conveyancers, solicitors, banks, surveyors — yes.

Ms BATH — Yes, banks — that was the other one. Would you appreciate or like those very different but potentially integrated groups to be able to be part of this evaluation of this new owner or entity?

Mr HARMAN — I do not believe we want to be the groups who are evaluating the performance. We want to be the groups who are working cooperatively to make sure it works well, so I think evaluation of their performance is probably not quite the right language. We want to be continually consulted and we want to be part of the conversation in partnership, if you like, to make sure the system continues to work well for the state.

Ms BATH — Thank you very much.

Mr DALLA-RIVA — Just in terms of the terms of reference, we have been asked about the implications for people employed by the land titles office. Have you heard any concerns from your membership group about what is occurring within the land titles office? I mean, we hear from the department, but are you hearing anything of concern within the —

Mr HARMAN — I think it is fair to say that when this was first mooted, with the lack of information, there was great concern. I would say that as the process has gone on and we have heard commentary like we have heard tonight about the number of functions that are going to be retained by government, for our membership, that concern has been somewhat alleviated.

Mr SHONE — I do not think we have got enough knowledge to really comment.

Mr HARMAN — No.

Mr DALLA-RIVA — Well, that is why I am asking. So none of your members have fed back that they are hearing from land titles that it has all gone pear-shaped because of what is occurring?

Mr SHONE — No.

Mr HARMAN — No. Our membership and Land Use Victoria are experiencing extremely high workloads at the moment, as you can imagine, with the urban development that is going on around the state.

The CHAIR — Very big.

Mr HARMAN — It would be fair to say that in the last period of time there have been some initiatives out of Land Use Victoria which have improved registration performance around our area, which is registration of subdivision plans. I think it is working quite well.

The CHAIR — Can I thank both of you for your evidence — it has been very helpful indeed. And if I can also thank Hansard. Hearing closed, and we may well have the need to come back on some details. We would appreciate you keeping us informed about the ongoing consultation.

Mr HARMAN — Thank you, Mr Chair.

Mr SHONE — Thank you.

Committee adjourned.