

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

Witness

Ms Jill Ludwell (affirmed), Chief Executive Officer, Australian Institute of Conveyancers (Victoria Division).

The CHAIR — I welcome Jill Ludwell from the Australian Institute of Conveyancers Victoria Division, in place of our earlier witness. I will get you to briefly address our terms of reference, and we will ask some questions.

Ms LUDWELL — I think we got information about this privatisation earlier this year or late last year. We had a meeting down at the seaside somewhere.

The CHAIR — That is right. St Kilda.

Ms LUDWELL — You were at that meeting. Obviously as conveyancers we represent a significant amount of licensed conveyancers in Victoria. The licensed conveyancing area does about 50 per cent of the work in Victoria, so we have a significant amount of work in the marketplace. We have a very long and good relationship with Land Use Victoria. It has been going on for years. As I said, we have a longstanding and excellent relationship with Land Use Victoria, and obviously representing the conveyancers we are very concerned about numerous things — I presume the Law Institute have spoken about those things as well — like in point of fact the integrity of the register, what is actually going to be sold, the ability of the concessionaire or whoever it is that is going to get that concession to actually sell that information to a third party and more significantly the costs. Are there going to be rising costs? That would be significant.

Remember, the conveyancing industry is undergoing huge change with electronic conveyancing, and that is ongoing. The market for electronic conveyancing is a bit fraught at the moment, because the mandated date is 1 October whereby all discharges, transfers and mortgages must be lodged electronically, so that has actually made the industry sort of suddenly sit up and take notice that this is happening. As I said —

The CHAIR — When was that mandated?

Ms LUDWELL — A few months ago, but it is now 1 October. Single documents were mandated on 1 March. It has been a transition from certain documents like discharges and mortgages last year.

The CHAIR — Because I do not think the community is aware of that fully.

Ms LUDWELL — Well, it is quite a significant change, and there is one organisation with the monopoly, which is PEXA, which is partly owned by the land registries and the banks. From the AIC's point of view we have taken the proactive approach that we need to train our people in what is happening in the PEXA environment, and now to actually find that it is going to be privatised we just wonder how that will impact on this new electronic means of transfers.

As I said, we have had a good relationship with Land Use Victoria. We sit on committees with them. With any changes, they always come to us to discuss them. We circulate that around to members. So I would hate that to stop. If anyone was to come in and sort of take over that space, we would be looking for some sort of ongoing commitment, because that has been sort of more of a gentleman's agreement than anything else. We would need something more of a commitment that the industry and the stakeholders would be taken into account when they are doing things for the registry. It is important to actually have that integrity maintained and costs not skyrocketing. That would be detrimental, because the costs are already skyrocketing with the electronic conveyancing environment.

The CHAIR — Who mandated the decision that it would be electronic only? Who actually did that?

Ms LUDWELL — The government. The Treasurer.

The CHAIR — Is it the Treasurer?

Ms LUDWELL — I presume it would be the Treasurer. It was announced last year, the mandated date. There were quite a sequential lot of dates where the mandating came in, so it has been a transition; it has not just happened overnight.

The CHAIR — Is it national or is it just Victorian?

Ms LUDWELL — No, it is national.

The CHAIR — It is?

Ms LUDWELL — The mandated dates are different. New South Wales I think have now got 12 months before they get to the stage that the Victorian one is. South Australia is not announcing mandating yet.

The CHAIR — Do you think it reduces competition — people not being able to do a manual transaction?

Ms LUDWELL — Well, people will not be able to do a manual transaction. People will not be able to do manual at all. You cannot do paper. It is all electronic.

The CHAIR — That is my point — the absence of that.

Ms LUDWELL — You have to appoint a solicitor or a conveyancer to do the work for you, because there is only access to that PEXA system. The Land Use Victoria Registrar at the present time sits on the ARNECC board, which is the overall Australian Registrars National Electronic Conveyancing Council. So the Land Use Victoria Registrar sits on that council along with all the other divisions. They sit on that council, and they supposedly regulate the PEXA environment. So it is all very difficult at the moment for the conveyancing industry, and it is only going to get more muddied, I think, once the privatisation, if it goes ahead, takes place.

The CHAIR — So can I be just very clear: does your organisation support or oppose the commercialisation?

Ms LUDWELL — I am not sure that we can say we oppose it. We only support it on the basis of no big increase in costs. The register stays the same as it has always, and the Registrar is there to take the responsibility for the register. The fidelity fund is another thing, the assurance fund that is in place. We need to make sure that is there. So whilst I am saying that we do not object to it, I think from what I can understand it is a *fait accompli*, so there is no point in us beating our chests. We are a very small-resourced organisation, so if it were to come along, we would really need to ensure that we are front and centre in asking for these things, such as transparency and the ability to have some sort of stakeholder engagement in the steps that are going to take place.

The CHAIR — Well, Jill, I will make the same point that I made to the Law Institute — that when the transcript comes in, if there are further points you want to make in response to the precise model that is proposed, we would welcome those as a subsequent layout of evidence for the committee.

Ms LUDWELL — Certainly will.

The CHAIR — The second point I ask you is: are there any advantages that you see? Is there some innovation? Is there some upside that you could —

Ms LUDWELL — Well, that is what we are told. I mean, that is what the government is saying — that it will be more innovative.

The CHAIR — Does your organisation see that, though?

Ms LUDWELL — Well, we have not seen the evidence of it. There is no evidence because the actual thing has not occurred, so we do not know who it would be that would be taking over the privatisation of it or whatever it is going to be.

The CHAIR — Commercialisation.

Ms LUDWELL — We do not know whether it is an all-out sale or a lease or whatever, so we do not have any evidence to support that. We can only assume that that is what they are doing it for, not only just for the —

The CHAIR — I am happy to place on record my concern that at this point in the cycle the government has not clearly taken your organisation and the Law Institute into its confidence and sought input from both organisations around its precise proposed model. It appears that that is not something it has consulted on, and I put that on the record.

Ms LUDWELL — Yes.

The CHAIR — It is something that I just think is not good practice. My other point is: when you have seen the model I would also welcome any input to the committee as to the protections and checks and balances that you see as appropriate — to be conveyed to us.

Ms LUDWELL — Okay. Yes, by all means. Happy to do that. Do we know any timetables at this present time?

The CHAIR — Well, a transcript will be available tomorrow.

Ms LUDWELL — Thank you. All right.

Mr MULINO — Just on the issue of consultation — and by the way, thanks for coming in tonight and giving us evidence at this late hour.

Ms LUDWELL — That is a pleasure.

Mr MULINO — Have you had an opportunity or has your organisation had an opportunity to meet with the Treasurer?

Ms LUDWELL — Yes.

Mr MULINO — And when was that?

Ms LUDWELL — Probably about six weeks ago, I think.

Mr MULINO — And that was for the purpose of discussing some of the concerns that you have?

Ms LUDWELL — Well, we had sent in a submission pointing out our concerns. I understand the Law Institute did the same thing, and many other organisations, I suppose.

The CHAIR — We would welcome a copy of that submission too.

Ms LUDWELL — Yes, sure. I think it was just to try and alleviate any concerns we had about the model that they were going to choose. There was no definitive idea of what the model was going to be, but that was the discussion. It was about a 15-minute discussion, I suppose, on what was going to happen, because the other states — for instance, New South Wales and South Australia — had different models. In New South Wales I am not 100 per cent sure whether that was a lease or a sale, but I know in South Australia it was definitely a lease — a 40-year lease or something like that.

Mr MULINO — I will not go through all the detail of what was provided to us by the two departments, but there are just one or two issues I would like to flag, given we do have you here able to give evidence on oath. One aspect of the model that we discussed with both the department of treasury but also with DELWP when they gave evidence last sitting week was that there will be a CPI cap on prices charged and basically that the state will retain control over prices. Is that something that would alleviate some of your concerns around —

Ms LUDWELL — Well, it would be very important, because as I said, the costs escalate now because of the electronic environment, and for that to suddenly have to go up with cost — because remember also that in Victoria, and I do not think it is the same in New South Wales, we have brokers that deal with the title searches and the property certificates, so there is an add-on cost. Those brokers have been in place for 20 years or something — 15 years perhaps. The cost of a title search, for instance, is not \$7 to the ultimate conveyancer or user; it is probably about \$25 or \$30. However, in the scheme of things it is more efficient and a quicker way of doing things. You can still go directly to LANDATA, which is Land Use Victoria's arm, and get it directly if you want to, but if you are running a fairly efficient file, you would go through your broker to get all these documents and these searches. So for an organisation to be able to escalate the costs dramatically would just be terrible, because the disbursements now — I am not talking about the professional cost of doing the file; I am talking about the disbursements, all the add-ons, the certificates and things like that — all add up, and if you start to escalate and have holus-bolus —

The CHAIR — When did those costs come in?

Ms LUDWELL — As I said — help me, David [*McKenzie, of the Law Institute of Victoria*] — was it 15 years ago when brokers first started with the title searches? It would be at least 15 years ago, I think. The Land Use Victoria titles office enabled brokers to — they sold at a wholesale rate to the broker, and the broker makes that available to the consumer, to the conveyancer solicitor. So those costs went up a long time ago. As I said, it is a purely voluntary thing, but it is more efficient to get it in a one-stop shop arrangement.

Mr MULINO — Thank you. Look, as the Chair said, it would be good to get your reaction once you have had a chance to peruse the transcript, but our understanding is that there will be a CPI cap. Just a couple of other issues just very briefly. One is that the proposed scope of this transaction is much narrower than in other Australian jurisdictions — something like around 80 per cent of the staff will be retained in Land Use Victoria and the Surveyor-General and Valuer-General will basically have all of their functions protected away from the transaction. Is that something that you would see as a positive aspect?

Ms LUDWELL — Well, it is extremely important because there is a wealth of knowledge in the titles office — it cannot be overestimated; it is significant — and there are complicated matters that are handled, like plans for subdivision or NICO titles and things like that. There is such an amazing —

The CHAIR — What titles?

Ms LUDWELL — They are called NICO titles — not in common ownership. They are just the most complicated way of transferring slivers of property. So for that knowledge to just go out the door with redundancies and that sort of thing would just be horrendous.

Mr MULINO — And the last thing I was going to ask about is something that was raised by a few committee members to both secretaries of the two departments, and both indicated that the state will continue to provide guarantee of title and that they were confident this would mean we would not see the need for title insurance. Is that something that —

Ms LUDWELL — I think that is uppermost. It has to be there — it just has to be. No-one could agree with getting rid of that, that is for sure. It has to be there.

Dr RATNAM — Thanks very much, Jill. It has been really great to hear your evidence. Just to recap in terms of some of the assurances that you would want going forward if this were to proceed, you talked about no big increase in costs, transparency and that the register stays as normal —

Ms LUDWELL — Integrity of the register is basically that they cannot just sell off information for a price. It is a significant part of the property industry in Victoria — in Australia for that matter, but in Victoria especially — and that has to be kept absolutely pristine. If it were not like that, you end up in a Third World country, because we rely on that register to be absolutely pristine, and that should remain.

Dr RATNAM — You talked about the increased costs of the electronification that the records at the moment are undergoing. How are those costs being borne? Are they dispersed and distributed back to the consumer? How is the industry absorbing that at the moment?

Ms LUDWELL — Absolutely.

Dr RATNAM — So it has increased?

Ms LUDWELL — Yes.

Dr RATNAM — With the rollout of that, you talked about this happening nationally with different states at different stages of it as well. So just to understand, it is being driven by each state but it is happening nationally — there is sort of a synchronicity of all the states moving —

Ms LUDWELL — Only the major states. Tasmania and NT are not even close to that area yet; they have not gone down the electronic path at this point in time. It is the bigger states, so New South Wales, Victoria, South Australia and WA. South Australia has not announced a mandate, but the other states have.

Dr RATNAM — If I could ask a question about consultation, because it sounds like you had not been consulted actively prior to the decision being made, it sounds like there was a meeting six weeks ago that you

referred to. If you had been consulted in the idea-generation stage prior to the government enacting it, do you have a sense of what kind of feedback you would have provided at that stage, particularly given the timing I guess?

Ms LUDWELL — Well, I think it was all a bit of a shock when it happened. We just sort of got together and put our submissions in and waited for a reaction. We finally got a reaction; it was slow coming but we actually had a discussion with the Treasurer. A lot of these issues were raised, and he gave us some assurances. But as I said, we have not seen anything further, so I do not know where it is at and where it is going.

Dr RATNAM — Given the timing of the other significant changes that are happening to your industry, six months or 12 months ago when the idea was being germinated, do you think you would have advised that this was not the best timing for your industry in terms of a proposed privatisation?

Ms LUDWELL — Absolutely, because as I said, you do not realise the pressure in the conveyancing industry at the moment — it is enormous — and with 1 October coming very quickly, we are the first mandated state and there are a lot of organisations, a lot of lawyers and even conveyancers who have not actually got into the electronic space at this time. And the electronic space is not cheap; it is not something that you can just absorb into your disbursements — it is reasonably expensive — and you basically have to do it, so you have got your client saying, ‘What the hell are you charging me that for?’. Well, sorry, that is the electronic system that we have to do that transaction through.

Dr RATNAM — Can I ask what impact that is having at the moment? Is it too early for it to have huge impacts on the industry in terms of the same number of providers in the market? Are people exiting as conveyancers? Are there impacts at the moment, or are they to come?

Ms LUDWELL — Do you mean the electronic system?

Dr RATNAM — Yes.

Ms LUDWELL — Oh, yes, huge impacts at the moment. There was a problem that we had years ago when the titles office started on the electronic environment. It was called Electronic Conveyancing Victoria. I was on the working party many years ago. There was a lot of consultation, and we got to the point of actually getting a financial transaction up and running. That was the first transaction in Victoria, and that was very exciting. But then it was taken to COAG because it really had to be a national system. The banks were not interested unless we had a national system.

Unfortunately, although we have sort of got a so-called national system, it really is not, because every jurisdiction runs slightly differently. So all the banks have got to reinvent themselves in different ways in every state. In Victoria we are finding now, because a significant amount of the practitioners have not got on board with the electronic environment — they have not trained themselves or got into it early enough — that we have got a lot of third-party settlements people actually supplying the end of the transaction, and that is to my mind sort of muddying the waters a little bit because they are doing that for a price. But you are either a conveyancer or solicitor doing the work or you are not. You cannot just off-load that to someone else and expect that to be handled perfectly, so it is a bit of an unknown system at the moment, we are finding.

And there are people moving out of the system. That is for sure. They are getting to the stage where they do not need these hassles and they just depart. But I can tell you it is a very stressed industry at the moment.

Mr DALLA-RIVA — For the transaction costs from 1 October, what is the increase dollar-wise? What are we looking at?

Ms LUDWELL — Well, for instance, in Victoria we have always had a system of settlement agents, which is that you do all your conveyancing, the packet would go in to the settlement agent at the end and they would physically hand over the cheques and receive the documents. That is how it works or did work. With the electronic environment, it is only subscribers who go into this workspace. It is all data; it is not documents. So that has gone from being, say, something like \$35 or \$40 for a settlement to \$110, I think it is at the moment, to do that — to open that workspace and to actually get to the end of the result and get it transacted and get it registered.

The CHAIR — A tripling.

Mr DALLA-RIVA — So where is the exchange of cheques? There is none.

Ms LUDWELL — You do not. It is all done electronically.

Ms BATH — Bank transfer, I assume.

Ms LUDWELL — It is all done by, yes, electronic transfer. The Reserve Bank changed it all. And there is another player in the marketplace too. There is another organisation that is trying to get registered as an ELNO, which is the Electronic Lodgement Network, which is what PEXA is, and they are trying to move into that space as well. But no-one can tell us how the rules are going to play out with two of them in there. Are they going to talk to one another? I do not know. As I said, it is very up in the air at the moment.

The CHAIR — The national body must have worked out some rules for that, so have they sort of forgotten to do that?

Ms LUDWELL — Yes. They have said that they can exist, so they have said another ELNO can come into the environment, but there are no rules around it.

The CHAIR — So they have not created the jurisdiction and controls and protocols.

Ms LUDWELL — And we have written to them. We have written to ARNECC and said, you know, that we do not want any more changes to the model participation rules until such time as actually we can get some face-to-face meeting with ARNECC to find out what is going to happen when another ELNO comes into the marketplace.

The CHAIR — It is a shambles, really.

Ms LUDWELL — Yes, absolutely a shambles.

Ms BATH — Thank you, Jill, and thank you for coming out on a cold night.

Ms LUDWELL — That is all right. It is quite mild, actually, compared with this morning.

Ms BATH — Could you estimate for me the proportional percentage of DIY conveyancers or do-it-yourself or self-conveyancers in the market?

Ms LUDWELL — Minimal.

Ms BATH — Okay. I guess my question around that would be: it is almost if you are doing electronic and you are not in that space, you would not be able to do it, so it will go from minimal to zero, in effect.

Ms LUDWELL — Yes, you cannot get into the environment.

Ms BATH — The other question I had was in terms of education for the conveyance industry around this — a kind of sidestep a little bit. Has there been much there, or are you basically saying what you have been able to glean?

Ms LUDWELL — Only what we have provided. No, not glean — we have actually been proactive in that. We are very dedicated to education and training for our members and others. We are not limiting it to just our members. We invite lawyers and everybody to come along and have the training. We have been doing that for the last couple of years, so we have got a quite significant amount of people who are trained in the electronic environment.

Ms BATH — But as you say, because there is a time pressure, then people are pressing for your assistance.

Ms LUDWELL — And some are not getting on board.

Ms BATH — I guess the other question I had was in relation to your mentioning of platforms or choice of platforms. Is there a choice of platforms out there in terms of the electronic system?

Ms LUDWELL — No, not at the moment.

Ms BATH — So it is a one size fits all?

Ms LUDWELL — PEXA is the only one, and if another ELNO comes in, there may be two. I know there have been other applications to ARNECC to become an ELNO, but they have not gone anywhere, I do not think. This next one that is coming in is fairly significant. It is partnered with the ASX, so the ASX and InfoTrack are actually combining to have another ELNO in the marketplace, so there is a bit of money there and a bit of clout. Because the ASX was involved in the Electronic Conveyancing Victoria program, they have got a bit of history there.

The CHAIR — That has been very helpful indeed. I have one further question, which is about the 40-year lease which is proposed. You had obviously been informally told that it might be that model.

Ms LUDWELL — No. I was just saying that South Australia, I think, had a 40-year lease. I did not know what Victoria's proposal was.

The CHAIR — Right. Do you think that is adequate?

Ms LUDWELL — Adequate for what? I am not quite sure adequate for the person —

The CHAIR — In terms of the framework. Is it too long, too short?

Ms LUDWELL — I suppose if they are going to sell it off or lease it off, it has got to be a significant amount of time that they can actually get themselves established and get a return, otherwise they would not be interested.

The CHAIR — I want to thank you for, number one, stepping in and, number two, for providing evidence.

Ms LUDWELL — That is all right.

The CHAIR — We would welcome any further comment you may want to make on the transcript. There are slides that the departments provided which lay out the model.

Ms LUDWELL — When did that come out? Do you mind me asking?

The CHAIR — It came to our committee about 10 days or two weeks ago. The hearing was two weeks ago.

Ms LUDWELL — It has not been made public?

The CHAIR — It is not yet on the public website, but it will be shortly.

Ms LUDWELL — Yes, all right. Thanks very much.

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

Ms LUDWELL — It is a pleasure.

Committee adjourned.