

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

26 June 2018 — Melbourne

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 Alan Cameron (affirmed), Chairman, and

Mr Justin Schmitt (affirmed), Chief Transformation Officer, Property Exchange Australia.

The CHAIR — Can I welcome Alan Cameron, the Chairman, and Justin Schmitt, the Chief Transformation Officer, from Property Exchange Australia. This is pursuant to our inquiry. Can I ask you to give a brief summary of your activities, I guess, with respect to our inquiry, and then we will follow with some questions.

Mr CAMERON — Thank you, Chair. Can I just emphasise first that I am speaking today only as the Chairman of Property Exchange Australia Ltd. I do have other capacities. Secondly, ARNECC is the Australian Registrars National Electronic Conveyancing Council, to solve the minor mystery from your first session.

The CHAIR — I am just a bit old-fashioned. I like to hear the acronyms put out in full.

Mr CAMERON — PEXA welcomes the opportunity to present to the standing committee today. PEXA has a longstanding relationship with the Victorian government and recognises its commitment to upholding the integrity of the land use system. This morning I will give you a brief overview of PEXA, followed by our insights based on our experiences in relation to the privatisation of similar services in the other jurisdictions. I do so in the hope that that will be useful to your committee.

It is clearly true that the Torrens system was a major contribution by Australia to the world. The PEXA system is the next logical and inevitable development of the Torrens system. So what is PEXA? PEXA is a network business which enables the lodgement and settlement functions required in a property transaction to be completed electronically. This includes operating a central digital network which facilitates three things: firstly, the preparation and lodgement of the paperwork required by the land registries which facilitates the legal change of ownership; secondly, the verification and exchange of relevant information such as verifying that the stamp duty has been paid, verifying that the lodgements occurred and so on, to reduce errors and provide greater certainty of successful settlement; and thirdly, the facilitation of the financial settlement — the transfer of funds between participating banks. It is incidentally that third aspect that makes the Australian PEXA system unique, so while other countries have e-conveyancing systems, no other country yet has financial settlement as part of that system.

PEXA was initially created in 2010 to fulfil the Council of Australian Governments' Seamless National Economy initiative to deliver a single, national e-conveyancing solution to the Australian property industry. Its foundation shareholder group comprised four state governments, including the Victorian government, and the four largest Australian trading banks, which was later diversified to include the Little Group, the Link Group and Macquarie Capital. It was a natural next step in the digitisation of the property transaction process as a whole, with land titles offices, financial institutions and other related service providers already digitising their services. As it stands today, PEXA's exchange is the single largest lodgement channel for the Victorian land registry, with over 50 per cent of all lodgements into that land registry coming through PEXA.

Since its inception PEXA has settled property transactions through its financial settlement model worth in excess of \$150 billion. There have been 1.3 million electronic transactions. Not one of them has gone wrong. I am delighted that we had a satisfied user giving evidence just a few moments ago.

So what is our experience with respect to the privatisation of land registries? PEXA currently has operating agreements in place with the land titles offices of Australia's five largest states by dealing volumes, including New South Wales and South Australia, both of which have adopted privatisation models. As a result of its collaboration and continuous engagement with land titles offices, PEXA sets out below some suggested measures the committee might want to consider in the context of ensuring robust and appropriate security and privacy measures are in place as well as the ongoing integrity of the land use system in Victoria.

From our perspective, and assessing the proposed long-term lease of the land titles and registry functions of Land Use Victoria, consideration should be given to ensuring that any operator or concession holder does the following three things. Firstly, they should invest in systems to ensure that they are robust and keep pace with the requirements of the conveyancing market as it transitions to fully digital processing of conveyancing transactions. Secondly, they need to maintain high levels of availability of their interfaces and their systems that form part of the conveyancing network. Our exchange is required to be available 99.8 per cent of the time. Registry systems should match that availability and resilience, given the integral part they will play in the conveyancing process. And thirdly, they should commit to implementing the fully digital road map of documents that has been agreed to ensure that Victorian practitioners can complete 100 per cent of their conveyancing transactions electronically. This will enable all industry participants to achieve the efficiency

benefits that the COAG initiative was created to deliver by removing the expensive requirement to maintain dual processes, both paper and electronic.

The arrangement will also need to include the requirement to handle multiple independent Electronic Lodgement Network Operators. So, Chair, that is an ELNO — Electronic Lodgement Network Operator. So PEXA is an ELNO. It is possible for there to be more than one ELNO. At the moment there is only one.

The CHAIR — You are the only one currently.

Mr CAMERON — Yes. So whilst the PEXA exchange is the only operating ELNO at the moment, ARNECC — the Australian Registrars National Electronic Conveyancing Council — has approved one additional entity for stage 1 approval, and another entity has publicly announced its intention to apply. Any new operator will need to have the funding and bandwidth to facilitate working with multiple ELNOs, which would each run their own independent networks.

That is where I originally would have finished, Chair, but there has been some publicity in the last few days about some incidents, and if you wish, I am happy to address that now.

The CHAIR — Please, yes.

Mr CAMERON — PEXA is obviously aware that there have been two incidents recently whereby an unknown party gained unauthorised access to a practitioner's email account. In these two instances the unknown party intercepted a change-in-password email sent from the PEXA platform to the subscriber, which in turn allowed that person to access the subscriber's PEXA account. It was the email account of the subscriber being compromised that enabled access to the subscriber's account with PEXA. As a result the destination account details in the settlement schedule were fraudulently changed.

Now PEXA itself has robust fraud protections and strict authentication procedures built into its platform. Given the online environment in which we operate, we are continually reviewing and enhancing these. The PEXA platform was not hacked; practitioners' email accounts were compromised. Sophisticated fraud was then perpetrated against these practitioners who operate on our platform. PEXA understands that this is an incredibly stressful situation for everyone involved, and we are proactively working with all impacted parties to ensure a good outcome, including working directly with one of the practitioners' clients to offer assistance to allow them to settle on their new home. PEXA routinely communicates with practitioners on issues of cybersecurity and urges all practitioners to take steps to reduce the risk of fraud.

But of course this in isolation is not enough for a fraudulent payment to occur. Any payment instruction requires the practitioner to digitally sign or re-sign the financial settlement schedule confirming the account details that were entered and to represent to us that they are correct, allowing the settlement to proceed. All of the contractual arrangements and industry protocols make it clear that it is the practitioner's responsibility to check the settlement schedule immediately prior to signing it to ensure that the information entered is correct and reflects the instructions given.

While attempts of this nature are not specific to e-conveyancing, PEXA urges all practitioners to take steps to reduce the risk of fraud, including verbally confirming bank account details with clients, not using free public wi-fi and keeping security patches up-to-date. So again while the PEXA system itself was not hacked, we have begun work with our network developing additional alerts and processes to further enhance confidence in the system. As of this week PEXA will only allow new users to be created in what we call an inactive status, meaning that PEXA itself will need to enable them. In addition we will be adding a feature to the system that highlights the date, time and specific user that last updated the settlement schedule.

When PEXA was alerted to this most recent fraud last week, the second of only two, we immediately increased our monitoring of potential unusual activities surrounding password resets, new user creations and changes to BSB and account numbers. We have been actively contacting practitioners to confirm any such activity is legitimate. No new instances of this fraud have been found, and these two continue to be isolated incidents.

The CHAIR — Can I thank you for your evidence. If I perhaps start at the back end of that with the transactions that have become public in recent days and the issues around that, whilst I accept your point that it is not your system that actually fell down in this case, that is of slight comfort to those who have been impacted,

and in fact I think it does have to be looked at as part of the whole integrated system and transaction that occurred. I guess my point here is: it is a fact that there is a weakness in the system, and in effect you have conceded that by indicating that you have taken steps to plug those weaknesses in the system as broadly construed.

Mr CAMERON — Chair, as I think you may know, I was here during the earlier part of today. The reason for emphasising that the PEXA system itself was not hacked is not to diminish the importance to these people of these incidents, and I will come back to that; the importance is to show that the whole issue of title insurance, for example, does not arise from these incidents. The PEXA system by which land transactions are registered, new owners are inserted, new mortgagees are inserted and old ones depart is intact and was not jeopardised or prejudiced in any way, and in the 1.3 million transactions that have happened, that did not happen.

It is true though that practitioners are part of the network — they are our members as we view it. We are increasing our activity to help them protect themselves, and —

The CHAIR — Their clients.

Mr CAMERON — for that matter the rest of the network, and the clients against these incidents. We think that is appropriate to do. We all see in our daily banking activities the banks increasing from time to time the number of steps that they take when you add a new payee, for example, in your electronic banking. What the banks are doing there is a version of what we are doing here. We are trying to make it harder for these people, who will continue to phish and otherwise attack the users of the system. We are trying to help those users by increasing the protections that are available for them and the rest of the network against these activities.

I keep emphasising, Chair, because it is true, the very isolated nature of the instances where it has occurred. I am sure there have been other attempts made on practitioners and only two have got through, so that is quite significant in itself. But we are nevertheless going to increase the protections we are adding for the benefit of the network.

The CHAIR — You see, I think there is a natural scepticism amongst many in the public about the security of some of these electronic systems. I am not necessarily endorsing that or otherwise, but I think it does exist. This certainly heightens that concern that they may not be able to securely transact in a way where their funds are not at risk in this circumstance. But you would reject that?

Mr CAMERON — I would reject it in the sense that the system is robust. It has proved to be resilient in the face of the attempts we know are made to get to our system. They have all failed to get to our system. Our problem at the moment is addressing a concern with the practitioners' own —

The CHAIR — The problem for you and for the community is that your system necessarily incorporates the systems that add on to the side of it, that actually form the full part of the transactions.

Mr CAMERON — Yes, but it is absolutely integral to the operation of an electronic conveyancing system that practitioners, of whom we have got now over —

Mr SCHMITT — Six thousand.

Mr CAMERON — That those 6000 practitioners do have that access. Otherwise the system does not work. So we have to provide that but also make sure that it is secure, and that is where we are adding —

The CHAIR — But at the moment it is not.

Mr CAMERON — I will let my colleague answer.

Mr SCHMITT — Remember that the only way that those electronic payment instructions can proceed is if they are digitally signed. So that is using a digital signing certificate — gatekeeper approved and accredited. It is actually a hard token that you need to stick in your machine and enter your unique PIN that is relevant to the practitioner. So when we are talking about whose responsibility it is to check those details, that cannot proceed unless you have sat there, reviewed those transaction details —

The CHAIR — And ticked it.

Mr SCHMITT — the account number, and then you confirm that they are correct.

Dr RATNAM — In the case that has been highlighted in the media, are you saying that process was used? It was just the wrong details that were signed off on?

Mr SCHMITT — Correct.

Dr RATNAM — There was not a manual checking, then, of the bank account number?

Mr SCHMITT — So the actual hard token that the practitioner inserted into their machine was not compromised. They entered that and entered their unique PIN number to confirm the details were correct.

Dr RATNAM — But perhaps it would be fair to say that there was a weakness in the manual system around that. So the manual system of the individual person —

Mr SCHMITT — Checked.

Dr RATNAM — checking line by line whether the information they had uploaded two weeks ago was correct, because they had not anticipated that somebody could have gone and changed it.

Mr SCHMITT — Yes.

The CHAIR — And the issue that was pointed to earlier in our proceedings of the process within the transaction where details can be changed right until the very last point, this appears to be an issue that we have heard more than once, including today. Do you have a response to that aspect?

Mr SCHMITT — This probably reflects exactly what happens in the paper transaction today. So changes to a paper transaction happen right up until the last minute as well. So what PEXA does provide is complete transparency of changes. Now, those situations are slightly different depending on which interest group you are. We did hear the earlier —

The CHAIR — Evidence.

Mr SCHMITT — evidence in relation to the UDIA in their part. So what they are worried about is the idea of: are they at fault for changing those details? There are, and we did hear that evidence, very clear audit logs around who changes what and when. So in terms of financial settlement details, for example, payout figures for loan accounts go in on the day of settlement. Most of us in our day-to-day banking have redraw access linked to our home loans. We have credit cards that are linked to reduce the interest we pay. We have our salaries paid in on our home loan; therefore we can access it all the time. In order to give complete certainty of payout figures, then what we actually need to do is stop those transactions that will affect that. Therefore you do not have access to your credit card; we stop you transacting on your transaction banking accounts because that affects the interest you pay, which is all calculated daily. So those things do come in on the morning of settlement, for example. Therefore you do need to have the ability to change those settlement particulars to work out, ‘Well, here is the payout figure. Okay, what does that mean in relation to this?’.

The CHAIR — But the moving parts stop a period before, an hour before or some such?

Mr SCHMITT — What we have, though, is that ability for the parties to resolve that. They choose when that happens. So if I sign everything and it is all ready to go, some do that an hour before, some do that even longer before, but if something does change, then it will un-sign certain parts of your transaction. It was interesting hearing the developer conversation, so what they then put is their figures. So my accounts and my figures are what I sign. If those numbers do not change, then it does not un-sign for me. It will be the party that does change those numbers that changes their particular items. I cannot go in and change the account particulars for you or the amounts that you are to receive, but the other party that does affect the balance — because remember a transaction has to balance. What source funding is coming in — i.e., what I am borrowing and what I am tipping in — needs to match what is going out. So what I am paying out as a loan payout figure, vendor surplus et cetera all needs to balance. So if I change one thing over here, then the changes on the left-hand side and right-hand side need to balance, but it only changes what affects me. So if I am not changing my thing — so in the developer example, their particulars do not un-sign. It does not change. It cannot be me that is at fault because I did not change anything, for example.

Similarly, with land registry documents, we prepopulate information from the registry into a workspace. As Alan was talking about earlier, the reduction of errors and fraud and certainty of settlement is that you will reduce the rekeying that occurs in the PEXA platform because we actually extract the information directly from the land registry, the source of truth. So details are populated into the transfer, for example. So if you go and change those details, it is very clear who changed the details and when, because if we have got a contract between the two of us, then it is clear it is Alan and Justin. If I am changing one of those details, we know Justin is not on the contract. It is clearly my doing. I have changed the details, and therefore I am responsible for that, and there are audit logs that apply that all the way through.

But people want flexibility to be able to change things because things do change. I have final inspection on the morning of settlement. I find something that is wrong. I do not want it to proceed. I want to be able to unsign something to stop it. There are a whole lot of factors that apply that mean that people want to have that flexibility to be able to stop a transaction or not proceed.

Mr MELHEM — As a result of the experience of the \$250 000 —

Mr SCHMITT — It is not \$250 000, by the way.

Mr MELHEM — Wasn't it?

The CHAIR — It was \$110 000.

Mr SCHMITT — Yes, or a little bit less.

Mr MELHEM — Sorry, there was \$110 000. That was the total.

Mr SCHMITT — Originally the payment, but we have been able to recover all but \$110,000 — yes, details.

Mr MELHEM — One-hundred and ten thousand —. Sort of putting it at the other end, 6000 members you have. It is no different from banking. I mean I do my electronic banking, so I make sure I do not have my phone with me if I am doing something so I do not give my details to other people. What sort of education are you doing with your members, for example, and what controls have you put in place to make sure the email that resets a password or a mobile phone to get a PIN —

Mr SCHMITT — It is a multi-factor authentication, for example?

Mr MELHEM — That is right. What sort of controls are you asking your members to put in place to safeguard that? I accept what you are saying, that your platform was not hacked, but the hacking was on the other end where people were able to access the PIN number and made all the changes they wanted, including the account details.

The CHAIR — It is part of the larger process.

Mr MELHEM — I think Mr Davis talked about — and I am not sure if he touched on it, but I think previous witnesses did, about insurers and now people are talking about that we need to have insurance to make sure that if something goes wrong, we can claim it. There was some concern about that becoming a universal obligation and then it would add costs to the transaction. Let us hope we are not going to get there, but are you in the process of getting your 6000 members to have a robust system in place to tackle the example I have just given you?

Mr SCHMITT — Yes.

Mr CAMERON — I mentioned that in my statement, and let me try and say it again.

Mr MELHEM — Briefly, yes, I know you did.

Mr CAMERON — And incidentally we are writing to them all. We wrote to them all last week to tell them about these incidents and to say how they should react, and I have just seen this morning while sitting here a message that has gone out from the New South Wales Registrar-General to all of his electronic lodgement parties, discussing it and giving them the same sort of message I am giving you, which is you have got to look

after your systems, but what we will now do is if you lodge various kinds of changes with us, we might ring you, we might text you, we might email you and say, 'Did you mean to do that?', and we will not activate a new user until we have confirmed that that new user was genuine.

Mr SCHMITT — So outbound calls to confirm that. As we said, as we have been alerted to these incidents we have upped our monitoring, and you are seeing three things happen together: password reset, a new user and change —

The CHAIR — So this is a tightening in security that is occurring as we speak, would be a better word.

Mr SCHMITT — Yes.

Mr CAMERON — Yes, absolutely. And I might say, the earlier incident did occur earlier. So we have been working on this for the last little while to do it. It has not all happened in the last three days.

The CHAIR — Are you prepared now for the 1 October deadline?

Mr CAMERON — I will let Justin talk about that. If you are wondering what he is, he is the Chief Transformation Officer.

Mr MELHEM — It is a big title.

Mr CAMERON — That title indicates that he is responsible for all of these issues around how we deal with the revenue officers and how we deal with the titles officers and that sort of thing.

Mr SCHMITT — So again it probably comes down to the different types of parties that we are dealing with. So for a one-on-one transaction — a consumer buying and selling a house — the system has been operational and working well, and we have seen a significant —

The CHAIR — Except, as I understand it, only about half of the transactions are occurring on the electronic system. What percentage is that now in Victoria?

Mr SCHMITT — We set all lodgements, so again that has been a clear transition as we have moved through dealing with the rollout of PEXA. I can talk you through that quickly if you like.

So initially the way that this was rolled out was using the banks to start with, the major trading banks that represent over 80 per cent of all lending transactions. So they were the starting point in terms of developing out the capability of the system. What we started with, with them, is the discharge of mortgage: so I do not owe any money on my house, I have paid out my loan, there is no-one else involved and the bank users get on and discharge the mortgage. In fact the first transactions electronically occurred in Victoria with caveats, again a single-party transaction for practitioners, and a discharge of mortgage through a bank. Once we got the banks comfortable —

Mr CAMERON — It is worth saying, Chair, that those are 100 per cent digital now in Victoria, because the banks are all on the system and all of those are digital and are required to be.

Mr SCHMITT — Once we did that, then the mortgage transaction — so I am lending you money, again not dealing with anybody else. I have got now a different part of the bank, the bank that is the front end in lodging a mortgage. That then was the next rollout. Then we got to the refinance transaction — discharging bank, incoming bank — and actually using our financial settlement model to exchange the funds in real time. They also then get their security discharged and their new mortgage lodged as part of that process, as in effectively the lodgement occurs in real time as well.

So once we had them then transacting using the money, the next part was then bringing the practitioners on, and we followed a similar model, because you then have the caveat — I am not dealing with anyone else — I then have a standalone transfer. So I now start to deal with a person with potentially no money, but you then move into the next phase where you start to move money. So caveats, those types of things, not dealing with anyone else, now start doing transfers. I am dealing with another party and we start relaying money and having to sign off those things. Then we add the banks in, so now we have the true network business, which is the four-party

transaction. So in Victoria in the last month, the transfers themselves, about 30 per cent of those were lodged through PEXA. The refinances that banks conduct, it is about —

The CHAIR — About 70 per cent were not.

Mr SCHMITT — That is right, but again we are getting all the banks. There are 145 financial institutions that are subscribers to our system. So you need every party to the transaction to be involved for it to go ahead, so we may have the four of us as the different parties. If one of those does not transact digitally, then all of us are out. So this is a true network.

The CHAIR — So you will transact in the traditional way in that circumstance?

Mr SCHMITT — You are forced to transact. There has been a timetable. This mandating conversation has been a long one, and many of the jurisdictions have gone down this path because what is required is — and much of the talk of industry is, ‘Well, I won’t change until I have to’. Then you have got a number of people who want to transition their business to digital but cannot because it only takes one person for the transaction not to proceed.

The CHAIR — Just as a prior thing there, as you indicated, some of those things have been mandated for a short period now. There were fees associated with that, and it is my understanding that the fees went up at the time of those mandated transactions.

Mr CAMERON — Our fees have been public since day one, and the charging policy has been public. We do not increase them otherwise than in accordance with that policy. It was always designed to be in effect cost recovery on an eventual basis. PEXA is not profitable —

The CHAIR — No, that is not what I am suggesting. What I am suggesting is that the actual charge to the consumer was greater for the electronic transaction than for the paper movement, as it were, and parallel with the decision to mandate there was actually an increase in those electronic fees. That is correct, isn’t it?

Mr SCHMITT — Electronic fees that we charge?

The CHAIR — Yes.

Mr SCHMITT — We charge a fee for our service, so that is true.

The CHAIR — Yes, and the Victorian titles side of things also charges fees.

Mr SCHMITT — A land registry fee for the lodgement of documents. In terms of whether the land registry fee was increased leading up to the mandating of the transaction, again that is an annual statutory process.

The CHAIR — I understand it did go up. No-one has yet refuted this.

Mr SCHMITT — That may well have been the case, because annually those fees do change and do increase —

The CHAIR — The reason I am asking is a very simple one: part of the claimed efficiency of this is also the costs.

Mr SCHMITT — Yes.

The CHAIR — If costs go up as part of this, that does not sound to me more efficient, if I can be blunt.

Mr SCHMITT — No, and this is exactly where I was getting to, because the whole idea of this is running that dual process piece that we talked about. What actually industry did was go to the Registrar in Victoria and run a committee discussion that had all the relevant participants in the room — so it had the law society, the property committee, it had the Australian Institute of Conveyancers, it had the banks and the ABA in the room. I am not sure if the revenue offices were there, but all the participants —

The CHAIR — How many consumers were there?

Mr SCHMITT — No consumer was there.

The CHAIR — No, my question is how many consumers were there. The consumers pay; that is my point. You have got everyone there sitting around deciding what consumers will pay.

Mr SCHMITT — Again, I understand that.

The CHAIR — To be blunt. I am being blunt.

Mr SCHMITT — Yes, I agree, but the whole idea is then on running dual process. So in the transition from a paper process to an electronic one I am currently running two processes, and the industry went to the Registrar to say, ‘Are we going to run with one or the other?’, because the longer the dual process runs, the more expensive it is for everyone. Ultimately that is exactly the point that you make, which is that that will make it more expensive for the consumer. As we move to a more efficient —

The CHAIR — Except the charges went up on the consumers when we moved to electronic. That is my point.

Mr MELHEM — Is it?

The CHAIR — Yes.

Mr SCHMITT — There is a fee for using the PEXA system, and there is a lodgement fee, whether that occurs in paper or electronic. I cannot comment on what, in terms of what the registry —

Mr MELHEM — Maybe I can paraphrase this, because I was going to explore that with you further. I may as well do it now. There is some evidence in relation to moving to the electronic system through PEXA that basically it is going to be a more expensive and difficult transaction to go through — that is what some of the conveyancers are saying — compared to the current system. I do not necessarily agree with them, but they say that going with yours is going to be more expensive.

I will follow on by saying that your system is no different to the superannuation industry, for example. They have what they call a clearing house-like industry, an industry superannuation management group that basically looks after millions of members for combined super funds and including banks. It is sort of the economy of scale to be able to get a proper platform in place. That is exactly what you are doing.

Can you just take us through. We have got a current system now, which is a mix of paper, which you started touching on, and then going to a fully digitised platform and servicing five states and banks and 190 institutions or thereabouts. Can you just address those concerns — the conveyancers saying, ‘Our fees are going to go through the roof. It’s going to be more difficult’. Can you take us through that. What is your business plan? Are consumers going to be better off or worse off?

Mr CAMERON — The New South Wales government is going through the same issue, and they, through their Registrar-General, commissioned an inquiry — a report — by KPMG, which is available on their website. I have not looked at it recently, but my recollection of it is that it suggests that the net effect will be to the consumer’s advantage, and it should be, because if you think of the steps that a fully electronic conveyancing transaction avoids that presently involve time and money, it should be cheaper. Whether all those savings get passed on is not actually within PEXA’s control; it is not within any ELNO’s control. It is the marketplace.

The CHAIR — But it equally could be that you create a large and expensive super structure that then needs to be serviced by large fees, and actually it is not cheaper. I am just putting to you a contrary view. Is PEXA a large, cumbersome and expensive super structure that consumers will ultimately pay for is my question to you.

Mr CAMERON — I mentioned earlier that there are several other candidate ELNOs out there. I think the thing that in theory should mean that PEXA is never actually able to behave in that way would be the arrival of its own competition. Plus there is also the possibility of regulation through ARNECC. These issues are certainly current issues that PEXA is dealing with, and we deal with them by consultation with local registrars and with ARNECC all the time. How can I put it? There is no present regulatory resolution to all of that because the potential arrival of competition may make it all completely unnecessary in the sense that any fear you might have that we could gouge the market should be addressed by the arrival of competition.

Mr SCHMITT — Our pricing policy was also set in an environment where we had no market presence at all. We had zero market share competing against paper, with no mandated timetables or any of those things. Those prices were set then, and we have also then been locked into a maximum CPI increase regime that we negotiated with the entire industry — all of the conveyancers, all of the banks — in terms of using our service. We have contractually locked in with all of them a maximum —

The CHAIR — How many consumers were there? It is a terrible and devastating point that I have not actually heard of a single consumer involved in this.

Mr SCHMITT — But that is the KPMG report that we are talking about.

Mr MELHEM — I think to be fair it would be very hard for you to go and find a consumer. You were talking about conveyancers there. I am buying a house today, so now I am a consumer for the next seven days because I am signing the paperwork. While I am supportive of consumers getting involved and everything, and I think they should, in practical terms you have got to rely on the conveyancers, the lawyers — the people actually representing consumers — and you then would hope that people like ourselves in government and the regulators will make sure these people are not getting screwed over.

Can you just take me through the ownership of Property Exchange Australia? Who owns you? I have got a good idea, but —

Mr CAMERON — You do, in part. PEXA was set up as National E-Conveyancing Development Limited. It only changed its name to PEXA four or five years ago now. When it was set up in 2010, it was set up by New South Wales, Victoria and Queensland as a company limited by guarantee. Western Australia came in, and then we converted to a company limited by shares. We also incidentally bought for shares from Victoria, New South Wales, Queensland and Western Australia their existing e-conveyancing infrastructure. The states put in cash, but they also, for shares, put into PEXA the existing work done in Victoria in particular, because you had ECV, Electronic Conveyancing Victoria —

The CHAIR — Not necessarily an unmitigated success.

Mr CAMERON — We paid you value for it, Chair.

The CHAIR — I understand that.

Mr CAMERON — I will not make any other comment. We took all of that in, and then we started bringing in the private sector, because it was clear that the risks were too great for the public sector. The public sector was not willing to take the risk on this. The four big banks came in and then Macquarie and then Link and then Little, as in the Little Group, Mr Paul Little. We also have a small — what is it now? — 2 per cent shareholding held by the staff and ex-staff. Have I missed anybody who will be upset when I have left them out?

Mr SCHMITT — No, that is everyone.

Mr CAMERON — We are, as is publicly known, looking at a dual-track process now to list on the ASX or be sold by the end of the year. If that happens, Victoria is likely to sell. Victoria presently holds about 7 per cent of the capital of the company. The largest single shareholder is Macquarie followed by Link and the Commonwealth Bank and the Western Australians.

Mr MELHEM — That would be part of the set-up, even post. Listing on the stock exchange is basically your current visible shareholders, which are the banks and various state governments and they will be your future customers, and then it is fee for service, so basically if you are too expensive, they will move away from you. So really profit is important, but it is not —

Mr CAMERON — I am reluctant to speak for any or all of the states, but it is my understanding that all four states are likely to sell in one way or another as part of this process, which will remove that issue, if it is an issue. But in fairness the states did contribute initially some cash and then valuable assets and without them it would not have happened.

The CHAIR — Just to follow through with the issue of 1 July, when as I understand it in Victoria the electronic transactions will be mandated —

Dr RATNAM — 1 October.

The CHAIR — 1 October, rather.

Mr CAMERON — I was going to say you were giving me news there, Chair.

The CHAIR — 1 October. Yes, you were slightly worried about that.

Mr CAMERON — No, I am not.

Mr MELHEM — You have got five days to go.

The CHAIR — That is right. 1 October. Do you think everything is in place for that to occur seamlessly?

Mr CAMERON — I will let Justin address that because he is closer to it than I am.

Mr SCHMITT — I guess that was what we were getting to around the different groups. I think in terms of the standard one-for-one transaction, absolutely. You heard evidence earlier from the UDIA?

Mr MELHEM — About the 500, yes.

Mr SCHMITT — Yes, for those ones. What they are looking for is an ability for someone to click a button and be able to say that that will sign off on all of the details of their 500 transactions. At the moment that process we talked about of using the token and putting it in your machine, what they are looking to address is that they do not want to have to do that for 500 or 600 transactions each time. We have an interim measure that will make that much easier for them that will be released in the next few weeks, and we are working with them to have those controls in place that they are looking for in that November time frame. That is where they will be able to click a button —

The CHAIR — November, October — it seems to me there is a one-month disjuncture there.

Mr SCHMITT — That is it, so it depends on what transactions they have occurring. This is why you heard the UDIA saying that we are working with their members to identify: have they got any of those big lot transactions that occur in that period? If they do — and this is a problem because they are saying that is the expensive process because we want partners of our law firms to be the ones that are doing that signing — then potentially we work with the Registrar to say, ‘Well, potentially those are the ones that you would be pushing’.

Mr MELHEM — How do they do it now? Can I do a bulk 500 today?

Mr SCHMITT — What they are talking about is they want a —

Mr MELHEM — No, the current system.

Mr CAMERON — Today, paper.

Mr SCHMITT — Paper, so this —

Mr MELHEM — So I have got to do them individually 500 times at the moment?

Mr SCHMITT — Yes. At the moment what they are doing is the partner is sitting there and signing them all —

The CHAIR — Hansard will not quite get that, but he is signing sheet after sheet.

Mr SCHMITT — That is the process that they do in paper.

Mr MELHEM — I am trying to understand it. That is how we do it at the moment — manually, one by one. The industry is saying, ‘Come 1 October we want to be able to go and do one transaction for 500’. I mean to me, talking about consumers —

The CHAIR — That could be a good thing.

Mr MELHEM — Well, it could be a good thing; it could be a bad thing. It could be a good thing because basically there could be efficiency, hopefully saving money, less fees et cetera. The bad thing could be that people get lazy and not do their due diligence on the 500 individually and just do a bulk and mistakes could occur. I need to be frank: whether this system is ready on 1 October, 1 November or 1 December I do not really care as long as it is done properly, so therefore basically — and see if you agree with me or not — you need to make sure it is done correctly.

Mr SCHMITT — We completely agree that it needs to be done correctly. That is what we want to be able to give them. At the moment what we are saying is that an interim solution that will get them to where they want is that we will take them to an individual signing screen for every single one of those. They click one button and it moves to the next one, and it has all those relevant details that you just talked about on that screen. I will then go to the next one, go to the next one, go to the next one. The November solution that we are talking about is that that is in a table format. You have all the relevant information there, but they are across the screen and you will have as many as we can fit on a screen that has that relevant information so that you can check them. Because we agree with you: security and correctness is the key.

Mr MELHEM — The state is still to check them, though. They need to tick each one of them. Even if we move to the new system come 1 October, are there still going to be requirements where when I have got a spreadsheet of 500 I will still have to tick the one to 500 before I process it? Or not?

Mr SCHMITT — That is what we are leaving to them to decide. Let us use a 500 example. I could send them all on the one day, but I also need to stagger them. I have got a unit development for 500. If I settle them all at 11 o'clock, which is completely possible in the PEXA environment, I have 500 people wanting to move in at the same time and I am releasing 500 sets of keys and we have so many lifts and people being able to move into their property et cetera. So what they do is often they will say, 'Yes, you can do that', but you also like to be able to stagger them and they do not all necessarily settle at the same time. What we want to give them is the flexibility to choose what it is that they settle and when they settle. Whether that means I am checking all the details, because I am responsible for —

The CHAIR — You might be selling all 500 pieces of property —

Mr SCHMITT — It is unlikely that that will be the case.

The CHAIR — to a property management group, for example.

Mr SCHMITT — Possible, but it is unlikely they will buy all 500. But you might have a subdivision at Werribee or Berwick or whatever where there are 500 of those going to one property group, which again is easy enough, but then you are dealing with only two parties. You are not necessarily dealing with individual consumers all going at once. That is why I was getting to the point that all the different interest groups and all the different scenarios actually have different outcomes, potentially.

We completely understand what the UDIA is saying, and we are working actively with them. We want to give them the flexibility of what they want. We just need to put the technology in place to give them the flexibility of what they want, because at the moment what they are saying is they do not want to enter the pin number 500 times, doing all those things, which is what we say we do want — the example we talked about earlier as the before example. We want people to do that. We have got to find that balance between the different industry groups — as we said, the conveyancer or lawyer that is a small operation doing a handful of settlements, because conveyancing is a small part of their work, out to a law firm acting for a developer that is doing 500 lots at the same time. We have got technology solutions that deal with all of those. It is making sure that we roll them out at the right time and getting those right dates.

Mr MELHEM — That requires some sort of regulation to basically address the issue you talked about where they need to actually tick the boxes instead of just —

Mr CAMERON — No, just us.

Mr MELHEM — Just you?

Mr SCHMITT — And the consumer. Who are the users of our system? Ultimately the consumer is the beneficiary, and we completely agree and get that, but the actual subscribers to our platform are lawyers,

conveyancers, banks and developers. So those people are the ones. When they sign, using their token, and sign off with their gatekeeper-accredited digital certificate, they are the ones who are confirming the details are correct.

The CHAIR — Samantha has a point to make, but just on that: it will no longer be possible for somebody to do the transaction themselves, will it, under your system. There are people who we are aware of —

Mr SCHMITT — Who do self-conveyancing.

The CHAIR — Who do self-conveyancing manually and move the documents and do all the ticks and crosses and so forth. That will no longer be possible, will it?

Mr SCHMITT — That is something as to whether the regulation of —

The CHAIR — If practically it will not be possible —

Mr SCHMITT — If that is what Land Use Victoria is saying — that now the only way to do this stuff is electronically — then a consumer is not a user or subscriber of that system.

The CHAIR — They would have to go to huge effort to become such a person, or they could not do it.

Mr CAMERON — We would not let them.

Mr SCHMITT — They could not do it.

The CHAIR — So they would be cut out of that period.

Mr CAMERON — We have been aware of that for some time, Chairman, and we have considered various options for dealing with those people. At the end of the day, it is the Registrar's issue as to how to deal with them. PEXA has tried to come up with solutions for it which would involve minimal cost — in effect what you might loosely call a no-advice, an execution-only, service — through a member of our platform, but that has not been done yet. Whether it becomes necessary to do it —

The CHAIR — So my point is essentially right.

Mr CAMERON — Yes, absolutely. It is right.

The CHAIR — On 1 October no individual consumer will be able to process their title movement themselves.

Mr CAMERON — Through PEXA.

Dr RATNAM — In terms of picking up that point about regulation and past regulation, you have adopted a CPI increase kind of policy. Is that an internal policy? That is not regulated in an external environment or —

Mr SCHMITT — It is contractual, because we contract with every individual law firm or conveyancing firm and bank. At contract law we have agreed with every subscriber our pricing policy, which is available on our website and will detail in which prices can change. We cap that at CPI with the ability to pass through significant —

The CHAIR — CPI Australia wide?

Mr SCHMITT — It is a national price.

The CHAIR — Yes. As opposed to the CPI that occurs in Victoria or in Queensland or —

Mr SCHMITT — Yes. So we have identified the March quarter CPI as the one we use, but it is detailed, and then there is the ability to pass through certain costs in certain circumstances, which are again detailed.

Dr RATNAM — So theoretically if all your members/users agreed, that could increase to beyond CPI as a pricing policy. It is kind of self-regulated in terms of between you and the contract that you sign.

Mr SCHMITT — Yes.

Dr RATNAM — Before I believe you said there is nothing preventing another ELNO from being in the environment. At the moment another one has not emerged, as far as I understand.

Mr CAMERON — Two have announced their intention to emerge. The second one of them is backed by Australian Securities Exchange Ltd, which is a very serious company, so you would think there is some possibility that that will happen, yes.

Dr RATNAM — I am asking this also in view of what is happening in terms of the commercialisation of some of the Land Use Victoria functions and potential implications, which I would like to move on to as well. When the 1 October deadline and the chronicisation proposal and intended outcome was determined, you were the only operator because there was no other. What regulations or caveats or control support were around that, given that the industry was being asked to transition in terms of this new platform but there was only one operator that could actually provide that service? Was it all negotiated by contract with your users — how the price regulation and everything came in?

Mr SCHMITT — In terms of the contractual price regime, as I alluded to earlier, that was all done when we initiated the service, so that was back in 2013. We did that, like I say, with zero market share and no mandatory timetables for using our service. That has not changed, so the maximum price increase since then has been the CPI, although, like we say, there is the ability in changing circumstances contractually where we could pass through certain costs. For example, we acquire data that we were talking about earlier for populating workspaces from the registry, and we pay a fee for that. That is part of our service. If that quadrupled, for example, then we would have the ability to be able to reflect that in our pricing.

Dr RATNAM — On that point, what are the possible implications that you envisage of the commercialisation of some of these functions of Land Use Victoria? What impact could that have on the service and functions you are providing at the moment — and prices, for example?

Mr SCHMITT — Fees is clearly one, but other models have adopted a CPI regime, as you heard in earlier evidence as well. Technology and the point that we were making earlier around what we think that the committee needs to have a think about is making sure that there is investment in services. As we were saying, part of the way PEXA has gone about delivering its service has integrated with the land registry so that the process actually occurs in real time. Through registry services we offer a number of services that can provide greater certainty and outcomes for consumers. Some of those include a title activity check. When you open a PEXA workspace we have an integration link to the registry that says, ‘Has there been any activity on the title going back 90 days?’.

Then we do it for the period of the settlement process. In Victoria that is somewhere between 90 and 60 days. We manage that monthly, weekly and then daily as you lead up to settlement, so we are continuing to interrogate the register to see if anyone else has lodged a dealing. If someone lodges a caveat or those things, that would stop settlement. You as a subscriber get an alert: ‘Hang on. There’s a problem here. Don’t proceed with settlement’.

Dr RATNAM — You pay for that service every time you ask, and you are paying Land Use Victoria, paid bulk.

Mr SCHMITT — Yes, per workspace. Yes, but that service is all included in that fee.

Dr RATNAM — And those types of services potentially, if they go beyond CPI, for example, could impact your ability to deliver as well?

Mr SCHMITT — It could impact what we do too, so we also offer lodgement verification. We talked about pre-populating documents. In paper I do not get to walk that down to the registry and say, ‘Look, can you just check this? If I handed you this, would you accept it?’. In the PEXA environment, that is exactly what happens, so we actually send a completed document prior to settlement to say, ‘If we were to send this to you, will you accept this for lodgement — yes or no?’, so we either get a tick or a cross. If it is a cross, then you know you have got a problem with your document; it will not settle. If you have already got a tick, you know that the registry has had a look at the document — the transfer, the mortgage, those things — so the chances of

something going wrong are very, very small because it has already had someone look at it from the registry. That is an IT service, but again it is more certainty and a greater chance that your document will be lodged and therefore registered, you will be on title quicker and you will get your money faster as a consumer as you are selling because the settlement will proceed.

Mr CAMERON — I think Dr Ratnam's question was about what change we see with commercialisation. I think the simple answer is: in New South Wales and South Australia we have not seen any significant change. The issues that we are wary about that I mentioned earlier really come down to the continued availability and reliability of those services, because unless the land registries — and I might say in passing the state revenue offices — remain up and available all the time in the same way as we are expected to be, it blocks everything. And you do not actually know what it is that will cause it, but when you have got an electronic network every bit of it has got to be working properly. Therefore we have got to be up if we want them to be up.

Dr RATNAM — Do you currently share any databases or information with Land Use Victoria or are they quite separate in terms of the information stored there?

Mr SCHMITT — Separate.

Dr RATNAM — And you anticipate that continuing?

Mr SCHMITT — Yes.

The CHAIR — My final question is around some of the evidence that has been put to us that there is a greater risk of the 1 October date parallel with the commercialisation process. Now, in one sense they are strictly separate processes, but it has certainly been put to us that they ought not to proceed at precisely or very close to the same time.

Mr CAMERON — I am not sure it is a matter for PEXA to comment on, Chairman. All I would say is that the states have been flexible to some extent about their mandating timetables. Western Australia extended one of their mandating deadlines by six months.

The CHAIR — When did they do that?

Mr CAMERON — They were going to mandate on 18 May, and they have made it 18 November, if I recall correctly.

Mr SCHMITT — December.

Mr CAMERON — So the states can do that, and if Victoria had a concern, I am sure they would. I might say that I think in the long-term interests of the industry, mandating 100 per cent is the right outcome, and the only way of getting to 100 per cent is eventually to mandate, but when you do that is a matter that you can be flexible about.

The CHAIR — The precise time.

Mr CAMERON — Yes. The message about mandating is important because there are in our community people who will not start the process until you tell them that they have to do it. The significant advantages for the community will not come until it is 100 per cent.

Mr MELHEM — But that will not have any impact on the commercialisation process. They are two separate issues, aren't they?

Mr CAMERON — I am not aware that it will, but I am not presuming.

Mr MELHEM — I am not either. That is why I am asking.

Mr SCHMITT — I think we agree.

The CHAIR — It is certainly what we have heard, though. That is why I am testing that with you.

Dr RATNAM — If there are any data breaches, are you regulated or mandated to report that to anyone?

Mr SCHMITT — Yes, privacy laws apply to us the same as they apply to anyone else.

Mr CAMERON — They apply to everyone.

Mr SCHMITT — So we are regulated. ARNECC is one, but which then has an obligation to each registry, so we would have to notify the Registrar of those things. That is all included. The legal framework is a national law that has been adopted, so each jurisdiction has passed enabling legislation.

What then occurs out of that is two sets of rules, so model operating requirements and participation rules. So the model operating requirements are what apply to PEXA as an operator, which each jurisdiction again adopts, which is then what regulates us. ARNECC comes up with the model rules. You also then have the participation rules. Now, those model participation rules are what apply to users of the Electronic Lodgement Network — so lawyers, conveyancers, banks that use our system; they are the rules that apply to them. The model operating rules set out what reporting we would have to do for those things.

Mr MELHEM — Would you share your data with third parties?

Mr SCHMITT — No. So again there are data obligations in here that talk about how we would only be able to do that — we have to have the privacy laws applying to us as well, but then because really it is your and my —

The CHAIR — Which privacy jurisdiction applies to you?

Mr SCHMITT — We would have the Commonwealth.

The CHAIR — The Commonwealth?

Mr SCHMITT — Yes. Actually it is probably Victoria — each jurisdiction as well, everywhere. So again, we operate nationally, so we would have both. We also then have obligations in relation to data in those rules, so obligations to each jurisdiction on top of that.

Dr RATNAM — Can I just ask: in terms of operation, you mentioned 2013 — did you start operating in 2013?

Mr SCHMITT — The first lodgements occurred in 2013.

Dr RATNAM — So in the five years you have talked about, there have been two data breaches in that five years of the 1 million transactions. Can I just ask, with that first breach —

Mr SCHMITT — Well, if you class that as a data breach, yes.

Dr RATNAM — Is that being considered a data breach?

Mr CAMERON — I do not think it is a data breach.

Dr RATNAM — The first breach or issue that occurred out of the 1 million transactions at the site, was that a similar kind of scenario?

Mr SCHMITT — Exactly the same scenario.

Dr RATNAM — So through a conveyancer, user details?

Mr SCHMITT — Logged in as the conveyancer or lawyer.

Dr RATNAM — And when did that occur, that one?

Mr SCHMITT — That was three weeks ago.

Dr RATNAM — So both have occurred within a short time frame, you are saying?

Mr SCHMITT — Yes.

Dr RATNAM — Okay, all right.

Mr SCHMITT — Which is why we are saying we have been working on it to try and come up with other measures that address these; they have happened in a short time frame though.

Dr RATNAM — And my final question is: do you have cause or reason to ask for aggregated data from Land Use Victoria or to access the aggregated data at the moment from Land Use Victoria?

Mr SCHMITT — The only data is to actually report back to them in terms of the broader numbers. So when I was able to give you those percentage numbers of what percentage of overall lodgements, we had to get the number to say, 'Well, we've got half'.

Dr RATNAM — Yes. Do you have to pay for that service?

Mr SCHMITT — Not on that, because it is just reporting back into industry around, 'We're at 97 per cent of all refis. We're over 55 per cent of all lodgements' et cetera.

Dr RATNAM — Do you expect that to change with any of the functions that are going to be commercialised going forward?

Mr SCHMITT — I think that would be a matter that may play out. If I was a private operator running the business, I would want to know what percentage I have got coming in the different channels.

Dr RATNAM — Yes, and you want the same access to the data that you have to be able to report back currently —

Mr SCHMITT — Yes, so whether that is through the regulator or through the operator.

Dr RATNAM — Okay. Great. Thank you very much.

The CHAIR — Just two further questions. You are a company limited —

Mr CAMERON — A company limited by shares now. It was formed as a company limited by guarantee, yes.

The CHAIR — Is there an annual report or something that is produced? Where do, as it were, the shareholders — that are currently some states and so forth — have reports?

Mr CAMERON — They would all have it or be entitled to it. So the 2017 annual report of the company is available to shareholders. It is probably on the ASIC database.

The CHAIR — Right.

Mr CAMERON — But if you are asking for it —

The CHAIR — No, no, I am just a simple fellow who is interested in state money and where it is reported to Parliament.

Mr SCHMITT — That one would be through Treasury.

Mr CAMERON — Treasury, yes. Treasury is the shareholder.

The CHAIR — Treasury is the shareholder, and so if I look in the Department of Treasury and Finance annual report I will presumably see something on this? The Secretary is nodding. Good, that is helpful.

The second point is the two new ELNOs that are in the wings — are any of those groups that are likely to bid into the commercialisation processes, do we think?

Mr CAMERON — We would have no idea. We do not know.

The CHAIR — Would there be any conflict in an ELNO also having a —

Mr CAMERON — I am not sure. It has not been made clear to us that Victoria would not welcome an ELNO as a bidder. We are in fact not, interestingly, not a bidder, but I am reasonably certain that was not from Victoria's point of view limited to us. I think they took the same view generally.

Mr SCHMITT — You would assume so.

The CHAIR — You have no view on it, but your understanding is the Victorian process will not accept that an ELNO could bid or be part of a bidding process?

Mr CAMERON — I would rather you did not quote me as the authority for that, Chair, but that is my understanding — yes.

The CHAIR — All right, thank you. Can I thank you for your comprehensive evidence and for bearing with our impertinence on matters, but we are interested to understand this from the public perspective.

Mr CAMERON — Thank you very much.

Witnesses withdrew.