

BRIEFING PAPER

SALE OF THE WA LAND REGISTRY

THE **ESSENTIAL** MEMBERSHIP FOR
THE LEGAL PROFESSION

Prepared by the Law Society of Western Australia

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SALE OF THE WA LAND REGISTRY

Issue

The Western Australian Government has proposed to privatise the WA Land Registry. Privatisation can produce a range of benefits, including improved customer service and greater investment in technology. However, this will usually only be the case where the private owner has an incentive to act in the public interest because of strict regulation or because the service or asset is in a competitive market.

Background

Landgate was established in 2007 under the *Land Information Authority Act 2006 (WA)* ("LIA Act") as Western Australia's Land Information Authority. It is responsible for Western Australia's land and property information and operates the Western Australian Land Registry.

Pursuant to s8 of the LIA Act, Landgate was established with the dual objective that it: (1) acts as a body through which the State performs certain functions related to land information on a basis that does not involve making a profit; and (2) generates for the State a fair commercial return from providing goods and services on a basis that may involve making a profit.¹ Permitting Landgate to engage in commercial activities has helped it to become financially self-sustaining and make significant investments in technology.² This puts Landgate in a unique position compared with other Australian land registries.

Recently, the privatisation of the following Australian land registries has occurred:

- In 2017, the New South Wales government transferred operation of the NSW Land and Property Information (LPI) unit of the Department of Finance, Services and Innovation to a private consortium under a 35 year concession, for \$2.6 billion.³
- In August 2017, the South Australian Government announced the privatisation of its land titles registry and services unit, 'Land

Services Group' to a private consortium. The South Australian government received \$1.6 billion for the sale operating under a 40 year term.⁴

The Victorian Government has also recently announced its proposal to sell Land Use Victoria which is its primary agency for land administration and land information.⁵

Policy Summary

Law Council of Australia

The Law Council of Australia was strongly opposed to the sale of the LPI unit by the NSW government and urged the government not to implement the plan.

The Law Society of Western Australia

The Law Society notes that without proper consideration and regulation of any sale, there is potential for privatisation to result in the deterioration of the current high standard and value of Landgate's services for the WA public.

Funding Implications

Privatisation gives a significant infrastructure boost to the State due to the revenue received from the sale, and can increase the efficiency and quality of remaining government activities, reduce taxes and shrink the size of government.⁶

However, the Law Society queries whether the one-off short term financial gain the government will receive from the sale will provide greater value to the Western Australian public than the future revenue raised from the registry remaining in the public sector, especially given that Landgate is capable of being financially self-sustaining and able to commercialise new opportunities.

Policy Position

The Law Society of Western Australia opposes the privatisation of Landgate, unless the Government commits to:

- ensuring the continued integrity of the registry and the safeguarding of sensitive data;
- maintaining the effectiveness of the current system of indefeasibility of title, guaranteed by the WA Government, without need for title insurance;
- addressing the fact that a private monopoly owner may not have incentive to provide high quality services at a lower cost; and
- ensuring the current high standards of customer satisfaction are maintained.⁷

NOTES

- ¹ *Land Information Authority Act 2006 (WA)* s 8(a)(b).
- ² *The Mandarin, Landgate and the innovation floodgate: building a program, keeping it fresh* (20 February 2018) <<https://www.themandarin.com.au/88167-landgate-innovation-floodgate-building-program-keeping-fresh/>>
- ³ *Government News, NSW land titles lease sold to consortium for \$2.6 billion* (12 April 2017) <<https://www.governmentnews.com.au/2017/04/land-titles-lease-sold-consortium-2-6-billion/>>
- ⁴ *Australian Financial Review, Macquarie and Canada pension fund win SA \$1.6b land titles* /10 August 2017) <<https://www.afr.com/business/banking-and-finance/financial-services/macquarie-and-canada-pension-fund-win-sa-16b-land-titles-20170810-gxtfov>>
- ⁵ *Law Institute Victoria, Media Release - Proposed sale of land titles registry a risky move* (22 August 2017) <<https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/August-2017/Proposed-sale-of-land-titles-registry-a-risky-move>>
- ⁶ *Goodman, John and Loveman, Gary, Does Privatization Serve the Public Interest?*, *Harvard Business Review*, November-December 1991 <<https://hbr.org/1991/11/does-privatization-serve-the-public-interest>>
- ⁷ *In the July to September 2015 quarter, more than 80 percent of Landgate's customers rated it 8, 9 or 10 out of 10 for overall satisfaction: Landgate, Customer service - our top priority* <https://www0.landgate.wa.gov.au/news/latest_news/customer-service-our-top-priority>