

Report 12 of 2018

Land services commercialisation project



Report of the Auditor-General

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Auditor-General's Department

www.audit.sa.gov.au

Enquiries about this report should be directed to:

Auditor-General
Auditor-General's Department
Level 9, 200 Victoria Square
Adelaide SA 5000

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Level 9
State Administration Centre
200 Victoria Square
Adelaide SA 5000
DX 56208
Victoria Square
Tel +618 8226 9640
Fax +618 8226 9688
ABN 53 327 061 410
audgensa@audit.sa.gov.au
www.audit.sa.gov.au

The Hon A L McLachlan CSC MLC
President
Legislative Council
Parliament House
ADELAIDE SA 5000

The Hon V A Tarzia MP
Speaker
House of Assembly
Parliament House
ADELAIDE SA 5000

Dear President and Speaker

**Report of the Auditor-General:
Report 12 of 2018 'Land services commercialisation project'**

As required by the *Public Finance and Audit Act 1987*, I present to each of you Report 12 of 2018 titled 'Land services commercialisation project'.

Content of the Report

The land services commercialisation project involved the appointment of a private operator to deliver a range of land services functions on behalf of the SA Government. Following a four-stage procurement process, Land Services SA was appointed to deliver certain lands titling and property valuation services for 40 years.

Our review assessed whether:

- the potential costs, benefits and risks of the proposed transaction were properly evaluated before proceeding with the commercialisation
- a fair, open and transparent procurement process was undertaken to select the service provider
- the SA Government and service provider's compliance with the transaction documents and contract management risks were properly managed.

Acknowledgements

The audit team for this report was Salv Bianco, Ken Anderson and Grace Lum.

We appreciate the cooperation and assistance given by staff of the Office of the Registrar-General, Office of the Valuer-General and the Department of Treasury and Finance during the review.

Yours sincerely

A handwritten signature in black ink, appearing to read "Richardson", with a long horizontal flourish extending to the right.

Andrew Richardson
Auditor-General

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1 Executive summary

1.1 Introduction

The land services commercialisation (LSC) project involved the appointment of a private operator to deliver a range of land services functions on behalf of the SA Government (the land services commercialisation transaction).

Following a four-stage procurement process, MIRA, trading as Land Services SA (the service provider) was appointed to deliver certain lands titling and property valuation services for 40 years. The service provider started delivery of these services on behalf of the SA Government on 13 October 2017. It also acquired exclusive rights to commercialise certain land services data and introduce new products to the market subject to SA Government approval. The total commercialisation transaction proceeds were \$1.605 billion.

The Registrar-General and the Valuer-General continue in their roles as statutory officers following the commercialisation transaction and legal, policy and regulatory functions for land services remain with the SA Government. The Valuer-General also continues to be responsible for maintaining the statutory valuation roll for all properties in South Australia, overseeing public sector valuations and the valuation objections process.

The Office of the Registrar-General (ORG) and Office of the Valuer-General (OVG), together with the Commercial and Economics Branch (CEB) of the Department of Treasury and Finance (DTF), are responsible for monitoring the service provider's performance and compliance with the transaction documents.

We reviewed the LSC project as lands titling and valuation services are critical public services that are vital to maintaining confidence in the State's property market.

Our review assessed whether the controls exercised by the SA Government over the following elements of the land services commercialisation transaction provided reasonable assurance that the transaction was conducted properly and in accordance with law:

- the potential costs, benefits and risks of the proposed transaction were properly evaluated before proceeding with the commercialisation (project initiation)
- a fair, open and transparent procurement process was undertaken to select the service provider
- the SA Government and service provider's compliance with the transaction documents and contract management risks were properly managed.

Sections 3 to 5 provide detailed findings and recommendations from our review. Detailed background on the LSC project transaction and contractual arrangement is provided in sections 7 to 10.

1.2 Conclusion

Our review of the project initiation and the procurement stages of the LSC project found that in the main, sound processes and controls were adopted and comprehensively documented. These controls provided reasonable assurance that there was proper evaluation of the initiative and a fair and transparent procurement process. We did, however, identify some areas where procedures, practices and controls could be improved.

The SA Government retains ultimate responsibility for maintaining the ongoing integrity and security of the land registry and valuation roll under the commercialisation transaction contractual arrangements. The contractual arrangements provide a sound base to ensure the proper performance of the outsourced services and the maintenance of statutory functions and protections.

We found the SA Government is progressing the implementation of a contract management framework to manage contract compliance and contract management risks, 12 months into the operating term of the contract. However, there were delays in establishing several elements of the framework and a number of key elements are yet to be fully implemented. As a result, proper contract management controls are not fully established and operating.

To ensure the effectiveness of the outsourcing arrangement with the service provider, the SA Government needs to be vigilant in actively monitoring contract deliverables, service level reporting and the effectiveness of service provider systems and controls over the 40-year term.

1.3 What we found

We found comprehensive analysis was performed on key aspects of the proposed commercialisation transaction. Controls over project initiation could have been improved by formally documenting the rationale and supporting analysis for adopting the final commercialisation model proposed to the market.

All binding offers received exceeded the upper end of the reserve price range. MIRA was assessed as having the lowest overall risk to the State and highest offer price.

We found the processes and controls over selecting the service provider were, in the main, sound and comprehensively documented. We did, however, identify the following areas where controls could have improved:

- retention value and reserve price calculation methodology
- financial analysis of a potential requirement arising from a specific contractual condition proposed by a bidder
- disclosure of contractual arrangements in line with DPC Circular requirements.

Our review also indicated that progress has been made in implementing the SA Government's contract management framework for ensuring compliance with the transaction documents and effective service provider performance. However, the following key elements of effective contract management control were not fully implemented or finalised:

- the use of contractual audit provisions to obtain independent assurance over service provider systems, controls and service level reporting
- the nature and timing of mandatory reporting against operations manuals on day-to-day processing tasks.

We found there were delays in implementing a number of elements of the SA Government's contract management framework, including:

- the ORG Compliance Management Procedure and compliance register
- the service provider transition plan
- service level reporting on lands titling and general services
- ORG and OVG business unit risk registers capturing contract management risks from the new outsourced service provider arrangement
- service provider identification, assessment and treatment of risks relating to continuity of services, contract deliverables and IT systems.

We also noted the importance of the SA Government implementing ongoing arrangements to ensure continuity of public access to the land registry in the event of major disruption to service provider systems.

Further detail on what we found is provided in sections 3, 4 and 5.

1.4 What we recommended

We recommended the SA Government implement the following actions promptly:

- establish a risk based audit plan and function covering service provider systems, controls and service level reporting
- finalise a formal schedule of mandatory service provider data provision and reporting requirements
- perform ongoing monitoring to ensure land information system backups are being performed regularly in line with the Land Services Agreement and consider establishing a 'hot site' backup and disaster recovery model for the land registry.

The implementation of regular independent audit coverage over service provider systems, controls and service level reporting is critical to ensuring the ongoing integrity and security of the land registry and valuation roll.

For future commercialisation or outsourcing projects, the SA Government should:

- confirm that all elements of business case planning and analysis required by Treasurer’s Instruction 17 and supporting guidelines have been completed and formally documented
- consider engaging an independent expert to review the reasonableness of retention value and reserve price calculation methodologies
- perform formal analysis of maximum potential financial exposures arising from contractual conditions proposed by individual bidders
- ensure information on all eligible and significant contracts is disclosed in line with DPC Circular requirements
- implement formal monitoring and compliance frameworks for contract deliverables from the start of the contract
- finalise detailed transition plan activities and timetables promptly
- implement contractual arrangements and governance structures that enable reporting on all service levels as soon as possible after the start of the contract.

Further detail on what we recommended is provided in sections 3, 4 and 5.

1.5 Response to our recommendations

The Chief Executive, DTF responded to our report indicating that:

As noted in your report, the LSC project is a significant and complex project and your review and findings will be carefully considered by my department and DPTI, both in regard to your findings, recommendations and implications for the management of current and future commercialisation projects.

As two agencies were involved in the LSC project, DTF liaised with the Department of Planning, Transport and Infrastructure (DPTI) and prepared a consolidated response to our report and recommendations.

The response from DTF also included specific comments for certain findings and recommendations. These are summarised in the individual sections of this Report where the findings are detailed (see sections 3, 4 and 5).

1.6 Key future challenges

The LSC project is a significant and complex project and there are a number of challenges ahead in managing the completion of the transition and implementation of ongoing contract management arrangements. The more significant challenges include:

- ensuring contract management functions within ORG and OVG are adequately resourced to effectively manage the ongoing contractual arrangements following the transition period
- developing a contract management approach that will ensure the ongoing integrity and security of the registries and valuation roll as service provider systems and processes become standalone
- establishing robust and up-to-date business continuity and disaster recovery arrangements for lands titling, valuation and general services systems and operations
- retaining appropriate institutional and technical knowledge within the SA Government to adequately understand contract management risks and interrogate service provider performance.

Further detail on future challenges and lessons for future commercialisation and outsourcing projects is provided in section 6.

2 Audit mandate, objective and scope

2.1 Our mandate

The Auditor-General has authority to conduct this review under section 36(1)(a)(iii) of the *Public Finance and Audit Act 1987*.

2.2 Our objective

We assessed whether the controls exercised by the SA Government over the following elements of the land services commercialisation transaction provided reasonable assurance that the transaction was conducted properly and in accordance with law:

- the potential costs, benefits and risks of the proposed transaction were properly evaluated before proceeding with the commercialisation
- a fair, open and transparent procurement process was undertaken to select the service provider
- the SA Government and service provider's compliance with the transaction documents and contract management risks were properly managed.

2.3 What we reviewed and how

2.3.1 Project initiation

In assessing whether the potential costs, benefits and risks of the proposed transaction were appropriately evaluated prior to proceeding with the commercialisation, we considered whether the business case prepared to justify proceeding with the commercialisation transaction was reasonable.

2.3.2 Selecting the service provider

To assess whether a fair, open and transparent procurement process was undertaken to select the service provider, we considered whether:

- evaluation plans were established and approved with reasonable criteria for each stage of the procurement process
- a probity plan was established and followed for each key stage of the procurement process
- the selection of the service provider was adequately supported
- approval was obtained to proceed with signing the transaction documents
- advice sought and analysis performed before granting the exclusive right to negotiate on other registries was reasonable.

2.3.3 Contract management

To assess whether controls over ensuring compliance with the transaction documents were effective and contract management risks were appropriately managed, we reviewed:

- governance arrangements implemented during the transition period to ensure the delivery of services and outcomes to contracted standards
- the transaction documents and key contract risks
- processes/controls implemented to ensure the service provider supplied performance reports that meet the requirements of the Land Services Agreement
- processes/controls implemented to ensure the service provider and the SA Government were meeting their obligations under the transaction documents and the service provider was delivering the contracted level of service
- processes/controls implemented to ensure the monthly service charges were calculated and paid in line with the Land Services Agreement.

2.4 What we did not review

Our review did not cover:

- controls over the integrity and security of land registry and valuation roll data within the South Australian Integrated Land Information System (SAILIS)
- the procurement of consultants for transaction advisory services
- the adequacy of retention value, market value and reserve price calculations
- adequacy of the service standards in the transaction documents
- GST treatment for transaction proceeds received by the SA Government and service fees charged to land services consumers
- compliance with Australian Competition and Consumer Commission and Foreign Investment Review Board requirements
- management of the Revaluation Initiative by the OVG.

Our review focused on reviewing the effectiveness of contract management controls over the transaction documents. It does not provide assurance over compliance with all sections and clauses in the transaction documents.

3 Project initiation

What we found

We found that comprehensive analysis was performed on key aspects of the proposed commercialisation transaction, including:

- analysis of potential commercialisation models
- financial impacts
- costs and benefits
- time frames
- risks.

This included analysing the potential value of the proposed commercialisation transaction from the perspective of both the SA Government and the service provider, and visiting other jurisdictions that had recently commercialised their land services functions to learn from their experience.

Section 8 provides further details of the project initiation process.

We identified that controls over project initiation could have been improved by formally documenting the rationale and supporting analysis for adopting the final commercialisation model proposed to the market.

What we recommended

For future commercialisation or outsourcing projects, the SA Government should confirm that all elements of business case planning and analysis required by Treasurer's Instruction 17 and supporting guidelines have been completed and formally documented, including the rationale for selecting the final commercialisation model proposed to market.

3.1 Findings

3.1.1 The rationale for adopting the final commercialisation model proposed to market was not clearly documented or supported by specific analysis

Recommendation

For future commercialisation or outsourcing projects, the SA Government should confirm that all elements of investment proposal and business case planning and analysis required by Treasurer's Instruction 17 and supporting guidelines have been completed and formally documented. This includes ensuring the rationale for selecting the final commercialisation model proposed to the market is clearly documented and supported by specific financial, cost/benefit and risk analysis.

A formal checklist could be used to document where each element of business case planning required by Treasurer's Instruction 17 and supporting guidelines has been addressed and evidenced.

Finding

The business case to proceed with the land services commercialisation was developed and considered by the previous SA Government in stages, drawing on various documents including:

- May 2015 – PricewaterhouseCoopers High Level Scoping Study
- July 2016 – Investec Market Valuation and Strategy Report
- October 2016 – Investec Proposed Payment Flows and Service Fee Structure Report
- February 2017 – KPMG Vendor Due Diligence Report
- February 2017 – KPMG IT Due Diligence and Separation Analysis
- March 2017 – Investec Retention Value Analysis.

Our review of this documentation indicated that comprehensive analysis was performed on key aspects of the proposed commercialisation transaction, including potential commercialisation model options, financial impacts, costs and benefits, time frames and risks. This included analysing the potential value of the proposed commercialisation transaction from the perspective of both the SA Government and the service provider, and visiting other jurisdictions that had recently commercialised their land services functions to learn from their experience.

The Investec Market Valuation and Strategy Report made a number of recommendations on the commercialisation model to be proposed to the market, including the nature of the services to be outsourced and the term of the arrangement.

Treasurer's Instruction 17 'Evaluation of and Approvals to Proceed with Public Sector Initiatives' (TI 17) and the supporting guidelines require a finalised substantiation of the preferred solution (in this case the selected commercialisation model) to be documented as part of a business case. This should include cost and benefit analysis, financial and socioeconomic evaluations and risk management plans for the final preferred solution.

There was no formal documented substantiation or justification for the preferred commercialisation model prior to it being proposed to the market through the request for indicative offers (RFIO) process, including no documented rationale for why this model was considered preferable to other potential options. As a result, the basis for the SA Government committing to the final commercialisation model proposed to market as part of the RFIO process may not have been appropriately demonstrated and formally evidenced in line with TI 17.

The Commercial and Economics branch (CEB) of DTF and the Crown Solicitor's Office advised that further refinement of the models proposed by Investec as part of the Market Valuation and Strategy Report occurred following market soundings, KPMG's Vendor Due Diligence Report, and consultation with the Australian Competition and Consumer Commission (ACCC)

and the Australian Taxation Office. There were also detailed discussions on the final preferred commercialisation model through a number of forums, including governance committees and workgroups.

CEB also advised that the rationale for selecting the model with the service charge at 100% of regulated fees was to maximise cash flow to the service provider and therefore maximise the sale price. The adoption of a 12.5% royalty payment was designed to provide a royalty regime that would satisfy the requirements of the ACCC.

DTF response

CEB is of the view that the requirements of TI 17 were broadly addressed in the various analyses and reports prepared throughout the project, together with learnings from previous commercialisation projects.

CEB accepted that future projects should incorporate all elements of business case planning and analyses in the form required by TI 17.

4 Selecting the service provider

What we found

We found that the processes and controls over the selection of the service provider were, in the main, sound and comprehensively documented.

Section 8 provides further details of the process to select the service provider.

We did, however, identify the following areas where controls could have been improved:

- the retention value and reserve price calculation methodology
- the analysis of a specific contractual condition proposed by a bidder
- the disclosure of contractual arrangements in line with DPC Circular requirements.

What we recommended

For future commercialisations, the SA Government should:

- consider engaging an independent expert to review the reasonableness of the whole retention value and reserve price calculation methodology
- perform formal analysis of maximum potential financial exposures arising from contractual conditions proposed by individual bidders
- ensure information on all eligible and significant contracts is disclosed in line with DPC Circular requirements.

4.1 Findings

4.1.1 Scope to improve the retention value and reserve price calculation methodology

Recommendation

For future commercialisation projects, the SA Government should ensure that retention value and reserve price calculations consider:

- all relevant activity drivers for forecasting future revenues and costs
- the costs and benefits from a whole-of-government rather than business unit perspective.

We also recommend the following steps be performed to ensure the robustness of the calculation methodology:

- compare the key assumptions in the SA Government's reserve price calculation to those adopted by the bidders in their tender documents to highlight any inconsistencies that may need to be factored into calculations

- maintain appropriate version control over documents to ensure inputs into financial models accurately reflect up-to-date values
- engage an independent expert to review the whole retention value and reserve price calculation methodology to confirm the reasonableness of assumptions applied and the accuracy of the calculation.

Finding

A reserve price was used by the evaluation team as a 'preliminary hurdle' for the evaluation of offers and bids received. A preliminary reserve price was set for the RFIO evaluation and further refined as part of the request for binding offers (RFBO) evaluation.

The SA Government commissioned independent advice from two investment banking advisory firms to confirm the reasonableness of the discount rates adopted. However, an independent expert was not engaged to review the whole retention value and reserve price calculation methodology.

We identified that the accuracy of the retention value and reserve price calculation could have been improved by:

- considering changes in long-term Lands Titles Office product volumes in revenue forecasts
- ensuring inputs into the final version of the financial models reconciled to relevant up-to-date source information
- considering revenue streams from a whole-of-government rather than a Land Services Group business unit perspective to ensure appropriate treatment of revenues from other government agencies
- comparing government assumptions against those adopted by bidders in their tender business models to identify major inconsistencies.

As a result of these gaps in the calculation methodology, the reserve price used by the SA Government as a threshold for evaluating bids received may not have reflected all relevant costs and benefits.

CEB advised that these factors, both individually and in aggregate, would not have impacted the selection of the preferred bidder or the price achieved for the transaction.

DTF response

CEB accepted that there is room for improvement in some parts of the retention and reserve price calculation methodology, including obtaining independent third party advice on the financial model. CEB confirmed that the improvements we proposed would not have materially affected the recommendation for the preferred respondent.

4.1.2 No formal analysis was performed to evaluate the reasonableness of the exclusive right to negotiate interest payment conditions proposed by the MIRA consortium

Recommendation

For future commercialisation projects, the SA Government should perform formal analysis to confirm the reasonableness of all contractual conditions proposed by individual bidders that may impact the total cost to government of the contract and how the bid price compares to other bidders. This includes documenting the rationale for accepting the proposed contractual conditions, with reference to relevant market and industry factors and analysing the maximum financial exposures arising from all potential scenarios.

Finding

The Implementation Deed states that the interest component of any repayment of the exclusive right to negotiate (ERN) consideration is to be accrued on a daily basis at 10% p.a.

CEB advised that this interest condition was requested by MIRA in its binding bid as part of the RFBO process. This interest condition was considered by the evaluation team and the LSC Project Steering Committee as acceptable within the context of MIRA's complete bid price. The MIRA ERN proposal was also considered far superior to the proposals of the other bidders, in terms of potential value to the State.

The SA Government did not perform formal analysis demonstrating the reasonableness of the interest condition before selecting MIRA as the service provider. For example, no financial analysis was performed to assess the SA Government's potential maximum financial exposure from this interest condition, and whether the proposed interest rate was reasonable relative to market interest rates or other relevant benchmarks such as industry rates of return. As a result, it is possible that the ERN condition may not achieve value for money for the State.

CEB advised that the LSC Project Steering Committee and evaluation team engaged Investec to perform financial analysis of the ERN condition on the basis that the arrangements would be extended by seven years. In this scenario, the ERN consideration and interest component would not be payable to the service provider and hence further analysis was not considered necessary.

In our view, to ensure the ERN condition achieved value for money for the State, formal analysis should have been performed on all potential scenarios, including the potential scenario where a seven-year extension is not pursued by the SA Government owing to inadequate service provider performance.

Further detail on the ERN contractual condition is provided in section 9.16.

4.1.3 LSC contracts were not publicly disclosed in line with DPC Circular requirements

Recommendation

The SA Government should ensure information on all eligible and significant LSC contracts is disclosed in accordance with DPC Circular PC027 'Disclosure of Government Contracts', including consulting contracts with the transaction advisors where applicable.

Finding

DPC Circular PC027 requires public authorities to disclose eligible and significant contracts on the SA Government's Tenders and Contracts website.

The LSC transaction documents and consultancy contracts for key transaction advisors meet the definition of a significant contract and as such certain information about the contracts and the entire contract documents are required to be disclosed.

LSC contract documents have not been made available on the SA Government's Tenders and Contracts website and the reasons for non-disclosure have not been published.

As a result, there is a lack of transparency for the general public about the contractual arrangements entered into with a private service provider for critical public services and the nature of consulting advice provided by the transaction advisors.

DTF response

DTF responded that disclosure of the contractual documents may be subject to commercial or Cabinet confidentiality. Crown Solicitor's advice will be sought in relation to this point, with the intention to disclose as much of the contract as possible within the limits of the contractual requirements.

5 Contract management

What we found

We found progress had been made in implementing the SA Government's contract management framework to ensure compliance with the transaction documents and effective service provider performance. However, the following key elements of effective contract management control were not fully implemented or finalised:

- the use of contractual audit provisions to obtain independent assurance over service provider systems and controls supporting the ongoing integrity and security of the land registry and valuation roll
- the nature and timing of mandatory reporting against the operations manuals on day to day processing tasks
- the use of audit provisions to obtain independent assurance over service level reporting provided by the service provider.

We found there were delays in implementing a number of elements of the SA Government's contract management framework, including:

- the ORG Compliance Management Procedure and compliance register
- the service provider transition plan
- service level reporting on lands titling and general services
- ORG and OVG business unit risk registers capturing contract management risks from the new outsourced service provider arrangement
- service provider identification, assessment and treatment of risks relating to continuity of services, contract deliverables and IT systems.

We also noted the importance of the SA Government implementing ongoing arrangements to ensure continuity of public access to the land registry in the event of major disruption to service provider systems.

The SA Government retains ultimate responsibility for maintaining the ongoing integrity and security of the land registry and valuation roll under the commercialisation transaction contractual arrangements. The contractual arrangements provide a sound base to ensure the proper performance of the outsourced services and the maintenance of statutory functions and protections.

To ensure the effectiveness of the outsourcing arrangement with the service provider, the SA Government needs to be vigilant in actively monitoring contract deliverables, service level reporting and the effectiveness of service provider systems and controls over the 40-year term.

What we recommended

We recommended the SA Government:

- establish a risk based audit plan and function covering service provider systems, controls and service level reporting
- finalise a formal schedule of mandatory service provider data provision and reporting requirements under the lands titling, valuation and general services operations manuals
- perform ongoing monitoring to ensure SAILIS backups are being performed regularly in line with the Land Services Agreement and consider establishing a 'hot site' backup and disaster recovery model for the land registry
- finalise the review and update of the OVG risk register promptly
- review the risk register supplied by the service provider on continuity of services, contract deliverables and IT systems for reasonableness.

For future commercialisations and outsourcing arrangements, the SA Government should:

- implement formal monitoring and compliance frameworks for contract deliverables from the start of the contract
- finalise and formally agree detailed transition activities and timetables promptly
- implement contractual arrangements and governance structures that enable reporting on all service levels as soon as possible after the start of the contract.

5.1 Findings

5.1.1 Use of contractual audit powers to obtain independent assurance over service provider systems and controls

Recommendation

The SA Government should establish a risk based audit plan focused on confirming the effectiveness of service provider controls in place to meet the overall objectives of the Land Services Agreement (LSA), in particular ensuring the delivery of a sustainable service model that ensures the integrity and security of:

- the lands titling system in South Australia
- the registers
- the progressive assurance and audit process used by the Valuer-General and OVG
- the valuation roll.

Given the importance of audit coverage to the effective operation of the outsourcing arrangements, it is appropriate the audit plan and resourcing be finalised promptly (ie by 31 March 2019).

The scope of the audit plan could be informed by analysis of SAILIS reports and statistics (eg identification of reasons for title repairs) and any potential risks identified.

The audit plan should consider IT controls over SAILIS and other relevant systems, including validating the service provider's disaster recovery plans and security measures. It should also consider obtaining audit coverage over the integrity of mandatory operations manual reporting, accurate noting of instruments and plans on registries and accurate update of the valuation roll.

We suggest the SA Government considers establishing a single audit plan and program to cover both service provider operational systems and processes and service level reporting. This will help to develop an integrated approach that limits overlap and duplication of audit activity.

Finding

ORG has established a Compliance Management Procedure and compliance register. The register includes actions to ensure plans and documents are submitted timely and reviewed for compliance with relevant agreement requirements. It also reflects all the deliverables under the transaction documents identified by the transaction legal advisors.

The Compliance Management Procedure and compliance register focus on monitoring contract deliverables in terms of the reports, plans and other information to be supplied by the service provider under specific clauses of the transaction documents. Service provider reporting against service levels outlined in the LSA is also monitored by the SA Government.

Monitoring the contract deliverables and service levels as of itself will not give the SA Government adequate assurance over the ongoing integrity and security of the registries and valuation roll, or compliance with contractual and legislative obligations. This information is self-reported by the service provider and does not specifically address the ongoing operating effectiveness of service provider systems and internal controls over the term of the agreement.

To mitigate risks associated with maintaining the ongoing integrity and security of the registries and valuation roll, it is important that the SA Government obtains independent assurance over service provider systems and controls through focused audit coverage. The LSA gives the SA Government broad rights to access and audit the records of the service provider for any aspect of the transaction documents. It is important the SA Government exercises these contractual audit rights regularly and effectively.

We note the SA Government has direct access to SAILIS to run reports and generate statistical information. This information would be a useful reference in developing an audit plan, for example to identify areas where processing errors are more likely to occur and may require specific audit focus.

ORG advised it intends to establish an audit plan and function covering the effectiveness of systems, controls and process supporting the ongoing integrity and security of the land registry, pending appropriate funding being secured as part of the budget process.

ORG also indicated that the service provider has strong incentives to maintain the ongoing integrity and security of the land registry to avoid performance rebates, reputational damage and other financial losses.

DTF response

DTF advised that ORG has established a draft internal audit program that uses existing ORG resources and external resources that are currently funded, such as auditing of adjustment statements and royalties by BDO. The program covers the issues raised by the Auditor-General and aspects of the OVG contract management and reporting responsibilities.

OVG is finalising its internal audit program which uses its existing valuation qualified audit staff. Both programs will be reviewed in the event that additional budget funds are made available.

Both programs will be submitted to the DPTI Audit and Risk Committee for approval as soon as practicable, which is expected to be before 31 March 2019.

Auditing under the ORG program has already commenced, and the OVG audit process for the general valuation is well established.

5.1.2 Delay in implementing formal approved compliance management framework for the transaction documents

Recommendation

For future outsourcing arrangements, formal monitoring and compliance frameworks for contract deliverables should be in place from the start of the contract. The frameworks should outline the nature and timing of compliance and monitoring activities for contract deliverables, as well as specifying the officers responsible for the activities.

To achieve this, the SA Government will need to allow sufficient time during the contract finalisation and completion phase to assess ongoing contract management resource requirements and implement the necessary staffing arrangements.

Finding

The Compliance Management Procedure and compliance register are a sound framework for monitoring contract deliverables in terms of the reports, plans and other information to be supplied by the service provider under specific clauses of the transaction documents.

However, these documents were not drafted until June 2018 and not formally approved by the Registrar-General until 31 July 2018. As a result, a formal approved compliance management framework for the transaction documents, allocating responsibility for

monitoring each contract deliverable to a specific responsible officer, was not in place for the first nine months of the outsourcing arrangements. Instances where the service provider failed to supply contract deliverables within required time frames may therefore not have been promptly and effectively identified and actioned during this period.

Formal compliance management frameworks for outsourced service contracts should be established at the commencement of the arrangements to ensure timely identification and monitoring of contract deliverables.

ORG advised that the delay in implementing the formal compliance management framework was primarily due to the lead time required to secure appropriate resources for the contract management function. Specifically:

- the resourcing of the Contracts and Compliance team was not finalised until 10 May 2018
- there were several other vacancies in ORG during the initial period following the commencement of the arrangements, including a vacancy in the Registrar-General position.

ORG indicated that the transaction legal advisors operated as the transaction document contract managers from commencement of the arrangements to the appointment of a dedicated ORG Contract Manager in February 2018. As part of this contract management role, the legal advisors prepared a table detailing the deliverables and corresponding timelines under the transaction documents.

ORG also advised that a compliance system was in place from the end of May 2018, with contract deliverable prompts and reminders reflected in the ORG governance calendar from that time on.

5.1.3 Delay in finalising service provider transition plan

Recommendation

The SA Government should liaise with the service provider to ensure the transition plan is appropriately updated to reflect the SA Government's requirements, including a formal process for updating and tracking changes to the plan, by November 2018.

Finding

The Transitional Services Agreement required the service provider to prepare and provide to the SA Government a detailed transition plan within 20 business days of the commencement date (13 October 2017). The transition plan serves to enable the smooth and successful transition of lands titling, valuation and general services from the SA Government to the service provider.

We note that several versions of the transition plan were supplied by the service provider and detailed activities and time frames involved in completing the transition were not

formalised and agreed in principle with the service provider until April 2018. This was more than five months after the commencement of the transition arrangements. SA Government requested amendments to the plan for minor wording and date changes and the establishment of a system for tracking changes and plan version control remain outstanding.

Prior to the service provider submitting an adequate draft transition plan, there may have been a lack of clarity about the detailed nature, timing and cost of transition activities to be performed by the SA Government in the transition period.

The delay in finalising the transition plan and agreeing a formal process for updating and tracking changes to the plan also increases the risk of dispute with the service provider over transition deliverables.

CEB advised that it expects an updated transition plan incorporating the feedback on the final issues provided by the SA Government to be submitted to the Chief Executive, DTF shortly.

CEB also indicated that the Transitional Services Agreement provided clarity on the broad transitional services to be performed, pending agreement on detailed transition activities in the transition plan.

5.1.4 Service level reporting on lands titling and general services did not start until more than six months after the outsourcing arrangements began

Recommendation

In the event that other registries are commercialised in the future, the SA Government should implement contractual arrangements and governance structures that enable reporting on all service levels as soon as possible after the start of the contract. This includes ensuring the contract management function is appropriately resourced and reporting templates are finalised and agreed on promptly.

Finding

We found that no reporting on service levels for lands titling services or general services was received from the service provider until April 2018, six months after the commencement date of the outsourcing arrangements. This reporting only provided information for March 2018. Reporting on the months from October 2017 to February 2018 was not received until May 2018.

We note that reporting for all months from April 2018 onwards has been provided in the time frames specified in the LSA.

Ideally, ongoing and regular reporting against lands titling and general service levels should have occurred from the commencement of the outsourced arrangements. This reporting is necessary to ensure service standards are being met, performance issues are promptly identified and performance rebates are applied as required.

ORG advised that the delays in establishing service level reporting were mainly due to the time required to resource the contract management function (the ORG contract manager was appointed in February 2018) and time needed to agree the format of the service level reporting template with the service provider.

ORG also advised that some reporting on performance was received from the service provider from commencement of the arrangements, including statistical information on the number and types of documents lodged, the number of title repairs and backlogs in instrument and plan processing. This provided the SA Government with some comfort over the quality of services being provided by the service provider.

5.1.5 The nature and timing of reporting against the operations manuals on day-to-day processing tasks is not finalised

Recommendation

The SA Government should liaise with the service provider to finalise a formal schedule of mandatory data provision and reporting requirements under the lands titling, valuation and general services operations manuals by 31 December 2018.

The SA Government should perform formal ongoing monitoring to ensure data and reporting is provided by the service provider in line with this schedule. Prompts and reminders in the ORG compliance register and governance calendar system could be used to facilitate this process.

The SA Government should review the reporting provided under the operations manuals to identify any issues, errors or problems that could impact the integrity of the land registry and valuation roll and initiate prompt follow-up action as appropriate.

Finding

The LSA requires the service provider to prepare the reports and information specified in the lands titling, valuation and general services operations manuals and deliver them at the times and in the manner specified in the manuals. The manuals highlight the requirements and outcomes with which compliance by the service provider is mandatory.

Our review indicated that data provision and reporting requirements for all three operations manuals were not finalised. As a result, reporting provided by the service provider to date against the operations manuals was largely ad hoc. We also noted instances where mandatory reporting under the operations manuals was either yet to be received or received irregularly, including reporting on:

- document lodgement and examination obligations
- delegation obligations
- electronic conveyancing obligations
- dispute resolution
- customer advice obligations
- qualified personnel obligation
- capacity management.

The operations manuals outline the key day-to-day operations and processes to be performed in maintaining and updating the land registry and valuation roll, responding to customer enquiries and complying with legislative requirements.

Regular and systematic reporting against mandatory operations manual reporting requirements is crucial to ensuring the service provider is performing day-to-day operations in line with the SA Government's expectations, maintaining the integrity of the land registry and valuation roll and complying with legislative obligations.

ORG and OVG advised that schedules of required reporting against the operations manuals are currently being negotiated with the service provider and will be finalised as a matter of priority.

ORG also advised that, pending finalisation of the schedule, it believes a significant proportion of operations manual reporting requirements are already being addressed through existing service level reporting, monthly statistics reporting and reporting available from SAILIS.

DTF response

DTF noted that, while the SA Government is liaising with the service provider to reach agreement on the formal schedule of mandatory data provision and reporting requirements under the lands titling, valuation and general services operations manuals, whether the service provider will accept the terms of that schedule is a decision for the service provider (under the terms of the LSA).

Based on discussions with the service provider to date, ORG and OVG do not anticipate agreement before 31 January 2019. ORG and OVG accept the recommendation based on a revised target date of 31 January 2019.

The SA Government also notes that approximately 75% of the reports required under the operations manuals are already being reported.

The SA Government will continue to use the compliance register and governance calendar to monitor data provision and reporting. It will review the reporting provided under the operations manuals to identify any issues, errors or problems as it does with reporting already provided by the service provider on service levels set out in the LSA.

5.1.6 Use of contractual audit powers to obtain independent assurance over the accuracy and completeness of service level reporting provided by the service provider

Recommendation

The SA Government should establish an audit function and plan to obtain independent assurance over the accuracy and completeness of service provider self-reporting against lands titling, valuation and general service levels outlined in the LSA. This audit plan should specifically capture the accurate calculation of performance rebates.

Given the importance of audit coverage to the effective operation of the outsourcing arrangements, it is appropriate the audit plan and resourcing be finalised promptly (ie by 31 March 2019).

As part of any potential future outsourcing contracts, the SA Government should implement mechanisms for obtaining independent assurance over service level reporting by the service provider when the arrangements commence.

As detailed in section 5.1.1, we suggest the SA Government considers establishing a single audit plan and program to cover both service provider operational systems and processes and service level reporting. This will facilitate the development of an integrated approach that limits overlap and duplication of audit activity.

Finding

Accurate and complete service level reporting by the service provider is critical to the effective operation of the outsourcing arrangements, including maintaining the integrity and security of the lands titling system and valuation roll and the accurate calculation of service charges and performance rebates.

As with all outsourcing contracts, it is important that the SA Government does not place exclusive reliance on what the service provider is reporting on its own performance. This increases the risk of undetected inaccuracies and omissions in the reported quality of services provided. There needs to be a genuine exchange of information and continual appraisal of the service provider's performance over the life of the contract.

The broad scope of the audit powers under the LSA and, in particular, the SA Government's entitlement to confirm the service provider's compliance with the transaction documents, extends to interrogating and ensuring the accuracy and completeness of the service provider's own performance reporting.

Given the importance of meeting service levels to maintain the integrity of the land registry and valuation roll, it is appropriate that the SA Government reviews and interrogates the accuracy of service level reporting using its audit powers under the LSA.

ORG and OVG have advised they intend to establish an audit plan and function covering the integrity of service level reporting, including reporting of service quality failures and processing errors, pending appropriate funding being secured as part of the budget process.

ORG has also indicated it obtains a degree of comfort over service levels through existing mechanisms, including:

- monthly 'title repair' document processing statistics which give an indication of the number and nature of registry processing errors being made
- formal and verbal feedback from the industry and stakeholders, including lawyers and conveyancers, on potential service quality failures and processing errors.

DTF response

ORG and OVG are establishing internal audit programs to cover the issues raised in our findings. Further detail is provided in section 5.1.1.

5.1.7 Implementing ongoing arrangements to ensure continuity of public access to the land registry in the event of major disruption to service provider systems

Recommendation

The SA Government should continue to perform ongoing monitoring to ensure SAILIS backups are being performed in line with the LSA and that backups can be effectively restored. This monitoring and testing could form part of the audit coverage discussed in our finding in section 5.1.1.

The SA Government could also consider other backup and disaster recovery models for the land registry, such as establishing a 'hot site' backup. This would further reduce the risk to continuity of public access to the registry in the event of major disruption to service provider systems.

Finding

SAILIS is used to maintain the land registry and valuation roll. Prior to commercialisation, the SA Government entered into a licensing agreement with Fuji Xerox to use SAILIS. Fuji Xerox was responsible for performing backups of SAILIS data under this agreement. As part of the commercialisation transaction documents, the agreement was novated from the SA Government to the service provider. Fuji Xerox continues to be responsible for performing SAILIS backups, however its customer relationship is now with the service provider rather than the SA Government.

We note that under the commercialisation transaction documents, the SA Government is now one step removed from Fuji Xerox as the supplier of SAILIS, and it must ensure the timely and regular backup of SAILIS data through the service provider. This increases the inherent risk associated with maintaining appropriate backups of the critical public information contained on SAILIS.

As the SA Government cannot directly access or restore SAILIS backups of the land registry and backup arrangements are now managed through the service provider and a third party, it may have difficulties ensuring the continuity of the registry's availability to the public in the event of major disruption to service provider systems.

ORG advised that the LSA requires incremental daily and full weekly backups to be performed on SAILIS and the backups to be stored at an offsite location. Ongoing monitoring has been performed by ORG to ensure backups are being performed regularly in line with the LSA. ORG advised that it has also conducted informal tests of its business continuity plan to ensure that it can promptly respond to a disaster or business continuity event that threatens the availability or integrity of the land registry.

DTF response

DTF responded that ORG has commenced discussions with the service provider to establish ongoing monitoring to ensure SAILIS backups are being performed in line with the LSA and will incorporate this action into the internal audit program referred to in section 5.1.1.

ORG is considering other disaster recovery models for the land registry, including the establishment of a 'hot site', and is finalising a paper in this regard to the DPTI Chief Operating Officer.

5.1.8 Delay in establishing ORG and OVG risk registers

Recommendation

The SA Government should finalise the development of the OVG risk register promptly (ie by the end of November 2018). The updated register should reflect all current OVG functions, including transaction document contract management risks.

The SA Government should also review contract management risks identified in the ORG and OVG business unit risk registers to ensure they have all been appropriately captured and addressed by contract management compliance activities.

Finding

ORG and OVG are new business units established following the commencement of the commercialisation arrangements. They replaced the former Lands Title Office and State Valuation Office.

An ORG risk register was established in June 2018. It is comprehensive and reflects risks in key areas. An OVG risk register is being developed but is not finalised.

We note that risk registers reflecting the functions of these new business units, including the management of the transaction documents and outsourced service provider arrangements, were not in place for at least the first eight months of the commercialisation arrangements. As the functions of ORG and OVG are significantly different to the former Lands Title Office and State Valuation Office, and given the nature of the outsourced service provider arrangements, the risks associated with these new functions should have been identified, assessed and treated promptly.

Business unit risk registers are an important tool in identifying, evaluating and treating risks associated with managing significant and complex contractual arrangements. The contract management risks identified on business unit risk registers should serve as a key driver of the business unit's contractual compliance program.

ORG advised that from March 2018, transaction document contract management risks were managed and monitored through an active risk register by CEB and the LSC Project Finance and Contract Management Group. Business as usual contract management risks were transitioned from this risk register to ORG in August 2018.

OVG advised that workshops and consultation have been conducted with ORG to ensure common risks that are relevant to both offices are treated consistently. Further work is required to expand more on the risks associated with the functions of the Valuer-General under the *Valuation of Land Act 1971*.

DTF response

DTF advised that OVG will finalise the development of the risk register by mid-December 2018 incorporating contract management risks, to be further reviewed on commencement of the new Valuer-General in January 2019.

DTF also advised that ORG has completed a review of the contract management risks identified in the ORG business unit risk register to ensure that they have all been appropriately captured and addressed by contract management compliance activities.

5.1.9 Delay in the service provider finalising its identification, assessment and treatment of risks relating to continuity of services, contract deliverables and IT systems

Recommendation

The SA Government should review the risk register supplied by the service provider for reasonableness and provide feedback on risk assessments and treatments as appropriate.

For future commercialisation and outsourcing projects, the SA Government should ensure the service provider systematically and formally identifies risks associated with the delivery of services promptly following commencement of the arrangements.

Finding

The LSA requires the service provider to maintain a risk register in line with best industry practice and any applicable standards. It should document all potential risks that relate to the continuity of services, contract deliverables and service provider IT systems.

The service provider must keep the risk register up to date at all times during the agreement.

The service provider initially adopted the pre-existing Lands Title Office and State Valuation Office business unit risk registers. We note these registers reflected the previous in-house service arrangements and not the functions of the service provider under the transaction documents.

The service provider did not finalise risk registers covering the required areas until September 2018. They were made available to the SA Government in October 2018.

As a result, service provider risks relating to continuity of services, contract deliverables and IT systems were not systematically identified, assessed, treated and documented for a period of almost 12 months following the commencement of the commercialisation

arrangements. This increased the likelihood that risks in these areas were not appropriately managed during that period, which could potentially have impacted the ongoing integrity and security of the land registry and valuation roll.

DTF response

DTF responded that ORG has completed a review of the risk register supplied by the service provider and is currently considering whether the service provider is entitled to redact certain risks that it claims are not related to the contract risks contained in the LSA.

6 Future challenges and key lessons

6.1 Future challenges

The LSC project is significant and complex and there are a number of challenges ahead in managing the completion of the transition and implementation of ongoing contract management arrangements. These include:

- the need for DTF and DPTI to continue to work closely together to facilitate the smooth transition of land services to the service provider and establishment of effective ongoing contract management frameworks and practices
- ensuring contract management functions within ORG and OVG are adequately resourced to effectively manage the contractual arrangements on an ongoing basis following the transition period
- developing a contract management approach that will ensure the ongoing integrity and security of the registries and valuation roll as service provider systems and processes become standalone
- establishing robust and up-to-date business continuity and disaster recovery arrangements for lands titling, valuation and general services systems and operations
- retaining appropriate institutional and technical knowledge within the SA Government to adequately understand contract management risks and interrogate service provider performance
- managing the ERN and potential commercialisation of other registries in line with sound business case planning and procurement principles.

6.2 Key lessons for future commercialisation and outsourcing projects

Our review highlighted a number of issues and risks that we believe are prudent to consider as part of any future commercialisation or outsourcing projects. This includes ensuring the following elements are in place on commencement of the arrangements or shortly after:

- clarity about the scope, coverage and resourcing of audits to be performed under contractual audit provisions, including coverage to be obtained over service provider systems, controls and performance reporting
- formal compliance management frameworks to effectively identify and monitor the timely supply of contract deliverables by the service provider
- service provider performance reporting on all service levels
- performance rebates or abatements for service levels not met
- a formal transition plan agreed to between the SA Government and the service provider

- a schedule of reporting on day-to-day operations agreed with the service provider
- business unit risk registers reflecting ongoing contract management risks and how they will be managed through the compliance program.

There also needs to be clarity on existing service levels and key performance indicators in business units or functions that are planned to be commercialised before entering into contractual arrangements with an outsourced service provider.

We note that SA Government imperatives to finalise contractual documentation in tight time frames can create practical difficulties in establishing robust and appropriately resourced contract management frameworks and activities on commencement of outsourcing arrangements.

It is prudent for the SA Government to consider how project and contract finalisation time frames will impact the timely implementation of appropriate contract management frameworks, to ensure there is no deterioration in service quality at any time during the outsourcing arrangement.

7 Overview of the land services commercialisation project

7.1 What does the LSC project involve?

The LSC project primarily involved:

- the SA Government appointing a private sector service provider to exclusively deliver certain lands titling, valuation and other services (commercialised services) on behalf of the SA Government for a 40-year term. These services were previously delivered by the SA Government through the Lands Titles Office (LTO) and State Valuation Office (SVO)
- in return for providing the commercialised services, the SA Government paying the service provider an ongoing service fee
- the Registrar-General delegating certain powers, duties and functions to the service provider to perform the commercialised lands titling services
- the Valuer-General authorising personnel of the service provider to exercise certain rights and powers to perform the commercialised valuation services
- the SA Government providing the service provider with all information, data, records and documents it requires to provide the commercialised services (State information assets), and granting the right to commercialise the SA Government information assets. In return, the SA Government will earn a royalty on revenue the service provider generates from the commercialisation of State information assets
- the SA Government providing the service provider with transitional services to support the service provider for an interim period with the transition of the commercialised services from the State to the service provider
- the transfer of certain physical assets and State employees to the service provider
- the novation of certain contracts to the service provider
- the SA Government providing the service provider with an exclusive right to negotiate (ERN) in relation to other State registries if the SA Government decides to commercialise additional registries
- the service provider paying \$1.605 billion for the above appointment, rights to the State information assets and the exclusive right to negotiate.

The new service provider, Land Services SA, started delivering the commercialised services on 13 October 2017 (the commencement date).

7.2 Objectives of the LSC project

The SA Government's stated objectives in market procurement documents for commercialising land services are shown in figure 7.1.

Figure 7.1: Objectives for commercialising land services



Reduce future operating costs and drive innovation for customers

The private sector should be better able to achieve operational efficiencies and to respond to customer demands for technology driven services.



Promote greater investment in systems and reduce risks

The private sector will be better placed and capitalised to invest in major ICT systems and upgrades in an increasingly technology driven business.



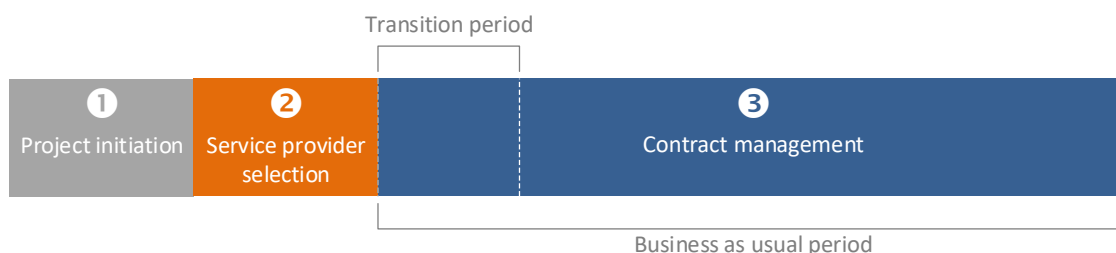
Create significant value

An opportunity for the SA Government to receive an upfront payment and/or ongoing royalties which will strengthen the State's financial position.

7.3 LSC project phases

The LSC project has three phases.

Figure 7.2: Phases of the LSC project



Project initiation

The Commercial and Economics branch (CEB) of DTF was responsible for managing the project initiation phase, with oversight from a cross-agency steering committee.

The project initiation phase involved identifying potential opportunities to commercialise Land Services Group functions, confirming the value of proceeding with the commercialisation, and identifying the optimal commercialisation structure and marketing strategy to achieve the project objectives.

Service provider selection

CEB was responsible for managing the service provider selection phase, assisted by a number of key specialist advisors. The process was overseen by a cross-agency steering committee.

The commercialisation model was refined during this phase as a result of market feedback to maximise the potential upfront return to the SA Government with consideration to minimising the SA Government's risk exposure.

The service provider selection phase involved a multi-stage structured bid process to select a service provider which best met the project objectives.

Contract management

The contract management phase is currently in progress. It covers a transition period, when the SA Government is providing support to the service provider to help transition the commercialised services from the SA Government to the service provider, and the business as usual period.

CEB is responsible for managing transition activities during the transition period.

ORG and OVG are responsible for oversight of ongoing business as usual contract management activities, including monitoring service provider compliance with the transaction documents and performance against contractual service standards.

7.4 Timeline of events

Figure 7.3: Timeline of events

Date	Event
Project initiation	
May 2015	High-level scoping study completed by PricewaterhouseCoopers (PWC).
19 May 2016	Preliminary market valuation and strategy report prepared by Investec.
23 May 2016	The SA Government approved proceeding with the commercialisation as part of the 2016-17 State Budget process.
7 July 2016	The Treasurer announced the SA Government’s intention to commercialise a range of transactional land services and functions in the 2016-17 State Budget.
18 July 2016	Final market valuation and strategy report completed by Investec.
Service provider selection	
November to December 2016	Bidder roadshow presentations held nationally and internationally.
January 2017	Request for expression of interest process completed.
March 2017	Request for indicative offer process completed.
August 2017	Request for binding offer process completed. The evaluation team identified Macquarie Infrastructure and Real Assets, Macquarie Alternative Investment Trust and the Canadian Public Sector Pension Investment Board consortium (MIRA) as the recommended bidder. This recommendation was endorsed by the LSC Project Steering Committee.

Date	Event
Service provider selection	
10 August 2017	<p>The SA Government approved:</p> <ul style="list-style-type: none"> • the appointment of MIRA (trading as Land Services SA) as the service provider • granting the service provider an exclusive right to negotiate for future government registry commercialisation projects • the Treasurer, on behalf of the SA Government, executing binding contracts to appoint the recommended bidder as the private operator and the grant of the exclusive right to negotiate and related obligations. <p>The transaction documents were executed.</p>
12 October 2017	<p>Consideration of \$1.605 billion from Land Services SA was received in the DTF operating bank account and subsequently transferred to the Consolidated Account.</p> <p>Transaction completed.</p>
Contract management	
13 October 2017	<p>The Land Services Agreement (LSA) commenced.</p> <p>Land Services SA commenced providing commercialised services.</p>
12 October 2019	Expiry of the Transitional Services Agreement.
12 October 2020	The SA Government must make a formal decision whether or not to commercialise the management of the motor vehicle registry by this date.
12 October 2057	Expiry of maximum term of the LSA (if not extended).

7.5 Overview of land services in South Australia

7.5.1 Land Services Group

Prior to the commercialisation, the SA Government administered land services in South Australia through three statutory offices – the Lands Titles Office, State Valuation Office and Land Boundaries Office, collectively known as the Land Services Group (LSG).

Further information about these offices is provided in Appendix 1.

The *Real Property Act 1886* (RP Act), *Valuation of Land Act 1971* (VL Act) and *Survey Act 1992* establish the roles of the Registrar-General, Valuer-General and Surveyor-General as well as their respective offices. The Acts grant these officers with powers and functions including statutory responsibilities for administering and enforcing the Acts, levying fees and charges for the provision of these functions and services, and powers of delegation.

7.5.2 Torrens title system and the Assurance Fund

The Torrens title system used in South Australia is a land registration system, in which the SA Government creates and maintains a central register of land holdings, which serves as the conclusive evidence of title for the person recorded on the register as the owner, and of all other interests recorded on the register.

The system provides indefeasibility of title, which means that the holder of a registered title to a parcel of real property may absolutely rely on that registration to defeat any other claims over that property.

Where a person relying on a registration of title incurs loss arising from fraud or error, they may make a claim with the SA Government to be compensated by the Assurance Fund.

The operation of the Torrens title system and Assurance Fund is contained in the RP Act.

Section 9.4 discusses the impact of the LSC project on the Assurance Fund.

7.5.3 South Australian Integrated Land Information System

In 2011, the SA Government commissioned Fuji Xerox Document Management Solutions to develop a new IT system for the LSG called the South Australian Integrated Land Information System (SAILIS).

SAILIS became fully operational in April 2015 and replaced a large number of legacy systems. It is used to access the register book, valuation roll and cadastral database¹ and support various business processes.

SAILIS is a derivative of the Integrated Land Information System (ILIS) which Fuji Xerox has the commercialisation rights to. In developing SAILIS, a significant amount of customisations and enhancements were added to ILIS to meet the LSG's system requirements. The intellectual property associated with these customisations and enhancements belong to the SA Government.

7.6 Scope of commercialised services and functions

The SA Government has entered into an exclusive 40-year arrangement with the service provider to:

- deliver certain transaction processing and customer services (previously provided by the LTO)
- deliver certain valuation services (previously provided by the SVO)

¹ Geospatial database containing property boundaries and related property descriptions for all land parcels in South Australia.

- commercialise the State information assets and innovate new products and services (subject to SA Government approval).

All services and functions provided by the Land Boundaries Office and/or the Surveyor-General have been retained by the SA Government, however the service provider has a right to commercialise certain data from the cadastral database.

The Registrar-General and Valuer-General remain as statutory officers, and their legal, policy and regulatory functions have been retained within the SA Government.

Appendix 2 provides a high-level overview of the scope of commercialised services and functions under the LSC project.

Following the commercialisation, there was a change in government office names to distinguish the functions retained by the SA Government. The LTO is now known as the Office of the Registrar-General (ORG), the SVO as the Office of the Valuer-General (OVG) and the Land Boundaries Office as the Office of the Surveyor-General.

8 Project initiation and service provider selection

8.1 Project governance

The LSC Project Steering Committee (LSCPSC) was established in February 2015 to provide strategic and whole-of-government oversight of the LSC transaction.

A project team was established within CEB, with support from the Crown Solicitor's Office and external advisers, to deliver the LSC transaction and make recommendations to the LSCPSC.

A probity advisor was appointed to provide probity advice during the project initiation and service provider selection phases. The probity advisor provided advice to CEB on appropriate governance arrangements, including terms of reference for the LSCPSC and associated working groups. The probity advisor also attended meetings of these forums, and reviewed and advised on the minutes kept.

8.2 Project initiation

The business case to proceed with the commercialisation of land services was developed and considered by the previous SA Government in stages, drawing on a number of different documents, including a PWC high-level scoping study and Investec market valuation and strategy report.

The scoping study was completed by PWC in May 2015 to explore options available to deliver services being provided by the LSG.

Investec, the lead transaction advisor, was then engaged to perform further analysis and make recommendations on the optimal commercialisation structure and marketing strategy for the proposed transaction in light of the SA Government's objectives.

Investec provided retention value and market valuation information to corroborate the viability of the proposed market offering and the likelihood of achieving a market price in excess of the retention value. In this way, Investec's advice indicated to the SA Government whether or not it could reasonably expect to achieve a transaction outcome in excess of the retention value. Further detail on the retention value is provided in section 8.3.7.

In its final market valuation and strategy report dated July 2016, Investec concluded:

- there was strong commercial interest in the LSG's transaction processing functions, valuation services and databases
- an outsourced model was most likely to maximise upfront and ongoing value to the SA Government compared to other commercialisation structure alternatives

- while the proposed transaction could potentially be implemented without separate enabling legislation, some minor amendments to the RP Act would mitigate the potential risk of legal challenge to the proposed commercialisation structure and increase transaction certainty (and therefore maximise value).

Investec noted that:

- the guarantee of indefeasibility of title and management of the Assurance Fund should be retained by the SA Government. It would be inappropriate for a private sector operator to be responsible for this function given how fundamental the SA Government’s guarantee is to land property rights within the State
- the policy, audit, compliance, dispute resolution and enforcement functions of the Registrar-General and the Valuer-General should also be retained by the SA Government, given those responsibilities are core statutory obligations in nature and should not provide commercial benefits to a private operator.

Investec did not identify a strong rationale for commercialising the Surveyor-General’s functions and services, however confirmed that there was commercial interest in the cadastral database maintained by the Surveyor-General.

After considering Investec’s preliminary market valuation and strategy report, the SA Government approved proceeding with the commercialisation as part of the 2016-17 State Budget process.

No changes were required to legislation for the project to proceed, however some amendments were made to the RP Act to enable the Registrar-General to delegate legislative powers, duties and functions to the service provider to provide the commercialised services on behalf of the SA Government.

Section 7.6 explains the final scope of commercialised services which formed the proposed transaction and section 9 explains the final commercialisation model.

8.3 Selecting the service provider

8.3.1 Key stages

The four-stage process used to select the new service provider is shown in figure 8.1.

Figure 8.1: Process to select the service provider



The State Procurement Board granted the LSC transaction an exemption from its policy framework due to the bespoke nature of the LSC procurement process and governance arrangements in place.

The service provider selection process was supported by the lead transaction advisor, and legal, economic, tax and accounting, ICT and probity advisors.

Evaluation teams and evaluation plans were established for the EOI, RFIO and RFBO stages. Submissions received at each stage were assessed against criteria in the evaluation plans, with outcomes documented in evaluation reports and endorsed by the LSCPSC.

The evaluation process sought to obtain the best outcome that satisfied the project objectives set out in section 7.2. The evaluation process was supported by comprehensive risk and financial analysis.

All four stages of the service provider selection process were observed by the probity advisor, who also advised on potential conflicts of interest. The probity advisor concluded in their report that 'all probity risk matters have been conducted diligently and appropriately from a probity perspective' and 'processes have been conducted with integrity, have not been compromised and involved a fair and unbiased process conducted in the public interest with no degree of favouritism, appearance of impropriety or unfair advantage'.

8.3.2 Market soundings

In November and December 2016, bidder roadshow presentations were held domestically and internationally with selected organisations.

The purpose of the bidder roadshows was to provide prospective bidders with information on LSG functions, maximise interest in the proposed transaction and allow prospective bidders an opportunity to ask questions on the proposed transaction.

Potential bidders expressed a strong interest to include an option to expand to other government registries

Feedback from market soundings indicated a strong interest from potential bidders to include an option to expand to other government registries, such as motor vehicle registrations and drivers' licensing, should the SA Government decide to outsource the operation of these registries in the future. The SA Government determined that including an option to grant an exclusive right to negotiate the commercialisation of additional government registries (ERN) was the preferred mechanism to offer this option.

Commercial advice indicated that including an option for an ERN would:

- help to maximise the up-front value received for the proposed transaction
- streamline the bidding process for future government registry commercialisation projects, delivering time and cost savings to both the SA Government and the private sector.

The ERN was communicated to all potential bidders in the RFIO market approach documents.

Section 9.16 contains further information about the mechanics of the ERN.

8.3.3 Request for expressions of interest (EOI)

On 9 December 2016, the SA Government, through an open call process, sought expressions of interest from the private sector to deliver a range of transactional land services and functions on behalf of the SA Government. The objective of the EOI process was to identify interested parties who demonstrated the capability to participate further in the service provider selection process. Interested parties were requested to submit their interest and qualifications to be considered as a participant in the service provider selection process.

Submissions for the EOI closed on 13 January 2017 and 13 submissions were received.

An evaluation team and evaluation plan were established to assess the EOI submissions. The evaluation team assessed the submissions and recommended that all respondents be shortlisted as qualified bidders to participate further in the service provider selection process.

8.3.4 Request for indicative offers (RFIO)

The shortlisted qualified bidders from the EOI stage were invited to submit non-binding indicative offers for the proposed transaction, including their interest in paying additional cash consideration to secure the exclusive right to negotiate for any future registry commercialisations considered by the SA Government.

The RFIO was issued on 30 January 2017 and submissions closed on 28 February 2017. Five indicative offers were received.

An evaluation team and evaluation plan were established to assess the RFIO submissions. The RFIO evaluation plan, endorsed by the LSCPSC, outlined the evaluation process including the scoring of submissions against the evaluation criteria. The respondents were assessed on a risk management basis against the evaluation criteria in the RFIO evaluation plan.

Submissions were also compared to the initial reserve price set by the SA Government. Section 8.3.7 has further information about the setting of the reserve price.

All respondents were assessed as having satisfactory risk ratings and their indicative offers exceeded the reserve price range.

All respondents to the RFIO progressed as shortlisted qualified bidders to the RFBO stage.

8.3.5 Request for binding offers (RFBO)

The shortlisted qualified bidders from the RFIO stage were invited to submit a binding offer for the proposed transaction.

The RFBO was issued on 3 April 2017 and submissions closed on 28 July 2017. Four binding offers were received.

The closing date for RFBO submissions was revised from 30 June 2017 to 28 July 2017 after feedback from most of the qualified bidders indicated that an extended time frame was likely to result in better informed binding offers. This extension to the closing date was approved by the LSCPSC.

Further commercial, economic, legal, financial and IT vendor due diligence information was provided to qualified bidders, additional to the information provided at the RFIO stage.

Qualified bidders were given the opportunity to:

- meet with the preparers of the vendor due diligence information and ask questions
- meet with the Registrar-General and Valuer-General to ask questions on the proposed transaction
- provide feedback on the draft transaction documents.

Qualified bidders were required to obtain all necessary approvals from regulatory authorities to complete the proposed transaction, including the Foreign Investment Review Board, ACCC and Australian Taxation Office, prior to submitting their binding offers.

An evaluation team and evaluation plan were established to assess the RFBO submissions. The RFBO evaluation plan, endorsed by the LSCPSC, outlined the evaluation process including the scoring of submissions against the evaluation criteria. The respondents were assessed on a risk management basis against the evaluation criteria in the RFBO evaluation plan.

Submissions were also compared to the updated reserve price set by the SA Government. There is more information about setting the reserve price in section 8.3.7.

All binding offers received exceeded the upper end of the reserve price range.

The evaluation team sought specialist advice to assist with the evaluation process on operational, ICT, legal and financial matters, including obtaining financial analysis from Investec on an ERN condition proposed by a bidder.

From this evaluation process, the Macquarie Infrastructure and Real Assets, Macquarie Alternative Investment Trust and the Canadian Public Sector Pension Investment Board consortium (MIRA) was selected as the preferred service provider. MIRA was assessed as having the lowest overall risk to the State and highest offer price.

8.3.6 Land Services SA appointed as the service provider

On 10 August 2017, the SA Government approved the appointment of MIRA, trading as Land Services SA, as the exclusive service provider for a 40-year term.

8.3.7 Retention value and reserve price

A reserve price was used by the evaluation teams as a 'preliminary hurdle' for the evaluation of offers and bids received. A preliminary reserve price was set for the RFIO evaluation and further refined for the RFBO evaluation.

The reserve price was determined with reference to the retention value and any additional costs and benefits to the SA Government arising from the transaction and transferring the business to a new service provider business model.

The retention value adopted by the LSC project team was the net present value of all the costs and benefits of retaining the business in the SA Government's hands over the 40-year concession period.

The SA Government commissioned independent advice from two investment banking advisory firms to confirm the reasonableness of the discount rates adopted. However, an independent expert was not engaged to review the whole retention value and reserve price calculation methodology.

8.3.8 Consideration received

On 12 October 2017, the SA Government received \$1.605 billion consideration upfront from the service provider. This comprised:

- \$1.525 billion for the right to be appointed as the service provider under the LSA, the right to access and use the State information assets, a licence to use the SA Government's software and the purchase price for acquiring associated business assets
- \$80 million for the exclusive right to negotiate to become the service provider for other State registries, which is effectively a prepayment to the SA Government for the appointment to manage such registries. This amount may be refundable if the SA Government does not progress with the commercialisation of the motor vehicle registry within three years or does not grant a seven-year extension to the service provider under the LSA.

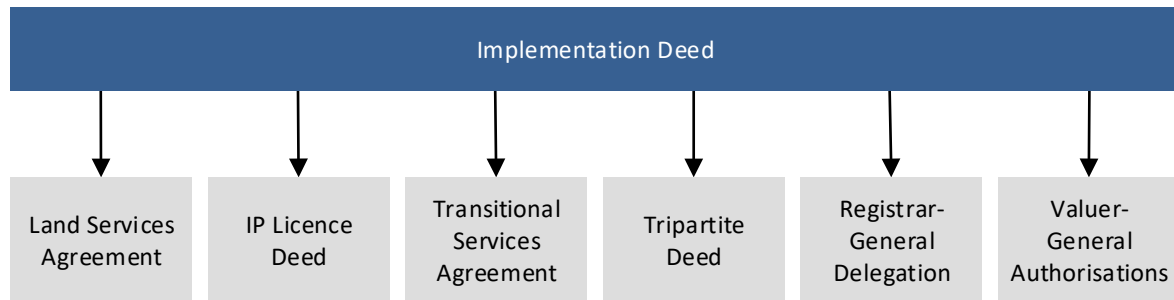
The consideration received was transferred to the Consolidated Account.

9 Transaction structure

9.1 Overview of key transaction documents

Figure 9.1 depicts the key transaction documents comprising the transaction structure.

Figure 9.1: Key transaction documents comprising the transaction structure



Other transaction documents include the State Records Agency Instrument, Ancillary Asset Sale and Purchase Agreement and agreements for the service provider to use the premises at 101 Grenfell Street and Netley occupied by the former LTO and SVO.

Figure 9.2 explains the primary purpose of the key transaction documents.

Figure 9.2: Primary purpose of key transaction documents

Transaction document	Primary purpose
Implementation Deed	The Implementation Deed is an ‘umbrella’ agreement between the SA Government and the service provider incorporating all of the other transaction documents. It sets out the terms for implementing the transaction including the consideration to be paid by the service provider and ERN conditions.
Land Services Agreement	<p>The Land Services Agreement is the key operational document for the transaction. Under it, the SA Government appoints the service provider as the exclusive provider of the relevant lands titling and valuation services for the 40-year term. It sets out the scope of the services to be delivered, service levels that must be met, performance management mechanisms (ie rebates, cure plans, step-in provisions) and the service charges payable by the SA Government.</p> <p>Appendix 3 details the key elements of the Land Services Agreement.</p>

Transaction document	Primary purpose
IP Licence Deed	Under the IP Licence Deed, the SA Government provides the service provider with a right to access and use relevant intellectual property, data and software of the State for the purposes of performing the services under the Land Services Agreement. The service provider is also granted the exclusive right to commercialise for gain particular intellectual property and data.
Transitional Services Agreement	The Transitional Services Agreement requires the SA Government to provide services to the service provider for an interim period to help transition the commercialised services from the SA Government to the service provider. The arrangements include seconding employees and providing access to ICT systems.
Tripartite Deed	The Tripartite Deed is between the SA Government, the service provider and the security trustee under the service provider's debt financing arrangements. It regulates the manner in which the parties can exercise their respective rights under the transaction documents and the service provider's financing documents, including with respect to step-in and termination.
Registrar-General Delegation	This is a formal instrument of delegation from the Registrar-General to the service provider's personnel delegating all of the legislative powers, duties and functions necessary to enable the service provider to provide the commercialised services on behalf of the SA Government.
Valuer-General Authorisations	The Valuer-General Authorisations authorise relevant service provider personnel to exercise certain rights and powers under the VL Act, including the power to enter onto land to undertake valuations.

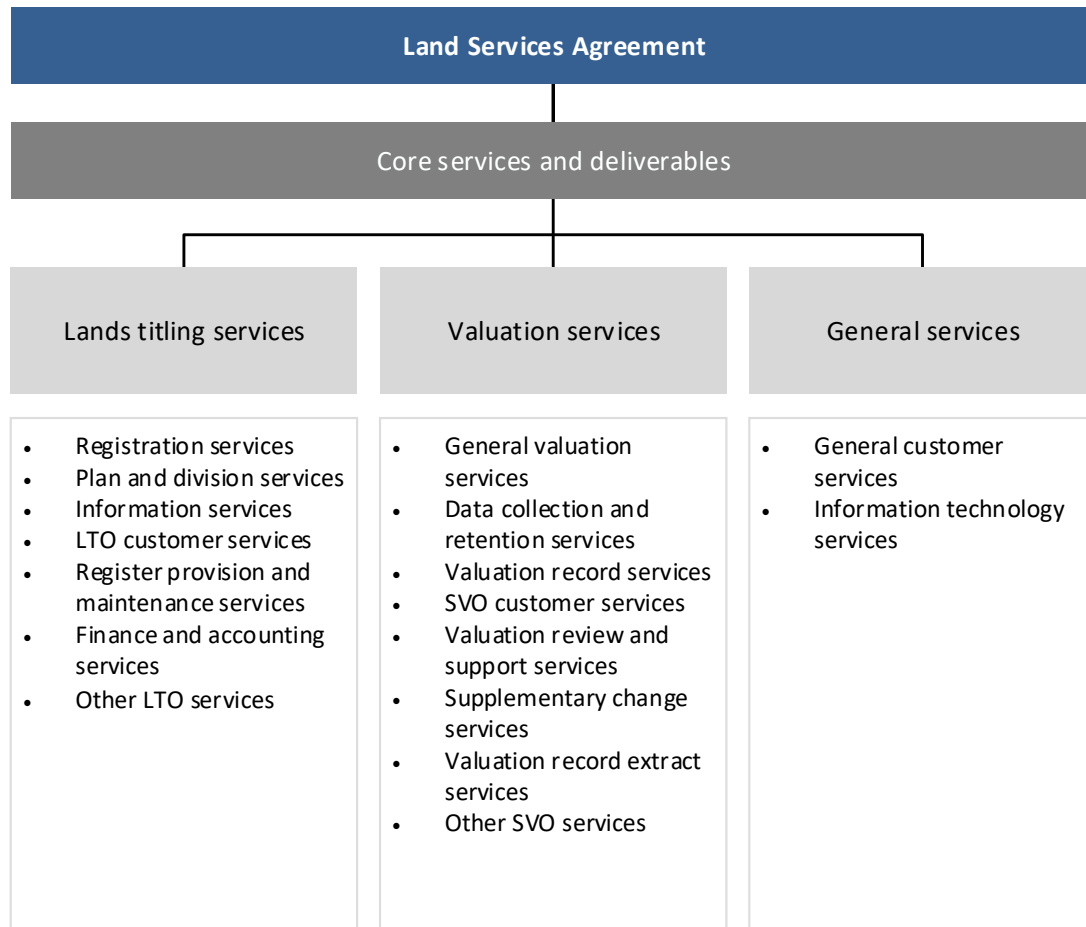
9.2 Services and deliverables

Under the LSA, the services to be delivered by the service provider comprise:

- lands titling services
- valuation services
- general services
- new project services.

Figure 9.3 provides further information about the specific lands titling services, valuation services and general services functions that make up the core services and deliverables.

Figure 9.3: Composition of core services and deliverables



New project services – Revaluation Initiative

The SA Government has also appointed the service provider to assist the Valuer-General to undertake a Revaluation Initiative. These services are governed by a statement of work entered into under the LSA for new project services and are not captured as part of the core services and deliverables.

A key function of the Valuer-General under the VL Act is to undertake general valuations of properties in each area of the State. Mass appraisal techniques are used in conjunction with manual valuation approaches to deliver the general valuations. In South Australia, an indexation approach has been the primary mass appraisal technique used since the mid-1980s. The indexation approach means that any error in the existing valuation is carried over to the next valuation.

The Valuer-General has determined that there is a requirement to review the valuation roll to ensure that valuations, which are the basis for calculating various State and Local Government taxes, rates and levies, remain sufficiently accurate and relative. To achieve this, the Valuer-General has embarked on a five-year Revaluation Initiative to conduct reviews of site values and capital values across priority areas and property classifications.

9.3 Delegations to the service provider

Under the provisions of the RP Act the Registrar-General has delegated certain powers and functions to the service provider's personnel to enable it to perform its obligations under the transaction documents. In addition, under the VL Act, the Valuer-General has authorised certain service provider personnel to exercise certain rights and powers of the Valuer-General.

Under the LSA, the service provider must ensure that its personnel comply with the Registrar-General Delegation and Valuer-General Authorisations.

9.3.1 Registrar-General Delegation

The Registrar-General Delegation instrument delegates authority under various legislative provisions to the Chief Executive Officer of the service provider who, in turn, may subdelegate to its employees, provided they are appropriately qualified and experienced.

The specific powers, duties and functions are listed in the Registrar-General Delegation. Notably, it specifically limits the delegate from exercising certain powers relating to creating new forms, destroying documents, obtaining legal advice, conducting legal proceedings and setting fees.

9.3.2 Valuer-General Authorisations

The Valuer-General Authorisations:

- authorise certain service provider personnel, known as approved valuers, to enter land and do what is necessary to determine the value of that land under section 26(1) of VL Act
- authorise approved valuers to be given full and free access to all maps, plans, documents and books in the possession of the SA Government, relevant to the service provider's determination of the value of land under section 27(1) of the VL Act.

9.4 The Assurance Fund

The transaction documents do not disturb or otherwise interfere with the titling system provided for under the RP Act, with the SA Government remaining responsible for the guarantee of indefeasibility of title and the ongoing operation of the RP Act Assurance Fund. The LSA contains express provisions requiring that the SA Government continue to conduct and manage any Assurance Fund claims.

While the service provider is liable to the SA Government for any claims made on the Assurance Fund flowing from any breach by the service provider of the LSA, the SA Government ultimately retains responsibility for providing the guarantee of indefeasibility of title.

Ensuring the ongoing integrity and security of the lands titling system and the various registers is one of the primary objectives of the LSA. In that regard, a breach by the service provider of its obligations under the LSA which affects the integrity or security of the lands titling system or the various registers may amount to a significant failure, which may (if not remedied or if incapable of remedy) trigger the SA Government's termination rights.

9.5 Customer fees

The SA Government charges customers a range of fees for processing lands titling transactions and supplying information products. Most of these fees are set by regulation (regulated fees).

As part of delivering the lands titling services under the LSA, the service provider is responsible for processing these transactions and supplying these information products on behalf of the SA Government.

The SA Government has appointed the service provider as its agent to collect those fees on its behalf, and the service provider must not charge customers any more than the regulated fee.

Customer fees for the services are paid directly to the SA Government and deposited into an SA Government controlled bank account. The service provider recovers customer fees, excluding ad valorem property transfer fees and the SAILIS transaction levy, by way of the LTO service charge paid by the SA Government.

Appendix 4 illustrates the transaction flows for customer fees before and after commercialisation. Section 9.6 contains further information on setting and calculating the LTO service charge.

The SA Government has obtained a GST private binding ruling which confirms that GST will not be payable on customer fees paid by the public, as they remain fees for government services and are accordingly GST exempt.

The SA Government retains control over the setting of regulated fees

The SA Government retains control over the setting of regulated fees and charges, in the same way as before commercialisation. Regulated customer fees will continue to be prescribed under the relevant legislation, with yearly increases tied to the treasury indexation rate set by the SA Government.

Ad valorem fees continue to be retained by the SA Government

The service provider is responsible for collecting ad valorem fees from customers for property transfers prescribed under section 277 of the RP Act as agent for the SA Government. The ad valorem fee is charged on a sliding scale based on the value of the property transferred. This revenue stream does not flow to the service provider and is still retained in full by the SA Government.

DPTI advised that ad valorem fees collected by the SA Government from 1 July 2017 to 30 June 2018 were approximately \$148.4 million.

The SAILIS transaction levy remains in operation

A SAILIS transaction levy of \$15 was introduced in 2011 on all property instruments lodged under the RP Act and associated statutes to recover the costs of implementing SAILIS.

The transaction levy is collected by the service provider on behalf of the SA Government and revenue received is retained by the SA Government.

CEB advised that the transaction levy still applies as the revenue raised from the levy is yet to meet the costs of implementing and maintaining SAILIS.

As at 30 June 2018, total SAILIS capital expenditure and maintenance costs were \$27.2 million, and the SA Government had recouped \$18.7 million through the transaction levy.

Fees for new products introduced by the service provider must be approved by the SA Government

Under the IP Licence Deed, new products and associated fees introduced by the service provider must be approved by the SA Government.

The IP Licence Deed requires the service provider to submit a proposal including fees and contract terms for any new products. In considering whether to approve or reject a new data product proposal, the SA Government may have regard to any matters it reasonably considers relevant including public policy and public interest concerns, the privacy of natural persons, the security and integrity of the data proposed to be made available, and national security.

9.6 Services charges

In line with the LSA, the SA Government will pay the service provider certain charges for the services and deliverables provided. The main charges are:

- LTO service charge
- valuation service charge
- SA Water processing charge
- new project services charge.

LTO service charge

The LTO service charge is a variable monthly charge for providing lands titling services and the general services.

The LTO service charge is calculated by multiplying the number of lands titling transactions initiated in a month by the applicable transaction fee for the transaction type.

The transaction fees are set out in the LTO service charge fee schedule in the LSA and escalated annually at the indexation rate defined in the LSA.²

Importantly, the LTO service charge fee schedule in the LSA is the only point of reference for the calculation of the LTO service charge and remains independent of the fee setting process controlled by the SA Government, which may set out different customer fees to be paid by the public. It is therefore possible for the SA Government, subject to Cabinet approved regulation changes, to increase transaction fees above those that are passed onto the service provider through service charges and retain the difference.

Appendix 4 illustrates the transaction flows for lands titling fees and charges before and after commercialisation.

Valuation service charge

The valuation service charge is a fixed annual amount for providing valuation services.

The valuation service charge was \$10.22 million in 2017-18 and is escalated annually at the indexation rate defined in the LSA.³

Appendix 4 illustrates the transaction flows for valuation service fees and charges before and after commercialisation.

SA Water processing charge

The SA Water processing charge is a variable quarterly charge for processing South Australian Water Corporation (SA Water) information products.

The SA Water processing charge is calculated by multiplying the number of SA Water transactions performed in a quarter by the applicable transaction fee for the transaction type. The charge is escalated annually at the indexation rate defined in the LSA.⁴

New project services charge

The new project services charge is a monthly charge for any statement of work agreed with the service provider for new project services.

A monthly charge is incurred by the SA Government for Revaluation Initiative services rendered by the service provider.

9.7 Performance management

9.7.1 Overview of service level regime

The LSA sets detailed and prescriptive service levels that the service provider must meet or

² The indexation rate is calculated annually based on movements in the Consumer Price Index and Wage Price Index published by the Australian Bureau of Statistics.

³ *ibid.*

⁴ *ibid.*

exceed. The service provider is to self-measure and self-report its performance against these service levels using SA Government approved methodologies.

Failure by the service provider to achieve these service levels will trigger financial sanctions in the form of performance rebates applied to service charge invoices. Additional contractual provisions are also in place to address systemic or serious failures by the service provider, including:

- the service provider implementing a cure plan
- the SA Government appointing a resolution manager
- the SA Government exercising its step-in rights
- termination rights, depending on the gravity and persistence of the failure.

The performance and default provisions set a framework for the service provider to remedy deficiencies, with increasing levels of SA Government intervention as the deficiencies become more serious or remain uncorrected.

The service level regime largely places the onus on the service provider to accurately self-report its own performance. The broad scope of the audit powers in the LSA described in section 9.14.1 gives the SA Government the ability to interrogate the services provider’s reporting to ensure it is accurate and complete.

9.7.2 Service levels

There are 31 separate service levels, including nine for lands titling services, 14 for valuation services and eight for general services.

Each service level comprises:

- a description of the service level
- the classification of the service level (critical, important or minor)
- the applicable measurement period
- the method for measuring the service level
- the verification period⁵ where applicable.

Figure 9.4 provides a summary of the service level types and classifications.

Figure 9.4: Summary of service level types

	Lands titling services	Valuation services	General services	Critical service levels <ul style="list-style-type: none"> • Noting instruments and plans • Registration of instruments • Statistical requirements for property classification and sub-market valuations • Supply of valuation data extracts • Land information system availability
Total number of service levels	9	14	8	
Critical ☆☆☆	4	3	1	
Important ☆☆	4	5	2	
Minor ☆	1	6	5	

⁵ The period after the commencement date during which performance rebates are not applicable.

Detailed information about the nature of the critical service levels is contained in Appendix 5.

Verification period for service levels

Of the 31 service levels, 21 have prescribed verification periods which vary between three and 20 months after the commencement date. Valuation services have 14 service levels subject to a verification period, while lands titling services have four and general services three.

During a verification period, the service provider is not liable for performance rebates for delivery of the service to be verified. At the same time, it must perform the relevant services to a standard no less than the standard of the SA Government in the 12 months leading up to the commencement date.

If the service provider fails to meet a service level during a verification period, it may request a change to the service level. Whether such a request is ultimately accepted remains at the SA Government's discretion, acting reasonably.

9.7.3 Performance rebates

Failures by the service provider to achieve the service levels may trigger financial sanctions in the form of performance rebates applied to service charge invoices.

The LSA requires the service provider to calculate its liability to pay performance rebates at the end of each quarter. The amount of the performance rebate is dependent on whether the service level is classified as critical, important or minor.

If a service level default for a particular service level occurs repeatedly, the performance rebate for that service level default will be multiplied by the applicable multiplier. The total amount of performance rebates payable is capped yearly at the greater of \$7 million (baseline cap amount) or 10% of the charges for services that were charged in the previous financial year. The rebate amounts and the baseline cap amount are subject to indexation from 1 July in each year by the indexation rate defined in the LSA.

The service level categories (critical, important and minor) can be subject to some limited swapping at the SA Government's discretion.

Cure plan

If a persistent failure or significant failure occurs, the service provider must prepare a cure plan to address it.

A persistent failure is where a service level default occurs across multiple periods, either over consecutive periods or a rolling period. A significant failure occurs where the service provider commits particularly serious breaches or service level defaults.

A cure plan must set out how, once implemented, it is to prevent significant or persistent failure from occurring again. It must be implemented at no cost to the SA Government and in line with the time frames and any other terms specified in it.

Cure plans may also be required to address errors in the registers or valuation records the service provider is responsible for, but which do not give rise to a persistent or significant failure.

9.7.4 Resolution manager

Where the service provider fails to develop or implement a cure plan or the cure plan fails to resolve the failure, the SA Government may appoint a resolution manager at the cost of the service provider.

The role of the resolution manager is to oversee the resolution of the issues underpinning the failure that led to the requirement for a cure plan. The service provider must comply with all the resolution manager's directions.

9.7.5 Step-in

With notice to the service provider, the SA Government also has the discretion to step-in and take over supplying services if:

- a significant failure occurs, in which case the SA Government may take over the services and related items affected by the significant failure
- the service provider, a holding company of the service provider or the guarantor suffers an insolvency event, in which case the SA Government may take over all the services
- the service provider fails to comply with a direction of a resolution manager, in which case the SA Government may take over either:
 - the development or implementation of an applicable cure plan
 - the resolution of the underlying issue or failure.

During any step-in period, the service provider is required to fully cooperate with the SA Government and its personnel. This includes providing access to all resources used by the service provider in providing the services.

Unless the SA Government exercises any right to give a termination notice that it has relating to the events giving rise to the step-in, it must hand back responsibility for the services to the service provider when the service provider is capable of resuming the supply of the affected services and when the event or events giving rise to the step-in rights no longer subsist and will not reoccur. Where this occurs, the service provider must also do all things necessary to accommodate the transition back from SA Government control and pay all of the losses suffered or incurred by the SA Government related to a step-in.

9.8 Business continuity

At all times from the commencement date, the service provider is required to maintain up-to-date plans and procedures in anticipation of any risks that might affect the continuity of services. These plans and procedures, referred to as the business continuity plan, must meet best practice industry standards and be tested at least annually.

At any time, the SA Government may reasonably request evidence of the service provider's compliance with the business continuity provisions contained in the LSA.

An accurate, up-to-date and tested business continuity plan is important to prepare for and effectively manage a business disruption, and ensure the continuity of lands titling and valuation services. The business continuity plan provisions in the LSA are intended as a protective measure to guard against the service provider walking away from its obligations and require it to proactively prepare for circumstances where its ability to perform the services is affected by adverse external circumstances.

If the service provider is unable to or fails to maintain the continuity of services, depending on the severity of the issue, the SA Government would be entitled to exercise its step-in rights to take over the delivery of services and deliverables.

9.9 Dispute resolution, termination and disengagement

9.9.1 Dispute resolution

The LSA provides for a multi-tiered process to resolve disputes connected with the LSA and IP Licence Deed.

In the first instance, disputes are to be considered by the Land Services Agreement Governance Committee.

If a dispute remains unresolved, and relates to a financial matter, it must first be referred to an independent expert for adjudication. If the expert fails to make a binding determination, the parties can commence legal proceedings to resolve any unresolved part of the dispute.

If an unresolved dispute relates to matters other than a financial matter, either party may commence legal proceedings.

9.9.2 Termination

The LSA provides the SA Government with termination rights in particular circumstances.

The SA Government may terminate the LSA in its entirety, or in relation to one or more services or deliverables. However, if it wishes to terminate the lands titling services, it must terminate the LSA in its entirety.

The SA Government can give the service provider a termination notice if one of the following events occurs:

- the service provider commits a material breach of particular clauses in the LSA and that breach either cannot be remedied or the service provider fails to remedy the breach after the SA Government requests it to do so
- a delegation by the SA Government is revoked or withdrawn and is not replaced

- the service provider, a holding company of the service provider or the guarantor suffers an insolvency event
- a notice of termination is given under the IP Licence Deed
- there are repeated failures to implement cure plans
- there is a change in law which means that all or substantially all of the LSA is no longer permitted or capable of being performed under that law.

The SA Government is obligated to compensate the service provider for loss suffered due to it terminating arrangements for situations within its control and for which the service provider is not at fault.

9.9.3 Disengagement

Disengagement means the transfer of responsibility for the supply of services or deliverables from the service provider to the SA Government or a new supplier.

The LSA contemplates disengagement:

- at five years from the end of the term of the LSA
- on termination of part or all of the LSA.

The service provider is required to prepare a disengagement plan setting out the services, tasks, functions, activities and responsibilities required for successful transition of services and deliverables, as well as time frames, resourcing, anticipated delays and any associated anticipated damages. Once the plan has been accepted by the SA Government, the service provider must provide disengagement assistance to the SA Government in line with the plan.

A disengagement charge for disengagement assistance is payable to the SA Government by the service provider and calculated by a prescribed method.

9.10 Guarantees and indemnities

The guarantor under the Implementation Deed is Land Services SA Holding Pty Ltd as trustee for the Land Services SA Holding Trust (formerly Autumn Holding Company Pty Limited as trustee for the Autumn Holding Trust).

The guarantor indemnifies the SA Government against any loss and/or costs incurred in connection with any claim made against the SA Government arising from the service provider's:

- failure to perform its obligations under the transaction documents
- insolvency, liquidation or winding up
- inability, including the guarantor's inability, to pay money due to the SA Government because of any other circumstances.

9.11 Access to State information assets

9.11.1 What are State information assets?

The IP Licence Deed grants the service provider the right to access, use and commercialise State information assets.

State information assets are all information, data, records and documents that the SA Government owns, is licensed or authorised to use and has possession or control of, which the service provider requires to provide the services and deliverables under the LSA. This includes the land registry, valuation roll and digital cadastral database.

The SA Government retains ownership of these assets and associated intellectual property and can continue to use them for government purposes.

9.11.2 Commercialisation of State information assets

The service provider has the right to use the State information assets to develop new products to sell to third parties and provide wholesale data to third parties for commercial purposes.

Under the commercialisation arrangements, customers will continue to have access to the same data products that were available before the commercialisation. However, the service provider can introduce new data products and expand the offering of products to the public subject to SA Government approval.

The service provider must obtain approval from the SA Government prior to selling or making available any new data product based on a State information asset. In determining whether to grant approval for a new data product, the SA Government can consider any matter that it considers relevant, acting reasonably, including:

- public policy and public interest concerns
- the privacy of natural persons
- the security and integrity of the data proposed to be made available
- national security.

In addition, any commercialisation of data by the service provider needs to comply with its obligations under the transaction documents including compliance with the *Privacy Act 1988* (Cwlth).

Intellectual property rights in any new data products created and commercialised by the service provider are owned by the service provider (except for intellectual property rights in any State information assets incorporated into the new data products). The SA Government does not have any right to access or use the service provider's intellectual property in its new data products, but is entitled to a royalty on commercialisation revenue earned by the service provider on those products. Further information about the royalty regime is contained in section 9.13.

9.11.3 Service provider's privacy obligations

The State information assets arrangements give the service provider access to a large amount of personal information about the customers of the lands titling and valuation systems. Personal information is any information that could be used to identify an individual, including any information that could uniquely identify a property.

In dealing with that information, including commercialising it, the service provider must:

- comply with the *Privacy Act 1988* (Cwlth) and any other applicable privacy legislation at all times
- self-report to the SA Government any incident involving the misuse, or loss of, interference with, unauthorised access to, modification of or disclosure of personal information.

SA Government approval is required before the service provider can introduce new data products to the market. The approval regime set out in the IP Licence Deed allows for the SA Government to consider whether the service provider complies with privacy legislation and other potential privacy issues when approving requests from the service provider to commercialise new products, as well as broader consideration of privacy issues which may extend beyond the requirements of the legislation. The approval process for new data products is further discussed in section 9.11.2.

9.11.4 Protection of State information assets

The IP Licence Deed sets out a number of obligations on the service provider to protect the State information assets, including:

- obligations to store State information assets on infrastructure or media located in Australia only
- not transferring to, or making State information assets accessible from, outside Australia except as agreed with the SA Government
- implementing security measures and procedures that comply with applicable laws, industry standards and government requirements, including the Information Security Management Framework
- complying with all laws and policies in relation to the State information assets, including certain security measures and procedures which must be tested at least every three months and remedied if deficient
- remedying any loss, damage to or corruption of the State information assets caused by the service provider
- keeping all physical State information assets at the 101 Grenfell Street or Netley premises (or other premises approved by the SA Government).

The service provider must report to the SA Government any breaches of its obligations to protect State information assets.

A breach of the privacy or data security clauses may result in damages, a significant failure and/or trigger the SA Government's termination rights, depending on the type and degree of the breach.

9.12 State software

The SA Government has granted the service provider:

- a licence to use, reproduce, sublicense, modify and adapt SA Government owned software including SAILIS intellectual property
- a sublicense to use, reproduce and sublicense SA Government licensed software.

These licensing rights are limited to the purpose of the service provider performing its obligations under the transaction documents.

The SA Government has also granted the service provider a licence to commercialise intellectual property rights in SAILIS owned by the SA Government, subject to approval.

The SA Government no longer has ongoing maintenance responsibility for SAILIS

Under the transaction documents, the service provider has taken over responsibility for SAILIS in conjunction with the external third party SAILIS suppliers.⁶ As a condition of the transaction documents, an earlier agreement between the SA Government and SAILIS suppliers was novated to the service provider.

The novated agreement requires the service provider to 'supply SAILIS on a software-as-a-service basis under the Land Services Agreement', and otherwise releases the SA Government from any ongoing liability in respect of those arrangements.

Accordingly, the SA Government has relinquished responsibility for the supply and control of SAILIS, with liability for any faults in SAILIS connected with its supply and maintenance resting with the parties to the novated SAILIS agreement.

9.13 Royalties

In return for the SA Government granting the service provider the right to commercialise the State information assets and SAILIS intellectual property, it will earn a royalty of 12.5% of the revenue the service provider generates from commercialising these assets.

The service provider must calculate the service provider royalty payable in line with the process prescribed in the IP Licence Deed on a six-monthly basis.

⁶ SAILIS suppliers means Fuji Xerox BusinessForce Pty Limited and Fuji Xerox Document Management Solutions Pty Limited.

The IP Licence Deed provides the SA Government with the right to audit the service provider's accounts and records to determine whether the service provider royalty payable has been correctly calculated.

9.14 Audit provisions

9.14.1 General audit provisions

The LSA gives the SA Government broad rights to access and audit the records of the service provider for any aspect of the transaction documents. Under the LSA, the SA Government may, by giving the service provider at least 10 business days' notice, either itself or using an independent auditor, conduct an audit of the service provider:

- for the purposes of the SA Government carrying out, performing or exercising its rights, functions, duties, or powers in line with, or under, any law
- to meet or comply with applicable contractual, regulatory and governmental purposes
- to confirm the service provider's compliance with the transaction documents.

The SA Government is yet to exercise its audit powers under this section of the LSA.

9.14.2 Service charges and royalties audit

The LSA contains specific provisions for the audit of service charges. The SA Government, at the service provider's cost, must conduct an audit of the service provider's accounts and records every six months to determine whether service charges paid by the SA Government are correctly calculated in line with the LSA.

The SA Government also has the right under the IP Licence Deed to conduct an audit of the service provider's accounts and records to determine whether the service provider royalty payable has been correctly calculated in line with the IP Licence Deed.

9.15 Value adds

The Implementation Deed acknowledges that the service provider's business plan in its binding offer contemplates certain commitments following transaction completion (ie 12 October 2017):

- investment of up to \$35 million in technology and innovation over the first five years of the LSA associated with providing the services and deliverables
- investment of up to \$3 million over the first five years of the LSA associated with developing and implementing new products and services to improve outcomes for customers and other stakeholders
- being an active participant in the start-up culture in South Australia to assist and develop new product and start-up companies.

The Implementation Deed does not bind the service provider to fulfil any of these commitments.

9.16 Exclusive right to negotiate

The service provider paid the SA Government \$80 million in ERN consideration on the transaction completion date (ie 12 October 2017). As a condition of receiving the ERN consideration, the SA Government agreed to use its reasonable endeavours to undertake necessary preparatory work to make a decision whether or not to commence a formal process to commercialise the management of the motor vehicle registry in the three years after the transaction completion date.

The SA Government has committed only to making a genuine effort to prepare to consider whether to commercialise the motor vehicles registry in a similar manner to land services. This obligation in and of itself does not trigger the service provider's entitlement to exclusive negotiations. That right is only triggered if and when the SA Government does in fact commence a formal process to commercialise the motor vehicle registry or any other State registry. Should such a formal process commence, the SA Government must notify the service provider, after which there will be a six-month period of exclusive negotiations in respect of the relevant State registry.

After the expiry of the six-month period, the SA Government may choose to go to the market and negotiate with other parties, or continue negotiations with the service provider. If it reaches an agreement with the service provider with respect to the motor vehicle registry or any other State registry, the service provider may apply the ERN consideration or any part of it as payment towards consideration for that agreement. The balance of any ERN consideration not applied must be refunded to the service provider.

There is no binding obligation on the SA Government to agree to commercialise the motor vehicle registry or any other State registry or even to enter the exclusive negotiation period. However, the failure to reach any agreement with the service provider will have consequences for the ERN consideration. There is only one scenario under which the SA Government is not required to repay the \$80 million ERN consideration in the absence of an agreement to commercialise the motor vehicle registry. That is, if the SA Government grants a seven-year extension to the maximum term of the arrangements.

Repayment of ERN consideration

The SA Government must repay the ERN consideration, with interest, if:

- it appoints a party other than the service provider to commercialise the motor vehicle registry at any time during the term of the LSA
- no agreement to commercialise the motor vehicle registry is entered between the SA Government and the service provider within three years of the transaction completion date, subject to extension of the term.

The interest component of any repayment of the ERN consideration is to be accrued on a daily basis at 10% p.a. If no other State registry is commercialised in the three years

following the transaction completion date, the SA Government will be liable to repay approximately \$104 million (ie \$80 million ERN consideration plus around \$24 million in interest).⁷

The LSC project team advised that the 10% interest rate applicable to the repayment of the ERN consideration to the service provider was included in MIRA's binding bid. The interest rate was considered by the evaluation team and the LSCPSC as acceptable within the context of MIRA's complete bid price.

Status of the exclusive right to negotiate

In the 2018-19 State Budget, the SA Government allocated \$500 000 to develop a scoping study on the feasibility of commercialising the motor registration and driver licensing registry. An open tender was issued in October 2018 to acquire advisory services to perform this scoping study.

At the time of our review, a formal process to commercialise the motor registration and driver licensing registry had not commenced.

9.17 Transition arrangements

The service provider has engaged the SA Government under the Transitional Services Agreement (TSA) to provide transitional support services for approximately two years commencing 13 October 2017. These services include:

- secondment services
- IT services
- back office services.

The TSA requires the service provider to prepare and provide to the SA Government a detailed transition plan by 10 November 2017.

The purpose of the transition plan is to set out the steps the parties intend to take to enable the SA Government, by the end of transition period, to cease providing services. It also serves to enable the smooth and successful transition of lands titling, valuation and general services from the SA Government to the service provider.

The plan must include a timetable for:

- transferring services to the service provider by the expiration of the transition period
- transfer or provision of data relating to business operations and customers
- knowledge transfer and document, information and asset handover.

The plan must also allocate responsibilities of the parties for implementing the transition plan and set out an estimate of the SA Government's reasonable costs for implementing it.

⁷ Interest accrues on a daily basis at 10% p.a. up until the date repayment is made. The actual interest payment will therefore depend on the date repayment is made. Assuming the ERN consideration is repaid at three years following the transaction completion date (ie 12 October 2017), the SA Government will be liable to repay approximately \$24 million in interest.

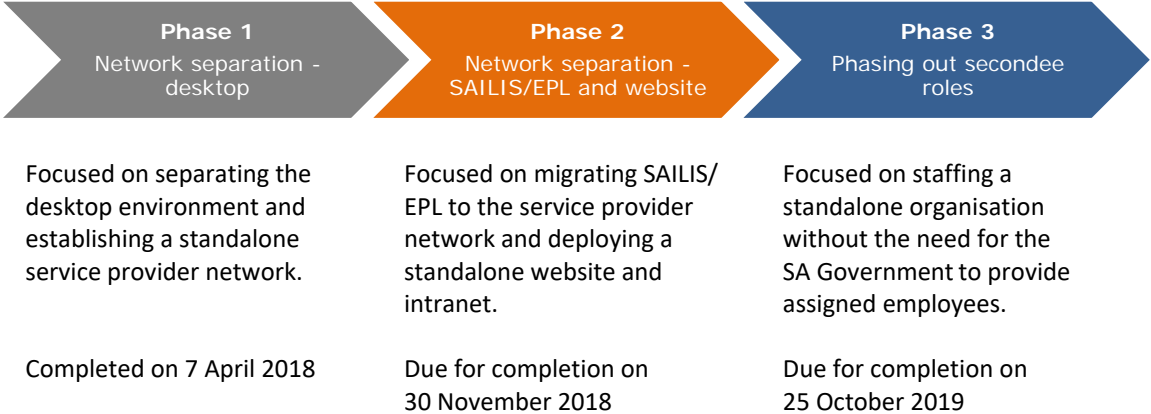
Costs incurred by the SA Government in providing the transitional services to the service provider are charged on a 'pass through' basis. CEB advised that total transition costs up to 30 September 2018 were \$4.96 million and the SA Government has recovered \$4.17 million of these costs. CEB also advised that the difference is due to timing, and outstanding costs are due to be recovered from the service provider.

The SA Government has set up a number of governance committees and workgroups to oversee and manage the transition of services. In addition, CEB has established a comprehensive transition risk register, and transition milestones and risks are formally monitored through the governance committees.

Transition phases

The service provider's transition plan is structured into three project phases described in figure 9.5.

Figure 9.5: Transition plan – key project phases



Of particular significance is phase 2, involving the transfer of SAILIS from the SA Government network (Statenet) to the standalone service provider network. Given the pivotal role of SAILIS in delivering lands titling and valuation services, the successful separation of SAILIS will be critical to ensuring the continuity of services. Further changes to the network environment will present security risks that will need to be carefully managed.

SA Government employees seconded to the service provider are gradually being phased out

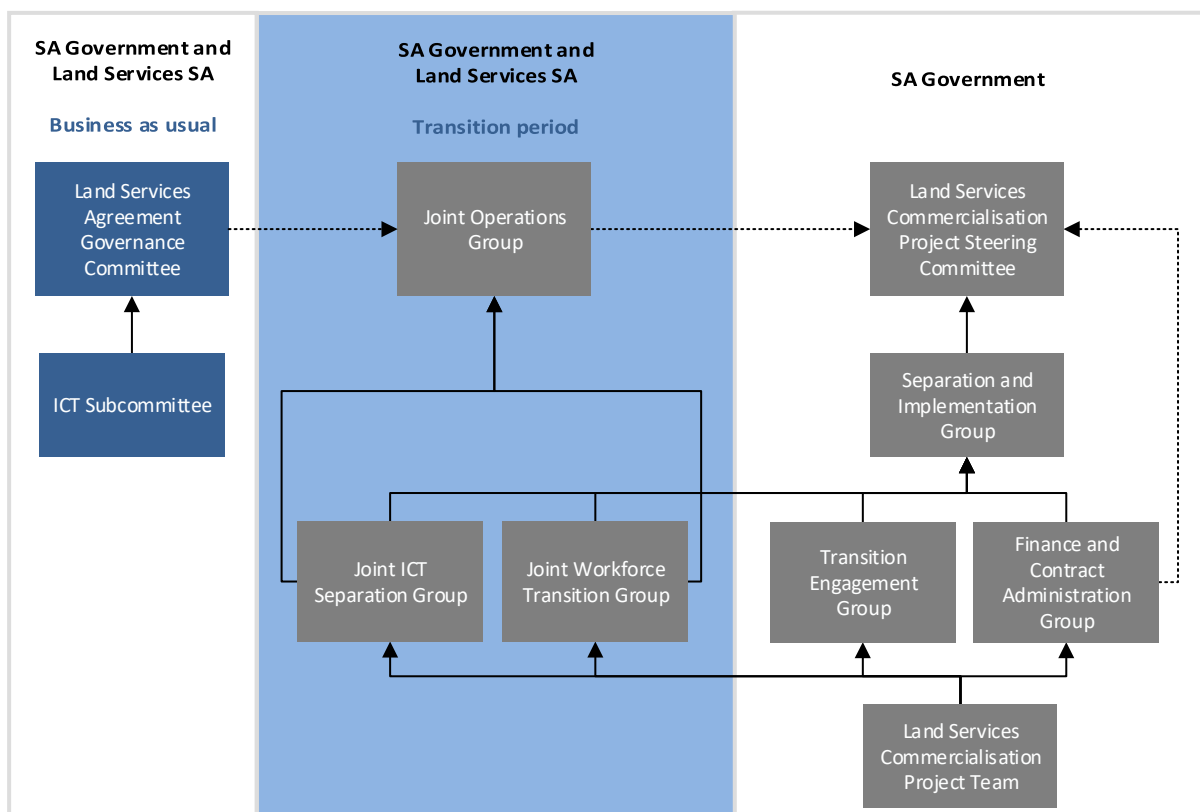
At the time of commercialisation, some SA Government employees were offered the opportunity to transfer to the new service provider. CEB advised that at the time of commercialisation 51 employees secured ongoing employment with the service provider. A further 59 employees were seconded from the SA Government to the service provider to provide transitional services. Seconded employees are gradually being phased out as the service provider progresses towards operating on a standalone basis. CEB advised that as at 30 September 2018, there were 47 secondeed employees remaining with the service provider.

10 Compliance management governance and framework

10.1 Overview of governance arrangements

The governance committees established to administer the contractual arrangements during the transition and business as usual phases are shown in figure 10.1.⁸

Figure 10.1: Governance committees



Formal terms of reference have been established for all the committees. The committees meet regularly to discuss contractual issues and risks, with action items logged and tracked.

The LSC project team in CEB is responsible for the transition workgroups and activities prescribed in the TSA. ORG and OVG are responsible for business as usual activities and activities prescribed in the LSA.

⁸ CEB advised that the governance arrangements were recently amended. The Joint Operations Group has been disbanded with the LSA Governance Committee now the primary forum for joint discussion. The Finance and Contract Administration Group has been disbanded with finance and contract administration functions shared between CEB and ORG. The Transition Engagement Group has been disbanded following the establishment of the transition plan. The other committees, including the LSCPC, remain in operation.

A Contracts and Compliance Unit with three staff has been established within ORG to perform the overall contract management function for the transaction documents. Formal job and person specifications have been established for each member of the unit.

The SA Government and the service provider are individually responsible for managing their own internal risks. Only risks with potential to have a shared impact or which can be mitigated through collaboration are managed through the shared governance structure.

10.2 Compliance management framework

ORG developed and finalised a compliance management procedure and compliance register during our audit. The compliance register records the following information for each identified compliance obligation:

- agreement title
- clause of agreement
- date/frequency of obligation
- responsible person
- description of action to be taken
- governance calendar date prompt details.

The register includes actions to ensure plans and documents are submitted timely and reviewed for compliance with relevant agreement requirements. It also reflects all the ongoing contract deliverables under the transaction documents identified by the transaction legal advisors.

A governance calendar system has been established to ensure required compliance activities are formally tracked and performed timely.

10.3 Operations manual

The LSA requires the maintenance of an operations manual which specifies the processes that the service provider must follow in providing the services. A separate operations manual has been established for each of the three core services and deliverables areas, being lands titling services, valuation services and general services.

The operations manual, initially developed by the SA Government, outlines the day to day operations and processes to be performed in maintaining and updating the land registry and valuation roll, responding to customer enquiries and complying with legislative requirements.

The operations manual reflects the manner in which the SA Government expects core services and deliverables to be performed by the service provider and the LSA requires the service provider to perform its obligations in line with the operations manual. The

operations manual is therefore an important management tool for both the SA Government and the service provider for the effective delivery of core services and deliverables.

The LSA requires the service provider to prepare certain reports and information specified in the operations manual and deliver those reports at the times and in the manner specified. The operations manual specifically highlights the requirements and outcomes with which compliance by the service provider is mandatory.

10.4 Service levels and performance management

As explained in section 9.7, the LSA sets detailed and prescriptive standards for the service provider's delivery of the prescribed services. Any failure by the service provider to meet the applicable service level will constitute a service level default.

The following mechanisms have been established by the SA Government to monitor the service provider's service levels:

- establishing the Land Services Agreement Governance Committee
- governance committee reporting and discussions
- operational meetings held weekly/fortnightly
- stakeholder engagement, both formal and informal.

Performance reporting on service levels by the service provider to governance committees has been occurring since April 2018. Service levels are being monitored by governance committees to ensure that the service provider's performance meets or exceeds the benchmarks set. The reporting provided by the service provider up to September 2018 indicates that it has satisfactorily met all service levels and therefore no performance rebates have been triggered.

10.5 Annual compliance certificate

The LSA requires the service provider to supply an annual compliance certificate on 1 July each year certifying that its personnel have complied with all obligations and instruments of delegation under the LSA and IP Licence Deed. Certification is also required that:

- no significant failures or persistent failures as defined in the LSA have occurred
- it has implemented and maintains appropriate and sufficient compliance reporting systems and internal controls designed so that it is able to manage its compliance with the LSA and the IP Licence Deed and identify any breaches that arise
- those reporting systems and internal controls are operating as required to provide the service provider with the necessary information to ensure that the certification is complete and accurate.

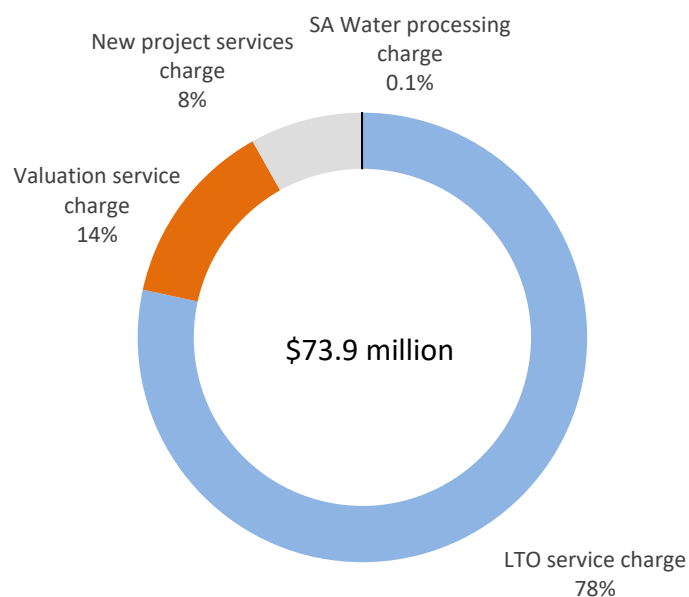
A signed annual compliance certificate was supplied by the service provider on 2 July 2018 based on a self-assessment.

10.6 Service charge and royalty verification and audit

10.6.1 Service charges

CEB advised that total service charges paid/payable by the SA Government to the service provider from the commencement date to 30 September 2018 were \$73.9 million. Figure 10.2 illustrates the composition of service charges.

Figure 10.2: Service charges incurred from 13 October 2017 to 30 September 2018



CEB implemented a structured process to verify the reasonableness of service charge invoices prior to making payment. Responsibility for this verification process is intended to transfer to ORG in 2018-19.

The service charge verification process is supported by six-monthly service charge audits performed by an independent party to confirm that service charges paid by the SA Government to the service provider are correctly calculated in line with the LSA. CEB engaged an auditor (BDO) to perform these audit services. BDO has completed audits of service charges covering the period from commencement of the arrangements to 30 June 2018. They confirmed that the service charges paid to the service provider were materially correct.

Additionally, as a once-off exercise, CEB engaged KPMG to review in detail the methodology and processes employed by the service provider to generate invoices for the LTO service charge. Following KPMG's review, the service provider implemented an automated solution to generate invoices acting on the recommendations.

10.6.2 Royalties

CEB advised that total royalties received by the SA Government from the service provider in 2017-18 were \$40 000.

The SA Government has exercised its audit rights under the IP Licence Deed to audit the service provider's accounts and records to determine whether the amount of the service provider royalty for a royalty calculation period has been correctly calculated.

CEB engaged an auditor (BDO) to perform these audit services on a six-monthly basis. BDO has completed audits of royalties covering the period from commencement of the arrangements to 30 June 2018. They confirmed that royalties received by the SA Government from the service provider were materially correct.

Appendix 1 – Overview of land services arrangements before commercialisation

	Land Services Group		
	Lands Titles Office	State Valuation Office	Land Boundaries Office
Establishing Act	<i>Real Property Act 1886</i>	<i>Valuation of Land Act 1971</i>	<i>Survey Act 1992</i>
Responsibility	Registrar-General	Valuer-General	Surveyor-General
Key operations	<p>Maintaining the State’s lands title registry and guaranteeing the system of lands titling in South Australia.</p> <p>Administering the Assurance Fund which underpins the SA Government’s guarantee of indefeasibility of title.</p>	<p>Providing a property valuation service and producing the valuation roll which is used primarily by SA Government authorities for setting rates and taxation.</p> <p>Managing objections to valuations.</p>	<p>Maintaining the survey network which determines land boundaries and supports the definition of land titles.</p> <p>Regulating surveyors in South Australia.</p>
Key fees and charges collected (2015-16)⁹	<ul style="list-style-type: none"> Document lodgements: \$28.7 million Plans lodgements and certificates of title: \$4.4 million Information products: \$26.6 million Ad valorem registration transfer fee: approx. \$136.2 million 	Revenue from the use of the valuation roll: \$13.4 million	Immaterial
Key information assets	<p>All titling information collected by the Lands Titles Office (register book):</p> <ul style="list-style-type: none"> Address Registered proprietor Dimensions of land boundaries Plans of examination Memorials of dealings Zoning/land use codes Agents Flood zones Information related to environment/Aboriginal heritage 	<p>All valuation information produced by the State Valuation Office (valuation roll):</p> <ul style="list-style-type: none"> Site value Capital value Land use codes Tenancy records Other property attributes (eg building size, construction and condition) 	<p>All geospatial information collected by the Land Services Group (cadastral database):</p> <ul style="list-style-type: none"> Land boundaries Land dimensions Plans

⁹ KPMG, Department of Treasury and Finance: Land Services Commercialisation – vendor due diligence report, 21 February 2017.

Appendix 2 – Scope of commercialised services and functions

	Retained functions	Commercialised services
Lands Titles Office	<ul style="list-style-type: none"> • Guarantee of title indefeasibility • Assurance Fund • Policy and regulatory • Audit and compliance 	<ul style="list-style-type: none"> • Registration services • Division and planning services • Old systems title conversion • Customer services • Land information services • Maintenance of SAILIS (subject to data integrity and security obligations)
State Valuation Office	<ul style="list-style-type: none"> • Oversight of public sector valuations • Policy and regulatory • Audit and compliance • Management of objections and grievances • Advisory valuations 	<ul style="list-style-type: none"> • All operational work (fieldwork, mass appraisal and clerical work) associated with the general valuation process • All operational work (fieldwork) associated with the objections process • All clerical work associated with records creation
Land Boundaries Office	<ul style="list-style-type: none"> • All existing functions and services retained by the Surveyor-General 	<ul style="list-style-type: none"> • Data from databases maintained by the Surveyor-General can be accessed by the service provider for the purposes of providing services and commercialising data

Appendix 3 – Key elements of the Land Services Agreement

The Land Services Agreement (LSA) is the key operational document for the transaction. Under it, the SA Government appoints the service provider as the exclusive provider of the relevant lands titling and valuation services for the 40-year term. This Appendix provides a summary of the key elements of the LSA.

Area	Element
Objectives	<p>The objectives of the LSA are to ensure the delivery of a sustainable service model that ensures the integrity and security of:</p> <ul style="list-style-type: none"> • the lands titling system in South Australia • the registers • the progressive assurance and audit process used by the Valuer-General and the State Valuation Office • the valuation roll. <p>The service model should also:</p> <ul style="list-style-type: none"> • maximise the efficiency gains to be achieved by the Registrar-General, the Lands Titles Office, the General Registry Office, the Valuer-General and the State Valuation Office in the performance of their functions • provide ongoing improvement in the performance of the functions of the Registrar-General, the Lands Title Office, the General Registry Office, the Valuer-General and the State Valuation Office • minimise the risks relating to the core services and deliverables. <p>The service provider must work with the SA Government to the best of its ability to allow the SA Government to achieve these objectives.</p>
Services and deliverables	<p>The services to be supplied by the service provider directly to customers on behalf of the SA Government and to the SA Government itself comprise:</p> <ul style="list-style-type: none"> • lands titling services • valuation services • general services • new project services • disengagement assistance. <p>Together, the lands titling services, valuation services and general services make up the core services and deliverables.</p>
New project services	<p>The SA Government may request that the service provider supply additional project based services for a fixed duration, which are related to but outside of the current scope of core services and deliverables.</p>
Delegations	<p>The service provider must ensure that its personnel comply with the Registrar-General Delegation and Valuer-General Authorisations.</p>

Area	Element
Systems and information technology	<p>The service provider is required to:</p> <ul style="list-style-type: none"> • only use systems approved by the SA Government • do all things necessary to ensure that systems and data are protected from unauthorised access or use and comply with the Information System Security Management Framework • keep software patches, updates and releases up to date • test system security measures at least once a year • host SAILIS and other relevant systems on physical infrastructure located in Australia, at a site and location approved by the SA Government • perform backups of SAILIS and other relevant systems in line with the frequency, format and method specified by the SA Government • prepare and maintain appropriate disaster recovery arrangements • refresh SAILIS infrastructure every five years • hold source code materials for particular critical software in escrow (to be made available to the SA Government in the event of step-in or disengagement) • monitor new technology and emerging trends to improve the delivery of services, keep pace with technological advancements and prepare a technology evolution plan in support of this obligation.
Performance management	<p>The LSA prescribes 31 service levels which the service provider must meet or exceed.</p> <p>The service provider is required to monitor and report its performance using SA Government approved methodologies. Failure by the service provider to achieve service levels may trigger financial sanctions in the form of performance rebates.</p> <p>Additional contractual provisions are also in place to address systemic or serious failures by the service provider, including cure plans, the appointment of a resolution manager and SA Government step-in rights.</p>
Business continuity	<p>The service provider is required to maintain up-to-date plans and procedures (business continuity plan) in anticipation of risks which may affect the continuity of services.</p> <p>The service provider must comply with its business continuity plan and implement the plan if a continuity event occurs.</p> <p>The service provider is required to test its business continuity plan at least annually.</p>

Area	Element
Service provider personnel	<p>The service provider must:</p> <ul style="list-style-type: none"> • ensure that personnel used to deliver services are suitably qualified, experienced, trained and skilled • only appoint personnel approved by the SA Government to key positions • only use personnel who have been approved by the Valuer-General to exercise the rights, powers or functions of the Valuer-General. <p>Further, the service provider cannot subcontract without prior consent from the SA Government.</p>
Governance framework	<p>Governance of the service provider’s operations is structured so that the SA Government retains a significant level of oversight of the service provider’s delivery of the services.</p> <p>The governance framework comprises:</p> <ul style="list-style-type: none"> • contract managers who are responsible for the day to day management of the LSA and IP Licence Deed • the Land Services Agreement Governance Committee which is responsible for managing the relationship between the parties and the strategic decisions relating to the LSA and IP Licence Deed. It comprises the Registrar-General and Valuer-General or their nominees and two key personnel from the service provider • subcommittees to manage any particular components of the LSA and IP Licence Deed.
Operations manual	<p>In line with the Implementation Deed, the SA Government and the service provider developed and agreed on an operations manual for delivering lands titling, valuation and general services. It specifies the processes that the service provider must follow in providing the services and the manner in which the service provider will supply the services.</p> <p>The service provider must perform its obligations in line with the operations manual and keep it up to date at all times.</p>
Compensation events	<p>The SA Government is required to compensate the service provider for any loss suffered by it as a result of a compensation event. Compensation events are changes in circumstances that are beyond the service provider’s control and that may have a direct and detrimental effect on its ability to perform its obligations under the transaction documents. They include changes in relevant laws or directions by the SA Government that may have the effect of increasing the service provider’s costs or reducing the scope of the services it agreed to provide.</p> <p>The SA Government’s liability for a compensation event is capped at 100% of the consideration paid by the service provider to the SA Government in relation to the transaction (that is, \$1.605 billion).</p>

Area	Element
Extraordinary events	<p data-bbox="544 237 1375 271">Extraordinary events may lead to renegotiation of the LSA.</p> <p data-bbox="544 322 1375 501">An extraordinary event means an event or circumstances that would have a fundamental and sustained impact on, or fundamentally changes, the ongoing nature of any of the services and deliverables or the manner in which they are supplied or the costs and revenues associated with any of the services and deliverables.</p>
Change requests	<p data-bbox="544 512 1375 685">A process has been established to enable the LSA to be amended over time. Either party to it may initiate an amendment through a change request at any time. Depending on the circumstances, a change request by either party may be accepted, negotiated or rejected.</p> <p data-bbox="544 736 1375 797">The service provider is not entitled to reject a change request in circumstances where:</p> <ul data-bbox="544 808 1375 987" style="list-style-type: none"> <li data-bbox="544 808 1375 909">• implementing the change request will not require the service provider to incur additional material costs in complying with the LSA or materially reduce the charges <li data-bbox="544 920 1375 987">• the purpose of the change request is to address a change in law or any of the delegations.
Audit and compliance provisions	<p data-bbox="544 999 1375 1059">The service provider is required to submit to the SA Government an annual compliance certificate on 1 July each year.</p> <p data-bbox="544 1111 1375 1200">The SA Government has broad rights to access and audit the records of the service provider at any time in order for the SA Government to:</p> <ul data-bbox="544 1211 1375 1402" style="list-style-type: none"> <li data-bbox="544 1211 1375 1245">• comply with any applicable duty at law <li data-bbox="544 1256 1375 1323">• comply with any applicable contractual, regulatory or governmental purpose <li data-bbox="544 1335 1375 1402">• confirm the service provider's compliance with the transaction documents. <p data-bbox="544 1447 1375 1547">The SA Government must audit the service provider's accounts and records every six months to determine whether service charges paid by the SA Government were correctly calculated.</p>
Service charges	<p data-bbox="544 1559 1375 1626">The SA Government will pay the service provider certain charges for the services and deliverables provided by the service provider. These charges are:</p> <ul data-bbox="544 1671 1375 1908" style="list-style-type: none"> <li data-bbox="544 1671 1375 1704">• LTO service charge <li data-bbox="544 1715 1375 1749">• valuation service charge <li data-bbox="544 1760 1375 1794">• SA Water processing charge <li data-bbox="544 1805 1375 1839">• new project services charges <li data-bbox="544 1850 1375 1883">• disengagement charge <li data-bbox="544 1895 1375 1908">• pass-through expenses.

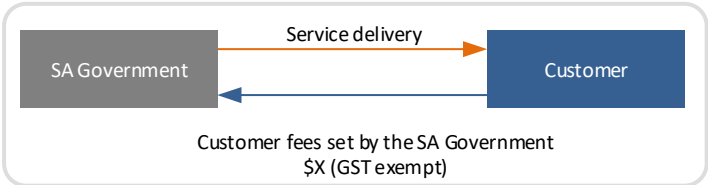
Area	Element
Privacy	<p>In dealing with personal information, the service provider must comply with the <i>Privacy Act 1988</i> (Cwlth) and any other applicable privacy laws.</p> <p>In addition, the service provider must self-report to the SA Government any incident involving the misuse, or loss of, interference with, unauthorised access to, modification of or disclosure of personal information.</p>
Liability and risk	<p>The SA Government’s maximum aggregate liability for compensation payments is capped at 100% of the consideration paid by the service provider to the SA Government in relation to the transaction (that is, \$1.605 billion). This includes the SA Government’s liability for termination and compensation events.</p>
The Assurance Fund	<p>The LSA sets out the responsibility and liability for existing and new claims against the Assurance Fund.</p> <p>The LSA contains express provisions requiring the SA Government to continue to conduct and manage any Assurance Fund claims.</p> <p>The service provider indemnifies the SA Government against losses suffered or incurred by the SA Government and amounts paid out of the Assurance Fund, flowing from any breach of the LSA, or fraud or criminal conduct by the service provider.</p>
Insurance	<p>The service provider is required to obtain and maintain insurance policies meeting standards acceptable to the SA Government.</p>
Dispute resolution	<p>The LSA provides for a multi-tiered process for the resolution of disputes. In the first instance, disputes are to be considered by the Land Services Agreement Governance Committee. Unresolved disputes relating to financial matters are to be referred to an independent expert for adjudication, otherwise either party may commence legal proceedings.</p>
Termination	<p>The SA Government has termination rights in particular circumstances. These circumstances include, but are not limited to:</p> <ul style="list-style-type: none"> • a material breach of particular clauses • repeated failures to implement cure plans • withdrawal of delegation by the SA Government • a change in law that means that all or substantially all of the LSA is no longer permitted or capable of being performed under that law • an insolvency event. <p>The SA Government is obligated to compensate the service provider for loss suffered as a result of the SA Government terminating arrangements relating to situations within its control and for which the service provider is not at fault.</p>
Disengagement services	<p>There is a detailed disengagement process to facilitate the transfer of the service provider’s responsibilities back to the SA Government or to a new service provider on early termination of the LSA or at the end of the term.</p>

Appendix 4 – Transaction flows for lands titling and valuation services

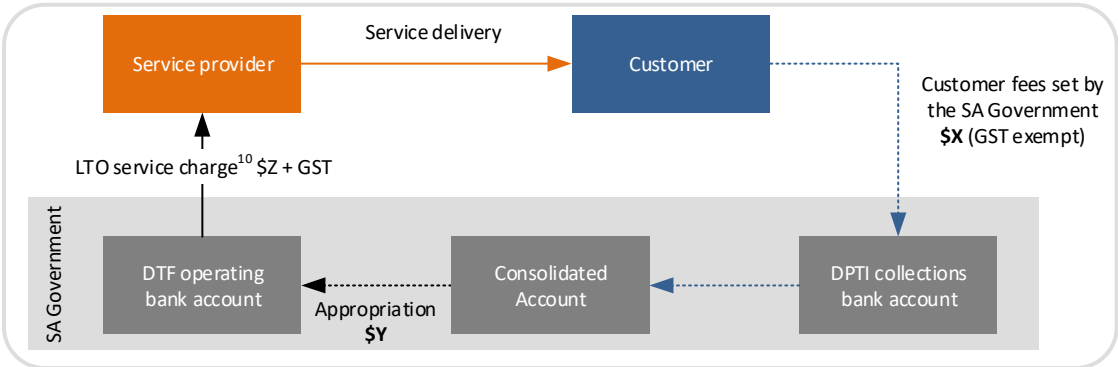
The following diagrams illustrate the transaction flows for customer fees and service charges before and after commercialisation.

Lands titling services

Pre-commercialisation:

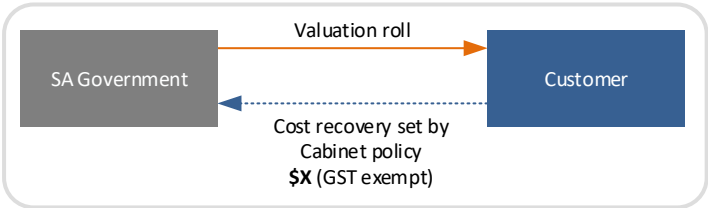


Post-commercialisation:

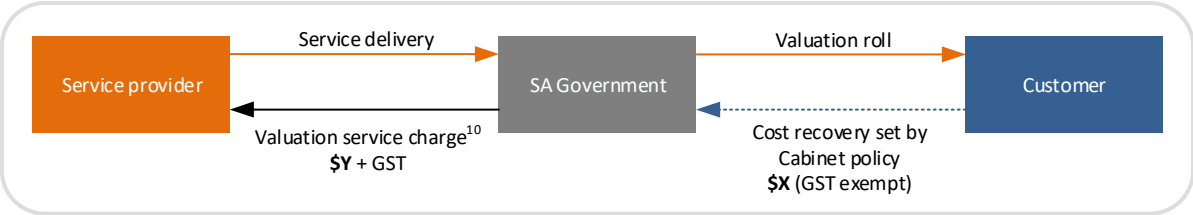


Valuation services

Pre-commercialisation:



Post-commercialisation:



¹⁰ Refer to figure 10.2 in section 10.6.1 for service charges paid to the service provider.

Appendix 5 – Summary of critical service levels in the Land Services Agreement

Critical service level	Description
Lands titling services	
Accurate and timely noting of priority instruments	The service provider must ensure that 95% or more of priority instruments that it is obliged to note in each measurement period are accurately noted on the correct register within the required time frame.
Accurate and timely noting of general instruments	During the first six measurement periods, the service provider must ensure that 90% or more of general instruments that it is obliged to note in each measurement period are accurately noted on the correct register within the required time frame. This threshold increases to 95% or more of general instruments in each subsequent measurement period.
Accurate and timely noting of plans	The service provider must ensure that 95% or more of plans that the service provider is obliged to note are accurately noted on the correct register within the required time frame.
Accurate and timely registration of instruments	During the first six measurement periods, the service provider must ensure that 90% or more of all instruments that it is obliged to register during each measurement period are accurately registered on the correct registers within the required time frame. This threshold increases to 95% or more of all instruments in each subsequent measurement period.
Valuation services	
Failed property classification valuations	The service provider must ensure that the number of failed property classification valuations in any measurement period is less than the valuation failure threshold.
Failed sub-market valuations	The service provider must ensure that the percentage of failed sub-market valuations in any measurement period is less than the valuation failure threshold.
Accurate and correct supply of valuation data extracts	The service provider must ensure that 99% or more of all current valuation roll particulars, any updates to the current valuation roll particulars, any proposed valuation roll particulars and any valuation data (each a valuation data extract) that it is obliged to supply in a measurement period are accurately and correctly supplied.
General services	
Availability of the land information system during core hours	The service provider must ensure that the land information system is available at least 99.5% of the time during core hours in each measurement period.

Appendix 6 – Glossary of abbreviations and terms

Acronym	Description
ACCC	Australian Competition and Consumer Commission
CEB	Commercial and Economics branch of the Department of Treasury and Finance
DPC	Department of the Premier and Cabinet
DPTI	Department of Planning, Transport and Infrastructure
DTF	Department of Treasury and Finance
EOI	Expression of interest
EPL	Electronic Plan Lodgement system
ERN	Exclusive right to negotiate
LSA	Land Services Agreement
LSC	Land services commercialisation
LSCPSC	Land Services Commercialisation Project Steering Committee
LSG	Land Services Group
LTO	Lands Titles Office
MIRA	Macquarie Infrastructure and Real Assets, Macquarie Alternative Investment Trust and the Canadian Public Sector Pension Investment Board consortium
ORG	Office of the Registrar-General
OVG	Office of the Valuer-General
PWC	PricewaterhouseCoopers
RFBO	Request for binding offers
RFIO	Request for indicative offers
RP Act	<i>Real Property Act 1886</i>
SAILIS	South Australian Integrated Land Information System
SVO	State Valuation Office
TI 17	Treasurer's Instruction 17 'Evaluation of and Approvals to Proceed with Public Sector Initiatives'
TSA	Transitional Services Agreement
VL Act	<i>Valuation of Land Act 1971</i>

