

Victorian Government Land Transactions Policy and Guidelines

**Presentation by Ian Gibson
Acting Victorian Government Land Monitor**

Victorian Government Land Transactions Policy and Guidelines

What this presentation will cover:

- ❖ Information about the Government Land Monitor
- ❖ Information about the Land Transactions Policy and Guidelines, and the associated forms
- ❖ Comments about how application of the policy and guidelines is unfolding



Victorian Government Land Transactions Policy and Guidelines

Origins of Victorian Government Land Monitor

- ❖ Land scandals of the 1970s — purchases of land by the government on the fringes of Melbourne for future residential housing for inflated prices and with profits to developers and middlemen.
- ❖ First established 1979 as one of the functions of a new Department of Property and Services.



*To all the
Victorian Government
Land Monitor staff
Doris Walker
Vance*



Victorian Government Land Transactions Policy and Guidelines

Role of the Victorian Government Land Monitor

❖ Overall role:

The role of the VGLM is to provide government with an **assurance of integrity, impartiality and accountability** in land transactions. The VGLM analyses each transaction...to verify that the transaction is legal, transparent and is conducted in accordance with the highest standards of probity, relevant legislation and Victorian Government policy.



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Role of the Victorian Government Land Monitor

❖ Overall role:

The VGLM provides advice and assistance to agencies...to assist them to meet the requirements of government policy and standards of probity.

The VGLM also provides advice and assistance in mediation and litigation.

The function enables a consistent approach to be taken to land transactions across all government agencies.



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Role of the Victorian Government Land Monitor

❖ Overall role:

For each transaction, the VGLM assesses:

- appropriate level of due diligence;
- the agency has the appropriate authority;
- the most appropriate zoning is in place;
- the transaction is supported by current market value of the land;
- accords with the relevant legislation; and
- any exemption is supported by the relevant approval.



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Legal basis of Victorian Government Land Monitor

- ❖ Victorian Government Land Transactions Policy and Guidelines
- ❖ Policy and Guidelines made by Ministers with the authority of the Cabinet.
- ❖ Policy is administered by the Department of Environment, Land, Water and Planning.



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Legal basis of Victorian Government Land Monitor

- ❖ Therefore, not established by legislation and binding by constitutional convention
- ❖ Even so, adhered to by all departments and government agencies



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Role of the Victorian Government Land Monitor

- ❖ Covers all Victorian government departments and authorities
- ❖ This includes:
 - units within government departments
 - legally independent authorities created by statute (operating across Victoria)
 - legally independent authorities created by statute (such as regional water authorities and universities)



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Where issues seem to arise:

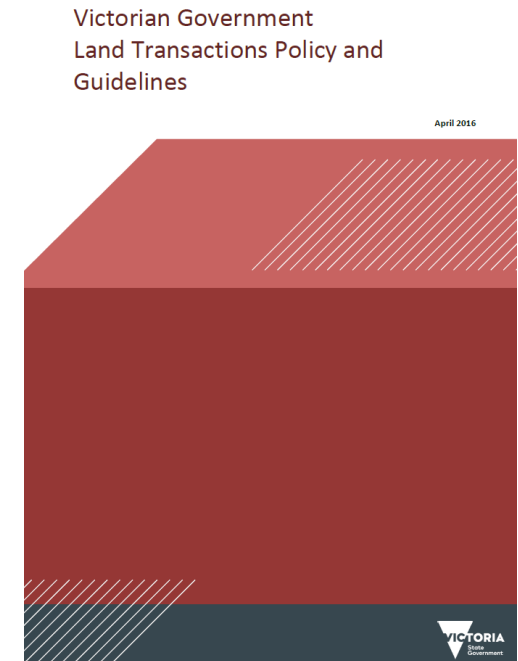
- ❖ Where the agency wants to cut corners in order to wrap things up...
- ❖ ...and where strict adherence to the rules seems too costly or troublesome.
- ❖ Where public officials want to help out some non-commercial entity (charity, local government)
- ❖ Where a small transaction is part of a big relationship.



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THE NEW RULES

- The new Policy and Guidelines came into effect April 2016.
- All land transactions (sale, purchase and compulsory acquisition) with a value of \$750,000 or more require Victorian Government Land Monitor approval...
- ...with additional requirements where an exemption applies.
- The Victorian Government Land Transactions **Policy** and the **Guidelines** were approved by the Minister for Finance, the Minister for Planning and the Special Minister for State in April 2016, and both the Policy and Guidelines then came into effect.



Victorian Government Land Transactions Policy and Guidelines



Victorian Government Land Transactions Policy and Guidelines

Victorian Government
Landholding
Policy and Guidelines

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Victorian Government Land
Transactions Policy and
Guidelines

Victorian Government
Strategic Crown Land
Assessment Policy and
Guidelines

Victorian Government Land Transactions Policy and Guidelines

The policy states that, **UNLESS AN EXEMPTION APPLIES:**

- Agencies must not sell (or grant a lease or interest in land) any land which is less than the Current Market Value (CMV) (or rental) of the land as determined by VGV.
- Agencies must not purchase (acquire a lease or an interest in land) any land at a price which is greater than the CMV (or rental) of the land as determined by VGV.
- Must not sell any land without a public process (except via first right of refusal).

..../2

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The policy states that, **UNLESS AN EXEMPTION APPLIES:**

(continued)

- Prior to offering land for sale by public process, the land **must have the most appropriate zoning** (plus other planning provisions) so it can be sold on its Highest and Best Use.
- **Agencies must not grant a lease** (except to a government agency) which contains an option to purchase.

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Agencies must obtain VGLM approval:

- for any sale or purchase of land (or an interest of land) where the value of the land or transaction is \$750,000 (exc. GST) or more;
- if land forms part of a group of related transactions by the same buyer or seller involving interests in land, air rights etc. including land which is part of a group of adjoining parcels proposed for disposal or acquisition, where the total value of the related land or related transactions is \$750,000 (exc. GST) or more;
- for an offer of compensation under the *Land Acquisition and Compensation Act 1986* (Vic) of \$750,000 (exc. GST) or more; and
- for a compensation claim under the *Planning and Environment Act 1987* (Vic) where the value of the compensation is \$750,000 (exc. GST) or more.

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THE THREE FORMS

- **Form F1**
 - Sale by auction or other public process
 - Purchase
 - Compulsory acquisition
- **Form F2**
 - Notifying VGLM where an exemption applies
- **Form F3**
 - Sale to non-government entities not by public process (VGLM recommendation to the Minister)

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FORM F1: SEEKING APPROVAL

- The form together with all approvals, valuations and consultation reports is emailed to VGLM by the agency.
- VGLM approval is to be obtained prior to the auction or close of tender date.
- VGLM approval is to be obtained before making an offer in respect of compensation for compulsory acquisition or in respect of a negotiated purchase.
- VGLM will reply to agencies within 10 business days.

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FORM F1: SEEKING APPROVAL

Guidelines 6.1:

An inter-agency transaction of \$750,000 (exc. GST) or more must be approved by the VGLM before a letter of exchange or Contract of Sale is entered into. **A submission to the VGLM is to be jointly made by the parties to the transaction.**

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VALUATION REQUIREMENTS

- Agencies must obtain and use valuations from VGV
- VGV letters of certification are valid for three months, after which the agency may seek an extension of currency from VGV.
- Estimates of Value – Agencies may seek an estimate of value from VGV. **Estimates of Value cannot be used as the basis of the transaction.** The eventual VGV valuation may not be the same as an earlier estimate of value.

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VALUATION REQUIREMENTS

Note: VGV and VGLM are close to an agreed position on certain matters, and one of them will be that an extension of a valuation past 6 months will be rare, and after 12 months a fresh valuation will always be required.

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VALUATION CONFERENCES Section 5.4

- It is the responsibility of VGV to convene conferences generally where valuations vary by more than 10% or where there is a material difference in opinion or approach between the VGV valuation and the 'check' valuation.
- It is the responsibility of the agency to issue the invitations for valuation conferences.
- Agency and VGLM representatives are required to attend all conferences.
- It is the responsibility of the agency to ensure that VGLM is provided with all relevant documents prior to the conference.

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Form F2: Where an exemption applies under paragraph 2(d) of the policy (except subparagraphs (ii) and (iii))

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Form F2: Where an exemption applies

Paragraph 2(d) of the policy

details exemptions from the land transaction requirements in paragraph 2(c) of the policy.

The Guidelines state:

If an exemption applies or has been granted with respect to one or more land transactions requirements, it is still necessary to comply with all of the other requirements.

If a transaction requires the approval of the VGLM and is exempt from one or more land transaction requirements, **the VGLM will**, for probity purposes, **confirm the exemption exists** rather than examine the merits of the exemption being granted. The VGLM can request to review an agency's exemption file.

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Form F2: Where an exemption applies

What are the exemptions?

...where:

- (i) a sales process and / or the terms of a transaction have been approved by Cabinet or a Committee of Cabinet;
- [(ii) and (iii)]
- (iv) with the approval of the landholding Minister, land is sold or transferred for a public or community purpose and the terms of sale include a restriction on title that reflects the public or community purpose so that any future change in the use of the land requires the State's consent;
- (v) the terms of a lease (which does not contain an option to purchase) have been approved by the acquiring or landholding Minister;

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Form F2: Where an exemption applies

What are the exemptions?

- (vi) the provisions of an Act expressly provide for Ministerial discretion or authorised officer action in relation to a sales process and / or the terms of a transaction, including the *Land Act 1958 (Vic)*, *Transport Integration Act 2010 (Vic)* and *Housing Act 1983 (Vic)*;
- (vii) the land is subject to a lease which includes an option to purchase and is to be sold to the beneficiary of that option;
- (viii) the land is a tenanted residence and is to be sold to the tenant in accordance with a policy of the landholding agency;
- (ix) a transaction is a commitment recorded in a Recognition and Settlement Agreement under the *Traditional Owner Settlement Act 2010 (Vic)*;

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Form F2: Where an exemption applies

What are the exemptions?

- (x) surplus railway leasehold land is offered to the tenant for purchase at not less than the current market value of the land as determined by VGV valuation; or
- (xi) specified in section 10.2 of the *Victorian Government Land Transactions Guidelines* in respect to the grant of a leasehold interest in land; or
- (xii) the transaction relates to a purchase, acquisition of land (or an interest in land) or payment of compensation for an amount in excess of the VGV valuation and the VGLM has approved the transaction.

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Form F2: Where an exemption applies

The Guidelines state

Agencies must ensure when seeking an exemption that the relevant decision maker is informed of the potential loss of revenue created by the exemption and why the proposed exemption justifies the potential loss of revenue.

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Form F3: Exemptions recommended to the Minister for Planning

- (1) Sale to non-government entities not
by public process**
- (2) Land sold with its public purpose
zoning in place**

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Form F3: Where an exemption applies

Exemption under paragraph 2(d)(ii) and (iii) of the Policy:

The Minister for Planning is able to grant exemptions to the land transaction requirements where an agency requests:

- an alternative sales process and/or terms of a transaction; or
- that the land can be sold with its public purpose zoning in place.

For each request submitted, the VGLM will assess whether or not any exemption to the requirements of the Policy is supported by the relevant approval. The VGLM will provide a recommendation to the Minister for Planning.

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Form F3: Where an exemption applies

In considering exemptions to the public sales process (exemption 2(d)(ii)), the Minister for Planning, with advice of the VGLM, will consider:

logical – the transaction is logical and the proposed use of the land is the most appropriate use (e.g. the subject land is landlocked, there is a single adjoining owner, or there is only one logical alternative owner);

no advantage – the purchaser will not gain an unfair financial advantage from the transaction; taxpayer funds will not be misused;

equitable – that if other potential purchasers exist (e.g. adjoining landowners) it is clear from recorded inquiries that they have no interest in purchasing the subject land;

declared Policy – the transaction will facilitate a declared and publically acknowledged government policy outcome (e.g. sale of land in a declared Urban Growth Zone); and

transparent – that all dealings with external parties in relation to the transaction have been open and transparent and properly recorded, and no favouritism has been exhibited or can be implied from the transaction.

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CONTAMINATED AND POLLUTED SITES

- Section 3.5 **Contaminated land** may be purchased or sold provided suitable professional advice and remediation costs are obtained and VGV is provided with report and consideration to remediation costs is considered in valuation report.
- Section 3.6 **Polluted land**. Agencies must not sell or purchase land where the contamination of land may represent an unacceptable risk to human health, surrounding lands or the contiguous environment.

Victorian Government Land Transactions Policy and Guidelines

The approach of the Victorian Government Land Monitor

- This is a “policy” with “guidelines”. It is not legislation covering every situation, and cannot be construed in that way.
- The only reasonable approach is to apply the policy and guidelines in a way that is consistent and reflects their purpose and intention.

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The approach of the Victorian Government Land Monitor: guiding principles

- It is the role of the VGLM to apply the policy, not to make it.
- Each affected entity has a balance sheet, and assets should be added to or removed from the balance sheet at their proper value.

Example: it is not a purpose of an emergency service provider to provide aged care. If land is removed from the balance sheet of such a provider and is to be used for aged care, the full value of the land should become a cash asset of the provider, if necessary by the government department funded to support aged care giving a grant to the aged care provider to purchase the land.

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The approach of the Victorian Government Land Monitor: guiding principles

- All citizens have an equal right to compete in the market place for unneeded government land.

Example: There is a strip of land that is between transport infrastructure and a shopping centre, and the transport authority no longer needs it. It should not be offered only to the owner of the shopping centre.

- It was not the intention of the government that agencies succeed in strategems designed to allow the very evils that the policy was put in place to prevent.

Example: Treating non-contiguous lots within a single development as not being part of the same transaction.

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The approach of the Victorian Government Land Monitor: guiding principles

- A good guide to whether a proposed novel or alternative approach is acceptable is what would have happened if the normal and usual approach had been used.

Example: There is an agreement to enter into a contract with an owner of land to occupy land while infrastructure is built for an amount of compensation and return at the end of the project. What would have been the cost to the agency if it had compulsorily acquired the land and sold it at market value when it had no further need for it?

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The approach of the Victorian Government Land Monitor: guiding principles

- The presence of a ground of exemption should not be read as an exemption from a requirement for “integrity, impartiality and accountability”.

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Questions

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THANK YOU