

[3 THE LAND TRANSFER SYSTEM: PROCEDURE](#)

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[3 THE LAND TRANSFER SYSTEM: PROCEDURE](#)

[\(1\) THE BRINGING OF LAND UNDER THE LAND TRANSFER ACT](#)

[8.012 By alienation from the Crown since 1870](#)

The phrase, “bringing the land under the Land Transfer Act”, refers to the process whereby land comes within the operation of the then Land Transfer Act and becomes subject to its provisions.¹ Land brought under the Land Transfer Act is said to be “under the Land Transfer Act” and is often referred to as “Land Transfer land”. Since 1870, all land alienated from the Crown in fee simple has become subject to the Land Transfer system.² This requirement was provided for initially by s 20 of the Land Transfer Act 1870 (New Zealand’s first Torrens statute) and has been repeated, in varying forms, in all subsequent Land Transfer Acts.³ This requirement did much to familiarise the public and the legal profession with the Torrens system and was one of the reasons for its success.⁴

Section 12(1) of the Land Transfer Act 1952 builds on this requirement. It provides that a Crown grant may not be issued for any land that is subject to the provisions of the Act.⁵ In place of the Crown grant, s 12 authorises the Governor-General by warrant⁶ to direct the Registrar to issue a certificate of title or to create a computer register for the land. The section’s continued reference to a certificate of title is historic. The recording of information in the computer register, when effected,⁷ has the force and effect of a Crown grant.⁸ Currently most new alienations from the Crown in fee simple are made under the provisions of the Land Act 1948, in which case a certificate given pursuant to s 116 thereof has the same effect as a warrant under the hand of the Governor-General.

1 The less commonly used phrase, “immatriculation”, refers to the same process.

2 The Land Transfer Act 1870, s 20, was repealed by the Land Transfer Act 1870 Amendment Act 1871, s 4, and replaced by the 1871 Act, s 6.

3 Land Transfer Act 1885, s 10; Land Transfer Act 1908, s 10; Land Transfer Act 1915, s 10; Land Transfer Act 1952, s 10.

4 See *Whalan* (1967) 2 NZULR 416.

5 That is, by virtue of the Land Transfer Act 1952, s 10. In other cases a Crown grant may be made under the provisions of the Crown Grants Act 1908.


6 The particulars to be specified in the warrant are set out in the Land Transfer Act 1952, s 13. As to the reservation of roads by the warrant, see the Land Transfer Act 1952, s 18.

7 Registration is effected under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 when a unique identifier for the instrument or matter is entered in the relevant computer register: Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 30(2).

8 Land Transfer Act 1952, s 12(2). A certificate of title acquired the force and effect of a Crown grant when it was signed and registered. In turn every grant and certificate of title was deemed to be registered when marked by the Registrar with the folium and volume as embodied in the register: Land Transfer Act 1952, s 34(1).

8.013 By voluntary application

Each successive ***Land Transfer*** Act has made provision for ***land*** alienated from the Crown in fee simple prior to 1870 and under the Deeds ***system***, to be brought under the ***Land Transfer*** Act by voluntary application.¹ Practically all privately owned ***land*** in New Zealand is now under the ***Land Transfer*** Act, so that these provisions are almost spent.² Voluntary applications were normally made by the person in whom the fee simple of the ***land*** was vested in possession,³ and had to be in the form prescribed by the Act.⁴ Sections 21–32 of the ***Land Transfer*** Act 1952 prescribe the requirements and procedure to be followed. Section 58 of the Act preserves the priority of pre-existing leases, mortgages encumbrances and other estates or interests, which were disclosed in the application or could be ascertained.⁵

- 1 The present provisions relating to voluntary applications are in the ***Land Transfer*** Act 1952, ss 19–32.
- 2 The past tense is therefore used predominantly in the remainder of this paragraph. The procedure for bringing ***land*** under the ***Land Transfer*** Act must sometimes be adapted and used for other purposes; for example, on an application by adjoining owners for title to an access strip made under the provisions of the ***Land Transfer*** Act 1952, Part IVA : ***Land Transfer*** Act 1952, s 89C(1).
- 3 For the full catalogue of possible applicants, see the ***Land Transfer*** Act 1952, s 20.
- 4 ***Land Transfer*** Act 1952, s 20(1) and the Second Schedule, Form A.
- 5 See *Waimanku Estate Ltd v Jack* (2007) 8 NZCPR 274 .

8.014 By compulsory registration

An impediment to voluntary applications to bring ***land*** under the ***Land Transfer*** Act was the cost associated with the providing the necessary plan of the ***land***.¹ In 1923 it was estimated that about one-fifth of the ***land*** in New Zealand was still under the Deeds ***system***.² Against this background it was decided to bring all Deeds ***system*** titles under the ***Land Transfer*** Act. To facilitate this the ***Land Transfer*** (Compulsory Registration of Titles) Act 1924 was passed.³ The provisions of that Act are now to be found in Part 12 of the ***Land Transfer*** Act 1952. Section 3(1) of the 1924 Act⁴ required the Registrar to proceed with all convenient speed to bring all ***land*** previously alienated from the Crown for an estate in fee simple and not already under the ***Land Transfer*** Act, under that Act.⁵ It was hoped that the work would be finished in five years,⁶ but it was not until 1951 that the task was officially regarded as complete.⁷ The provisions in Part 12 of the ***Land Transfer*** Act 1952 “are now virtually obsolete and rarely used”⁸ Without entering into the details of the procedure followed, the scheme of the 1924 Act required that every Deeds ***system*** title be examined.

Clearly some Deeds ***system*** titles would, on examination, prove to be defective. More commonly the position and boundaries of the ***land*** would not be defined with sufficient accuracy to comply with the requirements of the ***Land Transfer*** Act. Anticipating this the 1924 Act provided for the issue of four different types of certificate of title:⁹

- (1) An ordinary, that is, fully guaranteed, title;
- (2) Limited as to parcels;
- (3) Limited as to title; or
- (4) Limited as to parcels and title.

Section 190 of the ***Land Transfer*** Act 1952 continues the approach of the 1924 Act. That section’s continued reference to a certificate of title should be read as a reference to the appropriate computer register.¹⁰ Section 191, which defines a limited certificate of title, refers expressly to the creation of an equivalent computer register with the addition of the words limited as to parcels, limited as to title, or limited as to parcels and title.

(a) Fully guaranteed titles

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In the comparatively rare cases in which a Deeds **system** title was examined and it appeared to the Registrar and the Examiner of Titles:¹¹

- (1) That the Registrar would have issued an ordinary certificate of title if a voluntary application had been made;
- (2) That a person who would have been competent to make a voluntary application ¹² was in possession of the **land**; and
- (3) That the position and boundaries of the **land** were sufficiently defined by the instruments of title or by any deposited plan or plans —

the certificate of title (computer register) issued was an ordinary, fully guaranteed, one.¹³

(b) Limited titles

A certificate of title (computer register) was issued with a limitation as to parcels when the position or boundaries of the **land** comprised in it could not be guaranteed.¹⁴ It was issued with a limitation as to title when some defect in the title to that **land** was discovered on the official examination. In many cases, certificates of title were issued limited both as to parcels and title.

Before issuing a limited title the Registrar was required to file with the **Land** Registry Office records a signed minute clearly setting out what needed to be done in order to justify the issue of an ordinary certificate of title.¹⁵ The minute, if necessary, could require the surrender of all instruments of title and for the deposit of a plan of survey of the **land**. A copy was then sent to the proprietor of every estate or interest in the **land** as evidenced by the deeds register or by the instruments of title.¹⁶ The Registrar is empowered to revise and amend the minutes but not so as to prejudice the limited title of, or throw any onus upon, a bona fide purchaser or mortgagee of the **land** for valuable consideration.¹⁷ The minutes do not form part of the register for the purpose of inspection under s 46 of the **Land Transfer Act**.¹⁸

A statute may provide for registration under the **Land Transfer Act** 1952 of estates or interests in **land** where that **land** is not properly defined by survey. In these situations the legislation may provide for the registration to be endorsed “limited as to parcels” and for the provisions of Part 12 of the **Land Transfer Act** 1952, as far as they are applicable and with the necessary modifications, to apply.¹⁹

The application of the indefeasibility provisions of the **Land Transfer Act** 1952²⁰ are modified when the title is a limited one.²¹

Because title to **land** under the Deeds **system** can be acquired by adverse possession, limited titles remain subject, in certain instances, to the claims of such persons.²² There are specific forms of caveat which a claimant to such an interest may lodge. These may prevent the **land** being brought voluntarily under the **Land Transfer Act**,²³ protect such an interest where the **land** is being brought compulsorily under the Act,²⁴ or prevent the removal of a limitation as to parcels.²⁵

A registered proprietor of **land** comprised in a title that is limited as to parcels may not bring an action against the Crown for the recovery of damages by reason of any error or omission in the description of the parcels of **land** comprised in the computer register.²⁶ Accordingly, special care must be taken in these respects when searching such a title.²⁷

(c) Constituting limited titles as fully guaranteed titles

When the appropriate requirements have been met, limitations as to title and as to parcels can be removed and the title can be constituted as a fully guaranteed title. The requirements are different for each form of limitation.

(d) Removal of limitation as to title

A limitation as to title may be removed by compliance with the requirements of the Registrar's minutes and by satisfaction of the Registrar's requisitions relating to title.²⁸ When everything required has been done, s 195 of the **Land Transfer Act** 1952 confers upon the Registrar the discretion, if there is no remaining limitation as to parcels,

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to either cancel the limited title and issue an ordinary one, or to simply constitute the limited title an ordinary one by the endorsement of an appropriate memorial on the appropriate computer register.²⁹

As a general rule, 12 years from the date of issue of the first certificate of title/computer register limited as to title for any **land**, the limitation as to title ceases.³⁰ Any claim, estate, or interest upon or in such **land** existing before that date, and not evidenced by the computer register or by a memorial endorsed on it (including the claim of any caveator under s 205 of the **Land Transfer Act 1952**), is barred and extinguished. This is subject to three important exceptions: i) the estate or interest of a person in actual possession of and rightfully entitled to³¹ the **land**; ii) the estate or interest or claim of a person in adverse possession of the **land**; and iii) the exceptions as provided in s 62 of the **Land Transfer Act 1952**, is barred and extinguished.³² It follows that even though a limitation as to title has ceased by the effluxion of the statutory period of 12 years, the computer register may remain void as against an adverse possessor whose title has matured under the **Limitation Act 2010** or under any earlier limitation statute.³³ With respect to the application of similar provisions in the **Limitation Act 1950**, it had been said that: ³⁴

There is placed on a purchaser of such a limited title the onus of going behind the register and satisfying himself that no adverse interest by possession on the part of a trespasser has been acquired, or is in the course of being acquired, by virtue of the **Limitation Act 1950**.

(e) Removal of limitation as to parcels

A limitation as to parcels may only be removed subject to the restrictions contained in s 207 of the **Land Transfer Act 1952**.³⁵ This section continues to refer to the issuance of a certificate of title but this should be read as a reference to the creation of the appropriate computer register.³⁶ Subsection (1) of that section provides that the Registrar is not bound on an application in that behalf:

- (1) To create an ordinary computer register;³⁷
- (2) To create an ordinary computer register in lieu of a computer register limited as to parcels; or
- (3) To constitute a computer register limited as to parcels an ordinary computer register—

unless and until certain precautions have been taken. First, the Registrar may require to be satisfied by the deposit of a survey plan,³⁸ together with such other evidence as may be deemed necessary, or by some other means, that no part of the **land** to which the application relates is held in occupation adverse to the title of the proprietor appearing by the deeds register and the instruments of title, or by the computer register limited as to parcels, as the case may be, to be entitled thereto. Second, the Registrar may give to the persons appearing to him or her to be occupiers or proprietors of adjoining **land** such notices as he or she deems necessary of the intention to issue or constitute an ordinary computer register; and may take no further action until the expiration of the time specified in any such notice.³⁹ But, by s 207(2), the Registrar must give such notices if it appears to him or her that the **land**, or part of the **land**, in respect of which an ordinary computer register is proposed to be issued or constituted, is included in the title of an adjoining occupier or proprietor as evidenced by the deeds register or by a computer register limited as to parcels of the **land** of an adjoining occupier or proprietor. The purpose of such notices is to give adjoining occupiers or proprietors an opportunity of disputing the boundaries.⁴⁰

(f) Registrar's discretionary power to require proof

In order to give the public some degree of protection against the danger of dealing with a void computer register, the **Land Transfer Act** confers upon the Registrar a discretionary power to require proof⁴¹ that "the estate or interest of the registered proprietor has not become extinguished by the operation of the **Limitation Act 2010** or any other enactment that prescribes a limitation period or a limitation defence" before doing any of the following: ⁴²

- (a) Creating an ordinary computer register in substitution for a computer register that is limited as to parcels or as to title or as to parcels and title;
- (b) Constituting such a limited computer register an ordinary computer register;
- (c) Removing the limitations as to title of a computer register that is limited as to parcels and title; or
- (d) Registering any dealing with the **land** comprised in a computer register that is limited as to parcels or as to title or as to parcels and title.

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- 1 The plan is required by the Land Transfer Act 1952, ss 21 and 167.
- 2 “*The Demise of the Deeds System*” (1951) 27 NZLJ 271.
- 3 At the time, this legislation had no counterpart in any of the Torrens systems overseas.
- 4 The Land Transfer Act 1952, s 185 directs the Registrar to “continue” this process “with all convenient speed”.
- 5 This requirement did not, however, extend to land over which the Maori title had not been extinguished: Land Transfer (Compulsory Registration of Titles) Act 1924, s 3(2). This is the position also under the Land Transfer Act 1952, s 185(2). For a consideration of Maori customary title, see *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General* [1994] 2 NZLR 20 at 23–24 (CA) per Cooke P for the Court; *Re Marlborough Sounds Foreshore and Seabed Decision of the Maori Land Court* (2001) 4 NZ ConvC 193,399 ^{CB}; *Ngati Apa v Attorney-General* (Court of Appeal, CA 173/01 and CA 75/02, 19 June 2003) per Elias CJ at paras [14]–[48], per Gault P at paras [10]–[106], per Keith and Anderson JJ at paras [139]–[150], per Tipping J at paras [183]–186; *Erueti* [2001] 1 NZLJ 145.
- 6 “*The Demise of the Deeds System*” (1951) 27 NZLJ 271; at 274.
- 7 “*The Demise of the Deeds System*” (1951) 27 NZLJ 271; at 271.
- 8 New Zealand Law Commission, Review of the Land Transfer Act 1952 (2008, NZLCIP 10), at para 20.28. The past tense is therefore used predominantly in the remainder of this paragraph. The procedure remains available, however. Should the Registrar seek to invoke this procedure it would culminate in the creation of a computer register, rather than the issue of a certificate of title.
- 9 Land Transfer (Compulsory Registration of Titles) Act 1924, ss 8 and 9; now the Land Transfer Act 1952, ss 190 and 191.
- 10 Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 20(3).
- 11 The Office of Examiner of Titles has since been abolished and all references to Examiner in the Land Transfer Act 1952 were removed by the Land Transfer (Automation) Amendment Act 1988.
- 12 For the list of persons by whom such applications may be made, see the Land Transfer Act 1952, s 20.
- 13 Land Transfer (Compulsory Registration of Titles) Act 1924, s 8(2); now the Land Transfer Act 1952, s 190(2).
- 14 An ordinary certificate of title which is partially cancelled by the Registrar following the transfer of part of the land comprised in it without the deposit of a new survey plan may become limited as to parcels under the provisions of the Land Transfer Act 1952, s 167(2). The practice of issuing certificates of title which are limited as to parcels and which are based on “general boundaries” (a euphemism for uncertain boundaries) has been considerably extended by legislation dealing with some special circumstances in modern times.
- 15 Land Transfer Act 1952, s 193(1); cf Land Transfer (Compulsory Registration of Titles) Act 1924, s 11(1).
- 16 Land Transfer Act 1952, s 193(2); cf Land Transfer (Compulsory Registration of Titles) Act 1924, s 11(2).
- 17 Land Transfer Act 1952, s 193(3); cf Land Transfer (Compulsory Registration of Titles) Act 1924, s 11(3).
- 18 Land Transfer Act 1952, s 194; cf Land Transfer (Compulsory Registration of Titles) Act 1924, s 12. Adams, para S194.3, suggests that: “Access ... to the Registrar’s minutes must be sought through the Official Information Act 1982”:
- 19 See for example the Land Act 1948, s 82(1A) and (1B); the Housing Act 1955, s 18(3) and (4); the Mining Tenures Registration Act 1962, s 10(4) and (5); the Local Government Act 1974, s 345(2), and the Crown Forest Assets Act 1989, s 30(5) and (6).
- 20 See paras 9.008–9.014.
- 21 Land Transfer Act 1952, s 199(2).
- 22 See para 7.007.
- 23 See paras 10.024–10.026.
- 24 See para 10.025.
- 25 See para 10.026.
- 26 Land Transfer Act 1952, s 209; *Melville-Smith v Attorney-General* [1996] 1 NZLR 596 ^{CB} at 602 per Hammond J; para 9.096.

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- 27 *Melville-Smith v Attorney-General* [1996] 1 NZLR 596 ^{CB} at 603 per Hammond J.
- 28 As a general rule it is unsafe to take a **transfer** or mortgage of **land** comprised in a certificate of title that is limited as to title. A purchaser or prospective mortgagee will normally requisition for the removal of the limitation as to title: Property Law Act 1952, s 41(2). Section 41(2) requires the vendor of **land** comprised in a certificate of title limited as to title, subject to any stipulation to the contrary in the contract, at his or her own expense to do whatever is necessary to cause the certificate of title to cease to be limited as to title. The vendor is not, however, required by [s 41](#) to remove any limitation as to parcels. For an analysis of the application of the equivalent section in the Property Law Act 1952, s 54(1), see *McMorland*, para 9.09(c).
- 29 **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 20(3).
- 30 **Land Transfer** Act 1952, s 204(1)(d). If the title is also limited as to parcels, the limitation as to parcels continues unaffected. The comment has been made that: "The Act leaves the relationship between limitations as to title and limitations as to parcels very ill-defined. Theoretically the latter could extend in a particular case to affect even a major part of the **land** comprised in the limited title": *Brookfield*, "Prescription and Adverse Possession" (1971) *Centennial Essays* 162 at 171, n 38.
- 31 The words "rightfully entitled" in the **Land Transfer** Act 1952, s 204(1)(a), no doubt refer (as they do in s 79) to an adverse possessor whose title has matured under the provisions of the Limitation Act 1950 or its predecessor: see [paras 7.007](#) and [9.036](#).
- 32 **Land Transfer** Act 1952, s 204(1)(a).
- 33 *Tong v Car Reconditioners Ltd* (1965) 1 NZCPR 587 ^{CB}. See *Adams* (1951) 27 NZLJ 208 at 209; *Adams* [1967] NZLJ 84.
- 34 *Adams* [1967] NZLJ 84 at 87.
- 35 *Cotton v Keogh* [1996] 3 NZLR 1 ^{CB} at 7 (CA) per Blanchard J (CA) for the Court, noted (1996) 7 BCB 201 (*McMorland*).
- 36 **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, [ss 19](#) and [20\(3\)](#). See para 8.007.
- 37 While this section continues to refer to certificates of title, since 14 October 2002, when the Registrar-General declared that all **land** in New Zealand that is in, or becomes comprised in, a computer register to "electronic transactions **land**" (see *New Zealand Gazette*, 10 October 2002, p 3895), this reference is to be read as a reference to the appropriate computer register, see the **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, [s 20\(3\)](#).
- 38 The duties of a surveyor surveying **land** in a certificate of title which is limited as to parcels are set out in *Cotton v Keogh* [1996] 3 NZLR 1 ^{CB} at 6-7 (CA) per Blanchard J (CA) for the Court, noted (1996) 7 BCB 201 (*McMorland*).
- 39 It is stated in *Adams*, para S207.2, that "[n]otices under this provision are no longer served automatically. For example, in many instances the **land** in a certificate of title limited as to parcels is surrounded by **land** with fully guaranteed certificates of title supported by modern surveys. In such circumstances the service of notice may be regarded by Registrars as unnecessary".
- 40 *Cotton v Keogh* [1996] 3 NZLR 1 ^{CB} at 7 (CA) per Blanchard J (CA) for the Court.
- 41 The Registrar normally accepts a statutory declaration as to the facts. For a precedent, see *Adams* (1951) 27 NZLJ 208 at 210. If, however, a false declaration were made it would seem that any adverse possessory estate, the existence of which was not disclosed by the declaration, would not be destroyed by the removal of the limitation as to title: **Land Transfer** Act 1952, [ss 79](#), [199\(1\)\(d\)](#) and [\(3\)](#), and [204\(1\)\(a\)](#); *Brookfield*, "Prescription and Adverse Possession" (1971) *Centennial Essays* 162 at 171.
- 42 **Land Transfer** Act 1952, s 197. See also the **Land Transfer** Act 1952, s 207. The **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002 requires that continued statutory references to certificate of title for **land** now classified a electronic transaction **land** to be read as a reference to the appropriate computer register, see the **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 20(3).

8.015 By other statutes

Land may become subject to the **Land Transfer** Act 1952 by the operation of other statutes. For example, if **Deeds system land** is taken for a public work, [s 57\(2\)](#) of the [Public Works Act 1981](#) provides that upon the registration of

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the proclamation or declaration taking or acquiring the land and of the plan accompanying it, the land becomes subject to the Land Transfer Act 1952.

8.016 By the registration of mining tenures

In the second half of the nineteenth century, the gold rushes in Central Otago, on the West Coast of the South Island, and in the Coromandel peninsula brought sudden influxes of prospectors, tradespeople, and business people to the gold fields. Special legislation was promptly passed to provide for the management of the gold fields. ¹ The legislation ² made provision for the constitution of “mining districts”, ³ for the constitution of special Courts, called Wardens’ Courts, ⁴ and for the appointment of Wardens, Mining Registrars, and certain other officers. ⁵ Provision was also made for the granting of leases of Crown land in mining districts ⁶ and for the granting of a wide variety of “mining privileges” ⁷ including business site, residence site, and special site licences. These licences were special forms of land tenure designed to meet the need for residential land and essential services in the mining districts. ⁸

Full provisions for the registration of mining privileges (including business site, residence site, and special site licences), and of transfers and other instruments affecting them, were made by the Mining Act 1926. These provisions constituted a code for the registration of mining privileges which was separate from and independent of the Land Transfer Act 1952. ⁹ Unfortunately, the registration procedures established by the Mining Act 1926 were not always strictly observed, and the boundaries of many licences were uncertain, so that there were numerous cases of encroachment and even some instances of houses being built a mile or more from the allotted site. These imperfections in the system of registration of mining privileges gave rise to a number of difficulties. ¹⁰ It was therefore decided to provide for the registration, under the Land Transfer Act 1952 of residence site and business site licences, certain special site licences, and leases of land in mining districts.

Provision for the implementation of this reform was made by the Mining Tenures Registration Act 1962.¹¹ The main objects of the legislation were: first, to preserve the rights of licensees under existing licences; second, to cure any defects of title; and third, to give licensees the opportunity of acquiring the freehold of the land comprised in their licences. ¹² The work of registering licences under the Land Transfer Act 1952 is largely complete.¹³

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- ¹ The first statute was the Gold Fields Act 1858, which dealt only with gold mining. Later the scope of the mining legislation was widened to include not only gold but also other metals and minerals.
 - ² Far-reaching changes were brought about by the Mining Act 1971, which came into force on 1 April 1973. See White, “Mining Law in New Zealand Present and Future” (1970) *Australasian Mining Symposium* 24. The Mining Act 1971 was repealed by the Health and Safety in Employment Act 1992, s 62(1) and the Third Schedule. See now the provisions of that Act, of the Crown Minerals Act 1991, and of the Resource Management Act 1991.
 - ³ Mining Act 1926, s 8.
 - ⁴ Mining Act 1926, s 9.
 - ⁵ Mining Act 1926, ss 9 and 10.
 - ⁶ A lease of the surface of any Crown section in any township within a mining district could be granted by the Warden subject to the conditions laid down by Mining Act 1926, s 45.
 - ⁷ Mining Act 1926, Part IV.
 - ⁸ They were used much more frequently than leases under the Mining Act 1926, s 45 (and s 47). See Phillips, “Leases and Licences under the Mining Tenures Registration Act 1962” (1975) *Landlord and Tenant* 375 at 378.
 - ⁹ A mining privilege was not registrable under the Land Transfer Act 1952, and would not support a caveat under the provisions of the Land Transfer Act 1952. Furthermore, a mining privilege took priority over the rights of the registered proprietor of the land affected by it (even if the registered proprietor had taken a transfer in good faith, for value, and without notice of the mining privilege) notwithstanding the provisions of the Land Transfer Act 1952, ss 62, 182 and 183 : *Miller v Minister of Mines* [1963] AC 484 ; [1963] NZLR 560; [1963] 1 All ER 109  (PC).
 - ¹⁰ For example, properties held under business site, residence site, and special site licences were not regarded as acceptable securities for mortgage loans by many lending institutions. The establishment of new industries, necessary

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to provide employment in the former mining towns, was hampered as companies were unwilling to invest large sums of money in building factories on **land** held under business site or residence site licences.

- 11 The first attempt at reform had been made in 1952, but many problems were encountered. For the history of the legislation, see Phillips [1963] NZLJ 546 at 547-548; Phillips, "Leases and Licences under the Mining Tenures [Registration Act 1962](#)" (1975) *Landlord and Tenant* 375 at 380-382.
- 12 Phillips [1963] NZLJ 546 at 548-549; Phillips, "Leases and Licences under the Mining Tenures [Registration Act 1962](#)" (1975) *Landlord and Tenant* 375 at 380-382.
- 13 For an account of the legislation, see *New Zealand Insurance Co Ltd v Attorney-General* [1980] 2 NZLR 660 ^{CB}. For a fuller account of the history of mining privileges and tenures, see H, M & S, 1978, vol 1, para 2.028.

8.017 Land that is now subject to the Land Transfer Act

The present position is that all **land** which has been alienated from the Crown for an estate in fee simple is under the **Land Transfer Act 1952** except:¹

- (1) **land** in respect of which the title to is clearly defective;
- (2) **land** that was overlooked when Deeds **system land** was brought under the **Land Transfer Act** by the compulsory registration of titles provisions;
- (3) **land** the existence of which is disclosed only by the making of a new survey; and
- (4) Maori titles held under Crown grant; and Maori customary **land**.²

In theory, computer registers cannot be created for Crown **land** unless there is special statutory authority to do so.³ Such statutory authority is, however, quite frequently given.⁴

Statutes may authorise the registration of leases under the **Land Transfer Act 1952** even though the **land** affected has never been alienated from the Crown in fee simple. By s 82(1) of the [Land Act 1948](#), for example, certain leases and licences of Crown **land** which is subject to that Act are registered under the **Land Transfer Act 1952**, and the lease or licence which is retained in the **Land** Registry Office forms part of the register. Similarly, s 78(1) of the [Maori Reserved Land Act 1955](#) authorises registration under the **Land Transfer Act 1952** of certain leases granted by the Maori Trustee even though the fee simple has not been alienated by the Crown.

Special provisions apply in relation to the sale of state houses under the provisions of Part I of the [Housing Act 1955](#). State houses may be sold for cash or under an agreement for sale on such terms as Housing New Zealand Corporation thinks fit.⁵ In the case of a cash sale, the Corporation may execute a **transfer** to the purchaser; but in many cases it is unable to confer on the purchaser a title to the **land** under the **Land Transfer Act 1952**.⁶ In such cases, Housing New Zealand Corporation may issue to the purchaser a licence to occupy the **land**,⁷ which may be registered under the **Land Transfer Act 1952**.⁸ Agreements for the sale of state houses may be registered under the **Land Transfer Act 1952** in a similar way.⁹ Where no plan of the **land** comprised in the licence or agreement has been deposited as required by s 167 of the **Land Transfer Act 1952**, the licence or agreement may be endorsed "limited as to parcels".¹⁰

1 Adams, para S184.4.

2 *Ngati Apa v A-G* [2003] 3 NZLR 643 ^{CB}; *Re Tipene* [2016] NZHC 3199 ^{CB}; [2017] NZAR 559 ^{CB} (considering the application of the [Marine and Coastal Area \(Takutai Moana\) Act 2011](#)).

3 Adams, 2nd ed, 1971, para 21.

4 *Hayes* (1985) 3 BCB 61. For a list of statutory provisions authorising the issue of certificates of title for Crown **land**, see Adams, 2nd ed, 1971, para 21.

5 [Housing Act 1955](#), s 16(1)

6 [Housing Act 1955](#), s 17. For example, on account of roads not having been dedicated or surveys not having been completed.

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- 7 [Housing Act 1955](#), s 17.
- 8 [Housing Act 1955](#), s 18(1). Since 14 October 2002, when the Registrar-General declared that all **land** in New Zealand that is in, or becomes comprised in, a computer register to be “electronic transactions **land**” (see New Zealand Gazette, 10 October 2002, p 3895), the reference to “folium of the register” is to be read as a reference to the appropriate computer register, see the [Land Transfer](#) (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 20(2).
- 9 [Housing Act 1955](#), s 18(2).
- 10 [Housing Act 1955](#), s 18(4).

(2) THE MECHANICS OF REGISTRATION

8.018 Plans and surveys

Accurate surveys are essential to the proper functioning of **the Land Transfer system** not only to give certainty of title¹ but also because the state guarantees to the registered proprietor possession of the **land** as originally pegged.² For these reasons the operation of the [Land Transfer](#) Act 1952 is today linked to a **survey system** of great accuracy.³ Historically paper-based, since 30 June 2003, “e-survey” introduced digital surveys and their electronic lodgement. Since 1 September 2007 electronic lodgement is mandatory. In turn, digital surveys have facilitated the online searching of New Zealand’s authoritative survey database.

A survey is normally done before **land** is brought under the [Land Transfer](#) Act by alienation from the Crown for an estate in fee simple.⁴ Similarly before **land** is brought under the Act by voluntary application⁵ a plan of the **land** showing its boundaries and relative position has to be supplied by the applicant.⁶ When **land** was brought under the Act pursuant to the compulsory registration of titles legislation,⁷ however, there was generally no adequate survey plan in existence, so that the certificate of title issued at that time was limited as to parcels.⁸

Once **land** has been brought under the [Land Transfer](#) Act, the maintenance of a proper standard of survey is ensured by the provisions of s 167 of the [Land Transfer](#) Act 1952.⁹ The effect of that section is to give the Registrar power to require the deposit in the [Land](#) Registry Office of a survey plan in accordance with the regulations for the time being in force.¹⁰ This power arises in the following circumstances:

- (1) When **land** is being brought under the [Land Transfer](#) Act;
- (2) When [Land Transfer land](#) is subdivided;¹¹
- (3) When a new computer register¹² needs to be created for the untransferred part (or residue) of the **land** comprised in a computer register, certificate of title or other instrument of title;¹³
- (4) When an application has been made for the registration of any instrument affecting part only of the **land** comprised in any computer register, certificate of title or other instrument of title.

Where the Registrar is of the opinion that a survey plan complying with the regulations is not warranted in the circumstances of any particular case, the Registrar may require the deposit of such other plan as she or he considers, after consultation with the Chief Surveyor, sufficient to define the **land** in relationship to existing surveys.¹⁴ By s 167(2) of the [Land Transfer](#) Act 1952, the Registrar is given an additional discretionary power to dispense with the deposit of a survey plan where, having regard to the value of the **land** in question, he or she considers that hardship would be caused if a survey plan were required.¹⁵ Where this discretion is exercised, and where the **land** is comprised in an ordinary computer register, the Registrar may, with the written consent of every registered mortgagee or lessee of the **land**, create a computer register limited as to parcels for the **land** which has been subdivided off; and where the ordinary computer register is in consequence partially cancelled, it may be made subject to a limitation as to parcels.¹⁶ Section 167 applies to any **land** comprised in a computer register that is recorded as being limited as to parcels,¹⁷ so that when such **land** is subdivided a survey plan will ordinarily be required and the titles to the lots on the subdivision will be fully guaranteed.

The result of the legislation is that the position and boundaries of the great majority of the parcels of **land** comprised in ordinary certificates of title under the [Land Transfer](#) Act are defined by survey plans with a high degree of accuracy. By contrast, parcels of **land** comprised in certificates of title and the equivalent computer register that are limited as to parcels are not defined by plans of an acceptable degree of accuracy. Doubt necessarily exists as to the position, area, and boundaries of such **land**.¹⁸

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A survey plan that has been deposited in the **Land** Registry Office is part of the register¹⁹ and it is the duty of the Registrar to keep deposited plans in his or her care, custody and control.²⁰

- 1 If the boundaries of a parcel of **land** are uncertain, it may be of little use to guarantee the title of the registered proprietor: see the quotation from Ruoff, p 51, in [\[8.003\]](#).
- 2 **Land Transfer** Act 1952, s 172. But note that: “[T]here has been no claim paid under the compensation provisions due to the fact that the area or the measurements on a certificate of title have been wrongly shown. The reason for this is that an ordinary guaranteed title guarantees the **land** as originally pegged. If any claim for compensation arose then the Crown may rely on the words ‘more or less’ in the certificate of title: *Moore v Dentice* (1901) 20 NZLR 128^{CB}”: Adams, [S172.8]. See also Sim, “The Compensation Provisions of the Act” (1971) *Centennial Essays* 138 at 141-142.
- 3 See, generally, the **Cadastral Survey Act 2002** (s 47 relates to the general duties of a cadastral surveyor in conducting a cadastral survey; s 49 allows the Surveyor-General to make rules specifying standards for the conduct of cadastral surveys: see the Surveyor-General’s Rules for Cadastral Survey 2010, and the transitional provision in [s 50](#) of the **Cadastral Survey Act 2002**). See also the **Crown Grants Act 1908**, [ss 6](#) and [7](#); and the **Land Transfer** Act 1952, Part 10. The **Cadastral Survey Act 2002** creates a regime by which a cadastral survey may be reviewed for errors and, if necessary, corrected. For a review of the Court’s supervisory jurisdiction of the review process see *Hojsgaard v The Chief Executive of Land Information New Zealand* [2018] NZHC 750^{CB}. The duties of a surveyor surveying **land** in a certificate of title which is limited as to parcels are set out in *Cotton v Keogh* [1996] 3 NZLR 1^{CB} at 6-7 (CA) per Blanchard J for the Court and considered in *O’Kane v Bell Farms Ltd* (High Court, Auckland M 1856-00, 12 June 2001) at [28]–[37] and [48]–[50] per Williams J, noted (2001) 9 BCB 185 (Toomey). Unfortunately, surveys have not always been as reliable as they are today. Many of the early surveys were hurried and inaccurate and must be treated with caution. For comments on the early surveys in New Zealand, see Ruoff, pp 53-54; Esterman *Legislation for Surveys and Subdivisions* Legal Research Foundation Occasional Pamphlet No 5, 1970, pp 5-7; and Whalan, “The Origins of the Torrens **System** and its Introduction into New Zealand” (1971) *Centennial Essays* 1 at 27-30 (where it is pointed out that the state of the surveys was at one time so bad as to endanger the very existence of the Torrens **System** in New Zealand).
- 4 Para 8.012; and see the **Land Transfer** Act 1952, s 13. Refer generally to the **Crown Grants Act 1908**, [ss 6](#) and [7](#).
- 5 Para 8.013.
- 6 **Land Transfer** Act 1952, s 167. But certificates of title based on early surveys must sometimes be treated with reserve. Esterman, *Legislation for Surveys and Subdivisions* Legal Research Foundation Occasional Pamphlet No 5, 1970, comments: “Although the [**Land Transfer**] Act required a plan of survey to accompany applications to bring **land** under the **system**, in certain districts some of the early Registrars presumably in order to encourage landowners to bring their **land** under the Act dispensed with adequate surveys. Such titles are in a most anomalous position: theoretically their boundaries are guaranteed and certain, but in actual fact they are not certain. Possessory boundaries may well prevail over documentary boundaries if in existence at the date of initial registration under the **system**”. The Surveyor-General may, however, authorise any survey for the purpose of correcting any **Land Transfer** plan or certificate, and the cost will be paid out of the Crown Bank Account on the certificate of the Surveyor-General that the survey has been duly made and was necessary for that purpose: **Land Transfer** Act 1952, s 170.
- 7 **Land Transfer** Act 1952, Part 12, formerly the **Land Transfer** (Compulsory Registration of Titles) Act 1924.
- 8 Para 8.014.
- 9 Under the **Forestry Rights Registration Act 1983**, [s 5](#), the standard of survey is greatly relaxed for the purpose of registering a “forestry right”: see Hayes (1983) 2 BCB 27.
- 10 The **Land Transfer Regulations 2002** (SR 2002/213), [reg 19\(1\)](#), provides that a person seeking to deposit a plan must present it at a **Land** Registry Office in the same manner and within the same hours that apply to the presentation of instruments for registration. (This provision does not apply to digital cadastral survey datasets as defined in the **Cadastral Survey Act 2002**, [s 4](#): **Land Transfer Regulations 2002** (SR 2002/213), [reg 19\(2\)](#).) No alteration may be made in or to any plan after it has been deposited, although, with the consent of the Registrar, additional or corrective information distinguished as such may be marginally added: see **Land Transfer Regulations 2002** (SR 2002/213), [reg 34](#). Note that from 1 June 2002 until 1 June 2003, the Survey Regulations 1998 (SR 1998/441) had effect as if they were rules under the **Cadastral Survey Act 2002**, [s 49](#): see the **Cadastral Survey Act 2002**, [ss 50](#) and [51](#).
- 11 The Resource Management Act 1991, s 224(c), prohibits the deposit of a survey plan under the **Land Transfer** Act 1952 unless a certificate, signed by the principal administrative officer or other authorised officer of the territorial authority, is lodged with the Registrar stating that: (a) it has approved the survey plan (and stating the date of the approval); (b) any of the conditions of the subdivision consent have been complied with to the satisfaction of the territorial authority; and (c) in respect of such conditions that have not been complied with, a completion certificate or

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consent notice has been issued, and a bond has been entered into by the subdividing owner. In addition, any consent notice that has been issued in respect of any conditions must be lodged for registration with the Registrar: Resource Management Act 1991, s 224(d). If **land** shown on the survey plan will vest in the Crown or a local authority, see Resource Management Act 1991, s 224(b). After the deposit of the survey plan, new certificates of title may be issued for the allotments: see Resource Management Act 1991, s 226; *Waitakere City Council v Registrar-General of Land* [2003] NZRMA 464 ^{CB}. Generally as to subdivision, refer to the Resource Management Act 1991, Part X; Hayes (1991) 6 BCB 17; Registrar-General of **Land** (1998) 8 BCB 26. See also *Kawau Copper and Sulphur Developments Ltd v District Land Registrar* [1980] 2 NZLR 529 ^{CB}; and *Wilbow Corporation (NZ) Ltd v North Shore City Council* [2002] 1 NZLR 114 ^{CB}.

- 12 Section 167 continues to refer to certificate of title and makes no express reference to computer registers. The **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, however, requires that continued statutory references to certificate of title for **land** now classified as electronic transaction **land** is to be read as a reference to the appropriate computer register, see the **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 20(3). See [8.007].
- 13 Such as a memorandum of lease. See also the **Land Transfer** Act 1952, s 93.
- 14 **Land Transfer** Act 1952, s 167(1) (proviso).
- 15 For a consideration of the circumstances in which the Registrar may dispense with the deposit of a survey plan when part only of the **land** in a certificate of title is being dealt with, see Adams, 2nd ed, at [467].
- 16 **Land Transfer** Act 1952, s 167(2); at [8.014].
- 17 **Land Transfer** Act 1952, s 167(4).
- 18 Para 8.014.
- 19 **Land Transfer** Act 1952, ss 2, 33, and 168(2). See *Auckland District Law Society v District Land Registrar* [1980] 2 NZLR 697 ^{CB} at 705 per Perry J; *Registered Securities Ltd v Stephens* (1982) 1 NZCPR 473 ^{CB}; and at [8.022].
- 20 *Auckland District Law Society v District Land Registrar* [1980] 2 NZLR 697 ^{CB} at 705 per Perry J; *Registered Securities Ltd v Stephens* (1982) 1 NZCPR 473 ^{CB}.

8.019 The certificate of title

The general nature of a certificate of title has already been mentioned.¹ In essence it was a statement under the signature and seal of the Registrar that the person named in it was the proprietor of the specified estate in the **land** described, subject first, “to such reservations, restrictions, encumbrances, liens, and interests” as are notified by memorial “underwritten or endorsed” on the certificate,² and second, to any existing statutory right of the Crown to take and lay off roads.

Two originals of every certificate of title were prepared. One was included in the register,³ the other was stamped “duplicate original” and held by the registered proprietor or, if the **land** was mortgaged, by the first mortgagee. Reforms introduced by the **Land Transfer** (Automation) Amendment Act 1998 and the **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002 have resulted in the conversion of the certificate of title formerly included in the register into computer registers. The 2002 Act directed the Registrar not to issue a duplicate certificate of title for “electronic transactions **land**”⁴ and provided that certificates of title with respect to electronic transaction **land** were cancelled and ceased to have any legal status as title documents.⁵ As from 14 October 2002 all **land** in New Zealand that is in, or becomes comprised in, a computer register is “electronic transactions **land**”.⁶ As a result, all certificates of title have been cancelled.

1 [Para 8.007](#).

2 See *Medical Benefits Fund of Australia Ltd v Fisher* [1984] 1 Qd R 606 ^{CB}.

3 The **Land Transfer** Act 1952, s 33 requires the Registrar to include in the register “a duplicate of every grant of **land** and of every certificate of title”. In practice the document embodied in the register was regarded as the original.

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- 4 *Land Transfer* (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 18. See [\[8.007\]](#) for the process by which land becomes electronic transactions land.
- 5 *Land Transfer* (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 18(2).
- 6 New Zealand Gazette, 10 October 2002, p 3895.

8.020 Computer registers

The *Land Transfer* (Automation) Amendment Act 1998, which came into force on 1 February 1999, made provision for the automation of the land titles system in New Zealand. Sections 5, 7, 9, and 11 of that Act empowered the Registrar to create computer registers for certain estates or interests in land.¹ Although the *Land Transfer* (Automation) Amendment Act 1998 was repealed by [s 64\(3\)](#) of the *Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002*, the latter enactment largely re-enacted the 1998 Amendment Act, and continues the Registrar's entitlement to create computer registers.²

(a) Forms of computer register

The *Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002* makes provision for the creation of four types of computer registers, namely a computer freehold register,³ a computer interest register,⁴ a computer unit title register,⁵ and a composite computer register.⁶ A computer register may be held or stored in any medium⁷ or combination of media that will enable it to be maintained or accessed for the purposes of the *Land Transfer* Act 1952 and the *Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002*.⁸

(b) Computer freehold register

The Registrar may create a computer freehold register for any freehold interest in land that is subject to the *Land Transfer* Act 1952.⁹ This is the electronic equivalent of the former paper-based fee simple certificate of title. Upon doing so, the land becomes subject to the *Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002*.¹⁰

A computer freehold register is required to comprise:¹¹

- (1) The unique identifier¹² for that computer freehold register;
- (2) A description of the land in a form determined by the Registrar from time to time;
- (3) The unique identifier for each instrument relevant to the land and the information necessary to enable its priority to be determined;
- (4) The name of the registered proprietor of the freehold interest in the land;
- (5) Any minority or other restriction on the legal capacity of the registered proprietor that is known to the Registrar;¹³ and
- (6) Certain other information that is required to be included or considered appropriate to include.

(c) Computer interest register

The Registrar may create a computer interest register for any interest that is required or permitted to be registered.¹⁴ Although the primary function of this register is to ensure that leasehold certificates of title are provided for,¹⁵ the definition of "interest" is much wider and is defined to mean any one of the following:¹⁶

- (1) A lease registered or to be registered under the *Land Transfer* Act 1952;
- (2) Any matter or interest less than the freehold incorporated or embodied as a folium of the register under the *Land Transfer* Act 1952;
- (3) Any matter or interest embodied as a folium of the provisional register;
- (4) Any other matter incorporated or embodied in any other register in a Land Registry Office; or

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- (5) Any proclamation or notice published in the *Gazette* and registered or to be registered in a **Land** Registry Office.

Upon creation of a computer interest register, the interest becomes subject to the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), and, if subject to the **Land Transfer** Act 1952, remains subject to that Act. ¹⁷ Should the Registrar be directed or empowered by any other enactment to incorporate or embody any registered interest or other matter as a folium of the register, ¹⁸ it is sufficient if the Registrar instead creates a computer interest register. ¹⁹ Similarly, a requirement in any enactment to record any matter against, in, or on any instrument for which the Registrar has created a computer interest register is satisfied if the Registrar records the matter in the computer interest register. ²⁰

Each computer interest register is required to contain all of the following information: ²¹

- (1) The unique identifier ²² for that computer interest register;
- (2) A general description of the interest;
- (3) A reference to the instrument that creates the interest; ²³
- (4) The unique identifier for each instrument relevant to the interest and the information necessary to enable its priority to be determined;
- (5) The date on which the interest was registered;
- (6) The name of the registered proprietor of the interest or a reference to the instrument stating that name;
- (7) Any minority or other restriction on the legal capacity of the registered proprietor that is known to the Registrar; ²⁴ and
- (8) Any other information that is required to be included by any Act or regulations, or that the Registrar considers appropriate to give effect to the requirements of any Act or regulations.

(d) Computer unit title register

The Registrar may create a computer unit title register for a stratum estate ²⁵ in freehold or a stratum estate in leasehold. ²⁶ If a computer unit title register is created in respect of any principal unit (and any associated accessory units) and any future development units under the Unit Titles Act 2010, the units become subject to the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#).²⁷ The Registrar is also authorised to create a register that is to perform the function of the supplementary record sheet in accordance with [s 47](#) of the Unit Titles Act 2010. ²⁸

A computer unit title register is comprised of:²⁹

- (1) The unique identifier ³⁰ for that computer unit title register;
- (2) The number of the principal unit on the relevant unit plan and the letter allotted to any associated accessory unit and any future development unit on that plan;
- (3) The unique identifier for each instrument relevant to the principal unit and any associated accessory unit, and the information necessary to enable the priority of the instrument to be determined;
- (4) A statement that the stratum estate concerned is subject to the reservations, restrictions, encumbrances, liens, and interests that are notified by memorial or by a unique identifier on the computer unit title register and on the relevant unit plan and the supplementary record sheet for the plan kept in accordance with s 47 of the Unit Titles Act 2010;
- (5) The name of the registered proprietor of the stratum estate concerned;
- (6) Any minority or other legal restriction on the legal capacity of the registered proprietor that is known to the Registrar; ³¹ and
- (7) Any other information that is required to be included by any Act or regulations, or that the Registrar considers appropriate to give effect to the requirements of any Act or regulations.

These provisions incorporate the requirements of the Unit Titles Act 2010 and are, therefore, more extensive than the equivalent provisions relating to computer freehold or interest registers. ³²

(e) Composite computer register

If the Registrar considers it appropriate, a composite computer register for cross-leases and timeshares may be created. ³³ A composite computer register may comprise all or any of a computer freehold register, computer interest register, and computer unit title register. ³⁴

(f) References, directions, and requirements for electronic transactions land

Having abolished certificates of title for electronic transactions land, ³⁵ss 19 and 20 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 provide alternative references, directions, and requirements for electronic transactions land.

With respect to such land the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 provides that references in any enactment to a folium of the register must be read as a reference to the appropriate computer register. ³⁶ A reference to a certificate of title or duplicate certificate issued to the registered proprietor of an estate or interest in any land must be read as a reference to the appropriate computer register. ³⁷

Clearly any existing statutory requirement that any person produce or deliver a certificate of title does not apply. ³⁸ A requirement or authorisation for the Registrar to issue or cancel a certificate of title is satisfied by creating an appropriate computer register or doing an act in relation to a computer register that has the same effect respectively. ³⁹ A reference in any enactment for the purpose of describing a parcel of land must be read as a reference with equivalent effect to a computer register. ⁴⁰ If any enactment contains an authorisation or direction to do any of the following:

- (1) Make an entry in the register;
- (2) Enter a memorandum in the register or endorse one on a certificate of title or on a duplicate certificate of title;
- (3) Amend a certificate of title;
- (4) Make any other entry or endorsement or notation in the register or on a certificate of title or on a duplicate certificate of title;
- (5) File or deposit any instrument or covenant, notice, or resolution in a Land Registry Office; or
- (6) Certify, endorse, note, notify, or record, any matter, information, or thing against, in, or on a document held in any Land Registry Office —

the Registrar may instead make an equivalent or appropriate entry in a computer register and or create an appropriate computer register. ⁴¹

(g) The noting of encumbrances⁴²

Sections 7–14 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, incorporate. ⁴³ the requirements of s 67 of the Land Transfer Act 1952. That requires the Registrar to note on every certificate of title, in such a way as to preserve their priority, the memorials of all unsatisfied mortgages, leases, and other estates and interests to which the land is subject at the time of issuing the certificate. As applied to computer freehold registers and computer unit title registers, for example these registers must comprise, inter alia, the unique identifier for each instrument relevant to the land, interest, or unit and the information necessary to enable its priority to be determined; ⁴⁴ and any minority or other restriction on the legal capacity of the registered proprietor that is known to the Registrar. ⁴⁵

(h) How computer registers are dated

Sections 7–14 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, require that a computer register must contain the unique identifier for each instrument relevant to the land, interest, or unit and the information necessary to enable its priority to be determined, ⁴⁶ and, in the case of a computer interest register, the date on which the interest was registered. ⁴⁷

(i) Application of certain empowering provisions relating to certificates of title

Despite the cancellation of certificates of title for electronic transactions land, a number of sections in the Land

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Transfer Act 1952 continue to refer to certificates of title. Section 20(3) of the **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002 provides that references in any enactment to certificates of title in relation to electronic transactions **land** must be read as a reference to the appropriate computer register. Because of s 20(3) of the 2002 Act, certain empowering provisions conferred by the **Land Transfer** Act 1952 should apply to computer registers. They deal with the following situations.

Tenants in common

The **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002 does not expressly provide for persons entitled as tenants in common⁴⁸ to undivided shares in **land** to hold separate computer registers for their undivided share. Section 72 of the **Land Transfer** Act 1952 conferred this right with respect to certificates of title and this section should be seen as authorising the creation of separate computer registers in this situation.

Computer register in the name of a deceased person

The **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002 does not expressly provide that any computer register issued in the name of a person who has previously died is not void. This was the position in relation to certificates of title. Section 74 of the **Land Transfer** Act 1952 provides that the certificate of title is not void and that “the **land** comprised therein shall devolve in like manner as if the certificate had been issued immediately prior to death”. Applying s 20(3) of the **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 72 should be read as applying to computer registers.

Merging and dividing computer registers

Section 86 of the **Land Transfer** Act 1952 empowered the Registrar to issue a single certificate of title in place of several, or several certificates to be issued in the place of one and, applying s 20(3) of the **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 86(1) should be seen as applying to computer registers.

(j) Machinery provisions relating to computer registers

Where any computer register⁴⁹ has become or is becoming obliterated or unfit for use, or where in the opinion of the Registrar it is desirable in the interests of convenience of reference or administration, the Registrar may cause the computer register to be copied in the same or some other convenient form, and that copy shall have the same effect as the original.⁵⁰ Further, where any computer register⁵¹ is lost, misplaced, or destroyed, the Registrar may prepare another copy of the original and record thereon the particulars of all instruments, dealings, and other matters affecting the **land** as those particulars were recorded on the original at the time of its loss, misplacement, or destruction.⁵²

(k) Computer registers as evidence of proprietorship

[Section 34](#) of the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#) prescribes the evidentiary effect of documents or instruments that record the contents of a computer register or appear to be in the form prescribed for a certificate of title if the **land** is not electronic transactions **land**.⁵³ Such a document or instrument must be received in all Courts as evidence of the information it contains, and the recording of that information in the register.⁵⁴ It is also made conclusive evidence of three further facts, namely: ⁵⁵

- (1) That, at the time it was issued, the information shown on it identified all of the interests and other matters in the computer register concerned;
- (2) That the person named in the certificate or computer register (or in any information forming part of it) as holding an estate or interest in **land** to which it relates, holds that estate or interest as from the date of the certificate or as from the date from which it is expressed to take effect;⁵⁶ and
- (3) That the **land** to which it relates is subject to the **Land Transfer** Act 1952 and the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#).⁵⁷

If an instrument is recorded or registered in any medium other than paper, a document that records the contents of the instrument is admissible in evidence if the document:⁵⁸

- (1) Is generated by or produced from the computer **system**;

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- (2) Is in a readily understandable form; and
- (3) Is certified by or on behalf of the Registrar as a true representation of the instrument.

(l) Deposited plans

At least once it is printed, a computer register is an “instrument” as defined in s 2 of the [Land Transfer Act 1952](#).⁵⁹ Section 168(2) of the [Land Transfer Act 1952](#) provides that:

Every instrument in which [land](#) is described by reference to a deposited plan shall take effect, according to the intent and meaning thereof, as if the plan was fully set out thereon.

It follows that, whenever a computer register describes [land](#) by reference to a deposited plan, that plan is deemed to be incorporated into the title, and carries with it the statutory guarantees of the indefeasibility provisions⁶⁰ of the [Land Transfer Act 1952](#).⁶¹ Whenever a computer register which refers to a deposited plan is searched, it is essential also to search the deposited plan.

(m) Offences in relation to information or instruments

Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding \$1000, who fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement of:

- (1) The recording, lodgement, presentation, or registration of any information, instrument, matter or thing under the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#);⁶² or
- (2) The deletion or alteration of any information, matter, or thing recorded under the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#).⁶³

Any such activity, so procured or made by fraud, shall be void as between all parties or privies to the fraud.⁶⁴

1 [Land Transfer \(Automation\) Amendment Act 1998, s 12.](#)

2 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, ss 7, 9, 11, and 13.](#)

3 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 7.](#)

4 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 9.](#)

5 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 11.](#)

6 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 13.](#)

7 “Medium” is defined to include “(a) any electronic, electromagnetic, optical, digital, or photographic process or [system](#); and (b) any paper; and (c) any other means of recording, reproducing, copying, or storing information”: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 4.](#)

8 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 14.](#)

9 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 7\(1\).](#) The Registrar need not do so if, in her or his opinion, it is not expedient to do so: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 7\(4\).](#)

10 The [land](#) remains subject to the [Land Transfer Act 1952](#) : [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, ss 7\(2\) and 6\(a\).](#)

11 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 8.](#)

12 This is defined as a combination of letters or numbers, or both, by which a computer register or an instrument or other document is, or is to be, uniquely identified: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 4.](#) The [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 29,](#) confers on the Registrar the power to assign a unique identifier.

13 [Paras 19.001–19.016.](#)

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- 14 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 9\(2\)](#). The Registrar need not do so if, in her or his opinion, it is not expedient to do so: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 9\(4\)](#).
- 15 If the interest to which the computer interest register relates is a lease registered or to be registered under the [Land Transfer Act 1952](#), the register may also include any provisions set out in any form prescribed by the [Land Transfer Act 1952](#) for certificates of title that the Registrar considers appropriate to include: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 10\(2\)](#).
- 16 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 9\(1\)](#).
- 17 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, ss 9\(3\)](#) and [6\(a\)](#).
- 18 Or provisional register, or in any other register in a [Land](#) Registry Office.
- 19 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 9\(5\)](#).
- 20 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 9\(6\)](#).
- 21 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 10](#). See also the prescribed forms of certificate of title: para 8.019.
- 22 This is defined as a combination of letters or numbers, or both, by which a computer register or an instrument or other document is, or is to be, uniquely identified: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 4](#). The [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 29](#), confers on the Registrar the power to assign a unique identifier.
- 23 A reference in the computer interest register to the instrument creating the interest to which the register relates takes effect as if the instrument were fully set out in the register: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 10\(3\)](#).
- 24 [Paras 19.001–19.016](#).
- 25 “Stratum estate” has the same meaning as in the Unit Titles Act 2010: Unit Titles Act 2010, ss 5, 18 and 22.
- 26 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 11\(1\)](#). The Registrar need not do so if, in her or his opinion, it is not expedient to do so: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 11\(5\)](#).
- 27 While remaining subject to the [Unit Titles Act 2010](#) and the [Land Transfer Act 1952](#) : [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 11\(2\)\(a\)](#).
- 28 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 11\(4\)](#).
- 29 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 12](#).
- 30 This is defined as a combination of letters or numbers, or both, by which a computer register or an instrument or other document is, or is to be, uniquely identified: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 4](#). The [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 29](#), confers on the Registrar the power to assign a unique identifier.
- 31 [Paras 19.001–19.016](#).
- 32 Para 8.020(b) and (c).
- 33 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 13\(1\)](#).
- 34 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 13\(1\)](#).
- 35 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 18\(1\)](#).
- 36 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 20\(2\)](#).
- 37 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 20\(3\)](#).
- 38 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 19\(3\)](#).
- 39 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 19\(2\)](#) and [\(4\)](#).
- 40 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 19\(5\)](#).
- 41 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 19\(6\), \(7\)](#) and [\(8\)](#). If the Registrar does so, any requirement under any enactment that the Registrar take action in relation to a duplicate or triplicate of a document affected by that authorisation or direction does not apply: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 19\(9\)](#).

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- 42 For guidance as to the meaning of encumbrances, see *Hodge v Applefields Ltd* (1997) 3 NZ ConvC 192,500 ^{CB} at 192,502-192,503 per Hansen J, noted (1997) 7 BCB 284 (McMorland); *Applefields Ltd v Hodge* (1998) 3 NZ ConvC 192,726 ^{CB} at 192,728 (CA) per Doogue J (CA), noted (1998) 8 BCB 16 (Thomas).
- 43 Section 67 does not directly apply to computer registers: *Land Transfer* (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 36.
- 44 *Land Transfer* (*Computer Registers and Electronic Lodgement*) Amendment Act 2002, ss 8(c), 10(1)(d), and 12(c).
- 45 *Land Transfer* (*Computer Registers and Electronic Lodgement*) Amendment Act 2002, ss 8(e), 10(1)(g), and 12(f).
- 46 *Land Transfer* (Computer Registers and Electronic Lodgement) Amendment Act 2002, ss 8(c), 10(1)(d), and 12(c).
- 47 *Land Transfer* (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 10(1)(e). Section 68(1) of the *Land Transfer* Act 1952, which does not apply to computer registers, required that every certificate of title issued pursuant to any dealing to bear even date with the registration of that dealing.
- 48 Paras 13.014–13.017.
- 49 Or other record, that is, any book, plan, register copy of any certificate or instrument of title or of any other instrument of any kind whatsoever forming part of the register or the Registrar's records.
- 50 *Land Transfer* Act 1952, s 215A.
- 51 Or any duplicate grant or certificate of title constituting a separate folium of the register, or any other instrument of any kind forming part of the register or the Registrar's records.
- 52 *Land Transfer* Act 1952, s 215B. The *Land Transfer* Act 1952, s 211(ca), enables the Registrar to call in any duplicate certificate of title, instrument, or document if the reconstitution of the record necessitates this action. This provision must be regarded as redundant in the context of electronic transactions *land*.
- 53 There is a further requirement that such document or instrument does not appear to have been altered in any way: *Land Transfer* (*Computer Registers and Electronic Lodgement*) Amendment Act 2002, s 34(1)(b).
- 54 *Land Transfer* (*Computer Registers and Electronic Lodgement*) Amendment Act 2002, s 34(2)(a).
- 55 *Land Transfer* (*Computer Registers and Electronic Lodgement*) Amendment Act 2002, s 34(2)(b).
- 56 Unless the contrary is proved by the production of a statement by the Registrar: *Land Transfer* (*Computer Registers and Electronic Lodgement*) Amendment Act 2002, s 34(2)(c) and (3).
- 57 *Land Transfer* (*Computer Registers and Electronic Lodgement*) Amendment Act 2002, s 34(2)(c) and (3).
- 58 *Land Transfer* (*Computer Registers and Electronic Lodgement*) Amendment Act 2002, s 35.
- 59 "Instrument" means any printed or written document, map, or plan relating to the *transfer* of or other dealing with *land*, or evidencing title thereto; and includes a memorandum within the meaning of the *Land Transfer* Act 1952, s 155A(1) and an electronic instrument as defined in the *Land Transfer* (*Computer Registers and Electronic Lodgement*) Amendment Act 2002, s 4: *Land Transfer* Act 1952, s 2. See *paras 8.011* and 8.026.
- 60 *Paras 9.008–9.014*.
- 61 *Auckland District Law Society v District Land Registrar* [1980] 2 NZLR 697 ^{CB} at 705 per Perry J.
- 62 *Land Transfer* Act 1952, s 225(1)(ab)(i).
- 63 *Land Transfer* Act 1952, s 225(1)(ab)(ii).
- 64 *Land Transfer* Act 1952, s 225(2).

8.021 Restriction on issue of new computer register

The Registrar may not issue a new computer register for any *land* that is shown as a separate allotment on a survey plan where the title or register is issued to give effect to the subdivision shown on the plan, unless he or she is satisfied after due inquiry that any one of a number of events specified in *s 226* of the *Resource Management Act 1991* has occurred.¹ Registers created in contravention of this prohibition, at least where the creation of the register does not involve any change of registered proprietor,² or where there has not been any subsequent registration of any purchaser or mortgagee bona fide for valuable consideration,³ is invalid.⁴

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- 1 This prohibition overrides a court ordered partition order: *Harley v Registrar-General of Land* (2010) 11 NZCPR 458 ^{CB}
- 2 In *Waitakere City Council v Registrar-General of Land* [2003] NZRMA 464 ^{CB} certificates of title were issued to the subdividing owner, as would normally be the case, so that no change of ownership was involved.
- 3 *Land Transfer* Act 1952, s 183; para 9.014.
- 4 *Waitakere City Council v Registrar-General of Land* [2003] NZRMA 464 ^{CB} at para [63] per Harrison J.

8.022 The register

The register has been described as “the keystone of the Torrens **System**”.¹ Indeed, in *Fels v Knowles*, Edwards J observed that “[t]he cardinal principle of the statute [the *Land Transfer* Act] is that the register is everything”. This is because, as Edwards J further observed:²

[E]xcept in cases of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world. Nothing can be registered the registration of which is not expressly authorised by the statute. Everything which can be registered gives, in the absence of fraud, an indefeasible title to the estate or interest, or in the cases in which registration of a right is authorised, as in the case of easements or incorporeal rights, to the right registered.

The register is created by s 33 of the *Land Transfer* Act 1952. The language of s 33 is misleading as it does not reflect the conversion of the register from a paper-based **system** to a computer-based **system** and the associated replacement of certificates of title with computer registers.³ Section 33 requires the Registrar to “keep a register, whether in the form of a book or otherwise” and to “bind up or include therein ... every certificate of title”. Section 33 further directs the Register, with respect to each certificate of title, to “record” on the part of the register pertaining to it, the particulars of all instruments,⁴ dealings⁵ and other matters”, which are required to be registered by the *Land Transfer* Act. These recordings are called memorials.⁶ The register also includes certain other instruments that the Registrar is required by statute to register.⁷

Despite the wording of s 33, the “register” should be viewed as the collection of “computer registers”. Apart from this, the key concept of the register as recording “the particulars of all instruments, dealings and other matters” pertaining to a parcel of **land** remains.

The creation of a computer registers is the latest change in the nature of register. Originally the documents constituting the register were bound up to form large volumes. This **system** had the advantage of security, for it was difficult to destroy or remove a folium of the register. But it also had considerable disadvantages from an administrative point of view, because the memorials all had to be hand-written into the register book, and the process of checking and signing each entry involved taking out the appropriate volume, finding the place, and when the entry had been checked and signed, replacing the volume on its shelf or rack. It was therefore decided to convert the bound volumes of the registers to a looseleaf **system**, and the necessary amending legislation was passed in 1961.⁸

In 1991 the government approved the establishment of a number of pilot projects to test possible approaches to automating information storage and retrieval in public registries.⁹ The *Land Transfer (Automation) Amendment Act 1998* was the first legislative amendment necessary to begin the process of automating New Zealand’s **land** title records. In essence, it provided for the electronic storage of title information and the conversion of the existing manual records to a computer-based **system**. The *Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002* repealed the *Land Transfer (Automation) Amendment Act 1998*, but largely re-enacted its provisions while also extending its scope by providing for the electronic lodgement of some instruments.

The Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 authorises the creation of four types of computer registers, namely a computer freehold register, a computer interests register, a computer unit title register, and a composite computer register.¹⁰ These registers may be held or stored in any medium ¹¹ or

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combination of media,¹² and *ss 8, 10, and 12* of the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#) specify the information that must be included therein.

All information at any time registered under the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#) is part of the register,¹³ unless any other enactment expressly provides that the information does not do so.¹⁴ The Registrar must retain all information at any time recorded in a computer register,¹⁵ either in a computer **system** or elsewhere, even if:

- (1) The information was erroneous and has been corrected;
- (2) The information is an old description that has been superseded;
- (3) The information was, but is no longer, current information; or
- (4) The computer **system** is no longer being maintained.

Instruments, once registered, are “deemed and taken to be embodied in the register as part and parcel thereof”,¹⁶ or in simple terms, “to be treated as if written out on the face of the register”, and anyone proposing to deal with the **land** is required “to examine the documents constructively placed before his eyes”.¹⁷

1 Adams *The Land Transfer Act* 1st ed, 1958, para 46.

2 *Fels v Knowles* (1906) 26 NZLR 604  at 620.

3 [Para 8.007](#).

4 In the *Land Transfer Act* 1952, unless the context otherwise requires, “Instrument (a) means any printed or written document, map, or plan relating to the **transfer** of or other dealing with **land**, or evidencing title to **land**; and (b) includes a memorandum within the meaning of section 155A(1) and an electronic instrument”: [Land Transfer Act](#) 1952, s 2.

5 In the *Land Transfer Act* 1952, unless the context otherwise requires, “Dealing means every **transfer**, transmission, mortgage, lease, or encumbrance of any estate or interest under this Act”: [Land Transfer Act](#) 1952, s 2.

6 Para 8.034.

7 Some well-known examples are: (1) certain leases and licences of Crown **land**, which are constituted folios of the register under the [Land Act 1948, s 82](#); (2) agreements for sale and licences issued by the Housing Corporation in respect of the sale of state houses, which are constituted folios of the register under the [Housing Act 1955, s 18](#); and (3) certain licences issued by the Mining Registrar which are constituted folios of the register under the [Mining Tenures Registration Act 1962, s 10](#). For other examples of statutes which require the Registrar to register instruments, see the Statutory **Land** Charges Registration Act 1928, s 5; the Maori Housing Amendment Act 1938, s 8; the Greymouth Harbour Board Amendment Act 1945, ss 3 and 5; and the [Maori Reserved Land Act 1955, s 78](#).

8 [Land Transfer Amendment Act](#) 1961, s 2, which repealed the *Land Transfer Act* 1952, s 33, and substituted a new section. For a full account of the changes started in 1961 and their implications, see Phillips [1962] NZLJ 39. See also the *Land Transfer Act* 1952, s 215A, which empowered the Registrar to abandon the large bound registers and produce smaller looseleaf registers copied from the originals: see Adams, para S215A.2. Computers have long played an important part in **Land** Registry Offices: see Whalan (1967) 40 ALJ 413; Phillips [1973] NZLJ 193 at 194; Hayes (1982) 1 BCB 27; Hayes (1984) 3 BCB 15; Hayes (1988) 4 BCB 237; Hayes (1990) 5 BCB 128; Hayes (1990) 5 BCB 201.

9 Department of Justice New Zealand, “New Technology for Public Registries Group”, News Release, 10 October 1991.

10 Para 8.020.

11 In the *Land Transfer Act* 1952, unless the context otherwise requires, “‘Medium’ includes— (a) any electronic, electromagnetic, optical, digital, or photographic process or **system**; (b) any paper; and (c) any other means of recording, or storing information”, see s 2.

12 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 14](#).

13 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 31\(1\)](#).

14 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 31\(3\)](#). This section also does not apply to the limitation imposed by the *Land Transfer Act* 1952, s 155A(5) as to memoranda registered under certain provisions of the *Land Transfer Act* 1952: see [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 31\(2\)](#).

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15 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 32](#).

16 [Land Transfer Act 1952, s 38\(2\)](#).

17 *Re Goldstone's Mortgage: Registrar-General of Land v Dixon Investment Co Ltd* [1916] NZLR 489 ^{CB} at 504–505 (CA) per Hosking J (CA) for the Court, cited in *Melville-Smith v Attorney-General* [1996] 1 NZLR 596 ^{CB} at 603 per Hammond J and *Harvey v Hurley* [2000] ANZ ConvR 480 at 484 (CA) per Thomas J (CA) for the Court. See para 8.024.

8.023 Access to the register

A key aspect of **the Land Transfer system** is public access to the register. Section 46 of the **Land Transfer Act 1952** authorises public access to the register¹ for the purpose of inspection, during the times appointed by regulation.² The section does not apply to computer registers.³ and has ceased to have practical relevance. Its functional replacement is [s 33](#) of the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#). Rather than providing a right of access per se, [s 33](#) confers upon the Registrar powers to provide a search copy of a computer register and copies of instruments.⁴

1 Para 8.022. The Registrar's minutes do not form part of the register for the purposes of the **Land Transfer Act 1952**, s 46 : [Land Transfer Act 1952, s 194](#); para 8.014(b).

2 [Land Transfer Act 1952, s 46](#); [Land Transfer Regulations 2002](#) (SR 2002/213), [reg 40](#).

3 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 33\(1\)](#).

4 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 33\(2\)](#).

8.024 Searching the register

Any person may search the register and the registered instruments embodied in it. Reflecting this, the register is “notice to the world of the facts it contains”.¹ More specifically, it is “notice to all persons dealing with the **land** of that which would be discovered by a search”.² A person searching the register is entitled to rely upon the information found there, but must bear in mind that the register does not include rights that do not require registration. It follows that anyone proposing to deal with **land** must search the register at the earliest possible moment.

The depth of any search is a matter for judgment,³ but it is essential to search, not only the current memorials entered on the register, but also the instruments to which they refer. This is due to the fact that upon registration, every instrument⁴ becomes constructively embodied in the register.⁵ The instrument “must therefore be treated as if written out on the face of the register, and it would be the business of any one proposing to deal with the **land** to examine the documents thus constructively placed before his eyes”.⁶

The importance of undertaking a full search is illustrated by *Bursill Enterprises Pty Ltd v Berger Bros Trading Co Pty Ltd*.⁷ This case involved a certificate of title rather than a computer register but the result and reasoning of the High Court remains relevant. The certificate of title recorded the registration of a **transfer**, which was described as a right of way. Inspection of the registered instrument would have revealed that it included a **transfer** of air space. The High Court held that while the endorsement on the title might not have accurately described the nature of the interest, the purchaser should have searched the underlying instrument and acquired the **land** subject to that interest. Barwick CJ expressed the point quite plainly by stating:⁸

... [I]t was not intended that the certificate of title alone should provide a purchaser dealing with the registered proprietor with all the information necessary to be known to comprehend the extent or state of that proprietor's title to the **land**. The dealings once registered became themselves part of the register book.

...

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To my mind, it is inescapable that a person dealing with the registered proprietor in this case would be bound to search the registered dealing of which particulars were endorsed on the relevant certificate of title.

Windeyer J said:⁹

... it seems to me that what is “notified” to a prospective purchaser by his vendor’s certificate of title is everything that would have come to this (sic) knowledge if he had made such searches as ought reasonably to have been made by him as a result of what there appears.

Bursill and earlier cases, such as *Fels v Knowles*¹⁰ and *Wamiha Saw Milling Co Ltd (in liq) v Waiome Timber Co Ltd*,¹¹ which had stressed the significance of the register, were considered in *Yip v Frolich*. There, Bleby J summarised their effect, while warning that the instrument would still need to be interpreted. He said:¹²

The effect of those cases is to stress the importance of the register and the conclusive nature of interests recorded on the register to the exclusion of interests claimed which are not so registered. Further, where the interest created is referred to, albeit inaccurately, on the certificate of title, a purchaser will be taken to have notice of the contents of the instrument creating the interest.

... A purchaser is therefore deemed to have notice of the content of the memorandum of **transfer** and of the description of the interest contained therein. That is as far as the cases go. They do not go as far as to say that where there is an ambiguity on the face of the instrument, extrinsic evidence is not relevant to its interpretation. Indeed, a person reading the instrument and encountering the ambiguity might well be put on notice that extrinsic evidence may be necessary to resolve the ambiguity.

The importance of assessing instruments embodied in the register is displayed in *Registrar-General of New South Wales v Cihan*.¹³ The issue in this case was whether an easement had been “recorded in” the Register for the purposes of s 42 of the Real Property Act 1900 (NSW).¹⁴ In essence the current folio of the Register noted that the title was subject to an encumbrance and referred to an earlier folio. The description of the right in that folio lacked any reference to a dominant tenement, which suggested that the right that was created a personal licence. In turn that folio referred to an earlier one. It contained a description of the right that identified a dominant tenement and contained other indications that an easement was intended. Referring back to the earliest description of the right, the Court of Appeal held that an easement was recorded in the Register. Referring to *Bursill*, Barrett JA (with whom Allsop P and Tobias AJA agreed) concluded that the concept of notification or recording “is sufficiently made if particulars [of the interest] explicitly stated are such as to engender in the minds of a reasonable reader generally familiar with property and **land** titles a need for further inquiry by resort to readily available records”.¹⁵

Commenting upon this decision Professor Butt observed:¹⁶

This decision ... puts a high premium on technical expertise and sheer determination in assessing the extent to which cryptic comments on present and past folios of the Register should be scrutinized to determine the state of the present title.

It is thus essential to search, not only the current memorials entered on the register, but also the instruments to which they refer. Failure to search may amount to negligence disentitling the claimant to compensation under the **Land Transfer Act 1952**.¹⁷

A search of the register (or “search of the title” or “title search” as it is commonly called) involves a number of steps.¹⁸ For example:

- (1) A search of the computer register (or in the unlikely event that the **land** is not electronic transaction **land**, and a certificate of title remains, a search of the certificate of title) embodied in the register;
- (2) A search of any deposited plan referred to in the computer register (or certificate of title);¹⁹
- (3) A search of all the instruments currently registered²⁰ against the title; ²¹
- (4) A pending transaction and/or pending instrument search;

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- (5) When searching the title to land to which an easement or other right is appurtenant²² it is necessary to search the title to the servient land to make sure that the easement or other right has been registered against the title to the servient land.²³
- (6) When searching the title to a cross-lease it is a wise precaution to search the titles to all the other flats or offices in the development to make sure that the plans and cross-leases are all consistent with one another;
- (7) If any question relating to water or drainage rights or easements could arise in relation to the land, the appropriate records kept by the relevant local authority need to be searched.²⁴

A computer register that is “limited as to parcels” gives no guarantee of the position, or boundaries of the land contained in it.²⁵ Special care must therefore be taken in searching such a title. If there is any element of doubt about the position, or boundaries, a surveyor should be instructed to check them. In *Melville-Smith v Attorney-General*²⁶ the plaintiffs or their agents had not made an adequate search of a title which was limited as to parcels. They had failed to read the memorials correctly and to check the calculations of the area of the land. Hammond J said:²⁷

In this case there was a very high degree of negligence by the plaintiffs or their agents (their solicitors). First, the title was plainly stamped as being “Limited as to Parcels”. It was once more than that; it was limited as to title also. Every searcher should exhibit great caution immediately such notations are observed. Even more than usual care is required on a search. Secondly, the contents of entries on the register are notice to the world of their contents, and particularly in the case of a title such as that at issue in this litigation should be examined: see s 38(2) of the Land Transfer Act 1952; and *Re Goldstone’s Mortgage: Registrar-General of Land v Dixon Investment Co Ltd* ...²⁸

It is obvious that instruments may be registered against a title between the time when a prospective purchaser or mortgagee searches that title and the time when the purchase money or mortgage money is paid over on settlement of the transaction. This is a serious practical difficulty²⁹ and it will be seen that it can be partially overcome by obtaining what is called a “guaranteed search” shortly before a transaction is settled.³⁰

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- 1 Hayes (1989) 5 BCB 67 at 68. See also *Re Goldstone’s Mortgage: Registrar-General of Land v Dixon Investment Co Ltd* [1916] NZLR 489 ^{CB} at 504 (CA) per Hosking J for the Court, cited in *Melville-Smith v Attorney-General* [1996] 1 NZLR 596 ^{CB} at 603 per Hammond J and *Harvey v Hurley* [2000] ANZ ConvR 480 at 484 (CA) per Thomas J for the Court.
 - 2 Hayes (1989) 5 BCB 67 at 68.
 - 3 Hayes (1989) 5 BCB 67 at 68.
 - 4 Ie, every instrument drawn in any of the forms provided in the schedules to the Land Transfer Act 1952, or in any form which for the same purpose may be authorised in conformity with the provisions of the Land Transfer Act 1952 : Land Transfer Act 1952, s 38(2). For the definition of “instrument”, see Land Transfer Act 1952, s 2.
 - 5 Para 8.022. The Land Transfer Act 1952, s 38(2), excepts any memorandum within the meaning of the Land Transfer Act 1952, s 155A(1) : para 8.030.
 - 6 *Re Goldstone’s Mortgage: Registrar-General of Land v Dixon Investment Co Ltd* [1916] NZLR 489 ^{CB} at 504–505 (CA) per Hosking J (CA) for the Court, cited in *Melville-Smith v Attorney-General* [1996] 1 NZLR 596 ^{CB} at 603 per Hammond J and *Harvey v Hurley* [2000] ANZ ConvR 480 at 484 (CA) per Thomas J for the Court. See also McMorland, “Notice, Knowledge and Fraud” (2003) *Torrens in the Twenty-first Century*, 69–78.
 - 7 *Bursill Enterprises Pty Ltd v Berger Bros Trading Co Pty Ltd* (1971) 124 CLR 73 ^{CB}.
 - 8 *Bursill Enterprises Pty Ltd v Berger Bros Trading Co Pty Ltd* (1971) 124 CLR 73 ^{CB} at 77 and 79.
 - 9 *Bursill Enterprises Pty Ltd v Berger Bros Trading Co Pty Ltd* (1971) 124 CLR 73 ^{CB} at 93.
 - 10 *Fels v Knowles* (1906) 26 NZLR 604 ^{CB}; para 8.022.
 - 11 *Waimiha Sawmilling Co Ltd (in liq) v Waione Timber Co Ltd* [1926] AC 101 ^{CB}; (1925) NZPCC 267 ^{CB}.

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- 12 *Yip v Frolich* [2004] SASC 287; (2004) 89 SASR 467 ^{CB} at [50]–[51] (FC) per Bleby J (with whom Perry and Gray JJ agreed).
- 13 *Registrar-General of New South Wales v Cihan* [2012] NSWCA 297; [2012] NSW ConvR 56-305 ^{CB}, noted (2013) 87 ALJ 230 (Butt).
- 14 This section is the equivalent of s 62 of the *Land Transfer* Act 1952, save that s 62 refers to interests “notified” on the register.
- 15 *Registrar-General of New South Wales v Cihan* [2012] NSWCA 297; [2012] NSW ConvR 56-305 ^{CB} at [64] per Handley AJA.
- 16 (2013) 87 ALJ 230 at 230.
- 17 Hayes (1989) 5 BCB 67 at 68. For the compensation provisions of the *Land Transfer* Act 1952 see [paras 9.083–9.100](#). The application of the compensation provisions in an electronic *land* register environment is considered by France-Hudson (2006) 12 Canta L R 121.
- 18 For a fuller exposition of this topic, see *Landonline* e-Searches, user guide: available at www.linz.govt.nz/land/landonline/e-search ^{CB}.
- 19 *Land Transfer* Act 1952, s 168(2); para 8.020(l).
- 20 When an instrument ceases to be registered, for example when a mortgage is discharged, it ceases to be constructively embodied in the register: cf *Toohey v Gunther* (1928) 41 CLR 181 ^{CB}. Whilst it is not necessary to search a discharged mortgage, it may be necessary to search an expired lease to see whether any right of renewal exists: see paras 11.109–11.111. If a registered mortgage is to be discharged on settlement of the purchase of the *land*, it is not necessary to search the mortgage. The purchaser’s solicitor simply notifies the vendor’s solicitor that a registrable discharge of the mortgage will be required on settlement.
- 21 *Land Transfer* Act 1952, s 38(2); Hayes (1985) 3 BCB 85; Hayes (1989) 5 BCB 67.
- 22 [Para 16.002](#).
- 23 See Adams, 2nd ed, 1971, para 104. See also *Racoon Ltd v Turnbull* [1997] AC 158 ^{CB}; [1996] 4 All ER 503 ^{CB} (PC) in which Their Lordships stressed the need for a purchaser of the dominant *land* to search the title to the servient *land*. The case, while not involving an easement, concerned a lease intending to provide an access way. Lord Jauncey of Tullichettle said at 166, 509: “It is one thing to protect a proprietor with a registered title in relation to his rights over his own *land*. This was the position in *Frazer v Walker* [1967] 1 AC 569 ^{CB} and *Breskvar v Wall* (1971) 126 CLR 376 ^{CB} where only one parcel of *land* was involved and where the issue was whether an adverse claim to *land* or an interest therein could succeed against the registered proprietor. It is however another thing to protect a proprietor in relation to his rights over another registered parcel of *land* in circumstances where the other proprietor has no knowledge of the asserted right and consequential burden. In a situation where the rights of A extend over B’s *land* it is entirely reasonable and consistent with the scheme of registration that someone dealing with A should satisfy himself as to the validity of his right by examining the registered entry of B. This does not require him to go behind the register but merely to examine two entries instead of one.”
- 24 [Paras 6.015–6.017](#), [9.072](#), [16.052–16.058](#).
- 25 Para 8.014. See *Melville-Smith v Attorney-General* [1996] 1 NZLR 596 ^{CB} at 602–603 per Hammond J. Cf *McNicholl v Attorney-General* (1996) 3 NZ ConvC 192,451 ^{CB}.
- 26 *Melville-Smith v Attorney-General* [1996] 1 NZLR 596 ^{CB}.
- 27 *Melville-Smith v Attorney-General* [1996] 1 NZLR 596 ^{CB} at 603.
- 28 *Re Goldstone’s Mortgage: Registrar-General of Land v Dixon Investment Co Ltd* [1916] NZLR 489 ^{CB} at 504–505 (CA) per Hosking J (CA) for the Court
- 29 See [para 9.013](#).
- 30 Guaranteed searches are considered in [para 9.101](#).

8.025 The provisional register

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In the early days of land registration in New Zealand there were delays in the issue of Crown grants, and hence difficulties about recording transactions that were entered into between the date of the contract of alienation from the Crown and the date of the issue of the Crown grant. To overcome these difficulties provisional registration was introduced in 1871.¹ Three years later provisional registration was extended to Maori land to enable the registration of dealings between the date of the order of the Maori Land Court declaring the land to be held in freehold tenure and the issue of the Crown grant to the land.²

Provisional registration is governed by s 50 of the Land Transfer Act 1952. Until a computer freehold register³ is created for any land that is under the Land Transfer Act 1952,⁴ all dealings, memorials, and entries affecting that land must be provisionally registered. For the purposes of provisional registration, a certificate signed by the Director-General of Lands to the effect that the purchase money of the land in question has been paid, or the order of the Maori Land Court declaring that the land shall be held in freehold tenure, takes the place of a Crown grant. Such certificates or orders are issued in duplicate, and one duplicate is forwarded to the Registrar. The Registrar records the required information in a computer interests register.⁵




Every entry on the computer interests register is evidence of the particulars it contains, and is, as against the person named in the original certificate or order of Court and all persons claiming through, under, or in trust for her or him, conclusive evidence that the person named in that entry is seised or possessed of the estate or interest of which she or he is expressed to be the registered proprietor.⁶

As a general rule, all the provisions of the Land Transfer Act 1952, so far as the circumstances permit, apply to land on the provisional register and to the registration of instruments and other matters affecting that land.⁷ The major exception is that the estate or interest of a proprietor of any estate or interest on the provisional register is indefeasible only against the person named in the original certificate or order, and all persons claiming through, under, or in trust for that person.⁸ Accordingly, the protection is something less than the indefeasibility afforded by permanent registration.⁹

As soon as the computer freehold register of any land is finally constituted, the Registrar is required to close the computer interests register as to that land, and to transfer to the computer freehold register the record of all memorials and entries affecting that land so far as may be necessary to preserve existing interests.¹⁰ The memorials and entries, and the dealings to which they relate, thereafter take effect as if they had been originally entered in the register, and the dealings are deemed to be finally registered.¹¹ The title then becomes fully indefeasible in the absence of fraud.¹²

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- 1 Land Transfer Act 1870 Amendment Act 1871, s 8. See Whalan (1967) 2 NZULR 416 at 422 and 435–436, n 70 (where it is pointed out that if provisional registration had not been introduced the Land Transfer system might have failed).
 - 2 Land Transfer Act 1870 Amendment Act 1874, ss 9–11; and see the Land Transfer Act 1952, s 11. See also Te Ture Whenua Maori Act 1993, Maori Land Act 1993, ss 139(4) and 299.
 - 3 Section 50 refers to the creation of a “folium of the register”. Since 14 October 2002, when the Registrar-General declared that all land in New Zealand that is in, or becomes comprised in, a computer register to be “electronic transactions land” (see New Zealand Gazette, 10 October 2002, p 3895) and the sections continuing reference to a folium of a register is to be read as a reference to the appropriate computer register, see the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 20(3).
 - 4 By virtue of the provisions of the Land Transfer Act 1952, s 10.
 - 5 The Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 authorised the creation of a computer interest register in this situation. See the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 9(1)(c).
 - 6 Land Transfer Act 1952, s 52 (as required to be read by the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 20(3)).
 - 7 Land Transfer Act 1952, s 54 (as required to be read by the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 20(3)).
 - 8 Land Transfer Act 1952, s 54 (as required to be read by the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 20(3)). See paras 7.007 and 9.036.

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- 9 *Gawn v Macdonald* (Court of Appeal, CA 162/86, 13 March 1987, Somers, Casey and Hillyer JJ) per Casey J at p 4 of his judgment.
- 10 **Land Transfer** Act 1952, s 51 (as required to be read by the **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 20(3)).
- 11 **Land Transfer** Act 1952, s 51 (as required to be read by the **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 20(3)). See *Assets Co Ltd v Mere Roihi* (1905) NZPCC 275; [\[1905\] AC 176](#)  
- 12 See *Boyd v Mayor of Wellington* [\[1924\] NZLR 1174](#)  at 1220 (CA) per Adams J (CA).

8.026 Instruments

“Instruments” are documents affecting **Land Transfer land**, such as **transfers**, mortgages and leases. Formerly instruments were paper-based but with the introduction of the electronic lodgment of instruments the **Land Transfer** Act 1952 recognises and distinguished between: instruments, a “paper instrument” and an “electronic instrument”. An “instrument” is defined in s 2 of the **Land Transfer** Act 1952 as meaning “any printed or written document, map, or plan relating to the **transfer** of or other dealing with **land**, or evidencing title to **land**”.¹ The Act further provides that an instrument includes “a memorandum within the meaning of s 155A(1) and an electronic instrument”.² **Land Transfer** Act 1952 now distinguishes between a “paper instrument” and an “electronic instrument”.

An “electronic instrument” is defined to mean an instrument of a class specified in regulations made under s 236(1)(d) of the **Land Transfer** Act 1952 that has been prepared in an electronic workspace facility.³ In turn, [reg 4](#) of the **Land Transfer Regulations 2002** (SR 2002/213) provides that an instrument is capable of being an electronic instrument if it:

- (1) Belongs to the class of permissible instruments described in Schedule 1, Part 1 of the Regulations; and
- (2) Does not come within the restrictions set out for instruments of that class set out in Schedule 1, Part 2 of the Regulations.

For the sake of completeness it can be noted that **Land Transfer** Act 1952 defines a paper instrument as an instrument that is not an electronic instrument.⁴

Returning to electronic instruments, an electronic workspace facility is a shared virtual workspace in which electronic transactions (or “e-dealings”) may be prepared. Section 22(1) of the **Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002** empowers the Registrar⁵ to approve one or more electronic workspace facilities for use in the preparation of electronic instruments. Such approval must not be given unless the Registrar is satisfied that adequate provision is made to ensure that instruments prepared in the facility comply with the requirements of the **Land Transfer** Act 1952 and the **Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002** when lodged; and that the Registrar is able to carry out her or his functions under the **Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002**.⁶ If at any time an electronic workspace facility fails to meet these requirements, the Registrar may withdraw her or his approval of it.⁷ Activities in any electronic workspace facility may be monitored by the Registrar for the purpose of detecting fraud or improper dealings.⁸

Whenever an instrument is presented to the Registrar under the **Land Transfer** Act 1952, the **Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002**, or any other Act, the Registrar may produce a record or copy or image of the instrument or document in any medium⁹ determined by the Registrar.¹⁰ Once copied or imaged, the Registrar may return the instrument to the person who presented it, and notify her or him of such.¹¹ The record or copy or image must then be taken to be the definitive form of the instrument on and from the day on which it was presented to the Registrar.¹² The Registrar may also produce a record or copy or image of any instrument in respect of which registration has been completed under the **Land Transfer** Act 1952.¹³ When the Registrar does so, the record or copy or image must be taken to be the definitive form of the instrument.¹⁴

In the absence of proof to the contrary, every matter arising under the **Land Transfer** Act 1952 or the **Land**

3 THE LAND TRANSFER SYSTEM: PROCEDURE

[Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#) relating to an instrument recorded or copied or imaged must be effected and determined as if the instrument had been presented in that form.¹⁵

The Registrar may require certain persons to produce any instrument in their possession or control and, if necessary, to give any information or explanation concerning any such instrument.¹⁶ The Registrar may also, by notice, require any person having in her or his possession or control any instrument upon which any memorial or entry is required to be endorsed, to produce that instrument within a reasonable time to be fixed by the notice, and to deposit the instrument in the **Land** Registry Office of her or his district for such time as may be necessary for the making of that endorsement or entry.¹⁷ Refusing or neglecting to produce such an instrument without reasonable cause amounts to an offence for which a fine is payable.¹⁸ The offender is also liable to make compensation to any person who has sustained loss or damage by reason of the offender's refusal or neglect.¹⁹

- 1 Despite the definition's reference to a document in *Mawhinney v Registrar-General of Land* [2014] NZHC 933 at [69] Brown J considered that the "defining nature of an instrument is the particular incidence of **transfer** or dealing with the **land** which it purports to give effect to." The result is that "[w]hether two incidences of **transfer** or dealing with **land** could be viewed as one and the same instrument would turn of the degree of identity of the transaction, not on whether the same piece of paper was used (albeit amended)".
- 2 [Land Transfer Act 1952, s 2.](#)
- 3 [Land Transfer Act 1952, s 2](#); [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 4.](#)
- 4 [Land Transfer Act 1952, s 2.](#)
- 5 The chief executive of the department of state that is responsible for the administration of the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#) may also (but is not required to) provide an approved electronic workspace facility: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 22\(5\)](#) and [\(6\)](#).
- 6 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 22\(2\).](#)
- 7 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 22\(4\).](#)
- 8 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 22\(3\).](#)
- 9 "Medium" includes — (a) any electronic, electromagnetic, optical, digital, or photographic process or **system**; and (b) any paper; and (c) any other means of recording, reproducing, copying, or storing information: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 4.](#)
- 10 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 27\(1\)\(a\).](#)
- 11 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 27\(1\)\(b\).](#) Unless the instrument or document needs to be retained to enable the copy or image to be understood.
- 12 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 27\(2\).](#)
- 13 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 27\(3\).](#)
- 14 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 27\(4\).](#)
- 15 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 27\(5\).](#)
- 16 [Land Transfer Act 1952, s 211\(a\).](#)
- 17 [Land Transfer Act 1952, s 211\(b\).](#)
- 18 [Land Transfer Act 1952, s 212.](#)
- 19 [Land Transfer Act 1952, s 212.](#)

8.027 Form and execution of paper instruments

Formerly the forms of many instruments used under the **Land Transfer Act 1952** were prescribed by the Act itself. In 2002 the Act was amended with the result that a paper instrument is an acceptable form if it:¹

- (1) Contains the information required by the **Land Transfer Act 1952**; and

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- (2) Meets the requirements for the physical properties of paper instruments that are prescribed by regulation.

With respect to the first requirement, a paper instrument is regarded as containing the information required by the **Land Transfer Act 1952** if it is properly completed and is either in a form specified by the Registrar prior to its lodgement, or is in a form prescribed by regulations made under the **Land Transfer Act 1952**² **Schedule 2** to the **Land Transfer Regulations 2002** (SR 2002/213) sets out 28 forms of paper instrument, which must be regarded as containing the information required by the **Land Transfer Act 1952** for the relevant class of instrument.³

With respect to the second requirement, a paper instrument will meet the requirements for the physical properties of paper instruments if it complies with **reg 7** of the **Land Transfer Regulations 2002** (SR 2002/213). This specifies certain requirements regarding paper colour, quality, and size; ink density and colour; layout; and signature and page requirements for annexure schedules. Notably, **reg 7** provides that, as far as reasonably practicable, a paper instrument must have the “core elements”⁴ on one page.

Paper instruments that do not comply with the above requirements must still be regarded as being in an acceptable form, as long as the non-compliance relates to a minor matter that, in the opinion of the Registrar, will not affect the operation or effect of the instrument once it is registered.⁵

Every paper instrument for the purpose of creating, **transferring**, or charging any estate or interest under the **Land Transfer Act 1952** must be executed by the registered proprietor and any party to it specified in certain regulations.⁶ A person who is required to execute a paper instrument must be regarded as having complied with that requirement if:⁷

- (1) The person adds the person’s signature⁸ or mark to the instrument before a witness⁹ who is not a party to the transaction; or
- (2) The instrument is signed by the person’s attorney, under a power of attorney deposited with the Registrar, before a witness who is not a party to the transaction; or
- (3) The instrument is executed in accordance with any other enactment that prescribes a method of execution that may be adopted by that person.

Every instrument so executed has the same effect as a deed executed by the parties signing it.¹⁰ Further, every paper instrument executed and registered under the **Land Transfer Act 1952** is presumed to have been sufficiently executed in the absence of evidence to the contrary, and is sufficient evidence in any Court of the matters to which it relates.¹¹ As regards instruments executed outside New Zealand, s 166 of the **Land Transfer Act 1952** must be complied with.¹²

No paper instrument purporting to deal with or affect any estate or interest under the **Land Transfer Act 1952** can be received by the Registrar, unless there is endorsed thereon a signed certificate that the instrument is correct for the purposes of the **Land Transfer Act 1952**.¹³ Such certificate must be signed by the applicant, a party claiming under or in respect of the instrument, a licensed landbroker or a solicitor of the High Court employed by the applicant or party.¹⁴ A certificate of correctness given by a practitioner¹⁵ must be signed in her or his own name and not in the name of any firm with which they are connected.¹⁶ It must also show that she or he is acting for the party claiming under the instrument.¹⁷ A person who falsely or negligently certifies to the correctness of any such instrument commits an offence, and is liable on conviction before a District Court Judge to a fine not exceeding \$100.¹⁸

It has been said that:¹⁹

The certificate of correctness probably is a guarantee that the Registrar may accept an instrument at its face value, i.e., that the person signing the certificate is aware of the antecedent circumstances which culminated in the execution of the instrument ... The Registrar only sees what actually appears in the instrument, hence it seemed necessary to have the dealing vouched for. In other words, the Registrar places a trust in the solicitor or broker, and when a person certifies an instrument, only reasonably close contact with the facts which culminate in the execution of that instrument would appear to discharge that trust ...

The primary purpose of the certification requirement is to avoid fraud,²⁰ in part by ensuring that the parties to a transaction are the persons they actually claim to be. The certificate also covers a number of collateral matters, for example that proper advice of the transaction has been given to the Maori **Land Court**.²¹





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Where any instrument has not been so certified, any other person who is a party to the instrument or claims any interest thereunder or in respect thereof or his legal personal representative may apply to the High Court for authority to certify that the instrument is correct for the purposes of the Land Transfer Act 1952. If the Court is satisfied that it is just and expedient that such authority be granted, it may order accordingly and, upon production of a sealed copy of the order, the Registrar may register the instrument if it is certified as correct for the purposes of the Land Transfer Act by the person so authorised.²²

In certain circumstances the Registrar may register a person as the registered proprietor despite the loss of the paper instrument.²³

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- 1 Land Transfer Act 1952, s 237(1).
 - 2 Land Transfer Act 1952, s 237(2).
 - 3 Land Transfer Regulations 2002 (SR 2002/213), [reg 8](#). Note that every person commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding \$1000, who fraudulently uses, assists in fraudulently using, or is privy to the fraudulent using of any form purporting to be issued or sanctioned by the Registrar-General: Land Transfer Act 1952, s 225(1)(b).
 - 4 “Core elements” is defined to mean the following elements of a paper document: (a) the name of the paper document; (b) the references in the document to the unique identifiers or certificates of title; (c) the descriptions of the relevant land or estate or interest; (d) the names of the parties involved; (e) any relevant memorandum number; (f) the operative clause, or the application contained in the document; (g) the certificate of correctness (if the prescribed form requires this); (h) the date (if the prescribed form requires this); (i) any address for service (if the prescribed form requires this); (j) any other information that the relevant prescribed form requires to be stated, being information that does not form part of an annexure schedule; (k) any footnote relating to any matter referred to in (a)–(j) above: Land Transfer Regulations 2002 (SR 2002/213), [reg 7\(4\)](#).
 - 5 Land Transfer Act 1952, s 237(3). This subsection was applied in *Willigers v McFarlane* (2006) 6 NZCPR 885, noted (2006) 12 BCB 17: caveat not displaying the capacity of the person executing the caveat form.
 - 6 Land Transfer Act 1952, s 157(1). See also Land Transfer Regulations 2002 (SR 2002/213), [reg 6](#). Note that Land Transfer Act 1952, s 157(1) is subject to the provisions of the Official Appointments and Documents Act 1919, s 3, which section relates to the execution of instruments by the Governor-General. Note also that if a certification has been given in relation to an electronic instrument or paper instrument of a class specified for the purpose by regulations made under the Land Transfer Act 1952, this provision does not apply: Land Transfer Act 1952, s 164D.
 - 7 Land Transfer Regulations 2002 (SR 2002/213), [reg 16\(1\)](#).
 - 8 In the absence of proof to the contrary, it is presumed that: (a) a seal or signature impressed, affixed, appended, or subscribed on or to an instrument submitted for registration or deposit, or on or to a document verifying the execution of any such instrument, is genuine; and (b) the person appearing to have signed or attested the instrument or document had in fact authority to sign or attest it; and (c) the document was in fact made in accordance with the law under which it purports to have been made: Land Transfer Regulations 2002 (SR 2002/213), [reg 16\(5\)](#).
 - 9 For a detailed statement of the law and practice relating to the witnessing of instruments, see Adams, paras S157.6–S157.9. A witness to the execution of such an instrument must sign an attestation clause in [Form 26](#) of [Sch 2](#) or in a form to the same effect: Land Transfer Regulations 2002 (SR 2002/213), [reg 16\(2\)](#). It has been held that witnessing the execution of instruments by video-conferencing is not in compliance with the legal requirement; the witness must be present in person at the signing of the instrument: *First Canadian Title Co v Law Society (British Columbia)* [2004] 8 WWR 319.
 - 10 Land Transfer Act 1952, s 157(3).
 - 11 Land Transfer Act 1952, s 163.
 - 12 See also Land Transfer Regulations 2002 (SR 2002/213), [reg 16\(4\)](#).
 - 13 Land Transfer Act 1952, s 164(1). Note that if a certification has been given in relation to a paper instrument of a class specified for the purpose by regulations made under the Land Transfer Act 1952, this provision does not apply: see Land Transfer Act 1952, s 164D.
 - 14 Land Transfer Act 1952, s 164(1). A corporation may authorise any person to certify on its behalf: Land Transfer Act 1952, s 164(2).

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- 15 Practitioner means: “(a) a practitioner within the meaning of [section 6](#) of the [Lawyers and Conveyancers Act 2006](#); or (b) landbroker licensed by the Registrar under section 229 of [the [Land Transfer Act 1952](#)]: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 4](#).”
- 16 [Land Transfer Regulations 2002](#) (SR 2002/213), [reg 15\(a\)](#). This regulation refers to “conveyancer”. In turn, reg 3 provides that unless the context requires otherwise the term “conveyancer” has the meaning ascribed to it by the [Land Transfer](#) (Computer Registers and Electronic Lodgement) Amendment Act 2002, [s 4](#). That term was repealed by the [Lawyers and Conveyancers Act 2006](#) and replaced with the term “practitioner”.
- 17 [Land Transfer Regulations 2002](#) (SR 2002/213), [reg 15\(b\)](#).
- 18 [Land Transfer Act 1952](#), s 164(3).
- 19 Adams, 2nd ed, 1971, para 164.
- 20 *Waller v Davies* [\[2005\] 3 NZLR 814](#); [\(2005\) 6 NZCPR 341](#)  at [79] per Harrison J; [paras 9.017–9.023](#).
- 21 Registrar-General of [Land](#) v *Marshall* [\[1995\] 2 NZLR 189](#)  at 200 per Hammond J.
- 22 [Land Transfer Act 1952](#), s 164(1) proviso.
- 23 [Land Transfer Act 1952](#), s 57. See *Hodge Trustee Services Ltd v Huang* (2008) 6 NZ ConvC 194,646 ; *De Young v Rewita* [\[2017\] NZHC 2064](#) .

8.028 Form and execution of electronic instruments

An electronic instrument is in order for registration if: ¹

- (1) The instrument was prepared in an approved electronic workspace facility; ²
- (2) The instrument is in an acceptable form;
- (3) The instrument contains, or is associated with, a certification under s 164A of the [Land Transfer Act 1952](#); and
- (4) In respect of any matter not provided for in the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), the instrument is in order for registration under the [Land Transfer Act 1952](#).

To be in an acceptable form an electronic instrument must take the form specified by the Registrar.³ This includes the information contained in the form, the electronic format to be used, or the way a certification is included in, or associated with, the form.⁴ Despite any rule of law to the contrary, an electronic instrument need not contain an operative provision that gives effect to the object of the instrument. ⁵

Every electronic instrument must contain a certification specifying that: ⁶

- (1) The person giving the certification has authority to act for the party specified in regulations in relation to that class of instrument and that party has legal capacity to give such authority;
- (2) The person giving the certification has taken reasonable steps to confirm the identity of the person who gave the authority to act; ⁷
- (3) The instrument complies with any statutory requirements specified by the Registrar for that class of instrument; and
- (4) The person giving the certification has evidence showing the truth of the certifications in (1) to (3) above and that the evidence will be retained for the period prescribed for the purpose by regulations made under this Act.

Where the instruction to register is given by the specified party through their attorney the instruction is valid only if the agent was appointed as attorney by deed.⁸ If this has not occurred the certificate is incorrect and the registration is made in error entitling the Registrar to exercise the power to correct the register.⁹

Before a practitioner can give a certification in regard to an instrument the client must have signed an appropriate

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“Authority and Instruction” form, clearly recording all of the information on which the practitioner will rely to complete the transaction.¹⁰

Only a practitioner may give such a certification.¹¹ A “practitioner” is defined in [s 4](#) of the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#) to mean:

- (1) a practitioner within the meaning of [s 6](#) of the [Lawyers and Conveyancers Act 2006](#); or
- (2) a landbroker licensed by the Registrar under s 229 of the [Land Transfer Act 1952](#).¹²

The Registrar may revoke a person’s right to give such a certification at any time if she or he believes on reasonable grounds that the person has given a fraudulent certification, or has given a certification that is materially incorrect, or has failed to retain evidence showing the truth of the certification, as required by s 164C of the [Land Transfer Act 1952](#).¹³ The right of a person to give certifications may be reinstated if the Registrar is satisfied as to certain circumstances.¹⁴

[Regulation 11](#) of the [Land Transfer Regulations 2002](#) (SR 2002/213) sets out the parties on whose behalf certifications must be given. For instance, if the instrument is a **transfer** instrument and the conveyancer is acting for the transferor, a certification must be given on behalf of the registered proprietor.

Any person who gives a certification must retain evidence showing the truth of the certification for ten years from the date on which the instrument to which the certification relates is lodged for registration.¹⁵ The Registrar may require a person who has given a certification to produce such evidence and/or provide a statement on oath as to any further information required, or the circumstances surrounding the preparation and electronic transmission of any instrument, within 10 working days.¹⁶

[Regulation 12](#) of the [Land Transfer Regulations 2002](#) (SR 2002/213) prescribes the form of certification.¹⁷

If a certification has been given in relation to an electronic instrument,¹⁸ certain provisions relating to the certification of the correctness of instruments,¹⁹ the execution of paper instruments,²⁰ and the execution, signing, witnessing, or attestation of instruments do not apply.²¹

When an instrument certified in the above manner²² is registered, the instrument has the same effect as a deed executed by the relevant party or parties.²³ In addition, the instrument must be regarded, for the purposes of every enactment and rule of law, as if it had been made in writing and duly executed by the relevant party.²⁴ Further, and for the avoidance of doubt, when such a certified instrument is registered, the provisions of s 25 of the Property Law Act 2007²⁵ must be regarded as having been fully satisfied.²⁶

Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding three years or to a fine not exceeding \$1000, who knowingly or recklessly gives a certificate under s 164A of the [Land Transfer Act 1952](#) that contains an incorrect material particular.²⁷

¹ [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 23\(1\)](#). For instruments not in order for registration, see para 8.032.

² See para 8.026.

³ [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 26\(1\)](#).

⁴ [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 26\(2\)](#).

⁵ [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 26\(3\)](#); *Merbank Corporation Ltd v Cramp* [1980] 1 NZLR 721 [CB](#).

⁶ [Land Transfer Act 1952, s 164A\(3\)](#). “Every lawyer certifying and signing an instrument needs to be satisfied personally that the authorisation from the client(s) is in order, that the identity of the client(s) has been established to the lawyer’s satisfaction and that all certifications relating to that instrument are true and correct.”: *New Zealand Law Society Property Transactions and E-Dealing: Practice Guidelines*, July 2012, Updated April 2015, p 70, Guideline 8.68. A breach of the Guidelines “may evidence a failing in the practitioner’s professional, [but] hey do not go to the validity of the transaction”: *Thorn v United Steel Ltd* [2017] NZHC 1865 [CB](#) at [88] per Nation J.

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- 7 For guidelines relating to the establishment of client identity, see New Zealand Law Society. *Property Transactions and E-Dealing: Practice Guidelines*, July 2012, Updated April 2015, pp 59–62.
- 8 *Thorn v United Steel Ltd* [2017] NZHC 1865 ^{CB} at [78].
- 9 *Thorn v United Steel Ltd* [2017] NZHC 1865 ^{CB} at [79]–[81]. *Land Transfer* Act 1952, s 81.
- 10 See New Zealand Law Society *Property Transactions and E-Dealing: Practice Guidelines*, July 2012, Updated April 2015, p 58, Guideline 8.25.
- 11 *Land Transfer* Act 1952, s 164B(1).
- 12 Note that the *Land Transfer* Act 1952, s 229 (which relates to the power of the Registrar-General to license persons as landbrokers) was repealed on 26 August 2002 by the *Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 64(1)*. For the continued application of s 229 to persons who, immediately before 26 August 2002, held a licence as a landbroker under s 229, see *Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, s 67*.
- 13 *Land Transfer* Act 1952, s 164B(2). The Registrar must give notice as soon as possible to any such person: *Land Transfer* Act 1952, s 164B(3).
- 14 *Land Transfer* Act 1952, s 164B(4).
- 15 *Land Transfer* Act 1952, s 164C(1); *Land Transfer Regulations 2002* (SR 2002/213), *reg 14*. The Registrar may specify requirements that, if met, must be regarded as satisfying this obligation: *Land Transfer* Act 1952, s 164C(2).
- 16 *Land Transfer* Act 1952, s 164C(2) and (4).
- 17 *Land Transfer* Act 1952, s 164A(4).
- 18 *Land Transfer* Act 1952, s 164D.
- 19 *Land Transfer* Act 1952, s 164.
- 20 *Land Transfer* Act 1952, s 157.
- 21 *Land Transfer* Act 1952, s 164D.
- 22 Other than a discharge of mortgage under the *Land Transfer* Act 1952, s 111: *Land Transfer* Act 1952, s 164E(1).
- 23 Namely the transferor and transferee (in the case of a *transfer* instrument) or the registered proprietor of the *land* or estate or interest affected by the mortgage (in the case of a mortgage instrument): *Land Transfer* Act 1952, s 164E(1); *Land Transfer Regulations 2002* (SR 2002/213), *reg 13(1)*. Note that *Land Transfer* Act 1952, s 164E is subject to the provisions of the *Official Appointments and Documents Act 1919, s 3*, which section relates to the execution of instruments by the Governor-General.
- 24 Namely the transferor (in the case of a *transfer* instrument); the registered proprietor of the *land* or estate or interest affected by the mortgage (in the case of a mortgage instrument); the mortgagee (in the case of a mortgage discharge instrument); the chargeholder or other person authorised to execute the discharge (in the case of a statutory *land* charge discharge instrument); the person authorised to execute the discharge (in the case of a compensation certificate discharge instrument); or the caveator (in the case of a caveat withdrawal instrument): *Land Transfer* Act 1952, s 164E(3); *Land Transfer Regulations 2002* (SR 2002/213), *reg 13(2)*.
- 25 This section requires certain instruments to be in writing: see McMorland, para 4.01.
- 26 *Land Transfer* Act 1952, s 164E(4) and (5).
- 27 *Land Transfer* Act 1952, s 225(1)(d).

8.029 Preparing an electronic instrument

In order to prepare an electronic instrument ¹ within the electronic workspace, a registered user ² first creates an e-dealing through the “Create Dealing” screen. Once a client reference has been added to the “Create Dealing” screen, an instrument or instruments may be added by adding a row in the “Instruments” area, entering the code for the instrument in the “Type” field, ³ entering the title reference affected by the instrument, and selecting “Multi” or “Single” in the “Parties” field to represent the number of conveyancers involved in the e-dealing. A primary contact and conveyancing professional must then be specified for every e-dealing, as must the individual responsible for releasing each instrument and submitting the e-dealing.


Once these “Role” details are completed, any one of the instruments (previously added to the “Instruments” area)

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may be selected. This opens the “Prepare Instrument” screen. Within this screen, the details of the instrument are completed. ⁴ It is also possible to pre-validate the instrument, ⁵ which causes Landonline to review the content of the instrument to determine if it is correct. ⁶ Should the pre-validation fail, a “Pre-validation Report” screen displays details of the failure.

Each instrument in an e-dealing must be certified and signed by an appropriate conveyancing professional. ⁷ Before this occurs, however, an instrument must be displayed and reviewed for correctness. A conveyancing professional must then log on with her or his user name and check the box next to each certification statement in the “Certifications” area. Once all certifications are completed, an authorised conveyancing professional may click on the “Signed for” icon. The “Sign Titles Instrument” screen, which includes summary information for the instrument, is then displayed. If the instrument is correct, the conveyancing professional may click on the “Sign” icon to confirm. The conveyancer must then enter her or his Landonline password in the “Enter Landonline Password” screen and her or his passphrase to sign digitally.

The parties to the transaction may then complete settlement and release the instrument(s). ⁸ When all instruments within an e-dealing are released, the e-dealing may be submitted for registration. ⁹

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- 1 For a more detailed account of this process, see generally the e-dealing resources, available at www.landonline.govt.nz .
 - 2 Users must obtain a Landonline digital certificate, which is an electronic identifier, unique to the user, created and stored on her or his computer. This digital certificate allows the user to log on to Landonline and, if the user has the authority, to certify and electronically sign instruments. A practitioner must not allow any other person to use their digital certificate or the associated password: New Zealand Law Society, *Property Transactions and E-Dealing: Practice Guidelines*, July 2012, pp 50–51, Guideline 8.19.
 - 3 For instance, “DM” for discharge of mortgage, “T” for transfer, and “M” for mortgage. Alternatively, users may select the description of the instrument from a drop down list.
 - 4 These details vary depending on the type of instrument.
 - 5 By clicking on the “Pre-validate” icon.
 - 6 Pre-validation of an instrument may be done at any time and as many times as a user wishes before submitting the dealing to Land Information New Zealand (“LINZ”).
 - 7 Multi-party instruments, such as a transfer, must be signed by a conveyancing professional for each party.
 - 8 An online message advising of the release is sent to any other parties involved with the instrument.
 - 9 Parties are advised to preview and pre-validate an e-dealing before submitting it for registration.

8.030 Forms of memorandum

Mortgages and leases are generally long documents with special provisions and covenants covering a number of pages. Most lending institutions have their own specially printed mortgage forms, and leasing authorities often have printed forms of lease. The storage of these bulky paper instruments was formerly a problem for the Land Registry Office. ¹ Responding to this difficulty, s 155A of the Land Transfer Act 1952² provides for the registration of a memorandum which sets out a standard set of provisions intended for inclusion in instruments of a class, for example, mortgages or leases, specified in the memorandum. ³ A lending institution, for example, can register a memorandum under s 155A that sets out the provisions and covenants contained in its standard mortgage form. Each mortgage taken by that institution can thereafter be a single-sheet form that simply incorporates by reference the provisions of the relevant registered memorandum. While originally designed for a paper-based registry, s 155A is applicable to the current electronic registry, the memorandum is simply stored electronically. The salient features of s 155A are:

- (1) Any person may execute a memorandum for the purpose of registration (s 155A(2)); ⁴
- (2) An executed memorandum that is delivered for registration and is approved by the Registrar must be numbered and registered by the Registrar (s 155A(2)); ⁵

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- (3) The Registrar is also entitled to draw up, number, and register a memorandum (s 155A(3));⁶
- (4) A memorandum is deemed to be registered “when a memorial of registration is endorsed upon it and signed by the Registrar” (s 155A(4));
- (5) On the registration of a memorandum, it is deemed to be part of the register “for the purposes only of s 46 ” of the **Land Transfer Act 1952**,⁷ that is, for the purpose only of being searched by members of the public (s 155A(5));⁸
- (6) The Governor-General is empowered to make regulations prescribing a memorandum in respect of any class of instrument (for example, mortgages or leases) for the purposes of s 155A (s 155A(6));⁹ and
- (7) Where an instrument of the class specified in a memorandum registered or prescribed under s 155A (for example, a mortgage or a lease) “contains a provision or reference that incorporates (with or without amendment) any or all of the provisions set out or referred to in that memorandum, those provisions or (as the case may require) those provisions as amended shall be implied in that instrument as fully and effectually as if they were set forth at length in the instrument” (s 155A(7)).¹⁰

¹ Hayes (1987) 4 BCB 225.

² The **Land Transfer Act 1952**, s 155A, applies to any class of instruments, though it is most frequently used in respect of mortgages and leases.

³ For the prescribed form of memorandum, see **Land Transfer Regulations 2002** (SR 2002/213), **reg 9, Sch 3**. For commentary and precedents, see **Land Titles New Zealand: Forms and Practice** looseleaf 1995—, “Section 155A Memorandum”, and generally “Leases” and “Mortgages”. See also **Land Titles Bulletin** Issue 20, April 1995.

⁴ As to the execution of a memorandum under the **Land Transfer Act 1952**, s 155A, see **Land Titles New Zealand: Forms and Practice** looseleaf 1995—, “Section 155A Memorandum — 1 Prescribed Forms”.


⁵ As to the approval and registration of the memorandum and associated forms, see **Land Titles New Zealand: Forms and Practice** looseleaf 1995—, “Section 155A Memorandum — 2 Approval and Registration of Memorandum and Associated Forms”.

⁶ Any person who wished to do so could, by the use of the appropriate form, incorporate the provisions set out in the Registrar’s memorandum into any instrument of the specified class.

⁷ **Paras 8.011** and 8.024.

⁸ The limitation imposed by the subsection is not affected by the **Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002**, s 31, which provides that all information at any time registered under the **Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002**, is part of the register: **Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002**, s 31.

⁹ Any person who wished to do so could, by the use of the appropriate form, incorporate the provisions set out in the prescribed memorandum into any instrument of the specified class.

¹⁰ See Hayes (1987) 4 BCB 136. See also *Westpac New Zealand Ltd v Clark* [2009] NZSC 79; [2010] 1 NZLR 82; **BC200962579**  (whether a loan agreement could be incorporated into a mortgage by reason of the fact that the memorandum of mortgage for an “all obligations” mortgage contemplated the entry into a loan agreement(s)).

8.031 Registration procedure

Section 42 of the **Land Transfer Act 1952** provides that the Registrar is not to register an instrument that does not comply with the provisions of the Act or any other Act authorising the registration.

The operation of s 42 is reinforced by the **Land Transfer Regulations 2002** (SR 2002/213). **Regulation 21** provides that the Registrar must not register any instrument that:

- (1) Does not comply in all respects with the requirements of the **Land Transfer Act 1952** and of the **Land Transfer Regulations 2002** (SR 2002/213) and any other regulations for the time being in force under the **Land Transfer Act 1952**;

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- (2) Is contrary to any other law or enactment;
- (3) Appears to involve any fraud or improper dealing;
- (4) Purports to create estates or interests not capable of registration, or to deal with estates or interests not registered or not capable of registration;
- (5) Purports to deal with **land** or other property not subject to the provisions of the **Land Transfer Act 1952**;
- (6) Purports to deal with matters not capable of inclusion in the register; or
- (7) Contains an erasure, or contains an alteration to any writing that is not made in accordance with [reg 22](#) of the **Land Transfer Regulations 2002** (SR 2002/213).¹

A plaintiff may, in an appropriate case, obtain an injunction restraining the Registrar from registering an instrument even though the plaintiff has no cause of action against the Registrar.² For example, an injunction might well be granted to restrain the Registrar from registering a forged instrument.³

For the sake of completeness, it can be noted that the **Land Transfer Act 1952** recognises one situation where, despite s 42, an informal instrument can be registered. Section 210 of the **Land Transfer Act 1952** permits the registration of any deed affecting any **land** that has been compulsorily brought under the **Land Transfer Act**⁴ if that deed:

- (1) Might have been registered under the provisions of the **Deeds Registration Act 1908** if neither the **Land Transfer (Compulsory Registration of Titles) Act 1924** nor the **Land Transfer Act 1952** had been passed; and
- (2) Bears date prior to, or within six months after, the date of the first certificate of title for that **land**.

Although the **Land Transfer Act 1952** does not expressly impose on the Registrar a duty to register instruments that are presented for registration in proper form, it has been held that under the New South Wales Torrens **system** the Registrar has both a duty to register an instrument in registrable form and also a duty to refuse to register an instrument that is not in registrable form.⁵ The Registrar's duty to register, however, may not be absolute and the Registrar may be entitled to refuse to register an instrument when there is reasonable cause for doing so,⁶ for example, when there is an injunction against a person registering a particular instrument and the Registrar knows of that injunction.⁷ It has been held in Queensland, however, that the Registrar is not entitled to refuse to register a plan of survey merely because she or he doubts whether the **land**, the subject of the plan, is entirely freehold.⁸

Certain instruments may be accepted for registration as to part only of the **land** affected if a request for partial registration is endorsed on the instrument and signed by the person presenting it for registration.⁹

Although no alteration may be made in any instrument during its retention in the **Land Registry Office**,¹⁰ after an instrument has been lodged for registration, but before it has been registered, the person who lodged the instrument, or that person's duly authorised agent, may withdraw the instrument.¹¹

As soon as it is registered, every instrument (other than a memorandum within the meaning of s 155A of the **Land Transfer Act 1952**¹²) is "deemed and taken to be embodied in the register as part and parcel thereof".¹³ Further, no alteration may be made in any instrument after it has been registered.¹⁴

A party is bound by the document and cannot go behind the act of registration and ask to be restored to the earlier position as the holder of certain pre-existing unregistered rights.¹⁵

(a) Electronic lodgement

Prior to the reforms introduced by the **Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002**, instruments were manually presented or lodged for registration. That Act empowered the Registrar to authorise the registration or deposit of instruments in any medium.¹⁶ This introduced the concept of electronic lodgment or e-dealing as it has become known.

[Section 47](#) of the **Land Transfer Act 1952** continues to provide for the manual lodgment/presentation of instruments, but the use of manual lodgment has been severely curtailed. Indeed, since 23 February 2009 all "practitioners" are required to use e-dealing to electronically lodge the classes of instruments set out in Schedule 1

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to the **Land Transfer** Regulations 2002.¹⁷ A “practitioner” is defined in s 4 of the **Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002** to mean:

- (1) a practitioner within the meaning of s 6 of the **Lawyers and Conveyancers Act 2006**; or
- (2) a landbroker licensed by the Registrar under s 229 of the **Land Transfer** Act 1952.

The requirement that practitioners lodge instruments electronically does not apply if the practitioner has been barred from giving certification under s 164B of the **Land Transfer** Act 1952 or if the practitioner receives a dispensation by the Registrar on the grounds that it is impracticable or inappropriate to present the instrument electronically.¹⁸

As a brief overview of the operation of e-dealing,¹⁹ when all instruments within an e-dealing are released,²⁰ the e-dealing may be submitted for registration. An e-dealing or electronic instrument may be edited or deleted at any time before it is submitted, although once edited, any pre-validation, certification, or signature is removed. Once “Submit” has been clicked, fees for the e-dealing may be reviewed in the “Confirm Fee Charges” screen, the e-dealing is prioritised, and removed from the electronic workspace. Should there exist a pending dealing that affects any title in the submitted e-dealing, users can elect to queue the e-dealing during submission, or cancel and submit the e-dealing at a later time. A queued e-dealing is allocated a priority date and time and placed behind any pending dealings. Once any pending dealing has cleared, the e-dealing is subjected to certain automated checks. Unless the e-dealing is rejected,²¹ it will automatically be registered and **Landonline** then sends an online message to the submitting Primary Contact formally notifying confirmation of registration.

The registration of an instrument or matter under the **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002 is effected when a unique identifier²² for that instrument or matter is entered in the relevant computer register.²³

(b) Manual lodgement

For non-practitioners or practitioners not required to use e-dealing, paper instruments may be presented for registration at a “designated **land transfer** office”²⁴ in the following ways:²⁵

- (1) By hand at the public counter;
- (2) By depositing the instrument in a secure facility provided for that purpose; or
- (3) By posting it to that office.

An instrument presented by deposit in a secure facility or by post is deemed to have been presented for registration on the business day after the day on which it is received by the Registrar, but before any other matter presented on that day in relation to the same **land**.²⁶

Except in the case of any instrument registered under the **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002²⁷ or a **transfer** instrument, every instrument presented for registration must be in duplicate,²⁸ and must be attested by a witness.²⁹ The instrument may be in triplicate if the person presenting it so requires.³⁰ The Registrar may waive the requirement that instruments be presented for registration in duplicate.³¹



Whenever an instrument is lodged for registration, the Registrar enters the appropriate memorial³² in the relevant register. The Registrar is also required to endorse on the instrument so registered a certificate showing the day and hour on which the memorial was entered in the register “being the day and hour of the production of the instrument for registration”.³³ Every such certificate must be received in all Courts as conclusive evidence that the instrument has been duly registered.³⁴ Further, unless production of the outstanding duplicate grant, certificate of title, lease, or other instrument of title has been dispensed with,³⁵ whenever a memorial of any instrument has been entered in the register, the Registrar must³⁶ also record that memorial on the duplicate.³⁷

On the registration of any instrument,³⁸ the Registrar must file it in the **Land** Registry Office.³⁹ If it is in duplicate or triplicate, one copy is filed and the other or others delivered to the person who presented the instrument for registration.⁴⁰ Alternatively, the Registrar may produce a record or copy or image of the instrument or document in any medium, and return the instrument or document (and any extra copies presented) to the person who presented it with an indication that it has been copied or imaged.⁴¹ If the Registrar does so, the requirement to file the instrument in the **Land** Registry Office does not apply.⁴²

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- 1 The [Land Transfer Regulations 2002](#) (SR 2002/213), [reg 22](#) makes provision for the alteration of instruments. It provides, for instance, that any writing intended to have no effect must be struck out, but the struck-out writing must be left legible. In addition, if the alteration affects or could affect the interests of any signatory of the instrument, the alteration must be initialled or signed by each signatory of the instrument and by either the signatory's witnesses (if any) or the conveyancer acting for that signatory.
- 2 *Williams v Marac Australia Ltd* (1985) 5 NSWLR 529 ^{CB}. Hodgson J said at 534: "... if there is no cause of action against the [Registrar], then I think that jurisdiction should be exercised sparingly, and by analogy with the Mareva injunction situation, it may well be appropriate to obtain something more than the usual undertaking as to damages from the plaintiff".
- 3 See *Mayer v Coe* (1968) 88 WN (Pt 1) (NSW) 549 at 558, [1968] 2 NSW 747 at 754 per Street J.
- 4 Para 8.014.
- 5 *Registrar-General v Lee* (1990) 19 NSWLR 240 ^{CB} (CA). The Registrar has no residual power to refuse to register an instrument simply because of uncertainty as to whether it is registrable. "... [T]he expedient of refusing registration merely on the grounds of difficulty is a luxury which is not available": (1990) 19 NSWLR 240 at 255 per Meagher JA. Note that the Registrar will not approve an instrument correct for registration: Hayes (1995) 7 BCB 32. For the process when an instrument is found not to be in order for registration, see para 8.032.
- 6 *Williams v Marac Australia Ltd* (1985) 5 NSWLR 529 ^{CB}, not cited in *Registrar-General v Lee* (1990) 19 NSWLR 240 ^{CB} (CA).
- 7 *Williams v Marac Australia Ltd* (1985) 5 NSWLR 529 ^{CB} at 535-536 per Hodgson J.
- 8 In *Beames v Leader* [1998] QCA 368; [2000] 1 QdR 347 ^{CB} (CA), noted (1999) 73 ALJ 27 (Young J), (2001) 9 APLJ 27 (Weir), the Registrar had reason to suspect that the true boundary of certain freehold **land** might not be the mean high water mark of a certain creek, as the applicant for registration and his surveyor contended. Had the Registrar's suspicions been well founded, the survey plan would encompass an area of Crown **land**. It should be noted, however, that the **Land** Title Act 1994 (Qld), s 30(1), provides: "If a person lodges an instrument and complies with the requirements of this Act for its registration, the registrar must register the instrument". *Beames v Leader* was distinguished in *Svensden v State of Queensland* [2002] 1 QdR 216, noted (2001) 9 APLJ 27 (Weir); (2002) 76 ALJ 167 (Young J).
- 9 [Land Transfer Regulations 2002](#) (SR 2002/213), [reg 24\(1\)](#). A partially registered instrument may subsequently be accepted for registration as to the remainder or any other part of the **land** affected by the instrument, subject to payment in respect of each registration of the same fees as if each registration were effected by a separate instrument: [Land Transfer Regulations 2002](#) (SR 2002/213), [reg 24\(2\)](#).
- 10 Except as authorised by the Registrar: [Land Transfer Regulations 2002](#) (SR 2002/213), [reg 32](#).
- 11 [Land Transfer Regulations 2002](#) (SR 2002/213), [reg 23](#).
- 12 Para 8.030.
- 13 **Land Transfer** Act 1952, s 38(2); para 8.022. This provision applies only to instruments "drawn in any of the forms provided in the Schedules to this Act, or in any form which for the same purpose may be authorised in conformity with the provisions of this Act": **Land Transfer** Act 1952, s 38(2). See *Re Goldstone's Mortgage: Registrar-General of Land v Dixon Investment Co Ltd* [1916] NZLR 489 ^{CB} at 504-505 (CA) per Hosking J for the Court.
- 14 [Land Transfer Regulations 2002](#) (SR 2002/213), reg 33.
- 15 *Farrier-Waimak Ltd v Bank of New Zealand* [1965] AC 376 ^{CB} at 399, [1965] NZLR 426 ^{CB} at 441, [1964] 3 All ER 657 at 663 (PC) per Lord Upjohn.
- 16 **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, [s 5](#). "Medium" includes — (a) any electronic, electromagnetic, optical, digital, or photographic process or **system**; and (b) any paper; and (c) any other means of recording, reproducing, copying, or storing information: **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, [s 4](#).
- 17 **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, [s 24](#); **Land Transfer** (Compulsory Electronic Lodgement) Order 2008, r 4.
- 18 **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002, [s 24\(3\)](#).

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- 19 For a more detailed account of this process, see generally the e-dealing resources, available at www.landonline.govt.nz .
- 20 Paras 8.028–8.029.
- 21 Should this occur, all primary contacts and conveyancing professionals involved with the e-dealing are notified of the rejection and the e-dealing is returned to the electronic workspace accompanied by a “Rejection Report”.
- 22 In the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), unless the context otherwise requires, “‘unique identifier’ means a combination of letters or numbers, or both, by which a computer register or an instrument or other document is, or is to be, uniquely identified”: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 4](#).
- 23 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 30\(1\)](#); para 8.033. Note that the [Land Transfer Act 1952, s 34](#), does not apply if registration is effected under the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002: Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 30\(2\)](#).
- 24 “Designated *land* registry office” means any *land* registry office designated for that purpose by the Registrar: [Land Transfer Act 1952, s 47\(2\)](#). In the *New Zealand Gazette* 27 November 2008, p 4750, the Registrar-General of [Land](#) designated the following office of [Land](#) Information New Zealand (LINZ) as offices for the purposes of presentation of instruments with effect from 23 February 2009: North Auckland, South Auckland and Taranaki [Land](#) Registration Districts: Corner of Victoria and Rostrevor Streets, Hamilton. And in the *New Zealand Gazette* 7 October 2010, p 3472, the Registrar-General of [Land](#) designated the following office of [Land](#) Information New Zealand (LINZ) as offices for the purposes of presentation of instruments with effect from 15 November 2010: Gisborne, Hawke’s Bay, Wellington, Nelson, Marlborough, Westland, Canterbury, Otago and Southland Registration Districts: 112 Tuam Street, Christchurch.
- 25 [Land Transfer Act 1952, s 47\(1\)](#).
- 26 [Land Transfer Act 1952, s 47\(4\)](#). Any caveat or notice of claim under the [Property \(Relationships\) Act 1976](#) that is presented by deposit in a secure facility or by post is deemed to have been presented for entry after any other instrument presented to the Registrar in the same manner on the same day: [Land Transfer Act 1952, s 47\(5\)](#).
- 27 [Land Transfer Act 1952, s 36\(4\)](#).
- 28 *Re Skerrett* (1868) 2 SALR 21 . It is noteworthy that transmissions (paras 9.103-9.112) and notices of marriage (para 9.113), while clearly “instruments” within the meaning of the [Land Transfer Act 1952, s 2](#), are not in practice required to be in duplicate. Further, many documents which are made registrable under the [Land Transfer Act 1952](#) by the provisions of other statutes (for example, proclamations or declarations under the Public Works Act 1981) are not in practice required to be in duplicate. An additional copy of an instrument may be required if it affects *land* in more than one *land* registration district: see the [Land Transfer Act 1952, s 36\(1\)](#) (proviso).
- 29 [Land Transfer Act 1952, s 36\(1\)](#). As to the witnessing of [Land Transfer](#) instruments, see para 8.027.
- 30 [Land Transfer Act 1952, s 36\(1\)](#). In the case of an instrument registered in triplicate, one copy is marked “Triplicate” and it is not necessary to record any memorial on the triplicate: [Land Transfer Act 1952, s 36\(2\)](#) (an exception is made in the case of triplicates of instruments which were destroyed by fire following the Hawke’s Bay earthquake in 1931: [Land Transfer \(Hawke’s Bay\) Amendment Act 1933, s 8](#)). Leases are usually registered in triplicate so that the landlord and the tenant may each have a copy.
- 31 [Land Transfer Act 1952, s 36\(3\)](#).
- 32 Para 8.034.
- 33 [Land Transfer Act 1952, s 40\(2\)](#). See *Pell v Booth* (High Court, Wellington CP 271/94, 18 November 1994, Master Thomson), noted (1995) 7 BCB 32 (McMorland).
- 34 [Land Transfer Act 1952, s 40\(3\)](#).
- 35 [Land Transfer Act 1952, s 44](#).
- 36 Except in the case of a *transfer* or other dealing endorsed upon a memorandum of lease or mortgage, as provided in the [Land Transfer Act 1952: Land Transfer Act 1952, s 40\(1\)](#).
- 37 [Land Transfer Act 1952, s 40\(1\)](#).
- 38 Para 8.033.
- 39 [Land Transfer Act 1952, s 38\(1\)](#).
- 40 [Land Transfer Act 1952, s 38\(1\)](#).
- 41 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 27\(1\)](#).
- 42 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002, s 27\(6\)](#).

8.032 Instruments not in order for registration

With the introduction of e-dealing,¹ in particular the facility it provides by which an electronic instrument can be pre-checked or pre-validated prior to lodging for registration, the lodging of instruments that are not in order for registration should be rare.² Where any instrument (both paper and electronic) lodged for registration is found not to be in order,³ s 43(1) of the ***Land Transfer*** Act 1952 gives the Registrar two alternative courses of action:

- (1) To return the instrument⁴ and all other instruments lodged in connection with it to the person by whom they were lodged or, where that person is not available, to such other person as may, in the opinion of the Registrar, be entitled to receive them;⁵ or
- (2) To retain the instrument pending rectification of any matter required by the Registrar to be rectified.⁶

Where any instrument is returned pursuant to s 43 of the ***Land Transfer*** Act 1952, it shall be deemed not to have been presented for registration.⁷

Should the Register decide to retain the instrument pending rectification, he or she is required to give notice to the person who lodged the instrument, or to the person entitled under the instrument, of the time within which such rectification must occur.⁸ The notice is referred to in s 43(2) as a requisition. If a requisition is not complied with within the specified time, the Registrar may refuse to complete the registration and return any instruments.⁹ As noted above, should this occur the instrument is deemed not to have been presented for registration.¹⁰

The Registrar may also refuse to complete or proceed with the registration of an instrument if, after the instrument has been presented, for any reason it is impracticable to copy or image it properly (in the case of a paper instrument); or to capture the data in it properly (in the case of an electronic instrument).¹¹ In such circumstances, the Registrar must notify the person from whom the instrument was received and arrange for it to be resubmitted.¹² The priority of such an instrument will not be affected so long as it is resubmitted within two months or any other period that the Registrar may allow.¹³ If an instrument is not resubmitted within two months, it must be treated as not having been presented for registration.¹⁴

1 The e-dealing ***system*** distinguishes between everyday routine instruments and more complex instruments. In the former situation, the registration process (including pre-checking and validation) is automated. In the latter situation, the instrument may need to be checked by the registry staff.

2 Para 8.029.

3 For the form of paper and electronic instruments see paras 8.027–8.028.

4 In the case of electronic instruments the instrument is deemed to have been returned once the Registrar notifies the person who submitted it: ***Land Transfer*** (Computer Registers and Electronic Lodgement) Amendment Act 2002, [s 23\(2\)\(a\)](#).

5 ***Land Transfer*** Act 1952, s 43(1)(a). If the Registrar makes such a finding but has already returned the instrument lodged for registration (other than pursuant to the ***Land Transfer*** Act 1952, s 43(1)(a)), the Registrar must give a notice to the lodging party specifying that either the return of the instrument is to be regarded as having been made under the ***Land Transfer*** Act 1952, s 43(1)(a), or the instrument is to be regarded as having been retained pursuant to the ***Land Transfer*** Act 1952, s 43(1)(b), and the instrument must be treated as so returned or retained: ***Land Transfer*** Act 1952, s 43(1A). If any instrument is returned in this manner, the Registrar may determine that either any fees paid to the Registrar in respect of the instrument are forfeited, or any fees paid to the Registrar are forfeited unless any matter required to be rectified to enable the instrument to be registered is so rectified and the instrument is again lodged with the Registrar within a period specified by the Registrar: ***Land Transfer*** Act 1952, s 43(3).

6 ***Land Transfer*** Act 1952, s 43(1)(b). Where any instrument is returned in this manner, any fees paid to the Registrar in respect of that instrument shall be forfeited: ***Land Transfer*** Act 1952, s 43(4).

7 ***Land Transfer*** Act 1952, s 43(6).

8 “It is for the Registrar to determine what the nature of the requisition is to be, subject to this, that his demands must be reasonable and proper. If they are objected to, the Court or a Judge upon appeal has power to determine their

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propriety: [[Land Transfer Act 1952](#), ss 216–224]”: *Re Hinewhaki No 3 Block* [1923] NZLR 353 ^{CB} at 363 (FC) per Hosking J. See, further, Adams [1960] NZLJ 6; *Bradley v Attorney-General* [1978] 1 NZLR 36 ^{CB}.

- 9 [Land Transfer Act 1952](#), s 43(2). Instruments may be returned to the person by whom they were lodged or, where that person is not available, to such other person as may, in the opinion of the Registrar, be entitled to receive them.
- 10 Where a requisition is made, amending the instrument to create a different dealing or **transfer** results in the creation of a new instrument and s 43(6) deems that the first dealing or **transfer** was never presented: *Mawhinney v Registrar-General of Land* [2014] NZHC 933 ^{CB} (**transfer** by a mortgagor amended to become a **transfer** by a mortgagee).
- 11 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), s 28.
- 12 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), s 28(2). The Registrar must contribute, to the extent prescribed, to the costs or expenses incurred in resubmitting the instrument: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), s 28(3)(b).
- 13 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), s 28(3)(a); para 8.035.
- 14 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), s 28(3)(c); para 8.035.

8.033 When instruments are registered

Both the [Land Transfer Act 1952](#) and the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#) specify when registration is deemed to occur. The relevant provision of the 1952 Act¹ is now largely of historic interest, as it does not apply if registration is effected under the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#).

The registration of an instrument or other matter under the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#) is effected when a unique identifier² for the instrument or matter is entered in the relevant computer register.³

When any computer register is created or instrument has been registered, the person named in it as seised of or taking any estate or interest is deemed to be the registered proprietor of that estate of interest.⁴

When a transferee, in possession of a registrable **transfer** instrument and with the authority of the transferor to register it, dies before doing so, the **transfer** remains registrable and the personal representative of the transferee must obtain the registration of the **transfer**.⁵ If, however, the **transfer** was to a donee,⁶ and, prior to the donor's death, equity would not regard the gift as being complete and there is no authority to register the **transfer** after the donee's death.

- 1 [Land Transfer Act 1952](#), s 34. This section provides that Every Crown grant and certificate of title is deemed to be registered as soon as it has been marked by the Registrar with the folium and volume numbers as embodied in the register and that every **transfer** instrument or other instrument purporting to **transfer** or in any way to affect [Land Transfer land](#) is deemed to be registered as soon as the appropriate memorial has been entered in the register.
- 2 In the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), unless the context otherwise requires, “‘unique identifier’ means a combination of letters or numbers, or both, by which a computer register or an instrument or other document is, or is to be, uniquely identified”: [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), s 4.
- 3 [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), s 30(1).
- 4 [Land Transfer Act 1952](#), s 35. Section 35 refers to a certificate of title. Since 14 October 2002, when the Registrar-General declared that all **land** in New Zealand that is in, or becomes comprised in, a computer register to be “electronic transactions **land**” (see New Zealand Gazette, 10 October 2002, p 3895), the section's continuing reference to certificate of title is to be read as a reference to the appropriate computer register, see the [Land Transfer \(Computer Registers and Electronic Lodgement\) Amendment Act 2002](#), s 20(3).
- 5 *Watt v Lord* [2005] NSWSC 53 ^{CB} at paras [17]–[54], with a clear statement of authority at paras [51]–[52], per Gzell J, noted (2005) 79 ALJ 540 (Butt).

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6 For the position of a volunteer prior to registration, see para 9.004.

8.034 Memorials

A memorial has been defined as: ¹

... [A] record either of outstanding interests affecting the estate of the registered proprietor when **land** is first brought under the **Land Transfer** Act, or of the devolution of the estate of the registered proprietor either by his own act or by operation of law as upon death or bankruptcy, or of encumbrances ² created by him upon his estate.

Section 39(1) of the **Land Transfer** Act 1952 requires every memorial entered in the register to state the following:

- (1) The nature of the instrument to which it relates;
- (2) The day and hour of the production of the instrument for registration; ³ and
- (3) If appropriate, the name of the person taking the benefit under the instrument.

The memorial must refer by number or symbol to the instrument, and must be signed by the Registrar or otherwise authenticated in a manner and by an officer of the **Land** Registry Office approved by the Registrar. ⁴

The fact that a memorial is authenticated by any officer other than the Registrar is conclusive evidence of their authority to do so and of the approval of the Registrar to the manner in which the memorial is authenticated by that officer. ⁵

A memorial is nothing more than a note or record of the dealing to which it refers — it is the instrument itself that is included within the register. ⁶ For this reason, if a memorial discloses that a dealing such as a mortgage, lease, or encumbrance is still subsisting, it is necessary when searching the title to examine the relevant instrument. ⁷ The effect of a memorial has been described as follows: ⁸

... [T]he registration which is effected by the memorial on the certificate of title is the registration of the instrument... [R]egistration under the [Torrens statute] is not confined to the entry of a memorial on the certificate of title. But it is the entry of that memorial which results in the registration of the instrument. As between the two, it is the instrument which is dominant. Provided that the memorial sufficiently states the nature of the instrument, the addition of an erroneous statement as to its operative effect will be treated as surplusage.

¹ *Re the **Land Transfer** Act 1908*, ex parte Matheson (1914) 33 NZLR 838 at 840 per Chapman J.

² And also of leases, easements, and profits a prendre created by him or her: Adams, 2nd ed, 1971, para 55.

³ In the case of a paper instrument which is in order for registration when first presented to the **Land** Registry Office for that purpose, the time of presentation has been seen as equivalent to the time of registration once registration has been completed. In other words, the time of the entry of the memorial relates back to the time of presentation of the instrument for registration: Adams, para S34.3; and see the **Land Transfer** Act 1952, ss 68 and 141(2); *Re Jackson's Claim* (1890) 10 NZLR 148 ^{CB}. See also *Bradley v Attorney-General* [1978] 1 NZLR 36 ^{CB}. A similar approach has been held to apply with respect to electronic instruments registered under the **Land Transfer** (Computer Registers and Electronic Lodgement) Amendment Act 2002; the time of registration being when the "electronic instrument is in order for registration as provided by s 23 of [the 2002 Amendment Act] and the registrar has provided a unique identifier for the instrument pursuant to ss 29 and 30 of that Act": In *Millbrook Country Club Ltd v S F M Investments Ltd* (2009) 11 NZCPR 139 ^{CB} at [28] per Robinson AJ. Earlier case law dealing with paper instruments suggest that there is at least one exception to the general rule. When a caveat has been lodged against the title and has to be removed or withdrawn in order to allow registration to proceed (*para 10.016*), the time of registration will be immediately after the removal or withdrawal of the caveat: *Pell v Booth* (High Court, Wellington CP 271/94, 18 November 1994, Master Thomson), noted (1995) 7 BCB 32 (McMorland).

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- 4 Land Transfer Act 1952, s 39(1).
- 5 Land Transfer Act 1952, s 39(2).
- 6 Land Transfer Act 1952, s 38(2).
- 7 See the Land Transfer Act 1952, s 38(2); *Re Goldstone's Mortgage: Registrar-General of Land v Dixon Investment Co Ltd* [1916] NZLR 489 ^{CB} at 504-505 (CA) per Hosking J (CA) for the Court; para 8.024.
- 8 *Ex parte Property Unit Nominees (No 2) Pty Ltd* [1981] Qd R 178 ^{CB} at 181 per Connolly J.

8.035 Priorities as between registered instruments

Section 37 of the Land Transfer Act 1952 lays down two simple rules for determining the priority of registered instruments (whether paper instruments or electronic instruments), namely:

- (1) Every instrument must be registered in the order of time in which it is presented for registration; and
- (2) Instruments affecting the same estate or interest are, notwithstanding any express, implied, or constructive notice, ¹ entitled in priority according to the date of registration, ² and not according to the date of each instrument. ³

Prior to the introduction of e-dealing the application of these rules could be problematic if two or more competing paper instruments executed by the same registered proprietor and purporting to **transfer** or encumber the same estate or interest in the same parcel of **land**, were simultaneously presented for registration by different persons. In this situation s 41(2) of the Land Transfer Act 1952 provided that the person who presented the duplicate original certificate of title was entitled to have his or her instrument registered. ⁴Section 41(3) of the Land Transfer Act 1952 provides that s 41(2) does not apply to electronic instruments intended to be registered against electronic transactions **land**.

The continued operation of s 37 to the situation where a paper instrument is presented by hand at the public counter at a designated **land** registry office⁵ is confirmed by s 47 of the Land Transfer Act 1952.

Section 47 also authorises the lodging of paper instruments by depositing them in a secure facility provided at a designated **land** registry office. In this situation an instrument is "deemed to have been presented for registration on the business day after the day on which it is received by the Registrar and before any other matter presented on the day of registration in relation to the same **land**".⁶ Should two or more instruments be so received, s 47 of the Act provides that priority as between those instruments, is determined "in the order in which they were date and time stamped as received by the Registrar".⁷

The general principle that registered instruments enjoy priority according to the time of entry of the memorial in the register ⁸ is subject to a number of statutory qualifications, for example:

- (1) If the person taking under a registered instrument has been guilty of fraud, ⁹ the Court may make an order setting aside the registration of that instrument or otherwise depriving the fraudulent person of the benefits of registration; ¹⁰
- (2) The priority of mortgages may be varied by a mortgage priority instrument ¹¹ under the provisions of s 103 of the Land Transfer Act 1952.¹² Additionally ss 90–92 of the Property Law Act 2007 create special rules for mortgages securing advances up to a specified principal amount and for further advances;
- (3) Where the registered lessee of any **land** acquires the fee simple, provision is made in s 118A of the Land Transfer Act 1952 for the registered encumbrances affecting the lease to be brought down on to the fee simple title "in the order among themselves of their registered priority"; but, notwithstanding anything in s 37, any registered encumbrances affecting the fee simple estate at the time of registration of the **transfer** of the fee simple estate to the lessee have priority;
- (4) Section 13 of the Family Benefits (Home Ownership) Act 1964 and ss 5 and 7 of the Forestry Encouragement Act 1962 contain provisions under which priorities, as fixed by s 37 of the Land Transfer Act 1952, may be affected in the special cases for which they provide;

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- (5) Statutes which override the **Land Transfer** Act 1952, may, if they so provide, disturb the priorities fixed by s 37. ¹³

Section 37 of the **Land Transfer** Act 1952 governs the priority of registered instruments: ¹⁴ it does not govern equitable priorities. Subject to the effect of the caveat procedure, the priority of unregistered interests is determined by the ordinary principles of equity. ¹⁵

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- 1 The meaning of these terms is outlined in [para 4.023](#). See also McMorland, “Notice, Knowledge and Fraud” (paper delivered Torrens Conference, Auckland, March 2003).
 - 2 The **Land Transfer** Act 1952, s 37(2), uses the phrase “date of registration”, but in fact the priority of instruments is determined by the time of registration. The **Land Transfer** Act 1952, s 39(1), requires every memorial (see para 8.034) to state inter alia, “the day and hour of the production of the instrument for registration”. There would seem to be no doubt that an instrument registered at, say, 11 am on a certain day would take priority over an instrument affecting the same parcel of **land** registered at, say, 11:30 am on the same day.
 - 3 See, for example, *Property Restoration Ltd v Farquhar* [1991] 3 NZLR 498 ^{CB}; *Cricklewood Holdings Ltd v C V Quigley & Sons Nominees Ltd* [1992] 1 NZLR 463 ^{CB}.
 - 4 If the duplicate original certificate of title had already been produced to the Registrar, the **Land Transfer** Act 1952, s 41(2), would not help; but in the majority of cases the problem would be resolved by the **Land Transfer Regulations 2002** (SR 2002/213), [reg 18](#). That regulation requires the person producing any certificate of title (or other instrument) to the Registrar to enable the registration of any other instrument, to supply, to the satisfaction of the Registrar, particulars of that other instrument, and in effect forbids the registration of any instrument other than the one of which particulars have been supplied without the further authority of the person by whom the certificate of title (or other instrument) was produced.
 - 5 “Designated **land** registry office” means any **land** registry office designated for that purpose by the Registrar: **Land Transfer** Act 1952, s 47(2). In the *New Zealand Gazette* 27 November 2008, p 4750, the Registrar-General of **Land** designated the following office of **Land** Information New Zealand (LINZ) as offices for the purposes of presentation of instruments with effect from 23 February 2009: North Auckland, South Auckland and Taranaki **Land** Registration Districts: Corner of Victoria and Rostrevor Streets, Hamilton. And in the *New Zealand Gazette* 7 October 2010, p 3472, the Registrar-General of **Land** designated the following office of **Land** Information New Zealand (LINZ) as offices for the purposes of presentation of instruments with effect from 15 November 2010: Gisborne, Hawke's Bay, Wellington, Nelson, Marlborough, Westland, Canterbury, Otago and Southland Registration Districts: 112 Tuam Street, Christchurch.
 - 6 **Land Transfer** Act 1962, s 47(4).
 - 7 **Land Transfer** Act 1962, s 47(6)(b). This provision is subject to the **Land Transfer** Act 1952, s 47(5), which relates to any caveat or notice of claim under the Property (Relationships) Act 1976.
 - 8 See Baalman, 1st ed, 1951, p 107. For general discussion of the principle, see *Farrier-Waimak Ltd v Bank of New Zealand* [1965] AC 376 ^{CA}; [1965] NZLR 426; [1964] 3 All ER 657 ^{CB} (PC).
 - 9 Ie, fraud within the meaning of the **Land Transfer** Act 1952 : [para 9.018](#).
 - 10 **Land Transfer** Act 1952, ss 62, 63(1)(c) and 85. For examples, see *Merrie v McKay* (1897) 16 NZLR 124 ^{CB}; *Loke Yew v Port Swettenham Rubber Co Ltd* [1913] AC 491 ^{CA} ^{CB} (PC); *Efstratiou, Glantschnig and Petrovic v Glantschnig* [1972] NZLR 594 ^{CB} (CA).
 - 11 For the required content of a mortgage priority instrument, see the **Land Transfer** Act 1952, s 103(2). For the form of a mortgage priority instrument, see the **Land Transfer** Regulations 2002 (SR 2002/213), Schedule 2, Form 10. For a discussion of the variation of the priority of mortgages, see para 15.154.
 - 12 **Land Transfer** Act 1952, s 102(4).
 - 13 Refer to the Statutory **Land** Charges Registration Amendment Act 1930, s 3(2).
 - 14 The Registrar has no jurisdiction to determine equitable priorities: *Kissling v Mitchelson* (1885) NZLR 3 CA 261.
 - 15 [Paras 9.005](#) and [10.005](#).

(3) RIGHTS OF APPEAL

8.036 The appeal rights conferred by the Land Transfer Act 1952

Sections 216–224 of the Land Transfer Act 1952 confer a number of rights of appeal. They include a right to refer certain decisions back to the Registrar for reconsideration.¹ Alternatively, the dissatisfied proprietor or claimant may appeal directly to the High Court.² Provision is also made for the Registrar-General to submit questions arising to the Court of Appeal.³

1 Land Transfer Act 1952, s 216(1).

2 Land Transfer Act 1952, s 217. The right of appeal against the proposed cancellation of a joint family home settlement is direct to the District Court: Joint Family Homes Act 1964, s 10(5).

3 Land Transfer Act 1952, s 222.

8.037 Primary appeal to the Registrar for reconsideration

Under the provisions of s 216 of the Land Transfer Act 1952, any proprietor or claimant to any land, estate, or interest who is dissatisfied by any decision¹ of the Registrar,² or a person acting under delegated authority,³ in relation to the land, estate, or interest, may refer the matter, by notice in writing, to the Registrar for reconsideration.⁴ In *Paparua County v District Land Registrar*⁵ Wilson J considered that the “[b]efore [the Registrar] be called upon to justify his decision [under this section] ... , it must appear prima facie that the conditions prescribed by s. 216 have been fulfilled”.

The Registrar may investigate the matter,⁶ and require the dissatisfied person⁷ to provide any relevant evidence, information, or explanation.⁸ The Registrar must, if requested by the dissatisfied person,⁹ give that person an opportunity of being heard.¹⁰

As soon as practicable, the Registrar must decide the matter by either confirming the decision or refusal to act, or substituting such decision as the Registrar thinks fit,¹¹ and must furnish to the dissatisfied person¹² written reasons for the decision.¹³

In *Rosevear v District Land Registrar, Gisborne*¹⁴ Chapman J recognised that s 216 (and s 217) are “for the protection of the Registrar as much as of the applicant”.

1 Section 216 was amended by the Land Transfer (Automation) Amendment Act 1998, s 36. Prior to 1 February 1999, the Land Transfer Act 1952, s 216, allowed the “person deeming himself aggrieved” to require the Registrar to set forth in writing the grounds of his refusal, direction, or decision. “Any such person” could also invoke the procedure under s 217. An example of this may be found in *Paparua County v District Land Registrar* [1968] NZLR 1017^{CB} at 1019 in which Wilson J held that a person “deeming himself aggrieved” was not necessarily a registered proprietor or person presenting an instrument for registration; that person could, for example, be someone who anticipated being adversely affected by actions of the registered proprietor if the Registrar refused to perform an act or duty allegedly cast on her or him by statute. In *Paparua County* the council had been able to use the procedure under (then) s 216 as a person deeming itself aggrieved by a refusal of the Registrar to maintain a caveat to prevent dealings which were in contravention of town planning legislation. Section 216 as now worded allows only “any proprietor or claimant to any land estate or interest” to act under s 216, and thus under s 217.

2 Prior to 1 February 1999, the Land Transfer Act 1952, s 216, referred to the “direction or decision” of the Registrar: amended by Land Transfer (Automation) Amendment Act 1998, s 36.

3 The Land Transfer Act 1952, s 216, applies to every decision of a District Land Registrar or Assistant Land Registrar as if it were a decision of a delegate of the Registrar: Land Transfer Act 1952, s 216(7).

4 Land Transfer Act 1952, s 216(1).

5 *Paparua County v District Land Registrar* [1968] NZLR 1017 at 1019.

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- 6 Land Transfer Act 1952, s 216(2).
- 7 Section 216 ought more properly to refer to “the dissatisfied person”.
- 8 Land Transfer Act 1952, s 216(3).
- 9 Section 216 ought more properly to refer to “the dissatisfied person”.
- 10 Land Transfer Act 1952, s 216(4).
- 11 Land Transfer Act 1952, s 216(5).
- 12 Section 216 ought more properly to refer to “the dissatisfied person”.
- 13 Land Transfer Act 1952, s 216(6).
- 14 *Rosevear v District Land Registrar, Gisborne* [1916] NZLR 482 at 483.

8.038 Appeal to the High Court

Any proprietor or claimant to any land, estate, or interest who is dissatisfied by any decision by the Registrar, or a person acting under delegated authority, in relation to the land, estate, or interest,¹ may, if she or he thinks fit, call upon the Registrar to appear before the High Court to substantiate and uphold the grounds of her or his decision.² This is done by a notice served upon the Registrar at least six clear days before the day appointed for the hearing.³

In *Paparua County v District Land Registrar*⁴ Wilson J recognised that this procedure does not, in terms, contemplate any party other than the applicant and the Registrar. His Honour went on to say, however:⁵

When third parties may be so affected by the result of the application I think that it is generally desirable that they be served with the application and given an opportunity to be heard. The prudent course for an applicant to follow when other persons may be affected is to apply for directions as to service under R 544A(2) of the Code of Civil Procedure.⁶ That was not done in the instant case but, as both the applicants and the respondent wished to proceed in the absence of the owner of the said land, I agreed to do so, merely observing that the owner would not be bound by my decision.

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- 1 The reference in the Land Transfer Act 1952, s 217, to “any such person” presumably refers to the category of persons described in Land Transfer Act 1952, s 216(1). See also para 8.037.
 - 2 Although the Land Transfer Act 1952, s 217, refers to “the grounds of such refusal, direction, or decision”, this reference refers to the Land Transfer Act 1952, s 216, prior to its repeal and substitution on 1 February 1999 by the Land Transfer (Automation) Amendment Act 1998, s 36. Section 217 ought more properly refer to the Registrar’s “decision”.
 - 3 The normal procedure is by motion: see Adams [1967] NZLJ 392 at 393. Alternatively, an originating summons may be used, as in *Paparua County v District Land Registrar* [1968] NZLR 1017 ^{CB}. Whichever form of originating application is used, a motion for directions as to service under the High Court Rules, R 18.7 (formerly R 451 of the 1985 High Court Rules), should be filed.
 - 4 [1968] NZLR 1017 ^{CB} at 1018.
 - 5 [1968] NZLR 1017 ^{CB} at 1019.
 - 6 See, now, High Court Rules, R 18.7 (formerly R 451 of the 1985 High Court Rules).

8.039 The hearing of the appeal

Upon the hearing by the High Court of any proceeding under s 217 of the Land Transfer Act 1952, the right of reply is reserved to the Registrar or the Registrar’s counsel by s 218 of that Act. This clearly implies that the

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Registrar or the Registrar's counsel also has the right to begin.¹ In *Paparua County v District Land Registrar*² Wilson J considered that before the Registrar could be called upon to justify their decision, it must appear prima facie that the conditions prescribed by s 216 had been fulfilled. He also expressed the opinion that:³

... [N]otwithstanding the Registrar's statutory right of reply under s 218, and the form of the proceedings as directed by s 217 there is an overall onus on the applicant to satisfy the Court that the Registrar's refusal, direction, or decision, ... is wrong. For that reason it is sometimes convenient for the applicant to begin and, by consent, that course was substantially adopted in this case.

In *Horokiwi Holdings Ltd v Registrar General of Land*⁴ Randerson J "regret[fully] ... reached a different view"⁵ as to which party bears the onus of proof under s 217. Randerson J reasoned as follows:⁶

Section 217 is explicit that any person aggrieved by the Registrar-General's decision may call upon him to appear before this Court "to substantiate and uphold the grounds of such refusal, direction or decision ...". And, as Wilson J accepted in *Paparua County*, the fact that s 218 gives the Registrar-General or his counsel the right of reply clearly implies that the Registrar-General is also to begin. Wilson J's reasoning seems to have been that, before the Registrar-General could be called upon to justify his decision, it must appear, prima facie, that the conditions prescribed by s 216 have been fulfilled. But those conditions are merely that the Registrar-General must have made a decision upon a recommendation under s 216 and furnished the aggrieved party with written reasons. Other than providing proof of that fact, the aggrieved party need do no more than file and serve the application under s 217 calling upon the Registrar-General to justify the decision. I conclude that the onus under s 217 is on the Registrar-General to substantiate and uphold the grounds of his decision. In order to fulfill that obligation, he has the right to begin and a right of reply. There is no onus on the aggrieved party to establish that the Registrar-General's decision was wrong. Nor is there any presumption that the Registrar-General's decision is correct.

If any question of fact is involved, s 218 requires the Court to direct an issue to be tried to decide that fact,⁷ and goes on to provide that "the Court shall thereupon make such order ... as the circumstances of the case may require,⁸ which order shall be binding upon the Registrar".⁹

The ordinary rules of procedure are made applicable by s 223 of the *Land Transfer* Act 1952.¹⁰ That section also gives the rights of appeal as are in force or exist for the time being in respect of ordinary proceedings in the same Court.¹¹

Upon the hearing by the High Court of any proceeding under s 217 of the *Land Transfer* Act 1952, the Court shall make such order as the circumstances of the case may require.¹² Such an order is binding upon the Registrar.¹³

¹ *Re Transfer to Palmer* (1903) 23 NZLR 1013  (CA).


² *Paparua County v District Land Registrar* [1968] NZLR 1017  at 1019.

³ *Paparua County v District Land Registrar* [1968] NZLR 1017  at 1019.

⁴ *Horokiwi Holdings Ltd v Registrar General of Land* (2007) 8 NZCPR 634 .

⁵ *Horokiwi Holdings Ltd v Registrar General of Land* (2007) 8 NZCPR 634  at [31].

⁶ *Horokiwi Holdings Ltd v Registrar General of Land* (2007) 8 NZCPR 634  at [31]–[33].

⁷ In *Waitemata County v Expans Holdings Ltd* [1975] 1 NZLR 34  at 46 (CA) Haslam J commented: "From the record, no application appears to have been made in the Supreme Court for a question of fact to be tried in accordance with s 218 of the Act [the *Land Transfer* Act 1952]. All evidence was presented on affidavit, but unless only one inference could be drawn from that class of material in a given instance, oral testimony should prove a more satisfactory method of determining the state of mind and the knowledge of the parties at the relevant time".

⁸ It is, however, suggested in *Adams*, para S218.4, that: "if the application to the Court discloses substantial questions of fact and law affecting parties not before the Court, no decision would be made by it under s 216 and those following sections until those substantial questions had been determined by the Court".

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- 9 But a party who had not been given an opportunity to be heard would probably not be bound by the order: *Paparua County v District Land Registrar* [1968] NZLR 1017^{CB} at 1019 per Wilson J. In *Re the Transfer of Land Statute*, ex parte Folk (1880) 6 VLR (L) 405 at 409 it was said by Stephen J, in relation to a summons to the Registrar of Titles to substantiate his refusal to give a clear certificate of title, that “the Court is not called upon to give an absolute and final decision upon the point submitted, as it might do if the parties adversely interested were litigating it”.
- 10 Under the *Land Transfer Act* 1952, s 224, rules for regulating proceedings in the High Court under that Act may be made in the manner provided by the Judicature Act 1908, s 51C.
- 11 Hence the comment that from the Registrar’s adjudication “an appeal lies to the Supreme Court [the High Court], from the Supreme Court to this Court [the Court of Appeal] and from this Court [the Court of Appeal] to the Privy Council”: *District Land Registrar of Wellington v Snow* (1910) 29 NZLR 865^{CB} at 870 (CA) per Edwards J delivering the judgment of Edwards, Williams, Denniston, and Cooper JJ.
- 12 *Land Transfer Act* 1952, s 218. In *Paparua County v District Land Registrar* [1968] NZLR 1017^{CB} at 1023 Wilson J described the powers conferred by the *Land Transfer Act* 1952, s 218 as being “expressed in very wide terms”.
- 13 *Land Transfer Act* 1952, s 218. See, for example, *Auckland City Council v Greig* (High Court, Auckland CP 969/87, 30 July 1987, Tompkins J) (successful application to review District Land Registrar’s decision to reject transaction for sale of land on grounds of statutory prohibition); *Cruickshank’s Farms Ltd v Registrar-General of Land* [1994] 1 NZLR 211^{CB} (Registrar-General’s refusal to bring down an easement on the title held to be in error); *Re Roberts (a bankrupt)* [1997] NZFLR 821 (Registrar-General’s refusal to cancel the registration of a joint family home under the *Joint Family Homes Act 1964* held to be wrong in law).

8.040 Costs

The rule laid down by s 219 of the *Land Transfer Act* 1952 is that “all expenses” attendant upon any proceedings under s 217 must be borne and paid by the person initiating the proceedings, unless, pursuant to s 219, the Court orders them to be paid out of the Consolidated Account. The term “all expenses” has been construed as “including costs and disbursements as between solicitor and client, with the addition of any other expenses properly incurred by the party or parties in whose favour an order is made under the section”.¹

The s 219 power was exercised in *Re Hinewhaki No 3 Block*.² After argument before a Full Court.³ Stout CJ said:⁴

A special point had arisen on registration. The District Land Registrar ... was anxious for the Court’s guidance. There was an important question of law to be settled, and it is only fair that the [Consolidated Account]⁵ should bear the costs.

The other members of the Court agreed, but Hosking J added the following note of caution:⁶

... I do not wish it to be inferred that I am of the opinion that any one who brings the District Land Registrar before the Court can get his costs from the [Consolidated Account]. This, however, was a case of general importance. It was for the purpose of obtaining a definition of practice to be followed not only in this but in other cases.

It might be inferred from *Re Hinewhaki No 3 Block* that an order for expenses to be paid out of the Consolidated Account will only be made in a case of general importance involving an important question of law. Indeed it has been judicially observed that the making of such an order is “the exceptional course”.⁷ Despite such observations it appears that overall the attitude of the Courts has been somewhat more liberal, and there are numerous cases in which a successful applicant has been allowed her or his costs.⁸

Where an applicant has been unsuccessful, it appears that she or he will normally be required to pay the expenses of the proceedings.⁹ The principles upon which the Courts will act, however, cannot be regarded as finally settled.

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¹ Per Wilson J in *Mayor of Ashburton v District Land Registrar* (Supreme Court, Christchurch A46/65, 4 May 1965), noted [1967] NZLJ 392 at 394 (Adams).

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- 2 *Re Hinewhaki No 3 Block* [1924] NZLR 491 ^{CB} (FC).
- 3 Stout CJ, Hosking, Herdman and Reed JJ.
- 4 *Re Hinewhaki No 3 Block* [1924] NZLR 491 ^{CB} at 494 (FC).
- 5 When the case was decided, the costs were borne by the Assurance Fund: *Land Transfer* Act 1915, s 202.
- 6 *Re Hinewhaki No 3 Block* [1924] NZLR 491 ^{CB} at 494 (FC).
- 7 Per Wilson J in *Mayor of Ashburton v District Land Registrar* (Supreme Court, Christchurch A46/65, 4 May 1965), noted [1967] NZLJ 392 at 394 (Adams).
- 8 For examples of such cases decided before *Re Hinewhaki No 3 Block* [1924] NZLR 491 ^{CB} (FC), see *Re Kaihu Valley Railway Co and Owen* (1890) 8 NZLR 522 ^{CB} (CA); *Re Okirae Block* (1892) 10 NZLR 677 ^{CB}; *Re Fairbrother to Allen* (1896) 15 NZLR 196 ^{CB}; *Peacocke v Auckland District Land Registrar* (1901) 20 NZLR 81 ^{CB}; *Re Duncan* (1905) 25 NZLR 24 ^{CB}; *Assets Realisation Board v Auckland District Land Registrar* (1906) 26 NZLR 473 ^{CB}; *Williams v District Land Registrar at Gisborne* (1907) 26 NZLR 1081 ^{CB}; *Roberts v District Land Registrar at Gisborne* (1909) 28 NZLR 616 ^{CB}; *Deacon v Auckland District Land Registrar* (1910) 30 NZLR 369 ^{CB}; *Fitzgerald v District Land Registrar of Wellington* (1912) 31 NZLR 1252 ^{CB}; *Re the Land Transfer Act 1908*, ex parte Matheson (1914) 33 NZLR 838; *Rosevear v District Land Registrar, Gisborne* [1916] NZLR 482; *Re Goldstone's Mortgage: Registrar-General of Land v Dixon Investment Co Ltd* [1916] NZLR 489 (CA). For a more recent example of a case in which the expenses of a successful applicant were ordered to be paid by the Crown, see *Paparua County v District Land Registrar* [1968] NZLR 1017 ^{CB}. In *Re Maungatautari Nos 1 and 2 Blocks* (1895) 14 NZLR 125 ^{CB} and *Kauri Timber Co Ltd v District Land Registrar, Auckland* (1902) 21 NZLR 84 ^{CB} no award of expenses was made to the successful applicants, but the Registrar's costs were ordered to be paid out of the (then) Assurance Fund (as to which, see *para 9.084*). In *Re Parish* (1890) 9 NZLR 262 ^{CB} and *Re Bygum dec'd* (1895) 13 NZLR 270 ^{CB} the successful applicants were ordered to pay costs.
- 9 *Re Knapman* (1878) 3 NZ Jur (NS) SC 110; *Finlayson v Auckland District Land Registrar* (1904) 24 NZLR 341 ^{CB}; *Smith v Auckland District Land Registrar* (1905) 24 NZLR 862 ^{CB}; *Manahi te Hiakai v District Land Registrar* (1909) 29 NZLR 130 ^{CB}; *Duthie v District Land Registrar at Wellington* (1911) 31 NZLR 245 ^{CB}; *Parkes and Wright v District Land Registrar at Wellington* (1914) 33 NZLR 1449 ^{CB}; *Finlayson v District Land Registrar, Auckland* (1915) 34 NZLR 977 ^{CB}; *Mayor of Ashburton v District Land Registrar* (Supreme Court, Christchurch A46/65, 4 May 1965) noted [1967] NZLJ 376 (Pt I) and 392 (Pt II) (Adams). Unsuccessful applicants were not ordered to pay the Registrar's costs in *Re Maungatautari No 4 Block* (1894) 12 NZLR 385 ^{CB} and *District Land Registrar of Wellington v Snow* (1909) 29 NZLR 865 ^{CB} (CA). Unsuccessful applicants were awarded costs in *Pott v District Land Registrar of Taranaki* (1906) 26 NZLR 141 ^{CB} (counsel for the Registrar agreed) and *Re Bevan* (1909) 29 NZLR 714 ^{CB} (exceptional circumstances and the unsuccessful applicant was a government department).
- 10 Compare the varying attitudes of the members of the Court of Appeal in *Re Transfer to Palmer* (1903) 23 NZLR 1013 ^{CB} (CA).

8.041 When the appeal procedure may be used

Both ss 216 and 217 contemplate that the Registrar may be able to justify her or his decision, and it is recognised in s 218 that there may be a contested issue of fact to be determined.¹ It would, therefore seem that the procedure under ss 216 and 217 is available in a wide variety of situations in which a person who is affected by a decision of the Registrar is in disagreement with the Registrar. But where "grave and perhaps complicated questions of law and fact might arise", this procedure is inapt and an ordinary action should be commenced.²

¹ See the comments of Kitto J in *Pirie v Registrar-General* (1962) 109 CLR 619 at 624 in relation to the analogous provisions of the Real Property Act 1900-1956 (NSW), s 121.

² *Manahi te Hiakai v District Land Registrar* [1909] 29 NZLR 130 at 132 per Chapman J.

8.042 Whether an appeal lies against the exercise of a discretion by the Registrar

Section 216 of the *Land Transfer* Act 1952 gives a right of appeal against “any decision” by the Registrar. Section 216(5) clearly contemplates that such a decision may include a “refusal to act”. It would therefore seem that there is a right of appeal under ss 216 and 217 against the exercise by the Registrar of a discretionary power.¹

In reviewing the exercise of a discretion by the Registrar, the Court would probably be guided by the principles which are applied by an appellate Court in reviewing the exercise of a discretion by the Court appealed from.² If this view is correct, the Registrar’s exercise of a discretionary power will not be reversed merely because the Court would itself have exercised the discretion in a different way. Only if there has been a wrongful exercise of discretion, in that the Registrar did not apply the right principle or gave no weight or no sufficient weight to relevant considerations, will the Court interfere with the exercise of the Registrar’s discretion.³

In *Re the Land Transfer Act 1885, ex parte De Latour*⁴ Edwards J decided that, in proceedings under (now) s 217, he could not order the Registrar to correct the register under the provisions of (now) s 80 of the *Land Transfer* Act 1952 on the ground that the Registrar’s power of correction is discretionary and that its exercise depends upon the Registrar being satisfied as to the error.⁵ In the light of more recent authority, however, the statements made by Edwards J in that case may require some qualification. In *Commissioner of Stamp Duties v International Packers Ltd and Delsintco Ltd*⁶ the Court of Appeal had to consider the application of s 106 of the Stamp Duties Act 1923 which gave the Commissioner power to grant a certain exemption “if he [was] satisfied” that the statutory conditions were complied with. North J said:⁷

In my opinion, the authorities clearly show that the Court cannot substitute its own opinion for the opinion of the Commissioner simply because it would have reached a different conclusion if the decision in the first instance had been left to the Court.

Despite this, North J cited a number of statements of principle made by English Judges to the effect that, where a right of appeal to the Court is preserved (as is done by ss 216 and 217 of the *Land Transfer* Act 1952), the right of appeal must have been intended by the legislature to be an effective right, and that the Court is always entitled to examine the facts in order to determine whether they are sufficient to support the decision in question. If, in the opinion of the Court, those facts are insufficient in law to support it, the decision under appeal cannot stand.⁸

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- ¹ *Paparua County v District Land Registrar* [1968] NZLR 1017 ^{CB} at 1023 per Wilson J. In two early cases doubts were expressed as to whether there was a right of appeal against the exercise by the Registrar of a discretionary power: *Re Parish* (1890) 9 NZLR 262 ^{CB} at 265 per Denniston J; *Re Macarthy and Collins* (1901) 19 NZLR 545 ^{CB} at 547 per Edwards J. The provision then in force which corresponded to the *Land Transfer* Act 1952, s 216, was the *Land Transfer* Act 1885, s 191, which did not expressly give a right of appeal against a decision of the Registrar. However, when the *Land Transfer* Act 1908 was passed, the section (which then appeared as s 202) was amended by including an express reference to “decision or direction”. This change would seem to have removed the doubts expressed in *Re Parish* and *Re Macarthy and Collins*. The provision now in force, as substituted on 1 February 1999 by the *Land Transfer* (Automation) Amendment Act 1998, s 36, simply refers to “any decision by the Registrar”.
 - ² For judicial discussions of these principles see, for example, *Evans v Bartlam* [1937] AC 473 [☞]; [1937] 2 All ER 646 ^{CB} (HL), and *Charles Osenton & Co v Johnston* [1942] AC 130 [☞]; [1941] 2 All ER 245 ^{CB} (HL), applied in *Re Taupo Totara Timber Co Ltd* [1943] NZLR 557 ^{CB} at 565–566 per Kennedy J.
 - ³ This suggested statement of principle is adapted from the words used by Gresson P for the Court of Appeal in *Sulco Ltd v Talboys* [1958] NZLR 817 ^{CB} at 825 (CA).
 - ⁴ *Re the Land Transfer Act 1885, ex parte De Latour* (1904) 6 GLR 433.

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- 5 *Re the Land Transfer Act 1885, ex parte De Latour* (1904) 6 GLR 433 at 434.
- 6 *Commissioner of Stamp Duties v International Packers Ltd and Delsintco Ltd* [1954] NZLR 25 (CA).
- 7 *Commissioner of Stamp Duties v International Packers Ltd and Delsintco Ltd* [1954] NZLR 25 at 52 (CA).
- 8 See also *Gisborne Sheepfarmers' Mercantile Co Ltd v Commissioner of Inland Revenue* [1962] NZLR 810 ^{CB} at 816 per Barrowclough CJ.

8.043 Alternative procedures

In many cases, an alternative course to pursuing the right of appeal given by ss 216 and 217 of the Land Transfer Act 1952 is to make an application to the High Court for judicial review under Part I of the Judicature Amendment Act 1972.¹ This could be done when the circumstances which give rise to the right of appeal also amount to “the exercise, refusal to exercise, or proposed or purported exercise”² by the Registrar of a “statutory power” as defined in s 3 of the Judicature Amendment Act 1972.³ An application for review may be made, by virtue of s 4 of the Judicature Amendment Act 1972, to the High Court “notwithstanding any right of appeal possessed by the applicant in relation to the subject-matter of the application”, and the Court may by order grant “any relief that the applicant would be entitled to, in any one or more of the proceedings for a writ ... of mandamus, prohibition, or certiorari or for a declaration or injunction”.⁴

Part I of the Judicature Amendment Act 1972 has not abolished proceedings for mandamus, prohibition, or certiorari: it merely provides an alternative single procedure. If, therefore, a situation should arise in which the right of appeal given by ss 216 and 217 of the Land Transfer Act 1952 could be exercised but the circumstances did not amount to “the exercise, refusal to exercise, or proposed or purported exercise” by the Registrar of a “statutory power” the person dissatisfied might be able to take proceedings for mandamus⁵ instead of using the procedure provided by ss 216 and 217.

In New South Wales the opinion has been expressed that mandamus provides an alternative remedy to the appeal procedure under s 121 of the Real Property Act 1900-1972 (NSW).⁶ It has also been decided in Manitoba, that under a Torrens-type statute which gave rights of appeal comparable to those given by ss 216 and 217 of the Land Transfer Act 1952, mandamus is available as an alternative procedure.⁷

In the New Zealand case of *Re Tanner, Re Lyndon (Heretaunga Block Case)*⁸ Richmond J remarked (obiter) that:⁹

If in no other way, there must be the power in this Court by mandamus to grant a remedy to persons aggrieved.¹⁰

In the later cases of *Main v District Land Registrar*¹¹ and *Fairmaid v Otago District Land Registrar*¹² the plaintiffs applied for writs of mandamus in circumstances under which they could apparently have proceeded under (now) ss 216 and 217 of the Land Transfer Act 1952, and the reports do not record that any objection was taken to the form of proceedings. More recently, in *Auckland District Law Society v District Land Registrar*,¹³ Perry J considered that the remedies available in ss 216–218 of the Land Transfer Act 1952 are alternative, not exclusive, and did not prevent an owner of land proceeding by writ to challenge the Registrar’s decision regarding the care, custody, and control of Land Transfer records.¹⁴

1 Part 1 of this Act came into force on 1 January 1973: Judicature Amendment Act 1972, s 2(2).

2 See the Judicature Amendment Act 1972, s 4.

3 The Judicature Amendment Act 1972, s 3, provides that: “In this Part of this Act, unless the context otherwise requires, — ‘Statutory power’ means a power or right conferred by or under any Act or by or under the constitution or other instrument of incorporation, rules, or bylaws of any body corporate — (a) to make any regulation, rule, bylaw, or order, or to give any notice or direction having force as subordinate legislation; or (b) to exercise a statutory power of decision; or (c) to require any person to do or refrain from doing any act or thing that, but for such requirement, he would not be required by law to do or refrain from doing; or (d) to do any act or thing that would, but for such power or right, be a breach of the legal rights of any person; or (e) to make any investigation or inquiry into the rights, powers, privileges, duties, or liabilities of any person: ‘Statutory power of decision’ means a power or right conferred by or under any Act,

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or by or under the constitution or other instrument of incorporation, rules, or bylaws of any body corporate, to make a decision deciding or prescribing or affecting — (a) The rights, powers, privileges, immunities, duties, or liabilities of any person; or (b) The eligibility of any person to receive, or to continue to receive a benefit or licence, whether he is legally entitled to it or not.”

- 4 Judicature Amendment Act 1972, s 4.
- 5 In theory at least, proceedings for mandamus might also be available as an alternative to an application for review under the Judicature Amendment Act 1972, Part I.
- 6 Baalman, 2nd ed, 1974, pp 393–394; *Perpetual Executors and Trustees Association of Australia Ltd v Hosken* (1912) 14 CLR 286 [CB](#).
- 7 *CPR v District Registrar of Dauphin Land Titles Office* (1956) 4 DLR (2d) 518.
- 8 *Re Tanner, Re Lyndon (Heretaunga Block Case)* (1887) NZLR 5(SC) 102.
- 9 *Re Tanner, Re Lyndon (Heretaunga Block Case)* (1887) NZLR 5(SC) 102 at 106.
- 10 It was held that the procedure under (now) the Land Transfer Act 1952, ss 216 and 217, could be used to have a Registrar’s caveat removed.
- 11 *Main v District Land Registrar* [\[1939\] NZLR 220](#) [CB](#).
- 12 *Fairmaid v Otago District Land Registrar* [\[1952\] NZLR 782](#) [CB](#).
- 13 *Auckland District Law Society v District Land Registrar* [\[1980\] 2 NZLR 697](#) [CB](#).
- 14 *Auckland District Law Society v District Land Registrar* [\[1980\] 2 NZLR 697](#) [CB](#) at 700–701, applying *Perpetual Executors and Trustees Association of Australia Ltd v Hosken* (1912) 14 CLR 286 [CB](#).

8.044 Special case submitted by the Registrar-General to the Court of Appeal

Under the provisions of s 222 of the Land Transfer Act 1952 the Registrar-General may, by special case, submit for the decision of the Court of Appeal any question arising under that Act ¹ which appears to her or him to require such a decision. ² Although the Court of Appeal is required by the section to give its judgment “as if the question had been raised in due form upon an appeal from the decision of the High Court”, it may be that such a decision is not a binding precedent. Edwards J has commented: ³

It appears to me ... that the opinion of the Court so obtained, with respect to matters which affect private rights, and without hearing the persons interested, can be looked upon as no more than a series of rules to guide the Registrar-General and his officers in the discharge of their duties, and that such opinion will not bind this Court, or the [then] Supreme Court, in any litigious proceeding in which any of these questions may be raised by persons actually interested in their determination.


In a special case stated under s 222 the Court does not necessarily have the benefit of hearing argument by opposing counsel and, as Lord Goddard CJ said in *Nicholas v Penny* : ⁴




... [A] case which has not been argued on both sides has nothing like the weight of authority of one which has been fully argued.

¹ Or under any “former Land Transfer Act”, a term which is defined in the Land Transfer Act 1952, s 2.

² See, for example, *Ex parte Locke* (1877) 4 NZ Jur (NS) SC 15 (under the Land Transfer Act 1870, s 116, which was then in force, the District Land Registrar stated a case for the opinion of the Supreme Court); *Re Andreas Petersen* [\(1890\) 9 NZLR 538](#) [CB](#) (CA); *Re the Land Transfer Act 1885 and the Public Works Act 1903* [\(1905\) 25](#)

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[NZLR 385](#)  (CA). See also Baalman, 2nd ed, 1974, pp 397-398, for a discussion of the corresponding provision in the New South Wales Torrens statute, which has been extensively used.

- 3 *Re the Land Transfer Act 1885 and the Public Works Act 1903* [\(1905\) 25 NZLR 385](#)  at 414 (CA) in a dissenting judgment.
- 4 *Nicholas v Penny* [\[1950\] 2 KB 466](#)  at 472. See also the report sub nom *Penny v Nicholas* in [\[1950\] 2 All ER 89](#)  at 91 where Lord Goddard CJ is reported as saying: “We can, however, always differ from a case on the ground that it has not been argued on both sides”.