

# Torrens *talk*

Survey and Title Information for Land Professionals

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## Enter *Landonline* Stage Two

Before its third reading on 14 May 2002, the Land Transfer and Cadastral Survey Legislation Bill was divided into two. The **registration** elements of the Bill have been enacted as the **Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002** (CRELA) and the **survey** elements as the **Cadastral Survey Act 2002**.

### Effective dates for CRELA

The majority of CRELA came into force on 1 June 2002.

- Part 1 addresses commencement, purposes and interpretation.
- Part 2 repeals and re-enacts, with amendments, the provisions of the Land Transfer (Automation) Amendment Act 1998.
- Part 3 and Schedules 1 and 2 amend the Land Transfer Act 1952 ("the principal Act").
- Part 3 and Schedule 3 amend the Deeds Registration Act 1908.
- Part 3 and Schedule 4 amend certain provisions in other enactments.

Provisions relating to:

- prescribing instruments available for adoption by other enactments
- fees or charges, and
- making regulations

came into force on 17 May 2002.

Many of the substantive repeals of, amendments to, and substitution of provisions in, the principal Act are to come into force on a date, or dates, to be appointed by Order in Council. They deal with:

- **transfers**
- the creation, variation, and surrender of

**easements**, the rights and powers implied in them, and the removal from the register of easements and *profits à prendre*

- the form, variation of terms, variation of priority, and discharge of **mortgages**
- the form, registration, variation, and surrender of **leases**
- **caveats**, the effect and early lapse of caveats against dealing, notice by the Registrar-General of Land (RGL), second caveats, RGL's powers, and caveats in respect of applications under Part 12 (compulsory registration of titles) of the principal Act
- the execution, approval and content of **paper instruments**
- **deposit documents**, and
- transitional provisions relating to **easements** and **landbrokers**.

### Purposes

The purposes of the new Act are to enable the preparation and registration of instruments and dealings, and the recording and storage of registered instruments, to be carried out electronically, and to provide for the more efficient operation of the principal Act. Dealings and registration are to be carried out in ways which preserve the integrity and underlying principles and purposes of the principal Act.

### The Land Transfer (Automation) Act 1998

Part 2 of CRELA re-enacts provisions of the Land Transfer (Automation) Act 1998 and introduces new provisions to support **Landonline** Stage Two.

Cont. Page 3



Enter *Landonline* Stage Two 1

Survey Information 2

Cadastral Survey Guidelines 2

IN THIS ISSUE

# Survey Information

## Contents

Enter **Landonline** Stage Two 1

**SURVEY INFORMATION** 2  
Cadastral Survey Guidelines



*This section contains information on the new Cadastral Survey Act, as well as information on the revision of Cadastral Survey Guidelines.*

**Tony Bevin**  
Surveyor-General

### Survey Information

The Cadastral Survey Act came into effect on 1 June 2002. It repeals the Survey Act 1986 and makes a number of significant changes to the regulation of the survey system and cadastral surveying.

It defines the respective responsibilities of the Surveyor-General and Chief Executive of Land Information New Zealand for the survey system.

It also establishes a Cadastral Surveyors Licensing Board to replace the current Survey Board and replaces registration with licensing. There are transitional provisions for registered surveyors to become licensed surveyors.

The Act provides for the Surveyor-General to make Rules for the conduct of cadastral surveying, instead of Regulations. The existing Survey Regulations will become the new Surveyor-General Rules, and the Cadastral Survey Guidelines will continue to apply.

Accreditation is discontinued, and the limited examination fee will apply to all cadastral survey data sets (CSDs).

The Surveyor-General is required to audit surveyors' compliance with the standards for cadastral surveys and to report these to the Cadastral Surveyors Licensing Board. The current auditing regime for accreditation is being reviewed to take into account the new legislation, to provide a basis for the audit programme.

The Act also provides authority for the Surveyor-General to introduce standards for

digital lodgement and processing of CSDs in **Landonline**, and these standards will be promulgated shortly.

A more detailed explanation of the changes has been sent to all surveyors with the New Zealand Institute of Surveyors publication *Newslink*, and it is also available on the 'Survey System' section of the LINZ website [www.linz.govt.nz](http://www.linz.govt.nz)

Overall, the changes made by the Act should enable a more flexible and effective means of regulating and managing the survey system and carrying out surveys.

### Cadastral Survey Guidelines

Current Cadastral Survey Guidelines have been updated and are available under 'Cadastral Survey Guidelines' on the 'Survey System Publications' section of the LINZ website [www.linz.govt.nz](http://www.linz.govt.nz). Most of the changes are to clarify existing requirements and help achieve more consistent interpretation of these requirements.

The most significant change that has occurred is the update of all the sample plans (CSDs) together with an introduction of a GPS plan (CSD). Other changes are minor and it is suggested you view the change log to draw these to your focus. They are in Chapters 1,3,4,5,6 (including sample plans) and 11.

The Surveyor-General's letter to all surveyors about the recent changes to survey legislation can also be viewed on this section of the LINZ website.

Check out the latest quarterly statistics for activity volumes and performance information on the Titles and Records section of the LINZ website [www.linz.govt.nz](http://www.linz.govt.nz)

Did you know you can access back issues of *Torrenstalk* on the Internet? Check out the Publications section of the LINZ website [www.linz.govt.nz](http://www.linz.govt.nz)

## Enter *Landonline* Stage Two continued from page 1

### **Registration media**

Section 5 empowers the RGL to authorise the registration or deposit of instruments, and the recording of information, in any medium.

### **Computer registers**

The system to support *Landonline* Stage Two will rely on computer registers. These are dealt with in CRELA sections 7 to 14, which empower the RGL to create:

- computer freehold registers for freehold land
- computer interest registers for leases, other interests less than freehold, proclamations, or other matters embodied in a register
- computer unit title registers for freehold or leasehold strata estates under the Unit Titles Act 1972, and
- composite computer registers, forming any combination of the above.

Computer registers may be held or stored in any medium or combination of media and must contain:

- a unique identifier (a combination of letters and/or numbers, which identifies only that register)
- a description of the land or interest or, in the case of a unit title register, the number of the principal unit, the letter of any accessory unit and of any future development unit on the unit title plan
- a reference to the instrument creating an interest
- the date of registration of an interest
- other unique identifiers for each instrument relevant to the land or interest
- the name of the registered proprietor and any restriction on the proprietor's legal capacity, known to the RGL
- in the case of a unit title register, a statement that the stratum estate is subject to all matters on the register, the unit plan and the supplementary record sheet, and
- any other matters required by statute or regulation, or considered appropriate by the RGL.

### **Electronic compliance with manual registration requirements**

Upon an application, request or direction to make an entry in the register, or to issue a certificate of title under any enactment, the RGL may make that entry in a computer register, and/or create a computer register and issue a certificate of title under section 15. Any other relevant certificate of title must be cancelled, unless the RGL records in the new

title his or her dispensation with its production.

### **Definitive instruments**

Section 27 empowers the RGL to determine any medium, into which he may copy instruments and documents, before returning them to the person who presented them. The RGL's copy or image is taken to be the definitive form of the instrument or document.

### **Access to information**

The principal Act provides for anyone to inspect the register during prescribed hours. This will not apply to computer registers. Instead, CRELA section 33 provides a right for any person to receive a copy of an instrument, and a power for the RGL to furnish a search copy under section 45A of the principal Act, or a copy under any other Act.

The section also allows Land Information New Zealand (LINZ) to determine the form in which copies will be provided. *Landonline* enables customers to access copies online, rather than receiving paper copies.

### **Evidence**

As long as they appear unaltered, certificates of title to non-electronic transactions land and certified computer printouts of computer registers must be received in a court as evidence of the information they contain, and of the recording of that information on the register.

Such documents are conclusive evidence of all interests and other matters on the register.

### **Landonline Stage Two**

In addition to the current search facility, *Landonline* Stage Two will enable the electronic lodgement of survey and title data in digital form, and electronic title transactions.

### **Electronic workspace facilities**

Electronic transactions will require preparation and submission in an electronic workspace, approved by the RGL under CRELA section 22, which also allows LINZ to provide such facilities.

The facilities must ensure that instruments prepared through them comply with the statutory requirements and allow the RGL to exercise his statutory functions. If they fail to do so, the RGL may withdraw his approval.

### **Electronic transactions land**

Land subject to CRELA becomes, or ceases to be, 'electronic transactions land' if the RGL makes an entry to that effect on a computer

register or a declaration in the Gazette, under section 25.

He will declare *all* land held in computer registers to be electronic transactions land in time for the pilot for *Landonline* Stage Two, which is scheduled to occur later this year.

Section 18 forbids the RGL to issue a certificate of title for electronic transactions land and cancels certificates of title of land referred to in the *Gazette* declaration, on the date on which the declaration takes effect.

Section 19 permits the creation of computer registers and amendments to them, in satisfaction of any statutory requirement to issue or cancel a certificate of title, or make any entry in a register.

That section and section 20 also provide for references relating to paper records to be read as references relating to computer registers, and for the exclusion of requirements relating to duplicate or triplicate documents, which will be unnecessary in the electronic environment.

The effect is to remove the requirement for the issue and noting of duplicate titles. As it is intended that all land shall be declared electronic transactions land, no further duplicate paper titles will be issued once Stage Two is implemented.

This is a key change to conveyancing practice and will bring about some changes in settlement procedures. LINZ has consulted on these with the New Zealand Law Society and the banking and financial services sectors. New practice guidelines are being developed.

The major change for registration of title will be the simultaneous submission and registration of an electronic transaction. This advance represents a significant improvement in the time involved in the traditional paper-based processes for document preparation, lodgement and registration.

Paper-based processes will be retained for transactions, which will not qualify for electronic lodgement. The instruments concerned will be scanned into *Landonline* and stored in digital format, and the originals returned to the applicant. This has been the practice since the introduction of *Landonline*.

### **Scope of electronic lodgement**

Initially, electronic transactions will cater for transfers, mortgages and the full range of

## Enter *Landonline* Stage Two continued from page 3

discharges. The categories of instrument capable of electronic lodgement may be extended in future to cover more complex transactions. They will be specified in regulations.

### **Compulsory electronic lodgement**

Initially, electronic lodgement will be optional.

Section 24 CRELA provides that, if the Minister for Land Information is satisfied that an approved electronic workspace is available and that organisations representing conveyancers have been consulted, the Minister may recommend that the Governor-General make an Order in Council requiring electronic lodgement to be the only means of lodging specified classes of instrument.

### **Requirements for electronic instruments**

To comply with section 23, an electronic instrument must be:

- prepared in an electronic workspace
- in an acceptable form (as specified by the RGL under section 26)
- certified in accordance with section 164A of the principal Act, and
- otherwise in accordance with the requirements of the principal Act.

### **Certification regime**

The new sections 164A to 164E of the principal Act deal with the requirements and specifications for certification and their effects. They require electronic instruments to be accompanied by certifications, given by conveyancers, confirming that:

- the relevant parties have authorised the transaction
- they have taken reasonable steps to confirm the identity of those parties
- specified statutory requirements have been complied with, and
- supporting evidence has been retained.

Instruments certified in this manner are deemed to have been made in writing and have the same effect as if executed by the parties to the transaction.

### **Audit and sanctions**

Section 164C requires conveyancers to retain evidence supporting their certifications for the period prescribed by regulations.

For audit purposes, the RGL has authority to require production of supporting evidence or a statutory declaration, confirming any further information required by him, or the

circumstances surrounding an electronic transaction.

Section 22(3) CRELA permits the RGL also to monitor activities in any electronic workspace, to detect fraud or improper dealings.

Sanctions for incorrect or fraudulent certifications include barring a conveyancer from, or restricting his or her access to, **Landonline**.

The amended section 225 of the principal Act prescribes a criminal offence, punishable by a term of imprisonment not exceeding three years, on conviction on indictment, for the fraudulent procurement, or assisting in the fraudulent procurement, or being privy to the fraudulent procurement of the recording, lodgement, presentation, or registration of any information, instrument, matter or thing under CRELA.

The amended section 226 of the principal Act prescribes criminal offences, punishable by a term of imprisonment not exceeding four years, for (among others):

- giving a fraudulent certificate under section 164A
- fraudulently copying, imaging, recording, or registering any instrument or other document or information under CRELA, or doing, or omitting to do, any act for those purposes, and
- without the RGL's authority, connecting **Landonline** to any other computer, or to any terminal or other installation connected to or forming part of any other computer; or operating, or attempting to operate **Landonline**, or altering **Landonline**, or its programming, or altering any **Landonline** record.

### **Conveyancers**

The principal Act uses the term 'conveyancer' to describe practitioners who are empowered to conduct electronic transactions. The terminology is adopted from that of forthcoming legislation, intended to widen the boundaries of those permitted to carry out conveyancing transactions.

Conveyancers may be either persons holding a current practising certificate under section 57 of the Law Practitioners Act 1957, or landbrokers licensed by the RGL under section 229 of the principal Act.

The provisions in the principal Act relating to landbrokers (sections 229 to 234 and Schedule 6) will be repealed by Order in Council. Section 67 CRELA preserves the position of landbrokers who hold a licence immediately before the repeal comes into effect, by applying the landbroker provisions to them until they are eligible to become licensed conveyancers under the new legislation.

### **Amendments to the principal Act**

#### **General**

Replacement provisions have been inserted to standardise the information to be contained in instruments, and who must execute them. There will be a greater consistency between the forms of transfer, easement, mortgage and lease.

#### **Easements**

There are significant changes in respect of easement, including:

- new provisions for the removal of redundant easements and *profits à prendre*, under section 70
- easement certificate replaced by new 'easement instrument' for creation and surrender of easements, under section 90A. Transitional provisions continue to apply the former sections 90A to 90F to any easement certificate registered or executed before 1 June 2002, and deem easements in certificates still uncreated to be created, on the coming into force of CRELA section 66
- provision for creation and surrender of easements upon deposit of plan (section 90B)
- provisions in sections 90D and 236(1)(g) for regulations to specify rights and powers to be implied in easements. Regulations will bring in updated forms of implied rights to replace the Seventh Schedule to the principal Act, though not the Ninth Schedule to the Property Law Act 1952 (PLA), and
- allowing easements to be created, even where the dominant and servient tenements are in common ownership (section 90E).

#### **Land covenants**

Section 90F permits land covenants falling within the ambit of section 126A PLA to be created by transfer or covenant instrument, in the same manner as easements.

Section 126A of the PLA has been modified to enable land covenants to be noted on the title

## Enter *Landonline* Stage Two continued from page 4

for the dominant land. This is one of several amendments set out in Schedule 4 of CRELA, which came into force on 1 June 2002.

From this date, all land covenants will be memorialised accordingly. The following points should be noted:

- instruments containing land covenants should identify the dominant tenement(s) by reference to the relevant computer register(s)
- the registered proprietor(s) of the dominant tenement(s) must be a party to the transaction (eg see *Butterworths, Land Titles New Zealand, Forms and Practice*, Precedent 24, Page 149)
- the register for the dominant tenement may be noted whether or not the duplicate title is produced (updated duplicates will not be issued unless the outstanding copies are produced)
- the standard memorial ('Land Covenant in Transfer No') will be used on both the dominant and servient titles
- the \$5 multi-title fee is payable in respect of each dominant title. (This has been waived for land covenants on a transitional basis but payment of this fee will be required from 1 August 2002).

### **Caveats**

Significant changes to the provisions governing caveats include:

- removal of the requirement that the address for service of notice or proceedings linked with the caveat be in the same land registration district
- a list, in the amended section 141(5), of the types of transactions that would not be prevented by a caveat
- a new provision, under section 145A, for triggering the lapsing process without lodging a dealing, and
- some adjustment to the second caveat provisions to clarify the verification, which the RGL is obliged to undertake.

### **Deposit documents**

A new form of instrument called a 'deposit document' is introduced by section 167A. It may be used in conjunction with digital plans for:

- confirming compliance with Resource Management Act requirements
- other consents, or
- specifying easements or covenants to be created upon deposit of the plan.

### **Execution requirements**

Sections 157 to 162 of the principal Act are to be repealed on a date to be appointed by Order in Council. The new s157 allows regulations to prescribe execution, witnessing and attestation requirements relating to paper instruments. Existing requirements will be transferred to the regulations and will remain largely unchanged for the time being.

### **Paper forms**

The use of paper forms will continue for transactions which cannot be effected electronically. New provisions inserted into the principal Act relating to transfers, easements, leases, mortgages and caveats require modifications to many current forms and the introduction of some new ones. The new forms will follow the familiar 'panel' format and be prescribed in a schedule to regulations. If a form is not prescribed in that way, the new section 238(2) empowers the RGL to specify it.

Existing approved forms may continue to be used despite these changes.

### **Notices and notice periods**

The provisions requiring notices to be sent by registered post have been removed and new generic notice provisions are set out in the new sections 240B to 240D. They specify:

- various modes of delivery, including electronic options
- options for giving notice to the RGL, and
- deeming provision for date of delivery.

Notice periods (including lapsing timeframes for caveats against dealings) have been removed from the principal Act and are to be prescribed by regulations made under section 236(1)(b). These changes are to be brought into force by Order in Council later in 2002. Existing requirements will continue to apply in the meantime.

### **Lodgement provisions for paper instruments**

Section 41 of CRELA inserts a new section 47 in the principal Act. This consolidates existing provisions governing the presentation of instruments in paper form, provides for a new 'drop box' option (referred to in section 47(1)(b) as a 'secure facility'), and gives the RGL authority to designate offices for lodgement purposes.

For the time being, LINZ will continue to provide paper lodgement services (counter and postal only) on a regional basis. A notice has been published in the Gazette designating

each LINZ office accordingly (see *New Zealand Gazette*, 30/5/2002, No. 55, p. 1506).

It should also be noted that the prohibition on lodging caveats and notices of claim by post has been removed. This took effect on 1 June 2002.

The priority rules governing these matters are set out in section 47(4) & (5). As with all postal lodgements, priority is deferred to the following business day, but takes effect before any other transaction lodged on that day in relation to the same land. In addition, special provision is made for caveats and notices of claim so that anything else lodged via the post on the same day takes precedence."

### **Regulations**

The power for the Governor-General to make regulations by Order in Council has been widened considerably from that previously contained in the principal Act.

The main additions include the regulation, prescription or specification of:

- the classes of instrument capable of being electronic instruments
- how instruments must refer to the register
- the form of certification under section 164A, certifiers' authority to act and time periods for which they must retain evidence
- classes, properties and forms of paper instrument, and their execution, witnessing or attestation
- classes of easements, and rights and powers to be implied in them
- forms of notices and consents
- periods of time for notices and other matters
- instruments available for adoption by other enactments, and
- the practice and conduct of business under the principal Act.

The passage of time and experience of operating the new system may reveal a need for amendments or procedural changes. The widening of the regulatory powers should prove a valuable means of change.

However, their immediate object is to enable the setting up of the machinery to support the purposes of the principal Act and of CRELA. The regulations to do so will replace the Land Transfer Regulations 1966 and will be made in time for the pilot for **Landonline** Stage Two.

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### Address

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PO Box 5501  
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