

LAW COMMISSION REPORT - A NEW LAND TRANSFER ACT

Proposal

1. The Law Commission report *A New Land Transfer Act* (NZLC 116) was tabled in Parliament on 20 July 2010. This paper outlines the recommendations contained in that report and, in relation to one recommendation, proposes a slightly modified approach sought by agencies. The paper seeks Cabinet agreement to the recommendations and the issuing of drafting instructions to the Parliamentary Counsel Office to prepare a Bill to implement the recommendations.

Executive Summary

2. The legislation governing land transfer registration and transactions is outdated. The primary statute (Land Transfer Act 1952) is almost 60 years old and much of it is based on legislation dating back over a hundred years. It is focussed on paper-based land registration when in fact the registration system is almost exclusively electronic.
3. The Law Commission report *A New Land Transfer Act* makes 25 recommendations, and includes a draft Land Transfer Bill, intended to modernise, simplify and consolidate the land transfer legislation for enhanced clarity and accessibility. The overall effect would be to retain the Torrens system of land registration subject to some changes to ensure that people continue to be secure in their property ownership. These include a limited judicial discretion to order alteration of the register in cases of “manifest injustice” and requiring mortgagees to take reasonable steps to verify the identity of mortgagors.
4. I propose that Cabinet accept all the Commission’s recommendations (a modification is proposed to one recommendation) and approve the issuing of drafting instructions for a Bill, based on the Commission’s draft Land Transfer Bill, to implement the recommendations.

Background

5. The report *A New Land Transfer Act* (“the report”) documents the comprehensive review of the Land Transfer Act 1952 undertaken by the Law Commission in conjunction with Land Information New Zealand (“LINZ”) and with input from the Ministry of Justice.

6. This is a review of great significance. A land transfer system that provides people and businesses with secure property rights is a prerequisite for a prosperous, sustainable economy. It is still true that for many New Zealanders, buying a home is the biggest investment they will ever make.
7. The Land Transfer Act (“the LTA”) is the primary land-holding statute. It provides a system under which most of the privately owned (and some publicly owned) land in New Zealand, including some Māori land under Te Ture Whenua Māori Act 1993, is held and transactions are recorded. It is nearly 60 years old and much of it is based on the Land Transfer Act 1885.
8. While some provisions in the LTA have remained unchanged for over a century, there are two stand alone amendment Acts: the Land Transfer Amendment Act 1963 and the Land Transfer (Computer Registration and Electronic Lodgment) Amendment Act 2002. The first of these sets out a procedure to claim land based on continuous possession for more than 20 years. The second provides for the computerisation of the land register and for electronic land transfer transactions.
9. The report considers the above legislation and identifies a number of problems. It reviews case law and considers overseas legislation in its examination of issues related to these problems. The Report sets out twenty five recommendations and a draft Land Transfer Bill, developed by the Commission in conjunction with LINZ, to address the problems identified in the report.

Comment

Legislative framework

10. The key problem identified in the report is that the LTA is out of date. It has not kept pace with technological and other changes that have occurred since its enactment in 1952. It is focussed on paper-based land registration when in fact the registration system is now almost exclusively electronic. While workable, its two stand alone amendment acts are cumbersome and have resulted in a legislative framework that is unwieldy and difficult to navigate.
11. The Commission’s draft Land Transfer Bill set out in Part 3 of the report is intended to modernise, simplify and consolidate the land transfer legislation. The opportunity was taken to remove out-dated provisions, anomalies and unclear provisions, and re-enact provisions to make them clearer, more workable and more consistent with practice. The new provisions should reduce uncertainty.
12. I agree that it is desirable, for enhanced clarity, certainty and accessibility, to replace the outdated legislation with a single statute that is focussed on electronic registration and consistent with principles of clear drafting. I therefore propose that all three statutes should be repealed and replaced by a new Land Transfer Act.

Retention of the Torrens System

13. The Torrens system of registration of title to land is the basis of the LTA. It was introduced over a hundred years ago to simplify and minimise the costs of transferring interests in land and to provide security of title.
14. Under this system, the state maintains a central register of land title holdings. This register is deemed to accurately reflect the current facts about title so that those wanting to deal in the land need not look beyond it to establish ownership. The person whose name is recorded on the register holds state-guaranteed title to the property in all but the most exceptional circumstances.
15. A person deprived of land, or any interest or estate in land, by any error or omission in relation to any entry in the register may bring an action against the Crown for the recovery of damages. However, they cannot bring an action for possession or for the recovery of that land, estate or interest.
16. The Commission considered a sizeable body of academic and judicial commentary, and early Parliamentary debates, on the Torrens system. It has distilled from those authorities the following core principles:
 - title to land should be acquired by registration;
 - title should be, as far as possible, secure and indefeasible (indefeasibility of title is explained in paragraph 19 below);
 - a purchaser should not need to go behind the register to investigate the root of title;
 - the register should reflect as accurately as possible the true state of title to land so that “persons who propose to deal with land can discover all the facts relative to the title”;
 - the system for transfer of land should be efficient, effective and simple; and
 - there should be adequate compensation where an innocent owner has suffered loss due to the operation of the system.
17. As the system has proved effective in simplifying and minimising the costs of transferring interests in land, I consider that the Torrens system should be retained and that its core principles, as articulated by the Commission, should underpin the new Land Transfer Act.
18. I share the Commission’s view however that some changes in relation to two aspects of the Torrens system - indefeasibility of title and compensation – are desirable. Each of these is addressed below.

Indefeasibility of title

Statutory definitions

19. Put simply, indefeasibility of title means that the registered proprietor's title cannot be challenged or set aside. While the concept of indefeasibility lies at the very heart of the Torrens system, and is not easily understood, I think it neither necessary nor desirable to define the term "indefeasibility" in legislation. Indefeasibility is not defined in the LTA. Instead, the LTA states that registered title is paramount subject to exceptions and limitations. The problem with this approach is that the exceptions and limitations are not found in one section of the Act but are instead located throughout.
20. To enhance clarity and ease of reference, the Commission's draft Bill follows the same approach but locates the exceptions and limitations in the same section. I consider that this measure is sufficient to make the concept of indefeasibility of title more easily understood.
21. Fraud, which is one of the key exceptions to indefeasibility, is not defined in the LTA. To improve certainty and reduce litigation the new Act will clarify what type of fraud will defeat a registered owner's title. The definition should reflect the leading cases and should also be sufficiently flexible to future proof the legislation and allow for judicial development of the concept of land transfer fraud.
22. The Commission considered whether the fraud exception to indefeasibility should apply to "supervening fraud" (fraud in relation to an unregistered interest taking place entirely after registration) and concluded that it should not. I agree with that conclusion – where appropriate, supervening fraud should be dealt with by an in personam claim against the registered owner. These are claims that are based on an owner's personal obligations, rather than the quality of their title. I also agree that the court's "in personam" jurisdiction should only be referred to in the new Act to clarify that it is not affected by indefeasibility of title.

Immediate indefeasibility

23. The current law provides for immediate indefeasibility of title - legal estate or interest in the land passes as soon as the instrument that creates the interest is registered.
24. The advantage of this system is transactional ease for those wanting to deal in the land. Prospective purchasers can rely on the register and do not have to further investigate ownership or other interests affecting the land. The disadvantage is that on registration, the purchaser acquires a good title and the previous registered owner loses their property even where the transaction would otherwise have been void. For example, where the transfer has occurred through third party fraud or other illegality.

25. A tension thus exists between the competing aims of transactional ease (for the purchaser) and security of ownership (for the previous registered owner). Four options were identified for balancing these interests:
- a. immediate indefeasibility, where registration gives good title to a bona fide purchaser immediately whether or not the transfer instrument is void or voidable;
 - b. immediate indefeasibility with limited judicial discretion to order alteration of the register;
 - c. deferred indefeasibility, where the original owner can defeat the title of a purchaser or mortgagee registered (even if innocently) through a forged or otherwise invalid instrument, but only until the land is on-sold to a bona fide purchaser;
 - d. immediate indefeasibility subject to statutory exceptions.
26. Immediate indefeasibility (option a) provides more transactional certainty and protection for purchasers than deferred indefeasibility and is closer to the Torrens concept of the conclusive register. However, immediate indefeasibility can have unfair results as it gives a purchaser good title even where a void transfer instrument is registered. There can be harsh consequences for an owner who is an innocent victim of third party fraud as they will lose their home to the registered purchaser even though they had no intention to transfer the property. This option was favoured by only a minority of submitters.
27. Option b would modify immediate indefeasibility by introducing a limited judicial discretion to order alteration of the register to avoid manifest injustice. This option would provide a fairer and more flexible approach and allow justice to be done in exceptional cases. In the above example, the court would have the power to order restoration of ownership to the previous registered owner.
28. Arguments for deferred indefeasibility (option c) include that restoring a title to the original owner in cases of third party fraud and compensating the new owner is usually fairer and cheaper. However, the Law Commission found that this option, which is applied in some Canadian provinces with some subtle differences, suffers from complexity and a consequent lack of clarity. Option d would involve setting out the exceptions to immediate indefeasibility in the new Act rather than leaving the court to exercise its discretion (with statutory guidance). This approach would not provide the flexibility of option b.
29. Option b strikes the appropriate balance between ease of transfer and security of ownership. Most submitters preferred this option. I therefore propose that immediate indefeasibility be retained and, in exceptional cases to avoid manifest injustice, the court should have a limited discretion to order the Registrar-General of Land ("the Registrar") to cancel the registration of a person as the owner of an estate or interest in land.

30. Having clarified what the position on indefeasibility should be for purchasers, I see no reason to treat volunteers (those who have acquired land for no consideration) any differently in this regard. The new Act should clarify that a volunteer should obtain a title that cannot be set aside subject only to the same exceptions that apply to a purchaser for value. I note that this position is consistent with leading New Zealand and Australian case law as well as some Australian state legislation.

Identity verification requirement

31. To address the problem of mortgage fraud, the Commission recommended introducing a requirement for the mortgagee to take reasonable steps to verify the identity of the mortgagor. If the mortgagee does not meet this requirement, and the mortgage is executed by a person without lawful authority, the title of the mortgagee and of any subsequent purchaser of the mortgage will be defeasible (able to be challenged or set aside). This measure is intended to further incentivise mortgagees to conduct the proper customer identity checks.
32. I support this recommendation. Mortgagees are already subject to customer identity verification requirements under other legislation, such as the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. It is intended that compliance with legislation of this type should (with modification if necessary) prove sufficient for mortgagees to meet the land transfer customer identity verification requirements. This measure is intended to minimise or avoid additional compliance costs. The Commission's draft Bill also contains safe harbour provisions under which mortgagees following identity verification standards produced by LINZ will be deemed to have taken "reasonable steps".

Compensation

33. The state compensation system that currently operates to compensate those who suffer loss due to the operation of the land transfer system is a key feature of the Torrens system. It should be retained subject to a few modifications.
34. I propose that there be compensation for loss through Registrar's error, the operation of the land registration system and having acted in reliance on a guaranteed search. This is broadly consistent with the current legislation although the guaranteed search periods have been shortened in the Commission's draft Land Transfer Bill to reflect the automated conveyancing environment.
35. A key change recommended by the Commission is for compensation to be generally based on the value of the land at the date when the claim is made subject to judicial discretion to determine the claim on some other basis where the value is inappropriate. Currently, compensation is based on land value at the date of loss. This is problematic because loss can take some time to discover and the compensation in that case would not cover increase in property value or improvements made to the property in the interim. I consider that this recommendation will address this problem.

36. Other modifications provide for reduced compensation where the claimant or the claimant's agent (excluding a solicitor or conveyancer) contributes to the loss and enable the Crown to take legal action to recover the amount of compensation paid for loss caused by a third party. It is intended that the Crown should, for example, have broad rights of subrogation against solicitors and conveyancers whose mistakes or negligence cause the loss for which compensation is sought.
37. The legislative provisions supporting the compensation regime require very precise drafting to ensure there is no doubt or ambiguity as to the scope of the Crown's liability or the extent of its rights of subrogation. Feedback from the Crown Law Office has highlighted that some minor refinements may be needed to the Commission's draft Land Transfer Bill. These matters will be addressed when drafting instructions are developed for Parliamentary Counsel.

Registrar's power to correct the register

38. The current legislation empowers the Registrar to correct the register in certain circumstances. However, the nature and scope of these powers is unclear as the relevant provisions in the LTA are confusing in their extent and application. To clarify the nature and scope of the Registrar's powers of correction, the new Act should provide for the Registrar to have an administrative power to correct the register, and that the power should only be available to:
- correct an error by the Registrar or a person acting under a delegation;
 - correct an error made by a person preparing a document or information for registration;
 - record a boundary change due to accretion or erosion;
 - give effect to a court order.
39. Except in the case of a court order, if the alteration materially affects an estate or interest, consent or notice must be given and no objections received. There should also be a general power to alter any information with the written consent of all affected parties.

Unregistered interests

40. The Commission identified three key problems related to unregistered interests:
- the register does not offer a complete picture of the interests relating to a piece of land;
 - unregistered interests can be overridden by other interests arising later in time;
 - confusion regarding the position of unregistered interests, particularly unregistrable interests.

41. The Commission decided against introducing a system to record unregistered interests in land because it considered that the problems above were not significant enough to warrant legislative intervention. Also, that the benefits would not outweigh the operational problems likely to result from this intervention. I agree that the new Act should not contain an interest recording system.

Caveats

42. A caveat¹ can be lodged by the holder of an unregistered interest to prevent others from dealing in the land. The Commission posed two key questions in relation to caveats. First, should any type of interest in land be able to be caveated or only registrable interests? Second, should registered owners be able to caveat their own titles?
43. In relation to the first question, the Commission recommended, and I agree, that all interests in land should be able to be caveated regardless of whether they can be registered. This position is consistent with judicial authority and is supported by all those who submitted on the issue.
44. In relation to the second question, the Commission proposed a slight extension to the current law, which is that registered owners should be able to caveat their own title but only where there is an additional interest. I share the Commission's view that this should be extended to include situations where the owner establishes, to the satisfaction of the Registrar-General, that there is a real risk of fraud.

Trusts

45. Currently, there is no provision for noting on the register whether registered owners are trustees. This practice of keeping trusts "off the register" is common to most Torrens system statutes. The Commission consulted on whether to maintain the status quo or introduce optional noting. It did not consult on mandatory noting because this would represent a major departure from the current regime and from other legislation in other Torrens jurisdictions. Optional noting is unlikely to be effective and could increase compliance costs and delays. I therefore propose to keep trusts off the register.

Encumbrances and covenants in gross

46. These proposals target the widespread practice of creating covenants in gross via encumbrances. Covenants in gross are enforceable agreements that impose obligations, conditions or restrictions in relation to land use, and where the benefit under the covenant attaches to a person or corporate entity rather than to other land. Encumbrances are conveyancing instruments that are similar to and recognised as mortgages under the LTA.
47. The problem is that the encumbrance mechanism is being used for a purpose for which it was not intended. This has resulted in:

¹ A caveat is a notice of claim to an interest in land that generally prevents subsequent registration of dealings against the affected title.

- Lack of clarity about the status and validity of the encumbrance mechanism when used for this purpose;
 - The covenant in gross is recognised and afforded the protection of registration (indefeasibility), which was not the intention of the legislation;
 - The encumbrances are treated as mortgages but there are problems in applying mortgage rules to an interest that is not really a mortgage.
48. This problem can best be resolved by amending the Property Law Act 2007 to enable covenants in gross to be noted on the title for the burdened land using the same mechanism as that for recording other land covenants. They should be notified on the record of title as interests that run with the land but should not be registered. The intention is that the covenants will run with the land and bind purchasers but they will not be indefeasible.
49. Covenants in gross should relate to the use of the land and the court should have a broad power to modify or remove those that do not. The intention is to limit the use of these covenants and to enable the court to modify or remove objectionable covenants in gross on the same basis that it can currently remove positive and restrictive covenants (that do relate to other land). It is also proposed to extend those grounds of removal or modification to include where the covenants are contrary to public policy or unjust or inequitable.
50. Finally, to avoid encumbrances being used for purposes other than that for which they were originally intended, I propose the prohibition of the registration of encumbrances where their primary purpose is to secure collateral contracts. Mortgages securing guarantees will still be able to be registered and the proposed legislation will give effect to this policy intent by setting out separate definitions for “mortgage” and “encumbrance”.

Overriding statutes

51. The Commission recommended a number of changes to address concerns about the proliferation of statutory rights, charges and interests in land that override the LTA. Those dealing in land may not always be aware of the existence of these statutory provisions and how they affect title to land. These interests may undermine the integrity and accuracy of the register and the security of a registered owner’s title.
52. The new Act should specify that registered title can be limited by overriding interests in other statutes. This will at least signal to prospective purchasers that there are other statutory interests that may affect title to the land.
53. It is desirable that government agencies take a uniform approach to creating interests in land so I propose that LINZ and the Ministry of Justice prepare guidelines for agencies developing land-related legislation to consider. This will make them aware early on of the interface with the new Act. There should also be a related section added to the Legislation Advisory Committee Guidelines.

Registration of Maori land

54. The Commission recommended that “there should be an in-depth review into the registration of Maori Land”.
55. The intention is to address conceptual and administrative problems regarding the interface between the Land Transfer Act and Te Ture Whenua Maori Act 1993 (“TTWM”). The conceptual problem is whether the LTA should override TTWM. The administrative problems are inconsistencies between the Maori land records and general land registration systems.
56. In relation to the conceptual problem, the report notes that a number of submitters consider the interrelationship between the statutes to be unsatisfactory and worthy of review. It pays particular attention to the submission from the judges of the Maori Land Court, who submitted that TTWM should override the LTA. In relation to the administrative problems, the report notes the progress that has been made by LINZ and the Maori Land Court in reconciling the administrative inconsistencies.
57. In view of the progress made on the Maori Freehold Land Registration Project, an in-depth review to consider the administrative problems identified in the report may not be necessary. As a result of that project, completed in March this year, a large backlog of Maori Land Court orders has been presented to LINZ and registered. There is now a much clearer and more accurate record of Maori Freehold land under the Land Transfer system. LINZ and the Maori Land Court are working on further process improvements to ensure effective arrangements are in place for the ongoing registration of Maori Land Court orders and transactions affecting Maori Freehold land. There are also other initiatives currently being explored to address some of the related legislation issues that might impede registration and the interface between TTWM and the LTA by way of possible changes through the Maori Purposes Bill.
58. In my view, further work is required to better scope the size and nature of the problems relating to the registration of Maori land before committing resources to a review. I therefore propose that officials from LINZ, Te Puni Kokiri (“TPK”) and the Ministry of Justice (TPK lead) should further investigate the problems regarding Maori land registration identified by the Law Commission, in view of the work referred to above, and jointly-report back to the Minister of Maori Affairs, the Minister for Land Information and the Minister of Justice, by 30 June 2011 on what if any aspects of Maori land registration should be subject to review.
59. I propose that the Minister of Maori Affairs should, on behalf of the above group of Ministers, report to Cabinet by 30 November 2011 on whether any aspects of Maori land registration should be subject to review. If the view at that time is that a review should proceed, the report to Cabinet will also seek agreement to terms of reference and an indicative time line for the review.

Flat and Office Owning Companies

60. The current legislation includes provision for flat and office owning companies. These matters are dealt with in Part 7A of the Land Transfer Act 1952. Because this regime does not sit easily in this context, no equivalent provisions have been included in the draft Land Transfer Bill. The Commission instead suggests that these provisions should be dealt with by way of a separate act. I agree with this approach.

Consultation

61. The Ministry of Justice, Te Puni Kokiri, the Treasury, the Crown Law Office and the Law Commission were consulted on this paper. The Department of Prime Minister and Cabinet and the State Services Commission were informed of the content of this paper.

Financial implications

62. There are no financial implications associated with these proposals.

Human Rights

63. All of the proposals appear to be consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final determination as to the consistency of the proposals with the New Zealand Bill of Rights Act will only be possible once the legislation has been drafted.

Legislative implications

64. A draft Bill, based on the draft Land Transfer Bill produced by the Commission with input from LINZ, will be prepared by the Parliamentary Counsel Office to implement the recommendations in this paper agreed to by Cabinet. There is a Land Transfer Amendment Bill (category 5 priority - instructions to the Parliamentary Counsel Office to be provided in the year) in the 2010 Legislation Programme.

Regulatory impact analysis

65. A Regulatory Impact Statement (RIS) has been prepared by Land Information New Zealand officials and is attached to this paper. David Kelliher, a Senior Policy Analyst of Land Information New Zealand has reviewed the RIS statement prepared by Land Information New Zealand and associated supporting material. The reviewer considers that the information and analysis summarised in the RIS meets the regulatory impact analysis quality assurance criteria.
66. I have considered the analysis and advice of my officials, as summarised in the attached RIS, and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

- are required in the public interest;
- will deliver the highest net benefits of the practical options available
- are consistent with our commitments in the Government statement “Better Regulation, Less Regulation.”

Publicity

67. I propose that decisions taken by Cabinet on this paper should be publicly announced.

Recommendations

68. I recommend that the Committee:

1. **Note** that the Law Commission report *A New Land Transfer Act* identified a number of problems with the existing land transfer legislation and made recommendations primarily intended to simplify, clarify and update the law;
2. **Agree** to replace the Land Transfer Act 1952, the Land Transfer Amendment Act 1963 and the Land Transfer (Computer Registration and Electronic Lodgment) Amendment Act 2002 with a new Land Transfer Act that is focussed on electronic registration and consistent with principles of clear drafting;
3. **Agree** that the Torrens system of registration of title to land should be retained and that the new Act should be based on the following Torrens system principles:
 - title to land should be acquired by registration;
 - title should be, as far as possible, secure and indefeasible;
 - a purchaser should not need to go behind the register to investigate the root of title;
 - the register should reflect as accurately as possible the true state of title to land so that “persons who propose to deal with land can discover all the facts relative to the title”;
 - the system for transfer of land should be efficient, effective and simple; and
 - there should be adequate compensation where an innocent owner has suffered loss due to the operation of the register;
4. **Agree** that the new Act should not define indefeasibility but should state that registered title cannot be set aside, subject to exceptions and limitations;

5. **Agree** that the new Act should define “land transfer fraud” to incorporate the leading cases for both fraud against a previous registered proprietor and against an unregistered interest; to further clarify the definition of fraud against an unregistered interest; and to exclude “supervening fraud”;
6. **Agree** that the in personam jurisdiction should be referred to in the new Act only to clarify that it is not affected by indefeasibility of title;
7. **Agree** that the new Act should confirm the current system of immediate indefeasibility upon registration, but modify it by introducing judicial discretion as a means of avoiding manifest injustice in limited cases;
8. **Agree** that a volunteer should obtain a title that cannot be set aside subject only to the same exceptions that apply to a purchaser for value;
9. **Agree** that the title of a mortgagee and of any subsequent purchaser of the mortgage should be defeasible if the mortgagee fails to take reasonable steps to check the identity of the mortgagor and the mortgage was executed by a person without lawful authority;
10. **Agree** that the new Act should provide compensation for any loss caused by Registrar’s error; loss of land through the operation of the land transfer system; and loss after having relied on a guaranteed search;
11. **Agree** that compensation should generally be based on the value of the estate or interest as at the date on which the claim is made, but where this value is inappropriate the court should have discretion to determine the amount of compensation on a different basis;
12. **Agree** that the new Act should provide that compensation be reduced if a complainant or his or her agent (excluding a solicitor or conveyancer) contributes to the loss;
13. **Agree** that the Crown should have a right of subrogation where loss is caused by a third party;
14. **Agree** that the Registrar-General should have an administrative power to correct the register and that the power should only be available to:
 - correct an error by the Registrar or a person acting under a delegation;
 - correct an error made by a person preparing a document or information for registration;
 - record a boundary change due to accretion or erosion;
 - give effect to a court order;

15. **Agree** that except in the case of a court order, if the alteration materially affects an estate or interest, consent or notice must be given and no objections received;
16. **Agree** there should also be a general power to alter any information with the written consent of all affected parties;
17. **Agree** that the new Act should provide that a registered interest will defeat any unregistered interest, whether registrable or not, where there is no overriding statutory provision and the registered interest was not obtained through fraud;
18. **Agree** that the new Act should not contain an interest recording system;
19. **Agree** that any interest in land, registrable or not, should be able to be caveated;
20. **Agree** that a registered owner should be able to caveat his or her own title where there is an additional interest or where the Registrar-General is satisfied that there is a real risk of fraud;
21. **Agree** that the new Act should provide that no entry should be made on the register of any notice of trust, or if so entered, it should not be of any effect;
22. **Agree** that the Property Law Act 2007 should be amended to provide for covenants in gross;
23. **Agree** that covenants in gross should be treated in the same way as restrictive and positive covenants, that is, notified on the record of title as interests that run with the land; they should not be registered;
24. **Agree** that covenants in gross should relate to the use of the land and there should be a broad power for the court to modify or remove them;
25. **Agree** that encumbrances should no longer be able to be registered where their primary purpose is to secure collateral covenants;
26. **Agree** that the new Act should provide that registered title can be limited by “overriding interests” in other statutes;
27. **Direct** officials from Land Information New Zealand and the Ministry of Justice (Land Information New Zealand lead) to produce guidelines for agencies to consider when developing legislation that will create interests that affect title to land;
28. **Agree** that a section should be added to the Legislation Advisory Committee guidelines that sets out matters to be considered by agencies developing legislation that will create interests that affect title to land;
29. **Note** the Law Commission’s recommendation that there should be an in-depth review into the registration of Maori Land;

30. **Direct** officials from Te Puni Kokiri, Land Information New Zealand, and the Ministry of Justice (Te Puni Kokiri lead) to:
- (i) further investigate the problems regarding Maori land registration identified by the Law Commission, in view of work recently undertaken by Land Information New Zealand and the Maori Land Court and the progress of related initiatives such as the Maori Purposes Bill;
 - (ii) jointly-report back to the Minister of Maori Affairs, the Minister for Land Information and the Minister of Justice, by 30 June 2011 on what if any aspects of Maori land registration should be subject to review;
31. **Invite** the Minister of Maori Affairs on behalf of the above group of Ministers to report to Cabinet by 30 November 2011 on whether any aspects of Maori land registration should be subject to review and if so, to seek agreement to terms of reference and an indicative time line;
32. **Agree** that the regime for flat and office owning companies currently provided for in Part 7A of the Land Transfer Act 1952 should not be carried over to the new Land Transfer Act but should instead be provided for in a separate act;
33. **Agree** that a bill be drafted to implement the Law Commission's recommendations, that is based on the draft Land Transfer Bill prepared by the Law Commission with input from Land Information New Zealand and appended to the Report;
34. **Note** that a Land Transfer Amendment Bill has been included in the 2010 Legislation Programme with a category 5 priority;
35. **Invite** the Minister for Land Information to provide drafting instructions to Parliamentary Counsel for a Land Transfer Bill.

Hon Maurice Williamson
Minister for Land Information