

# Departmental Disclosure Statement

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Land Transfer Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Land Information New Zealand.

Land Information New Zealand certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

19 November 2015.

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## Part One: General Policy Statement

The Land Transfer Bill implements the recommendations from the Law Commission's 2010 report *A New Land Transfer Act*. The recommendations were aimed at modernising, simplifying and consolidating the land transfer legislation for enhanced clarity and accessibility.

New Zealand has a world-leading land title registration system that facilitates the sale, purchase, and development of property and ensures New Zealanders can have confidence in their property rights. The legislation that governs the system is, however, outdated.

The Land Transfer Act 1952 (the 1952 Act) has not kept pace with technological and other changes that have occurred since its enactment and nor is it future-proofed. It is focussed on paper-based land registration when in fact the registration system is now almost exclusively electronic. Land Transfer information in a new electronic system will be digital, interoperable and location-based. Survey and title data will be interoperable with other location-based data in the government's property and building sector.

While workable, the 1952 Act's two stand alone amendment acts (Land Transfer Amendment Act 1963 and Land Transfer Computer Registers and Electronic Lodgement Amendment Act 2002) are cumbersome and have resulted in a legislative framework that is unwieldy and difficult to navigate. For enhanced clarity and ease of access, the Bill will repeal all three statutes and replace them with a new Land Transfer Act.

The 1952 Act is based on the Torrens system of registration of title which was introduced over a hundred years ago to simplify and minimise the costs of transferring interests in land and to provide security of title.

The Bill retains the following core principles of the Torrens system:

- 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 system.

The Bill does, however, make changes in relation to two aspects of the Torrens system: indefeasibility of title and compensation.

In relation to indefeasibility, the Bill introduces a limited judicial discretion to order alteration of the register in situations where immediate indefeasibility would result in manifest injustice. The Bill also addresses the problem of mortgage fraud by introducing a requirement for the mortgagee or their agent to take reasonable steps to verify the identity of the mortgagor. If the mortgagee or their agent does not meet this requirement, and the mortgage is, through fraud, executed by a person without lawful authority, the title of the mortgagee and of any subsequent purchaser of the mortgage will be defeasible.

In relation to compensation, the Bill retains the state compensation system that currently operates to compensate those who suffer loss due to the operation of the land transfer system but makes a few modifications.

Compensation will be available 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 but the guaranteed search periods have been shortened to reflect the automated conveyancing environment.

The Bill also clarifies that:

- the amount required to compensate claimants fairly is the amount that would enable them to buy a comparable property;
- for mortgagees, compensation only extends to the value of the security and excludes any amount beyond that which might be owing under the mortgage.

Other modifications provide for reduced compensation where the claimant or the claimant's agent (excluding a solicitor or conveyancer) contributes to the loss. The Crown will also be able to take legal action to recover the amount of compensation paid for loss caused by a third party, and to join any proceedings that relate to the loss of an estate or interest in land.

Key measures aimed at enhancing clarity and certainty are—

- the introduction of a definition of fraud. Fraud is not defined in the 1952 Act, which has resulted in uncertainty and increased litigation;
- provisions clarifying that registered title can be limited by overriding interests in other statutes. There are many statutory rights, charges, and interests in land that override the 1952 Act. This measure will signal the existence of such provisions to prospective buyers who may otherwise be unaware of their existence;
- provisions clarifying the nature and scope of the Registrar's powers of correction. 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 1952 Act are confusing in their extent and application;
- removing an inconsistency under the existing legislation that protects administrators from personal liability in relation to positive, but not restrictive, covenants. The Bill will extend the protection to restrictive covenants;
- limiting the use and effect of covenants in gross for consistency with the original policy intent, by removing the protection of indefeasibility through registration and instead providing for covenants in gross to be noted on the title in the same way that other land covenants are.

The Bill also makes changes aimed at simplifying administration of the legislation and the land title registration system as follows:

- the 1952 Act and the Land Transfer Amendment Act 1963 are jointly administered by Land Information New Zealand and the Ministry of Justice and the Land Transfer (Computer Registers and Electronic Lodgement) Act 2002 is solely administered by Land Information New Zealand. The Bill provides for Land Information New Zealand to administer the new Land Transfer Act.

- the Bill repeals the Statutory Land Charges Registration Act 1928 and incorporates its provisions into the new Land Transfer Act to give the Registrar-General of Land more control over the whole regime of statutory land charges, which will in turn improve consistency and simplify administration. The change is purely administrative and does not change the law in regard to the effects of registration such as priority.
- a more streamlined process with less onerous notice requirements will apply when adjoining neighbours seek ownership of land that is in a limited title on the basis of adverse possession. This should reduce costs and speed up the process.

Finally, the Bill will improve the protection of privacy. It will clarify that the electronic register is a public register under the Privacy Act 1993 and is subject to the relevant privacy principles. The Bill will also extend the Registrar-General of Land's statutory powers to withhold an individual's personal information to protect his or her personal safety in specified circumstances.

#### *George Tanner QC and Warren Moyes*

Sadly, two outstanding public servants who were both instrumental in the development of the Bill have since passed away. The Law Commissioner responsible for the Commission's review of the 1952 Act was George Tanner QC, who became ill and later passed away following the publication of the report. The Commission's report included a bill drafted by Mr Tanner that formed the foundation of this the current Bill. This was the last complete draft Bill of a peerless drafter, gentleman, and colleague of those at the Law Commission. It says much about George that he spent the time between Christmas and New Year of 2010-2011 completing some of the provisions. He remains greatly missed.

Warren Moyes was also a true professional and a gentleman who had a long and distinguished career as the Wellington District Land Registrar and then latterly as a Senior Advisor in the Office of the Registrar-General of Land. Warren worked tirelessly on the Bill and the review that preceded it. Warren will be remembered for his contribution to the Torrens system in New Zealand, his extensive knowledge and expertise as a property lawyer, and the time he freely gave to the many people who sought his advice and assistance.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p><i>A New Land Transfer Act</i> (NZLC R116), New Zealand Law Commission, 20 July 2010.</p> <p>Accessible at:</p> <p><a href="http://www.lawcom.govt.nz/project/review-land-transfer-act-1952/publication/report/2010/new-land-transfer-act">http://www.lawcom.govt.nz/project/review-land-transfer-act-1952/publication/report/2010/new-land-transfer-act</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p><i>Regulatory Impact Statement: Law Commission Report – A New Land Transfer Act</i>, Land Information New Zealand, 20 October 2010.</p> <p><i>Regulatory Impact Statement: Land Transfer Bill – Minor Changes To 2010 Policy Decisions and Additional Policy Decisions</i>, Land Information New Zealand, 20 March 2015.</p> <p>Accessible at:</p> <p><a href="http://www.linz.govt.nz/bill-modernise-land-transfer-legislation">http://www.linz.govt.nz/bill-modernise-land-transfer-legislation</a></p> <p><a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>The regulatory impact statements identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>YES</b>
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Three minor, non-contentious policy proposals relating to the incorporation of existing legislation and the administration of the Act were incorporated into the Bill, following Cabinet approval.

See: EGI (12) 199 *Land Transfer Bill: Additional Policy Proposals*, September 14, 2012.

Accessible at: <http://www.linz.govt.nz/bill-modernise-land-transfer-legislation>

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
Analysis of potential costs and benefits is covered on pages 19-20 of the 2010 regulatory impact statement and pages 7-13 of the 2015 regulatory impact statement referenced in answer 2.3 above.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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No steps were taken in relation to determining consistency with New Zealand's international obligations because the provisions of the Bill do not affect New Zealand's international obligations, and are relevant only to domestic law.

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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LINZ considers that this Bill is consistent with the principles of the Treaty of Waitangi.

Consultation was undertaken with Te Puni Kōkiri and the Ministry of Justice to align this bill and the aims and objectives of Te Ture Whenua Māori Act 1993.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>NO</b>
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There are no implications arising from the Bill. Advice from the Ministry of Justice confirmed that the Bill is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
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The penalties in the Land Transfer Act 1952 (ss. 164(3), 225(1)(c)(d)) for offences related to fraudulent registration and making false statements are increased in this Bill (cls. 204-205).

The penalty for offences in relation to registration is increased from imprisonment for a term not exceeding 3 years or a fine not exceeding \$1,000, to imprisonment for a term not exceeding 7 years. The penalty for the offence of making a false statement is increased from a fine of \$100 to imprisonment for a term not exceeding three years.



<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
LINZ consulted with the Ministry of Justice on the initial policy proposals to adopt the Law Commission's recommended penalties. In response to concerns raised by the Ministry of Justice, the proposed penalty for making false statements was reduced to align it with similar penalties in other legislation.	

### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p>This Bill extends the Registrar-General of Land's discretion to either remove a person's name from the public register or to refuse to supply copies of instruments or records of title that include a person's name, where it would be prejudicial to the safety of that person or their family (cl. 39A). Formerly the Registrar-General of Land only had explicit authority to do so under s108 of the Domestic Violence Act 1995.</p> <p>The Bill also clarifies that the existing privacy provisions related to paper-based public registers also apply to electronic registers (cl. 8).</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Office of the Privacy Commissioner was consulted before these policy proposals were taken to Cabinet, and officials advised that they were comfortable with the proposals.</p> <p>Further input was sought from the Office of the Privacy Commissioner when drafting the relevant provisions of the Bill.</p>	

### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>There was extensive external consultation on the policy proposals. This consultation is outlined on pages 20 – 21 of the 2010 regulatory impact statement and page 13 of the 2015 regulatory impact statement referenced in answer 2.3 above.</p> <p>An exposure draft of the Bill was also released for targeted consultation with the legal profession and finance sector to test the workability of Bill's provisions. Input from that process was used to revise the Bill to make it more workable.</p> <p>Accessible at:  <a href="http://www.linz.govt.nz/exposure-draft-bill">http://www.linz.govt.nz/exposure-draft-bill</a></p>	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
The Bill carries over decision making powers related to property rights that exist under the current land transfer legislation.	

### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
The Bill creates regulation-making powers that are broadly consistent with those that apply under the existing land transfer legislation.	

#### **Any other unusual provisions or features**

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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