

# E-conveyancing in New Zealand: Progress to Date and Future Developments

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## **Introduction**

The use of information technology and online service channels has been a dominant theme in land registration circles for some decades now. After a long and relatively stable history of paper-based systems, computerisation has completely transformed the way in which land registries operate. In New Zealand, as in many other jurisdictions, this can be seen as part of a broader trend within government towards e-delivery of products and services.

Over the last ten years or so, with the proliferation of the internet, the focus has shifted from the development of computer-based registers to online delivery of title registration functions.

This paper outlines the steps the New Zealand Government has taken to provide a fully automated, online title registration system. While there is much that can be said about the technology aspects, this paper will mainly focus on the process changes for the registry and its customers, the involvement of conveyancing industry stakeholders, the legislative scheme and future developments.

## **Background**

### *The old paper-based system*

To provide some context for these developments, it is worth noting that New Zealand operated a paper-based land registration system up until the late 1990s.

The Torrens system of state guaranteed title by registration was adopted in the 1870s. Conversion from an earlier deeds-based system was completed by the 1950s. Land registration was for some time administered by the Land and Deeds Division of the Department of Justice.

The system was regionally based with a separate registry office located in each of twelve Land Registration Districts. The registry offices were overseen by legally qualified District Land Registrars, who exercised both managerial and technical functions. The day-to-day registration functions were undertaken by Assistant Land Registrars supported by other clerical staff. These positions were statutory in nature, deriving their authority directly from the Land Transfer legislation.

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### *Initial automation*

In 1996, a new government department called 'Land Information New Zealand' was established. This brought together a range of land-based functions including land registration and cadastral survey. It was recognised that these expanding paper-based systems were becoming increasingly cumbersome and would soon be incapable of meeting modern service level expectations. Automation of the land registration and survey functions was therefore a major strategic initiative for the new department.

The Land Transfer Act was amended in 1998<sup>2</sup> to allow for computerisation of the title registers and provide a more centralised organisational structure. The offices of District Land Registrar and Assistant Land Registrar were disestablished and statutory functions vested in the Registrar-General of Land. The number of offices was reduced from twelve to five and registry personnel exercised their functions under delegation.

A computerised land registration system, known as 'Landonline', was developed and rolled out over a period of several years. The system became fully operational upon completion of the conversion of existing paper-based registers in 2002. This transformed registry operations, allowing title information to be maintained electronically and made available to licensed customers online.

While these developments improved the efficiency of land registry operations and made records more accessible, the conveyancing process otherwise remained largely unchanged. Land Transfer instruments were still required to be prepared and presented to the registry offices in paper form.

Enabling conveyancers to register title transactions online was the next major step in Land Information New Zealand's automation programme. As this paper explains, these developments have meant significant changes for the conveyancing industry.

### *The NZ conveyancing environment*

Again by way of context, it is probably useful to make a few comments about the conveyancing environment in New Zealand.

Like many other jurisdictions, our conveyancing services market is highly regulated. Lawyers have had a virtual monopoly on conveyancing under the Law Practitioners Act 1982. There was once a licensing regime for non-lawyer 'Landbrokers' under the Land Transfer Act 1952, but those provisions are now repealed and only a handful of people are still authorised to practise on a transitional basis. New legislation that provides a more robust regulatory regime for non-lawyer conveyancers will come into force in mid 2008.<sup>3</sup> Private individuals may do their own conveyancing but this happens only rarely in practice.

In a conventional residential conveyancing transaction, the vendor and purchaser will each be represented by their own lawyer. If a mortgage is to be registered the mortgagee

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<sup>2</sup> Land Transfer (Automation) Amendment Act 1998 (NZ)

<sup>3</sup> Lawyers and Conveyancers Act 2006 (NZ)

bank will usually instruct the purchaser's solicitor to attend to the execution and registration of the mortgage documents. As a result, banks mostly operate via their customer's lawyer and only occasionally deal directly with the land registry for registration purposes. This can be contrasted with the approach in other jurisdictions where concerns about the potential conflict of interest would prevent the purchaser's lawyer acting in this dual capacity.

These days, most settlements are conducted remotely on the basis of faxed undertakings and confirmation of deposit of funds. The need for face-to-face interaction over conveyancing transactions is diminishing and therefore presents no real impediment to online registration.

### **An overview of the e-dealing system**

Land Information New Zealand has been operating an online registration system for routine title transactions since 2003. Called the 'e-dealing' system, this facility allows subscribers to submit transfers, mortgages and discharges of mortgage for registration in electronic form over the internet. New Zealand's approach is partly modelled on the 'E-Registration' system operating in Ontario, Canada.

The concept is relatively simple. Typically there will be two law firms involved: one acting on behalf of the vendor, the other on behalf of the purchaser. The dealing is set up and prepared online in a shared workspace. A law firm may assign access privileges to nominated personnel to undertake these preparatory steps. The transaction must be then be certified and digitally signed by an authorised conveyancer for each party.

Once settlement has occurred, the vendor's lawyer will release the dealing into the control of the purchaser's lawyer who may then submit it online for registration. Upon submission, provided it passes the necessary business rules, the transaction is registered automatically and the corresponding title is immediately updated with the new ownership details.

### **Legislative reform**

The Land Transfer Act 1952 (NZ) was amended in 2002<sup>4</sup> to pave the way for electronic registration. The key changes are summarised below.

#### *Abolition of Certificates of Title*

One major change was the abolition of duplicate certificates of title.<sup>5</sup> Since its inception, the paper-based land registration system had provided landowners with a certificate of title which mirrored the ownership details recorded in the register. It was necessary to produce this title document when registering transfers or other dealings with land. In the case of mortgaged land the certificate of title would invariably be held by the first mortgagee. Upon settlement of a sale and purchase, the certificate of title would be handed over from vendor to purchaser.

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<sup>4</sup> Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (NZ)

<sup>5</sup> s 18 Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002

Because settlement and registration could not take place without the certificate of title, it was seen as a particularly important feature of the conveyancing process. Changing this mindset was one of the key challenges in the move to online registration.

The reform process involved extensive consultation with the legal profession and banking industry. Essentially this meant demonstrating that electronic registration could operate more effectively and securely than the old system, without paper-based certificates of title. Not surprisingly, the possibility of fraud and the controls in place to manage these risks were major discussion points. Discussion also focussed on the benefits of eliminating the storage and retrieval costs associated with paper-based certificates of title.

Stakeholder support for these changes was ultimately obtained and, with the necessary legislative amendments in place, certificates of title were abolished late in 2002.

### *Provision for Electronic Instruments*

The legislation makes specific provision for instruments to be lodged in electronic form via an approved electronic workspace.<sup>6</sup> The details are prescribed by regulations which set out the classes of permitted instruments. At present this is limited to routine transactions, but the system will ultimately be expanded to cater for most transaction types.

Under delegated rule making powers the Registrar-General of Land may specify the form and necessary data elements for electronic instruments.

There is also provision in the legislation to enable the registration of standard clauses which may be incorporated by reference in subsequent transactions. This is widely used for mortgages where much of the content setting out terms and provisions is uniform. The ability to register a mortgage form which contains only the variable details and incorporates the standard provisions by reference has streamlined the automation process considerably.

### *The Certification Regime*

The certification regime, which replaces traditional paper-based execution requirements, is a key feature of the e-dealing system.<sup>7</sup> To meet requirements for registration, an electronic instrument must be certified by an authorised conveyancer as to the following matters:

- authority has been obtained from their client who has the capacity to enter into the transaction
- reasonable steps have been taken to verify their client's identity
- relevant statutory requirements have been complied with

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<sup>6</sup> s 22, s 23 and s 36 Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002

<sup>7</sup> s 164A – s164E of the Land Transfer Act 1952 NZ)

- supporting evidence of the above matters is held

This provides the necessary assurance that proper authorisation has been obtained from the relevant parties and the transaction is bona fide. An instrument certified in this manner is deemed to take effect for all purposes as if it were executed by the parties to the transaction in paper form.<sup>8</sup>

To ensure adequate controls are in place around the use of the system, the ability to certify electronic instruments is restricted to qualified conveyancers, principally lawyers. This reflects the role that lawyers have always played as trusted professionals in the conveyancing process.

It is interesting to note that in the paper-based system lawyers were required to certify transactions correct for the purposes of the Land Transfer Act 1952. While this was often seen as a mere formality, case law on these matters indicates that a person making such a certification is in fact providing assurance that the transaction is genuine and legally compliant.<sup>9</sup> The certification regime now in place for e-dealings can therefore be seen as a logical application of the obligations that have always been placed on conveyancers in New Zealand.

#### *Audit powers*

To provide added assurance as to the integrity of the e-dealing system, the legislation also authorises the Registrar-General of Land to audit conveyancers' certifications.<sup>10</sup>

If selected for audit, a conveyancer is required to produce the supporting evidence they hold to confirm the validity of their certifications. This would include any client authorisations and identification material.

There is a statutory requirement to retain this supporting documentation for a minimum of ten years.

#### *Mandatory use*

There is provision in the legislation to make it mandatory for conveyancers to use the e-dealing system.<sup>11</sup> This may be implemented by Order in Council on the recommendation of the Minister of Land Information, after consultation with conveyancing stakeholders.

The mandatory requirements do not apply to private individuals or others who are undertaking conveyancing on their own behalf.

There is an exception process which may be invoked by the Registrar-General of Land in cases where it is impractical to register a transaction in electronic form.

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<sup>8</sup> s 164E Land Transfer Act 1952

<sup>9</sup> See, for example, *Registrar-General of Land v Marshall* [1995] 2 NZLR 189, at 200.

<sup>10</sup> s 164C Land Transfer Act 1952

<sup>11</sup> s 24 Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002

## **Law Society Liaison**

There has been very close liaison with the New Zealand Law Society throughout the development of the Landonline system.

A special Working Party on Automation was set up by the Law Society to engage with Land Information New Zealand on these issues. The governance structure for the programme has also included Law Society representatives on various steering committees and advisory groups.

In the second stage of the programme, a jointly appointed stakeholder representative was recruited to work with the e-dealing development team. The appointee, a practising lawyer with extensive conveyancing experience, has been directly involved in application design and testing and has played an active role in promoting electronic registration.

The New Zealand Law Society has also developed practice guidelines for the e-dealing system and passed new rules to reinforce the obligations of lawyers when certifying transactions. The guidelines include a standard 'Authority and Instruction' form which may be used to document client authority and identity verification. This is now widely used by conveyancers.

The extensive input and support provided by the New Zealand Law Society has been instrumental to the success of the automation programme.

## **Security**

As one would expect, there has been a strong emphasis on security in the development of e-dealing system.

The Landonline database is protected by a suite of security measures including secure firewalls and intrusion detection systems. In addition, digital certificates are used to control system access and authenticate transactions.

All law firms wishing to use the system must acquire the necessary software licence. A digital certificate must also be obtained for each person who is to have system access. The process of issuing digital certificates is tightly controlled and includes measures to verify the identity of the applicant.

While digital certificates are required for all levels of system access, the ability to certify and sign electronic transactions is restricted to qualified conveyancers. Land Information New Zealand verifies the professional credentials of applicants before allocating certify and sign rights.

These security measures ensure that only authorised persons may access the system and certify transactions. The use of encryption and digital certificates allows the content of

the transaction and the identity of the conveyancer who certified it to be conclusively established.

### **Transition to the e-dealing system**

For several years following its introduction in 2003, the e-dealing system was optional and the paper registration system continued to run in parallel. While the e-dealing system is now widely used, uptake over this period was initially very slow. Notwithstanding strong support from stakeholders and early adopters, it has taken a while for lawyers to make the transition to electronic registration.

This is no doubt due in part to the up-front effort required to implement the necessary changes. A law firm's computer system must be set up with e-dealing access, digital certificates need to be obtained, existing office procedures and document management systems must be aligned to the electronic environment. Personnel also need to be trained on the use of the system. Finding the time and space to make these changes is naturally going to be a challenge for any busy law firm.

While there were initiatives to promote the system and computer-based, self-training materials were provided, it became apparent that further measures would be necessary to drive uptake.

Extending the level of training and support has been a key focus in that regard. Land Information New Zealand established a dedicated team to provide free on-site training and support for law firms. This initiative, coupled with expert call-centre support, has been highly successful in lifting the level of uptake.

Another key development was the decision that the system would ultimately become mandatory. In consultation with the New Zealand Law Society and other stakeholders, agreement was reached on when the mandatory provisions should take effect and a statutory process was initiated to implement these arrangements by Order in Council.

It was decided that the mandatory requirements should be implemented in a phased approach. Accordingly, the system became mandatory for discharges of mortgage on 1 May 2007, and for transfers and mortgages on 1 August 2007.

These dates were announced well in advance to provide law firms with sufficient time to make the transition. Uptake was closely monitored over this period and a communications campaign was put in place to ensure all law firms were made aware of the mandatory deadlines and booked in for training.

As a result of these efforts, full uptake was substantially achieved prior to the mandatory dates and the changeover has gone very smoothly.

### **Current Business Levels**

At present there are close to 2 million 'live' titles in the Landonline database. Land Information New Zealand registers approximately 750,000 transactions a year. About

65% of those are now lodged via the e-dealing system. In the 2005/06 period the online search service dealt with well over 3 million requests for title information.

About 1300 law firms have e-dealing licences. In total, approximately 8000 digital certificates have been issued to individual users of the system.

## **Future Developments**

### *System enhancements*

As noted, the e-dealing system presently caters for routine transactions only. These account for around 65% of the volume of registration work lodged with Land Information New Zealand.

About 35% is made up of more complex transactions (such as caveats, easements, transmissions, land covenants and leases) and miscellaneous low volume instruments. Work is currently underway on enhancements to the e-dealing system to cater for virtually all of these transactions types.

This will introduce new categories of e-dealing that will allow for the inclusion of non-standard provisions and attachment of scanned images. More complex transactions of this nature will be lodged electronically but, unlike the routine e-dealings, they will require some level of registry examination and processing to complete registration.

These enhancements will be introduced through a series of system releases over the next year. The supporting Land Transfer Regulations will be amended accordingly. Final mandating of the remaining transaction types is expected to occur towards the end of 2008.

### *Assurance regimes*

A compliance regime has been running in tandem with the uptake programme to ensure lawyers understand the e-dealing system and are meeting regulatory requirements.

In addition to the existing transactional audits, Land Information New Zealand is exploring the viability of adopting a 'systems and controls' based audit approach. This would focus on law firm processes for e-dealing and enable Land Information New Zealand to assess the robustness of their systems and controls for assurance purposes.

### *Organisational changes*

Over the next few years, once the system is fully in place, Land Information New Zealand will be reducing the size of its registry operations. The number of registry offices will be reduced from five to two and only residual public counter services will be provided.

With much of the registration work now being processed automatically, the need for registry personnel to capture and process transactions has diminished considerably. An

online survey lodgement service implemented in parallel with the e-dealing system has also reduced staffing requirements. Once the new structure is in place, overall staffing levels will have dropped by about 100 to around 150 operational personnel.

## **Conclusion**

While it has been a long journey, involving close liaison between Land Information New Zealand and the legal profession, electronic registration is now an integral part of the conveyancing environment in New Zealand.

Apart from the occasional teething issues, the system is operating very well. Experienced users who have integrated the system into their office processes find it simple to operate and have noted the benefits of a quicker, more immediate registration process. Clients can be provided with a copy of their registered title and conveyancing files that might otherwise have taken weeks to conclude may now be closed almost immediately following settlement.

Moving forward, the immediate focus for Land Information New Zealand will be on extending e-dealing functionality and ensuring performance and stability is maintained. With a large customer base now depending on the availability of online title registration and search services, it is essential that the system is robust.

Needless to say, ensuring the ongoing integrity of the system and that conveyancers understand and comply with regulatory requirements will be of paramount importance.

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