

Registrar's powers under the new Land Transfer Act 2017

Professor David Grinlinton

Faculty of Law, The University of Auckland

The Land Transfer Act 2017 provides that the Registrar-General of Lands, or his or her delegate, may alter the Register to correct errors, record boundary changes as a result of accretion or erosion, and to give effect to orders of a court (s 21). Such an alteration – except where it is pursuant to an order from a court – must not be made if it ‘would materially affect the registered estate or interest of any person’, unless the person consents or the Registrar has given notice of the intended alteration and no objection is received.

The Land Transfer Act 1952 allows the Registrar to correct the Register in cases of error, misdescription of land or boundaries, or where ‘any grant, certificate, instrument, entry, or endorsement has been fraudulently *or wrongfully* obtained, or is fraudulently *or wrongfully* retained’ (s 81(1)). The extent of these powers has been uncertain and controversial, particularly the meaning and ambit of “*wrongfully*”. Some commentators – both judicial and academic - considered that the powers were potentially very wide indeed, lacking in transparency and guiding criteria, and allowed the Registrar to alter registered property interests in situations where even the courts may not have such a power.

The new iteration of the Registrar’s powers in the LTA 2017 appears to have addressed these concerns, with the powers of alteration much more closely constrained. There are, however, still some concerns and many uncertainties. With automation the Registrar’s powers under s 81 of the 1952 Act have been utilized to correct the register in a timely and efficient, albeit non-transparent manner in cases of error and ‘wrongful’ registration. The more restricted powers of alteration under s 21 may prove cumbersome in addressing issues that are more than mere errors, but for which a quick administrative correction would not significantly undermine the sanctity of a registered title.

On the other hand, there are many uncertainties and ambiguities in the new provisions. For example, what is meant by “materially affect the registered estate or interest of any person”? What is meant by “material objection” where the registrar gives notice of a proposed alteration, and no “material objection” is received? The Registrar also has power to alter the Register with the consent in writing of “persons affected”. Who are “persons affected”? Other concerns may lie with the ability of the registrar to delegate his or her powers to “any person”. Under the 1952 Act such delegation was allowed to any employee of Land Information New Zealand, or other ‘suitable person’. The 2017 Act allows delegation to any person without qualification, and any such delegate is insulated from personal liability unless they acted unreasonably or in bad faith. This raises questions of accountability, especially if certain functions of the Department or Registrar-General are passed to the private sector.
