

# Departmental Disclosure Statement

---

Overseas Investment (Forestry) Amendment Bill
---

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 Te Tai Ōhanga – The Treasury.

The Treasury certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

11 May 2022

**Contents**

Contents..... 2  
Part One: General Policy Statement..... 3  
Part Two: Background Material and Policy Information ..... 4  
Part Three: Testing of Legislative Content..... 7  
Part Four: Significant Legislative Features ..... 9

## Part One: General Policy Statement

### **The Bill ensures overseas investment in forestry benefits New Zealand**

The Overseas Investment Act is New Zealand's principal tool for regulating foreign investment. It seeks to balance the need to support high-quality investment, while ensuring that the government has tools available to manage risks.

The objective of this Bill is to ensure overseas investments that result in the conversion of farmland (or other land-uses) to forestry benefits New Zealand and any risks can be better managed.

### **The drivers for investment in forestry has changed**

Under current legislation, overseas investors wishing to acquire an interest in production forestry can seek approval for the investment via a relatively permissive 'special forestry test',<sup>1</sup> which was introduced in 2018. This reflected the need at the time to support the forestry sector and achieve the government's goal of stimulating forestry investment.

Since then, the economics of investing in forestry has changed and it has become more attractive. This has been primarily driven by increasing price of carbon credits, Emissions Trading Scheme (ETS) reforms, and government afforestation schemes.

New Zealand has consequently seen an increase in forestry investment. This includes increasing conversions of productive farmland to forest (by both domestic and overseas investors). However, as economic and regulatory contexts change, it is important to consider the environmental, social, economic and other impacts of investment in forestry to ensure that all stakeholders continue to benefit.

### **The Bill provides stronger tools to manage these concerns when they arise from overseas investment**

Several regulatory systems have a role to play in mitigating these concerns, including the Overseas Investment Act. However, the Act's current (relatively permissive) special forestry test does not always provide sufficient flexibility to enable these concerns to be managed. The Bill remedies this by applying the Act's existing, but more stringent, benefit to New Zealand test to overseas investments that will result in converting land use to production forestry.

This is a more complex test than the special forestry test; it requires in-depth consideration of the benefits the investment brings relative to the current use of the land and involves greater discretion for decision-makers. Applying this test ensures overseas investment in forestry genuinely benefits New Zealand, and any risks can be better managed.

Finally, the Bill makes some minor and technical changes to the Act's forestry provisions to ensure their workability and clarity.

---

<sup>1</sup> The 'special test relating to forestry activities', commonly known as the 'special forestry test'. The special forestry test assesses an investment against a "checklist" of requirements and does not involve a 'counterfactual' analysis.

## 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>
The Treasury has published a range of information on the review of the Act's forestry provisions on its website: <a href="https://www.treasury.govt.nz/news-and-events/reviews-consultation/overseas-investment-act-2005-forestry-review">https://www.treasury.govt.nz/news-and-events/reviews-consultation/overseas-investment-act-2005-forestry-review</a>	

### 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>

### 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>
A regulatory impact assessment was prepared and submitted to Cabinet at the same time as policy approval was sought. A copy can be accessed here (with some redactions made in accordance with the Official Information Act 1982): <a href="https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments">https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments</a>	

<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>YES</b>
<p>A quality assurance panel (QA Panel) with representatives from the Ministry for Primary Industries, the Treasury and Toitū Te Whenua Land Information has reviewed the Regulatory Impact Statement (RIS).</p> <p>The RIS QA Panel has reviewed the Forestry Review paper prepared by the Treasury and considers that the RIS <b>meets</b> the QA criteria.</p> <p>The Panel found officials have done a good job in preparing the RIS against very tight timeframes and with very limited information on which to make a meaningful assessment of the proposed Government legislative changes. Officials have attempted to consult on the proposals within the timeframes provided, including with Māori and other stakeholders. The Panel notes the Treasury's preference for more comprehensive consultation and an intent to undertake this post-Cabinet decision. The RIS clearly notes constraints on the analysis, such as limited evidence of the effectiveness of the size and scale of the problem, and the potential impact the proposed legislative changes may have. The RIS would further benefit from a stronger commitment to how the legislative changes will be implemented and monitored. Consistent with the analysis in the RIS, these constraints indicate uncertainty as to the impact the statutory amendment may have. These constraints are clearly identified and the policy intent is otherwise clear given the very tight timeframes allowed for the completion of the RIS.</p> <p>Notwithstanding the limitations with respect to consultation within the limited timeframes, the RIS provides a fair assessment of the risks and limitations. For this reason, the QA Panel has assessed the RIS as meeting the Quality Assurance criteria.</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>NO</b>
<p>The minor and technical changes to the Act were mentioned, but were not of a scale or nature that required in depth analysis in the RIS.</p>	

### 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>YES</b>
<p>Yes, officials conducted further engagement with stakeholders after the drafting of the regulatory impact statement. The key advice that informed these policy changes, including a summary of that feedback, will be available on the Treasury's website: <a href="https://www.treasury.govt.nz/news-and-events/reviews-consultation/overseas-investment-act-2005-forestry-review">https://www.treasury.govt.nz/news-and-events/reviews-consultation/overseas-investment-act-2005-forestry-review</a></p>	

<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>YES</b>
These matters were considered in the regulatory impact statement referred to 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>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
Monitoring of compliance with the regime is undertaken by the Overseas Investment Office. This is covered at a high-level in the regulatory impact statement described above. Further information on the Overseas Investment Office's approach to monitoring compliance can be found here: <a href="https://www.lin.govt.nz/overseas-investment/comply/our-compliance-approach/investigating-possible-breaches">https://www.lin.govt.nz/overseas-investment/comply/our-compliance-approach/investigating-possible-breaches</a>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**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?**

The Ministry of Foreign Affairs and Trade has been involved in the development of the changes that this Bill gives effect to, to help assess whether the changes are consistent with the policy space preserved in trade agreements for the operation of our overseas investment screening regime.

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

**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?**

Iwi and Maori have significant interests in the forestry sector. The Associate Minister of Finance and Treasury officials hosted hui with key Māori leaders and representatives in the forestry sector, which supported the Crown to adhere to the principles of the Treaty of Waitangi.

More detail can be found on the Treasury's website:

<https://www.treasury.govt.nz/news-and-events/reviews-consultation/overseas-investment-act-2005-forestry-review>

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

**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?**

YES

Advice provided for this Bill, will be accessible on the Ministry of Justice website at:

<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

### Privacy issues

**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?**

NO

## 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>As noted above, in order to to understand and assess the potential impacts of change on Māori, the Associate Minister of Finance led a hui in January 2022 with selected key Māori stakeholders so that they could advise on the potential impacts of the changes.</p> <p>Officials engaged with a wider group of Māori / iwi stakeholders, and other key sectoral stakeholders immediately after the announcement of Cabinet's decision, to enable Māori and other stakeholders to advise on the potential impacts of the changes.</p> <p>The hui provided an opportunity for officials to listen to stakeholder feedback and report back to Ministers, as well as a chance to clarify what the changes will mean in practice for stakeholders.</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>YES</b>
<p>These changes were developed in close consultation with the OIO (the regulator under the Overseas Investment Act) with the aim of ensuring that they are workable.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>

### Strict liability or reversal of the usual burden of proof for offences

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

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>

### Significant decision-making powers

<b>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?</b>	<b>YES</b>
Clause 4 amends the test that is applied by decision-makers when assessing certain overseas investments that result in a change of land-use to forestry. The amended test is the same as the standard 'Benefit to New Zealand test' that applies to other types of overseas investment. This decision-making power is appropriately limited through criteria and decisions are subject to judicial review.	

### Powers to make delegated legislation

<b>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?</b>	<b>NO</b>
---	-----------

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

### 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>