

Overseas Investment (Restriction on Foreign Ownership of Land) Amendment Bill

24 July 2012

ATTORNEY-GENERAL

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:
OVERSEAS INVESTMENT (RESTRICTION ON FOREIGN OWNERSHIP OF LAND) AMENDMENT
BILL

1. We have considered whether the Overseas Investment (Restriction on Foreign Ownership of Land) Amendment Bill (“the Bill”) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (“the Bill of Rights Act”). The Bill was introduced into the House of Representatives on 28 June 2012 and is currently awaiting its first reading. The Bill is a Member’s Bill in the name of Dr Russel Norman MP.

2. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion we have considered the consistency of the Bill with s 19(1) of that Act (freedom from discrimination). Our analysis is set out below.

PURPOSE OF THE BILL

3. The purpose of the Overseas Investment Act 2005 (“the Act”) was to control and restrict ownership of sensitive New Zealand land by persons who are based offshore and whose connection with New Zealand is tenuous. Sensitive land is defined in the Act, and includes certain non-urban land, land with historical significance and land held for conservation purposes.

4. The Bill amends the Act to prevent overseas investment in sensitive land. Its purpose is to retain ownership and control of sensitive land within New Zealand.

CONSISTENCY WITH THE BILL OF RIGHTS ACT

Freedom from discrimination

5. Section 19(1) of the Bill of Rights Act provides that everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993. The prohibited grounds of discrimination include ethnic or national origin, which includes nationality or citizenship.

6. The Bill prevents “overseas persons” from investing in sensitive land. The Bill defines “overseas persons” as individuals who are “neither a New Zealand citizen nor ordinarily resident in New Zealand”. Various body corporates, partnerships, trusts and unit trusts are also considered to be “overseas persons”.

7. We have considered whether the Bill’s different treatment of non-citizens who are not ordinarily resident in New Zealand compared with citizens and those ordinarily resident in New Zealand could be said to discriminate on the basis of national origin.

8. It is arguable whether or not s 19(1) is engaged because the Bill distinguishes between people based on whether they are ordinarily resident in New Zealand rather than purely on the basis of their national or ethnic origins.

9. In November 2004, we considered this issue in relation to the Overseas Investment Bill (which became the Act). We concluded that, if s 19(1) was limited, it was a justified limitation under s 5 of the Bill of Rights Act. In coming to that conclusion we noted that the restriction on foreign ownership applied only to sensitive land, and that the limitation on the right was rationally connected to the Bill’s objective (to control ownership of sensitive New Zealand land by persons who are based offshore and whose connection with New Zealand is tenuous). We do not consider that the changes in the Bill materially alter the conclusion in our previous advice.

CONCLUSION

10. We have, therefore, concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. This advice has been prepared by the Public Law Group and the Office of Legal Counsel.

Melanie Webb
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Office of Legal Counsel

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