

## Treasury Report: Review of the Overseas Investment Act: Paper for POL

<b>Date:</b>	4 June 2004	<b>Treasury Priority:</b>	Medium
<b>Security Level:</b>	IN-CONFIDENCE	<b>Report No:</b>	T2004/954

### Action Sought

	<b>Action Sought</b>	<b>Deadline</b>
Minister of Finance	<b>Agree</b> that the attached Cabinet paper and background paper be submitted to Cabinet POL committee for 16 June.	Wednesday 9 June, for submission to Cabinet office on Thursday 10 June.
Associate Minister of Finance (Hon Trevor Mallard)	None	None
Associate Minister of Finance (Hon David Cunliffe)	None	None

### Contact for Telephone Discussion (if required)

<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>1st Contact</b>
Rosemary Cook	Principal Advisor, Market Interventions	471 5942 (wk)	Home numbers withheld under s 9(2)(a) – protect the privacy of natural persons
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**Enclosure: Yes**

3 June 2004

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## Treasury Report: Review of the Overseas Investment Act: Paper for POL

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1. Attached is a paper for you to discuss with your colleagues at POL on 16 June. If you would like to make further changes, please let us know by 9 June as it will need to be submitted to Cabinet office by 10 June.
2. There are a number of issues in the review that we would like to draw your attention to.

### Coverage: Department of Conservation

3. The Department of Conservation ("DOC") would like to ensure that land adjoining more reserves remain covered by the regime. The Cabinet paper proposes that only land adjoining foreshore and lake front reserves remain covered. DOC would also like to see coverage retained over land adjoining reserves administered by DOC.
4. Because we have very recently received this suggestion, we have not had time to consider what this would mean in a practical sense. However, we consider the suggestion may have some merit, and will talk with DOC over the coming week, and discuss it further with your office.
5. DOC have also asked that we draw to your attention that the Act at present does not cover all land managed by DOC, particularly National Parks and areas administered under Acts other than the Conservation Act.

### Coverage: Historic Heritage

6. The Ministry for Culture and Heritage have some reservations about removing coverage from land adjoining historic heritage sites. They have also noted that there may be potential for conflicts to arise for the Historic Places Trust where they are consulted by the regulator, given their role as an advocate for historic heritage.

### Coverage: Seabed

7. Recent reporting from LINZ has highlighted that there are a number of seabed parcels in private ownership. Some of these seabed parcels are not explicitly covered by the Act at present. There are two possible approaches to this:
  - Do not explicitly mention seabed in the Act. Because we are proposing that you clarify that the Act applies to all land that would be transferred under the Land Transfer Act or Te Ture Whenua Maori, seabed parcels within the thresholds of the Act will be covered. However the regime would not capture the sale of a small number seabed titles.
  - Explicitly extend the coverage of the regime to all seabed titles.
8. **Withheld under section 6(a) To avoid prejudice to the security or defence of New Zealand or the international relations of the Government of New Zealand;**
9. We understand there could be in the region of 200 parcels that the Act would not apply to, either because they are under five hectares and do not adjoin the foreshore, or are under 0.2 hectares and do adjoin the foreshore. Three of these parcels have always

been seabed (such as in harbours) and the remainder are eroded parcels, many of which fall below the 0.2 hectare limit even where they adjoin the foreshore.

### **Coverage: Te Ture Whenua Maori**

10. The sale of Maori freehold land to an overseas person is exempt from requiring OIC approval. However, alienations of Maori land have to be confirmed by the Maori Land Court, which must act in accordance with the provisions of the Overseas Investment Act under Te Ture Whenua Maori. The paper sets out four options for addressing this issue, including retaining the status quo. Other than status quo, which may be preferable if the provision is rarely used, we recommend option 4 – that is, the sale be subject to a decision by the overseas regulator, prior to being confirmed by the Maori Land Court. This would involve a change to Te Ture Whenua Maori, as the Maori Land Court should no longer be required to act in accordance with the Overseas Investment Act.
11. We have discussed this with Te Puni Kokiri but not with the Maori Land Court and would recommend that the matter be discussed with the Court.

### **Criteria: Other matters**

12. Along with the economic development criteria, the Act at present provides two “other matters” criteria. These are:
  - such other matters as may be prescribed; and
  - such other matters as Ministers think fit having regard to the circumstances of the particular overseas investment.
13. The paper proposes that only the first of these be retained. This is in order to improve transparency of the regime, and reflects the fact that the broader range of criteria will give Ministers and the regulator more scope for discretion around conditions to be applied. By retaining the criterion “other matters as may be prescribed”, the government can take account of topical factors that may be relevant given current policy settings. For example, Ministers may wish to take into account whether a prospective purchaser wishes to engage on tenure review.

### **Organisational design**

14. The paper recommends that the functions of the regulator be performed within LINZ. The paper also proposes that the current OIC staff will be offered employment in LINZ. A report back on implementation issues is recommended for POL on 28 July, and that report back would cover those issues and whether or not these functions will be performed by a separate business unit in LINZ.

## Consultation

15. The issue of consultation by the regulator in the course of considering applications has been raised with us by some departments and external agencies. The paper proposes that the regulator be expected to consult with relevant agencies, such as the Ministry of Fisheries where the application relates to fishing quota, the Historic Places Trust where any land that is the subject of an application contains a site of historic heritage interest, or the Department of Conservation where one of the conditions of consent is likely to relate to natural heritage. In the paper this is expressed as an expectation rather than a requirement, so that the regulator has some discretion as to who is consulted. The proposed changes also allow for the regulator to consider submissions by third parties.
16. We would expect the regulator to set limits around consultation so that it did not unduly delay the approval process.

## Announcement

17. There has been a degree of media interest in this review. The paper proposes that once decisions are made by Cabinet, the Cabinet paper and background paper be released publicly.

## Transition costs – between Budget spending

18. There will be some unbudgeted spending in relation to the transition of the OIC from the Reserve Bank to LINZ. These costs are expected to be less than \$1 million and will be reflected in the Supplementary Estimates, and in the interim will be met from Imprest Supply. Transition costs will include any redundancy payments required, costs of physical relocation, and costs of re-branding.

## Reports back

19. There are some outstanding matters. As noted above, there are some details around the organisational design transition that LINZ would like to report back on. That should be done in conjunction with Treasury. We consider that there are likely to be some issues around the proposed enforcement provisions that will need further work. We expect these to be reported back by the end of July, and we have suggested that these be reported back to POL, although Cabinet may wish to delegate these matters to you.

## Recommended Action

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20. We recommend that you:
- a **note** that the Cabinet paper assumes that you do not want the overseas investment regime be extended to cover all seabed parcels; and
  - b **agree** that the paper be submitted to Cabinet Office by Thursday 10 June 2004 for POL on 16 June.

*Agree/disagree.*

### **Rosemary Cook**

Principal Advisor, Market Interventions  
for Secretary to the Treasury

### **Hon Dr Michael Cullen**

Minister of Finance