The Treasury

Overseas Investment Act Submissions Information Release

December 2019

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[2] 6(b)(i) - to avoid prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of any other country or any agency of such a Government

[23] 9(2)(a) - to protect the privacy of natural persons, including deceased people

[25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information

[26] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied

[33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials

[34] 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions

[36] 9(2)(h) - to maintain legal professional privilege

[39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

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TE TAI ŌHANGA
THE TREASURY

Treasury Report: Overseas Investment Act Reform Phase Two - Report Back on Consultation

Date:	24 June 2019	**Report No:**	T2019/1690
		File Number:	IM-5-3-8 (Overseas Investment Act Phase Two)

Action Sought

	Action Sought	Deadline
Hon David Parker **Associate Minister of Finance**	**Note** the contents of this report ahead of your meeting with officials on 27 June 2019.	27 June 2019
Hon Grant Robertson **Minister of Finance**	**Note** the contents of this report, which is provided for your information	N/A

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
Kate Yesberg	Senior Analyst, International	[39]	[39]	✓
Megan Noyce	Principal Analyst, International	[39]	[39]	
Dasha Leonova	Manager, International (Overseas Investment) and Financial Markets	[39]	[39]	

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Refer the report to the Minister of Land Information and the Associate Minister of Finance (Hon David Clark).

Note any feedback on the quality of the report	

Enclosure: No

Treasury Report: Overseas Investment Act Reform Phase Two - Report Back on Consultation

Executive Summary

This report summarises feedback received during public engagement on the Phase Two Reform of the Overseas Investment Act 2005 (the Act). It highlights key themes and issues arising from consultation.

Overall, submitters were satisfied we had understood the problems with the current regime. There is broad support for proposals to simplify the consenting framework, with some caution around increasing discretion. More contentious issues relate to increased consideration of water, tax and Māori cultural values. There is support for reducing the Act's coverage for low risk investments. Stakeholders also agree the Act should enable a holistic assessment of the risks and benefits of proposed investments.

We are meeting Minister Parker on Thursday, 27 June 2019. This will be an opportunity to discuss stakeholder feedback and next steps. In particular, it will be useful to discuss potential changes to the consenting framework and other issues (eg, water) where stakeholders have strong and divergent views. We are also meeting Minister Sage on Monday, 1 July 2019.

In terms of next steps, despite receiving more submissions than expected, we are still aiming to provide you with a package of advice on reform options by Thursday, 1 August 2019. In some areas, we are developing revised policy options, responding to issues raised during stakeholder engagement. The timeframe for Phase Two reforms remains ambitious,
[34]

We also intend to publish a summary of submissions in due course. We will seek your approval separately on this in the coming months.

Recommended Action

We recommend that you:

a **note** that submitters were generally satisfied we had understood the problems with the current regime, and, while there is some concern about increasing discretion, broadly support proposals to simplify the consenting framework and to narrow the scope of the Act.

b **note** that more contentious or difficult issues relate to the consenting framework, and increased consideration of water, tax and Māori cultural values.

c **note** that we will seek your approval separately to publish a summary of submissions in due course.

d **refer** this report to the Minister of Land Information and the Associate Minister of Finance (Hon David Clark).

Dasha Leonova
Manager, International (Overseas Investment) and Financial Markets

Hon David Parker
Associate Minister of Finance

Treasury Report: Overseas Investment Act Reform Phase Two – Report Back on Consultation

Purpose of Report

1. This report briefly describes the public engagement process and feedback received on the Phase Two Reform of the Overseas Investment Act (the Act), and highlights key themes and issues arising from the consultation, in advance of our meeting with Minister Parker on Thursday, 27 June 2019.

Overview of public engagement process

2. The consultation period ran between 16 April and 24 May 2019. We held 19 meetings over that time across New Zealand and in Sydney, including:

    a three technical round tables with investors and professional advisors;

    b three public meetings, attended by stakeholders from environmental and recreational groups, investors and members of the business community; and

    c five hui with representatives from iwi organisations and Māori businesses.

3. Approximately 175 individuals in total attended these meetings. We also met separately with investors and recreation groups, including members of the Prime Minister's Business Advisory Council, Federated Farmers and Fish and Game.

4. OIO staff attended most of these meetings to provide technical support. **Annex A** includes a list of meetings held and numbers of attendees.

5. We received 733 written submissions. This was more than we had expected.

6. We received written submissions from individuals (629, including 588 submissions facilitated by the Green Party), businesses and investors (40), industry groups (24) and professional advisors (16), iwi groups (4), civil society and non-governmental organisations (10), New Zealand central and local government agencies (5), state-backed/asociated investment funds (3), and foreign government representatives (2).

Summary of key themes and issues arising from the consultations

7. Overall, we received positive feedback on the Consultation Document. Stakeholders generally considered that we had correctly understood the problems with the Act.

Stakeholders underscored extent of the problems with the current regime

8. Individual submitters generally consider that the Act does not adequately reflect important underlying values, particularly in relation to water, and environmental sustainability more broadly. There is concern the Act does not allow decision-makers to holistically assess whether proposed investments are in the national interest. Some of the sentiment at public meetings was generally against foreign investment. Sentiment at hui varied, in part depending on the extent to which iwi worked with foreign investors or competed against them. Māori stakeholders were generally keen to see more engagement with iwi and hapū, to ensure decisions take appropriate account of impacts on Māori.

9. The business community highlighted the impact of problems with the regime on New Zealand's investment landscape. We heard that applying for consent under the Act can cost more than $100,000 (excluding application fees), and that processing times are significantly longer than in other jurisdictions. One stakeholder said New Zealand's screening regime was "the worst of the 50 regimes that we interact with".

10. Given the time and cost associated with the investment screening regime, investors have incentives to avoid obtaining consent. We were told that New Zealand assets have been carved out of global transactions, resulting in those assets being starved of capital. The regime also creates incentives for businesses to underinvest in assets they are looking to sell, to ensure that new owners can demonstrate additional benefits to meet screening requirements.

Stakeholders support changes to the Act, but there will be trade-off between reducing complex and increasing flexibility

11. There is a general consensus that the Act's consenting framework is overly complex and does not enable a holistic assessment of a transaction's risks and benefits. The business community generally support a simplified benefits test, although there is some caution around introducing additional discretion into the regime. Individual submitters were broadly in favour of a national interest test applying to all investments. The business community support narrowing the scope of the investor test, while individual submitters have mixed views on this.

12. Proposed changes to the consenting framework have the potential to make the biggest difference to workability of the regime, but also present a clear tension between (i) achieving certainty for investors and (ii) ensuring sufficient flexibility for Ministers to take a holistic approach when deciding on applications for consent. The Government's preferred approach to reform will likely depend on the relative weight it attributes to each of these factors.

13. Submitters have strong and divergent views on incorporating additional considerations relating to Māori cultural values, water and tax into the Act's consent framework. Individual submitters generally support stronger recognition. The business community considers the Act is not well placed to address these issues, and are concerned about introducing additional complexity.

14. There is broad agreement that the Act is over-reaching and captures transactions that do not warrant screening. Most submitters support proposals to narrow the scope of sensitive adjoining land and leases requiring consent. Submitters also generally support narrowing the definition of "overseas person" to exclude some fundamentally New Zealand companies from the regime.

15. There is scope to considerably improve the efficiency of the Act by narrowing what and who we screen, without compromising the Government's ability to manage risks associated with overseas investment.

16. Consenting timeframes are a fundamental problem with the current regime (both the length of time and uncertainty involved in obtaining consent). Submitters from the business community support imposing statutory deadlines on consenting decisions, in conjunction with reducing the Act's complexity.

How we screen: support for a simplified consenting framework

17. This section considers feedback on the Act's consenting framework (how we screen). For ease of reference, we summarise the problem definition and options presented in

the Consultation Document at the beginning of each section below. Maintaining the status quo is also an option in each case.

Support for change to the investor test

The investor test imposes compliance costs that are potentially disproportionate to the risks posed by most overseas persons. The test includes criterion that may not be necessary or appropriate.

Option 1: slightly narrow the scope of the test by removing the financial commitment and immigration criteria, and simplifying the good character criterion.

Option 2: significantly narrow the scope of the test by removing the business acumen, financial commitment and immigration criteria, and removing consideration of allegations and the requirement to consider "any other matter" from the good character criterion.

Option 3: adopt a bright line checklist-style investor test.

Complementary options to exclude New Zealanders, include consideration of corporate character, and introduce standing consent.

18. Businesses, professional advisors and industry groups generally support significantly narrowing the investor test and ensuring it only focuses on relevant matters. Of those who expressed a preferred option, the majority support Option 3 on the basis that it would provide the greatest level of certainty to investors and would reduce compliance costs. There is some support for Option 2, and limited support for Option 1. Most of these submitters also support the complementary options.

19. There were mixed views from individual submitters, although the general sentiment was against narrowing the scope of the test. There was broad support for including consideration of corporate character.

Broad support for a simplified benefits test and a 'substantial harm' or 'national interest' backstop test

Parts of the benefits test are unclear and unnecessarily complex. This creates uncertainty and imposes costs, which can deter overseas investment. The test's design and gaps in coverage may also undermine decision makers' ability to assess proposed investments holistically, and to deny investments that are not in New Zealand's national interest.

Option 1: expanded benefits test.

Option 2: simplified benefits test with substantial harm test.

Option 3: simplified benefits test with national interest test for higher risk applications.

Option 4: replace the benefits test with a national interest test.

Option 5: national security and public order 'call-in' power.

20. Submitters generally agree the benefits test is overly complex and unpredictable. The business community noted the benefits test is a key driver of the time and cost involved in obtaining consent. There were mixed views on whether the test allows decision-makers to take a holistic view of the risks and benefits of a proposed transaction. There was wide support for enabling decision-makers to consider risks to national security.

21. There was little support for retaining or expanding the current test (Option 1). Views were mixed on whether decision-makers should consider the negative impacts of an investment (proposed as part of Option 1). Some considered it necessary in assessing an investment's likely impact. Most considered it would make the test more complex and unpredictable.

22. Most submitters support either Option 2 or 3. While there is broad support for simplifying the benefits test, there was some scepticism about whether a simplified test would deliver substantially more predictable outcomes, because decision-makers will retain significant discretion.

23. Some submitters caution that the inclusion of a 'substantial harm' or 'national interest' test could introduce more uncertainty. Others suggest that a 'national interest' backstop test should be framed negatively – that is, investments would only be blocked if they were found to be contrary to New Zealand's national interest.

24. Hui attendees supported a national interest test, but some were cautious about extending ministerial discretion, noting historical experience in which discretionary decision-making had not been in the best interests of hapū or iwi.

25. There was some support for Option 4, however submitters generally consider the test should be framed negatively (as it is in Australia). [2]

26. There was some limited engagement on Option 5, with submissions generally focussed on more detailed design issues. We are briefing you separately on policy design issues for a call-in power in consultation with relevant agencies [T2019/1128 refers].

Submitters agree counterfactual test needs to change

Decision makers use a counterfactual test to determine if a proposed investment is likely to benefit New Zealand. The counterfactual test is complex, unclear and costly to comply with.

Sub-Option A: comparison with the current state of the land; no-detriment test for sales between overseas persons.

Sub-Option B: comparison with what would happen if the vendor continued to own the land; no-detriment test for sales between overseas persons.

Sub-Option C: adjusted status quo, counterfactual defined to be 'continued ownership by the vendor' in cases where genuine market test has shown there is no New Zealand interest in the relevant land; current test would otherwise apply.

27. Regardless of the option chosen on reform of the benefits test, there will need to be some form of counterfactual test.

28. Submitters (mainly professional advisors and investors) supported changes to the counterfactual test. Several submitters described the current test as "unworkable", and a key cause of the cost and time involved in obtaining consent. Others expressed caution about introducing more complexity by establishing different pathways for different types of investment.

29. Most submitters support Sub-Option A. They consider it would provide a simple, verifiable threshold, increase certainty and lower compliance costs. Some submitters support Sub-Option B for similar reasons (although others note it would retain some of the hypothetical character of the existing test, which is a key concern for investors).

30. Several submitters raised design questions in relation to the no-detriment test (eg, in relation to shareholding changes).

31. Some submitters endorsed change without nominating a preferred option. Many noted that any of the options would be an improvement. There were various alternative proposals, including removing the test entirely and retaining the status quo.

Mixed views on increasing recognition of Māori cultural values

The Act explicitly allows Māori cultural values to be considered as part of the historic heritage factor in the benefits test. There is some concern, however, that the benefits test does not adequately consider Māori cultural values.

Option 1: broaden the benefits test to enable consideration of whether existing arrangements in relation to Māori cultural values will continue.

Option 2: clarify and broaden the benefits test to enable consideration of overseas persons' plans for wāhi tūpuna or Māori reservations on sensitive land.

Option 3: broaden the benefit to New Zealand test to enable consideration of Māori cultural values as they relate to the physical and historical characteristics of sensitive land.

32. Submitters had mixed views on whether the Act should provide greater recognition of Māori cultural values. Many individual submitters support increasing recognition of Māori cultural values. Submitters noted the special significance of land and other resources in te ao Māori, the Treaty principles of partnership and active protection, and that additional checks would reinforce the importance of Māori cultural values.

33. Most submitters support Option 2 (particularly professional advisers and hui attendees), on the grounds that it could better reflect Māori values without making the Act more complex. There was some support, including from hui attendees, for Option 1.

34. A number of submitters (particularly iwi representatives) suggested alternative approaches that involved stronger recognition of Māori values. The most common suggestion was to require the OIO or applicants to consult those with mana whenua in the relevant area, to ensure sensitive sites are identified and enhance overseas persons' cultural awareness.

35. Other submitters, particularly professional advisors, noted the importance of protecting Māori cultural values, but did not consider there was evidence of a problem with investment screening (they consider other generally-applicable legislation was a more appropriate place to address these issues). Some submitters were concerned that the proposed options – particularly Option 3 – would further complicate the benefits test.

Strong and divergent views on water

There is some public concern about overseas investment in water bottling. The benefits test allows limited consideration of the environmental impacts of proposed investments in water extraction. Decision makers can take account of mechanisms in place to protect or enhance indigenous vegetation or fauna, for example, but not how water will be used.

Option 1: consider the effects of water bottling or bulk export on economic, social and cultural wellbeing under the benefits test.

Option 2: consider the effects of water extraction on economic, social and cultural wellbeing under the benefits test.

36. Individual submissions strongly favour increasing the Act's ability to regulate water use by overseas persons. There were a range of views on the nature of the problem. Some submitters focussed on concerns relating to water bottling (expressing a preference for Option 1). Others had broader concerns with the impact of overseas investment on water quality and sustainability. Overall, these submitters' views more closely aligned with Option 2.

37. The business community generally consider the Act is not well placed to deal with water issues and support the status quo. They note that the Resource Management Act

already regulates water use in New Zealand. Perspectives at hui were mixed on whether the Act should do more to address water bottling or extraction.

38. Individual submitters suggested that water be categorised as a sensitive asset subject to screening under the Act. This suggestion is outside the scope of the review, [36]

Mixed views on additional tax considerations

There is concern about overseas persons acquiring sensitive New Zealand assets and not paying enough tax in New Zealand. The Act allows, but does not require, tax arrangements to be considered under the good character test.

Option 1: expressly referring to tax compliance as a component of the good character test.

Option 2: certification on tax avoidance and compliance with tax law.

Option 3: require overseas persons to obtain binding rulings from Inland Revenue that tax arrangements relating to the investments comply with New Zealand law.

39. Submitters from the business community strongly oppose any change to the status quo and consider that the OIO is not well equipped to evaluate (especially foreign) tax compliance. They consider tax compliance is properly addressed through New Zealand's existing tax laws. They also note that tax arrangements can already be considered in the investor test under the good character criterion.

40. If tax considerations are to be incorporated, a small number of submitters (4) favoured Option 3 as it focuses on the investor's New Zealand tax arrangements and leverages off an existing regime. Most submitters considered that this option would not be practicable given the time and cost involved in obtaining binding rulings.

41. A majority of individual submitters consider that tax is an important consideration in the investor test. The sentiment from these submitters is that overseas investors must pay for the services they receive and that previous tax compliance is a reliable indicator of future behaviour. Most submitters did not nominate a preferred option, but appear to broadly support Options 1 and 2.

What and who we screen: submitters agree the Act is over-reaching

42. In general, submitters agree that the Act is too broad and captures transactions that do not warrant screening. It is possible to narrow the scope of the Act without compromising the government's ability to manage risk.

Support for narrowing the scope of sensitive adjoining land

Transactions must be screened if they involve land that adjoins other land with sensitive characteristics ('Table 2' land). The current definition of sensitive adjoining land is arguably broader than necessary leading to land of low environmental and/or cultural value being screened.

Option 1: remove Table 2 land from the Act, with the exception of the foreshore, lakebeds, Māori reservations, and land that includes wāhi tapu.

Option 2: remove the section 37 list (a low value subset of adjoining land) from Table 2.

43. Overall, submitters support narrowing the scope of sensitive adjoining land requiring consent. They agree the current regime is too broad and that there are particular issues with the section 37 list.

44. Most submitters (particularly industry groups, professional advisors and investors) support Option 1, with a smaller number supporting Option 2. Both options would reduce compliance costs and improve New Zealand's attractiveness to overseas investors. Several submitters propose alternative options, which are mainly variants of Option 2.

45. A small number of submitters support the status quo and consider that narrowing screening of adjoining land would create a significant risk to natural and physical resources.

46. Other submitters suggested broadening the scope of sensitive adjoining land, [36]

Support for excluding medium-term and periodic leases of sensitive land

Leaseholds are generally less sensitive than freehold transactions, as the land remains in New Zealand ownership. However, transactions involving leases for terms of 3 years or more are subject to the same scrutiny and compliance costs as transactions involving freehold interests. Investors also find it difficult to demonstrate that short-term investments will deliver the benefits needed to satisfy the screening requirements.

Option 1: exclude medium-term leases (eg, <10 years) from screening requirements.

Option 2: screen leases of non-urban land >5 hectares if they are longer than 10 years, and all other leases only if they are longer than 35 years.

We also considered an option to clarify that periodic leases (which can be terminated at any time) are not covered by the screening requirement.

47. Submitters, particularly regular users of the Act and most hui participants, generally support increasing the threshold for when leases should be subject to screening under the Act. Most submitters favour Option 2. Some submitters propose hybrids of Options 1 and 2, including increasing the threshold to 20 years for all classes of land.

48. Some recreational/environmental groups and individuals expressed support for the status quo, or additional screening of leases, with key concerns around public access and potential environmental impacts. There was also concern that raising the threshold would incentivise investors to lease property to avoid consenting requirements.

49. Almost all submitters support explicitly excluding periodic leases from the scope of the Act.

Narrowing the definition of "overseas person" as it applies to bodies corporate

The definition of "overseas person" captures a range of domestically incorporated entities that are majority owned and controlled by New Zealanders. This seems disproportionate to the risks being managed, as such entities are unlikely to be the Act's intended targets.

Option 1: do not screen domestically incorporated and listed entities that are majority owned by New Zealanders.

Option 2: do not screen domestically incorporated and listed entities that are not controlled by overseas persons – that is, only screen entities if overseas persons with 'substantial holdings' (ie, holdings of at least 5%) in classes of shares that confer control rights cumulatively total 25%.

Option 3: do not screen domestically incorporated and listed entities that are majority owned by New Zealanders and not controlled by overseas persons.

Option 4: allow domestically incorporated entities (both listed and unlisted) with significant connections to New Zealand to apply for an exemption from screening.

50. Submissions on this topic were generally from the business community. Most submitters agree the definition of "overseas person" is too broad and captures entities that most people would consider do not require screening.

51. There were mixed views on the options presented in the Consultation Document. There was significant support for Option 1, although several submitters noted that there are difficulties in determining the beneficial ownership of shares (which we note is a broader issue with the operation of financial markets).

52. In relation to Options 2 and 3, submitters generally support the aggregation of 'substantial holdings' (rather than all shareholdings) to determine whether overseas persons control sensitive assets. Several submitters suggest the threshold for aggregation should be higher than 5%.

53. Several submitters proposed an alternative threshold of 25% ownership by a single overseas person. Many of these submitters supported Option 3 as their second preference.

54. Many submitters consider that Option 4 could complement the other proposed options. There was mixed feedback on the proposed criteria to qualify for the exemption. In particular, submitters consider that iwi entities with >50% ownership or control (but not necessarily 75%, as proposed) should qualify for the exemption. Stakeholders emphasised the importance of protecting Māori businesses' ability to enter into joint ventures with overseas partners. These relationships are critical in providing capital to develop natural resources owned by Māori businesses (which can struggle to access domestic sources of capital).

55. Some individual submitters support the status quo, generally on the basis that foreign investment is not inherently beneficial and that therefore any entity with a degree of foreign ownership should be subject to screening.

Portfolio investors

A portfolio investor is an entity that obtains a significant minority interest (ie, less than 10%) in another entity but has no, or a limited ability, to control that entity. Requiring such passive investments to obtain consent may disincentivise desirable investment into New Zealand.

Option 1: class exemption for portfolio investors acquiring an interest of 10% or less and not obtaining control interests.

Option 2: class exemption for investors that are beneficially owned and controlled by New Zealanders.

Option 3: class exemption for regulated superannuation funds.

Option 4: individual exemptions granted by the Minister(s) for qualifying entities.

56. The majority of submitters on this topic were from a technical audience (eg, professional advisors). They generally support excluding portfolio investors and entities that are beneficially owned and controlled by New Zealanders. Most submitters support variations of Options 1 and 2, with changes proposed to clarify scope and reduce the chance of an exemption being misused. Many submitters considered Option 4 could complement variations of Options 1 and 2.

Technical issue: tipping point

An overseas person requires consent if its acquisition results in an entity becoming an overseas person (eg, acquiring 1% of an entity that is 24% foreign owned). The Act can impose consent requirements on overseas persons making small investments that give them no control.

Option 1: replace section 12(b)(iii) with a general anti-avoidance provision.

Option 2: require consent where the acquirer will hold at least 5% of the total number of shares in a class, and the acquisition results in the entity becoming an overseas person.

Option 3: the same thresholds for consent as Option 2, with application limited to publicly listed entities.

57. Most submissions on this issue came from the business community and professional advisors, who generally favour liberalising the regime. There were mixed views on a preferred option, with several submitters proposing alternative options, including changes to the definition of "overseas person" which would remove the tipping point issue (eg, 25% ownership by a single overseas person). A small number (4) of submitters (individuals and civil society groups) supported the status quo.

Technical issue: incremental investments

The Act screens incremental investments in a sensitive asset where the overseas person already has consent to hold a 25% interest. As a general matter, it is not clear why the Act needs to screen incremental investments that do not cross important control thresholds (25, 50, 75 or 90%) (Option 1). While there are existing exemptions for certain types of incremental investment, technical issues limit their usefulness (Options 2 – 4 address these).

Option 1: allow all incremental investments within a control band.

Option 2: allow (direct or indirect) upstream shareholders to use the exemption.

Option 3: allow entities that acquired a sensitive asset before that asset required consent to use the exemption.

Option 4: remove the five-year restriction from the exemption.

58. Most submissions on this issue came from the business community and professional advisors and agreed with the problems identified. Support was evenly spread across the proposed reform options, with several submitters supporting all of the options.

Timeframes for decision a major concern

There are no time limits for decisions under the Act. Decisions take around 100 working days on average, which is significantly longer than similar processes overseas. There is no certainty around processing times.

Option 1: 45 working-day deadline with an ability to extend.

Option 2: tailored deadlines with an ability to extend.

Sub-Option A: time limits start once applications are lodged.

Sub-Option B: requests for information subsequent to lodgement only affect timeframes if made within 15 days.

Sub-Option C: subsequent requests for information always pause the timeline.

59. Many submitters consider consent timeframes to be the most serious issue with the Act. The length of time and uncertainty involved in the process were a major concern.

60. Most submitters support Option 2, with some alternative timeframes proposed for tailored deadlines. A number of submitters were concerned about the OIO having adequate resourcing to be able to process requests within the required timeframes. There were also some concerns with proposed unilateral extension powers.

61. There were mixed views on whether applicants should receive automatic consent if an application is not processed within the required timeframes. Many submitters agree there should be meaningful consequences if the OIO does not meet the required timeframes. However, submitters also agree that statutory timeframes need to be balanced with the OIO having enough time and resources to make the 'right' decision.

Scope to improve screening processes for land with special value

Farmland advertising

The farmland advertising requirements do not appear to be providing a genuine opportunity for New Zealanders to purchase the land. The advertising requirement can be met after a conditional sale and purchase agreement is entered into, and the minimum advertising standards are ineffective.

Option 1: advertise before agreement only (with enhanced exemptions).

Option 2: remove the requirement to advertise farmland.

62. Most submitters, and particularly the business community, support removing the farmland advertising requirement (Option 2). They consider the current law is effectively a tick box exercise.

63. Very few submitters support the status quo. Some support Option 1, with most submitters suggesting refinements should it be retained (eg, enabling exemption applications to be made before lodging an application, and clarifying minimum advertising requirements).

Special land

The Act requires that where sensitive land includes foreshore, seabed, riverbed or lakebed land (special land), it is offered to the Crown before consent is granted. The requirement creates significant compliance costs, delays and uncertainty.

Option 1: limit special land provisions to the acquisition of freehold interests only.

Option 2: make special land provisions a requirement for consent.

Option 3: establish a way to provide access to special land acquired by the Crown.

Option 4: improve the offer process.

64. Submitters generally support amending the special land provisions. Most submitters support a hybrid of Options 1, 2 and 4. While five submitters support Option 3 because it promotes public access, most (businesses and professional advisors) did not given it would increase complexity.

Other OIO process matters

65. The Consultation Document invited submitters to provide feedback on their experience with the OIO, to inform the OIO's continuous improvement programme.

66. In addition to concerns around timeframes (discussed above), key themes from the business community include: (i) perceived inconsistencies and a lack of transparency in the exercise of discretion by Ministers and the OIO; (ii) difficulties in contacting OIO personnel; and (iii) a lack of effective prioritisation in relation to difficult applications.

67. Submitters suggested the OIO should provide early indications on issues with an application or the need for further information, and provide progress updates.

68. Most submitters noted that these problems are in part caused by other issues being considered in this reform (for example, complexity of the consenting framework) and the OIO's resourcing. Some professional advisors also provided positive feedback on OIO staff who were generally helpful in spite of these challenges. Other submitters acknowledged that OIO processes have improved following recent reviews.

69. Individual submitters had mixed views on how OIO processes could be improved. Some suggested requiring public consultation on every transaction, and changes to decision-making authorities (both of which are outside the scope of the review).

70. The OIO will review submissions that have identified operational areas for improvement within the current statutory framework and will make necessary changes as quickly as possible, including addressing communication gaps with applicants and their advisors around progress of applications.

Next steps

71. We are meeting with Minister Parker on Thursday, 27 June 2019. This will be an opportunity to discuss feedback we have received during public engagement, and next steps. We are also meeting with Minister Sage on Monday, 1 July 2019, to discuss stakeholder feedback. We are aiming to provide a package of advice to you on proposed reforms on Thursday, 1 August 2019, with a view to proposals being considered by Cabinet in late October.

72. We have built up considerable goodwill with stakeholders through the engagement process. It will be important to keep stakeholders up to date on progress with the reforms in order to maintain that goodwill. While we are prioritising policy development work at this stage, we propose to publish a summary of submissions in due course. We will seek your approval separately for this in coming months.

Annex A – Consultation meeting schedule

Location	Meeting	Attendee numbers
Auckland	Technical	25
Auckland	Public	14
Wellington	Technical	14
Wellington	Public	18
Christchurch	Hui	4
Christchurch	Technical	10
Christchurch	Public	37*
Sydney	Investor Roundtable	7
Sydney	Baker Mackenzie and clients	10
Sydney	Pacific Equity Partners	2
Sydney	AMP	3
Sydney	Australian Treasury (and other Govt.)	12
Whangarei	Hui	3
Nelson	Hui	4
Auckland	Hui	1
Auckland	PM Business Advisory Council	3
Rotorua	Hui	3
Wellington	Federated Farmers	1
Wellington	Outdoor Recreation Groups	4

* registered, final attendance was lower

We placed public notices in local newspapers and used social media (Facebook, LinkedIn and Twitter) to promote the public meetings.

Among others, members of the following iwi or iwi organisations attended the hui:

- Ngai Tahu (Christchurch)
- Wakatū/Te Tau Ihu (Nelson)
- Ngāti Rārua Ātiawa Iwi Trust (Nelson)
- Rangitane Post-Settlement Group (Nelson)
- Te Awara (Rotorua)
- Ngati Tuwharetoa (Auckland)
- Taitokerau Forest Limited (Whangarei)

A broader range of iwi and Māori organisations were invited to participate in hui, with a number signalling they were unable to attend due to short timeframes. A number of invitees made written submissions.