

Report on the operation and effectiveness of the amendments made by the Overseas Investment Amendment Act 2018 relating to forestry (including forestry rights)

Presented to the House of Representatives in accordance with clause 10 of Schedule 1AA of the Overseas Investment Act 2005. Prepared by the Treasury in August 2022.

Background

1. This report is presented to the House of Representatives in accordance with clause 10 of Schedule 1AA of the Overseas Investment Act 2005. That clause required the Minister to carry out a review of the operation and effectiveness of the amendments made by the Overseas Investment Amendment Act 2018 relating to forestry (including forestry rights) and to present a report to the House of Representatives. The 2018 changes introduced the streamlined special forestry test for overseas investment in production forestry and brought forestry rights into the screening regime.
2. The Government agreed to a revised terms of reference for the Forestry Review in February 2022. This report summarises the outcome of the Forestry Review, with table one setting out the findings in each area of the terms of reference.
3. Key advice relating to the Forestry Review can be found on the Treasury's website: [Overseas Investment Act 2005: Forestry Review \(treasury.govt.nz\)](https://www.treasury.govt.nz/news-and-events/reviews-consultation/overseas-investment-act-2005-forestry-review).¹

Legislative change

4. In short, the Forestry Review found that much has changed since 2018 – the carbon price has risen, the Overseas Investment Act's consent process has been simplified, and afforestation has increased for a range of reasons. In this new context, the Government concluded a special streamlined process for investment in forestry conversions is no longer needed.
5. As a result, the Overseas Investment (Forestry) Amendment Act 2022 (the Amendment Act) came into force on 16 August 2022. The Amendment Act seeks to strike a balance between:
 - a supporting productive and sustainable investment in forestry that benefits New Zealand, and
 - b allowing the risks that investment can sometimes pose to be managed.
6. The changes made through the Amendment Act increase the oversight of forestry conversions by applying the more onerous general benefit to New Zealand test in place of the special forestry test. The Amendment Act retains the special forestry test for investment in existing production forestry (reflecting such investments do not result in changes to the use of the land) and makes some minor and technical improvements (refer table two).

¹ <https://www.treasury.govt.nz/news-and-events/reviews-consultation/overseas-investment-act-2005-forestry-review>

Operational improvements

7. A range of operational improvements have been identified (refer to the proactively released advice, linked above). These will be implemented through detailed guidance published by the regulator on the Act's forestry provisions.
8. This guidance will also include general material on the treatment of forestry-related investments under the Act. More specifically, it will cover how the benefit to New Zealand test will generally apply to forestry investments as a result of the Amendment Act. It will be published once the regulator and investors have experience applying the new rules – around February 2023.

Table one: Summary of the findings of the Forestry Review

Area in Terms of Reference	Findings
Scope: Legislative change. This part of the Forestry Review will consider legislative change to...	
...remove forestry conversions from the Act's 'special forestry test' with forestry conversions instead going through the revised benefit to New Zealand test), and ...improve the operation and effectiveness of the forestry-related amendments introduced by the 2018 Amendment Act, as identified by the review's consideration of the operation and effectiveness of the 2018 forestry changes (see below).	Complete: the Amendment Act has come into force on 16 August 2022.
Scope: Operation of the forestry changes. This part of the Forestry Review will consider...	
...the functioning of the new and amended consent pathways and standing consent criteria, taking into account the ease and volume of use of each pathway for applicants, their lawyers/advisors, and the regulator.	Complete: the Amendment Act and the operational improvements address issues with the new and amended consent pathways.
...the functioning of the forestry rights exemption provisions.	Complete: these are working as intended – see related answer below for more details on the exemption.
...any minor and/or technical amendments required to resolve unintended consequences associated with the implementation of the forestry-related amendments in the Phase One reform.	Complete: the Amendment Act includes several minor and technical improvements and will be followed up with operational improvements discussed in the body of the report (refer table two).

Area in Terms of Reference	Findings
Scope: Effectiveness of the forestry changes. This part of the of the Forestry Review will consider...	
...whether the changes are achieving their original policy intent, and whether they are aligned with other Government objectives and work programmes.	Complete: the 2018 changes are generally realising their intent. The Amendment Act ensures that the forestry provisions are better aligned with the Government's objectives.
...in relation to the 'special forestry test', the Forestry Review will consider whether the mandatory "checklist-style" criteria are appropriate and achieve the right balance between being more permissive of overseas investment while retaining a sufficient level of regulatory discretion to impose conditions on consent.	Complete: the special forestry test is now only available for existing production forestry. In the current context, it was more appropriate to require investors to demonstrate benefits through application of the Benefit to New Zealand test.
...in relation to the modified benefits test, the Forestry Review will consider whether the pathway remains fit for purpose in light of changes to the counterfactual assessment in the Act's general benefits test, agreed to as part of the Phase Two reform.	Complete: the Amendment Act repeals the modified benefits test as it is now redundant.
...in relation to the standing consent for repeat investors, the Forestry Review will consider whether the pathway has reduced the regulatory burden on the regulator, and whether it is encouraging repeat investments.	Complete: the Amendment Act removes conversions from the scope of new standing consents in favour of the general benefit to New Zealand test. In addition, guidance will be published to ensure it is encouraging the right kind of repeat investments.
<p>...in relation to the introduction of forestry rights into the screening regime, the Forestry Review will consider whether:</p> <ol style="list-style-type: none"> the screening thresholds are set at the appropriate level to achieve a balance between ensuring forestry investments benefit New Zealand while not disincentivising investment or increasing illiquidity, and the screening of forestry rights is better supporting landowners to make decisions about land use based on the highest value use. 	Complete: we have little evidence to suggest the threshold should be lowered or raised through our targeted engagement with key users of the regime or through the select committee process. A few forestry sector stakeholders have suggested the Government should raise the threshold. In relation to point (b), by aligning the treatment of forestry rights to other forestry investments (leasehold and/or freehold), we consider the 2018 changes have reduced any distortions to decisions about land use.
...if the [2018] changes are aligned with the Government's objectives for domestic wood processing, and a range of other relevant work programmes.	Complete: for conversions, the Amendment Act allows the decision maker to consider to what extent the investment supports other government policy objectives as part of the general benefit to New Zealand test. We have worked closely with agencies to ensure the Forestry Review aligns with other relevant Government policies.

Table two: Summary of the minor and technical changes

Issue	Solution
The special forestry test's restriction on residential use (only allowing forestry workers to reside) is contributing to negative outcomes for investors and tenants.	The Amendment Act allows anyone to occupy the land, except for investors and their associates (the non-occupation outcome).
There is a lack of clarity about whether activities carried out by other parties on the block of land containing the forestry are considered in the special forestry test.	The Amendment Act clarifies that activities unconnected to the interest being acquired are excluded, when determining whether the land is used nearly exclusively for forestry activities.
The definition of 'crop of trees' for the purpose of 'forestry activities' in the Act is not clear it only applies to production forestry.	<p>The Amendment Act amends the definition of forestry activities to be clear that the forest must be for the purpose of harvesting wood for the special forestry test to apply.</p> <p>The Amendment Act clarifies that the definition of forestry activities includes maintaining the land between harvesting and establishing a new crop of trees. The definition of forestry activities now includes the period between harvesting and replanting (to allow for staggered planting).</p>
There is a lack of clarity about the area of consented forestry rights being considered in the 1,000-hectare exemption.	The Amendment Act clarifies that consented forestry rights are not to be included in the 1,000 hectares calculation each calendar year and that forestry rights acquired under one of the Act's other exemptions are not counted as part of the 1,000-hectare threshold.
Applicants for forestry standing consents must demonstrate a strong record of compliance with the Act (or corresponding laws in other jurisdictions). However, the common practice of creating a local special purpose vehicle for an investment can be a barrier to demonstrating a record of compliance.	The Amendment Act clarifies that the regulator can consider the compliance record of the wider group of relevant entities and individuals associated with the applicant (to accommodate new special purpose vehicles, etc) when considering an application for a forestry standing consent. This makes the process consistent with residential standing consents.
Due to changes to other pathways, the modified benefit test is now redundant.	The Amendment Act repeals the modified benefits test for forestry activities to improve the coherence of the screening regime.