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ARTICLE

Māori Land Interests and Reform: Balancing Protection and Economic Development Under the Overseas Act 2005

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This article examines the regulation of overseas investment in Aotearoa New Zealand under the Overseas Investment Act 2005, including recent reforms, and their implications for Māori land interests. It explores the shift from a traditionally conservative regulatory regime toward an increasingly liberalised, economically driven approach. This article assesses how Māori land interests are addressed in practice and how reforms aimed at streamlining investment pathways risk weakening existing protection. It argues that overseas investment regulation reflects a delicate balancing between economic development and customary land protection, and that the effectiveness of the new statutory approach will be critical in determining whether this balance is properly achieved so that customary land protection retains importance in a shifting framework.

I Introduction

The Overseas Investment Act 2005 (the Act), the Overseas Investment Regulations 2005 (the OIR), and the more recent Overseas Investment (National Interest Test and Other Matters) Amendment Act 2025 (the Amendment Act) together establish a critical framework for regulating foreign investments in Aotearoa New Zealand, particularly concerning the acquisition of "sensitive land".[1] The Act's dual foci on protecting land of cultural importance in New Zealand and fostering foreign investment have important

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1 Overseas Investment Act 2005 [OIA], s 12.

implications for the economic and cultural landscape of New Zealand, including Māori customary interests in land.[2]

New Zealand has traditionally taken a more conservative approach to foreign investment than other nations in the Organisation for Economic Co-operation and Development (OECD).[3] The current coalition government first announced plans to amend the Act to liberalise foreign investment pathways in October 2024,[4] with new policies intending to streamline the process being implemented in June 2025.[5] These reforms were implemented through the Amendment Act in December 2025, with changes to the National Interest Test and regulatory time frameworks.[6]

As the door to overseas investment widens, we should consider whether that simultaneously closes the door to the issue of customary land protection in New Zealand. Discussing Māori interests without referencing whenua (land) is impossible as the two are intrinsically connected. However, despite the multifaceted value and significance of land in New Zealand, there is limited discourse on how the overseas investment regime currently protects Māori interests and whether a liberalised regime would present more opportunities or risks, both economically and culturally.

The meaning of land in New Zealand and the relationship people have with it has traditionally been framed through Pākehā knowledge systems, rather than a Māori understanding of mātauranga.[7] However, in the post-Treaty settlement era, there has been a rediscovery of tino rangatiratanga (self-determination), particularly concerning land. Central to this is the concept of mana, which is expressed through mana whenua (the authority of the land).[8] From mana whenua, other vital concepts such as wāhi tapu (sacred places), kaitiakitanga (stewardship), and ngā kōrero (local histories) emerge, establishing the deep connection between hapū, iwi and the land that forms part of their identity.[9] Yet, the challenge remains that land has often been commodified through a Pākehā worldview, losing its collective significance.[10] As Indigenous business models gain international recognition for addressing the flaws of Western systems, new tools based on Māori principles are emerging.[11] For instance, land trusts invest in properties above market value to reconnect hapū with sacred sites, such as their awa tūpuna (ancestral

2 Section 3.

3 OECD *OECD FDI Regulatory Restrictiveness Index*: *Key findings and trends* (OECD Business and Finance Policy Papers No 72, 2024) at 11.

4 Beehive "Overseas investment changes to get New Zealand off the bench" (press release, 12 October 2024).

5 Letter from David Seymour (Deputy Prime Minister) to Richard Hawke (Chief Executive of Land Information New Zealand) regarding Ministerial Directive under the Overseas Investment Act 2005 (6 June 2024) [Ministerial Directive Letter].

6 Beehive "Overseas investment reform enables more jobs and growth" (press release, 13 December 2025).

7 Knowledge, wisdom, understanding and skill: Te Aka Māori Dictionary "Mātauranga" <www.maoridictionary.co.nz>.

8 Richard Tauehe Jefferies "Setting Aside the Master's Tool's: Developing Mātauranga Māori Models for Māori Economic Development" in Gavin Jack and others (eds) *Managing the Post-Colony: Voices from Aotearoa, Australia and The Pacific* (Springer, Singapore, 2024) 157 at 159.

9 At 159.

10 See generally Jayden Houghton "Hybridisation and Distortion" in Jayden Houghton *Tikanga Māori and State Law* (Thomson Reuters, Wellington, 2025)161; and Jayden Houghton "Land Law" in Jayden Houghton *Tikanga Māori and State Law* (Thomson Reuters, Wellington, 2025) 525.

11 See generally Nin Tomas and Khylee Quince "Māori Disputes and their Resolution" in Peter Spiller (ed) *Dispute Resolution in New Zealand* (2nd ed, Oxford University Press, Australia, 2007) at 256.

rivers).[12] To support Māori economic development, integrating tikanga values into every aspect of trade and business in Aotearoa, including foreign investment, is essential.

This article argues that streamlining the investment process without updating protective mechanisms to align with a more progressive system could transform the Act from safeguarding against foreign investment risks into a barrier to Māori land retention and protection. The investment assessments and decisions forming the foundation of this article's research were obtained through official information requests to Land Information New Zealand (LINZ) and the Overseas Investment Office (OIO), specifically for this topic.

Part II will examine the existing overseas investment framework, focusing on the definition of "sensitive land" and the primary investment pathway—the benefit to New Zealand test. Part III will analyse how the overseas investment regime operates in practice by exploring three case studies, providing a detailed assessment of the process as it relates to Māori interests. Part IV will assess the proposed reforms, highlighting the most potentially impactful procedural changes. Part V will consider the opportunities and risks presented by the ongoing changes and potential amendments to the Act. First, it will explore the economic opportunities created by a more liberal investment regime. Secondly, it will examine the associated risks concerning Māori customary interests. Part VI examines foreign investment in Australia as a comparative study to assess how Indigenous interests are protected under a more liberal investment regime, with a specific focus on the rhetoric of national interest shaping both Australian and New Zealand current policies. Lastly, Part VII will conclude by addressing the extent to which reforming New Zealand's overseas investment regime may put Māori interests at risk and how these risks can be mitigated.

II Existing Overseas Investment Framework

The starting point for overseas investment in New Zealand is the acknowledgment that it is a *privilege* for overseas investors to own or control sensitive New Zealand assets.[13] As a result, New Zealand's approach to investment is viewed as conservative.[14] Notably, the Amendment Act has introduced a parallel purpose. It provides that the Act must also recognise that overseas investment increases economic opportunity by enabling timely consent of less sensitive investments through a simplified national interest risk assessment.[15] Although many applications are approved, the Act controls the impact of certain land transactions by requiring investments to meet certain criteria to receive consent. If successful, conditions are imposed on the consent to mitigate potential risk.[16]

Part 2 of the Act contains its operative provisions. They outline the consent and conditions regime for overseas investments in New Zealand, and the definition of sensitive land under sch 1 of the Act. An overseas investment in sensitive land is, inter alia, the acquisition by an overseas person of an estate or interest in land if the land that the estate or interest relates to is sensitive land under pt 1 of sch 1 of the Act.[17]

12 Jefferies, above n 8, at 170.
13 OIA, s 3.
14 See generally Mark Cox *A future for Foreign Direct Investment into New Zealand* (Business NZ: Growing Prosperity and Potential, 6 September 2024); and Ministerial Directive Letter, above n 5.
15 Overseas Investment (National Interest Test and Other Matters) Amendment Act 2025, s 3(2).
16 OIA, s 3(1).
17 Section 12.

A *Sensitive land*

Land is sensitive if it is or includes land of a type listed in table 1 of sch 1; or the land adjoins land of a type listed in table 2 of the schedule, referred to as "Land A". For land listed under both table 1 and table 2 to be considered sensitive, it must also be land that exceeds the corresponding area threshold (if any).

Under table 1 of sch 1, land that is considered sensitive is, inter alia, marine and coastal regions of any area;[18] a bed of lake of any area;[19] a historic place, historic area, wāhi tapu, or wāhi tapu area that is entered on the New Zealand Heritage List/Rārangi Kōrero (Heritage List) or for which there is an application that is notified under ss 67(4) or 68(4) of the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPT Act);[20] land that is set apart as Māori reservation and that is wāhi tapu under s 338 of Te Ture Whenua Māori Act 1993 (TTWMA).[21]

Under table 2 of sch 1, Land A is sensitive if it adjoins land of, inter alia, the following types:

- marine and coastal area, and it exceeds 0.2 ha;[22]
- bed of lake and it exceeds 0.4 ha;[23]
- land that adjoins the marine and coastal area or a lake and is a Māori reservation to which s 340 of TTWMA applies and exceeds 0.4 ha in area;[24]
- land over 0.4 ha that includes a wāhi tapu or wāhi tapu area that is entered on the Heritage List or for which there is an application that is notified under s 68(4) of the HNZPT Act;[25]
- land over 0.4 ha that is set apart as Māori reservation and that is wāhi tapu under s 338 of TTWMA;[26]
- land (if that land exceeds 0.4 ha in area) that, pursuant to an enactment specified in sch 3 of the Treaty of Waitangi Act 1975 or in regulations,—(a) is owned by the governance entity of a collective group of Māori such as an iwi or a hapū; and (b) is managed in accordance with the Conservation Act 1987 or an enactment referred to in sch 1 of that Act.[27]

(1) Māori freehold land exemption

Schedule 3 of the Overseas Investment Amendment Act 2018 outlines specific exemptions from the requirement to obtain consent for overseas investment. Notably, one such exemption applies to Māori freehold land.[28] According to s 129(2)(b) of TTWMA, Māori freehold land is defined as land whose beneficial ownership has been determined by the Māori Land Court through a freehold order. If land qualifies as Māori freehold land, it is not classified as sensitive land under the overseas investment regime. As a result, it is not subject to the same consent requirements as land that holds wāhi tapu status.

18 Sch 1 pt 1 table 1 row 5.
19 Row 6.
20 Row 10.
21 Row 11.
22 Sch 1 pt 1 table 2 row 1.
23 Row 2.
24 Row 7.
25 Row 8.
26 Row 9.
27 Row 10.
28 Overseas Investment Amendment Act 2018, sch 3 cl 1.

Overall, the type of land considered sensitive largely includes land of customary significance and value, such as land that is wāhi tapu, which generally means "a place sacred to Māori in the traditional, spiritual, religious, ritual, or mythological sense".[29] For the purposes of the Act, wāhi tapu is defined in TTWMA to mean "a place of special significance according to tikanga Māori".[30] Tikanga Māori, the first law of New Zealand, is the framework comprising Tikanga concepts and procedures that determine the correct action in te ao Māori.[31] Since 2005, there have been 185 applications made to the OIO pertaining to land that is wāhi tapu.[32]

B *The benefit to New Zealand test*

Investors wishing to invest in sensitive land in New Zealand must apply for consent from the OIO. Generally, the OIO applies the benefit to New Zealand test. This test applies to transactions involving sensitive land where no other application pathway is available (such as the special forestry test, or residential developer pathways where the land is residential).[33] The *general* benefit to New Zealand test is met if the overseas investment will or is likely to benefit New Zealand (or any part of it or group of New Zealanders) to the extent required by the Act and if the land is, or includes, residential land, the relevant ministers are satisfied that the conditions attached to the consent will be, or are likely to be, met. Section 16A of the Act provides that the relevant ministers must assess the benefit to New Zealand (or any part of it or group of New Zealanders) by comparing the likely result of the overseas investment against the existing state of affairs as at the time the overseas investment transaction is entered into or the time the application is made. In making this decision, the ministers must take a *proportionate approach* to determining whether the benefit test is met by considering whether the benefit is proportionate to the sensitivity of the land [34] and the nature of the overseas investment transaction.[35]

This test has a framework for determining whether the investment will be beneficial by assessing it against seven factors described in s 17 of the Act. The factors for assessing the benefit of overseas investment in sensitive land are whether the overseas investment will, or is likely to:

- result in economic benefits for New Zealand;[36]
- result in benefits to the natural environment;[37]
- result in continued or enhanced access by the public within or over the sensitive land or the features giving rise to the sensitivity, for example, to exercise kaitiakitanga in relation to historic, heritage or the natural environment;[38]

29 Te Ture Whenua Māori Act 1993, s 338(1)(b).
30 Section 338(1)(b).
31 Jayden Houghton "He Tīmitanga" in Jayden Houghton *Tikanga Māori and State Law* (Thomson Reuters, Wellington, 2025) 3.
32 Summary of Overseas Investment decided applications since 2005 with land sensitivity including wahi tapu (13 November 2024) (Obtained under Official Information Act 1982 request to Land Information New Zealand).
33 Toitū Te Whenua Land Information New Zealand "Benefit to New Zealand test" <www.linz.govt.nz>.
34 OIA, s 16A(1A)(b)(i).
35 Section 16A(1A)(b)(ii).
36 Section 17(1)(a).
37 Section 17(1)(b).
38 Section 17(1)(c).

- result in continued or enhanced protection of historic heritage in or on the relevant land, for example, agreement to support entry to wāhi tūpuna, wāhi tapu, or wāhi tapu areas on the Heritage List; [39]
- give effect to or advance a significant government policy;[40]
- involve oversight of, or participation in, the overseas investment or any relevant overseas person by persons who are not overseas persons;[41]
- result in other consequential benefits to New Zealand.[42]

Two sections are relevant to Māori customary interests. First, s 17(c) of the Act continued or enhanced public access. This section encompasses access to exercise kaitiakitanga in relation to historic heritage or the natural environment. Secondly, s 17(d) continued or enhanced protection of historic heritage. This section includes agreements to support entry to wāhi tūpuna, wāhi tapu, or wāhi tapu areas on the Heritage List, taking other actions under the HNZPT Act to recognise or protect heritage values, or agreement to land being set apart as a Māori reservation. Where the relevant land includes wāhi tūpuna, wāhi tapu, or wāhi tapu areas, a benefit may be established if the applicant agrees to support the inclusion of those areas on the Heritage List, or, for example, supporting the declaration of an archaeological site on the land.

III The Overseas Investment Regime in Practice: Case Studies and Analysis

Māori customary interests are primarily protected under the Act through conditions placed on the consent holder's consent. These conditions may include granting iwi members access to sensitive sites, requiring the fencing of marae for protection, and mandating consultation with iwi on certain matters—often related to forestry investments—to ensure their concerns are addressed. Additionally, conditions may stipulate that new job opportunities be offered to iwi members before they are made available to the general public. Furthermore, they can impose restrictions on forestry activities to prevent interference with wāhi tapu, such as prohibiting planting trees over sacred land. Conditions can vary and are very specific to the case at hand. The following case studies demonstrate how conditions are used to protect and promote customary land interests.

A *Case study: Pan Pac Forest Products Ltd*

Consent was granted to Pan Pac Forest Products Ltd (Pan Pac) on 12 October 2023 to buy 601 ha of land at Rock Station, Napier for a forestry investment. The relevant ministers granted consent under the benefit to New Zealand test.[43]

As per the requirements of the Act, Pan Pac had to submit the benefits the investment could provide. Under "environmental benefits", Pan Pac intended to undertake a historic heritage assessment, consult with local iwi, and protect sites discovered.[44] On this land,

39 Section 17(1)(d).
40 Section 17(1)(e).
41 Section 17(1)(f).
42 Section 17(1)(g).
43 Toitū Te Whenua Land Information New Zealand "Overseas investment decision for case 202300156 - Pan Pac Forest Products Limited" (13 October 2023) at [109] (Obtained under Official Information Act 1982 request to the Overseas Investment Office).
44 At [109].

there was a Māori pit of archaeological interest, which needed to be protected. For this reason (amongst others), the area was considered taonga (treasure, prized possession) to the local iwi.[45] Regulators at LINZ took this into account. They imposed a condition on Pan Pac, directing the proposed consent holder to mark the pit with a permanent marking post, register the area as an archaeological site under the HNZPT Act, and create a buffer zone around it. Furthermore, Pan Pac would need to plant along the ridgeline to maintain visibility, ensuring continued accessibility to the taonga site.[46] LINZ also recommended that consultation between Pan Pac and the local iwi be a condition for the consent to be granted, as the land is part of an area with significant taonga.[47]

The assessment report describes the proportionate approach taken by the regulators at LINZ and matters relevant to the sensitivity of the land are detailed, including that the land is farm land, the size of the land is large and that "the Land is part of a general area having significant taonga to local iwi".[48]

For this case, a special condition was imposed. Special condition (15) of the consent required the consent holder to take certain measures, including a historic heritage assessment, consult with local iwi, implement reasonable measures to protect sites discovered after the heritage assessment, and take measures to protect any Māori pits.[49]

This case exemplifies how Māori interests can be considered in decision-making at the benefit to New Zealand test stage. Regulators at LINZ can recommend immediate practical measures for the potential consent holder to mitigate any risk and facilitate the consent's passage. It can be as detailed as requiring the consent holder to put up a physical sign, enclosure or recommending that the consent holder consult with the local iwi to reach an understanding where the land can continue to be accessible and protected following the foreign sale of the land.

B *Case study: Ingka Investments Forest Assets NZ Ltd—special forestry test*

Consent was granted on 11 July 2022 to Ingka Investments Forest Assets NZ Ltd (Ingka) to buy 6,113 ha of land at Huiarua and Matanui Stations for a forestry investment. Ministers granted consent under the Act's special forestry test.[50]

The criteria for applications made under the special forestry test include that "existing arrangements" over the land protecting certain "specified purposes" must be implemented and maintained.[51] The definition for specified purposes refers, inter alia, to a historic place or area and wāhi tapu or wāhi tapu area.[52] By design, the special forestry test is a more streamlined pathway than the benefit to New Zealand test and does not require the applicant to demonstrate the benefit of an investment. The requirement is to preserve the status quo where this type of arrangement exists rather than to provide a benefit above the existing state.

45 At [110].
46 At [109].
47 At [110].
48 At [121].
49 At 35.
50 Toitū Te Whenua Land Information New Zealand "Overseas investment decision for case 202200036 - Ingka Investments Forest Assets NZ Limited and Ingka Investments Management NZ Limited" (11 July 2022) (Obtained under Official Information Act 1982 request to Land Information New Zealand).
51 Overseas Investment Regulations 2005, s 29.
52 Section 29(5).

The applicants applied for consent under the special test relating to forestry activities in the Act.[53] The investment involved acquiring 6,113 ha of former sheep and beef farmland in Gisborne, including 703 ha of existing forest to establish a 4,907 ha rotation forest.[54] Over 40 third-party submissions were received opposing the transaction, mainly due to environmental concerns and social impact issues, namely the closure of the local school.[55] Included in these submissions were opposing submissions from local iwi Ngāti Porou, opposing the investment for several reasons.[56] The key concern was that the forestry activities that Ingka intended to carry out (planting, harvesting) would have a direct impact on the Mata River and an indirect impact on the Waipu Catchment, which is subject to an agreement between Ngāti Porou and the Crown.[57]

In the assessment provided by LINZ to the then Minister of Finance and Minister for Land Information, the reasons for opposition, submitted by Selwyn Parata on behalf of Te Runanganui o Ngāti Porou, were addressed.[58] The first argument was that forestry was not the most appropriate use of the productive farmland. The second argument Ngāti Porou raised was that plantation forests would increase sedimentation in the Waiapu catchment, potentially harming the vital coastal environment. Finally, Ngāti Porou acknowledged their joint management agreement with the Gisborne District Council. However, they highlighted the Council's insufficient compliance capacity. They noted that, in practice, the hapū of Ngāti Porou would bear the long-term environmental and cultural impacts of the forestry development.

Ingka was granted consent attached with a multitude of conditions. They were required to consult with Ngāti Porou to share their long-term investment plans and methods for mitigating environmental risk. Special condition (9) of the consent required Ingka to maintain any existing arrangements under s 29 of the OIR and to maintain engagement with Te Runanganui o Ngāti Porou regarding the impact of forestry activities on them.[59] A memorandum of agreement was created between Ngāti Porou, Ministry for Primary Industries and the Gisborne District Council, intended to:[60]

> … recognise the significant role Ngāti Porou has in the protection of the region and the adverse impact failure to protect the Mata River can have on the people of the region.

The Ingka case study provides valuable insight into how cultural concerns are integrated into the assessment process, particularly at the stage where the benefits of a proposed investment are weighed against its potential risks. This case highlights that cultural factors are given significant consideration, especially regarding land and natural resources that hold special meaning for tangata whenua in the region. The process ensures that third-party submissions are heard, allowing affected iwi, hapū, and other stakeholders to raise concerns or offer additional perspectives.

53 OIA, s 16A(4).
54 Toitū Te Whenua Land Information New Zealand, above n 50, at 7.
55 At 47.
56 At 8.
57 At 47.
58 At 18.
59 At 36.
60 At 46.

In particular, Ingka illustrates the unique status of riverbeds and lakes in Aotearoa, emphasising their cultural and spiritual significance to the surrounding iwi or hapū. These natural features are not just viewed as physical assets but as taonga that hold deep connections to Māori identity, history, and traditions. As a result, any decisions made about these lands or resources must be approached with respect for the Māori worldview. The case study further demonstrates the growing recognition of these cultural factors within legal and regulatory frameworks.

C *Case study:* Kawakawa Station Ltd v New Zealand Walking Access Commission

Kawakawa Station Ltd v New Zealand Walking Access Commission is noteworthy as it highlights the broad application of the consultation tool available to the Minister for Land Information, as well as the significant influence the OIO holds in legal disputes—specifically regarding arbitration.[61]

In 2019, a dispute arose between Kawakawa Station Ltd (Kawakawa Station) and the New Zealand Walking Access Commission (the Commission) over Kawakawa Station's land in Wairarapa. The issue at hand was a recommendation made by the Commission for a walkway across Kawakawa Station's land. Kawakawa Station is a New Zealand-registered company, owned and controlled by overseas investors. As such, for the purposes of the Act, it is considered an overseas entity. In 2014, Kawakawa Station applied to the OIO for consent to acquire both a freehold interest in Kawakawa Station land and a leasehold interest in the adjacent Ngawi Station, which is Māori freehold land. Kawakawa Station received consent from the OIO to invest in this sensitive land, subject to two conditions. One of these conditions required them to consult with the Commission and implement any recommendations made by the Commission.[62]

The case illustrates how the OIO can nominate specific entities or groups to be parties to an arbitration if necessary. This demonstrates the broad and specialised nature of consultative conditions. These nominations are recognised in court and can establish that a valid arbitration agreement has been formed.[63] The judge ruled that the condition constituted an arbitration clause, binding Kawakawa Station. The ruling obliged them to refer the matter to arbitration.[64]

These case studies demonstrate the critical role the Act plays in regulating and controlling foreign investment in land of customary value. The consultation process ensures that the interests and concerns of iwi and hapū are considered. The decision-making timeframe provides an opportunity for third-party submissions, allowing those who may oppose the investment to voice their concerns. Critically, by applying a proportionate approach to the benefit to New Zealand test, the benefits of the proposed investment are carefully weighed against the concerns raised by the groups potentially affected by the transaction, as well as any further potential risks identified by LINZ.

61 *Kawakawa Station Ltd v New Zealand Walking Access Commission* [2019] NZHC 791, [2019] NZAR 797.
62 At [8]–[10].
63 At [65].
64 At [75].

IV Reforms "Fast Tracking" the Investment Process

New Zealand's cautious stance on foreign investment has sparked ongoing political and legal debates over the past decade, with varying opinions on whether sensitive land should retain its special status and how the process can be streamlined to encourage more foreign capital. In 2024, the National–led Government expressed its intention to amend the Act and started implementing a series of policy changes aimed at simplifying the system.

In October 2024, Associate Finance Minister Hon David Seymour announced that reform of the Act was on the horizon.[65] The proposed reform aimed to create a more investor-friendly environment by addressing the barriers that have deterred foreign investment in the past, including high compliance costs, delays, and uncertain outcomes. Investors often face a cumbersome approval process, characterised by unclear timelines and unpredictable outcomes. This makes New Zealand a less attractive destination for overseas investment. The proposed changes aim to streamline the investment process, making it more attractive to foreign investors while ensuring that national interests remain protected.

In June 2024, ahead of the Government's October press release, Mr Seymour issued a ministerial directive letter to guide application assessors at LINZ, aiming to streamline the decision-making process.[66] The letter outlined four key measures: delegating regulatory responsibilities from ministers to LINZ personnel; shortening the timeframes for assessment outcomes; and reducing consultations with other public bodies, including iwi groups. Another significant change is a shift away from the proportional approach taken under the benefit to New Zealand test, and the introduction of a simplified benefit test that requires two significant benefits to be listed for the application to succeed, without the need to consider other factors.

In December 2025, these prospective amendments were consolidated in the Amendment Act. The first change was to introduce the parallel purpose discussed earlier. The two other changes are: (a) expedited national interest decisions; and (b) creating a single streamlined consent test.

A *Delegation, assessment timeframes and consultation*

In the past, the outcome of foreign investment applications was a Ministerial decision. However, the ministerial directive letter of June 2024 introduced a system of delegation, whereby the ministers responsible under the Act are now required to delegate their powers and functions to regulators at LINZ.[67] The intended consequence of this change is to facilitate quicker outcomes for investment applications.

In further attempts to fast-track the application process, regulators must assess 80 per cent of consent applications within half the relevant statutory time frames.[68] The OIR provide timeframes for deciding applications, depending on the nature of the transaction. For example, the total timeframe for an application for consent where the benefit to New Zealand test applies is currently 70 working days, which will be changed to 35 days.[69] This process has been further expedited by the Amendment Act, which has

65 Beehive, above n 4.
66 Ministerial Directive Letter, above n 5.
67 At [4].
68 At [18].
69 Overseas Investment Regulations, sch 5 cl 2(1).

replaced the s 37B timeframe. Now, all decisions made under s 19A must now be made within 15 working days, unless a recognised national risk concern applies.[70]

Another change pertains to the frequency of consultation. Previously, investment decision regulators had the discretion to consult other government agencies, such as the Department of Conservation or iwi groups. Under the new approach, consultation is now expected only in cases with risks to national interests; significant risks are identified; in borderline cases where the Act's tests may not be clearly met; or to ensure compliance with international obligations.[71]

B *A revised approach to the benefit to New Zealand test*

As we have seen, the benefit to New Zealand test applies to transactions involving sensitive land where no other application pathway is available. This test evaluates whether the investment is beneficial based on seven factors outlined in s 17 of the Act. Two key factors that recognise Māori values include: continued or enhanced public access, such as access for kaitiakitanga related to historic heritage or the natural environment;[72] and continued or enhanced protection of historic heritage, such as supporting entry to wāhi tūpuna, wāhi tapu, or wāhi tapu areas, or actions under the HNZPT Act to protect heritage values.[73] If the land includes wāhi tūpuna, wāhi tapu, or similar areas, a benefit can be established if the applicant agrees to support their inclusion on the Heritage List or other protective measures.

The directive letter has signalled a shift in how this test is applied. Ministers at LINZ and the OIO must consider the Government's policies and coalition agreement objectives when applying the benefit to New Zealand test. Notably, the directive allows for a more focused consideration of key benefits. Other factors may carry less weight if an investment meets the test with strong benefits in one or two factors. Although this is a positive development for investors interested in sensitive land, it raises concerns about whether Māori interests will be overlooked.

One of the most significant amendments to the Act is the reconfiguration of the relevant consent tests. The national interest, benefit to New Zealand and investor tests will be consolidated into one test for all assets except farmland, fishing quota and residential land, which will continue under existing investment pathways.[74] Section 19 of the Act has been replaced with a new national interest test. The new provision introduces a two–stage process, intended to reserve a stage two assessment for special cases, while most investment decisions are streamlined through a stage one assessment. Under the Amendment Act, the national interest test is met if, after an initial national risk assessment, the regulator determines that a national interest assessment is not required; or if the matter is not referred to the Minister; or, if referred, the Minister determines that the investment is not contrary to the national interest. [75]

70 Overseas Investment (National Interest Test and Other Matters) Amendment Act, s 25.
71 Ministerial Directive Letter, above n 5, at [17.1].
72 OIA, s 17(c).
73 Section 17(d).
74 "Reform of the Overseas Investment Act" (15 December 2025) Toitū Te Whenua | Land Information New Zealand <www.linz.govt.nz>.
75 Overseas Investment (National Interest Test and Other Matters) Amendment Act, s 19.

V Opportunities and Risks

The recent reforms present both opportunities and risks within New Zealand. Although the economic potential is considerable, it is crucial to recognise the associated risks. A key consideration in this context is how, and to what extent, the current protective measures designed to safeguard and promote Māori interests may be undermined by implementing a more liberal investment framework.

This analysis will give particular attention to New Zealand's forestry, viticulture, and mining industries, which represent the three largest avenues for foreign direct investment. Additionally, the mining industry in Australia, along with Australia's foreign investment policy, will be examined as a case study to highlight how Indigenous interests can be marginalised within a more streamlined and culturally homogenous investment framework.

A *Opportunities*

For the past decade, New Zealand has maintained the most restrictive Foreign Direct Investment (FDI) rules among OECD countries, with significantly less foreign investment entering our domestic markets than comparable international markets.[76] This is largely due to the encumbrance investors face when applying for consent through the overseas investment application process.[77]

The Government's policy towards overseas investment has been to lift New Zealand's productivity and effectiveness of the public service; to implement an active foreign, defence and trade policy agenda which enhances New Zealand's security; signal that New Zealand is open for business and is outwardly engaged; make New Zealand a participant in major global and regional developments; and grow trade and prosperity.[78] The New Zealand Institute of Economic Research's (NZIER) latest report, dated March 2016, highlights the economic significance of FDI.[79] Economic evidence suggests that FDI benefits the host country for a trifecta of reasons.

The primary reason is that it enhances trade. FDI enables an influx of resources and their effective allocation to where they are most needed. This is accompanied by novel technology and specialised management, both of which the NZIER has stated contribute to domestic competition and productivity growth.[80] The second reason is a growth in employment rates. As trade grows, so does employment, with the report highlighting that in 2016, one in five New Zealanders worked in a firm partly funded by FDI.[81] The service industry is the largest contributor to Māori employment, and it also attracts the majority of FDI in the country, accounting for 56 per cent of the total.[82] Finally, FDI enables a more competitive market, allowing land and home owners in New Zealand to reach a wider range of potential buyers. The March 2016 report noted a common sensitivity among many New Zealanders regarding FDI—the fear that it could erode sovereignty and turn

76 OECD, above n 3.
77 Nick Wells and Greer Fredricson "Overseas Investment in New Zealand: A Regulatory Regime Ripe for Reform" (2015) 21 NZBLQ 1 at 2.
78 Ministerial Directive Letter, above n 5, at [6].
79 New Zealand Institute of Economic Research *Foreign Direct Investment in New Zealand: A brief review of the pros and cons* (March 2016).
80 At 1.
81 At 2.
82 At 2.

New Zealanders into "tenants in our own land".[83] In response, the report argues that the benefits FDI brings outweigh this potential loss, and that the investment screening process under the Act is sufficient to protect New Zealand's economic and social objectives. In 2016, investments in land for private enjoyment represented 5.9 per cent of total FDI.[84] A more liberalised investment scheme would allow farmers and private landowners with large properties to capitalise on their land through such investments.

(1) Example: viticulture in New Zealand

In New Zealand, viticulture has long been a thriving domestic industry and a significant source of export wealth. In 2023, New Zealand exported NZD 767 million worth of wine to the United States, making it the third-largest supplier of wine to the country, after Italy and France.[85]

The Hawke's Bay region (Te Matau-a-Māui) has become a prominent area for wine production, particularly over the past two decades. The NZIER report highlights Elephant Hill Winery as a key example. In 2003, the Weiss family purchased the coastal Te Awanga Vineyard and subsequently made two additional investments in the area.[86] The wine produced is sold both domestically and in large quantities abroad. The report outlines several benefits of this coastal investment, including creating employment opportunities, enhancing regional appeal for overseas tourists, developing viticulture skills within New Zealand and boosting exports to international markets.[87]

A recent case, Accolade Wines New Zealand Ltd, decided in November 2024, illustrates how the benefits of FDI can often outweigh concerns related to sensitive land.[88] The consent for the transaction was granted from ss 12(1)(a) and 13(1)(c) of the Act. Despite the land being deemed sensitive due to its status as farmland and a significant business asset, consent was granted. This is because the transaction was expected to provide key benefits, including the creation and retention of jobs, increased capital investment, higher production, and greater export receipts.[89]

(2) Example: forestry in New Zealand

The four largest private landowners in New Zealand are all foreign-owned forestry companies, highlighting the prominent role of foreign investment in the country's forestry sector.[90] The forestry industry is a major contributor to New Zealand's economy, generating approximately $6.6 billion in annual gross income.[91] The industry provides significant employment, with around 35,000 to 40,000 people working within it.[92]

83 At 1.
84 At 2.
85 See generally New Zealand Ministry of Foreign Affairs and Trade *NZ exports to the US: strong growth continues* (Market Intelligence Report, June 2024) at 2.
86 New Zealand Institute of Economic Research, above n 79, at 6.
87 At 7.
88 Toitū Te Whenua Land Information New Zealand "Overseas investment decision for case 202400405 - Accolade Wines New Zealand Limited" (7 November 2024) (Obtained under Official Information Act 1982 request to Land Information New Zealand).
89 At 2.
90 Kate Newton and Guyon Espiner "Foreign forestry companies NZ's biggest landowners" (7 October 2019) Stuff <www.stuff.co.nz>.
91 Ministry for Primary Industries "Forestry and wood processing data" <www.mpi.govt.nz>.
92 Ministry for Primary Industries, above n 91.

The case of Taumata Plantations Ltd (TPL) provides an example.[93] In September 2023, the Minister for Land Information (then Hon Damien O'Connor) and the Minister of Finance (then Hon Barbara Edmonds) were asked to decide on standing consent to acquire sensitive land for forestry purposes due to the Act.

When the application was made, TPL already owned over 157,000 ha of forestry estate in the North Island, making it the largest private forestry owner in New Zealand. This vast landholding not only positions TPL as a major player in the forestry sector but also plays a significant role in employment generation. TPL contracts with Manulife Investment Management Forest Management (NZ) Ltd (MFM(NZ)), the largest forestry management company in New Zealand, to oversee and manage its extensive forestry estate.[94]

Through the combined operations of TPL and MFM(NZ), a wide range of employment opportunities are created across various sectors of the forestry industry. These include jobs directly related to the management of the estate, such as forestry workers, harvesters, loggers and equipment operators, who are involved in the physical aspects of timber production. Additionally, there are employment roles in areas such as forest planning, environmental management, and compliance, which ensure that the estate is managed sustainably and in accordance with relevant legal and environmental regulations.

B *Risks*

Although fast-tracking and streamlining FDI present significant opportunities, they also come with considerable risks. First, simplifying the investment process could bypass crucial protective mechanisms, such as consultation conditions. A greater concern is that liberalising FDI to stimulate key industries, such as forestry, could threaten Māori land retention and reclamation. Finally, promoting environmentally intrusive industries without strong cultural safeguards risks relegating the protection of taonga to a secondary priority.

(1) Shift away from consultation as a condition attached to consent

Removing or weakening the consultation process in the overseas investment framework poses a significant risk to Māori interests. It diminishes tangata whenua's ability to have a say in decisions affecting culturally significant land. The consultation stage in the assessment process exemplifies the collective approach to dispute resolution observed in other socio-legal spheres, where Tikanga principles are also prevalent.[95] For example, in the context of wāhi tapū, consultation with iwi has historically been a key condition attached to consent approvals. If an investor seeks to acquire land that holds significant cultural meaning for a local iwi, consent may still be granted; however, a condition could be imposed requiring the investor to consult with the iwi about the intended use of the land. This consultation process has been vital in ensuring that the interests and rights of Māori communities are respected and protected.

The Government's recent push to expedite and simplify the investment process risks jeopardising this crucial consultation step by reducing or eliminating the post-consent consultation requirement, which diminishes the ability of Māori communities to assert their rights and interests in relation to their land.

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93 Toitū Te Whenua Land Information New Zealand "Overseas investment decision for case 202200328 - Taumata Plantations Limited" (19 September 2023) (Obtained under Official Information Act 1982 request to Land Information New Zealand).

94 At [3].

95 See generally Tomas and Quince, above n 11, at 256–294.

(2) Land retention: foreign ownership of land used for forestry

As we have seen, despite being foreign-owned, forestry companies contribute to New Zealand's economy by boosting trade, fostering job creation, and stimulating various ancillary industries. However, the foreign ownership of these large landholdings has raised concerns about land sovereignty and the future control of natural resources.

(a) Example: Taumata Plantations Ltd (continued)[96]

Although TPL contributes significantly to the forestry industry and the broader economy of New Zealand, its land transactions pose certain risks. TPL sought a standing consent for land across the entire North Island.[97] The standing consent regime allows Ministers to grant consent before a transaction in certain circumstances. This is attractive to investors who wish to make a long-term investment plan but seek certainty in their ability to invest in the land. Investors seeking a standing consent must satisfy four criteria:

(1) they meet the investor test;
(2) that the conditions imposed on the standing consent will or are likely to be met;
(3) the investor has adequate processes in place for meeting the requirements set out in the OIR; and
(4) the investor has a strong record of compliance with the Act and with conditions and other requirements imposed under it.

Notably, the criteria for standing consent do not allow for the consideration of the broader impacts of an investment (for example, impact on local communities or the environment).

Obtaining standing consent would allow TPL to proceed with land transactions without requiring prior consent under the Act, and to enter into contracts that are not conditional on obtaining consent under the Act, thereby completing them in a shorter timeframe.[98]

A standing consent was requested for five years from the date of request, making it valid until September 2028. However, LINZ recommended that a duration of three years be granted. LINZ argued that this timeframe appropriately balances the need for TPL to have sufficient time to utilise the standing consent while ensuring that the consenting framework remains responsive to future legislative and policy changes.[99]

Several conditions were attached to the consent, including that existing protection arrangements remain in place for historic places, wāhi tapu areas and Māori reservation land;[100] and TPL will consult with iwi regarding the management of those sites.[101]

The TPL case is informative for several reasons. First, the concept of standing consent, a form of pre-emptive approval, carries more risks than a standard fixed-date consent. In this case, the regulators at LINZ recognised that a five-year standing consent period could be problematic and shortened it to three years. Although standing consent provides certainty to investors by allowing them to proceed with their projects without needing to seek additional approval during the consent period, it means that should any issues arise during that time, the forestry companies are permitted to continue their activities on the land. The TPL case also highlights how protective measures are enforced throughout the

96 Toitū Te Whenua, above n 93.
97 At 18.
98 At [37].
99 At [48].
100 At [64].
101 At [69].

consent renewal process. This ensures that any new concerns are addressed before approval is granted for an extension or renewal of consent.

The issues surrounding investment certainty in the forestry industry in New Zealand are also evident in other post-colonial economies. In these contexts, the drive for stability and predictability in foreign investment often prioritises economic interests over customary land rights. Although providing certainty to investors is vital for economic growth and the continued development of industries, this approach can sometimes result in Indigenous concerns being sidelined. As the Government streamlines investment processes and reduces perceived risks, the complexities of balancing economic advancement with the preservation of Indigenous rights and land interests become more pronounced. This dynamic is not unique to New Zealand. Still, it is a challenge faced by other post-colonial nations, where Indigenous communities are often left to navigate the tension between securing their cultural heritage and participating in modern economic systems.

(3) Protection of taonga: risks associated with mining

Mining in New Zealand represents an industry with significant growth potential;[102] however, without proper mitigating measures, promoting mining could undermine the role of kaitiaki,[103] and other tikanga concepts in protecting taonga.[104] For example, in *Waihi Gold Company v Waikato Regional Council,* a proposal to extend the Martha Mine was approved under the Resource Management Act 1991, but Ngāti Tamaterā opposed it.[105] Their objections centred on the removal of Pukewa, a hill of great cultural significance, and the impact on the sacred Ohinemuri River. Despite the economic benefits the mining project could provide, Ngāti Tamaterā argued that the mining activities would harm their ancestral lands and identity. The court recognised the river's cultural importance and acknowledged the adverse effects on Ngāti Tamaterā.

Mining is a vital sector in New Zealand's economy, contributing significantly to export earnings and regional development, particularly through coal and gold. In 2023, mining accounted for 8.4 per cent of the West Coast's GDP, generating one billion in annual export revenue and providing over 5,000 jobs.[106] In his formal speech, Hon Shane Jones advocated for liberalising investment policies to attract international investors, promoting growth, expanding employment, and ensuring the sector's long-term sustainability.[107] However, there are associated risks in encouraging overseas investors to engage in New Zealand mining operations without considering customary concerns.

102 Shane Jones, Minister "New Zealand's minerals future" (speech to the New Zealand Parliament, 23 May 2024).

103 Katharina Ruckstuhl and others *Māori and mining* (Māori and Mining Research Team, Dunedin, 2013) at 16.

104 Treasure, anything prized: Te Aka Māori Dictionary "tāonga" <www.maoridictionary.co.nz>.

105 *Waihi Gold Co v Waikato Regional Council* NZEnvC Auckland Decision No A146/98, 15 December 1998 at 2 and 3.

106 Jones, above n 102.

107 Jones, above n 102.

Mining directly implicates the status of taonga in New Zealand and involves many tikanga principles, including rangatiratanga,[108] manaakitanga,[109] and kaitiakitanga.[110] In the context of mining, minerals found in the land are taonga. Iwi and hapū groups can exercise rangatiratanga by being involved in resource management and land use decisions in particular regions.[111] Manaakitanga, emphasised by some iwi as a guiding principle for extractive activities, signifies hospitality and mana. It represents the kaitiaki's obligation to manage resources in a way that allows them to give gifts and express generosity, intending to respect those receiving them.[112] Kaitiakitanga represents a reciprocal relationship with resources, where social, economic, and political benefits are obtained alongside the responsibility to care for those resources. Those considered kaitiaki are iwi, hapū, whānau, and individuals with genealogical links to the resource. This principle empowers iwi to seek a more meaningful role in environmental decision-making within their rohe. The most effective way to exercise kaitiakitanga today is through partnerships with central and local governments, as well as environmental agencies.[113]

The Government has signalled that New Zealand is open to foreign investment in the mining industry.[114] The question is if and how liberalising this sector will impact tangata whenua's ability to exercise rangatiratanga, manaakitanga and kaitiakitanga. Research suggests that for iwi and hapū to effectively exercise kaitiakitanga, partnerships between iwi and agencies should be encouraged, and suitable co-management approaches implemented.[115] Previously, consultation conditions attached to investment consents could have provided a pathway for co-management possibilities. However, with the policy changes that demote the consultation tool, there is a risk that important protective tikanga principles will not be part of the discussion.[116] The impact of a more liberalised regime on protective measures is uncertain, but Australia's prioritisation of economic development over Indigenous interests offers a valuable case study.

VI Comparative Investment Framework and Policy Approach: Australia Case Study

To understand the broader implications of this issue, it is useful to examine how similar challenges have been addressed in other countries and how they might inform New Zealand's approach to foreign investment moving forward. Australia's approach towards foreign investment and Indigenous interests is relevant to New Zealand, as both countries share a colonial history that continues to shape Indigenous land ownership and rights. For most of Australia's history, Indigenous land was considered terra nullius, a concept that has permeated and informed how Indigenous land has been and is

108 Sovereignty, principality, self-determination and self-management: Te Aka Māori Dictionary "rangatiratanga" <www.maoridictionary.co.nz>.

109 Hospitality, kindness, generosity, support, the process of showing respect, generosity and care for others: Te Aka Māori Dictionary "manaakitanga" <www.maoridictionary.co.nz>.

110 Guardianship, stewardship, trusteeship and trustee: Te Aka Māori Dictionary "kaitiakitanga" <www.maoridictionary.co.nz>.

111 Ruckstuhl and others, above n 103, at 17.

112 At 19.

113 At 16.

114 Jones, above n 102.

115 Ruckstuhl and others, above n 103, at 19.

116 Ministerial Directive Letter, above n 5, at [17.1].

currently treated in the investment framework.[117] New Zealand is moving beyond its colonial conceptualisation of land through modern frameworks that empower tangata whenua to exercise tino rangatiratanga, enabling land to be reclaimed and protected. For example, the Māori Land Court, operating under the authority of TTWMA, is a working framework that has evolved over the years and, in its contemporary context, allows for tangata whenua to reconnect with their whenua through a formal system and oversee the general management of Māori Land in New Zealand.[118] However, whether the reformed investment legislation will support this development remains to be seen. Australia's investment regime, particularly in relation to mining and Indigenous interests, can be compared to New Zealand's approach, highlighting a situation where Aboriginal interests have been marginalised.

A *Foreign investment regime in Australia*

Over the last decade, Australia has consistently scored better on the OECD's FDI Restrictiveness Index, indicating fewer restrictions and contemporary limitations on foreign investment.[119] At the end of 2023, Australia had an FDI restrictiveness rating of 0.15 compared to New Zealand's rating of 0.24 (0 is open and one is closed).[120] Foreign investment in Australia is governed by the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA). The Australian Federal Treasurer oversees the administration of FATA with support from the Foreign Investment Review Board (FIRB).[121] Authority over investment decisions lies with the Treasurer, who can oppose proposals or impose conditions on investments deemed to be contrary to or at risk to Australia's national interest.

Similar to attitude changes in New Zealand, in May of 2024, the Treasurer announced reforms to Australia's foreign investment policy, which aims to focus scrutiny on high-risk investments to protect national interests while streamlining low-risk investments to attract the capital Australia needs quickly.[122] Investment applications are required where the land involved is national security, agricultural, commercial, or residential land. However, the regime does not consider or address the significance of land to Aboriginal communities.[123]

B *Indigenous land rights in Australia*

Indigenous rights legislation in Australia, specifically the Aboriginal Land Rights (Northern Territory) Act 1976, has similarities to New Zealand's TTWMA. However, each country has key differences in how land rights are defined and managed. Due to the Aboriginal Land Rights (Northern Territory) Act, Aboriginal land is defined as land held by a Land Trust for an estate in fee simple, or land subject to a deed of grant held in escrow by a Land

117 Bain Attwood *Empire and the Making of Native Title: Sovereignty, Property and Indigenous People* (Cambridge University Press, Cambridge, 2020) at 14.
118 See generally Te Ture Whenua Māori Act; and Te Tiriti o Waitangi 1840.
119 OECD, above n 3, at 11.
120 OECD "OECD FDI Regulatory Restrictiveness Index" (2024) <www.oecd.org>.
121 Foreign Investment Review Board "Foreign Investment in Australia" (2 February 2025) Australian Government The Treasury <www.foreigninvestment.gov.au>.
122 Foreign Investment Review Board "Australia's Foreign Investment Policy" (14 March 2025) Australian Government The Treasury <www.foreigninvestment.co.nz>.
123 See generally Foreign Acquisitions and Takeovers Act 1975.

Council.[124] In contrast, Māori land in New Zealand includes Māori customary land and Māori freehold land.[125]

In Australia, the Minister has the authority to establish Aboriginal Land Trusts to hold title to land in the Northern Territory for the benefit of Aboriginal people traditionally entitled to the use or occupation of the land in question.[126] This differs from TTWMA, which outlines mechanisms for managing Māori land, particularly regarding its ownership, governance and use by Māori communities. Both frameworks aim to safeguard Indigenous land rights but reflect differing legal and cultural approaches to land ownership and management.

C *Risks to indigenous land rights in Australia*

While forestry is the largest sector attracting foreign trade in New Zealand, mining is Australia's most significant foreign investment industry. Mining generates substantial capital for Australia, with the industry valued at AUD 392.1 billion in 2023.[127] The following examples exemplify how the industry puts Indigenous land at risk.

(1) Example: Mount Isa Mines

In the late 1990s, Mount Isa Mines, a mining company, acquired a river mine in the Northern Territory, valued at AUS$250 million in lead, zinc, and silver, with approval from the Federal Government.[128] The land became the subject of a native title claim, and the Chief Executive, Norm Fussell, threatened to withdraw from the project if the Government could not provide the mining industry with certainty over the land's status.[129] Mining projects were commonplace in Australia around this time. This coincided with the wave of native title recognition that (briefly) moved through the Northern Territory. In response, any native title claims were dismissed.

(2) Example: The *Wik* claim

Another example is *Wik Peoples v State of Queensland (Pastoral Leases case)*.[130] The case concerned the status of large areas of land with several pastoral leases and mining leases.[131] The claimants (the Wik peoples and the Thayorre people) wished to assert their native title rights and argued that these rights survived despite the granting of mining and pastoral leases. In the High Court, a majority of 4:3 found for the claimants on the pastoral lease issue but against them unanimously on the special mining leases. Commentary surrounding the *Wik* claim suggests that this refusal to acknowledge native land title in the land that is the object of mining licenses was largely due to the investors' pressure on the Government during this time. The primary mining company, Cozinc Riotinto of

124 Aboriginal Land Rights (Northern Territory) Act 1976 (Cth), s 3.
125 Te Ture Whenua Māori Act, s 4.
126 Aboriginal Land Rights (Northern Territory) Act, pt 2 s 4.
127 Australian Government Department of Foreign Affairs and Trade "Australian industries and foreign direct investment" (June 2024) <www.dfat.gov.au>.
128 Damien Short "The Social Construction of Indigenous 'Native Title' Land Rights in Australia" (2007) 55 Current Sociology 857 at 860.
129 At 860.
130 *Wik Peoples v State of Queensland (Pastoral Leases case)* [1996] HCA 40, (1996) 187 CLR 1.
131 This lease arrangement has also been utilised in New Zealand, in which government-owned Crown land is leased out to graziers for the purpose of livestock.

Australia Ltd (now Rio Tinto Ltd), publicly declared that the company would halt the AUD 1.75 billion project if the *Wik* claim issues were not resolved. Further, the company sent letters to all government ministers stipulating they would not enter into any business with the Wik people unless they had government assurance that their title through the mining leases was valid against native title.[132]

D *Marginalising indigenous land rights through the national interest rhetoric*

The mining case study offers valuable insight into events unfolding in New Zealand for two key reasons. First, it illustrates how land status becomes uncertain when subject to native title claims. Secondly, it highlights how native land rights can be marginalised when framed as secondary to national interests.

In Australia, the recognition of native title sparked rhetoric portraying these claims as obstacles to mining expansion, a sector deemed crucial to national growth. Noam Chomsky examines the relationship between power and national interest, arguing that while nations like Australia and New Zealand are often portrayed as serving their people, they primarily serve the interests of the dominant group.[133] This concept fuelled resistance to native title claims, particularly post-*Mabo*, where mining advocates pushed to invalidate native land rights to protect investment. For example, Grant Watt of the Northern Territory Chamber of Mines and Petroleum urged the Commonwealth to reject native title claims after Mabo, warning that failure to do so could deter investment and threaten Australia's economic future.[134] In response, the Native Title Act 1993 was introduced to validate existing commercial titles and ensure future negotiations aligned with the Government's vision of native land rights.

E *The national interest rhetoric in New Zealand*

The Government has identified the national interest test as a key safeguard against investments that may threaten New Zealand's national interests.[135] This mechanism allows the Minister of Finance to assess transactions on a discretionary basis, considering factors such as national security, public order, international relations, market structure, economic and social impacts, alignment with New Zealand's values, investor character, and foreign government involvement. The Minister can deny consent if an investment is deemed contrary to the national interest.[136]

A transaction may be classified as a matter of national interest if it risks New Zealand's security or public order, conflicts with government priorities, threatens Treaty of Waitangi obligations, or involves a site of national significance.[137] The Government's new approach to overseas investment weighs an investment's benefits, expecting that if two significant benefits are identified, it should proceed—unless it falls under national interest concerns.[138]

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132 *Wik Peoples*, above n 130, at 863.

133 Noam Chomsky *Profit Over People: Neoliberalism and Global Order* (Seven Stories Press, New York, 1999) at 96.

134 *Wik Peoples*, above n 130, at 864.

135 Ministerial Directive Letter, above n 5, at [10]–[11].

136 Overseas Investment Regulations, s 20B.

137 Toitū Te Whenua Land Information New Zealand "Safeguarding New Zealand's National Interest" <www.linz.govt.nz>.

138 Ministerial Directive Letter, above n 5, at [13].

However, what is considered national interest may not mirror Māori land interests. For instance, while FDI in forestry may be seen as economically beneficial, it could clash with Māori interests if the land holds cultural significance. However, this factor is not considered in the assessment process. The Government's stance on national interest can be inferred from recent political agendas, such as the Treaty Principles Bill, which promotes neutral language to balance diverse rights.[139] The potential amendments to the Act could impact tangata whenua land rights, prioritising the nation's economic interests over Māori land interests. If the Act shifts toward neutrality, it may weaken safeguards that recognise the cultural, spiritual, and economic significance of land. Historically, Māori land has been undermined by colonial policies, so these protections are vital.[140] The outcome will depend on whether any future amendments will continue to acknowledge distinct Māori land interests, or if these interests will become absorbed into one interest group: New Zealand's interest.

F *Free, prior and informed consent: the international context*

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), a non-binding resolution adopted in 2017, remains an important international instrument in discussions of Indigenous land retention and management in New Zealand.[141] Its relevance stems largely from the principle of Free, Prior and Informed Consent (FPIC), articulated in arts 10, 19, 29(2), and 32(2). Article 19 requires that states cooperate in good faith with Indigenous peoples to obtain their free, prior, and informed consent before enacting legislative or administrative measures that may affect them. Similarly, art 32(2) extends this obligation to projects affecting Indigenous lands, territories, and resources.

New Zealand formally expressed support for UNDRIP in 2023.[142] Although non-binding, this recognition was not without resistance. Concerns were raised that granting Indigenous peoples the ability to challenge projects on the basis of Indigenous rights might hinder national development.[143] The FPIC provisions are deliberately broad, allowing for some flexibility, but they also highlight the tension between fostering development and safeguarding Indigenous rights. Despite this tension, FPIC has gained significant relevance at the international level and is increasingly regarded as an ideal that could support more protective investment regimes. [144] In New Zealand, FPIC may become directly relevant to future debates surrounding the permeability of the investment regime, for two main reasons. First, the emphasis on *prior* consent highlights the importance of engaging with Indigenous communities before implementing legislative or regulatory changes. In particular, amendments to the Act affecting Māori land should involve consultation during the drafting stage, not as an afterthought. Prior consent also implies that Indigenous peoples should not be subject to undue time pressures; instead, they

139 See generally Principles of the Treaty of Waitangi Bill 2024 (94-1).

140 See generally Jayden Houghton "Land Law" in Jayden Houghton *Tikanga Māori and State Law* (Thomson Reuters, Wellington, 2025) 525.

141 *United Nations Declaration on the Rights of Indigenous Peoples* GA Res 61/295, A/Res/61/295 (2007).

142 New Zealand Ministry of Foreign Affairs and Trade, above n 85.

143 Mauro Barelli "Free, Prior, and Informed Consent in the UNDRIP: Articles 10, 19, 29(2), and 32(2)" in Jessie Hohmann and Marc Weller (eds) *The UN Declaration on the Rights of Indigenous Peoples: A Commentary* (Oxford University Press, Oxford, 2018) 247 at 248.

144 At 249.

must be afforded sufficient time to gather information from their immediate communities and relevant third parties.[145]

The element of *informed* consent reinforces this principle. Indigenous peoples must have access to the necessary resources to evaluate proposed measures or projects meaningfully. In the context of New Zealand's overseas investment regime, this requires ensuring that Māori communities can fully understand the nature, scale, purpose, and likely economic, social, cultural, and environmental impacts of potential projects as applications are made.[146] The precise meaning of consent remains to be defined domestically. Within the overseas investment framework, some aspects of FPIC are already practised. For example, conditions attached to approvals for developments on sensitive Māori land often require consultation with the relevant Iwi as projects unfold. However, whether this principle will be strengthened or diluted within a more liberalised regime remains uncertain.

Comparative approaches also illustrate the instability of the principle. Unlike New Zealand, Australia has declined to recognise UNDRIP's relevance in domestic policy, reflecting the differing national attitudes toward Indigenous land rights as previously discussed. The question, therefore, is whether New Zealand's recognition of FPIC will meaningfully influence future legislative and policy decisions concerning overseas investment. Will Indigenous rights remain a central consideration, or will FPIC's domestic significance recede as New Zealand prioritises economic development?

VII Conclusion

In conclusion, while New Zealand is embracing foreign investment, we must remain committed to protecting the status of land and not sacrifice vital safeguards to streamline the process. This article has examined the operation of New Zealand's overseas investment regime, striking a balance between the need for foreign capital and the protection of Māori land interests. It has also examined recent reforms and the potential risks and benefits of liberalising the investment framework, drawing on the Australian experience, particularly within the mining industry, as a relevant case study.

Key changes, including reduced consultation requirements, shorter timeframes for decision-making, and revised investor tests, underscore the Government's commitment to facilitating foreign direct investment. However, these shifts could relegate Māori interests to secondary considerations. These changes may impact the treatment of wāhi tapu sites, land retention objectives, and the protection of taonga in New Zealand. Introducing more flexible options for foreign investors, such as standing consent, poses a potential risk to Indigenous interests by reducing opportunities for third-party opposition and limiting consideration of changing circumstances.

The implications of the recent reforms are profound. The Act plays a crucial role in not only safeguarding Māori land interests but also fostering Māori economic development and self-determining practices. The loosening of protections could have far-reaching consequences, analogous to Australia's more unbridled approach to foreign investment.

145 At 250.
146 At 251.

Ultimately, while foreign capital plays an essential role in New Zealand's economic development, it is equally vital to uphold Tikanga principles and ensure that Māori interests in sensitive land are not only considered but continue to be given a status of national importance. As New Zealand moves to liberalise its investment framework, it remains to be seen if the recent reforms can strike a balance between economic development and the rights and interests of tangata whenua. Land will always hold special significance in Aotearoa, and it is the responsibility of our foreign investment legislation to ensure that this reality is consistently reflected and safeguarded.