



Report of the

ATTORNEY-GENERAL

under the New Zealand Bill of Rights Act 1990 on the Land Transfer (Foreign Ownership of Land Register) Amendment Bill

Presented to the House of Representatives pursuant to Section 7 of the New Zealand Bill of Rights Act 1990 and Standing Order 265 of the Standing Orders of the House of Representatives

1. I have considered whether the Land Transfer (Foreign Ownership of Land Register) Amendment Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. I have concluded that the Bill appears to be inconsistent with the right to be free from discrimination affirmed in s 19(1) of the Bill of Rights Act.
3. As required by s 7 of the Bill of Rights Act and Standing Order 265, I draw this to the attention of the House of Representatives.

The Bill

4. The Bill amends the Land Transfer Act 1952. The main purpose of the Bill is to create a publicly available comprehensive register of all foreign-owned New Zealand land ('the register') as a resource for policy-makers and the general public.

Inconsistency with s 19(1) — Right to be free from discrimination

5. Section 19(1) of the Bill of Rights Act affirms that everyone has the right to freedom from discrimination on the prohibited grounds in s 21 of the Human Rights Act 1993. The Human Rights Act provides that ethnic or national origins, which includes nationality or citizenship, is a prohibited ground of discrimination.¹
6. The key questions in assessing whether there is a limit on the right to freedom from discrimination are:²
 - 6.1 does the legislation draw a distinction on one of the prohibited grounds of discrimination under s 21 of the Human Rights Act and, if so,
 - 6.2 does the distinction involve material disadvantage to one or more classes of individuals?
7. Clause 4 of the Bill requires overseas persons to provide information about their nationality for the purposes of the register. The Bill uses the definition of "overseas persons" in s 7 of the Overseas Investment Act 2005 as individuals who are "neither a New Zealand citizen nor ordinarily resident in New Zealand". Various bodies corporate, partnerships, trusts and unit trusts are also considered to be "overseas persons" if they are 25 percent (or more) owned or controlled by an overseas person or persons.
8. The Bill, therefore, draws a distinction based on a person's citizenship. Though there are also residency requirements built into the test, whether a person is ordinarily resident is immaterial if they hold New Zealand citizenship. A non-New Zealand citizen and a New Zealand citizen both resident in New Zealand would not

¹ Human Rights Act 1993, s 21(1)(g).

² See, for example, *Atkinson v Minister of Health and others* [2010] NZHRRT 1; *McAlister v Air New Zealand* [2009] NZSC 78; and *Child Poverty Action Group v Attorney-General* [2008] NZHRRT 31.

be subject to the proposed register. However, if they were both to become resident overseas only the non-New Zealand citizen would have to submit to the register.

9. The Bill appears to create a material disadvantage for non-New Zealand citizens because overseas persons are required to provide more information when presenting an instrument for registration under s 47 of the principal Act than New Zealand citizens in the same circumstances i.e. who are not resident in New Zealand.
10. The Bill also proposes a public register, which would require the land owner caught by it to make public their name, their country of origin and the value of their land purchase in New Zealand. The loss of privacy in publicising this information is sufficient to constitute a material disadvantage.
11. I therefore consider cl 4 of the Bill is a *prima facie* case of discrimination on the grounds of national origins which creates a material disadvantage to people who are not citizens and not ordinarily resident in New Zealand.

Is the apparent inconsistency justified in a free and democratic society?

12. A limitation on a particular right or freedom can be justified under s 5 of the Bill of Rights Act where:
 - 12.1 the provision serves an important and significant objective; and
 - 12.2 there is a rational and proportionate connection between the provision and that objective.

Important and significant objective

13. The purpose of the Bill is to provide a resource for policy-makers and the general public, specifically to enable them to gauge foreign landholdings across New Zealand and in their local communities. I consider having information on foreign-owned New Zealand land to be an important and significant objective.

Rational and proportionate connection

14. The establishment of a register to capture data on foreign-ownership of land in New Zealand could be said to be rationally connected to the objective of providing a resource for policy-makers and the general public.
15. However, the Bill as it is currently drafted would not provide the comprehensive view of the total stock of foreign ownership of land the explanatory note states the Bill aims to achieve. It would be a point in time collection of information about the nationality of overseas registered proprietors at the point of purchase and would not include land already owned by non-resident overseas persons. Nor does the Bill provide a way for overseas purchasers to leave the register if, through residency or citizenship of New Zealand, they no longer meet the definition of overseas person and the status of their land ownership changes.

16. Publication of personal details, however, is not necessary for the purposes of informing policy-makers and the public of the level of foreign-owned New Zealand landholdings. What is important is the statistical information about the total “amount of land under the control of foreign nationals.”³
17. I also consider a publicly accessible register with personal details such as names and nationalities of overseas persons would impair the right to be free from discrimination more than reasonably necessary to achieve these stated objectives.
18. There are reasonable alternatives available to inform policy-makers and members of the public on the extent of foreign-owned New Zealand land. The Bill could, for example, require the same information from overseas persons and retain the requirement for Land Information New Zealand to publish data, but make the register anonymous, or make the collection and dissemination of the information subject to the Privacy Act 1993. This would enable data collection and provide the key information to the public, but protect the privacy of overseas persons and reduce the risk of stigma attracting to those individuals. In doing so, the material disadvantage for overseas persons would be lessened and the right to be free from discrimination could be considered to be limited no more than reasonably necessary.
19. The impact of the loss of privacy for foreign nationals not ordinarily resident in New Zealand goes beyond losing the ability to keep personal investment transactions from public view. Publication of their name in many cases will be enough to expose the means of contacting them through social media and expose them to stigma and hostility from persons who resent foreign ownership.
20. In light of the extent of the discrimination and the availability of reasonable alternatives to achieve the objective, I consider the limit is not proportionate to the importance of the Bill’s objective.

Conclusion

21. For the above reasons, I have concluded the Bill’s provision to create a publicly available comprehensive register of all foreign-owned New Zealand land appears to limit s 19(1) of the Bill of Rights Act and this cannot be justified under s 5 of that Act.



Hon Christopher Finlayson
Attorney-General
 4 September 2016

³ See the explanatory note for the Bill.