Submission by
the Campaign Against Foreign Control in Aotearoa
to the
Primary Production Select Committee
on the
Overseas Investment Amendment Bill, 1994

1 Introduction

1.1 The Campaign Against Foreign Control of Aotearoa (CAFCA) has been in existence for twenty years. Its aims are obvious from its name, and it concerns itself with all aspects of New Zealand's sovereignty, whether political, economic, military or cultural. It publishes a journal, *Foreign Control Watchdog*, on an approximately quarterly basis. The subscribers include a number of institutions and libraries, journalists, public figures and other researchers in the area. It is acknowledged as a unique and well-researched source in this area, where hard information is difficult to come by. CAFCA also researches, publishes, organises public meetings and other events, and works with other groups, in New Zealand and internationally.

1.2 In February 1985, CAFCA wrote to the Overseas Investment Commission (OIC) asking for it to inform us on a monthly basis of all applications received by it, and their outcomes. Lengthy debates followed over both what information should be released, and the price to be charged for it ($400 to $450 per month was the OIC's first offer). The debate included the intervention of several Ombudsmen, a case in the High Court, and threatened legislation to prevent release of the information[1]. Finally, we started receiving monthly information (cost then averaging about $40 per month) in December 1989.

1.3 Since then, we have made extensive use of the information received from the OIC, including supply on subscription and on request to mainstream news media and other interested parties, and regular publication in *Watchdog*. More detail is given below. Hence our strong interest in this Bill.

1.4 The aspect of this Bill of most immediate concern to us is that it would threaten the already inadequate supply of official information on overseas investment, and we strenuously oppose these provisions.

1.5 Several years of monitoring OIC decisions gives us considerable cause for concern as to trends in sales to overseas interests of New Zealand land and other assets. We present evidence for this concern and suggest that what is required is the resources and commitment to protection of ownership of land in New Zealand hands, but that the present Bill weakens that protection.

1.6 This submission will focus on the following aspects of the Bill:

1.6.1 The definition of "Overseas person";

1.6.2 The new provisions relating to land sales;

1.6.3 The effect of the abolition of the Land Settlement Promotion and Land Acquisitions Act 1952 (LSP Act);

1.6.4 The effect on access to information.

1.7 A summary of recommendations concludes the submission.

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[1] Proposed Section 17 of the Law Reform (Miscellaneous Provisions) Bill, 1990.

1.8 The examples given in this submission, unless otherwise referenced, come from decisions made by the OIC, as supplied to CAFCA. All areas above one hectare are rounded to the nearest hectare.

2 Definition of "Overseas person"

2.1 Clause 2(3) defines "overseas person" to include only persons who *are not New Zealand citizens*. Thus New Zealand citizens not permanently resident in New Zealand have no restrictions on their ownership of New Zealand assets, including land. Though this is similar to the LSP Act, it is a change from the Overseas Investment Act. We believe this change would be a major mistake.

2.2 It ignores the most important problem: that of absentee ownership. It appears to take the view that overseas ownership should be restricted simply because of the passport the person happens to hold. The proposed definition would allow, for example, citizens of other countries to gain residence, and subsequently New Zealand citizenship, through the business immigration scheme, and then return to their country of origin. They could then own as much land or other assets in New Zealand as they wished yet never again set foot in the country. There is also a large expatriate New Zealand community, including prominent businessmen. The problems of absentee ownership apply to them in the same way.

2.3 We therefore submit that the existing wording in the 1973 Act remain: "Any person not ordinarily resident in New Zealand".

2.4 We support the other changes to the definition of "overseas person".

3 Provisions relating to land sales

3.1 We support the extension of the definition of overseas investment to explicitly include land (paragraph (b) of the definition), and the clarification that indirect ownership of land through a company is regarded as overseas investment (paragraph (c)). This has been a potentially large loophole in the LSP Act through which land sales to overseas companies could have occurred. Since they escape regulatory authorities, examples are not easy to document.

3.1.1 Probably the best documented case is that of Matakana Island. In February 1993, the OIC approved the joint purchase by Ernslaw One (Malaysian owned) and ITT Rayonier (U.S.A.) of the Matakana Island land and forestry rights of London Pacific (in receivership). In March 1994 the High Court invalidated the sale, Mr Justice Greig ruling that the use of Ernslaw One's $250 shelf company, Caldora Holdings, was clearly intended to avoid the need to get Ministerial consent under the LSP Act and the Overseas Investment Act.

3.1.2 An example was documented in the December 1990 issue of *New Zealand Property* (p. 2: photocopy attached to this submission). There, Kaikoura Island was able to be transferred without scrutiny to Hawaiian developers, via the sale of the company, Westy Holdings Ltd, which owned it. This sale also escaped the OIC because the land was not zoned rural (it was not included in the District Scheme). We comment on this below.

3.1.3 A second example surfaced through the "wine box" European Pacific documents. The aim was to allow an Australian company, Strand Holdings, to acquire listed corporate farmer, Agland, and to buy farm land. The scheme involved setting up a

company which did not own any existing farms and incorporating it in New Zealand. This did not require Land Settlement Tribunal consent and met OIC requirements. It also "maximised tax efficiency". Two farms had been purchased by this method by August 1988. (*Press*, "Aust company skirted NZ laws to buy SI farmland", 10/6/94, p.6.) By late 1993, Agland was simply a cashed-up shell and by April 1994, Strand had sold virtually all its shares in Agland. (*Press*, "Strand sells 50.9% of Agland", 10/11/93; "Strand ends Agland links", 14/4/94.)

3.2 It is important that this definition also include arrangements such as forestry cutting rights, and *profit a prendre* (the right to grow and harvest crops and minerals from land belonging to another person) provisions which are becoming common. There are many well known examples of the sale of forestry cutting rights: the majority of state forest sales were in this form. Two *profit a prendre* cases have come to our notice through decisions of the OIC:

3.2.1 In August 1993, the Japanese company, Southern Wasabi Ltd gained approval from the OIC for a "profit a prendre" over 5 hectares of land at Cargills Rd, Barrytown, Westland in order to increase the scale of its Wasabi growing for export to Japan. Until then, the operation had been an experimental one utilising approximately 1 hectare of land. Southern Wasabi is owned 25 per cent each by Tominaga Boeki Kaisha Ltd and Marui K.K., both of Japan, and three New Zealand residents with 16.66 per cent each. The two Japanese companies bought their shareholding from the New Zealand founders of the operation in March 1991.

3.2.2 In May 1994, a BP Oil New Zealand Ltd (U.K.) subsidiary, Bitumix Ltd, entered into a *profit a prendre* over 20 hectares of land in Northland owned by Halliwell Farms Ltd "to enable them to quarry, win, work and take stone and metal, thus ensuring a supply of raw materials for their roading activities". The price was a minimum annual royalty of $50,000.

3.3 While the provisions of the new Section 2(4) are welcome, making *all* land acquisition for commercial purposes investment, we submit that the "commercial purposes" qualifier should be dropped. That is, *all* land acquisition by overseas persons should be subject to regulation, for the following reasons:

3.3.1 Custodianship of all land is compromised by absentee ownership;

3.3.2 Open ownership of, for example, city residential properties, can affect the affordability of home ownership in that attractive properties in New Zealand cities are very cheap by European, U.S. and Asian standards. It also has social and cultural effects.

3.3.3 Even small pieces of land, if strategically placed for commercial, social, environmental or conservation reasons, may be of significance: for example if they control entry to other land or have special historical significance.

3.3.4 The use of land can change. Owners of land bought for residential purposes may decide they wish to run a business from that land, for example. An example occurred in April 1994: three family trusts, two from the U.S.A. and one from New Zealand, own a 5 hectare block of land on Waiheke Island. According to the OIC, "the property was acquired in 1992 but as no business was to be undertaken the OIC's consent was not required. Subsequently Moana Roa Ltd [the company owned by the family trusts] have decided to establish a small vineyard, hence the need for consent to carry on business." In this case, the owners were knowledgea-

ble and honest enough to reapply to the OIC. However, the OIC does not have the resources (even though this legislation now would give it the power) to check up on such matters.

3.3.5 The zoning of the land can change. The example of Kaikoura Island given in 3.1.1 is a particularly telling one. Land may be wrongly zoned, not zoned, or the zoning may be changed for conservation reasons for example.

3.3.6 Such applications are the only way in which information can be collected as to the extent of the overseas ownership of land.

3.4 The First Schedule to the Bill which lists "land requiring consent to acquisition by overseas persons" appears to be taken largely from the LSP Act. However there are some significant exceptions.

3.4.1 Firstly, the LSP Act applies to the acquisition of *two* hectares or more of rural land, whereas the Schedule applies to "any land that exceeds 5 hectares".

3.4.2 Secondly, the LSP Act applies to any land of 4,000 square metres (0.4 hectares) or more that is not included in any district scheme. The example of Kaikoura Island in 3.1.1 makes clear that this is an important provision.

3.4.3 Thirdly, the LSP Act applies to any land being or forming part of any island (except the North and South Islands) within 150 km of the mainland. The Schedule only applies to land over 0.4 hectares on the 16 large islands listed in Part II of the Schedule.

3.5 The 150 km limit with regard to offshore islands is not observed in the current criteria used by the OIC. We submit that this limit should also be omitted.

3.6 We therefore submit that the First Schedule, at a minimum, be amended to:

3.6.1 apply to the acquisition of *two* hectares or more of rural land, rather than five;

3.6.2 apply to any land of 4,000 square metres (0.4 hectares) or more that is not included in any district scheme.

3.6.3 apply to any land being or forming part of any island (except the North and South Islands), and the Chatham Islands.

3.7 Finally, we note that New Zealand should not feel at all embarrassed at regulating ownership of land. New Zealand is the exception rather than the rule in the openness with which it welcomes overseas land ownership. Land has a unique place in aspects of New Zealand life ranging from Maori culture to New Zealand's international competitiveness. It is, in economic terms, still New Zealand's most important comparative advantage in international trade. To allow land to be controlled by, and the benefits to accrue to, overseas residents, surrenders the historical basis for New Zealand's prosperity and culture.

4 The effect of the abolition of the Land Settlement Promotion and Land Acquisitions Act 1952

4.1 The LSP Act has important and laudable aims that appear nowhere in either the Overseas Investment Act or the present Bill. (See letter from Minister of Lands to CAFCA, 22/8/94, and accompanying Office of Crown Lands summary of LSP Act Part IIA, attached.) These include:

4.1.1 prevention of undesirable speculation in New Zealand land by overseas interests;

4.1.2 prevention or constraint of absentee ownership of New Zealand land by overseas interests;

4.1.3 preservation of reserves and land with such potential in New Zealand ownership;

4.1.4 ensuring that land having a special nature or character or in a significant location remains in New Zealand ownership;

4.1.5 ensuring that the acquisition of rural land by overseas interests will provide significant benefits to the farming sectors and the local community and be in the interests of the country generally.

4.2 In addition the LSP Act has explicit provisions to prevent undue aggregation of land by both overseas and local interests.

4.3 Current administration of the legislation and regulations indicates that these aims are not being followed.

4.4 Speculation

4.4.1 Speculation in land is difficult to identify from the information applicants supply to the OIC, particularly as the Commission does not investigate further the information and claims supplied to it by applicants. However the increasing corporate ownership of land, and examples of purchases being clearly for the purpose of investment, coupled with increasing land prices (particularly for dairy-capable land) resulting from the GATT settlement and the attractive future for forestry, makes speculation highly likely. Land with tourist potential, such as the high country around Queenstown, is a particularly likely target, and one where there has been a high number of sales. Tourism and "life-style" are frequently mentioned as reasons for purchases. A number of North Island approvals have clearly involved speculation based on the hope of zone changes allowing residential subdivision.

4.4.2 That capital gains are a major motivation for corporate farming is confirmed by those involved. New Zealand Rural Properties chairman, Mr Selwyn Cushing, told the company's annual meeting in 1994 that "corporate farming was an unusual business. It did not have a good cash flow, but the potential for capital gains was good." (*Press*, "Rural Props expects gains from change", 22/11/94, p.39.) Tasman Agriculture specialises in dairy farms. Founder of Tasman Agriculture, Mr Howard Patterson reportedly chose dairying for the company because "research convinced him that dairying land prices rose most over the years" (*Press*, 15/5/92, business pages). There is only a small step from focusing on capital gains to speculative trading of farm land.

4.4.3 The effect of speculation is to raise land prices above their capacity to service normal rates of return or bank loans. Land becomes unaffordable to new farmers or those wishing to expand their farms for bona fide farming purposes. Rateable values may rise inappropriately. Where speculation is the main motivation, it may also mean neglect of the land, as capital value rather than productive capacity is the aim of the owner.

4.4.4 Where speculation is on the basis of possible tourist use or for subdivision into "lifestyle" lots for resale, the price paid may bear little relation to productive capacity as a farm.

4.4.5 Some examples of corporate ownership of land, and land purchased for investment purposes are given below. We do not assert that any particular instance is one of speculation. We are simply providing evidence that the scene is amply set for it.

4.4.5.1 There are now many examples of corporate ownership of farming land. Overseas owned corporate farmers include AMP, Apple Fields Ltd (now legally an overseas controlled company being 28.59% owned by T/A Pacific Select Investments of the U.S., registered in the Bahamas[2]), Brooks family companies (U.K.), the Black family of Australia, Greytak family interests (U.S.A.), Grocorp Pacific Ltd (Japan), New Zealand Rural Properties Ltd (which in November 1994 was given OIC approval to sell units in its properties to overseas persons via a new trust, the Rural Investment Trust), the Prudential Assurance Company Ltd of the U.K. (and subsidiaries), the Qatar Islamic Bank, and Tasman Agriculture (45.6% owned by Brierley Investment Ltd, legally an overseas controlled company). In addition of course the majority of land used for forestry is corporate owned. Some of these forestry companies are using some of their land for farming.

4.4.5.2 We analysed a sample of OIC decisions released to CAFCA relating to rural land: the 89 for the six months January 1994 to June 1994. This shows 38 related to forestry (18,059 hectares) of which 28 involved corporate ownership. Of the remaining 31 non-forestry approvals (13,260 hectares), 14 had corporate ownership.

4.4.5.3 In May 1994 RII New Zealand Forests I Inc, a U.S.A. company "ultimately owned by pension funds and non profitable, charitable and educational institutions predominantly from the U.S.A." (but registered in the British Virgin Islands) bought 731 hectares of land in the Wairau Valley, Marlborough jointly with Tasman Forestry (Nelson) Ltd (51%). It describes its function as providing "risk capital" in the development of forestry. It had previously bought land in January 1992 (13,200 hectares) December 1993 (666 hectares and 235 hectares), February 1994 (203 hectares), April 1994 (524 hectares). In June 1994 it bought 326 hectares and an associated company bought 2,895 hectares. In July it bought 665 hectares: a total since 1992 of 19,445 hectares.

4.4.5.4 In April 1991, approval was given to sell a 441 hectare sheep beef and cattle farm at Orere Point, Papakura to a Taiwanese family after "extensive attempts [had] been made to sell the property over the last 2-3 years". The family "wish to extend their investments to New Zealand". The vendor would continue to oversee the operation of the property which would continue its existing activities. In December 1992, they bought a further adjacent 174 hectare farm at Orere Point to be run as a single farm under the current manager. "The property is being purchased because of the Liou's wish to expand their New Zealand investments."

4.4.5.5 In June 1992, the Numakura family, from Japan, described as having "extensive property interests through-out the world" and seeking permanent residence, were given approval to purchase a 4 hectare kiwifruit orchard near Kumeu and a 90 hectare dairy and horticultural property at Clevedon,

[2] "Apple Fields stake", *Press*, 12/1/95, p.23.

Auckland. The Kumeu orchard will have a local manager, and the Clevedon farm will be "further developed ... with an eye to the lucrative Japanese market." In July 1992 the Numakuras also were given approval to buy a 13 hectare cherry farm on the Wairau Plains, Marlborough, the second cherry farm to pass into Japanese ownership with the OIC's approval.

4.4.5.6 In April 1993, an Australian company which had its name suppressed, purchased 23 hectares of rural land on the corner of State Highway 6 and Grant Road, Queenstown for the purpose of "undertaking a commercial development". The price was also suppressed. "The land to be acquired runs parallel to Queenstown Airport. It is likely that the present rural zoning of the land will be changed … The planned development will seek to exploit the tourist appeal and potential of the area.".

4.4.5.7 In July 1993, a company owned by three U.S.A. residents, Carolina Farms Ltd, bought two adjoining farms on State Highway 25, Whangamata, one of 482 hectares, the other of 171 hectares. The new owners were to keep the previous owners on, leasing back their former properties. The new owners "perceive New Zealand to be a good place to invest particularly with the potential in the forestry and farming industries." In September 1993, they bought a third adjoining farm of 467 hectares The three would be integrated to form "a substantial farming/forestry development" leased back to the original owners. They also acquired 210 hectares of sheep farming land at Lake Hayes near Queenstown in October 1993.

4.4.5.8 Also in July 1994, a U.K. resident gained approval to buy up to 50% of Mount Benger Ltd which owns 1,401 hectares of rural land in North Canterbury. The first 40% was to cost him $600,000, the remainder "to be determined by market value when the option is exercised". He was investing "as a business associate", the farm to be managed by the other shareholder. They said they were considering developing a tourist lodge and expanding into dairying and forestry.

4.4.5.9 In October 1994, an organisation called the New Zealand National Trust, owned in China, was being set up to "focus its investment strategy on the New Zealand primary sector, together with value added industries based on that sector.... the purpose of the Trust is to attract foreign investment capital from Asia and in particular Southern China to New Zealand." It is valued at "approximately $30 million".

4.5 Absentee ownership

4.5.1 Approval by the OIC of absentee ownership of land by overseas interests is commonplace. The dangers of absentee ownership include inability or unwillingness to sufficiently control the use of the land leading to possible run-down or inappropriate use of the land. Speculation and investment solely for capital appreciation are temptations.

4.5.2 In many cases there is little evidence of any significant farming knowledge, so complete reliance is placed on the farm manager, often continuing whatever activities the farm was engaged in before purchase.

4.5.3 There are also examples where the absentee owner is buying the land for the purpose of vertical integration – that is, to control the marketing of a product from

soil to overseas market. This potentially reduces market opportunities for New Zealand farmers, and/or reduces prices paid to them, makes possible tranfer pricing (paying non-market prices in order to transfer profits to a location suitable to the owner for tax-minimisation or other reasons) and reduces the foreign exchange earnings of the country.

4.5.4 Some examples follow. See also 4.4.5.7. Many other approvals are given with comments such as the purchasers "intend to seek permanent residence", indicating no binding commitment to either apply for or take up permanent residence. The Committee should also be aware that the stated intentions of the new owners (some of which are quoted below) are never checked by the OIC after the sale. There is nothing to stop an applicant from making claims as to development of a property, providing employment, new markets and so on, for no other intention than to have the purchase approved.

4.5.4.1 Our analysis of the 89 OIC decisions on rural land for the six months January 1994 to June 1994 shows that of the 38 related to forestry (18,059 hectares) nine involved absentee ownership. Of the remaining 31 non-forestry approvals (13,260 hectares), 11 had absentee ownership.

4.5.4.2 In February 1991, Portmore Enterprises Ltd (nominally of the British Virgin Islands) was given the right to acquire the 13,686 hectare Cecil Peak Station. The Christchurch *Press* reported in March that the station ("one of New Zealand's largest sheep stations") had been sold to the Morningside Asia Group of Hong Kong.

4.5.4.3 The same month, the 885 hectare Kinloch Station (Tuhingamata West and East Survey Districts) was sold to Barwon Ltd, a company owned by a Japanese resident Mr Saburo Okakura, to be "extensively redeveloped" and run by local contractors and a New Zealand manager.

4.5.4.4 The 1,515 hectare Stanton Station, Stanton Road, Fairlie, South Canterbury was bought the same month by the Australian company Farnsway Mining (NZ) Ltd, to be run by a farm manager.

4.5.4.5 In March 1991, a U.K. resident acquired a 516 hectare farm near Masterton owned by Rawhiti Farm Ltd.

4.5.4.6 The same month, approval was given to sell three farms at Hororata near Christchurch totalling 2,125 hectares to a Japanese owned company, Venden Pty. One of the three farms is called "Grasslands" and the other two are adjacent to this one. A Christchurch residential property is also owned by the company.

4.5.4.7 In May 1991, four Japanese residents were given approval to purchase Aberlour Farms Ltd which owns a 36 hectare farm at Whitford-Maraetai road, Whitford. The new owners "propose to develop the property to its full horticultural potential and produce fruit for export to Japan which will be marketed through [Mr Shigeru Yazaki's] existing market infrastructure."

4.5.4.8 In February 1992, the 553 hectare Tirimoana Station near Havelock North was sold to a Finnish family company for farming and forestry development. In December 1992, a further 323 hectares of adjacent land in Tukituki Road, was sold to the same family company for forestry development..

4.5.4.9 The same month, a 337 hectare farm in Waipuna Road, Te Kauwhata, already owned by Market Ltd, itself owned by Mrs M.L. Treweeke of Sydney, was "rationalised" into a single ownership. Market Ltd owned adjoining farmland, all of which is farmed as a single block.

4.5.4.10 In September 1992, the son of General Suharto of Indonesia purchased the 27,526 hectare high country sheep station, Lilybank Station, Lake Tekapo through the company New Zealand Trophy Guide Service Ltd (all but 8 hectares of it is leasehold). It had already been developed to provide "high quality safari operations, mainly to overseas hunters." The new owner, "who has a keen interest in hunting activities proposes to spend approximately $1 million upgrading the property with the aim of attracting further overseas hunters and tourists to the property. Local managers will be appointed to the property both for the stock and for the safari operations." Some of the land "is due to be surrendered to the Department of Conservation in terms of a Land Improvement Agreement".

4.5.4.11 The same month, approval was given for the sale of a South Kaipara Head deer farm, Ototoa Station, from Porter Holdings Ltd (New Zealand) to a Korean residing in Australia. The farm, which was in two blocks, of 237 hectares and 31 hectares, was to be managed by a joint venture, Ototoa Park Partnership, 61.7 percent owned by the Korean, but with 50/50 voting rights. Porter Holdings would also have an interest through Lake Ototoa Stud Ltd. The Korean "will through his extensive Korean connections provide access to the Korean market for added value New Zealand dried velvet."

4.5.4.12 Also that month, a Danish octogenarian who had owned a 747 hectare farm in Parekura Bay, Bay of Islands, since 1968, transferred ownership of it to Pacific Shops Inc, a U.S. company controlled by him, "to enable his estate to be more easily managed."

4.5.4.13 In December 1992, a 19 hectare former kiwifruit farm in Puhinui Road, Papatoetoe was sold to Sharyo Orchards Ltd, a company owned by three Japanese residents,. The aim was "to develop new fruit varieties for the Japanese market utilising the advantage of producing fruit in the Japanese off-season. This proposal is directed at exporting produce grown locally to Japan using established contacts."

4.5.4.14 In the same month, a 1,515 hectare farm, "Karaha", in Leslie Pass Road, Hanmer Springs was sold to two New Caledonians. They stated they intended to lease the farm to one of the former owners and "propose to further develop the property by applying weed eradication programmes and improving pastures (fertilising) ...[and] to develop a deer park on the property for trophy shooting."

4.5.4.15 In May 1993, two Canadian residents bought a 497 hectare pastoral farm, Glenross Station, Hokoroa Road, Tauwharepara, near Tolaga Bay. They said they intended to redevelop the property to a commercial forest operation. "The Commission is advised that the property has serious erosion problems which will be eased with the planting of trees."

4.5.4.16 From August 1993, Far North Afforestation (NZ) Ltd, owning land at Broadwood, Far North District, began selling off parcels of land which it

continued to manage for forestry development. The 16 sales to date are largely of 20 to 60 hectare blocks sold at $3,000-$4,000 per hectare to families in Taiwan or Hong Kong who clearly have little or no further involvement with their management.

4.5.4.17 In September 1993, two U.K. absentee landowners acquired a further 377 hectare farm near Kaikoura. Their company, Lynton Downs Ltd, bought the remaining 76 per cent of Clarenshelf Forty-Three Ltd it does not already own. Clarenshelf owns the 377 hectare farm which "is only marginally viable as a pastoral property and will be better utilised as an agro-forestry operation utilising the extensive expertise that the shareholders of Lynton Downs have in the forestry business." The adjoining property is 4,192 hectares and has been owned and operated by Lynton Downs Ltd as an agro-forestry operation for over thirty years.

4.5.4.18 In November 1993, a U.S. couple were given approval to buy a 20 hectare goat dairy farm, Sunnyheights Ranch Ltd, on Sunnyheights Road, Orewa. They intended to continue the goat dairying activities and develop the farm further using a local farm manager residing in the homestead.

4.5.4.19 In March 1994, a 19 hectare orchard in Kerikeri was sold to B & Y's Orchards Ltd, owned by Stanley So of Hong Kong. "Mr So sees an opportunity to develop and cultivate the orchard utilising New Zealand expertise and creating a long term lifestyle for him and his family" using a New Zealand manager and workers.

4.5.4.20 In June 1994, the Erdman family of the U.S.A. gained approval to buy the 1,899 hectare Coleridge Downs Farm Ltd near Darfield, Canterbury, via Catterick Holdings Ltd. "The Erdman family have extensive agribusiness interests and experience in the U.S.A. The Erdmans state that they propose to carry out extensive developments to Coleridge Downs which is likely to result in a doubling of the current 10,500 stock units over the next five years."

4.5.4.21 In August 1994, sale of Glenroy Station Ltd to a New Caledonian was approved. The station, near Queenstown has 124 hectares of freehold land and 4,879 hectares of pastoral lease. The new owner "has considerable cash resources and will be able to develop the property to its full potential without having to worry about financial considerations." It will be managed by D.J. and J. Scott who farm the adjoining Glenlee property.

4.6 Preservation of reserves and land having a special character in New Zealand ownership

4.6.1 A prominent example of the failure of these aims is the significant number of major South Island high country stations that have passed into overseas hands for apparently little other benefit than that the new owners had sufficient money.

4.6.2 The 13,686 hectare Cecil Peak Station, Kinloch Station (885 hectares), Woodbine Station (2,501 hectares), Lilybank Station (27,526 hectares), Otamatapaio Station (9,110 hectares), Flock Hill Station (14,000 hectares) and Glenroy Station (5,003 hectares) are examples since 1991.

4.6.3 Sales of offshore islands are a matter of continuing controversy, though the evidence from the OIC appears to show that this is largely under control. However

this must be seen in the context already noted, namely that there are many loopholes in the current law which allow purchases which would not be cleared by either the OIC or the LSP Act procedures. In addition, some approvals through the LSP Act do not need to go on through the OIC. This is reflected in the fact that the Minister of Lands approved 18 sales of land on offshore islands in 1992 (*Press*, "Land sales to foreigners", 15/6/93) but nowhere near that number applied to the OIC.

4.6.4 With the exception of the sale of a large part of Matakana Island for forestry purposes, the sales are largely of small blocks (up to 5 hectares) on Waiheke Island. However the well-publicised example of the German fraudster, Ralf Simon, who was given permission to buy the 20 hectare Pakatoa Island, also highlights the derisory effort given to checking the information supplied by applicants and their credentials. A small block was also sold on Great Barrier Island.

4.6.5 In the South Island, a Liechtenstein-registered consortium of non-residents owns a 2,102 hectares station and "island" at Pohuenui and the nearby 707 hectare Forsyth Island property, both in Pelorus Sound. There is also significant overseas owned forestry development in the Marlborough Sounds, and some "lifestyle" farming.

4.6.6 Other examples with clear conservation values include: In April 1992, a 1,285 hectare farm at Moana Road, Goose Bay, Kaikoura which includes land rising to 2,000 metres and a large stand of native bush, was sold to a company owned by four U.S. residents, New Zealand Ecological Tours Ltd. In May 1993, a Swiss acquired a 143 hectare property in Puketawa Road, Broadland, Hokianga. The land is at least partially forested, and one of the conditions imposed by the Commission is that the purchaser does not "undertake any subdivision or development of that part of the property which is currently covered in mature or regenerating native forest without prior consent of the Commission." It is unusual for such a condition (or any significant condition) to be applied by the Commission. In November 1993 an Australian, Mr P.O. Rickards, gained approval to buy a 454 hectare property in the Upper Wangapeka Valley, Nelson. "Of the total land area only 12 hectares of the property are in pasture with the rest comprising mainly regenerating native bush."

4.7 Providing benefits

4.7.1 Overseas ownership of an individual property can been justified if the new owner brings new techniques, skills or expertise to New Zealand that could not otherwise easily be acquired. Until the 1980s this was in practice virtually the sole basis on which land could be bought by overseas interests. On the face of it, it is difficult for an applicant to establish such a case because of the high level of expertise existing in New Zealand. Many of the applicants to the OIC make such claims, though many such claims appear to come down to having the finance available to develop a property further. The claims are particularly questionable where they involve employing a New Zealand manager who is the previous owner of the property.

4.7.2 In fact there are a number of clear counter-examples involving overseas owners who are investing here in order to take advantage of New Zealand expertise. Two such examples follow. We are of course not claiming that *no* projects involve benefits to New Zealand.

4.7.2.1 In May 1991, two Indonesians, bought a 209 hectare property at Te Pirita, Canterbury, which, according to the OIC, "they propose to set up ... as a base to source New Zealand genetics for supply to their existing farming interests in West Java. The intention is to use genetics from the New Zealand facility in conjunction with their existing artificial insemination facilities in order to improve the genetic base in Indonesian stock." They later acquired the lease or freehold of neighbouring 295 hectare and 587 hectare properties, and in 1993, the lease of the 14,000 hectare Flock Hill Station.

4.7.2.2 In April 1992, the OIC approved the sale of land to an overseas resident so that he could come here and learn farming. A Netherlands resident who has applied for permanent residence was given approval to buy a 22 hectare rural property at Parua Bay, Whangarei Heads. He "will use the property, which is not an economic unit, to learn about farming techniques in New Zealand prior to purchasing a larger property."

4.7.3 Some examples show no benefit other than it gave the vendor an opportunity to sell.

4.7.3.1 The case already noted in 4.4.5.4 in which approval was given to sell a 441 hectare sheep beef and cattle farm at Orere Point, Papakura to a Taiwanese family after "extensive attempts [had] been made to sell the property over the last 2-3 years". The vendor would continue to oversee the operation of the property which would continue its existing activities.

4.7.3.2 Two similar approvals in June 1993 showed little benefit other than the proceeds of the sale. An Australian, purchased a 53 hectare Wanaka rural property on the Wanaka - Mt Aspiring Road, through his company, Trilane Industries Ltd. "Mr Meyer is a regular visitor to New Zealand and has been seeking to acquire a property in the Wanaka region for some time. This land has not been farmed for 10 years and is being sold by the beneficiaries of an estate who also own an adjacent block which is being retained by the latter. The property was extensively marketed over a period of time and it was eventually sold at a recent auction." The new owner says he intends to establish an exotic timber commercial forestry operation on the land, though that hardly seems worth waiting 10 years for a Wanaka property for.

4.7.3.3 In a similar deal, a U.K. resident bought a 24 hectare rural property in Little's Road, Dalefield, Queenstown. "Mr Adams has visited New Zealand several times and now wishes to purchase a property on which he will carry on cultivation and farming activities. The vendor of the property ... is selling the property because he does not have the financial resources to develop or retain the property.... a feasibility study will be undertaken which will guide Mr Adams on the best crop or type of farming for the land."

4.7.3.4 In July 1993, eight Taiwanese were given approval to buy 55 per cent of a company, Hilaroy Holdings Ltd, which owns a 74 hectare farm in Tongue Farm Road, Matakana, Warkworth. They paid $55 for the 55 per cent interest, but the company was to issue them with a further 20,345 $1 ordinary shares (issue price not stated) and the Taiwanese were to lend the company $1,500,000 to repay existing debt. The farm is "in urgent need for a cash injection". The former owner was to be retained as farm manager, and "it is proposed to develop part of the property into a private resort with accom-

modation for eighty guests and this will result in significant employment opportunities both in the construction and operation of the resort." (As of January 1995, no application for consent for such work had been lodged with the Rodney District Council, nor start been made on such construction.)

4.8 Land aggregation

4.8.1 The above examples and other information also indicate a trend towards land aggregation through the large property holdings of corporate farmers, through often massive farm and other rural property acquisitions by forestry companies, and by a tendency for overseas landowners to acquire neighbouring properties to increase the profitability of the initial unit.

4.8.2 Land aggregation will tend to make acquisition of land by new entrants to farming more difficult. Particularly in the case of corporate farming, it will also lead to large agribusiness structures that challenge the successful existing marketing boards. The benefit will be to those corporates, not to New Zealand farmers who rely upon the monopoly of the marketing boards for strength in overseas markets.

4.9 Another trend already alluded to in 4.5.3 is that of vertical integration. That is, companies attempting to control the marketing of a product from soil to overseas market. This potentially reduces market opportunities for New Zealand farmers, and/or reduces prices paid to them, makes possible tranfer pricing (paying non-market prices in order to transfer profits to a location suitable to the owner for tax-minimisation or other reasons) and reduces the foreign exchange earnings of the country. It is the same position farmers were in with regard to British-owned meat companies. The drawbacks of that arrangement were emphasised by U.K. entry to the European Community. Some recent examples:

4.9.1 The Five Star Beef Holdings Ltd joint venture between New Zealand Meat Board subsidiary, ANZCO Developments Ltd, and Itoham Foods Inc., of Japan, which owns New Zealand's first large scale beef feedlot, located at Wakanui, 17 kilometres east of Ashburton is designed to supply high quality beef to the Japanese market. However, Itoham is one of Japan's leading meat distribution companies (*Press,* 7/9/92). The *Listener* (18/5/92), reported that ANZCO sought out Itoham "to assure smooth access and control to the shop shelf".

4.9.2 In December 1990, ANA/TC Marlborough Cherry Company Ltd, which is 50% owned by All Nippon Airways Trading Co Ltd, was given approval to buy a 16 hectare cherry farm near Blenheim. The OIC's reason for approval: "The New Zea-land cherry industry was and remains dependent to a substantial degree upon the Japanese market for its ongoing viability. It was seen as important by the vendors to secure by the establishment of a joint venture operation, an ongoing ability to both export fruit to Japan but also secure airfreight access to Japan at times of peak demand. All Nippon Airways Trading Co. Ltd is a fully owned subsidiary of All Nippon Airways Ltd, a substantial international airline. The company through its subsidiaries is involved in the distribution of various food items in Japan, in particular the distribution of fresh fruits. The applicant has advised that the Japanese partners will assist in providing capital required to develop the property."

4.9.3 The same month, the approval of the Juken Nissho Ltd (Japan) purchase of Crown Forest licences and assets to five forests gave the same rationale: "timber will be exported through established contacts in the international market place."

4.9.4 In March 1991, approval was given to the acquisition of a 50% shareholding in Southern Wasabi Ltd by two Japanese companies, Tominaga Boeki Kaisha Ltd and Marui K.K. (70% owned by Yasuji Iguchi). Each company then had 25% of Southern Wasabi each. Southern Wasabi "has successfully completed their first commercial harvest (of Wasabi) and successfully exported to Japan the resultant crop. The vendors see a clear path for future expansion. However, they feel the success of the venture is dependent on the benefits that will be provided by the applicants, including supply of plant, material, technical expertise and guaranteed market access." (See also 3.2.1.)

4.9.5 In July 1992, members of the Brooks family of the U.K. were given approval to acquire a 96 hectare deer farm at Cust, Canterbury, through the company Buckcorp Holdings No. 62 Ltd. "Mr B.E. Brooks is a major participant in the U.K. meat cutting industry. His company, B. Brooks (Norwich) Ltd is one of the largest processors of New Zealand sheep meat in the U.K. and wishes to expand into venison processing. The property is being acquired to ensure that New Zealand deer in the appropriate condition are readily available for the company."

4.9.6 In September 1993, the 9,110 hectare Otamatapaio Station, near Omarama, North Otago was sold to a company owned in equal thirds by an Italian company, Reda SPA, an Australian company, Lempriere (Australia) Pty Ltd, and two locals, J.C. and H. L. Perriam, "who are said to be amongst the leading fine merino producers in New Zealand". They propose to develop the property into a merino sheep operation. "The Commission is further advised that Reda SPA which is at the forefront of wool textile design and technology and Lempriere which is one of Australia's leading wool exporters view the proposal as an opportunity to research, develop and establish a fine merino production base and source in New Zealand."

4.9.7 The Japanese controlled company, Grocorp Pacific Ltd owns farms, market gardens and orchards in New Zealand and exports citrus fruits from Australia. Its activities include apples, squash, asparagus, exporting Australian oranges and lemons to Japan, ice cream, frozen vegetables, and kiwifruit, though it has sold its kiwifruit and cherry orchards. Virtually all of the products are exported to Japan, though it is beginning to develop European markets. Since its formation in 1984 it has had a patchy history of profitability and has never paid a dividend. (*Press*, "Grocorp wants apple licence", 17/5/94, p.30.) This is evidence for transfer pricing.

4.10 The effectiveness of the Overseas Investment Commission

4.11 We believe it is apparent from the above evidence that the OIC is almost completely ineffective in controlling overseas ownership of rural land. Indeed, it has not turned down *any* application for overseas investment since 1990, when it rejected one application out of 219 (we do not know if that was a rural land application).

4.12 This is not mere speculation nor even deduction on our part. We argued to the then Chief Ombudsman, John Robertson, that the OIC should check on applications, and that it should not rely on the applicants as its source of information. His reply (letter to CAFCA, 22/3/94) states:

4.12.1 "…the Commission does not have the resources to enable it to check on all information supplied by the applicants, and it accordingly does need to rely on the information supplied to be of sufficient quality and accuracy to enable it to carry out its functions."

4.13 In fact, it is deliberate policy not to exercise effective control. The Ombudsman's 1993 Annual Report states:

4.13.1 "The small number of staff in the Commission to handle applications has been explained by the Minister as not being a lack of adequate resources, but a reflection of the Commission's role in the wider context of government policy *"to foster the development of strong international linkages"*. The Minister has commented *"...the general stance for some time has been to encourage the flow of international investment into New Zealand. The regulatory regime applying to overseas investment is therefore a broadly permissive one, with tighter controls applied in only a small number of sectors"*. The Minister continues, *"The Commission's operating procedures are consistent with the Government's intention that the regime facilitate positive investment. The Commission makes its decisions based on material supplied to it by applicants, and regard the information as having been provided in good faith."* [Ombudsman's italics.]

4.14 The effect of this was shown most graphically in the case we have already mentioned of the German confidence trickster who was given permission to buy Pakatoa Island (4.6.3). His claims and credentials were apparently accepted without checking.

4.15 The Commission is also, from the public's point of view, a law unto itself. We will comment on the information it makes (or rather, does not make) available below. But applications made to it are approved without the public consultation that is the rule for most other statutory bodies such as Planning Tribunals, local bodies, or the Commerce Commission. Decisions it makes are reported well after the event, if they are not suppressed for reasons of commercial confidentiality. By then, any attempt to overturn or modify a decision would be impractical or at best cause major cost and inconvenience. Such attempts would have to be by costly review in the High Court.

4.16 One telling symptom of its ineffectiveness is the frequency with which it approves investments in retrospect. It does so several times a year. This can only lead to the process being held in disrespect, to be ignored if inconvenient. We are not aware of any prosecutions for breaches of the existing Act or regulations.

4.17 For the first time in 1994, the OIC released detailed statistics on rural land sales for 1993. The increase was startling. Approvals totalled $138 million, compared to $44 million passing into full foreign ownership in 1992 (though approval was given for $190 million in sales that year). The area involved in 1993 was 48,997 hectares; in 1992 it was only 19,534 hectares (1992 statistics quoted in the *Press*: "Land Sales to foreigners", 15/6/93).

4.18 Conclusions

4.19 The aims of the LSP Act are laudable, yet they are not being enforced by that Act's own mechanisms, nor by the OIC. We submit that the evidence we have presented demonstrates that current approvals go well beyond those aims and what is prudent in New Zealand's long term interests.

4.20 The present Bill aims to make applications for overseas ownership of land simpler. But aside from that, it is by no means neutral in the changes it makes in the control imposed over land sales. By discarding the provisions of the LSP Act, it throws out important protections. It will lead to greater overseas ownership of New Zealand land, and much of that ownership will be of an undesirable nature.

4.21 We therefore submit that either the LSP Act should remain in force or that its aims and mechanisms be incorporated into the Overseas Investment Act. It is insufficient that it should be left to the Cabinet to make easily changed regulations, or to the current Minister to give suitable instructions to the OIC, or to the administration of the Commission itself.

4.22 Whichever course is taken, considerably greater resources must be made available to enforce the aims of the LSP Act. These should include giving the statutory authorities the personnel, power and duty to

4.22.1 notify the public and ask for submissions before approving an application;

4.22.2 investigate applications as to their credibility and applicants as to their integrity and ability to carry out their undertakings;

4.22.3 regularly notify the public of the results of such applications, with the ability for interested parties, including affected members of the public, to require a review of a decision within a specified time period;

4.22.4 when granting applications, attach any conditions that may be necessary;

4.22.5 require regular (for example, six-monthly or annual) reports from successful applicants as to progress on the undertakings they have given in their applications and on the conditions attached by the authorities, and make independent checks and inspections to ensure that these are being adhered to;

4.22.6 prosecute breaches of conditions and failure to obtain approval for overseas investment, with the threat of substantial penalties including disposal or confiscation of assets;

4.22.7 regularly and frequently report on the workings of the Commission, including statistical information, and information services to the public.

4.23 Any regulations made pursuant to the relevant Acts should reflect the spirit as well as the letter of the aims of the LSP Act.

4.24 We note in reference to 4.22 that power to monitor compliance is provided for in Clause 4 (new Section 9(f)). This is an improvement on the current situation, but there should be a *requirement* to monitor compliance in each case where undertakings are given or conditions imposed.

4.25 However, the powers in Clause 4 should refer to *all* overseas investment, not solely that involving land.

4.26 The powers under the proposed Section 14(3) (Clause 6) are also appropriate.

4.27 The reports mandated in Clause 5 (new Section 11A) may be useful as long as they are not seen by the Commission as the only reporting necessary, although it is not clear that the reports will be sufficiently detailed. Further, six-monthly reports can only be reports: they do not give an opportunity to question or challenge decisions made by the Commission. Timely notification of decisions is also essential. There must be mechanisms to make the Commission accountable to the public for its decisions. We cover this in detail in section 5.

4.28 The power to give retrospective consent given in Clause 7 of the Bill (new Section 15) should be used only when no other alternative is available, and should not be permitted to be delegated by the Minister(s).

4.29 Substantially increased penalties for breaches of the legislation or regulations, and of conditions, and undertakings should be provided for. To be credible, these penalties should be appropriate to potentially highly profitable commercial transactions. A $100,000 fine is not credible in a transaction that could be valued at billions of dollars.

4.30 We therefore submit that Clause 11 should allow for the maximum fine to be proportional to the scale of the investment, but in any case the maximum should not be less than $30,000 for individuals or $100,000 for corporates. It should also maintain the pattern of Section 18 of the 1973 Act, to provide that should an offence be a continuing one, the individual or corporation should be liable to a further fine not exceeding $10,000 for every day on which the offence has continued.

4.31 The ability to lay information leading to either penalties under Section 18 (Clause 11 of the Bill) or disposal of assets under the new Section 18A (Clause 12 of the Bill) should be open to any interested party (using a similar sense of interested party to that in the Resource Management Act). It should not rest solely with the OIC, given its record.

4.32 The power to dispose of assets should be extended to confiscation in extreme cases. There are precedents for this in our fishing and drug enforcement legislation.

4.33 We emphasise that these powers are useless without the political will and the resources to use them. Given its record, we do not believe the OIC as presently constituted is the appropriate body to critically scrutinise applications.

5 The effect on access to information.

5.1 As already noted, we have a long history of requesting information from the OIC, beginning in February 1985. We have used that information extensively, including supplying it to other users. We analyse each month of decisions released by the OIC, and supply the analysis to paying subscribers. A sample month analysis is attached.

5.2 The information is used by journalists and by business consultants for intelligence and analysis. We also publish the information in our journal, *Watchdog*. On at least one occasion an investment bank was referred to us for information by the OIC because the OIC was unable or unwilling to supply the information itself.

5.3 Judging by the accounts sent to us each month by the OIC for the supply of the decisions, another dozen or so parties receive the decisions independently on a regular basis. There is clearly public interest in this material, as the Ombudsman has recognised.

5.4 As the Minister of Lands admitted in reply to a recent question in the House (number 8648, lodged 8 December 1994) “there is a limited amount of information available on the total area and value of land sold, over the last 20 years, to non New Zealand parties...” Information formerly available from the Department of Statistics on overseas investment in general ceased a decade ago. The OIC is one of the few sources of such information, though incomplete. It is one of the very few ways left we can judge the extent and nature of overseas ownership of New Zealand’s assets.

5.5 The OIC was most uncooperative in providing information, and, other than annual statistical information, still only provides what is demanded of it under the Official Information Act. It is under this Act that we receive the OIC’s “decision sheets”, which are summaries of its approvals prepared by the OIC’s secretariat for presentation to the Commission itself.

5.6 The decisions frequently have deletions from them, most often the name of an applicant or the amount being paid, but almost every month some decisions are suppressed in full. We routinely appeal these suppressions and deletions, firstly to the OIC itself, a few months after the initial non-release of information. This is on the basis that information becomes less sensitive with time. Some further information is sometimes released. We then appeal the remaining refusals to the Ombudsman, who generally upholds the OIC's decisions.

5.7 The Ombudsman stated in his 1993 Annual Report that he "…considered that satisfying the public interest in this manner on each request was not as effective as it could be and involved a great deal of time and resources at both the Commission and the Ombudsman's offices. In his view insufficient information was being made available to the public by the Commission to satisfy the public interest in the nature and extent of overseas investment in New Zealand, and that there was room for improvement in the manner in which the Commission accounted to the public for its operations."

5.8 In response to this frustrating situation, the Ombudsman negotiated with the Minister in charge of the OIC a six-monthly report to Parliament which summarises all applications even further, giving only country of ownership, name of applicant, name of seller, purpose of application (in twelve categories), location of investment (by province), and consideration. The first such report was recently presented by Mr W.F. Birch to Parliament for the period 1 January 1994 to 30 June 1994.

5.9 We welcome this report, but it by no means satisfies the public's need for information. It demonstrably does not satisfy our needs for information, nor that of our readers and clients, nor of journalists we are in contact with. It does not allow the kind of analysis we have given above, which provides warnings as to problems occurring with the investment rules.

5.10 We are not alone in our frustrations at the negative attitude of the OIC regarding the release of information. It appears to consider its first duty lies in servicing its applicants for investment rather than in providing information to the public it is supposed to be representing and protecting.

5.11 *New Zealand Property* reporter, Colin Jenkins (July 1992, p.1, copy attached) described the OIC's behaviour in these terms: "In protecting information about the transaction [which Jenkins was investigating], most of which was freely available from other sources, the OIC has shown itself willing – and able – to act above the law, defying the Ombudsman, showing the Official Information Act to be quite useless." He gives examples of information he was able to find on the public record which the OIC refused to supply, or indeed had failed to obtain. This included the ultimate owner of an applicant to the OIC to buy a 525 hectare farm.

5.12 *Listener* reporter Bruce Ansley, showing evident frustration at the lack of information flowing from the OIC in regard to the Flock Hill Station sale, imagined OIC secretary, Paul Tindill, "languid in his office chair, perhaps swinging his rubber stamp" ("High Country sell-out", *Listener*, 16/7/94, p.20).

5.13 The present Bill (Clause 9) classifies virtually all information of importance to be "confidential information", the only exceptions being certain "summaries", and information already "in the public domain" (which is undefined) or that the applicant has agreed may be disclosed. The effect of this will be that the Official Information Act will no longer be of any use to us or other members of the public in extracting information from the OIC. Even the existence of an application may be suppressed, so the public and in-

terested parties may never be aware even that decisions are being made affecting them – let alone be aware of the nature of those decisions.

5.14 This effective exemption of the OIC from the Official Information Act is a bad precedent in itself, which we oppose as a matter of principle.

5.15 In fact, we consider that the Official Information Act allows far too much secrecy where commercial confidentiality is concerned. Availability of information should be opened up, not closed down further. The *Listener* article quoted above gives an example where there is a strong suspicion that commercial confidentiality was used as an excuse to prevent public debate over the ownership and use of a high country station.

5.16 The treatment of "summaries" of applications appears to leave almost entirely in the applicant's hands the discretion as to what may be released, given the OIC's excessively cooperative attitude towards applicants. Once a summary has been issued, its exemption from the Official Information Act means that the public can no longer appeal against what is suppressed, except perhaps by an expensive and time-consuming judicial review.

5.17 Neither can the form of the summary be challenged. It may for example include only the bare information presented to Parliament recently – or even less.

5.18 Even then, there is no assurance in the Bill that the summary will be released to the public, nor that it will be released in a timely manner. It would be consistent with the Bill for the OIC to stop supply of its decisions to CAFCA and others, and publish the summaries solely in its six-monthly report to Parliament. Given its reluctance to supply information in the past, this is a credible scenario.

5.19 We also oppose labelling virtually all information supplied by applicants as "confidential", even extending to the fact of the application. That is an absurd generalisation. For example, where the information relates to a competitive situation where the information would give competitors an advantage, the information almost certainly would lose its value within a very short time after the choice between competitors had been made. The classification also allows no challenge to misuse of the confidentiality protection, such as to cover up embarrassing situations, or to prevent public discussion of a proposal..

5.20 We submit that information supplied should be treated like information supplied to the Registrar of Companies or the Land Registry, and be available for public inspection. It is, after all, supplied for a statutory purpose.

5.21 At the very least there should be an obligation on the OIC to release a summary of each application, in time to allow for public comment. The form of this summary and any deletions from it should be subject to appeal under the Official Information Act.

5.22 The public profile of the OIC would be greatly enhanced if it published a regular newsletter voluntarily providing proper summaries of applications, and other statistical information and analyses. The OIC's functions should include that of providing to the public information on all aspects of its work.

5.23 We strenuously oppose Clause 9 in its entirety. It appears to be another attempt, like that in 1990, to restrict the already sparse information available to the public on the extent and nature of overseas investment in New Zealand.

6 Summary of recommendations

6.1 That the existing definition of "overseas person" in the 1973 Act remain: "Any person not ordinarily resident in New Zealand".

6.2 That controls should extend to such arrangements as *profit a prendre* and forest cutting rights.

6.3 That *all* land purchases, whether or not for commercial purposes, should be subject to regulation.

6.4 That, at a minimum, the proposed Schedule to the Act be amended to

6.4.1 apply to the acquisition of *two* hectares or more of rural land, rather than five;

6.4.2 apply to any land of 4,000 square metres (0.4 hectares) or more that is not included in any district scheme.

6.4.3 apply to any land being or forming part of any island (except the North and South Islands), and the Chatham Islands.

6.5 That either the LSP Act should remain in force or that its aims and mechanisms be incorporated into the Overseas Investment Act.

6.6 That, whichever course is taken, considerably greater resources must be made available to enforce the aims of the LSP Act. These should include giving the statutory authorities the personnel, power and duty to

6.6.1 notify the public and ask for submissions before approving an application;

6.6.2 investigate applications as to their credibility and applicants as to their integrity and ability to carry out their undertakings;

6.6.3 regularly notify the public of the results of such applications, with the ability for interested parties, including affected members of the public, to require a review of a decision within a specified time period;

6.6.4 when granting applications, attach any conditions that may be necessary;

6.6.5 require regular (for example, six-monthly or annual) reports from successful applicants as to progress on the undertakings they have given in their applications and on the conditions attached by the authorities, and make independent checks and inspections to ensure that these are being adhered to;

6.6.6 prosecute breaches of conditions and failure to obtain approval for overseas investment, with the threat of substantial penalties including disposal or confiscation of assets;

6.6.7 regularly and frequently report on the workings of the Commission, including statistical information, and information services to the public.

6.7 That any regulations made pursuant to the relevant Acts should reflect the spirit as well as the letter of the aims of the LSP Act.

6.8 That the power to monitor compliance provided for in Clause 4 (new Section 9(f)) should be a *requirement* to monitor compliance in each case where undertakings are given or conditions imposed.

6.9 That the powers in Clause 4 should refer to *all* overseas investment, not solely that involving land.

6.10 That the reports mandated in Clause 5 (new Section 11A) should not be seen by the Commission as the only reporting necessary.

6.11 That the power to give retrospective consent given in Clause 7 of the Bill (new Section 15) should be used only when no other alternative is available, and should not be permitted to be delegated by the Minister(s).

6.12 That Clause 11 should allow for the maximum fine to be proportional to the scale of the investment, but in any case the maximum should not be less than $30,000 for individuals or $100,000 for corporates. It should also maintain the pattern of Section 18 of the 1973 Act, to provide that should an offence be a continuing one, the individual or corporation should be liable to a further fine not exceeding $10,000 for every day on which the offence has continued.

6.13 That the ability to lay information leading to either penalties under Section 18 (Clause 11 of the Bill) or disposal of assets under the new Section 18A (Clause 12 of the Bill) should be open to any interested party (using a similar sense of interested party to that in the Resource Management Act).

6.14 That the power to dispose of assets should be extended to confiscation in extreme cases. There are precedents for this in our fishing and drug enforcement legislation.

6.15 We emphasise that these powers are useless without the political will and the resources to use them.

6.16 That information supplied to the OIC should be treated like information supplied to the Registrar of Companies or the Land Registry, and be available for public inspection.

6.17 That at the least there should be an obligation on the OIC to release a summary of each application, in time to allow for public comment. The form of this summary and any deletions from it should be subject to appeal under the Official Information Act.

6.18 That Clause 9, which defines all information supplied to the OIC by applicants as "confidential" and exempts summaries of this information from the Official Information Act, not be proceeded with.

CAFCA
P.O. Box 2258,
Christchurch.

2 February, 1995

Attachments

1. "What price paradise? The market in off-shore islands", *New Zealand Property*, December 1990, p.2
2. Letter from Minister of Lands to Murray Horton, CAFCA, 22/8/94, including attachments.
3. Sample analysis of Overseas Investment Commission decisions by CAFCA (October 1994).
4. Sample of decision sheets from the OIC (October 1994).
5. "The battle of Kiripaka", by Colin Jenkins, *New Zealand Property*, July 1992, p. 1, 4.