KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL **WAI 3513**

IN THE MATTER OF	**the Treaty of Waitangi Act 1975**
AND	
IN THE MATTER OF	**a claim by JOHN RUDDOCK on behalf of his whānau and Māori who do not qualify for citizenship by descent**

SYNOPOSIS OF CROWN SUBMISSIONS

15 September 2025

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Te Tari Ture o te Karauna
Crown Law

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MAY IT PLEASE THE TRIBUNAL:

Synopsis of Crown argument

1. On 1 September 2025, the Tribunal granted an application to hear this matter with urgency:[1]

> The urgent inquiry will be targeted and specific and is to focus on "Whether the Citizenship Act 1977 and the current process to apply for citizenship for Maori whose parents were not born in New Zealand or Australia is in breach of te Tiriti o Waitangi principles."

2. The claimant has submitted that the Citizenship Act 1977 (the **Act**) breaches the principles of the Treaty of Waitangi | te Tiriti o Waitangi "by failing to actively protect Māori citizenship rights".[2] The claimant advances his case on the basis that the breaches follow because:[3]

   2.1 the Act does not deem Māori as citizens as of right, with the consequence that those who whakapapa but who were born overseas may be eligible for citizenship only at the discretion of the Minister of Internal Affairs; and

   2.2 in the exercise of that discretion, the Act does not require the Minister to consider the Treaty of Waitangi | te Tiriti o Waitangi or the fact that an applicant is Māori and indigenous to Aotearoa.

3. At the outset, the Crown acknowledges the witnesses who have presented their personal experiences to the Tribunal and the experts who have shared their knowledge with the Tribunal.

4. The Crown acknowledges that under the Act, there is no automatic right to New Zealand | Aotearoa (**NZ**) citizenship for Mr Ruddock's children. This is because they were born overseas to a parent who is a NZ "citizen by descent": that is, Mr Ruddock was, himself, born outside of NZ, but is entitled to citizenship by right because one of his parents is a NZ citizen by birth pursuant to s 6 of the Act. For ease of reference in these submissions, the claimant's children might be said to be in a category of those who are

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1 Wai 3513, #2.5.4.

2 Statement of claim at para 5: Wai 3513, #1.1.1.

3 Statement of claim at para 4: Wai 3513, #1.1.1.

second-generation overseas descendants of NZ-born citizens. Under the Act, the right to citizenship by descent passes down only to the first generation born overseas.[4]

5. Nevertheless, the Crown notes that the Act provides an avenue for attaining citizenship for those who are *second-generation overseas descendants of NZ-born citizens* through an application process for "citizenship by grant".[5]

6. The Crown further notes that, in addition to citizenship processes, *second-generation descendants of NZ-born citizens* may also be entitled to reside in NZ through immigration processes, including through the grant of visas or, in the case of individuals born in Australia, through the ability to apply for a resident visa upon arrival.

7. The claimant and interested parties have noted that the Citizenship Act does not reference te Tiriti o Waitangi | Treaty of Waitangi. It is acknowledged that the legislative history of the passing of the Act reveals no discussion of the implications for those with Māori whakapapa born overseas. The Crown does note, however, that DIA's *Citizenship Guidance Document* has, for some years included consideration of whakapapa ties regarding Ministerial decision-making for citizenship-grant applications for *second-generation overseas descendants of NZ-born citizens.*

8. The interested parties to this proceeding have drawn comparisons between the access to citizenship between, on the one hand, *second-generation overseas descendants of NZ-born citizens* with Māori whakapapa who do not have a right to citizenship and, on the other, those who live elsewhere but are nevertheless entitled to citizenship as a consequence of being born in NZ or being parented by a-NZ born citizen. In response, the Crown submits that care ought to be taken in the weight given to these types of comparisons. The Crown notes that NZ's citizenship scheme – like those of many other jurisdictions and cultures – draws upon

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4 Section 7, Citizenship Act 1977 (subject to certain exceptions relating to children born to parents on overseas military service / foreign affairs service).

5 Pursuant to ss 8, 9 and 9A of the Citizenship Act 1977.

connection to birthplace as a proxy for a genuine and effective link to the country. At a high level at least, the Crown does not understand anyone to be suggesting that such an approach is inconsistent with the principles of the Treaty of Waitangi | te Tiriti o Waitangi.

9. The specific question that the claimant has put before the Tribunal is the extent to which this connection should be able to be passed down generations. This is a question with which DIA grappled in the 2006 series of papers, and concluded that the settings of the Act – including the specific provisions for the grant of citizenship – were sufficient to accommodate the range of circumstances that might present in citizenship applications, including by those with Māori whakapapa. The specific acknowledgment of the relevance of whakapapa ties in the DIA Guidance document is a legacy of the recommendations in the 2006 papers to formalise this within Ministerial decision making.

10. The Crown acknowledges that citizenship processes can be time-consuming and challenging for applicants. However, the Crown notes that this Urgent Inquiry has not been brought on the basis that the citizenship processes themselves are carried out in a way that is discriminatory towards Māori or that Māori receive poorer outcomes of citizenship processes than non-Māori. This will be relevant to the Tribunal's consideration of whether Article 3 of Treaty of Waitangi | te Tiriti o Waitangi is engaged.[6] Indeed, there is no indication that applications from either Māori or non-Māori *second-generation overseas descendants of NZ-born citizens* are being inappropriately declined.

11. Nevertheless, one of the central tenets being advanced in this Urgent Inquiry is that the current settings under the Act interfere at a practical level and perhaps at a more fundamental level with the preservation of

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6 As this Tribunal observed in the *Napier Hospital and Health Services Report* (Wai 692, 2001) at page 64:

> The Treaty's grant of citizenship rights is to Maori as individuals. It joins Maori to the community of citizens and provides no privileges for Maori above other citizens. It does, however, assure Maori of the right to equal standards of healthcare [*that claim being concerned with the provision of State healthcare*].

whakapapa links. In response, the Crown notes that the connections to which the claimant's and interested party's refer exist regardless of whether a person holds citizenship as defined by statue.[7] The question of whether such a connection can or should be defined in statutory terms for the purpose of conferring an automatic right to citizenship, to be interpreted and applied by officials (without discretion), has not been the subject of consideration. However, the existing s9(1)(b) discretion enables applicants to place before the Minister such information that they consider relevant and appropriate for establishing whakapapa ties. In these circumstances, the Crown submits that the Act's underlying objective – of ensuring that citizenship reflects a genuine and effective link to NZ– is not inconsistent with the Crown's Treaty | Tiriti duties of active protection of whakapapa links and taonga. While a range of policy approaches could potentially be adopted, the current scheme represents one means of advancing both objectives, a position that aligns with the conclusions reached in the previous internal DIA reviews and, while discussing a range of options, a paper written for the Institute of Policy Studies in 2011.[8]

12. The issues raised before this Urgent Inquiry are not matters that are currently under review by DIA. Citizenship raises complicated questions about nationhood and belonging. Were the Tribunal minded to make recommendations for change, the Crown would submit that this would be best done in the context of a broader kaupapa, such as the Constitution Kaupapa Inquiry, when the range of possibilities and their implications could be considered in a manner that is not possible in the context of an urgent inquiry.

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7 Despite the determination of High Court of Australia in *Love v Commonwealth* [2020] HCA 3 (referenced by the claimant in his submissions) that the connection of the plaintiff, who was born in New Zealand, to the land and waters in Australia meant that he could not be excluded from Australia as a "alien", it did not follow that the plaintiff was a "citizen" in accordance with the applicable statutory definition.

8 Waldron, H, *Overseas-Born Māori and New Zealand Citizenship* (2011, Institute of Policy Studies, Wellington).

The circumstances relating to the claimant's family's applications

13. Appendix A to these submissions sets out a summary of key circumstances relating to the claimant's children's applications. Included in this appendix is a chronology of key facts: the Crown has shared this with claimant counsel and understands that this chronology is agreed.

14. For privacy purposes, this Appendix will be filed separately with the Tribunal, the claimant, and interested parties on a confidential basis.

The system settings

15. Appendix B to these submissions summaries the historical and current system legislative settings that apply to *second-generation overseas descendants of NZ-born citizens*.

16. Appendix C to these submissions sets out key pieces of relevant legislation and procedural guidance.

Evidence to be presented by the Crown

17. The Crown has tendered briefs of evidence from the Department of Internal Affairs (joint brief of Ms Carpinter and Mr Jarvis), Immigration NZ (Ms Sharma) and the Ministry of Education (joint brief for Mr Jackson and Ms Harvey, for which leave has been sought to file out of time).

18. The Crown proposes that the Ms Carpinter and Mr Jarvis give evidence together as a panel and that Mr Jackson and Ms Harvey give evidence together as another panel. These four witnesses will be present at the hearing in person. Crown counsel understands through discussions with coordinating counsel that there is unlikely to be any objection from counsel to this proposal.

19. Ms Sharma will attend by AVL.

15 September 2025

S K Barr / Z McCoy
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal
AND TO: Claimant Counsel