APPENDIX B: SYSTEM SETTINGS

Summary

20. *Second-generation overseas descendants of NZ-born citizens* (and subsequent generations) are not automatically entitled to citizenship. Rather, to attain citizenship, a grant must be sought.

21. Those who arrive in NZ prior to their citizenship applications being resolved must do so under relevant immigration procedures.

22. School-age applicants may attend school pursuant to relevant visas and, in limited and temporary circumstances, under the Education and Training Act.

The historical limits on citizenship by descent

23. The ability of

23.1 British Subjects from 1840 to 1949 (including those born in New Zealand | Aotearoa] under the British common law and British legislation for the period; and

23.2 NZ-born citizens from 1949 to present under NZ legislation,

to pass on to their children the status of British Subject / the right to be a NZ citizen has always been subject to limitations of one form or another. A simplified version of the various schemes – based in large part on the paper, *An analysis of New Zealand citizenship by descent* (DIA, 2006)[9] – is set out below:

1840-1915	Two generations of overseas-born children of male British subjects could acquire British-subject status by right.
1915-1949	One generation of overseas-born children of male British subjects could acquire British-subject status by right. From 1922, further generations could acquire status if the birth was registered at a British consulate.

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[9] The paper is exhibit DIA-02 in the Annexures to the joint brief of Ms Carpinter and Mr Jarvis. For a more detailed analysis of the history of the British law, see Historical background information on nationality (accessible) - GOV.UK.

1949-1977	One generation of overseas-born children of male NZ-born citizens could acquire NZ citizenship by right. A second generation could acquire status if the birth was registered at a consulate. From 1970, citizenship by descent could be passed down from a female NZ-born citizen. The 1977 Act retrospectively extended this to prior births.
1955	The International Court of Justice spoke of a citizenship in terms of a *genuine and effective link* with the state.
1977-present	One generation of overseas-born children of male or female NZ-born citizens could acquire NZ citizenship by right. Until 2001, this was subject to the descendant being registered before the age of 22.

Current settings

The Citizenship Act 1977

24. Under the Citizenship Act 1977 and the Citizenship (Western Samoa) Act 1982, there are four main ways to become a NZ citizen:[10]

    24.1 by birth in NZ or the Realm countries[11] (citizenship by birth);[12]

    24.2 by birth overseas to a NZ-citizen parent (citizenship by descent);

    24.3 by grant under the Citizenship Act 1977 (citizenship by grant); or

    24.4 by grant to a Samoan citizen under the terms of the Citizenship (Western Samoa) Act 1982 (Citizenship by grant – Samoan).

25. Relevant to the context of the current Inquiry is citizenship by grant.

26. The usual requirements for the approval of citizenship by grant are as follows:

    26.1 Entitlement to reside indefinitely (ie pursuant to an Immigration NZ residence-class visa)

[10] Citizenship Act 1977 and the Citizenship (Western Samoa) Act 1982.

[11] The Realm countries include the self-governing states of the Cook Islands and Niue, and the dependent territory of Tokelau.

[12] In addition, this is provision made for citizenship otherwise by descent for children born to parents on overseas military service / foreign affairs service.

26.2 Presence in NZ (ie having been in NZ for a minimum of 1,350 days in the five years preceding the citizenship application, and for at least 240 days in each of those five years)

26.3 Good character

26.4 Knowledge of the responsibilities and privileges of citizenship

26.5 English language

27. However, there may be reasons why those criteria cannot be met by an citizenship-grant applicant, which can be addressed by way of discretionary powers afforded to the Minister.

28. Of particular relevance to the present Inquiry are two categories of case for which the Citizenship Act expressly provides discretion to the Minister to consider:

28.1 Grant of citizenship for minors – section 9(1)(a)

28.2 Grant of citizenship for children of citizens by descent – s 9(1)(b)

29. The key relevance here of s 9(1)(a) is the usual prerequisites of character, knowledge of responsibilities and language do not necessarily need to be worked through in respect of children aged under 14.

30. The key relevance of s 9(1)(b) is that it provides a discretionary pathway for grant applications by *second-generation overseas descendants of NZ-born citizens*. Grants can be made under this provision notwithstanding that the usual requirements set out above – including holding current residency visas and having been present in NZ for a certain period of time in the preceding years – are not satisfied. In exercising this discretion, the *New Zealand Citizenship – Citizenship Guidance Document*[13] sets out that the Minister may take into account:

30.1 whether the applicant can demonstrate a link to NZ,

[13] Citizenship Guidance Document February 2023 at p21.

30.2 whether the applicant has longstanding familial/whakapapa ties to NZ,

30.3 whether the applicant has family members living in NZ who are NZ citizens,

30.4 the circumstances of the parent(s) being citizens by descent (e.g. if the grandparents were outside NZ for only a few months),

30.5 why the applicant wants NZ citizenship, and

30.6 any other factors the applicant wishes the Minister to consider.

Immigration

31. Immigration is relevant to the present Inquiry for two key reasons:

31.1 First, one of the usual prerequisites for an application for citizenship by grant is that the applicant is entitled to reside indefinitely (ie hold a residence-class visa). However, as noted above, this requirement can be waived by the Minister in the exercise of the discretion under s 9(1)(b).

31.2 Secondly, the ability of child applicants for citizenship-by-grant to participate in the NZ schooling system is, in large part, dependent on the children having the relevant Immigration NZ visa (eg residence-class or student visa).

Education

32. Under the Education and Training Act, "domestic students" have an entitlement to free education in NZ. Those students who are not "domestic students" are "international students". "International students" not entitled to receive free education and can study in NZ only in certain circumstances.

33. "Domestic students" include children who are NZ citizens and those with permanent residency and receive free education. However, there are other categories of students who are deemed to be "domestic students",

including, relevantly for this case, those who are in receipt of student visa (and meet other certain criteria).

34. There is also a discretion available under s 519 of the Education and Training Act 2020 to enable international students temporarily to attend their schools while the requirement to pay fees is waived (the costs of which the school must absorb):

> …
>
> (9) Despite anything in this section or section 521 [*which relates to the requirement of international students to pay fees*], an international student may, with the consent of the principal or person responsible for teaching and learning in a charter school and during a period of not more than 28 consecutive days (or any longer period the Secretary approves for any particular student), receive tuition at or from a State school or charter school—
>
> (a) without the consent of the school's board or the sponsor; and
>
> (b) without paying the amount required by section 521.
>
> (10) If subsection (9) applies, the student may not be counted for the purpose of calculating or ascertaining the school's entitlement to teachers or funding.