

HE TANGATA,

HE WHENUA

HE TANGATA,
HE WHENUA

The Citizenship Report

PRE-PUBLICATION VERSION

WAI 3513

WAITANGI TRIBUNAL REPORT 2025



ISBN 978-1-0670949-4-2 (PDF)

www.waitangitribunal.govt.nz

Typeset by the Waitangi Tribunal

Published 2025 by the Waitangi Tribunal, Wellington, New Zealand

29 28 27 26 25 5 4

Set in Adobe Minion Pro and Cronos Pro Opticals

Tuia te rangi e tū iho nei, tuia te papa e takoto ake nei, tuia te muka tāngata e here nei i a tātou ki tā tātou kaupapa, tēnā koutou katoa. Mātua rā e tika ana kia whakaarorangi ngā whakaaro ki te wāhi ngaro, kei ngā mate o te wā, nō roto i ngā iwi o tēnā, o tēnā o tātou, haere mai, haere. Kei ngā reo pāorooro o ngā pari kārangaranga puta i te motu whānui, tēnā rā koutou i ā koutou tuku i ō reo, i ō whakaaro kia rere i tēnei whakahaeretanga ā-ture. Kei te kaikerēme matua i tuku tuatahi ai i tēnei kaupapa ki mua i tō mātou aroaro, tēnei mātou ka mihi. Otirā, tēnā tātou me ngā tini kaupapa e pikauria nei e tēnā, e tēnā o tātou, kia kaha tonu mai rā tātou ki te whakakotahi mai i ō tātou whakaro kia ngawari ai ā tātou kawē atu i ēnei mahi ki tōna Hawaikihoutanga.

PREFACE

This is a pre-publication version of the Waitangi Tribunal's report *He Tangata, he Whenua*. As such, all parties should expect that, in the published version, headings and formatting may be adjusted, typographical errors rectified, and footnotes checked and corrected where necessary. Maps, photographs, and additional illustrative material may be inserted. The Tribunal reserves the right to amend the text of these parts in its final report, although its main findings will not change.

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Waitangi Tribunal
Te Rōpū Whakamana i te Tiriti o Waitangi
Kia puta ki te whai ao, ki te mārama

The Right Honourable Christopher Luxon
Prime Minister

The Honourable David Seymour
Deputy Prime Minister

The Honourable Tama Potaka
Minister for Māori Development
Minister for Māori Crown Relations

The Honourable Brooke van Velden
Minister for Internal Affairs

The Honourable Erica Stanford
Minister for Education
Minister for Immigration

Parliament Buildings
WELLINGTON

31 October 2025

Kei te kähui Minita, tēnā koutou

This is an urgent inquiry into a claim which goes to the heart of our national citizenship. The inquiry – sparked by an application from Māori citizen by descent Mr John Ruddock concerning the effects of the Citizenship Act 1977 and its associated processes on his tamariki – addresses far wider issues facing an increasing number of Māori born overseas to parents themselves born outside Aotearoa New Zealand. Its discussion, findings, and recommendations touch on vital themes such as indigeneity and whakapapa; the absence of tikanga in legislation and bureaucratic processes; national belonging, and the very basis of citizenship itself as a category of identification and meaning. We enjoy you to read this significant report thoroughly and in full.

For anyone that has been involved in this urgent inquiry, it will be no surprise that we have found the Crown breached te Tiriti o Waitangi and its principles. This is not a situation where the Tribunal has been asked to inquire as to

whether a current te Tiriti clause in legislation is Treaty compliant, or whether an acknowledgement of Māori as tangata whenua goes far enough – there is simply nothing in the Citizenship Act 1977 of that nature. The wording of the legislation is void of any recognition of Māori as tangata whenua, and of any recognition of te Tiriti as our founding document. We have seen that this silence has become problematic for Māori who seek citizenship and permanent residency within their tūrangawaewae. Similarly, the application process they must go through to attain one of the four categories of citizenship is flawed. In the remainder of our report, we outline specifically our findings on the process and the prejudice it has caused the claimant, his whānau, and other Māori. Ministers will see in the report that follows, the specific breaches we have found relate to the principles of rangatiratanga, partnership, good government, active protection, equal treatment, and options.

Put simply, it is our position that this law is outdated and requires amendment. In the words of Pou Tikanga, Waihoroi Shortland, in his evidence to this Tribunal: *‘Me whakatika te ture kia tika ai te ture’* (*The law requires reform in order for it to be just*). To ensure that no further prejudice is suffered by Māori that may have to pursue this pathway in the future, we have recommended the Crown undertake a process to amend the legislation. This must be a co-design initiative that takes into account a full reflection of Māori views.

Finally, it is clear that Aotearoa New Zealand as a whole would benefit from a review and amendment of the Citizenship Act 1977 and therefore we urge the Ministers to consider this report and our recommendations to ensure our founding document and position of Māori as tangata whenua is appropriately acknowledged.

‘Me whakatika te ture kia tika ai te ture.’

Nāku noa, nā



Judge Alana Thomas
Presiding Officer

ACKNOWLEDGEMENTS

The Tribunal panel wish to acknowledge several people who have played key roles over the past months to ensure the inquiry, including the hearing and production of the report, has run smoothly and at a level of quality and precision.

We would like to thank all that assisted in the coordination of the hearings and in preparing this report, namely the Waitangi Tribunal Unit staff, including Genevieve O'Brien, Natalya Holmes-Mustart, and Rose Abdul Aziz from Registration, Heaven-Leigh Teofilo and Arapera Tapiata from Claims, Donald Rowe and Katelynne Potiki-Clune from Inquiry Facilitation, Chief Historian Kesaia Walker, and Dominic Hurley, Daniel Morrow, and David Coyle from Report Writing.

Te Wehi Wright assisted the panel throughout the hearings and with post hearing matters. We are grateful to have had the benefit of his guidance and expertise with respect to tikanga matters internally.

Finally, we acknowledge those that continue to play a critical role in Tribunal inquiries, Paiheke McGarvey who served as interpreter; and Alan Doyle, the audio-visual technician.

Anei mātou ko te pānara o Wai 3513, e mihi atu nei ki a koutou katoa, tēnā koutou, tēnā koutou, tēnā koutou katoa. A kāti, ki te ripoata.

KO NGĀ MIHI

E tika ana kia tukua e mātou, e te pānara te mihi ki ngā tāngata, nā rātou i whakaheke werawera, i whakapau kaha kia tika ai, kia kounga ai ngā whakaritenga o tā tātou nohoanga, te whakaputanga anō hoki i tēnei ripoata.

Nō reira, ko te aumihi nui tēnei e rere atu nei ki ngā rau ringa i oti ai ngā mahi kia puta pai ai tēnei ripoata, ki ngā kaimahi o te Rōpū Whakamana i te Tiriti o Waitangi, ki a Genevieve O'Brien rātou ko Natalya Holmes-Mustart, ko Rose Abdul Aziz nō te tima Rēhitatanga, ki a Heaven-Leigh Teofilo rāua ko Arapera Tapiata nō te tima Kerēme, ki a Donald Rowe rāua ko Katelynne Potiki-Clune nō te tima Whakahaere Ruku Tātari, ki te Tumu Kōrero Matua, Kesaia Walker, ka mutu, ki a Dominic Hurley rātou ko Daniel Morrow, ko David Coyle nō te tima Kaituhi Ripoata.

Nō mātou hoki te waimarie i te whai wāhi mai a Te Wehi Wright ki ngā whakaritenga o te nohoanga me ētahi take i puta. Nā tana arahi, nā ōna pūkenga i ea ai te taha tikanga nō roto i ā mātou mahi. Anei mātou e mihi atu nei.

Hei whakakopani ake i konei, ki ngā pou o ngā ruku tātari puta i ngā mahi o te Rōpū Whakamana i te Tiriti, ki te kaiwhakawhiti reo, ki a Paiheke McGarvey me te kirikawa hangarau, a Alan Doyle, mei kore ake kourua. Tēnā kourua.

THE MĀORI LANGUAGE AND
TERMINOLOGY USED IN THIS
REPORT

It is necessary to begin this report with a brief explanation with respect to the dual languages used. This report is provided bilingually, English and te reo Māori. The English is provided in the left column and for ease of reference, the direct translation of the English text into te reo Māori is provided in the right column.

While we recognise there a number of differing methods with respect to the production of bilingual documentation, the method and form adopted for the purpose of this report is to provide the direct translation of text side by side, a method which is adopted in the Māori Land Court and widely used internationally by justice systems that regularly produce bilingual decisions.*

However, where we differ is the footnotes are not translated, and neither are direct quotes from evidence or submissions received; or names referred to throughout the hearing, including the names of Acts, policies, documents, books and articles.

Furthermore, we provide an explanation for the different terms used for 'citizenship/citizen' in the te reo Māori side of this report. It became clear during the hearing that the intent of the claimant and interested parties when they used the word 'citizenship' or 'citizen' in certain contexts (ie, when speaking about te ao Māori worldviews or tikanga) was not captured by the generic dictionary word

KO TE REO MĀORI ME NGĀ
WHAKAMĀRAMATANGA

E tika ana kia tīmatahia tēnei ripoata e tētahi wāhi whakamāramatanga mō te whakamahinga o ngā reo e rua. E tukuna ana tēnei ripoata i te reo Ingarihi me te reo Māori. Kei te pou kupu mauī te reo Ingarihi noho ai, nā, kia māmā ai te tahuri atu, kei te pou kupu matau te whakawhitinga reo Māori o ngā kupu i te reo Ingarihi.

E mārāma ana mātou, kei ā tēnā, kei ā tēnā anō tōna ake tukanga kia whakaputa i ngā tuhinga reo rua, nā, ko te tukanga me te whakatakotoranga i whāia ai e mātou i tēnei ripoata, ko te noho karapipiti o ngā whakawhitinga reo, he tukanga e whāia nei e te Kooti Whenua Māori, ka mutu, e horapa ana ki ngā pūnaha ture o whenua kē atu he rite tonu te whakaputa i ngā whaka-taunga reo rua.

Heoi anō, he rerekētanga i puta, arā, kāhore mātou i whakamāori i ngā kupu tāpiri, kāhore hoki i pērā i ngā whakatauāki mai i ngā taunakitanga, i ngā tāpaetanga anō hoki; ngā ingoa i tukuna ai i te nohoanga, tae atu ki ngā ingoa o ngā Ture, kaupapa here, tuhinga, pukapuka me ngā atikara.

Hei tāpiri ake, ka tuku mātou i tētahi whakamāramatanga mō ngā rerenga kua whakamahia mō 'citizenship/citizen' i te taha reo Māori o tēnei ripoata. Kua mārakerake te kite atu i te nohoanga, mō ētahi horopaki (pērā i te kōrerohia mō te ao Māori me te tikanga) kua ngaro te ia o tō te kaikerēme, o ō te hunga whai take anō hoki whakaaro mō te 'citizenship', 'citizen' rānei ki te whakamahia te kupu whānui nā te

* For example, see *Devine v Quebec (AG)* [1988] 2 SCR 790.

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that has been used for ‘citizenship’ being ‘kiriraraunga’. Therefore, we provide the following explanations for the differing term used for ‘citizenship/citizen’:

- ▶ **Kiriraraunga/kirirarau:** in a non-Māori context when discussing citizenship issues generally;
- ▶ **Tangata whenuatanga/tangata whenua:** when discussing Māori citizenship and citizens of Aotearoa in a te ao Māori/tikanga context.

Similarly, for ease of reference when referring to the four categories of citizenship provided for in the Act, which could relate to both non-Māori and Māori citizenship contexts, we use the following terms:

- ▶ **kiri-toto:** citizenship by birth
- ▶ **kiri-heke:** citizenship by descent
- ▶ **kiri-tuku:** citizenship by grant
- ▶ **kiri-whakaae:** citizenship by special case (minister discretion)

We note that these terms are only for the purposes of this report and this inquiry.

Finally, in this report we use ‘te Tiriti o Waitangi’ or ‘te Tiriti’ when referring to the text in te reo Māori, and ‘the Treaty of Waitangi’ or ‘the Treaty’ when referring to the text in English. When referring to both texts together, or to the making of the treaty in 1840 without specifying either text, we use the term ‘the treaty’ in lower case on the English language side of this report and ‘te tiriti’ in lower case on the te reo Māori side of the report.

papakupu, arā te ‘kiriraraunga’. Nō reira, e mea nei tētahi whakamāramatanga mō ngā kupu rerekē e whakamahia ai mō ngā kupu ‘citizenship/citizen’:

Hei tāpiri noa, kia māmā ai tā tātou tahuri ki ngā wāhanga e whā o te tūranga kirirarau e ai ki te Ture, e mārāma ana mātou tērā pea ka whai wāhi atu ngā Pākehā me ngā Māori ki ēnei horopaki katoa, nō reira, ka whai mātou i ēnei:

Ka ki ake mātou i konei, e whakamahia ana ēnei kupu mō te take o tēnei ripoata anahe.

Hei whakakapi ake, i tēnei ripoata e whakamahia ana te ‘te Tiriti o Waitangi’, ‘te Tiriti’ i a tātou e kōrero ana mō te tuhinga reo Māori, me te ‘the Treaty of Waitangi’ ‘the Treaty’ rānei mō te tuhinga Ingarihi. Ki te kōrero mātou mō ngā tuhinga e rua, mō te tau 1840 rānei i tana waihangā mai, ka whakamahi mātou i te ‘the treaty’ pū iti nei i te taha reo Ingarihi o tēnei ripoata, i te ‘te tiriti’ pū iti nei i te taha reo Māori o te ripoata.

ABBREVIATIONS

COVID-19	Coronavirus Disease of 2019
DIA	Department of Internal Affairs
doc	document
ECE	early childhood education
ed	edition, editor, edited by
ltd	limited
memo	memorandum
NZ	New Zealand
NZLR	<i>New Zealand Law Reports</i>
NZMC	New Zealand Māori Council
OHCHR	Office of the High Commissioner for Human Rights
p, pp	page, pages
ROI	record of inquiry
s, ss	section, sections (of an Act of Parliament)
SCR	<i>Supreme Court Reports</i> (Canada)
UN	United Nations
UNDRIIP	United Nations Declaration on the Rights of Indigenous Peoples
v	and (in a legal case name)
vol	volume
Wai	Waitangi Tribunal claim

Unless otherwise stated, footnote references to briefs, claims, documents, memoranda, papers, submissions, and transcripts are to the Wai 3513 record of inquiry. A copy of the index to the record is available on request from the Waitangi Tribunal.

INTRODUCTION

KUPU WHAKATAKI

Ina tirohia koinei te āhuatanga e meatia nei ko taku tūākiri, e kore e taea e te ture te muku te tūākiri e mau nei i runga i a au, i runga i aku uri, ahakoa rātou whānau mai. Ina tukua te ture kia mahi i tēnei mahi ka pā tētahi wewetetanga o ngā here o ngā uri o te ao Māori i hea nei o te ao ki ō rātou tūpuna.¹

—Waihoroi Shortland, Pou Tikanga

1.1 WHAT IS AT ISSUE?

This inquiry addresses a claim submitted to the Waitangi Tribunal under urgency regarding the Citizenship Act 1977 ('the Act'). Claimant John Ruddock (Ngāpuhi) was born in Australia in 1987 to his Scottish father, John Chapman, and Māori mother and New Zealand citizen, Rhonda Bryers.² The Act (discussed in chapter 2) provides for New Zealand citizenship by descent for the children of New Zealand citizens born overseas, but limits it to one generation. Accordingly, Mr Ruddock is a New Zealand citizen by descent through his mother.

When Mr Ruddock moved with his three children to New Zealand on 2 April 2025, he discovered his children had no legal right to remain here. For children in such cases to automatically receive New Zealand citizenship, either they or their other parent must have been born in New Zealand. Mr Ruddock's children were born

1.1 KO TE AHA TE TAKE MATUA?

E aro ana tēnei ruku tātari ki tētahi kerēme mō te Citizenship Act 1977 ('te Ture') i tukuna taihorotia ai ki te Taraipiunara o Waitangi. I te tau 1987, ki Ahitereiria, i whānau mai ai te kaikerēme, John Ruddock (Ngāpuhi); ko John Chapman, nō Kōtimana tana pāpā; ko Rhonda Bryers tana māmā, he Māori, he tangata whenua nō Aotearoa. I tukuna rā e te Ture (ka kōrerotia ki wāhanga 2) te āheinga kia whiwhi kiri-heke ngā tamariki a ngā kirirarau nō Aotearoa engari i whānau mai i tāwahi, heoi anō e whāiti ana te titiro ki te whakareanga kotahi. Nā tana māmā me tō rāua whakapapa, kua whai kiri-heke a Mr Ruddock.

I te 2 o Āpereira 2025, i tana hoki mai ki Aotearoa me ana tamariki e toru, i whai māramatanga a Mr Ruddock i te tūranga o te noho mai o ana tamariki ki kōnei, he tūranga ture kore. I ēnei horopaki, ki te whiwhi noa ngā tamariki i ngā kiriraraunga Aotearoa, me whānau mai tētahi o ō rātou mātua ki Aotearoa. I whānau mai ngā

1. Transcript 4.1.1, p111.

2. John Ruddock, brief of evidence (doc A1), p1. Mr Ruddock does not have Australian citizenship by birth as the Australian Government limited this to children with at least one Australian citizen parent from 20 August 1986.

in the United States and their mother is not a New Zealand citizen, so they do not automatically receive New Zealand citizenship. However, the Act does provide for the Minister of Internal Affairs to exercise discretionary powers to grant citizenship in special cases upon application, including for children whose mother or father is a citizen by descent. Mr Ruddock has applied to Immigration New Zealand for temporary student visas for his children, and to the Department of Internal Affairs to grant his children citizenship.³

Counsel for Mr Ruddock acknowledged that while the Minister can use discretion to grant citizenship in cases like this, the central issue to the claim is that 'there is no explicit requirement for the Minister to consider te Tiriti o Waitangi (as there is no Treaty clause), or the fact that the applicant is Māori and indigenous to Aotearoa'.⁴ Mr Ruddock's claim was therefore made on behalf of himself and his whānau, but also on behalf of all Māori who do not qualify for citizenship by descent generally.⁵

The Crown stated that Mr Ruddock's case is still a live issue currently being considered by immigration officials, making this inquiry premature. Outside of Mr Ruddock's case, the Crown's broader position was that since the Citizenship Act 1977 has been in force from 1 January 1978 there is no need for urgency, and that the matter could be addressed in the Tribunal's kaupapa inquiry programme.⁶

tamariki a Mr Ruddock ki Amerika, ehara tō rātou māmā i te kirirarau nō Aotearoa, nō reira, kāhore rātou i te whiwhi noa i te kiriraraunga Aotearoa. Heoi anō, mā te ture hoki e tuku te āheinga ki te Minita o Internal Affairs kia whakamahia tōna ake mana kia whakaaetia ētahi kēhi whakaha-rahara, tae atu ki ngā tamariki he kiri-heke te māmā, te pāpā rānei ka mutu kua tonoa kia pērā. Kua tuku tonu a Mr Ruddock ki a Immigration New Zealand mō ngā pane uruwhenua ākongā mā ana tamariki, kua tonoa hoki kia noho āna tamariki hei kiri-tuku.

I whakaae te rōia mō Mr Ruddock kei a te Minita te āheinga ki te tuku kiri-whakaae i ngā horopaki pēnei ki tēnei, engari ko te kaupapa matua o tēnei kerēme, ko te āhuatanga e mea ana 'there is no explicit requirement for the Minister to consider te Tiriti o Waitangi (as there is no Treaty clause), or the fact that the applicant is Māori and indigenous to Aotearoa'. Nā konā, i tuku a Mr Ruddock i tana kerēme hei māngai mōna me tana whānau, mō te iwi Māori whānui hoki kāhore e āhei ana ki te whiwhi noa i te kiri-heke.

I mea atu te Karauna, e whai whakaaro tonu ana ngā āpiha manene ki te kēhi o Mr Ruddock, me te aha, he wawe te whakahaere i tēnei ruku tātari. Hāunga te kēhi o Mr Ruddock, ko te tūranga whānui o te Karauna e mea ana, horekau he take o tētahi ruku tātari ohotata, inā hoki e pēnei nei te āhua o te Citizenship Act 1977 mai i tana whakairotaanga i te 1 o Hānuere 1978, he pai hoki pea kia waiho tēnei kaupapa mō te hōtaka ā-kaupapa o te Taraipiunara.

3. John Ruddock, brief of evidence (doc A1), p 2.

4. Statement of claim 1.1.1, p 1.

5. John Ruddock, brief of evidence (doc A1), p 1.

6. Submission 3.1.2, pp 3–5.

1.2 INQUIRY BACKGROUND

1.2.1 The claim

On 24 July 2025, the Tribunal received an application from Mr Ruddock for an urgent hearing of his claim.⁷ Crown counsel filed a response on 8 August 2025 opposing the application for an urgent hearing, maintaining that neither the statement of claim nor the circumstances of the claimant's whānau were justifiable reasons.⁸

On 19 August 2025, claimant counsel filed submissions in reply to the Crown, stating that claims of a constitutional nature are typically granted urgency by the Tribunal.⁹

1.2.2 Panel to this inquiry

On 12 August 2025, a panel was convened to consider the application. Judge Alana Thomas was appointed as Presiding Officer, and Professor Tafaoimalo Tologata Leilani Tuala-Warren, Ken Williamson, and Professor Emeritus David Williams were appointed as members of the panel.¹⁰

1.2.3 Decision to grant urgency

The panel granted the urgency on 1 September 2025. They considered that Mr Ruddock's children were suffering prejudice by not being allowed to attend school in New Zealand, a situation that only the granting of the children's visa or citizenship applications could remedy. The Crown argued that these remedies offered a reasonable alternative to this inquiry, however, the panel remained concerned about the lack of clarity surrounding the timeframes and processes. The panel determined that 'the claimants are suffering, or will likely suffer, significant and irreversible prejudice through the Crown's

1.2 TE HĪTORIA O TE RUKU TĀTARI

1.2.1 Te kerēme

I te 24 o Hūrae 2025, i tae mai tētahi tono nā Mr Ruddock e kimi nei i tētahi ruku tātari ohotata mō tana kerēme. I te 8 o Akuhata 2025, i tuku mai te Karauna i tana whakautu e whakahē nei i te tono kia taihorotia te nohoanga, me te whakaū ki te tūranga ehara te tauākī whakatau nawe me te horopaki o tō te kaikerēme whānau i te take e tika ana. I te 19 o Akuhata 2025, i tuku mai te rōia mō te kaikerēme i ana tāpaetanga whakahoki ki te Karauna, me tana ki, i tōna tikanga ka whakaaetia e te Taraipūnara kia taihorotia ngā kerēme e hāngai ana ki ngā take ture ā-papa.

1.2.2 Te pānara o tēnei ruku tātari

I te 12 o Akuhata 2025, i whakatūria ai tētahi pānara kia tirohia te tono. I kopoua a Kaiwhakawā Alana Thomas hei Mana Whakahaere, i kopoua hoki a Professor Tafaoimalo Tologata Leilani Tuala-Warren rātou ko Ken Williamson, ko Professor Emeritus David Williams hei mema o te pānara Taraipūnara.

1.2.3 Te whakataunga kia taihorotia

I te 1 o Hepetema 2025, i whakaaetia e te pānara kia taihorotia te take. I mea atu rātou, e whakataumahatia ana ngā tamariki a Mr Ruddock e te aukatinga o ā rātou āheinga kia haere ki tētahi kura i Aotearoa, mā te tuku i ngā pane uruwhenua, i ngā kiriraraunga rānei ki ngā tamariki e whakatika tērā āhutatanga. I mea atu te Karauna, ko aua whakatikahanga ngā kōwhiringa e tika ana mō tēnei ruku tātari, engari i te āwangawanga tonu te pānara i te kōrenga o te whai māramatanga mō ngā angawā me ngā hātepe. I meinga te pānara e whakataumahatia ana ngā kaitono, he nui rānei te tūponotanga ka whakataumahatia

7. Statement of claim 1.1.1.

8. Submission 3.1.2.

9. Submission 3.1.3.

10. Memorandum 2.5.2, p2.

1.2.4

actions due to the inability of the tamariki to receive education and the uncertainty of their legal status to remain in New Zealand which is causing undue stress for the entire whānau.¹¹

The panel clarified that the urgent inquiry would be ‘targeted and specific’ and would focus on ‘[w]hether the Citizenship Act 1977 and the current process to apply for citizenship for Māori whose parents were not born in New Zealand or Australia is in breach of te Tiriti o Waitangi principles.’¹²

1.2.4 Events since the granting of urgency

Three days after urgency was granted, on 4 September 2025, Immigration New Zealand approved the applications for temporary student visas for Mr Ruddock’s children under section 61 of the Immigration Act 2009 (discussed in chapter 2).¹³ While this alleviated the immediate issue of the children’s ability to attend school, it did not resolve the question of their citizenship nor the wider question of citizenship for Māori born to citizen-by-descent parents.

1.2.5 Hearings for the inquiry

The hearings for this inquiry took place at the Tribunal’s offices in Wellington from 16 to 17 September 2025.¹⁴ Closing submissions were filed on 14 October 2025.¹⁵

rātou, e te tino whakahāweatanga putanga kore i tupu mai i ngā mahi a te Karauna, e aukati nei i te āheinga o ngā tamariki kia haere ki te kura, e tuku nei hoki kia noho pāhekeheke rātou mō ō rātou tūranga ā-ture ki Aotearoa; nā kona e kōhukihuki ana te noho o te whānau katoa.

I tuku whakamāramatanga te pānara mō te ruku tātari ohotata arā, ‘he whāiti, he motuhake’ tana titiro ki te take, ‘[w]hether the Citizenship Act 1977 and the current process to apply for citizenship for Māori whose parents were not born in New Zealand or Australia is in breach of te Tiriti o Waitangi principles.’

1.2.4 Ngā take whai muri i te tuku taihorotanga

I te 4 o Hepetema, te toru rā whai muri i te tuku whakaae kia taihorotia, i whakaae a Immigration New Zealand ki ngā tono a ngā tamariki a Mr Ruddock kia whiwhi pane uruwhenua ākongā e ai ki wehenga 61 o te Immigration Act 2009 (ka kōrerotia ki wāhanga 2). Hāunga tana whakatikatika i te take o te wā, arā, te āheinga o ngā tamariki kia haere ki te kura, kei reira tonu te take mō ō rātou kiriraraunga, ka mutu, te take whānui mō te tangata whenuatanga o ngā Māori, ko ōna mātua; he kiri-heke.

1.2.5 Ngā nohoanga mō te ruku tātari

I tū te nohoanga mō tēnei ruku tātari i te tari o te Taraipunara ki Pōneke, mai i te 16 ki te 17 o Hepetema 2025. I tukuā mai ngā tāpaetanga whakakapi i te rā 14 o Oketopa 2025.

11. Memorandum 2.5.4, pp 13–14.

12. Memorandum 2.5.4, p 14.

13. John Ruddock, brief of evidence (doc A6(a)), p 3; Fiona Sharma, brief of evidence (doc A12(a)), p [8].

14. Memorandum 2.5.8(a).

15. Memorandum 3.4.4, p 1.

1.2.6 Interested parties to this inquiry

Six claims were granted interested party status in this inquiry: the Ngāti Hine Lands, Forests and Resources claim (Wai 682), Te Kapotai and Ngāti Pare hapū claim (Wai 1464), Waikare Inlet claim (Wai 1546), the Constitutional (Kātene) claim (Wai 3313), and the Constitutional (New Zealand Māori Council) claim (Wai 3352).¹⁶

1.3 ISSUES

As signalled in the directions granting urgency (section 1.2.3), this is a targeted and specific inquiry.

We focus on the following two issues:

1. Are the Citizenship Act 1977 and the processes for applying for citizenship by grant compliant with the principles of the treaty? And, if not:
2. what changes, if any, could the Crown make to ensure treaty-compliance of its legislation and policy?

1.4 THE TREATY CONTEXT

The claimants identified four treaty principles as applying particularly to the circumstances of this urgent inquiry: rangatiratanga, active protection, equity, partnership, and good government.¹⁷ We broadly agree, however, we believe the principle of equal treatment (as explained in section 1.4.3) to be in fact more applicable to the circumstances of this inquiry. In addition to these, we also believe the principle of options to be relevant. We briefly discuss these six principles and their relevance below. Due to the time constraints

1.2.6 Ngā hunga whai take ki tēnei ruku tātari

I tukua te whakaaetanga ki ngā kerēme e ono kia noho mai hei hunga whai take ki tēnei ruku tātari: ko Ngāti Hine Lands, Forests and Resources (Wai 682), Te Kapotai and Ngāti Pare hapū (Wai 1464), Waikare Inlet (Wai 1546), te kerēme Constitutional (Kātene) (Wai 3313), me te kerēme Constitutional (New Zealand Māori Council) (Wai 3352).

1.3 NGĀ TAKE

Hei toai noa i te manatu whakahau e whakaae nei kia taihorotia (wehenga 1.2.3), he whāiti, he motuhake tēnei ruku tātari.

E aro ana mātou ki ēnei take e rua:

1. Ae rānei e noho tahi ana te Citizenship Act 1977 me ngā hātepe tonu mō te kiri-tuku, ki ngā mātāpono o te tiriti? Ki te kore:
2. He aha rā ētahi panonitanga, mena e tika ana, e wātea ana ki te Karauna hei whai kia noho tahi ai tana Ture me ōna kaupapa here ki te tiriti?

1.4 TE HOROPAKI Ā-TIRITI

E whā ngā mātāpono o te tiriti i tautuhia ai e ngā kaikerēme e whai take ana ki te horopaki ake o tēnei ruku tātari ohotata: rangatiratanga, matapopore moroki, mana taurite, houruatanga me te kāwanatanga whai i te tika. E whakaae whānui ana mātou, engari ki tā mātou titiro, kua whai take ake te mātāpono o te ngākau ōrite (ka kōrerohia ki wehenga 1.4.3) ki te horopaki o tēnei ruku tātari. Hei tāpiri ake ki ēnei, e whakapono ana mātou me whai wāhi mai te mātāpono o te kōwhiringa. Ki raro nei, ka wāhi kōrero mātou imō aua mātāpono

16. Memorandum 2.5.8(b).

17. Statement of claim 1.1.1, pp 5–6.

of this inquiry, we largely adopt the definitions of the principles as expressed in previous Tribunal reports. Where possible, we focus on jurisprudence related to the rights and duties of citizenship.

1.4.1 Rangatiratanga

The guarantee of rangatiratanga over lands, natural resources, and taonga both tangible and intangible in article 2 of te tiriti is of fundamental relevance to this inquiry. This is because, at its most basic level, the ability for Māori to live in New Zealand underpins their ability to exercise rangatiratanga. We consider that the principle of rangatiratanga requires the Crown not to deny Māori access to their whenua or disconnect them from their whānau, hapū, and iwi. As the Te Rohe Pōtae Tribunal wrote in 2023:

Our conclusion is that the Treaty guaranteed to Māori their tino rangatiratanga. This was a guarantee that Māori would be able to continue to exercise full authority over lands, homes, and all matters of importance to them. This, at a minimum, was the right to self-determination and autonomy or self-government in respect of their lands, forests, fisheries, and other taonga for so long as they wished to retain them. That authority or self-government included the right to work through their own institutions of governance, and apply their own tikanga or system of custom and laws.¹⁸

1.4.2 Active protection

As stated above (see section 1.1), central to this inquiry is whether the Citizenship Act 1977 protects Māori citizenship rights. As such, the principle of active protection, derived from articles 1 and 2 of the treaty, is also important. We adopt the principle of active protection as long established in Tribunal jurisprudence and recently articulated in *Ngā Mātāpono: The Principles* (2024):

e ono me ā rātou hāngai ki tēnei kaupapa. Nā ngā here wā o tēnei ruku tātari, ka whai noa mātou i ngā whakamāramatanga o ngā mātāpono i puta i ngā rīpoata Taraipiunara o mua. Pena e āhei ana, ka aro atu mātou ki ngā ture mō ngā mōtika, ngā kawenga anō hoki o te kiriraraunga.

1.4.1 Rangatiratanga

Ka noho mai hei tūāpapa ki tēnei ruku tātari, ko te kī taurangi nō roto i atikara 2 o te tiriti kia mau tonu ki te tino rangatiratanga o ngā whenua, ngā kāinga me ngā taonga, ā-kikokiko mai, ā-wairua mai hoki. E pēnei ana inā hoki, ka noho tahi ko te āheinga o te Māori kia noho mai ki Aotearoa me te āheinga kia whakamahia te rangatiratanga. E mea ana mātou, kei roto i te mātāpono o te rangatiratanga te kawenga a te Karauna kia kore ai e aukati tā te Māori whai wāhi atu ki tana whenua, kia kore ai hoki e motu te here ki tana whānau, tana hapū, tana iwi anō hoki. I te tau 2023, i mea atu te Taraipiunara o Te Rohe Potae:

1.4.2 Matapopore moroki

Hei toai noa i ngā kōrero o runga (ki wehenga 1.1), ko te ngako o tēnei ruku tātari, ko te kite atu pena raini e tiaki ana te Citizenship Act 1977 i ngā mōtika tangata whenuatanga o te Māori. Nā konā, ka noho matua mai hoki te mātāpono o te matapopore moroki, e ai ki a atikara 1 me 2 o te tiriti. Ka whai noa mātou i te mātāpono o te matapopore moroki kua roa e noho nei hei ture Taraipiunara me te kī atu o *Ngā Mātāpono: The Principles* (2024):

18. Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, 6 vols (Lower Hutt: Legislation Direct, 2023), vol 1, p183.

In the *Lands* case, the Court of Appeal found the Crown's obligations were 'analogous to fiduciary duties', and were 'not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable'. Active (rather than passive) protection 'requires honourable conduct by, and fair processes from, the Crown, and full consultation with – and, where appropriate, decision-making by – those whose interests are to be protected.' Otherwise, active protection can have 'paternalistic implications', reflecting the power imbalance between the Treaty/te Tiriti partners. Further, active protection applies to 'all interests guaranteed to Māori under the treaty and extends to intangible properties'. It applies across all statutory regimes and fields of Crown policy today.¹⁹

1.4.3 Equal treatment

As has been established in many previous Tribunal inquiries, the principle of equal treatment requires the Crown to act 'fairly and impartially towards Māori, including by treating Māori hapū and iwi fairly in relation to each other.'²⁰ The Tribunal noted in *Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness* (2023), that 'this means the Crown must avoid unfairly advantaging one group over another 'if their circumstances, rights, and interests [are] broadly the same'. As that report qualified, however, this did not necessarily mean:

treating all citizens or groups exactly the same, where they have different interests, populations, leadership structures, and preferences. The Crown's obligation to treat Māori groups equally and fairly is understood to arise from the principles of partnership, reciprocity, autonomy, and active protection. It too is integral to the article 3 guarantee of citizenship rights to Māori.²¹

We agree with this understanding of equal and fair treatment as integral to Māori citizenship rights and note the Tribunal's previous qualifier regarding differences in circumstances. We also note our concurrence with the Tribunal's

1.4.3 Ngākau ōrite

E ai ki te kōrero i puta i ngā ruku tātari maha o mua o te Taraipiunara, mā te mātāpono o te ngākau ōrite e mea atu ki te Karauna me whakamahi 'fairly and impartially towards Māori, including by treating Māori hapū and iwi fairly in relation to each other'. I whakamārama atu te Taraipiunara i *Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness* (2023), 'this means the Crown must avoid unfairly advantaging one group over another 'if their circumstances, rights, and interests [are] broadly the same'. Me tana tāpiri ake, ehara i te mea e kī ana:

E whakaae ana mātou ki tēnei whakamōhiotanga mō te ngākau ōrite, tōkeke hoki hei tino take mō ngā mōtika tangata whenuatanga o te Māori, me te tautoko i tā te Taraipiunara tāpirihanga mō ngā horopaki rerekē. E tautoko hoki ana mātou

19. Waitangi Tribunal, *Ngā Mātāpono: The Principles – The Interim Report of the Tomokia Ngā Tatau o Matangireia/the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies* (Pre-publication, 2024), p 77.

20. Waitangi Tribunal, *The Maniapoto Mandate Inquiry Report* (Wellington: Legislation Direct, 2020), p 91.

21. Waitangi Tribunal, *Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness* (Wellington: Legislation Direct, 2024), pp 91–92.

comment in *The Maniapoto Mandate Inquiry Report* (2020) that the Crown ‘has a duty to foster whanaungatanga among hapū and iwi, in treating groups fairly and equally it must do all that it can to avoid creating or exacerbating divisions and damaging relationships.’²²

It is clear that the principle of equal treatment is engaged by the circumstances of this inquiry, due to the inference in the claimant and interested parties’ arguments that the Crown is causing prejudice to uri due to the status of their Māori parent as a citizen by descent, a situation not affecting the children of other Māori citizens. The Crown’s alleged failure to recognise a treaty duty toward Māori living outside national boundaries in citizenship legislation and process may be seen as a potential breach of its obligation to treat all groups of Māori equally and not exacerbate divisions. This is a question to be tested in the inquiry.

1.4.4 Partnership

When Crown policy that will affect Māori is being designed or implemented, the principle of partnership is always relevant, and we therefore consider it to be engaged in this inquiry. We accept the definition provided by the Central North Island Tribunal in 2008:

In our view, the obligations of partnership included the duty to consult Maori on matters of importance to them, and to obtain their full, free, prior, and informed consent to anything which altered their possession of the land, resources, and taonga guaranteed to them in article 2. The Treaty partners were required to show mutual respect and to enter into dialogue to resolve issues where their respective authorities overlapped or affected each other.²³

i ā te Taraipūnara kōrero i *The Maniapoto Mandate Inquiry Report* (2020) me tā rātou kī ake, te Karauna ‘has a duty to foster whanaungatanga among hapū and iwi, in treating groups fairly and equally it must do all that it can to avoid creating or exacerbating divisions and damaging relationships’.

E mārakerake ana te kite atu e tika ana tā te mātāpono o te ngākau ōrite noho mai ki tēnei ruku tātari, nā runga anō i tā te kaikerēme, i tā ngā hunga whai take hoki tohenga e mea ana, e whakataumahatia ana ngā uri e te Karauna nā runga anō i te āhuatanga o ō rātou mātua hei kiri-heke, he āhuatanga kāhore e pākino nei ki ngā tamariki o ētahi atu tangata whenua Māori. Mō ngā ture me ngā hātepe, ko tā te Karauna aro kore ki tōna anō kawenga ā-tiriti ki ngā Māori e noho ana ki tāwahi, koia hoki pea ko tētahi takahitanga o tana takohanga kia noho tahi ia ki ia rōpū Māori nā runga i te ngākau ōrite, kia kore ai hoki te taumata o te wehewehe e nui ake. He pātai e tika ana kia tirohia ki tēnei ruku tātari.

1.4.4 Houruatanga

I te wā o te waihanga mai, o te whakahaere anō hoki i ngā kaupapa here a te Karauna e pā nei ki te Māori, e tika ana me whai wāhi mai te mātāpono o te houruatanga, nō reira, me pērā ka tika ki tēnei ruku tātari. E tautoko ana mātou i te whakamāramatanga i puta i te Taraipūnara o Central North Island i te tau 2008:

22. Waitangi Tribunal, *The Maniapoto Mandate Inquiry Report*, p 18.

23. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 173.

1.4.5 Good government

In *Ngā Mātāpono*, the Tribunal stated that the principle of good government, or ‘good governance’, ‘applies to the Crown’s exercise of kāwanatanga when proposing legislation that affects Māori interests.’²⁴ We agree this interpretation of the principle applies to this inquiry, in which the claimant and interested parties have sought a recommendation that legislation be reviewed and amended to take account of the basis for Māori citizenship. In doing so, counsel for Mr Ruddock submitted that ‘the principle of good government requires the Crown to review and amend legislation that is outdated, inconsistent with the evolving constitutional framework and creates arbitrary and unfair outcomes.’²⁵

1.4.6 Options

Lastly, we consider the treaty principle of options to be applicable in this inquiry, as Māori have a right to live as Māori in manners of their choosing. The Tribunal has stated in the past that Māori have a right to ‘choose their social and cultural path.’²⁶ The Te Rohe Pōtae Tribunal expanded on this, adding that the principle of options meant Māori had the right ‘to continue to govern themselves along customary lines.’²⁷

1.5 THE STRUCTURE OF THIS REPORT

In chapter 2, we provide a background to the Citizenship Act 1977, including how tikanga Māori accounted for concepts akin

1.4.5 Kāwanatanga whai i te tika

I ki ake te Taraipūnara i *Ngā Mātāpono*, ko te mātāpono o te kāwanatanga whai i te tika, ‘good governance’ rānei, ka ‘applies to the Crown’s exercise of kāwanatanga when proposing legislation that affects Māori interests’. E whakaae ana mātou kua whai take te whakamāramatanga o taua mātāpono ki tēnei ruku tātari, ka mutu, e kimi ana te kaikerēme me te hunga whai take i tētahi tūtohunga e meinga ana me arotake, me panoni anō hoki te ture kia whai wāhi atu te tūranga o te tangata whenua Māori. I taua kōrero anō hoki, i mea atu te rōia mō Mr Ruddock, ‘the principle of good government requires the Crown to review and amend legislation that is outdated, inconsistent with the evolving constitutional framework and creates arbitrary and unfair outcomes.’

1.4.6 Kōwhiringa

Hei whakakapi ake, e mea ana mātou me whai wāhi mai te mātāpono o te kōwhiringa ki tēnei ruku tātari, nā runga anō i tō te Māori mōtika kia noho hei Māori i runga i ngā āhuatanga nā rātou ake i kōwhiri. I ki ake ngā Taraipūnara o mua, kei a te Māori te mōtika kia ‘choose their social and cultural path’. I whakawhānui ake te titiro o te Taraipūnara o Te Rohe Pōtae me te ki ake, mā te mātāpono o te kōwhiringa e tuku ki te Māori te mōtika ‘to continue to govern themselves along customary lines.’

1.5 TE WHAKATOKOTORANGA O TĒNEI RIPOATA

I te wāhanga 2, ka tuku mātou i te horopaki o te Citizenship Act 1977, me te kōrerohia ngā āhuatanga o te tikanga Māori me tana

24. Waitangi Tribunal, *Ngā Mātāpono*, p 73.

25. Submission 3.3.8, p 22.

26. Waitangi Tribunal, *Te Mana Whatu Ahuru*, p 212; Waitangi Tribunal, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington: Legislation Direct, 2013), p 57; Waitangi Tribunal, *Kāinga Kore*, p 95.

27. Waitangi Tribunal, *Te Mana Whatu Ahuru*, p 212.

to citizenship prior to the signing of the treaty in 1840 and how New Zealand's laws subsequently developed. Chapter 2 also provides an overview of the Act's relevant provisions and details the processes for applying for citizenship under the current regime. In chapter 3, we set out the parties' positions, analyse the treaty-compliance of the Act and the processes for applying for citizenship, and assess potential prejudice. Chapter 3 then concludes the report with our findings and recommendations.

titiro ki tēnei mea te tangata whenuatanga i mua i te hainatanga o te tiriti i te tau 1840, ka mutu, i te panoni haeretanga o ngā ture o Aotearoa mai i taua wā. Ka tuku hoki a wāhanga 2 i tētahi kōrero whānui mō ngā wāhanga o te Ture, mō ngā hātepe, ngā taipitopito anō hoki o ēnei wā e hāngai ana ki te tono kiriraraunga. I te wāhanga 3, ka whakatakotohia ngā tūranga o ia hunga, ka mutu ka tātarihia te noho mai o te tiriti ki te Ture, ki te hātepe anō hoki mō te tono kiriraraunga, nā kona kia kite ai pena ka tau tētahi whakahāweatanga. Mā wāhanga 3 e whakakapi ake te ripoata i ā mātou kitenga me ā mātou tūtohunga.

BACKGROUND TO THE CITIZENSHIP ACT 1977

2.1 INTRODUCTION

In this chapter, we provide a background to the Citizenship Act 1977 and consider international law and legal precedent surrounding indigenous citizenship, as context for the claim before us. We begin by discussing citizenship and national belonging broadly, including evidence we received concerning similar concepts in tikanga Māori. We then briefly outline the legislative history of New Zealand's subjecthood and citizenship laws following the signing of the treaty in 1840, leading to the Citizenship Act 1977 (section 2.2). We detail the Act itself, including how many overseas Māori it could potentially impact, the relevant provisions, and the processes for applying for citizenship under the current regime (section 2.3). Finally, we discuss the Immigration Act 2009 and its relevance to this inquiry (section 2.4), before concluding with a quick contextual overview of citizenship in international law (section 2.5).

2.2 CITIZENSHIP AND BELONGING IN NEW ZEALAND

The meaning of 'citizenship' as an administrative and affective category is one of the most contested questions in political economy. In his book *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (first published in 1983), the scholar Benedict Anderson

TE HOROPAKI O TE CITIZENSHIP ACT 1977

2.1 KUPU WHAKATAKI

I tēnei wāhanga, i tuku mātou i te horopaki o te Citizenship Act 1977 me te tahuri ki ngā ture o tāwāhi, ki ngā taura ā-ture anō hoki mō te kaupapa o te kiriraraunga iwi taketake, hei whakataunga horopaki mō te kerēme kei mua i a mātou. Ka tīmata tā mātou matapakihanga i ngā kōrero whānui mō te kiriraraunga me ngā hononga ā-motu, tae atu ki ngā taunakitanga e tuku kōrero nei mō ngā tikanga Māori. Ka tahuri hoki mātou ki te whakapapa o te ture mō te tūranga o te tangata me te kiriraraunga i roto o Aotearoa mai i te hainatanga o te tiriti i 1840 tae atu ki te Citizenship Act 1977 (wehenga 2.2). Ka tahuri mātou ki te Ture ake me te rahinga o ngā Māori ka pāngia pea e ia, ki ngā wāhanga e whai take ana, me ngā hātepe tonono o ināianei kia whiwhi ai i te kiriraraunga (wehenga 2.3). Hei whakakapi, ka tahuri mātou ki te Immigration Act 2009 me tana whai wāhi mai ki tēnei ruku tātari (wehenga 2.4), ka mutu, ki tētahi whakarāpopototanga o ngā ture o tāwāhi mō te kiriraraunga (wehenga 2.5).

2.2 KIRIRARAUNGA ME TE HONO O TE TANGATA KI AOTEAROA

I te ao torangapū ohanga nei, he take tau-patupatu tēnei mea te whakamāramatanga o 'kiriraraunga' hei wāhanga whakahaere. I tana pukapuka *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (tāngia tuatahitia i 1983), i matapakihia horapahia e te pūkenga,

famously discussed the emergence of national feeling and identification across time and space. Anderson coined the term ‘imagined communities’ to describe how social groups so large and heterogeneous as to have little inherent commonality – specifically, nation states – came to be seen and to perceive themselves as collective identities.¹ The term has since entered the popular lexicon concerning immigration, national borders, and community ideation. As another scholar has noted, citizenship is the core mechanism by which ‘a community is imagined through the practice of granting nationality.’²

But what does it mean, and what has it meant to be a citizen in the context of Aotearoa New Zealand? While the Citizenship Act 1977 does not define the term ‘citizen’, the *Oxford English Dictionary* defines a citizen as a ‘legally recognized subject or national of a state, commonwealth, or other polity, either native or naturalized, having certain rights, privileges, or duties.’³ *Te Ara: The Encyclopedia of New Zealand* says to be a citizen means ‘to be a full member of a nation.’⁴ ‘Citizenship’, therefore, is often used synonymously for ‘nationality.’⁵

To further fill in this orthodox definition, the Office of the High Commissioner for Human Rights at the United Nations states:

e Benedict Anderson te putanga mai o te manawa whakahi, te tūākiri ā-motu ahakoa te wā me tōna wāhi. I whakataukihia e Anderson te rerenga ‘imagined communities’ hei whakamārama atu i te whakakotahi mai i ētahi rōpū pāpori e nui ana te rahinga, engari e rerekē ana te āhua – kia noho ai i raro i te tūākiritanga kotahi. Kua hau te rongo o tēnei rerenga ki te ao o ngā ratonga manene, ngā rohenga ā-motu me ngā whakaaro ā-hapori. Hei tā tētahi atu pūkenga, ko te kiriraraunga te tukanga matua e āhei ai ‘a community is imagined through the practice of granting nationality’.

Engari, ki roto i Aotearoa nei, he aha tana whakamāramatanga, he aha hoki tēnei mea te kirirarau? Ahatia kihai te Citizenship Act 1977 i tuku i tētahi whakamāramatanga o te kupu ‘kirirarau’, i mea atu te *Oxford English Dictionary*, ko te kirirarau he ‘legally recognized subject or national of a state, commonwealth, or other polity, either native or naturalized, having certain rights, privileges, or duties’. Me te kī a *Te Ara: The Encyclopedia of New Zealand*, ko te kirirarau, ‘to be a full member of a nation’. Nā kona, e kitea ana te whakamahinga o ‘hononga whenuatanga’ hei ‘kiriraraunga’.

Hei tāpiri i ēnei whakamāramatanga, i mea atu te Office of the High Commissioner for Human Rights at the United Nations:

1. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, revised ed (London: Verso, 2006), pp 5–6.

2. Sriprapha Petcharamesree, ‘Borders, Citizenship, “Imagined Community” and “Exclusive State” and Migration in Southeast Asia’ in *Migration in Southeast Asia* eds Sriprapha Petcharamesree and Mark P Capaldi (Switzerland: Springer, 2023), p 31.

3. ‘citizen’, *Oxford English Dictionary*, https://www.oed.com/dictionary/citizen_n?tab=meaning_and_use#9254061, accessed 24 September 2025.

4. David Green, ‘Citizenship’, *Te Ara – The Encyclopedia of New Zealand*, <https://teara.govt.nz/en/citizenship/print>, accessed 24 September 2025.

5. ‘What is citizenship?’, Wayne State University, <https://csc.wayne.edu/what-is-citizenship>, accessed 24 September 2025.

The right to a nationality is a fundamental human right. It implies the right of each individual to acquire, change and retain a nationality. International law provides that the right of States to decide who their nationals are is not absolute and, in particular, States must comply with their human rights obligations concerning the granting and loss of nationality. If a person does not have a nationality, it may be impossible for them to go to school, see a doctor, get a job, open a bank account, or even get married.⁶

In her 2011 paper ‘Overseas-Born Māori and New Zealand Citizenship’ for the Institute of Policy Studies at Victoria University of Wellington, Holly Waldron wrote that, ‘[w]hether an individual is a visitor, temporary migrant, permanent resident or citizen of a country profoundly affects that individual’s rights’. Importantly, however, she added that an individual’s nationality status does not only affect their rights, but ‘it can also have a deep effect on their identity and sense of belonging.’⁷

In this section, we discuss how ‘belonging’ in New Zealand has evolved over time, from a tikanga Māori worldview, to official subjecthood following the signing of the treaty in 1840, to the current legal framework of citizenship under the Citizenship Act 1977.

2.2.1 Tikanga Māori

When discussing connection to the environment and the importance of whakapapa, Pou Tikanga Waihoroi Shortland stated:

ko te pūtaketanga tēnā o te tauritanga tēnei o tā tātou e kōrero nei i te rā nei. Ahakoa mai i Hokianga ki Taumārere, mai i Kānata ki Niu Tirenī, mai i Ūropi ki Ahitereiria mai i hea nei ki konei ko taua awa rā anō, ko aua awa koia nei anei ko te awa tuku kiri o ō tātou tūpuna. I haere rātou ki ēnei awa ka horoia rātou i ēnei awa. Nō reira, o rātou kiri ka horoia i reira. Koia tērā momo kupu e mau nei. Ka horoi au taku kiri ka mau ki roto i te awa. Ka hono au te awa o Hokianga ki te awa o Taumārere kua mōhio a Ngāpuhi tonu

I tana tuhinga mō te Institute of Policy Studies at Victoria University of Wellington, 2011 ‘Overseas-Born Māori and New Zealand Citizenship’, i mea atu a Holly Waldron, ‘[w]hether an individual is a visitor, temporary migrant, permanent resident or citizen of a country profoundly affects that individual’s rights’. Heoi anō, i tāpiri hoki ia i te kōrero, ehara i te mea e pākinotia nei e te te turanga ā-motu o te tangata ōna mōtika anahe, engari kē ia, ‘it can also have a deep effect on their identity and sense of belonging’.

I tēnei wehenga, i matapakihia e mātou te huringa haeretanga o tēnei mea te hononnga ā-motu ki Aotearoa, timata i te tirohanga tikanga Māori, ki tētahi tūranga tūturu whai i te hainatanga o te tiriti i te tau 1840, ki te hātepe ā-ture o inaiānei e ai ki te Citizenship Act 1977.

2.2.1 Tikanga Māori

I a ia e kōrero ana mō te hononga ki te taiao me te hirahiritanga whānui o te whakapapa, i ki atu a Pou Tikanga, Waihoroi Shortland:

6. ‘OHCHR and the right to a nationality’, United Nations Office of the High Commissioner for Human Rights, <https://www.ohchr.org/en/nationality-and-statelessness>, accessed 24 September 2025.

7. Holly Waldron, ‘Overseas-Born Māori and New Zealand Citizenship’, Victoria University of Wellington Institute of Policy Studies, May 2011 (doc A15), p.3.

e kore e momotu tēnei āhuatanga. I whakaritea tērā kōrero e Rāhiri kia au ai te noho a āna tama e rua. I wāwāhitia ia te whenua i waenga i a rāua kia here tonu ai rāua ki a rāua.⁸

As Natalie Coates explained, prior to 1840, iwi and hapū ‘lived in accordance with tikanga Māori’. As it does now, tikanga Māori defined ‘belonging, rights and responsibilities . . . through whakapapa and kinship’ and concepts similar to citizenship ‘were not individualised but collective and relational.’⁹ Dr Carwyn Jones submitted that tikanga Māori ‘does not clearly distinguish between “law” and other social or moral forces that determine the behaviour of, and types of relationships between, individuals and groups.’¹⁰

In his opinion, the most relevant value in te ao Māori related to a concept like citizenship is whanaungatanga, but he also stressed that ‘mana, manaakitanga and kaitiakitanga are also highly relevant.’¹¹ Whanaungatanga, Dr Jones submitted, ‘encapsulates the centrality of relationships within te ao Māori.’¹²

With respect to whakapapa, Dr Jones stated that it ‘is more than simply a “genealogical table” or a “family tree”, and he noted Dr Moana Jackson’s observation that ‘whakapapa provides the foundational explanation not only of why life came to be, but also of how it should be lived.’¹³

E ai ki a Natalie Coates, i mua i te tau 1840, ko ngā iwi me ngā hapū ka ‘lived in accordance with tikanga Māori’. Pērā i tēnei wā, nā te tikanga Māori i tuku whakamārama atu i te ‘belonging, rights and responsibilities . . . through whakapapa and kinship’ ka mutu, ko ngā whakaaro e ōrite ana ki te kiriraraunga, ‘were not individualised but collective and relational’. I mea atu a Dr Carwyn Jones mō te tikanga Māori ‘does not clearly distinguish between “law” and other social or moral forces that determine the behaviour of, and types of relationships between, individuals and groups.’

Hei tāna, ko te whanaungatanga te tikanga i te ao Māori e āhua whai take nei ki tētahi kaupapa pērā i te kiriraraunga, engari ka tino whai take tonu a mana, manaakitanga me te kaitiakitanga. I mea atu a Dr Jones, ‘whanaungatanga encapsulates the centrality of relationships within te ao Māori.’

Mō te whakapapa, i mea atu a Dr Jones, ‘is more than simply a “genealogical table” or a “family tree”, me tana tahuri ki ngā kōrero a Dr Moana Jackson, ‘whakapapa provides the foundational explanation not only of why life came to be, but also of how it should be lived’. I ki hoki a Dr

8. It is the foundation that is the example of what we are talking about today. No matter from Hokianga to Taumārere, from Canada to New Zealand or whether you’re in Europe or Australia or wherever that river, those rivers are the rivers that our ancestors bathed in. They went to these rivers and would wash themselves in these rivers. Their skin was washed there. Those are the sentiments that are maintained. When I wash my skin in the river it remains there. When the Hokianga connects to Taumārere, those rivers, and so Ngā Puhī would know that will never be severed. That proverb was said by Rāhiri so that his sons can live in peace. He divided the land between them so that they still remain linked to each other. Transcript 4.1.1, p 114.

9. Natalie Coates, brief of evidence (doc A4), p 2.

10. Carwyn Jones, brief of evidence (doc A8), p 5.

11. Carwyn Jones, brief of evidence (doc A8), p 5.

12. Carwyn Jones, brief of evidence (doc A8), p 6.

13. Carwyn Jones, brief of evidence (doc A8), p 6.

Dr Jones added that ‘whakapapa and whanaungatanga shape rights and responsibilities of community participation.’¹⁴ Mana is also transmitted through whakapapa, observed Dr Jones, and ‘[m]ana tuku iho expresses the ideology that all things are inherited from ancestors, including kinship, status, authority, and land rights.’¹⁵

A relevant point to consider in the context of this inquiry is that, as Dr Jones acknowledged, in te ao Māori, ‘the strength of customary title rights strengthened or weakened over time depending on use.’¹⁶ However, he also stated that then, as today,

generally speaking when a connection to a particular area has been allowed to wane, I would expect that the whakapapa link would still entitle whānau to return, even if the scope of rights to a particular area may change.¹⁷

In a similar context, a Draft Discussion Paper produced by David Kingi for the Department of Internal Affairs (DIA) in 2006, titled ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’, noted the relevance of ahi kā when discussing matters like ‘citizenship’ from a te ao Māori viewpoint. Mr Kingi stated that ahi kā ‘might be translated literally as “burning fires”, but ‘is more appropriately translated as “occupation rights”’.¹⁸ When someone left their ahi kā, it became ahi tere (unstable fire), and if the fire ultimately died, it became ahi mātaotao (cold fire).¹⁹ However, he wrote that it ‘was possible for occupation to be abandoned or lost and restored again’ if ‘there was no objection from the tribe’. This would ‘be sufficient

Jones ‘whakapapa and whanaungatanga shape rights and responsibilities of community participation’. Hei tā Dr Jones, mā te whakapapa hoki te mana e tuku, me te ki ake ‘[m]ana tuku iho expresses the ideology that all things are inherited from ancestors, including kinship, status, authority, and land rights’.

He tika tā Dr Jones ki atu, ki te tahuri tātou ki te ao Māori, ko tētahi whakaarotanga matua i te horopaki o tēnei ruku tātari, ko ‘the strength of customary title rights strengthened or weakened over time depending on use’. Heoi anō, i mea atu hoki ia mō aua wā ā mohoa nei,

I te tau 2006, he pērā tonu te kōrero a David Kingi i tana Draft Discussion Paper mō te Department of Internal Affairs (DIA), ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’, me tana tahuri ki te tikanga o ahi kā i a tātou e matapaki nei i ngā take pērā i te ‘tangata whenuatanga, ki tā te tirohanga ao Māori. I mea atu a Mr Kingi, ko te ahi kā ‘might be translated literally as “burning fires”, but ‘is more appropriately translated as “occupation rights”’. Ki te wehe te tangata i tana ahi kā, nā wai rā ka ahi tere, nā wai rā ka ahi mātaotao. Engari, i ki hoki ia ‘was possible for occupation to be abandoned or lost and restored again’ mena ‘there was no objection from the tribe’. Koia tēnei ko te ‘be sufficient to relight the flame and so

14. Carwyn Jones, brief of evidence (doc A8), p 6.

15. Carwyn Jones, brief of evidence (doc A8), p 6.

16. Carwyn Jones, brief of evidence (doc A8), p 7.

17. Carwyn Jones, brief of evidence (doc A8), p 8.

18. David Kingi, ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’, June 2006 (doc A11(b)), p 2.

19. David Kingi, ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’, June 2006 (doc A11(b)), p 5.

to relight the flame and so keep their fires burning and their rights alive.²⁰ Such an invitation ‘must emanate from the tribe as a whole, and an overture from an individual member alone would, in most cases, hardly be sufficient.’²¹

Article 3 of te Tiriti guaranteed Māori ‘the rights and privileges of British subjects.’²² However, as Ms Coates noted, article 3 ‘sat alongside the additional guarantee of Māori tino rangatiratanga in Article 2’. In other words, ‘shared belonging as subjects (and later citizens) was never intended to diminish Māori authority, identity, and connection as tangata whenua.’²³ Dr Jones similarly wrote that the ‘exercise of tino rangatiratanga is necessarily predicated on Māori being citizens of Aotearoa’. He stated that it is ‘unlikely that signatories of te Tiriti would have even envisaged a situation where their [descendants] would not have that right.’²⁴

2.2.2 Subjecthood and citizenship

Since 1840, no distinction has been made between the status of Māori and Pākehā as British subjects, and eventually New Zealand citizens.²⁵ Following the signing of the treaty, Dr Jones wrote, ‘new subjecthood within a British colony and an empire was laid over the top of . . . pre-existing Māori forms of social organisation.’²⁶ However, there initially remained some uncertainty regarding article 3 and whether

keep their fires burning and their rights alive’. Ko tēnei āhuatanga, ‘must emanate from the tribe as a whole, and an overture from an individual member alone would, in most cases, hardly be sufficient’.

Nō ā ngā rangatira haina i te Tiriti i te tau 1840, i ki taurangi atu a atikara 3 ka puritia ‘the rights and privileges of British subjects’. Heoi anō, he tika tā Ms Coates ki atu, ko atikara 3 ‘sat alongside the additional guarantee of Māori tino rangatiratanga in Article 2’. Me ki, ‘shared belonging as subjects (and later citizens) was never intended to diminish Māori authority, identity, and connection as tangata whenua’. He pērā hoki te ki a Dr Jones, ‘exercise of tino rangatiratanga is necessarily predicated on Māori being citizens of Aotearoa’. I ki ia, ‘unlikely that signatories of te Tiriti would have even envisaged a situation where their [descendants] would not have that right’.

2.2.2 Te Tūranga o te Tangata me te Kiriraraunga

Nō te tau 1840, kihai i puta tētahi whakarekētanga o te tūranga o te Māori ki te Pākehā hei tangata nō Piritania, nā wai rā hei kiriraraunga nō Aotearoa. I mea atu a Dr Jones, whai mai i te hainatanga o te tiriti, ‘new subjecthood within a British colony and an empire was laid over the top of . . . pre-existing Māori forms of social organisation’. Heoi anō, i reira tonu tētahi āwangawanga mō Atikara 3 me te pātai

20. David Kingi, ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’, June 2006 (doc A11(b)), pp 7–8.

21. David Kingi, ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’, June 2006 (doc A11(b)), p 8.

22. Natalie Coates, brief of evidence (doc A4), p 3.

23. Natalie Coates, brief of evidence (doc A4), p 3.

24. Carwyn Jones, brief of evidence (doc A8), p 9.

25. Department of Internal Affairs, ‘Citizenship issues for Māori born outside New Zealand’, July 2006, p 3 (doc A11(a), p 5).

26. Carwyn Jones, brief of evidence (doc A8), p 11.

it meant Māori were actually British subjects or simply that they should be treated as if they had the same rights and duties as British subjects.²⁷ A few decades later, the Native Rights Act 1865 clarified the matter. The Preamble stated that ‘doubts have been raised whether certain persons of the Maori race are natural-born subjects of Her Majesty’ and that the Act aimed for ‘all such doubts to be removed’. Section 2 read:

Every person of the Maori race within the colony of New Zealand whether born before or since New Zealand became a dependency of Great Britain shall be taken and deemed to be a natural-born subject of Her Majesty to all intents and purposes whatsoever.

There was officially no such category as a ‘New Zealand citizen’ until 1949, when the British Nationality and New Zealand Citizenship Act 1948 came into force.²⁸ As well as automatically making all ‘New Zealand British subjects’ (including Māori) New Zealand citizens, the 1948 Act also introduced provisions for citizenship by birth and citizenship by descent. Limiting citizenship by descent to one generation, the Act also restricted this to those with New Zealand fathers only, meaning someone born overseas to a New Zealand mother would not have New Zealand citizenship by descent.²⁹ However, while the 1948 Act created New Zealand citizens, those citizens were still considered British subjects; the term ‘British subject’ remained on New Zealand passports until 1974.³⁰

As Ms Coates noted, it was only under the Citizenship Act 1977 that New Zealand

ia āe rānei he tangata tūturu te Māori nō Piritania, māna kua tukua kētia ngā mōtika me ngā kawenga e rite ana ki te tangata nō Piritania ki a rātou. He rau tau nō muri, nā te Native Rights Act 1865 te māramatanga i tuku. I mea atu te Kupu Whakataki, ‘doubts have been raised whether certain persons of the Maori race are natural-born subjects of Her Majesty’ and that the Act aimed for ‘all such doubts to be removed’. I ai ki a Wehenga 2:

I mua i te tau 1949 tae atu ki te whakam-anatanga o te British Nationality and New Zealand Citizenship Act 1948, kāhore he tūranga e mea ana ‘kirirarau nō Aotearoa’. I whakatūria tuatahitia e te Ture 1948 te tūranga o ngā ‘New Zealand British subjects’ (tae atu ki ngā Māori) hei kirirarau nō Aotearoa, ngā tūranga hoki o te kiri-toto me te kiri-heke. I whakawhāitihia e te Ture te whānuitanga o te kiri-heke ki te whakar-eanga kotahi, ka mutu, ki tōna pāpā anahe, nō reira mō ngā tāngata i whānau mai i tāwahi, nā, nō Aotearoa tana māmā, kāhore ia i whiwhi i te tūranga kiri-heke. Ahakoa, i whakatūria e te Ture 1948 te tūranga kirirarau nō Aotearoa, ka noho tonu ērā kirirarau hei tangata nō Piritānia; me te noho tonu o te rerenga ‘British subject’ ki ngā pukapuka uruwhenua tae atu ki te tau 1974.

He tika tā Ms Coates, nā te Citizenship Act 1977 i whakatū marika te ‘full

27. Department of Internal Affairs, ‘Citizenship issues for Māori born outside New Zealand’, July 2006, p 6 (doc A11(a), p 11).

28. Department of Internal Affairs, ‘Citizenship issues for Māori born outside New Zealand’, July 2006, p 7 (doc A11(a), p 13).

29. British Nationality and New Zealand Citizenship Act 1948, ss 3, 6–7.

30. David Green, ‘Citizenship’, Te Ara – The Encyclopedia of New Zealand, <https://teara.govt.nz/en/citizenship/print>, accessed 24 September 2025.

finally established ‘full independence in citizenship law’.³¹ She explained that because of the Act,

independence in citizenship law’ ki Aotearoa. Hei tāna, nā te Ture e pēnei nei,

citizenship law in Aotearoa has therefore moved from the Treaty promise of subjecthood, through a shared status as British subjects, to the independent framework of the Act.³²

Extending the right for New Zealand mothers to hand down citizenship by descent to their children was a key aspect of the debates in the House prior to the enactment of the Citizenship Act 1977.³³ However, as Ms Waldron noted:

I mua i te whakamanatanga o te Citizenship Act 1977, ko tētahi tohe matua ki roto i a Paremata ko te whakawhānuitanga o te mōtika o ngā māmā nō Aotearoa kia tukua te kiri-heke ki āna tamariki. Heoi anō, e ai ki a Ms Waldron:

When the restriction on citizenship by descent was being considered in 1977 there was no consideration of the effect on Māori. Māori and Pakeha were viewed as equal at law, so it was believed that one ethnic group should not enjoy special consideration or rights compared with another. Indigeneity was not recognised or accorded any special or different treatment.³⁴

We turn now to the Act itself.

Ka tahuri mātou inaiānei ki.

2.3 THE CITIZENSHIP ACT 1977

The Citizenship Act 1977 came into force on 1 January 1978. In this section, we set out the provisions relevant to this inquiry, examine the available evidence as to how many Māori the Act may impact, and outline the processes for applying for citizenship under the terms of the Act.

2.3 TE CITIZENSHIP ACT 1977

I te rā 1 o Hānuere 1978, whakamanatia ai te Citizenship Act 1977. I tēnei wehenga, ka whakatakoto mātou i ngā wāhanga e whai take ana ki tēnei ruku tātari, ka tātarihia ngā taunakitanga mō te nama o ngā Māori ka pāngia e tēnei Ture, waihoki, ka whakamāramahia atu ngā hātepe tonu mō te kiriraraunga, e ai ki te Ture.

2.3.1 What are the relevant provisions of the Citizenship Act 1977?

Sections 6 to 9 of the Citizenship Act 1977 provide for the four main pathways to acquire New Zealand citizenship – by birth, descent, grant, and special grant. We

2.3.1 Ko te aha ngā wāhanga o te Citizenship Act 1977 e whai take nei?

Mā wehenga 6 me 9 o te Citizenship Act 1977 e tuku ngā huarahi matua e whā kia whiwhi ai tētahi kiriraraunga Aotearoa – kiri-toto, kiri-heke, kiri-tuku, me te

31. Natalie Coates, brief of evidence (doc A4), p 3.

32. Natalie Coates, brief of evidence (doc A4), p 4.

33. Allan Highet (Minister of Internal Affairs), 10 June 1977, *New Zealand Parliamentary Debates*, vol 410, p 553.

34. Holly Waldron, ‘Overseas-Born Māori and New Zealand Citizenship’, Victoria University of Wellington Institute of Policy Studies, May 2011 (doc A15), p 16.

reproduce these sections in full below, but first note three important points.

First, section 6 (which provides for citizenship by birth) states that ‘every person born in New Zealand on or after the 1st day of January 1949 shall be a New Zealand citizen by birth’. However, the Citizenship Amendment Act 2005 amended this provision: after 1 January 2006, only children who had at least one New Zealand citizen parent (or who were entitled under the Immigration Act 1987 to reside indefinitely in New Zealand and/or the ‘realm’ countries of the Cook Islands, Niue, or Tokelau) would be granted citizenship at birth — effectively stopping automatic citizenship rights to children born in New Zealand to foreign visitors.

Secondly, section 7 (which provides for citizenship by descent) grants citizenship to children born to New Zealand citizens overseas, but it also restricts the ability of those children to hand down their citizenship to any children they may have outside of New Zealand. This makes citizenship by descent unique among the four main citizenship pathways, as citizenship by birth, grant, or special grant do not have this limitation — children of parents with these types of citizenship are automatically New Zealand citizens regardless of their place of birth. As Ms Waldron wrote:

For the most part, the rights and responsibilities that come with citizenship are the same despite the different ways in which citizenship may come about. There is, however, one important difference between citizens by descent and other New Zealand citizens . . . Citizens by descent, unlike citizens by birth and citizens by grant, cannot automatically pass on citizenship to their children if their children are born outside New Zealand.³⁵

kiri-whakaae. Ki raro nei, tuku ai mātou i te katoa o ēnei wāhanga, engari me mātua waitohu ngā take e toru.

Tuatahi, e mea atu ana a wehenga 6 (ko te kiri-toto tēnei) ‘every person born in New Zealand on or after the 1st day of January 1949 shall be a New Zealand citizen by birth’. Engari, nā te Citizenship Amendment Act 2005 i panoni tēnei wāhanga kia kī ai: whai muri i te 1 o Hānuere 2006, ko ngā tamariki anahe e āhei ana ki te whiwhi kiri-toto, koia ko ngā tamariki o tētahi mātua he kirirarau nō Aotearoa (he āheinga rānei e ai ki te Immigration Act 1987 ki te noho mō te ake tonu atu ki Aotearoa, ki ngā roherohenga rānei o te Cook Islands, Niue, Tokelau) – ko te āhua nei e aukatihia ana te mōtika noa ā-kiriraraunga mō ngā tamariki i whānau mai ki Aotearoa, engari he manene ngā mātua.

Tuarua, mā wehenga 7 (ko te kiri-heke tēnei) e tuku te kiriraraunga ki ngā tamariki i whānau mai i tāwāhi engari he kirirarau nō Aotearoa tētahi mātua, heoi anō tē taea e tērā tangata te tuku iho i tana kiriraraunga ki āna tamariki pena ka whānau mai te tamaiti ki tāwāhi. Nā konā, i motuhake ai te kiri-heke waenga i ngā huarahi matua e whā o te whiwhi kiriraraunga, inā hoki kāhore tērā ngoikoretanga ka tau ki te kiri-toto, te kiri-tuku me te kiri-whakaae – he kirirarau noa nō Aotearoa ngā tamariki o ngā mātua e noho nei ki ēnei momo kiriraraunga, ahakoa te whenua i whānau mai ia. Nā Ms Waldron ēnei kupu i tuhi:

35. Holly Waldron, ‘Overseas-Born Māori and New Zealand Citizenship’, Victoria University of Wellington Institute of Policy Studies, May 2011 (doc A15), p8.

To avoid this limitation, people with citizenship by descent can have their status changed to citizenship by grant upon application (this process is discussed in detail below in section 3.3.3). Ms Waldron explained:

To be able to pass on citizenship, an individual who is a citizen by descent must first apply for and be granted citizenship. If the individual receives a grant of citizenship, then they are no longer a citizen by descent and can pass on New Zealand citizenship to any of their children who are born outside New Zealand. However, an individual who is a citizen by descent and seeking to become a citizen by grant must meet all the requirements for a citizen by grant and pay a fee.³⁶

Thirdly, section 7(2) required those with citizenship by descent to register their citizenship before turning 22 years of age, otherwise it would lapse. Essentially, this gave these citizens, or their parents, the ability to decide which citizenship they wished to retain — either their New Zealand citizenship by descent, or the citizenship they may have otherwise acquired by virtue of being born in another country. The first people to be affected by this provision would begin turning 22 on 1 January 2000, and DIA launched the Staykiwi campaign to raise awareness in advance of this deadline to prevent people ‘unknowingly’ losing their citizenship. The Citizenship Amendment Act 2000 extended this period by two years, and the Citizenship Amendment Act (No 2) 2001 then removed this requirement altogether. Following the 2001 Act, retention of citizenship by descent is no longer dependent on registration, but people still need to register their citizenship to receive the benefits of citizenship, such as access to a New Zealand passport.³⁷

The relevant provisions of the Citizenship Act 1977 are as follows:

Hei kaupare i tērā ngoikoretanga, e taea ana e te kiri-heke te tono kia noho ai ia hei kiri-tuku (ka kōrerotia tēnei hātepe ki raro nei, ki wehenga 3.3.3). I whakamārama atu a Ms Waldron:

Tuatoru, e ai kī a wehenga 7(2) i ōna wā, me rēhita ngā kiri-heke i ō rātou tūranga i mua i tō rātou huringa tau 22, ki te kore, ka ngaro taua tūranga. Nā tēnei wehenga i tuku te āheinga ki ēnei kiri, ngā mātua raini, kia kōwhiria te tūranga e hiahiaia nei e rātou te pūmau – te kiri-heke, tērā atu kiriraraunga raini ka tau ki a rātou i tā rātou whānau mai i tāwāhi. I te 1 o Hānuere 2000, ka kite ai tātou i te rōpū tuatahi ka eke ki te tau 22, ka pāngia hoki e tēnei wāhanga, nā DIA i whakarewa te whakatairanga o Staykiwi kia mōhio ai te tangata ki tēnei rā, kia kore ai hoki tana kiriraraunga e ngaro ‘mōhio kore’ nei. Nā te Citizenship Amendment Act 2000 tēnei angawā i whakawhānui ake ki te rua tau, nā, nā te Citizenship Amendment Act (No 2) 2001 tēnei whakaritenga i muku mārika. Whai muri i te Ture 2001, kāhore he take o tā te kiri-heke rēhita kia pūmau tonu ai i tana tūranga, engari me rēhita tonu te tangata i tana kiriraraunga kia rongō ai ia i ngā hua o te kiriraraunga, pērā i te whiwhi i tētahi pukapuka uruwhenua o Aotearoa.

Ko ēnei ngā wāhanga o te Citizenship Act 1977 e whai take ana:

36. Holly Waldron, ‘Overseas-Born Māori and New Zealand Citizenship’, Victoria University of Wellington Institute of Policy Studies, May 2011 (doc A15), p 8.

37. Department of Internal Affairs, ‘Citizenship issues for Māori born outside New Zealand’, July 2006, p 10 (doc A11(a), p 19).

6. Citizenship by birth

- (1) Subject to subsection (2), a person is a New Zealand citizen by birth if—
 - (a) the person was born in New Zealand on or after 1 January 1949 and before 1 January 2006; or
 - (b) the person was born in New Zealand on or after 1 January 2006, and, at the time of the person's birth, at least one of the person's parents was—
 - (i) a New Zealand citizen; or
 - (ii) entitled in terms of the Immigration Act 2009 to be in New Zealand indefinitely, or entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau.
- (2) A person shall not be a New Zealand citizen by virtue of this section if, at the time of his birth,—
 - (a) his father or mother was a person upon whom any immunity from jurisdiction was conferred by or under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971 or in any other way, and neither of his parents was a New Zealand citizen; or
 - (b) his father and mother were enemy aliens and the birth occurred in a place then under occupation by the enemy.
- (3) Despite subsections (1) and (2),—
 - (a) every person born in New Zealand on or after 1 January 1978 is a New Zealand citizen by birth if the person would otherwise be stateless:
 - (b) a person is deemed to be a New Zealand citizen by birth if—
 - (i) the person, having recently been born, has been found abandoned in New Zealand; and
 - (ii) investigations have failed to establish the identity of at least one of the person's parents.
- (4) Notwithstanding section 7, a person born outside New Zealand shall be deemed to be a New Zealand citizen otherwise than by descent if that person's father or mother is then—
 - (a) a New Zealand citizen, or a New Zealand citizen by descent, pursuant to this Act; and
 - (b) either—
 - (i) a head of mission or head of post within the meaning of the Foreign Affairs Act 1988; or
 - (ii) an employee in any part of the State services, or a member of the Armed Forces, on service overseas; or
 - (iia) a person working overseas for the public service of Niue, Tokelau, or the Cook Islands; or
 - (iii) an officer or employee of New Zealand Trade and Enterprise (as established by the New Zealand Trade and Enterprise Act 2003) on service overseas; or
 - (iv) an officer or employee of the New Zealand Tourism Board (as established by the New Zealand Tourism Board Act 1991) on service overseas.
- (5) Despite section 7, a person is a New Zealand citizen by birth if—
 - (a) the person is born in the Independent State of Samoa; and
 - (b) but for reasons of medical necessity requiring the mother to travel from Tokelau to the Independent State of Samoa to give birth to the person, the person would have been born in Tokelau; and

- (c) at the time of the person's birth the person would have been a New Zealand citizen by birth under subsection (1), had the person been born on that date in Tokelau.
- (6) A person who is a New Zealand citizen by birth does not lose his or her New Zealand citizenship by reason of the person being adopted by a parent or parents who are neither—
 - (a) New Zealand citizens; nor
 - (b) persons entitled to reside indefinitely in New Zealand in terms of the Immigration Act 2009 or entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau.

7. Citizenship by descent

- (1) Every person born outside New Zealand on or after 1 January 1978 is a New Zealand citizen by descent if, at the time of the person's birth,—
 - (a) his or her mother or father was a New Zealand citizen otherwise than by—
 - (i) descent; or
 - (ii) grant under section 7A of the Citizenship (Western Samoa) Act 1982; or
 - (b) his or her mother or father was a New Zealand citizen by descent, and the person would otherwise be stateless.
- (1A) However, subsection (1) does not apply to a person who—
 - (a) is an adopted child pursuant to an overseas adoption (as that term is defined in section 2 of the Adoption Act 1955); and
 - (b) by virtue of section 17(3) of the Adoption Act 1955 cannot acquire the status of a New Zealand citizen by descent under subsection (1).
- (2) A person who is a New Zealand citizen by virtue of subsection (1) may apply for his or her citizenship status to be registered in accordance with regulations made under this Act.
- (3) For the purposes of this section, the Secretary may issue a certificate stating a person's status under this section and, in the absence of evidence to the contrary, a certificate to such effect shall be sufficient evidence of the matters stated in the certificate.
- (4) The citizenship of any New Zealand citizen by descent that has lapsed before the commencement of the Citizenship Amendment Act 2000 is reinstated with effect from the time it lapsed.

8. Citizenship by grant—

- (1) The Minister may authorise the grant of New Zealand citizenship to any person, including a person who may be a New Zealand citizen by descent, who—
 - (a) has attained the age of 16 years; and
 - (b) is of full capacity; and
 - (c) applies for citizenship in the prescribed manner; and
 - (d) satisfies the Minister that he or she meets each of the requirements specified in subsection (2).
- (2) The requirements referred to in subsection (1)(d) are as follows:
 - (a) that the applicant is entitled in terms of the Immigration Act 2009 to be in New Zealand indefinitely;
 - (b) that the applicant was present in New Zealand—

- (i) for a minimum of 1 350 days during the 5 years immediately preceding the date of the application; and
- (ii) for at least 240 days in each of those 5 years,—
being days during which the applicant was entitled in terms of the Immigration Act 2009 to be in New Zealand indefinitely:
- (c) that the applicant is of good character:
- (d) that the applicant has sufficient knowledge of the responsibilities and privileges attaching to New Zealand citizenship:
- (e) that the applicant has sufficient knowledge of the English language:
- (f) that the applicant intends, if granted New Zealand citizenship, either—
 - (i) to continue to reside in New Zealand; or
 - (ii) to enter into or continue in Crown service under the New Zealand Government, or service under an international organisation of which the New Zealand Government is a member, or service in the employment of a person, company, society, or other body of persons resident or established in New Zealand.
- (3) For the purposes of subsection (2)(a), a person will not be treated as entitled to be in New Zealand indefinitely if—
 - (a) conditions have been imposed under the Immigration Act 2009 on the person's entitlement to reside in New Zealand indefinitely; and
 - (b) those conditions have not been met in full or cancelled at the time of the person's application for citizenship.
- (4) The Minister may, after consultation with the Minister of Immigration,—
 - (a) waive the requirement in subsection (2)(a) if satisfied that an applicant is entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau:
 - (b) waive the requirement in subsection (2)(b) if satisfied that an applicant was present in the Cook Islands, Niue, or Tokelau—
 - (i) for a minimum of 1 350 days during the 5 years immediately preceding the date of the application; and
 - (ii) for at least 240 days in each of those 5 years,—
being days during which the applicant was entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau.
- (5) For the purposes of subsection (2)(b), the Minister may treat the applicant as having been in New Zealand for any period within the period of 5 years immediately preceding the date of application for citizenship during which—
 - (a) the applicant was in Crown service under the New Zealand Government; or
 - (b) the applicant was outside New Zealand because the applicant was accompanying his or her spouse or civil union or de facto partner who was a New Zealand citizen in Crown service under the New Zealand Government.
- (6) For the purposes of subsection (4)(b), the Minister may treat the applicant as having been present in the Cook Islands, Niue, or Tokelau for any period within the period of 5 years immediately preceding the date of the application for citizenship during which—
 - (a) the applicant served in the public service of the Government of the Cook Islands, Niue, or Tokelau; or
 - (b) the applicant was outside New Zealand because the applicant was accompanying his or her spouse or civil union or de facto partner who was a New Zealand citizen serving in the public service of the Cook Islands, Niue, or Tokelau.

- (7) If the Minister is satisfied in a particular case that there are exceptional circumstances particular to the applicant that would justify such a course, the Minister may accept the presence by the applicant for a lesser number of days as being sufficient compliance with—
- (a) the requirements of subsection (2)(b), so long as the applicant—
 - (i) was physically present in New Zealand for not less than 450 days during the 20-month period immediately preceding the date of the application for citizenship; and
 - (ii) was entitled in terms of the Immigration Act 2009 to be in New Zealand indefinitely during each of those 450 days:
 - (b) the requirements of subsection (4)(b), so long as the applicant—
 - (i) was physically present in the Cook Islands, Niue, or Tokelau for not less than 450 days during the 20-month period immediately preceding the date of the application for citizenship; and
 - (ii) was entitled to be in the Cook Islands, Niue, or Tokelau indefinitely during each of those 450 days.
- (8) The Minister may waive the requirement in subsection (2)(e) if satisfied in a particular case that, because of the applicant's age or standard of education, or for any other reason personal to the applicant, the applicant would suffer undue hardship if compliance with the requirement of that provision were insisted upon.
- (9) For the purposes of subsection (2)(f),—
- (a) the intention referred to in subsection (2)(f)(i) must be a continuing intention throughout the period from the date of application for citizenship until the date that the applicant becomes a citizen under section 12:
 - (b) the Minister may treat an applicant as intending to continue to reside in New Zealand if the applicant intends to accompany his or her New Zealand citizen spouse or civil union or de facto partner on Crown service for the New Zealand Government or public service for the Government of the Cook Islands, Niue, or Tokelau.

9. Grant of citizenship in special cases

- (1) Without limiting anything in section 8, the Minister may, upon application in the prescribed manner, authorise the grant of New Zealand citizenship to any person, including a person who may be a New Zealand citizen by descent,—
- (a) who has not yet attained the age of 16 years; or
 - (b) whose father or mother was, at the time of that person's birth, a New Zealand citizen by descent; or
 - (c) if the Minister is satisfied that granting a certificate of New Zealand citizenship to the applicant would be in the public interest because of exceptional circumstances of a humanitarian or other nature relating to the applicant; or
 - (d) if the person would otherwise be stateless.
- (2) In considering whether to authorise the grant of New Zealand citizenship to any person under subsection (1), the Minister—
- (a) may have regard to such of the requirements of section 8(2) (as subject to section 8(3) to (9)) as the Minister thinks fit; and
 - (b) must have regard to the requirements of section 9A(1) (but subject to the Minister's discretion under section 9A(2) and (3)).

2.3.2 How many overseas Māori could be impacted by the Citizenship Act 1977?

Demographer and sociologist Professor Tahu Kukutai stated that '[t]here are no accurate estimates of the size of the Māori diaspora who are born, or who have settled, outside of Aotearoa'. This is a result of how other countries record population statistics.³⁸ However, from her own academic research, she estimated that the Māori diaspora in 2010–11 was approximately 151,000, with Australia accounting for the vast majority at 140,000.³⁹ Compared to the estimated Māori population usually resident in New Zealand, which was approximately 664,000, she estimated that 18.5% of Māori lived overseas in 2010/2011.⁴⁰ This figure is roughly consistent with researcher Dr Paul Hamer's estimate that roughly one in six Māori in 2006 resided in Australia.⁴¹

Professor Kukutai further stated that there is simply no way to determine the number of overseas-born Māori with an overseas-born parent, again because of how other countries record population statistics. Only limited data is available, like the 2021 Australian census, which counted approximately 11,600 Māori in Australia with two Australian-born parents. Professor Kukutai acknowledged that this 'gives a lower estimate of the number of Māori who do not have a clear path to citizenship in New Zealand'.⁴² (Under the Trans-Tasman Agreement, which came into effect in 1973, Australian and New Zealand citizens have freedom of movement between the two countries, allowing them to live and work indefinitely. Therefore, while these 11,600

2.3.2 Tokohia ngā Māori o tawāhi ka pāngia pea e te Citizenship Act 1977?

Hei tā Tahu Kukutai, Ahorangi kaikaute, kaimātai hāpori anō hoki, '[t]here are no accurate estimates of the size of the Māori diaspora who are born, or who have settled, outside of Aotearoa'. Nā te mauhanga o ngā tatauranga taupori o whenua kē atu e pēnei nei. Engari, nā tāna ake rangahau, ka matapae ia, i te tau 2010/2011, kei te takiwā o te 151,000 te nama o te Māori e noho tawāhi ana, me te 140,000 o rātou e noho nei ki roto i a Ahitereira. Ki te taurite tātou i tērā nama ki te matapae rahinga o te Māori, i te nuinga o te wā, e noho nei ki Aotearoa, arā ko te 664,000, i matapaehia e ia, i te tau 2010–11, i noho atu te 18.5% o te iwi Māori i tawāhi. He tōna rite tēnei whika ki tā Dr Paul Hamer matapae me tana kī ake i te tau 2006 ko ia kotahi Māori i te ono Māori, ka noho ki Ahitereira.

I kī hoki a Ahorangi Kukutai, nā runga anō hoki i ā ngā whenua kē atu hātepe mō te mauhanga o ngā tatauranga taupori, horekau he huarahi poto ki te whakatau i te nama o ngā Māori i whānau mai i tawāhi ki tētahi mātua i whānau mai i tawāhi hoki. He iti te raraunga e wātea ana, koia ko te kautenui o Ahitereiria 2021 e mea ana he 11,600 ngā Māori ka noho ki Ahitereiria, i whānau mai hoki ō rātou mātua ki reira. I mea atu a Ahorangi Kukutai, 'gives a lower estimate of the number of Māori who do not have a clear path to citizenship in New Zealand'. (E ai ki te Trans-Tasman Agreement o te tau 1973, kei a ngā kirirarau nō Ahitereiria me Aotearoa te āheinga kia hūnuku kei waenga i ngā whenua e rua, me te noho, te mahi raini otinga kore. Nō

38. Tahu Kukutai, brief of evidence (doc A7), p 2.

39. Tahu Kukutai, brief of evidence (doc A7), p 3.

40. Tahu Kukutai, brief of evidence (doc A7), p 3.

41. Paul Hamer, 'Measuring Māori in Australia: Insights and Obstacles', *Social Policy Journal of New Zealand*, no 36, August 2009, p 77; Holly Waldron, 'Overseas-Born Māori and New Zealand Citizenship', Victoria University of Wellington Institute of Policy Studies, May 2011 (doc A15), p 8.

42. Tahu Kukutai, brief of evidence (doc A7), pp 3–4.

Māori in Australia might not have New Zealand citizenship, although many may be eligible to apply for it, they do have the ability nonetheless to move freely to New Zealand with only a few restrictions.⁴³)

Importantly, however, Professor Kukutai stated that the number and proportion of Māori living overseas has increased ‘tremendously’ since the passing of the Act in 1977, ‘which has also resulted in an increase in the number of people directly impacted by citizenship eligibility criteria.’⁴⁴ This increase in the international migration of Māori, she added, ‘has far-reaching implications when it comes to citizenship.’⁴⁵ Ms Waldron similarly noted that New Zealand’s diaspora (including both Māori and non-Māori) ‘is relatively large compared with that from other industrialised countries’.

While we cannot say for certain how many overseas Māori could potentially be currently impacted by the Act, we do know that the number is likely to be in the tens of thousands, and is likely to continue growing. Furthermore, the Act could impact Māori currently residing in New Zealand who are New Zealand citizens and Māori in the future, should they choose to travel overseas. In this sense, the Act carries potential consequences for all who whakapapa Māori.

2.3.3 What are the processes when applications are made for citizenship by grant or citizenship by special grant under the Citizenship Act 1977?

As noted in section 3.3.1, citizenship by descent, while largely identical in terms of the rights it affords the citizen, differs in one key respect — those with it cannot

reira, ahakoa ehara ēnei 11,600 Māori ki Ahitereiria i te kirirarau nō Aotearoa, kei ā rātou te āheinga ki te tono atu kia pērā, kei a rātou tonu te āheinga te hūnuku noa ki Aotearoa, he iti noa ngā herenga.)

Heoi anō, hei mātāmua ake, i mea atu a Ahorangi Kukutai kua piki rawa atu te nama me te ōwehenga o ngā Māori e noho tāwāhi ana mai i te whakairotainga o te Ture i te tau 1977, ‘which has also resulted in an increase in the number of people directly impacted by citizenship eligibility criteria.’ Ko te pikinga o te nama o ngā Māori e hūnuku ana ki tāwāhi, ‘has far-reaching implications when it comes to citizenship.’ I kī hoki a Ms Waldron mō te horapa o ngā tāngata nō Aotearoa whānui (Māori mai, Pākehā mai), ‘is relatively large compared with that from other industrialised countries’.

Ahakoa tē taea e tātou te mōhio mārika i te nama o ngā Māori e noho ana ki tāwāhi ka pāngia pea e te Ture, ka mōhio pū tātou kei te roherohenga o ngā manomano Māori te nama, ka mutu, e piki haere ana taua nama. Hei tāpiri ake, tērā pea ka pāngia e te Ture ngā Māori e noho nei ki Aotearoa inaiānei hei tangata whenua me ngā uri whakatupu, ki te hiahia rātou ki te haere tāwāhi. Nā runga i tērā, ko te hanga nei ka pāngia kinotia ngā tāngata whakapapa Māori katoa e tēnei Ture.

2.3.3 E ai kī te Citizenship Act 1977, he aha rā ngā hātepe mō ngā tono kiri-tuku, mō ngā tono kiri-whakaae anō hoki?

E ai ki a wehenga 3.3.1, te āhua nei he ōrite ngā mōtika e noho nei ki raro i te tūranga o te kiri-heke ki ētahi atu tūranga kiri, tahi nahi pea te mea e rerekē ana – tē taea e te

43. Philippa Mein Smith, ‘Australia and New Zealand’, Te Ara – The Encyclopedia of New Zealand, <https://teara.govt.nz/en/australia-and-new-zealand/print>, accessed 1 October 2025.

44. Tahu Kukutai, brief of evidence (doc A7), p 4.

45. Tahu Kukutai, brief of evidence (doc A7), p 6.

hand down their citizenship to any children born outside of New Zealand. Upon application, however, their citizenship status can be changed to citizenship by grant (under section 8), which then removes this limitation for any children they may have. Non-citizens can also apply for citizenship by special grant (under section 9), which is also unencumbered by the restriction of citizenship by descent.

Officials from DIA, Melanie Carpinter (Deputy Secretary Policy and Te Tiriti) and Adrian Jarvis (General Manager of Services and Access within the Regulatory Identity Services Branch), detailed the processes for people making such applications under sections 8 and 9. They noted at the outset that the Minister of Internal Affairs has wide discretionary powers when considering such applications.⁴⁶

Ms Carpinter and Mr Jarvis stated that DIA receives about 37,000 applications for citizenship under sections 8 and 9 each year (approximately 90 per cent are section 8 applications and 10 per cent are section 9 applications).⁴⁷ Applicants ‘who clearly meet all relevant requirements are approved for citizenship by grant [and] are approved by a senior Departmental official who holds delegated authority’. Of the 37,000 applications per year, the Minister personally considers around 100 to 200. The cases the Minister personally considers are typically applications where DIA did not have delegated authority, the applicants did not clearly meet one or more of the Act’s requirements, or DIA considered the application should be referred to the Minister (for example, if a previous Minister has declined the applicant).⁴⁸

kiri-heke te tuku i tana kiriraraunga ki āna tamariki kua whānau mai i tāwāhi. Heoi anō ki te tuku tonu rātou, e taea ana te panoni i tō rātou tūranga ki te kiri-tuku (e ai ki wehenga 8), nā nonā ka whakakorehia taua ngoikoretanga mō ā rātou tamariki. E wātea ana hoki te kirirarau-kore ki te tonu mō te tūranga kiri-whakaae (e ai ki wehenga 9), koia pū tēnei ko tētahi huarahi kāhore e herea ana e te ngoikoretanga o te kiri-heke.

I āta whakamōhio mai ngā āpiha nō DIA, a Melanie Carpinter (Deputy Secretary Policy and Te Tiriti) me Adrian Jarvis (General Manager of Services and Access within the Regulatory Identity Services Branch), i ngā hātepe hei whai mā te tangata e tuku tonu ana e ai ki a wehenga 8 me 9. I kī tuatahi rāua, kei ā te Minister of Internal Affairs ngā mana whānui ake, i a ia e whakaaro ana ki ngā tonu e pēnei nei.

I mea mai a Ms Carpinter rāua ko Mr Jarvis, ia tau ka whiwhi rātou i ngā tonu tōna 37,000 mō te kiriraraunga e ai ki wehenga 8 me te 9 (tōna 90 paiheneti o ērā he tonu wehenga 8, tōna 10 paiheneti he tonu wehenga 9). Mō ngā kaitono, ‘who clearly meet all relevant requirements are approved for citizenship by grant [and] are approved by a senior Departmental official who holds delegated authority’. Mō ngā tonu 37,000 o ia tau, ka whai whakaaro te Minita ki ngā tonu 100 ki te 200 o ērā. Ko te nuinga o ngā kēhi e whakaarohia nei e te Minita ake, ko ngā tonu kāhore e noho nei kei raro i te mana o te DIA, kāhore raini te kaitono i whakatutuki i tētahi o ngā paearu o te Ture, ka mutu, i whakaaro ake te DIA tērā pea e tika ana mā te Minita taua tonu e whakatau (hei tauira, kua whakakorehia kētia e tētahi Minita o mua taua kaitono).

46. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p [9].

47. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p [11].

48. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p [11].

In ‘rare circumstances’, DIA ‘may assess an application out of the standard queue order’, but even so, ‘all necessary checks and time for this is still required’. Any request for urgency is ‘usually only approved if the situation is out of the applicants’ control.’⁴⁹ Ms Carpinter and Mr Jarvis stated that while ‘[t]here is no official urgent service for citizenship applications . . . in extenuating circumstances, an application may be processed on an urgent basis’. Urgent processing ‘is reserved for those with a genuine critical need for citizenship’. In such cases, the applicant must request urgency and provide supporting evidence, after which a Team Leader at DIA will consider the merits of the request.⁵⁰ Reasons for urgently considering an application may include medical emergencies, representing New Zealand, needing citizenship for work or deployment, standing in local or general elections, humanitarian reasons, or if the applicant would incur significant cost or difficulty in obtaining new travel documents.⁵¹ DIA approving a request for urgency does not mean the application of citizenship itself is also approved; all necessary checks are still required, for example, overseas police clearances. Ms Carpinter and Mr Jarvis stated that ‘[t]here is no formal agreement that provides for external agencies to facilitate urgent processing for citizenship.’⁵²

Any application made under section 9(1)(c) – for those ‘[w]hose father or mother

I ngā ‘horopaki motuhake’, te DIA ‘may assess an application out of the standard queue order’, engari tonu, ‘all necessary checks and time for this is still required’. Mō ngā tono ohotata, ‘usually only approved if the situation is out of the applicants’ control’. I mea atu a Mr Jarvis, ahakoa ‘[t]here is no official urgent service for citizenship applications . . . in extenuating circumstances, an application may be processed on an urgent basis’. Ko ngā hātepe ohotata, ‘is reserved for those with a genuine critical need for citizenship’. I aua kēhi, me tonu te kaitono kia ohotatanga me te tuku i ngā taunakitanga hei tautoko, whai muri mā tētahi Kaiarahi Mahi o te DIA e titiro ki ngā painga o te tono. Tērā pea ka tae atu ngā take mō te haere ohotata o tētahi tono ki ngā aituā hauora, ki te tū hei māngai mō Aotearoa, ki te tūranga o te kirirarau kia whai mahi, kia whai wāhi hoki ki te ope taua, ki te tū ki ngā pōtitanga ā-rohe, ā-motu hoki, ki ngā take hāpai tāngata, ka mutu, ki te taimaha o te kaitono i te nui o te utu, i te uauatanga hoki o tana whai i ngā tuhinga haerere hou. Ehara i te mea e whakaaetia ana te tono kiriraraunga, pena ka whakaae a DIA ki te tono ohotata; me whai tonu i ngā arowhai e tika ana, hei tauira, ngā whakawāteatanga ā-pirihimana nō tāwāhi. I mea atu a Ms Carpinter rāua ko Mr Jarvis, ‘[t]here is no formal agreement that provides for external agencies to facilitate urgent processing for citizenship’.

Mō ētahi tono kua tukuna e ai ki a wehenga 9(1)(c) – ko ērā ‘[w]hose father

49. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p[11]. The DIA website states that it is ‘very difficult to get New Zealand citizenship if you do not meet the normal requirements’ and that citizenship can only be granted by the Minister under ‘exceptional circumstances’, which it describes as ‘rare’; Department of Internal Affairs, ‘If you do not meet a requirement’, <https://www.govt.nz/browse/passports-citizenship-and-identity/nz-citizenship/requirements-for-nz-citizenship/if-you-dont-meet-a-requirement-but-feel-your-situation-is-special>, accessed 9 September 2025; also see Natalie Coates, brief of evidence (doc A4), p 4.

50. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p[11].

51. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), pp [11]–[12].

52. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p[12].

was, at the time of that person's birth, a New Zealand citizen by descent', such as in the case of Mr Ruddock's children – is referred by DIA to the appropriate team 'to confirm whether the applicant's mother or father was a citizen by descent at the time of the applicant's birth'. Applicants who are 16 years or over are assessed against the requirements of section 8(2) of the Act, and applicants who are 14 years or over are assessed against the good character requirement. Overseas police checks are often necessary for these applicants. If the requirements of section 8(2) cannot be met by the applicant, DIA 'will ascertain why they are unable to fulfil that requirement and provide all relevant information to the Minister'.⁵³

Once a case has been referred to the Minister, the application will be assessed on a case-by-case basis. Ms Carpinter and Mr Jarvis noted the factors the Minister may consider in these cases, which have been set out in *New Zealand Citizenship – Citizenship Guidance Document* since at least 2017:

- ▶ whether the applicant can demonstrate a link to New Zealand;
- ▶ whether the applicant has longstanding familial/whakapapa ties to New Zealand;
- ▶ whether the applicant has family members living in New Zealand who are New Zealand citizens;
- ▶ the circumstances of the parent(s) being citizens by descent (e.g. if the grandparents were outside New Zealand for only a few months);
- ▶ why the applicant wants New Zealand citizenship; and
- ▶ any other factors the applicant wishes the Minister to consider.⁵⁴

Although there are no set requirements for the evidence applicants must provide, DIA offers advice on the types of information that may help 'demonstrate that the applicant has a longstanding familial/whakapapa ties to New Zealand'. The

or mother was, at the time of that person's birth, a New Zealand citizen by descent', pērā i tēnei kēhi me ngā tamariki o Mr Ruddock – ka tukuna e DIA ki te tīma e tika ana, 'to confirm whether the applicant's mother or father was a citizen by descent at the time of the applicant's birth'. Ka aromatawaihia ngā kaitono kua pakeke ake i te 16 tau e ai ki ngā paearu o wehenga 8(2) o te Ture, mō ngā kaitono kua 14 tau koni atu, ka aromatawaihia rātou e ai ki ngā tikanga o te tangata pai. Mō te nuinga o ēnei kaitono, e tika ana me whai i ngā arowhai ā-pirihimana nō tāwāhi. Ki te kore te kaitono e whakatutuki i ngā tikanga o wehenga 8(2), te DIA 'will ascertain why they are unable to fulfil that requirement and provide all relevant information to the Minister'.

Whai muri i te tukunga atu o tētahi kēhi ki te Minita, ka aromatawaihia nā runga anō i ngā āhuatanga ake o taua tono. I tautuhia e Ms Carpinter rāua ko Mr Jarvis ētahi o ngā take tērā pea ka whakaarohia e te Minita i aua wā, kua whakatakotohia hoki ki *New Zealand Citizenship – Citizenship Guidance Document* mai i te tau 2017:

Ahakoā kāhore e kitea ana ngā tikanga me mate te kaitono ki te whai i a ia e tuku taunaki ana, mā te DIA e tuku ētahi kupu tohutohu mō te āhua o ngā mōhiotio kia āwhinatia pea te 'demonstrate that the applicant has a longstanding familial/

53. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p[13].

54. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p[13].

application is advanced when the applicant provides all the documentation they intend to.⁵⁵ Some examples of such evidence include:

- ▶ family trees;
- ▶ documents showing New Zealand ancestry;
- ▶ Iwi membership or other documents;
- ▶ Māori Land Court documents;
- ▶ birth certificates or passports showing connection to New Zealand;
- ▶ supporting letters from family members about family history/whakapapa;
- ▶ good character supporting letters from family, friends, or employers;
- ▶ evidence of citizen by descent parents growing up or living in New Zealand;
- ▶ proof of property or business ownership in New Zealand; and
- ▶ any New Zealand medical, educational, and financial records.⁵⁶

Ms Carpinter and Mr Jarvis noted that children are unlikely to have independent links, and therefore ties to New Zealand 'will be dependent on their parent'. Applicants must also provide proof of identity, typically with birth certificates, overseas passports, and photographs.⁵⁷

For applicants who are under the age of 16, DIA requires confirmation that both their parents consent to the application for citizenship. The reason for this 'is to ensure that the applicant is not disadvantaged by being deprived of citizenship of another country, and is in line with New Zealand's obligations under the United Nations Convention on the Rights of the Child'. It is also designed to inform DIA 'if there are any ongoing custody issues'. DIA will attempt to establish contact with the other parent if they cannot be contacted, and will wait four weeks for a response.⁵⁸ DIA can proceed with an application if consent from the other parent cannot be obtained because: the location of the other parent is

whakapapa ties to New Zealand'. Mutu ana tā te kaitono tuku i ngā tuhinga katoa e hiahiatia nei e ia te tuku, ka kōkiritia te tono. E mea ana ētahi taurira:

I mea atu a Ms Carpinter rāua ko Mr Jarvis, kāhore pea e motuhake ana ngā hononga o ngā tamariki, nō reira, ko ngā hononga ki Aotearoa, 'will be dependent on their parent'. Me tuku hoki te kaitono i ngā tohu o tōna tūākiri, pērā i te tiwhikete rā whānau, i te pane uruwhenua tāwāhi, i ngā whakaahua anō hoki.

Mō ngā kaitono he rangatahi ake i te 16 tau, e mea ana a DIA me whai whakaatanga nā ngā mātua e rua ki te tono kirira-raunga. Ko te take o tēnei, 'is to ensure that the applicant is not disadvantaged by being deprived of citizenship of another country, and is in line with New Zealand's obligations under the United Nations Convention on the Rights of the Child'. Nā konā, ka mōhio ai te DIA, 'if there are any ongoing custody issues'. Pena ka puta tētahi aukatinga o te kōrero atu, mā te DIA e whakapā atu ki tērā atu o ngā mātua, ka tatari ai mō te whā wiki mō tētahi whakautu. Ki te kore te DIA e whai whakaatanga, e pai ana tā rātou kōkiri tonu i te tono inā hoki: kāhore e mōhioia ana te wāhi noho

55. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p [15].

56. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p [15].

57. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p [15].

58. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p [15].

unknown; there has been no contact with the other parent for three continuous years; contact has been discontinued for safety reasons; only the applying parent appears on the birth certificate or is established to be the sole guardian; the other parent is deceased; or the other parent refuses to provide consent.⁵⁹

Once the matters of evidence and consent have been addressed, a DIA case officer ‘will make a recommendation about whether the application meets the criteria for citizenship by grant’. Another staff member then reviews the case and makes an independent assessment. Finally, a summary is prepared, and the case is referred to the Minister for their decision.⁶⁰

With respect to processing times for all applications made under the various subsections of section 9, Ms Carpinter and Mr Jarvis provided the following details:

- ▶ 2020 – 30 applications received, 44.2 days average processing time
- ▶ 2021 – 876 applications, 209.2 days
- ▶ 2022 – 4,249 applications, 178.6 days
- ▶ 2023 – 4,162 applications, 205.7 days
- ▶ 2024 – 5,366 applications, 203.9 days
- ▶ 2025 – 4,480 applications (as of 9 September 2025), 131.4 days.⁶¹

While no further information was provided, we surmise that the spike in applications following 2021 likely reflected pent up demand associated with the closing and reopening of international borders due to the global COVID-19 pandemic.

o tērā atu mātua; kāhore tērā atu mātua e whakapā mai mō te toru tau karapipiti; kua whakakorehia te noho tahi nā runga i ngā take haumaruru; ko te ingoa o te mātua tonono anahe kei te tiwhikete rā whānau, ko ia rānei te kaitiaki ake kua whakaaetia; waihoki, e whakahē ana tērā atu mātua ki tana tuku whakaae.

Whai muri i te tahuri ki ngā take tau-naki, i ngā take whakaaetanga anō hoki, mā tētahi āpiha DIA ‘will make a recommendation about whether the application meets the criteria for citizenship by grant’. Nā konā ka arotakehia te kēhi e tētahi anō kaimahi, ka aromatawai motuhake ai. Hei whakamutu ake, ka whakaritea tētahi whakarāpopototanga, ka tuku ai te kēhi ki te Minita mō tana whakataunga.

Ki te taha o ngā angawā mō ngā tonokatoa kua tukuna e ai ki ngā momowāhanga ririki o wehenga 9, i tuku mai a Ms Carpinter rāua ko Mr Jarvis i ēnei taipitopito:

Ahako, kāhore i tukuna mai ētahi atu mōhiohio, ki tā mātou titiro, nā te aukatinga me te tuwheratanga anō i ngā kuaha ā-motu i te wā o te mate uruta KOWHEORI-19, i nui ai te hiahia kia hoki mai, i piki ai hoki te nama o ngā tonowhai muri i te tau 2021.

59. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p[15].

60. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p[17].

61. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p[18].

2.4 IS THE IMMIGRATION ACT 2009 RELEVANT TO THIS INQUIRY?

In the simplest terms, Immigration New Zealand deals with visa matters concerning non-citizens, while DIA deals with citizenship matters concerning New Zealand citizens. Where this arrangement can be confusing for the general public is when a non-citizen is trying to become a citizen, and can therefore be required to engage with both agencies — as has been the experience of Mr Ruddock. The Immigration Act 2009 provides the legislative framework under which Immigration New Zealand operates, and while largely irrelevant to the core issues of this inquiry, it has played a part in Mr Ruddock's case.

Immigration New Zealand Acting Visa Operations Manager Fiona Sharma gave evidence on the Immigration Act 2009, which provides two main classes of visas for non-citizens to lawfully be in New Zealand: residence class and temporary entrance class. Although each class has a subset of different varieties, broadly speaking, residence class visas allow people 'to reside in New Zealand indefinitely and work and study in New Zealand without restriction', and temporary entry class visas allow people 'to be in New Zealand for a temporary period of time' with conditional work and study restrictions.⁶²

Ms Sharma explained how section 61 of the Immigration Act 2009 empowers the Minister of Immigration to grant any type of visa to someone who is unlawfully in New Zealand but not currently under a deportation order (the Minister's authority in these cases has been delegated to senior officials at Immigration New Zealand).⁶³

2.4 ĀE RĀNEI, E WHAI TAKE ANA TE IMMIGRATION ACT 2009 KI TĒNEI RUKU TĀTARI?

Ki te whāia te huarahi poto, kei a Immigration New Zealand ngā take mō ngā pane uruwhenua o te hunga kirirarau kore, kei a DIA ngā take kiriraraunga mō ngā kirirarau o Aotearoa. Ka rangirua pea te ao tumatawhānui ki tēnei whakaritenga hei te wā ka tono tētahi tangata kirirarau kore kia noho hei kirirarau, nā ka mate ia ki te noho tahi ki ngā tari e rua – koia rā ko te wheako o Mr Ruddock. Mā te Immigration Act 2009 e tuku te tūāpapa ā-ture mō ngā whakahaeretanga o Immigration New Zealand, nō reira kāhore ia e tino whai take ana ki ngā kaupapa matua o tēnei ruku tātari, kua whai wāhi atu ia ki te kēhi o Mr Ruddock.

I tuku taunakitanga a Fiona Sharma, te Immigration New Zealand Acting Visa Operations Manager, mō te Immigration Act 2009, nā taua ture i tuku ngā momo pane uruwhenua e rua ki te hunga kirirarau kore kia noho ture ai ki Aotearoa: te momo ā-noho, te momo ā-noho taupua. Ahakoa kei ia momo ōna ake āhuatanga ririki, i te mutunga iho, ka tuku ngā momo pane uruwhenua ā-noho te āheinga ki ngā tāngata 'to reside in New Zealand indefinitely and work and study in New Zealand without restriction', ko ngā momo pane uruwhenua ā-noho taupua te āheinga 'to be in New Zealand for a temporary period of time', me ngā herenga ā-mahi, ā-ako.

I whakamārama mai a Ms Sharma i te āhua o wehenga 61 o te Immigration Act 2009 me tana whakamana i te Minister of Immigration kia tukua he momo pane uruwhenua ki tētahi tangata e noho ture kore ana ki Aotearoa engari kāhore e noho ana ki tētahi ōta terepūtanga (i ēnei kēhi, kua tukua te mana o te Minita ki ngā āpīha

62. Fiona Sharma, brief of evidence (doc A12(a)), p [3].

63. Fiona Sharma, brief of evidence (doc A12(a)), pp [4]–[5].

She described this provision as a ‘safety valve’ if there is any reason needed to ‘regularise a person’s status in New Zealand.’⁶⁴ Unlike section 8 and 9 applications under the Citizenship Act 1977, however, officials are not obliged to consider section 61 applications under the Immigration Act 2009. In other words, people have no right to apply and no right to have their application considered.⁶⁵

Ms Sharma noted that the temporary entry class visas of Mr Ruddock’s children expired on 2 July 2025. On 4 September 2025, a senior immigration officer granted Mr Ruddock’s children visas under section 61, allowing them to attend primary or secondary school. The fees were waived.⁶⁶ It is under this provision of the Immigration Act 2009 that Immigration New Zealand has allowed Mr Ruddock’s children to remain in New Zealand while their applications under the Citizenship Act 1977 are being processed by DIA.

matua ki Immigration New Zealand). Hei tāna, he ‘safety valve’ tēnei wāhanga mō te tūpono ka mate ki te ‘regularise a person’s status in New Zealand.’ Engari e rerekē ana ki ngā tono wehenga 8 me 9 e ai ki te Citizenship Act 1977, inā hoki ehara i te mea me whai whakaaro ngā āpiha ki ngā tono wehenga 61 e ai ki te Immigration Act 2009. Nā, kāhore i a te tangata te mōtika ki te tono, kāhore hoki he mōtika e mea ana me whai whakaaro atu ki te tono.

I mea atu a Ms Sharma, i te 2 o Hūrae 2025, i pau te wā ki ngā momo pane uruwhenua ā-taupua o ā Mr Ruddock tamariki. I te 4 o Hepetema 2025, i tukua e tētahi āpiha matua manene ngā pane uruwhenua ki ngā tamariki a Mr Ruddock e ai ki wehenga 61, e āhei ai rātou te haere ki te kura tuatahi, te kura tuarua rānei. I whakakorehia te utu. Nā tēnei wāhanga o te Immigration Act 2009, i whakaae ai a Immigration New Zealand kia noho tonu ngā tamariki a Mr Ruddock ki Aotearoa i a DIA e kōkiri nei i ā rātou tono e ai ki te Citizenship Act 1977.

2.5 CITIZENSHIP IN INTERNATIONAL LAW

In any discussion of New Zealand’s citizenship laws, comparisons to how other nations address the matter invariably arise. Naturally, we cannot canvas in this report all the varied and complex arrangements of citizenship by descent across the globe. However, Poblacht na hÉireann – the Republic of Ireland does have an arrangement that provides relevant international precedent to this inquiry. In this section, we first discuss the Irish arrangement, and then provide for further context a discussion of the Australian High Court case *Love v Commonwealth* and the relevant

2.5 KIRIRARAUNGA KI NGĀ TURE NŌ TĀWĀHI

Ekore e kāhore, ki te matapaki tātou i ngā ture kiriraraunga o Aotearoa, ka puta hoki ngā kōrero taurite o ā ētahi atu whenua tahuri ki tēnei take. Tē taea e tātou te whakaputa ki tēnei rīpoata te whānuitanga me ngā rerekētanga o te kiri-heke puta noa i te motu. Engari, kei a Poblacht na hÉireann – te Whenua o Airani tētahi tauira tāwāhi e whai take nei ki tēnei ruku tātari. I tēnei wāhanga, me mātua matapaki tātou i ngā whakaritenga o te whenua o Iharaira, ka tahuri ki tētahi anō horopaki i te Kōti Teitei o Ahitereiria i te kēhi o *Love v Commonwealth* me ngā atikara whai take

64. Fiona Sharma, brief of evidence (doc A12(a)), p [6].

65. Fiona Sharma, brief of evidence (doc A12(a)), p [6].

66. Fiona Sharma, brief of evidence (doc A12(a)), pp [7]–[8].

articles of the United Nations Declaration on the Rights of Indigenous Peoples.

2.5.1 Poblacht na hÉireann – the Republic of Ireland

Poblacht na hÉireann – the Republic of Ireland extends citizenship by descent for Irish diaspora to two generations. In other words, if someone has a grandparent who was born in Ireland, they can become an Irish citizen, no matter where their parents or they themselves were born. Individuals in these circumstances who want to acquire Irish citizenship must apply to be entered onto the Foreign Births Register. To be entered onto the Foreign Births Register, applicants must provide the appropriate documentation that proves their grandparent was born in Ireland (these documents and the application form must be signed by a witness with an approved profession), and they must pay a fee of €278 (approximately \$561) if they are over 18 years of age, or €153 (approximately \$308) if they are under 18 years of age. At present, the current wait time for applications to be processed is approximately nine months. Once on the Foreign Births Register, the applicant is officially an Irish citizen and can apply for an Irish passport.⁶⁷

Importantly, someone with a grandparent born in Ireland can be deemed ineligible to become an Irish citizen if their parent was not on the Foreign Births Register when they were born. That is, if a person's parent was born outside of Ireland and were not entered onto the Foreign Births Register before that person was born, the

o te United Nations Declaration on the Rights of Indigenous Peoples.

2.5.1 Poblacht na hÉireann – te Whenua o Airani

Ka tuku a Poblacht na hÉireann – te Whenua o Airani te kiri-heke ki ngā whakareanga e rua mō te hunga Airani noho tāwāhi. Nō reira, ki te whānau mai te karanimatua o tētahi tangata i Airani, e āhei ana rātou te noho hei kirirarau nō Airani, ahakoa te wāhi i whānau mai ai ōna matua, i whānau mai ai ia anō hoki. Mō ngā tāngata pēnei e hiahia ana ki te whai kiriraraunga Airani, me tonu kia whakaurua ki te Foreign Births Register. Ki te hiahia kia whakaurua ki te Foreign Births Register, me tuku atu ngā kaitono ngā tuhinga e tika ana e tohu nei ko wai rā tōna karanimatua i whānau mai ai ki Airani (me haina rawa ēnei tuhinga me te tonu e tētahi kaitirotiro kua whakaaetia te tūranga mahi), me utu hoki i te €278 (tōna \$561) pena he pakeke ake i te 18 tau, i te €153 rānei (tōna \$308) pena he rangatahi ake i te 18 tau. I tēnei wā, ko te roa o te wā tatarī kia kōkiritia ngā tonu, ko te iwa marama. Tae atu te wā ka noho te kaitono ki te Foreign Births Register, he kirirarau tūturu ia nō Airani, ka āhei hoki ia ki te tonu mō tētahi pane uruwhenua Airani.

Hei tāpiri ake, tērā pea ka noho māraurau kore tētahi tangata ahakoa he karanimatua i whānau mai ai i Airani tōna, pena kihai te ingoa o tana matua i whakauru ki te Foreign Births Register i tana whānautanga mai. Nā, pena i whānau mai te matua o tētahi tangata i waho atu i a Airani, kihai hoki i whakaurua tōna ingoa

67. 'Registering a foreign birth', Department of Foreign Affairs and Trade, Government of Ireland, <https://www.ireland.ie/en/dfa/citizenship/born-abroad/registering-a-foreign-birth>, accessed 25 September 2025.

parent can apply to be an Irish citizen but their child cannot.⁶⁸

2.5.2 *Love v Commonwealth*

In 2020, the High Court of Australia released its decision in *Love v The Commonwealth of Australia*; *Thoms v The Commonwealth of Australia* (known simply as *Love v Commonwealth*). In short, the court decided that Aboriginal Australians cannot be considered ‘aliens’ under section 51(xix) of the Constitution of Australia.

Daniel Love was born in Papua New Guinea and Brendan Thoms was born in New Zealand. Both are citizens of their countries of birth, permanent residents in Australia, and identify as Aboriginal Australians. They are not, however, Australian citizens. While living in Australia, both men were convicted of criminal offences and served prison sentences. Their criminal records meant their permanent residency visas were revoked under section 501(3A) of the Migration Act 1958 and made them liable for deportation. However, the question at issue that came before the High Court was whether, as Aboriginal Australians, the men could be considered ‘aliens’ under the Constitution. If not, they would not be able to be deported.

Justice Edelman interpreted the word ‘alien’ in an originalist sense, reflective of the meaning of the word at the time the Constitution was written: ‘belonging to another person or place’ – a term that did not apply to Aboriginal Australians. Justice

ki te Foreign Births Register i mua i tana whānautanga mai, ka wātea te matua ki te tono kia noho hei kirirarau Airani, engari anō te tamaiti.

2.5.2 *Love v Commonwealth*

I te tau 2020, i whakaputa te Kōti Teitei o Ahitereiria tana whakataunga *Love v The Commonwealth of Australia*; *Thoms v The Commonwealth of Australia* (e mōhiotia nei ko *Love v Commonwealth*). Hei whakarāpopoto ake, i ki ake te Kōti, ehara ngā Iwi Taketake o Ahitereiria i te ‘manene’ e ai ki whenga 51(xix) o te Constitution of Australia.

I whānau mai a Daniel Love i Papua New Guinea, i whānau mai a Brendan Thomas i Aotearoa. He kirirarau rāua nō ō rāua whenua tupu, he tangata noho tūturu ki Ahitereiria, ka mutu, hei tā rāua, he iwi taketake nō Ahitereiria rāua. Engari, ehara rāua i te kirirarau nō Ahitereiria. I a rāua e noho nei ki Ahitereiria, kua hāmenetia, kua mauheretia rāua mō ngā mahi taihara. Nā ā rāua rikoata taihara i whakakore ai ā rāua pane uruwhenua ā-noho tūturu e ai ki whenga 501(3A) o te Migration Act 1958, ka whakawāteahia hoki rāua mō te tereputanga. Engari i whiua te pātai ki mua i te Kōti Teitei, ae rānei, ka noho mai te tangata hei ‘manene’ e ai ki te Constitution pena he Iwi Taketake nō Ahitereiria ia. Ki te kore, kāhore e āhei ana te tuku i te tereputanga.

I tana whakamārama atu i te kupu ‘manene’, i tiki ake a Justice Edelman i te wairua o tana orokohanga mai, ka mutu, i te whakamāramatanga o te kupu i te wā i tuhi ai te Constitution: ‘belonging to another person or place’ — he rerenga

68. ‘Registering a foreign birth’, Department of Foreign Affairs and Trade, Government of Ireland, <https://www.ireland.ie/en/dfa/citizenship/born-abroad/registering-a-foreign-birth>, accessed 25 September 2025.

Gageler found that an ‘alien’ is a ‘non-citizen’, meaning Parliament can determine who is an alien through its citizenship laws. Ultimately, the court was split, but a 4:3 majority found that Aboriginal Australians cannot fall under Parliament’s powers provided by section 51(xix) of the Constitution and, therefore, cannot be deported.

Because New Zealand-born Mr Thoms had already been recognised as an Aboriginal Australian through a native title claim, the court determined that he was not an alien and the power to deport him could not be exercised.⁶⁹

2.5.3 The United Nations Declaration on the Rights of Indigenous Peoples

Legal scholar Dr Claire Charters provided evidence concerning the rights of indigenous peoples relevant to citizenship under international law, particularly the articles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):

- (a) Article 3 provides that indigenous peoples have the right to self-determination.⁷⁰
- (b) Article 8(b) provides that governments will ‘provide effective mechanisms for the prevention of, and redress for, any action which has the aim or effect of dispossessing Indigenous peoples of their lands, territories and resources.’⁷¹
- (c) Article 9 provides that ‘Indigenous peoples and individuals have the right to belong to an Indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned.’⁷²
- (d) Article 11 provides that ‘Indigenous peoples have the right to practice and revitalise their cultural traditions and customs, which includes the right to maintain, protect and develop the past, present and future manifestations.’⁷³

kāhore e whai take ana ki ngā Iwi Taketake o Ahitereiria. I mea atu a Justice Gageler, ko te ‘manene’ he ‘tangata kirirarau kore’, nō reira, mā te Paremata e whakatau ko wai rā te manene e ai ki ana ture kiriraraunga. I te mutunga iho, kua noho wehewehe te kōti, engari ko te 4:3 i tautoko atu i te whakatau, kāhore e tika ana tā te Iwi Taketake noho kei raro i te mana o te Paremata e ai ki wehenga 51(xix) o te Constitution, kāhore hoki e tika ana kia terepu atu.

Inā hoki, i tētahi kerēme taitara o mua, i whakamanatia kētia te tūranga o Mr Thoms hei Iwi Taketake o Ahitereiria, i whakatauhia e te Kōti ehara ia i te manene, kāhore hoki he āheinga ki te whakamahi i te mana kia terepuhia ia.

2.5.3 The United Nations Declaration on the Rights of Indigenous Peoples

I tuku taunakitanga a Dr Claire Charters, pūkenga ture, mō ngā mōtika o ngā iwi taketake e whai take nei ki te kiriraraunga e ai ki ngā ture tāwāhi, me te titiro pū nei ki ngā atikara o the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):

69. Mikaela Smith, ‘The divided decision in *Love v Commonwealth* – an analysis of Justice Gageler’s and Justice Edelman’s approaches to constitutional interpretation’, *Australian Public Law*, 17 March 2021, <https://www.auspublaw.org/blog/2021/03/the-divided-decision-in-love-v-commonwealth>, accessed 30 September 2025.

70. Claire Charters, brief of evidence (doc A9), p 3.

71. Claire Charters, brief of evidence (doc A9), p 5.

72. Claire Charters, brief of evidence (doc A9), p 4.

73. Claire Charters, brief of evidence (doc A9), p 6.

- (e) Article 25 provides that ‘Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal areas and other resources and to uphold their responsibilities to future generations in this regard.’⁷⁴
- (f) Article 27 provides that ‘where ethnic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.’
- (g) Article 33 provides that ‘Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.’⁷⁵

Dr Charters described article 3 as the ‘cornerstone’ of UNDRIP, which ‘underpins all rights in the Declaration’ and that ‘can be understood as most closely resembling the right to tino rangatiratanga within the context of te Tiriti o Waitangi.’⁷⁶ The UNDRIP articles work together, she argued, to ‘provide a standard that Indigenous peoples have the right to determine who is a member’ and ‘the rights that follow from that, including access to their lands, territories and resources.’ Dr Charters stated, therefore, that ‘it should be for iwi and hapū to determine belonging to that iwi and hapū and, once determined, as members of an iwi and hapū, those individuals must have the right to be on the territories of their iwi and hapū.’⁷⁷ She argued that ‘denial of citizenship to Māori can be viewed as a denial of access to Indigenous lands, territories and resources.’⁷⁸ Article 8(b), Dr Charters submitted, requires the Crown ‘to provide effective mechanisms to prevent the dispossession of Māori lands’ and that ‘any citizenship laws or policies that prevent Māori from accessing their lands are inconsistent with these international standards.’⁷⁹

I mea atu a Dr Charters, ko atikara 3 te ‘cornerstone’ o te UNDRIP, ka ‘underpins all rights in the Declaration’, ka mutu, ‘can be understood as most closely resembling the right to tino rangatiratanga within the context of te Tiriti o Waitangi.’ I mea atu ia, ka noho tahi ngā atikara o UNDRIP, kia ‘provide a standard that Indigenous peoples have the right to determine who is a member’ me ‘the rights that follow from that, including access to their lands, territories and resources.’ Nō reira, i kī atu a Dr Charters, ‘it should be for iwi and hapū to determine belonging to that iwi and hapū and, once determined, as members of an iwi and hapū, those individuals must have the right to be on the territories of their iwi and hapū.’ Ko tāna i tohe ai, ‘denial of citizenship to Māori can be viewed as a denial of access to Indigenous lands, territories and resources.’ I mea atu a Dr Charters, e ai ki a Atikara 8(b), mā te Karauna tērā ‘to provide effective mechanisms to prevent the dispossession of Māori lands’ and that ‘any citizenship laws or policies that prevent Māori from accessing their lands are inconsistent with these international standards.’

74. Claire Charters, brief of evidence (doc A9), p 5.

75. Claire Charters, brief of evidence (doc A9), p 4.

76. Claire Charters, brief of evidence (doc A9), p 3.

77. Claire Charters, brief of evidence (doc A9), p 4.

78. Claire Charters, brief of evidence (doc A9), p 6.

79. Claire Charters, brief of evidence (doc A9), p 6.

TRIBUNAL ANALYSIS OF THE CITIZENSHIP ACT 1977

TĀ TE TARAIPUNARA TĀTARI I TE CITIZENSHIP ACT 1977?

3.1 INTRODUCTION

In this chapter, we first set out the positions of the claimant, interested parties, and the Crown (section 3.2) regarding whether the Citizenship Act 1977 and the processes for applying for citizenship by grant under the Act are compliant with the treaty and its principles. Secondly, we analyse the Act and the processes (section 3.3) and present our findings (section 3.4). We then turn to a discussion of prejudice (section 3.5), before offering our recommendations (section 3.6).

3.2 PARTIES' POSITIONS

3.2.1 Claimant and interested parties' submissions

Counsel for claimant John Ruddock stated that '[a]t its heart, this claim is about the Crown's failure to recognise tangata whenua rights of belonging to Aotearoa.¹ They submitted that the Act 'fails to recognise the special relationship Māori have with their ancestral lands' and 'with the Crown under te Tiriti', resulting 'in arbitrary and unfair outcomes.'² In their view, '[f]or Māori, the right to enter and be in Aotearoa is a prerequisite to being able to exercise other rights guaranteed under te Tiriti.'³

Mr Ruddock's counsel submitted that the treaty guarantees New Zealand

3.1 KUPU WHAKATAKI

I tēnei wāhanga, i mātua tuku mātou i ngā tūranga o te kaikerēme, o ngā hunga whai take me te Karauna (wehenga 3.2) mō te pātai matua, āe rānei e noho tahi ana te Citizenship Act 1977 me ngā hātepe tono mō te kiri-tuku e ai ki te Ture, ki te tiriti me ōna mātāpono. Tuarua ake, ka tātarihia e mātou te Ture me ōna hātepe (wehenga 3.3), ka tuku ai ā mātou kitenga (wehenga 3.4). Katahi ka tahuri mātou ki te matapaki i ngā whakahāweatanga i mua i te tuku i ā mātou tūtohunga (wehenga 3.6).

3.2 TE TŪRANGA O NGĀ HUNGA

3.2.1 Ngā tāpaetanga a te kaikerēme me ngā hunga whai take

Hei tā te rōia mō te kaikerēme, mō John Ruddock, '[a]t its heart, this claim is about the Crown's failure to recognise tangata whenua rights of belonging to Aotearoa. I mea atu rātou, te ture 'fails to recognise the special relationship Māori have with their ancestral lands' ā, 'with the Crown under te Tiriti', whāia ko te arbitrary and unfair outcomes'. Ki tā rātou titiro, '[f]or Māori, the right to enter and be in Aotearoa is a prerequisite to being able to exercise other rights guaranteed under te Tiriti'.

I tāpae atu te rōia mō Mr Ruddock, e rua ngā huarahi, nā te tiriti i whakamana,

1. Submission 3.3.8, p 1.

2. Submission 3.3.8, p 2. See also submission 3.3.7, p 4.

3. Submission 3.3.8, p 3.

citizenship to Māori in two ways; the first is based on Māori rights of whakapapa and belonging under tikanga, recognised under article 2, and the second is based on the rights of citizenship under article 3.⁴ Citing the evidence of Dr Carwyn Jones, counsel stated that ‘under tikanga, a whakapapa connection to a particular area would entitle whānau to return.’ They submitted that under article 2 ‘the right of the Ruddock whānau to return and live in New Zealand has not been bestowed on Māori by the Crown, but has been inherited through tikanga.’⁵ The principle of tino rangatiratanga, counsel submitted, provides Māori ‘the right to control their own tikanga and taonga, including their social and political organisation’, and the Crown is required under the principle of active protection to protect ‘tikanga and whakapapa as a taonga.’⁶ Additionally, they stated that ‘whakapapa remains and while an individual may not claim or be aware of their Māori heritage, that does not mean that their hapū or whenua does not claim the individual.’⁷ Counsel further submitted that under article 3 the Crown ‘has a duty to actively protect Māori citizenship.’⁸

Mr Ruddock’s counsel pointed to the 1977 statement in Parliament made by then Minister of Internal Affairs Alan Highet that ‘it is undesirable to provide for New Zealand citizenship to be available as of right to people who have no connection with this country.’⁹ However, highlighting the Resource Management Act 1991 and the Te Ture Whenua Māori Act 1993 as examples where ‘the Crown has already recognised that Māori have a special

kia whai wahi ai te Māori ki tōna tangata whenuatanga; tuatahi, mā te tikanga me ngā āhuatanga o te tūrangawaewae me te whakapapa, i whakamanatia ai e atikara 2; tuarua, mā ngā mōtika kiriraraunga e ai ki a atikara 3. I a ia e aro nei ki ngā taunakitanga o Dr Carwyn Jones, i mea atu te rōia, ‘under tikanga, a whakapapa connection to a particular area would entitle whānau to return.’ Me te kī ake, e ai ki atikara 2, ‘the right of the Ruddock whānau to return and live in New Zealand has not been bestowed on Māori by the Crown, but has been inherited through tikanga.’ I ki ia, nā te mātāpono o te rangatiratanga i tuku ki te Māori ‘the right to control their own tikanga and taonga, including their social and political organisation’, ka mutu, e ai ki te mātāpono o te matapopore moroki, me tiaki te Karauna i te ‘tikanga and whakapapa as a taonga.’ Waihoki, i kī atu rātou, ‘whakapapa remains and while an individual may not claim or be aware of their Māori heritage, that does not mean that their hapū or whenua does not claim the individual.’ E ai ki a atikara 3, te Karauna ‘has a duty to actively protect Māori citizenship.’

I tahuri atu te rōia mō Mr Ruddock ki te Paremata o 1977 me te tauākī a Alan Highet, te Minister of Internal Affairs, me tana kī ake, ‘it is undesirable to provide for New Zealand citizenship to be available as of right to people who have no connection with this country.’ Engari hei tauira ake i ‘the Crown has already recognised that Māori have a special relationship with their lands in various statutory instruments’, i tohua e te rōia te ture o te

4. Submission 3.3.8, pp 7–8.

5. Submission 3.3.8, p 8.

6. Submission 3.3.8, p 10.

7. Submission 3.3.8, p 16. See also submission 3.3.7, pp 2–3.

8. Submission 3.3.8, p 11.

9. Submission 3.3.8, p 12; Department of Internal Affairs, ‘Citizenship issues for Māori born outside New Zealand’, July 2006, p 6 (doc A11(a), p 11).

relationship with their lands in various statutory instruments, counsel therefore asked 'how this recognition does not extend to the citizenship context and how it is not demonstrative of a genuine and direct connection with said lands[?]. By failing 'to recognise the special relationship Māori have with their lands', counsel maintained that the Act was 'inconsistent with Article 2 of the treaty'.¹⁰

Counsel for Mr Ruddock noted the various immigration arrangements that New Zealand has with other countries, particularly Australia and numerous Pacific Island nations, that can provide citizens of those countries with special pathways to New Zealand residency or citizenship.¹¹ With respect to these 'special relationships' that New Zealand has with these countries, counsel submitted:

it is incongruent for the Crown to not recognise what is its most special relationship with iwi and hapū encapsulated by te Tiriti o Waitangi. It is an absurdity of the current legislative settings that second generation Māori born in Australia have greater rights to enter and reside in New Zealand than second generation Māori born elsewhere. In effect, Māori born Australians have greater rights to reside and live in New Zealand deriving from their 'Australianness' than rights derived from te Tiriti.¹²

In relation to the process for applying for citizenship by special grant under section 9 of the Act, counsel stated that this 'has significant flaws'.¹³ Counsel acknowledged that while the section 9 provision 'can address situations where Māori do not qualify for citizenship by birth or descent . . . this provision is inadequate to properly recognise the rights of Māori guaranteed under te Tiriti o Waitangi'.¹⁴ This is because, as there is no treaty clause in the Act, 'there is no explicit statutory requirement or direction for government officials or Ministers of the

Resource Management Act 1991 me Te Ture Whenua Māori Act 1993 me tana pātai atu, 'how this recognition does not extend to the citizenship context and how it is not demonstrative of a genuine and direct connection with said lands[?]. I whakaū atu te rōia, i te korenga 'to recognise the special relationship Māori have with their lands', he 'inconsistent with Article 2 of the treaty' tēnei Ture.

I tahuri atu te rōia mō Mr Ruddock ki ētahi atu hononga manene o Aotearoa ki whenua kē atu, pērā i a Ahitereiria me ngā motu o te Moananuiakiwa, me ā ratou tuku ki ngā kirirarau o aua whenua ngā huarahi motuhake kia whai nohoanga, kia whai kiriraraunga anō hoki rātou. Mō te āhua o te Aotearoa 'hononga whakaharahara' ki ēnei whenua, i ki pēnei te rōia:

Mō te hātepe tono kia whai kiri-whakaae e ai ki a wehenga 9 o te Ture, i mea atu te rōia, ko te hātepe 'has significant flaws'. Me te ki o te rōia, ahakoa wehenga 9 'can address situations where Māori do not qualify for citizenship by birth or descent . . . this provision is inadequate to properly recognise the rights of Māori guaranteed under te Tiriti o Waitangi'. E pēnā ana inā hoki, i te korenga o tētahi whiti tiriti ki roto i te Ture 'there is no explicit statutory requirement or direction for government officials or Ministers of the Crown to give

10. Submission 3.3.8, p13.

11. Submission 3.3.8, p14.

12. Submission 3.3.8, p15.

13. Submission 3.3.8, p2.

14. Submission 3.3.8, p16.

Crown to give effect to their obligations under te Tiriti to recognise either Māori systems of belonging under tikanga or the guarantee of citizenship under te Tiriti.¹⁵ Counsel stated that they also have ‘significant concerns with the Minister’s discretion to take into account whakapapa ties’. They submitted that ‘it is fundamentally and wholly inappropriate for a Minister of the Crown or Crown officials to be determining whether or not someone’s whakapapa connection, or evidence of whakapapa connection, is sufficient to justify citizenship.’¹⁶

Mr Ruddock’s counsel submitted that, as well as breaching the principles of active protection and rangatiratanga in the manners outlined above, the Crown had also breached the principles of partnership and good government. They noted that ‘the Crown acknowledged that there was no discussion of the impacts on Māori born overseas when it was enact[ing] the Act’, a clear breach of the principle of partnership.¹⁷ Counsel cited Professor Kukutai’s evidence (see chapter 2), which stated that significantly more Māori now live overseas than when the Act was enacted almost 50 years ago. As noted above, Counsel submitted that ‘the principle of good government requires the Crown to review and amend legislation that is outdated, inconsistent with the evolving constitutional framework and creates arbitrary and unfair outcomes’. ‘Put simply’, he said, ‘it is a bad law’.¹⁸

Counsel for Waihoroi Shortland submitted that the ‘Māori worldview or way of identifying as tangata whenua is different to the concept of citizenship which is embodied and applied to Māori who make

effect to their obligations under te Tiriti to recognise either Māori systems of belonging under tikanga or the guarantee of citizenship under te Tiriti’. I mea atu hoki te rōia, kei a rātou ngā ‘significant concerns with the Minister’s discretion to take into account whakapapa ties’. I tāpae ake ia, ‘it is fundamentally and wholly inappropriate for a Minister of the Crown or Crown officials to be determining whether or not someone’s whakapapa connection, or evidence of whakapapa connection, is sufficient to justify citizenship’.

I mea atu te rōia mō Mr Ruddock, hei tāpiri ake i ngā āhuatanga i rārangitia ai ki runga mō tā te Karauna takahi i ngā mātāpono o te matapopore moroki me te rangatiratanga, i takahi hoki te Karauna i ngā mātāpono o te houruatanga me te kāwanatanga whai i te tika. I kī rātou, ‘the Crown acknowledged that there was no discussion of the impacts on Māori born overseas when it was enact[ing] the Act’, e marama ana te kite i te takahitanga o te mātāpono o te houruatanga. I tahuri te roia ki te taunakitanga o Ahorangi Kukutai (ki wahanga 2) me te kī ake, he nui ake te nama o ngā Māori e noho tāwahi ana inaiānei ki te nama i ngā tau 50 kua hori. Ko tā te rōia, ‘the principle of good government requires the Crown to review and amend legislation that is outdated, inconsistent with the evolving constitutional framework and creates arbitrary and unfair outcomes’. Me tana kī, ‘Put simply, it is a bad law’.

I tāpae ake te rōia mō Waihoroi Shortland, te ‘Māori worldview or way of identifying as tangata whenua is different to the concept of citizenship which is embodied and applied to Māori who

15. Submission 3.3.8, p16.

16. Submission 3.3.8, p17. See also submission 3.3.7, pp 5–6.

17. Submission 3.3.8, p21.

18. Submission 3.3.8, p22.

an application under the Citizenship Act 1977.¹⁹ They stated that both the Act and the *New Zealand Citizenship – Citizenship Guidance Document* not only fail to recognise the status of tangata whenua, but ‘impose over Māori people a legislative criteria that redefines their connection to New Zealand in a manner that is foreign and undermines the essential foundations of their tangata whenuatanga or indigeneity.’²⁰ ‘Suffice to say’, they added, ‘these criteria are not fit for the purpose of deciding the basis upon which Māori should be granted the right to citizenship in New Zealand.’ In their view, ‘[l]egislative change is required.’²¹

Counsel for the New Zealand Māori Council (NZMC) submitted that they supported the submissions made by Mr Ruddock and did not wish to repeat them.²² However, they added that they considered that the Act ‘fails to recognise tikanga’ and ‘does not account for the inseparable connection between whakapapa and whenua.’ In their view, a ‘rigid application’ of the Act ‘severs connection to whakapapa by depriving Māori born overseas of automatic citizenship rights.’²³ This severing of whakapapa, the NZMC submitted, breaches the principle of active protection.²⁴ Counsel further submitted that because ‘Māori are not treated as tangata whenua but as foreigners’, the Act ‘fails to protect the promise in te Tiriti o Waitangi of tino rangatiratanga for hapū.’ It does this by preventing hapū ‘from connecting with those of Māori descent in their own whenua’ (meaning that they lose the opportunity to connect on an equal basis with Māori estranged from hapū and iwi

make an application under the Citizenship Act 1977’. I mea atu rātou, i hē te Ture me te *New Zealand Citizenship – Citizenship Guidance Document* i te korenga o ā rāua tahuri ki te tūranga o te tangata whenua, waihoki, ka ‘impose over Māori people a legislative criteria that redefines their connection to New Zealand in a manner that is foreign and undermines the essential foundations of their tangata whenuatanga or indigeneity’. ‘Suffice to say’, e mea ana rātou, ‘these criteria are not fit for the purpose of deciding the basis upon which Māori should be granted the right to citizenship in New Zealand’. I tā rātou titiro, ‘[l]egislative change is required’.

I tautoko te rōia mō te New Zealand Māori Council (NZMC) i ngā tāpaetanga kua tukuna rā e Mr Ruddock me te kore e hiahia kia toaitia i ērā kōrero. Engari, i tāpiri rātou i te kōrero pēnei mō te Ture, ka ‘fails to recognise tikanga’, nā, ‘does not account for the inseparable connection between whakapapa and whenua’. I ō rātou whakaaro, ka ‘severs connection to whakapapa by depriving Māori born overseas of automatic citizenship rights’ tētahi ‘rigid application’ o te Ture. Hei tā te NZMC, nā tā rātou motu i ngā tātai whakapapa i takahia ai te mātāpono o te matapopore moroki. I mea hoki te rōia, ‘Māori are not treated as tangata whenua but as foreigners’ i roto i te Ture, nō reira nāna i ‘fails to protect the promise in te Tiriti o Waitangi of tino rangatiratanga for hapū’. E pēnei nei nā tana aukati i te hapū ‘from connecting with those of Māori descent in their own whenua’ (meaning that they lose the opportunity to connect on an equal basis with Māori estranged from hapū and iwi

19. Submission 3.3.7, p 2.

20. Submission 3.3.7, p 2.

21. Submission 3.3.7, p 4.

22. Submission 3.3.2, p 3.

23. Submission 3.3.2, p 1.

24. Submission 3.3.2, p 1.

life in the rohe due to overseas living). In the NZMC's submission, this 'undermines collective identity'.²⁵ Counsel for the NZMC also claimed that the current processes for granting citizenship breach the principle of equity as guaranteed by article 3 of the treaty. They argued that 'at the time of the signing of te Tiriti o Waitangi, it was not envisaged that Māori would live overseas, and now 'the world has changed'. As a result, 'Māori, by descent, should be able to return to Aotearoa and exercise their citizenship rights'. However, counsel submitted, the Act 'enables inequitable outcomes where arbitrary processes allow those who are non-tangata whenua to gain citizenship over Māori'.²⁶

3.2.2 Crown submissions

The Crown acknowledged that there is no automatic right to citizenship for Mr Ruddock's children and others in the category it designated 'second-generation overseas descendants of NZ-born citizens'.²⁷ This is because under the Citizenship Act 1977, the right to citizenship by descent passes down only to the first generation born overseas.²⁸ The Crown acknowledged that Māori 'born overseas to parents who themselves were born overseas' must apply for citizenship 'via a discretionary application process to the Minister of Internal Affairs'.²⁹ The Crown also accepted in respect of this process that the 'guidance approved by the Minister for the exercise of their discretion is permissive; that the discretion is broad; and that the 1977 Act does not reference te Tiriti/the Treaty or its principles'.³⁰

life in the rohe due to overseas living). I tā te NZMC tāpae, tērā mahi 'undermines collective identity'. I mea atu hoki te rōia mō te NZMC, nā ngā hātepe mō te tuku i te kiriraraunga o inaiānei i takahi te mātāpono o te mana taurite, nā atikara 3 o te tiriti i whakamana. I tohe rātou i tō rātou tūranga, 'at the time of the signing of te Tiriti o Waitangi, it was not envisaged that Māori would live overseas, inaiānei 'the world has changed'. Me te aha, 'Māori, by descent, should be able to return to Aotearoa and exercise their citizenship rights'. Heoi anō, i tapae ake te rōia, te Ture 'enables inequitable outcomes where arbitrary processes allow those who are non-tangata whenua to gain citizenship over Māori'.

3.2.2 Ngā tāpaeatanga a te Karauna

I whakaae atu te Karauna, kāhore he mōtika kiriraraunga ka tuku noa ki ngā tamariki a Mr Ruddock me ētahi e noho nei ki te wāhanga o e kīa nei 'second-generation overseas descendants of NZ-born citizens'. E pēnei ana inā hoki, e ai ki te Citizenship Act 1977, ko te mōtika o te kiri-heke ka heke noa iho ki te whakareanga tuatahi i whānau mai ai i tāwāhi. I whakaae atu te Karauna, ko te Māori 'born overseas to parents who themselves were born overseas', ka mate rātou ki te tonu mō te kiriraraunga 'via a discretionary application process to the Minister of Internal Affairs'. Mō taua hātepe rā, i mārāma hoki te Karauna, te 'guidance approved by the Minister for the exercise of their discretion is permissive; that the discretion is broad; and that the 1977 Act does not reference te Tiriti/the Treaty or its principles'.

25. Submission 3.3.2, p 1.

26. Submission 3.3.2, p 2.

27. Submission 3.3.6(a), p 1.

28. Submission 3.3.6(a), p 2.

29. Submission 3.3.9, p 1.

30. Submission 3.3.9, p 1.

In the Crown's submission, however, the Ministerial discretion provided for in the Act *does* 'provide a pathway for Māori born overseas to rely on whakapapa to support applications for citizenship.' Moreover, the Crown stated, 'experience shows that the process ultimately achieves outcomes that do not prejudice Māori'.³¹ The Crown also noted that affected persons may be entitled to reside in New Zealand through pathways other than citizenship. These include immigration processes such as the grant of visas, or application for residency based on Australian citizenship.³² The Crown consequently stated it did not concede that 'the absence of an automatic and perpetual right to citizenship for future generations of Māori born overseas' breached the Treaty and its principles. It cited two reasons for what it perceived as treaty compliance:

- ▶ there are a range of policy options available to the Crown to give effect to its Article 2 duty of active protection in relation to taonga; and
- ▶ there is no indication that the current citizenship scheme operates in a manner that denies Māori born overseas the Article 3 assurance of equal opportunity to attain Citizenship-by-Grant.³³

In its closing submissions, the Crown noted that Mr Ruddock's claim of treaty breaches centres on two aspects of the Citizenship Act 1977. Firstly, that 'the 1977 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'.³⁴ Secondly, the Crown noted Mr Ruddock had alleged that 'in the exercise of that discretion, the 1977 Act does not require the Minister to consider the Treaty of Waitangi/te Tiriti o Waitangi or the fact

Engari ki tā te Karauna titiro, ko te tukunga o te Ture e tukuna ana te mana ake ki te Minita, koia pū ko te 'provide a pathway for Māori born overseas to rely on whakapapa to support applications for citizenship'. Ka mutu, i mea atu te Karauna, 'experience shows that the process ultimately achieves outcomes that do not prejudice Māori'. I ki hoki te Karauna, ehara i te mea ko te kiriraraunga te huarahi anahe hei whai mā te tangata kia noho nei ki Aotearoa. Ka tae atu ēnei huarahi ki ngā hātepe manene pērā i te tuku i ngā pane uruwheua, ki ngā tono ā-noho nā runga i te tūranga kirirarau o Ahitereiria. Engari kāhore te Karauna e whakaae ana ki te kōrero, nā 'the absence of an automatic and perpetual right to citizenship for future generations of Māori born overseas' i takahi te tiriti me ōna mātāpono. E rua āna take mō tana ki ka noho tahi ia me te tiriti:

I āna tāpaetanga whakakapi, i tahi atu te Karauna ki te kerēme a Mr Ruddock me āna take e rua mō te Citizenship Act 1997, e mea ana ia, he takahitanga ki te tiriti. Tuatahi, 'the 1977 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'. Tuarua, i mea atu te Karauna, nā Mr Ruddock i whakapae atu, 'in the exercise of that discretion, the 1977 Act does not require the Minister to consider the Treaty of Waitangi/te Tiriti

31. Submission 3.3.9, p 1.

32. Submission 3.3.6(a), p 2.

33. Submission 3.3.9, p 2.

34. Submission 3.3.9, p 1.

that an applicant is Māori and indigenous to Aotearoa.³⁵

The Crown noted further that New Zealand's citizenship scheme does not operate in isolation of wider social obligations and benefits and should be considered in respect of this framework. It explained that 'the key function of the 1977 Act is to define and confer the legal status of "citizen" based on specific criteria' and that 'those criteria are designed to reflect a genuine and effective connection between citizens and Aotearoa/New Zealand'.³⁶

While acknowledging that 'citizenship status is one of the key gateways (alongside residence) to accessing a number of social and political rights', the Crown noted that the Act itself 'does not bestow particular privileges or obligations on citizens'.³⁷ Instead, 'privileges are granted and obligations arise under a raft of other statutes and statutory instruments'.³⁸ In relation to the issues of cultural identity and responsibility raised by Mr Ruddock, specifically, connection with and preservation of whakapapa, the Crown observed that these are not contingent on citizenship status, commenting that 'whakapapa, of course, exists quite independently of any statutory bestowal of citizenship. Attaining citizenship is but one way through which individuals born overseas may seek to connect with their whakapapa'.³⁹

The Crown accepted there is no evidence to suggest Parliament had considered Māori rights and interests relating to citizenship when passing the Act.⁴⁰ '[T]he legislative history of the passing of the Act,

o Waitangi or the fact that an applicant is Māori and indigenous to Aotearoa.

I mea atu hoki te Karauna, ehara i te mea e noho motuhake ana te kaupapa o te kiriraraunga o Aotearoa ki a ia anō, me whai whakaaro hoki ki ngā takohanga ā-hapori me ngā hua whānui nō tātou e titiro ana ki a ia. I kī ia, 'the key function of the 1977 Act is to define and confer the legal status of "citizen" based on specific criteria' nō reira 'those criteria are designed to reflect a genuine and effective connection between citizens and Aotearoa/New Zealand'.

I kī atu rā te Karauna, ahakoa ko te 'citizenship status is one of the key gateways (alongside residence) to accessing a number of social and political rights', ko te Ture ake 'does not bestow particular privileges or obligations on citizens.' Engari kē ia, 'privileges are granted and obligations arise under a raft of other statutes and statutory instruments.' Mō ngā take ake i whakahuatia mai e Mr Ruddock e hāngai nei ki te haepapa ā-ahurea, ā-tūākiri hoki, arā ko te hononga me te tautiaki i te whakapapa, i mea atu te Karauna, ehara i te mea kua herea ēnei ki te tūranga o te kirirarau, me te kī ake, 'whakapapa, of course, exists quite independently of any statutory bestowal of citizenship. Attaining citizenship is but one way through which individuals born overseas may seek to connect with their whakapapa.'

I whakaae atu te Karauna, kāhore he taunakitanga e whakaaatu nei i tā te Paremata tahuri ki ngā mōtika me ngā pānga o te Māori, nōna e whakamana ana i te Ture. '[T]he legislative history of the passing of

35. Submission 3.3.9, p 1.

36. Submission 3.3.9, p 3.

37. Submission 3.3.9, p 3.

38. Submission 3.3.9, p 3.

39. Submission 3.3.9, p 3.

40. Submission 3.3.9, p 5.

the Crown stated, ‘reveals no discussion of the implications for those with Māori whakapapa born overseas.’⁴¹ However, in the Crown’s submission, the issue had been given due consideration in subsequent decades – especially via a series of policy papers prepared by DIA in 2006.⁴² From these papers, the Crown had concluded that the settings of the Act were sufficient to recognise the varying circumstances of those applying for citizenship by grant, including those with Māori whakapapa. It also advised caution in comparing, as interested party submitters had, second generation overseas descendants with Māori whakapapa who do not have a right to citizenship and non-Māori entitled to citizenship through birth and familial connections.⁴³ The Crown noted that its adoption of ‘connection to birthplace as a proxy for a genuine and effective link to the country’ to be consistent with other jurisdictions throughout the world.⁴⁴

Weighing up the risks of legislating to introduce multi-generational citizenship by descent, the Crown noted that the 2006 reports had concluded that this step was not necessary to recognise ongoing links with New Zealand the overseas born may hold, because the Act already provided for this by way of citizenship by grant.⁴⁵ However, they did recommend several changes to operational policy of the DIA. In the Crown’s submission, these recommendations formed the basis of the wording that was ultimately adopted in DIA’s *New Zealand Citizenship – Citizenship Guidance Document*, specifically its reference to ‘whakapapa ties’ as an explicit type

the Act’ i mea atu te Karauna, ‘reveals no discussion of the implications for those with Māori whakapapa born overseas’. Engari, hei tā te Karauna, i ngā rau tau whai muri atu, i āta tirohia te take – kua kitea i roto i ngā tuhinga kaupapa here nā te DIA i te tau 2006. Nā ēnei tuhinga i whakatau ai te Karauna, e tika ana ngā wāhanga o te Ture kia aro ai ki ngā momo horopaki o te hunga e tono nei mō te kiri-tuku, tae atu ki ngā tāngata, he whakapapa Māori ōna. I tuku hoki ia i ngā kōrero tūpatō i a mātou e whakataurite ana, pērā i tā te hunga whai take kōrero, i ngā uri whakareanga rua, i whānau mai i tāwāhi, kāhore he mōtika kia whiwhi tangata whenuatanga ki te hunga whakapapa-Māori kore e āhei ana ki te whiwhi kiriraraunga nā tana whānautanga mai, nā tana hononga whānau anō hoki. I kī ake rā te Karauna, ko te whakamahinga o te ‘connection to birthplace as a proxy for a genuine and effective link to the country’ he ōrite ki ētahi atu ture puta i te ao whānui.

I tā rātou tahuri ki te whakaaro kia whakaturehia te āheinga o te whakareanga-maha kia whiwhi kiri-heke me ōna mōreareatanga, i toai atu te Karauna i te kōrero o ngā ripoata o 2006 me te kī, kāhore he take o tērā whakaaro kia mana ai te hononga o te hunga i whānau mai ai i tāwāhi ki Aotearoa inā hoki, kua tukua kētia tēnei e te Ture mā te huarahi o te kiri-tuku. Heoi anō, i tuku rātou i ētahi tūtohunga kia panonihia te kaupapa here whakahaere o DIA. I te tāpaetanga a te Karauna, nā enei tūtohunga i hānga ai ngā rerenga e noho nei ki te tuhinga o DIA *New Zealand Citizenship – Citizenship Guidance Document*, arā ko tana tahuri ki

41. Submission 3.3.6(a), p 2.

42. Submission 3.3.9, p 7.

43. Submission 3.3.6(a), p 2.

44. Submission 3.3.6(a), p 4.

45. Submission 3.3.9, p 7.

of evidence the Minister may consider in applications for citizenship by grant.⁴⁶

The Crown noted that, except for this adopted wording in the guidance document, and ‘notwithstanding that the issues raised in the 2006 papers have remained to some extent on the DIA’s internal “radar”’, there are no current plans to reform the citizenship law as it relates to Māori born overseas to citizens by descent. In the Crown’s assessment, this likely reflects the absence of a recent comprehensive review of the Act. The Crown noted ‘possibly for the same reasons, DIA has not identified evidence of any formal engagement with Māori regarding the citizenship status of Māori born overseas, although the topic has arisen and been discussed in public fora from time to time.’⁴⁷

Regarding the citizenship application process, the Crown acknowledged that this could be lengthy and challenging. However, the Crown stated no evidence existed of any disparity in application outcomes for those with Māori whakapapa in comparison with non-Māori.⁴⁸ The Crown further stated that ‘there is no indication that applications from either Māori or non-Māori second-generation overseas descendants of NZ born citizens are being inappropriately declined.’⁴⁹

In respect of recognising and actively protecting whakapapa connections through citizenship law, the Crown noted that the connections to which the claimants and interested parties referred ‘exist regardless of whether a person holds citizenship as defined by statute’. Indeed, the

‘whakapapa ties’ hei momo taunakitanga ka tau kei mua i te aroaro o te Minita nōna e whakaaro nei ki ngā tono mō te kiri-tuku.

I mea atu te Karauna, hāunga tēnei rerenga ake i te tuhinga ārahi, ka mutu ‘notwithstanding that the issues raised in the 2006 papers have remained to some extent on the DIA’s internal “radar”’, kāhore ā rātou mahere kia whakahoutia ngā wāhanga o ngā ture kiriraraunga e whai take nei ki ngā Māori i whānau mai ai i tāwāhi ki ngā mātua kiri-heke. I tā te Karauna tiro tiro atu, koia pū ko te tohu o te korenga o tētahi arotakenga whānui o te Ture. I ki te Karauna, ‘possibly for the same reasons, DIA has not identified evidence of any formal engagement with Māori regarding the citizenship status of Māori born overseas, although the topic has arisen and been discussed in public fora from time to time.’

Mō te hātepe tono o te kiriraraunga, i whakaae atu te Karauna, tērā pea ka roa, ka uaua hoki tana haere. Engari, i ki hoki te Karauna, kāhore e kitea ana ētahi taunakitanga e whakaatu nei i ngā otinga rerekē ka tau ki te hunga he whakapapa Māori ōna i te hunga kāhore ōna whakapapa Māori. I mea hoki te Karauna, ‘there is no indication that applications from either Māori or non-Māori second-generation overseas descendants of NZ born citizens are being inappropriately declined.’

Mō te take o te tahuri, o te matapopore moroki anō hoki i te whakapapa ki roto i ngā ture kiriraraunga, i mea atu te Karauna, ko ngā hononga e kōrerohia nei e te kaikerēme me ngā hunga whai take, ‘exist regardless of whether a person holds citizenship as defined by statute’. Me tā te

46. Submission 3.3.9, p 8.

47. Submission 3.3.9, p 9.

48. Submission 3.3.6(a), p 3.

49. Submission 3.3.6(a), p 3.

Crown noted 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.’ Overall, the Crown submitted 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.’⁵⁰

Finally, the Crown submitted that citizenship ‘raises complicated questions about nationhood and belonging’, but noted that were the Tribunal to recommend changes, this would be better achieved in the context of a broader kaupapa such as the Constitution Kaupapa inquiry.⁵¹

3.3 TRIBUNAL ANALYSIS

In this section, we analyse the treaty-compliance of the Act and the processes for applying for citizenship by grant or special grant.

3.3.1 Is the Citizenship Act 1977 compliant with the principles of the treaty?

It has been said that the Treaty of Waitangi was, in effect, New Zealand’s first immigration policy.⁵² Therefore, as Professor Kukutai wrote, when considering the treaty-compliance of citizenship laws, ‘it may be relevant to consider the extent to which whakapapa Māori requires special consideration.’⁵³ Central to this inquiry, however, is that the Act does not include

Karauna whakapātaritari atu mō taua hononga, ‘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.’ I te mutunga iho, i tāpae atu te Karauna ‘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.’

Hei whakamutu ake, i tāpae atu te Karauna, te kiriraraunga ‘raises complicated questions about nationhood and belonging’ engari ko te tūranga o te Karauna, he pai ake kia waiho mā tētahi kaupapa whānui, pērā i te Constitution Kaupapa inquiry, e tuku tūtohunga mō ngā panonitanga.

3.3 TĀ TE TARAIPUNARA TĀTARI

I tēnei wehenga, ka tātari mātou i te nohohitanga o te Ture me ōna hātepe tono mō te kiri-tuku me te kiri-whakaae ki te tiriti.

3.3.1 Āe rānei, e noho tahi ana te Citizenship Act 1977 ki ngā mātāpono o te tiriti?

E mea ana te kōrero, i tōna tikanga, ko te Tiriti o Waitangi te kaupapa here manene tuatahi o Aotearoa. Nō reira, i a tātou e whakaaro ana ki te nohohitanga o ngā ture kiriraraunga ki te tiriti, he tika tā Ahorangi Kukutai ki, ‘it may be relevant to consider the extent to which whakapapa Māori requires special consideration.’ Koia rā ko tētahi kaupapa matua o tēnei ruku

50. Submission 3.3.6(a), p 4.

51. Submission 3.3.9, pp 18–19.

52. Department of Internal Affairs, ‘Citizenship issues for Māori born outside New Zealand’, July 2006, p 6 (doc A11(a), p 11).

53. Tahu Kukutai, brief of evidence (doc A7), p 5.

a treaty clause, nor any language that acknowledges or requires consideration of the status of Māori as New Zealand's indigenous people. As Ms Coates noted, despite the importance of the rights and protections afforded by citizenship, the Act makes no reference 'to the Treaty of Waitangi, Māori, whakapapa, or indigeneity . . . Māori are treated in the same manner as all other people'.⁵⁴ Even so, does the Act still function in a manner that upholds the principles of the treaty?

Ms Coates argued that 'the Act fails to give effect to te Tiriti o Waitangi' because it 'falls short of the Crown's obligations to ensure that te Tiriti o Waitangi is given effect in the laws that define belonging in Aotearoa'.⁵⁵ She used hypothetical case studies to illustrate how the Act's provisions currently function, writing that 'the law can reward accident and geography, while discounting whakapapa and the promises of te Tiriti o Waitangi'. She stated that the Act 'can privilege those with no whakapapa connection to Aotearoa over Māori who have an ancestral relationship guaranteed in te Tiriti o Waitangi'.⁵⁶ Because the Act 'privileges chance and Crown discretion over whakapapa and Treaty guarantees', it turns the treaty's 'promise of enduring belonging into something conditional and fragile'.⁵⁷

In Ms Coates' view, the Act breaches four treaty principles. First, stemming from a matter of plain fact (and as stated above), the Act does not recognise Māori as tangata whenua or as Treaty partners. She argued that this means the Act 'ignores this distinct treaty position' by 'treating Māori transmission of citizenship as identical to that of migrant-descended

tātari, kāhore ā tēnei ture tētahi whiti tiriti, kāhore āna kupu e aro nei, e mea nei hoki me tahuri ki te tūranga o te Māori hei iwi taketake o Aotearoa. I mea atu a Ms Coates, ahakoa te hirahira o ngā mōtika me ngā haumarutanga e tukuna ai e te tūranga o te kirirarau, kāhore te Ture i te aro 'to the Treaty of Waitangi, Māori, whakapapa, or indigeneity . . . Māori are treated in the same manner as all other people'. Hāunga tērā, e hāpai tonu ana ngā whakaritenga o te Ture i ngā mātāpono o te tiriti?

Hei tā Ms Coates i tohe ai, 'the Act fails to give effect to te Tiriti o Waitangi' because it 'falls short of the Crown's obligations to ensure that te Tiriti o Waitangi is given effect in the laws that define belonging in Aotearoa'. I whakamahi ia i ētahi tauria kua pohewatia e ia hei whakaatu atu i ngā mahi o ia rā o te Ture, me tana kī 'the law can reward accident and geography, while discounting whakapapa and the promises of te Tiriti o Waitangi'. Mō te Ture ake, i kī ia 'can privilege those with no whakapapa connection to Aotearoa over Māori who have an ancestral relationship guaranteed in te Tiriti o Waitangi'. He pēnei inā hoki, mā te Ture e 'privileges chance and Crown discretion over whakapapa and Treaty guarantees', ka panoni tā te tiriti 'promise of enduring belonging into something conditional and fragile'.

Ki tāna titiro, e takahi ana te Ture i ngā mātāpono tiriti e whā. Tuatahi, e mārakerake ana te kite atu i ngā meka (kua kōrerohia ki runga), kāhore te Ture e aro atu ki te Māori hei tangata whenua, hei hoa tiriti rānei. Hei tā Ms Coates, koia tēnei ko te Ture e 'ignores this distinct Treaty position' by 'treating Māori transmission of citizenship as identical to that of

54. Natalie Coates, brief of evidence (doc A4), p10.

55. Natalie Coates, brief of evidence (doc A4), p13.

56. Natalie Coates, brief of evidence (doc A4), pp7–8.

57. Natalie Coates, brief of evidence (doc A4), p13.

populations'. She added that while 'settlers and their descendants can rely on birthplace and migration patterns to secure citizenship, Māori connection is through whakapapa and Treaty guarantees', but the Act's 'reliance on birthplace criteria erases that distinction'.⁵⁸ In Ms Coates opinion, because the Act 'fails to account for their [Māori] unique constitutional position as tangata whenua and Treaty partners', this leads to a breach of the principle of equity. 'On its surface', she stated, 'the Act applies evenly'. However, '[i]n practice, it has inequitable effects'.⁵⁹

Secondly, Ms Coates stated in her evidence that the Act breaches the principle of active protection. She maintained that placing a requirement on Māori whose children were born overseas to apply for citizenship, 'rather than recognising it automatically places barriers in the way of Māori whānau maintaining their identity and tūrangawaewae'. She stated that the principle of active protection placed a 'living duty' on the Crown 'to ensure that whakapapa, language and identity are carried safely across borders and generations'.⁶⁰

Thirdly, Ms Coates stated that the Act breaches the principle of partnership. She stated that the Crown 'did not engage Māori in designing the citizenship framework or its amendments, despite the clear implications for Treaty rights'.⁶¹ This is, so far as we could tell from the evidence provided, correct – there was no consultation with Māori, and how the law might impact Māori was not discussed when the Bill was being debated in the House in 1977 (as we noted in chapter 2). In Ms Coates'

migrant-descended populations'. I ki hoki ia, ahakoa e pai ana mā ngā 'settlers and their descendants can rely on birthplace and migration patterns to secure citizenship, Māori connection is through whakapapa and Treaty guarantees', engari ko tā te Ture 'reliance on birthplace criteria erases that distinction'. E mea ana a Ms Coates, ko te Ture 'fails to account for their [Māori] unique constitutional position as tangata whenua and Treaty partners', nā konā ka takahia te mātāpono o te mana taurite. 'On its surface', tāna ki, 'the Act applies evenly'. Engari, '[i]n practice, it has inequitable effects'.

Tuarua, e mea atu ana a Ms Coates, e takahi ana te Ture i te mātāpono o te matapopore moroki. I ū ia ki tana whakataua, ko te tuku i tētahi herenga ki runga i ngā tamariki Māori i whānau mai i tāwāhi kia tonu atu mō te kiriraraunga, 'rather than recognising it automatically places barriers in the way of Māori whānau maintaining their identity and tūrangawaewae'. I ki ia, mā te mātāpono o te matapopore moroki e tuku ki te Karauna tētahi 'living duty to ensure that whakapapa, language and identity are carried safely across borders and generations'.

Tuatoru, e takahi ana te Ture i te mātāpono o te houruatanga. I mea atu ia, te Karauna 'did not engage Māori in designing the citizenship framework or its amendments, despite the clear implications for Treaty rights'. Ki tā mātou titiro ki ngā tāpaetanga kua tukuna, he tika tēnei – kāhore tētahi i kōrero tahi ki ngā Māori, kāhore hoki i kitea tētahi matapakihanga o ngā kikinotanga ka pā ki te Māori i te tau 1977, arā, te wā e tohea nei tēnei pire i te whare (kua kōrerotia ki wāhanga 2). Ki tā

58. Natalie Coates, brief of evidence (doc A4), pp11–12.

59. Natalie Coates, brief of evidence (doc A4), p12.

60. Natalie Coates, brief of evidence (doc A4), p12.

61. Natalie Coates, brief of evidence (doc A4), p12.

view, such a lack of consultation and co-decision-making 'is inconsistent with the principle of partnership, which requires good faith and shared authority'.⁶²

Lastly, Ms Coates stated that the Act breaches the principle of rangatiratanga. She stated that the Act 'does not simply raise an issue of formal equality under Article 3', but 'undermines the Treaty framework in deeper ways'. She submitted that 'Article 2 affirms Māori tino rangatiratanga over their taonga, which includes whakapapa, identity, and the continuity of whānau, hapū and iwi'. Any laws that 'deny automatic belonging to Māori children born overseas intrude on Māori authority to define and maintain their own membership and continuity'. She added that the Act reinforces 'Crown dominance in determining belonging, allowing the Crown's pen to speak louder than whakapapa'.⁶³

With respect to the principle of rangatiratanga, Dr Jones wrote that the 'exchange of kāwanatanga and rangatiratanga is relevant to how Māori citizenship can or should be actively protected'. Citing the Tribunal's *Whaia te Mana Motuhake* report (2015), Dr Jones said that 'the Crown's right to govern has never been an absolute right, due to the guarantee of tino rangatiratanga'.⁶⁴ In that report, the Tribunal wrote that '[t]ino rangatiratanga has been interpreted as absolute authority and can include freedom to be distinct peoples: the right to territorial integrity of their land base; the right to freely determine their destinies'.⁶⁵ Dr Jones submitted

Ms Coates titiro, ko te tamōtanga o te noho tahi me te hanga tahi, 'is inconsistent with the principle of partnership, which requires good faith and shared authority'.

Hei whakakapi ake, i mea atu a Ms Coates, e takahi ana te Ture i te mātāpono o te rangatiratanga. I ki ia, ko te Ture 'does not simply raise an issue of formal equality under Article 3', engari kē, ka 'undermines the Treaty framework in deeper ways'. Me te kī, 'Article 2 affirms Māori tino rangatiratanga over their taonga, which includes whakapapa, identity, and the continuity of whānau, hapū and iwi'. Mō ētahi ture e ngana nei kia 'deny automatic belonging to Māori children born overseas intrude on Māori authority to define and maintain their own membership and continuity'. Hei tāna, ka tautoko te Ture i te 'Crown dominance in determining belonging, allowing the Crown's pen to speak louder than whakapapa'.

Mō te mātāpono o te rangatiratanga, i mea atu a Dr Jones, ko te 'exchange of kāwanatanga and rangatiratanga is relevant to how Māori citizenship can or should be actively protected'. Me tana tahuri ki tā te Taraipūnara ripoata *Whaia te Mana Motuhake* (2015), ki te kī ake 'the Crown's right to govern has never been an absolute right, due to the guarantee of tino rangatiratanga'. I taua ripoata, i tuhia rā e te Taraipūnara tēnei, '[t]ino rangatiratanga has been interpreted as absolute authority and can include freedom to be distinct peoples: the right to territorial integrity of their land base; the right to freely determine their destinies'. I tāpae atu a Dr

62. Natalie Coates, brief of evidence (doc A4), p12.

63. Natalie Coates, brief of evidence (doc A4), pp12–13.

64. Carwyn Jones, brief of evidence (doc A8), p10; Waitangi Tribunal, *Whaia te Mana Motuhake/ In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim* (Wellington: Legislation Direct, 2015), p26.

65. Waitangi Tribunal, *Whaia te Mana Motuhake*, p26; also see Carwyn Jones, brief of evidence (doc A8), p10.

that decisions about Māori citizenship ‘can be viewed as one way in which iwi and hapū exercise this autonomy and self-government.’⁶⁶ In his view, the provisions of the Act that refuse a Māori whānau the ability to reside in New Zealand are ‘inconsistent with the Crown’s obligation to actively protect Māori citizenship rights derived from Article 3 of te Tiriti.’⁶⁷

The issues before this Tribunal are not new to the Crown. The evidence shows that the Crown has considered these exact questions several times in recent decades, and simply decided it did not need to take any further action. To the extent of our knowledge, these considerations occurred in the context of internal policy discussions and were never disseminated, either publicly or to Māori stakeholders. If consulted during these discussion, many Māori might very well have suggested that having to apply for citizenship by grant was not acceptable.

In 1999 and 2000, as the section 7(2) requirement for those with citizenship by descent to register their citizenship before turning 22 years of age was about to come into force (see chapter 2), DIA reviewed the Act. This review ultimately led to the removal of the section 7(2) requirement in the Citizenship Amendment Act (No 2) 2001. It was during this review process, which consulted a number of different agencies including Te Puni Kōkiri, that the wider issues of citizenship by descent currently being considered by this Tribunal were raised. In September 1999, in the ‘Cabinet Social Policy Committee Review of Citizenship Act 1977: Paper Three – Citizenship by Descent’, it was noted that Te Puni Kōkiri considered:

Jones, ko ngā whakataunga mō te tangata whenuatanga o te Māori, ‘can be viewed as one way in which iwi and hapū exercise this autonomy and self-government’. Ki tāna titiro, ko aua wāhanga o te Ture e aukati nei i tā tētahi whānau Māori āheinga ki te noho ki Aotearoa, he ‘inconsistent with the Crown’s obligation to actively protect Māori citizenship rights derived from Article 3 of te Tiriti’.

Ehara i te mea he take hou ki te Karauna ēnei take kei mua i a mātou. Kua whakaatuhia mai e ngā taunakitanga, kua aro kē te Karauna ki ēnei take pū nei i roto i ēnei rau tau, engari i whakatau ake ia, kāhore he take o te whaiwhai haere. Ki tā mātou titiro, i puta ake ēnei take i te wā o ngā matapakihanga o roto mō ngā kaupapa here, engari kāhore i tukua atu ki te ao matawhānui, ki ngā hunga Māori rānei. Kua mahue te noho tahi ki te Māori i ēnei matapakihanga, ki te pērā, kua tukua pea te Māori i ōna whakaaro mō te hē o te tono kia whiwhi kiri-tuku te tangata.

I te tau 1999 me 2000, i arotakengia e DIA te Ture inā hoki, kua tata te wā kia whakamanatia te tikanga o wehenga 7(2) e meinga ana ki ngā kiri-heke me rēhita ō rātou kiriraraunga i mua i ō rātou huringa tau 22 (tirohia wāhanga 2). Nā tēnei arotake i whakakore ai te tikanga o wehenga 7(2) ki roto i te Citizenship Amendment Act (No 2) 2001. I te wā o taua hātepe arotake, i toro atu te ringa ki ētahi tari, pērā i Te Puni Kōkiri, nā konā i puta te kōrero mō ngā take whānui o te kiriraraunga, ngā take kua tae kē mai inaiānei ki mua i tēnei Taraipiunara. I te Hepetema o 1999, i te ‘Cabinet Social Policy Committee Review of Citizenship Act 1977: Paper Three – Citizenship by Descent’, i whai whakaaro ake a Te Puni Kōkiri ki tēnei e pēnei nei:

66. Carwyn Jones, brief of evidence (doc A8), p 10.

67. Carwyn Jones, brief of evidence (doc A8), p 11.

That the limitation of the acquisition of citizenship by descent, or the loss of that citizenship status, may be seen by some Maori as affecting their ability to exercise their heritage through their whakapapa. This restriction may be seen as an unreasonable infringement of Maori ability to exercise control over their taonga (whakapapa), which is guaranteed under Article Two of the Treaty of Waitangi.⁶⁸

Then, in May 2000, DIA noted in 'Consultation Draft: Citizenship 2000 – the review of the Citizenship Act 1977' that '[i]t is important that New Zealand's citizenship law reflects our growing understanding of the role of the Treaty of Waitangi, the increasing diversity within our society and the greater international mobility of people generally'.⁶⁹ Interestingly, a hypothetical case study was provided to illustrate the potential issues for Māori that appear very similar to that of the claimant in this inquiry:

Rawiri Ropata, who is of Maori descent, was born in Australia, having arrived six weeks prematurely while his mother was away on holiday. Rawiri grew up in a small New Zealand town and left when he was 20 to seek employment in Australia. After making some money mining uranium in Western Australia, he took up a vending machine franchise on the Gold Coast. Rawiri maintained strong links with his iwi (tribe), but remained in Australia because he enjoyed the lifestyle. Rawiri met his future wife, who is Australian, through mutual friends. In due course they had a baby and decided to make a trip home to New Zealand to celebrate. On applying for a passport for baby Moana, they discovered that because neither of them had been born in New Zealand, Moana was not deemed to be a New Zealand citizen. As tangata whenua (indigenous people) of New Zealand, Rawiri and his whanau (family) did not believe this was right.⁷⁰

In the context of the section 7(2) requirement to register, it was further noted:

Whai muri, i te Mei o 2000, i mea atu a DIA ki te 'Consultation Draft: Citizenship 2000 – The Review of the Citizenship Act 1977', '[i]t is important that New Zealand's citizenship law reflects our growing understanding of the role of the Treaty of Waitangi, the increasing diversity within our society and the greater international mobility of people generally'. Hei whakamōhio noa, i tukua tētahi taura, kua pōhewatia noa, kia whakaatu ai i ngā raru tērā pea ka tau ki te Māori, he taura e ōrite nei ki tā te kaikerēme o tēnei ruku tātari:

Mō te āhua o te tikanga o wehenga 7(2) kia rēhitatia, i kī pēnei hoki:

If a citizen by descent does not register their citizenship, and so loses it, that person has no automatic right to return to, or live in, New Zealand. Some of those at threat of losing their citizenship are descendants of Māori. This may be seen as contrary to the provisions of the Treaty of Waitangi.⁷¹

68. 'Cabinet Social Policy Committee Review of Citizenship Act 1977: Paper Three – Citizenship by Descent', 16 September 1999, p 3 (doc A17, p 27).

69. 'Consultation Draft: Citizenship 2000 – the review of the Citizenship Act 1977', 10 May 2000, p 3 (doc A17, p 39).

70. 'Consultation Draft: Citizenship 2000 – the review of the Citizenship Act 1977', 10 May 2000, p 9 (doc A17, p 45).

71. 'Consultation Draft: Citizenship 2000 – the review of the Citizenship Act 1977', 10 May 2000, pp 23–24 (doc A17, pp 59–60).

More broadly, DIA noted:

Me te kōrero whānui a DIA:

Some people may consider that limiting the passing of citizenship by descent to the first generation born overseas is inconsistent with the Treaty of Waitangi because it means that some Māori born overseas will have no claim to New Zealand citizenship and therefore no automatic right to return to New Zealand.⁷²

The paper also raised two further points: whether the English language requirement under section 8 could be satisfied by a knowledge of te reo Māori⁷³ and whether the oath new citizens take at their naturalisation ceremony should include a recognition of the Treaty of Waitangi.⁷⁴ Te reo Māori was made an official language in 1987. In 1999 in the *Wananga Capital Establishment Report*, the Tribunal said there was ‘no doubt’ that te reo Māori is a ‘highly valued and irreplaceable taonga’ that the Crown had a duty to actively protect.⁷⁵ As the Tribunal has stated before, under Article 2 of the treaty, ‘Māori were

Nā taua tuhinga i whakaputa ngā take e rua anō: āe ranei mā te mōhio ki te reo Maori e whakatutuki te tikanga o wehenga 8 mō te reo Pākehā, ka mutu, pena ka whai wāhi atu tētahi kōrero mō te Tiriti o Waitangi ki te oāti e tukuna ai e ngā kirirarau hou i tō rātou rā whakanui. I te tau 1987, i whakamanatia ai te reo Māori hei reo matua. I te tau 1999, i te *Wananga Capital Establishment Report*, i mea atu te Taraipunara, he ‘no doubt’ ko te reo Māori he ‘highly valued and irreplaceable taonga’ e tika ana kia matapopore morokihia e te Karauna e ai ki tana kawenga. Me tā te Taraipunara kī atu, e ai ki Atikara 2 o te

72. ‘Consultation Draft: Citizenship 2000 – the review of the Citizenship Act 1977’, 10 May 2000, p25 (doc A17, p 61).

73. ‘Consultation Draft: Citizenship 2000 – the review of the Citizenship Act 1977’, 10 May 2000, p43 (doc A17, p 79).

74. ‘Consultation Draft: Citizenship 2000 – the review of the Citizenship Act 1977’, 10 May 2000, p49 (doc A17, p 85). During the naturalisation ceremony, either an oath of allegiance or an affirmation of allegiance must be made, in English or te reo Māori. The oath of allegiance reads: ‘I [say your name] swear that I will be faithful and bear true allegiance to His Majesty King Charles the Third, King of New Zealand, his heirs and successors according to law, and that I will faithfully observe the laws of New Zealand and fulfil my duties as a New Zealand citizen. So help me God.’ (‘Ko ahau, ko [say your name] e kī taurangi ana ka piri honga ahau, ka piripono ki Te Arikinui Kingi Tiāre te Tuatoru, te Kingi o Aotearoa, me ōna uri ake me ōna whakakāpi e ai ki te ture, ā, ka aro piri honga ahau ki ngā ture o Aotearoa me te whakatutuki i āku mahi hei kirirarau o Aotearoa. Nō reira e te Atua, āwhinatia mai ahau.’) The affirmation of allegiance reads: ‘I [say your name] affirm that I will be faithful and bear true allegiance to His Majesty King Charles the Third, King of New Zealand, his heirs and successors according to law, and that I will faithfully observe the laws of New Zealand and fulfil my duties as a New Zealand citizen.’ (‘Ko ahau, ko [say your name] tēnei e whakaū pono ana ka piri honga ahau, ka piripono ki Te Arikinui Kingi Tiāre te Tuatoru, te Kingi o Aotearoa, me ōna uri ake me ōna whakakāpi e ai ki te ture, ā, ka aro piri honga ahau ki ngā ture o Aotearoa me te whakatutuki i āku mahi hei kirirarau o Aotearoa.’); ‘Citizenship ceremonies’, New Zealand Government, <https://www.govt.nz/browse/passports-citizenship-and-identity/nz-citizenship/how-to-apply-for-nz-citizenship/citizenship-ceremonies>, accessed 16 October 2025.

75. Waitangi Tribunal, *The Wananga Capital Establishment Report* (Wellington: Legislation Direct, 1999), p 50.

guaranteed the full protection of their rangatiratanga over their taonga.⁷⁶

A few years later, as Ms Carpinter and Mr Jarvis highlighted in their evidence, DIA produced two papers – ‘Citizenship Issues for Māori Born outside New Zealand’ (July 2006) and ‘An Analysis of New Zealand Citizenship by Descent’ (December 2006). Ms Carpinter and Mr Jarvis stated that these DIA papers were ‘not consulted on or distributed more widely as it was not government policy’. The papers led to no legislative changes.⁷⁷ These papers were produced following the Citizenship Amendment Act 2005 (which, as noted in chapter 2, ended citizenship by birth for the children of foreign visitors).⁷⁸ ‘An analysis of New Zealand citizenship by descent’ did not specifically mention Māori, instead analysing issues of section 7 of the Act more generally. (The phrase ‘family/whakapapa’ appeared once in relation to children born overseas to parents with citizenship by descent.⁷⁹) However, as the ‘Citizenship Issues for Māori Born outside New Zealand’ paper acknowledged:

According to tikanga (Māori customary practices) Māori who migrated from their home rohe (district) may retain certain rights to return to that rohe and those rights also extended to their descendants. In this respect, whakapapa (blood-line), rather than place of birth, is the important factor. Accordingly, traditional customary rights can apply to the foreign-born descendants of Māori who migrated to a rohe that happens to be *outside* of New Zealand.

Under current law, if an overseas-born Māori is not a citizen, he or she requires permission from the New Zealand Department of Labour to visit, or live in, New Zealand. This means that he or she could potentially be denied entry to New Zealand and

Tiriti, ‘Māori were guaranteed the full protection of their rangatiratanga over their taonga.’

I ā rāua taunakitanga, i aro atu a Ms Carpinter rāua ko Mr Jarvis ki ngā tuhinga e rua nā te DIA – ‘Citizenship Issues for Māori Born outside New Zealand’ (July 2006) me ‘An Analysis of New Zealand Citizenship by Descent’ (December 2006). I mea atu a Ms Carpinter rāua ko Mr Jarvis, ko ēnei tuhinga DIA ‘not consulted on or distributed more widely as it was not government policy’. Kāhore ētahi panonitanga ture i whai i ēnei tuhinga. I puta ēnei tuhinga whai muri i te Citizenship Amendment Act 2005 (hei toai i a wāhanga 2, nāna i aukati te āheinga o ngā tamariki a te manene kia whiwhi ai i te kiri-toto). Kāhore a ‘An analysis of New Zealand citizenship by descent’ i whakaingoa marika i te Māori, engari i tātarihia whānuihia ētahi take ki roto i a wehenga 7 o te Ture. (he kōtahi te putanga o te rerenga ‘family/whakapapa’ mō te take o ngā tamariki i whānau mai ai i tāwāhi ki ngā mātua he kiri-heke). Heoi anō, e mea ana te tuhinga ‘Citizenship Issues for Māori born outside New Zealand’:

76. Waitangi Tribunal, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington: Legislation Direct, 2013), p 66.

77. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p [18].

78. Melanie Carpinter and Adrian Jarvis, brief of evidence (doc A11), p [18].

79. Department of Internal Affairs, ‘An Analysis of New Zealand Citizenship by Descent’, December 2006, p 18 (doc A11(a), p 54).

ultimately access to his or her ancestral home marae, despite having a whakapapa link to New Zealand.⁸⁰

To remedy this possible occurrence, the paper commented on the potential for an amendment to the Act to provide for ‘multi-generational citizenship by descent’:

Hei whakatikatika i tēnei, i tuku kōrero te tuhinga mō te pitomata o te panonitanga o te Ture kia whakamanatia te ‘multi-generational citizenship by descent’:

If the Citizenship Act provided for multi-generational citizenship by descent, there would be no legal impediment to any overseas-born Māori coming to New Zealand. Having a provision for multi-generational citizenship by descent would acknowledge that some people born overseas have deep family and home ties to New Zealand that stretch back many generations. These links can be strong despite birth in a foreign country.⁸¹

The paper did not comment on how many generations any amendment should extend the provision to (such as Ireland’s two-generation policy discussed in chapter 2), but ‘An analysis of New Zealand citizenship by descent’ did also state that ‘providing for multi-generational citizenship by descent would create significant risks.’ Two primary risks were identified:

Kāhore te tuhinga i tuku kōrero mō te hia whakareanga e tika ana kia whai wāhi atu ki tētahi panonitanga o ngā wāhanga (pērā i a Airani me tana kaupapa here rua-whakareanga kua kōrerotia ki wāhanga 2), engari i ki a ‘An analysis of New Zealand citizenship by descent’, ‘providing for multi-generational citizenship by descent would create significant risks.’ E mea nei ngā mea matua e rua:

large numbers of people, many generations removed from New Zealand, arriving here *en masse* should an economic, political or environmental disruption occur overseas. This could result in an unsustainable burden on the country’s resources, such as schools, hospitals, housing, and income support capacity; and

Australia re-evaluating the terms of the Trans-Tasman Travel Arrangement because the new category of New Zealand citizen would be automatically able to live in Australia.⁸²

As mentioned in chapter 2, another paper was produced for DIA in 2006, ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’ by David Kingi, who wrote:

Hei toai noa i a wāhanga 2, i whakaputa a DIA i tētahi anō tuhinga nā David Kingi i te tau 2006, ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’, me tana ki:

an argument could be made that the Crown has an obligation under the Treaty of Waitangi to protect the New Zealand citizenship rights of Māori born out of New Zealand. Māori might for example regard New Zealand citizenship as a *taonga* under Article 11 of the

80. Department of Internal Affairs, ‘Citizenship issues for Māori born outside New Zealand’, July 2006, p 13 (doc A11(a), p 25).

81. Department of Internal Affairs, ‘Citizenship issues for Māori born outside New Zealand’, July 2006, p 13 (doc A11(a), p 25).

82. Department of Internal Affairs, ‘Citizenship issues for Māori born outside New Zealand’, July 2006, pp 13–14 (doc A11(a), pp 25–27).

Treaty that the Crown is obligated to protect. This protection might be extended to Māori born out of New Zealand whose parents were also born out of New Zealand.⁸³

However, Mr Kingi described extending citizenship rights to ‘remoter generations’ as ‘moot’, writing:

Engari, ko te whakaaro o Mr Kingi mō te whakarahinga o ngā mōtika kiriraru ki ngā ‘remoter generations’, he ‘moot’, me te ki:

Even if we accepted that citizenship was a *taonga*, there is no relevant case law and no clear guidance as to how it might be incorporated into the rules of citizenship by descent. The issue was raised in discussion that, according to *tikanga* (Māori customary practices), Māori who emigrated from their home *rohe* (district) retained certain rights to return to that *rohe* and that those rights also extended to their descendants. The necessary corollary however is that these traditional customary rights are applicable by analogy to include modern Māori who had more recently emigrated not merely to some other *rohe* within Aotearoa New Zealand, but overseas.

Arguably, our citizenship rules are consistent with the *tikanga* of *ahi kā*. A child born out of New Zealand to a parent who had left New Zealand may be regarded as *ahi tere* – their rights are unstable but may be reactivated by providing proof of identity and applying for recognition of their citizenship by descent through at least one parent who is a New Zealander.⁸⁴

However, Waihoroi Shortland stated that the provisions of the Act ‘run counter to everything that being Māori is about, to the very essence of what it means to be Māori’. In Mr Shortland’s view: ‘It matters little where we may wander in the world; nothing changes our capacity to identify as Māori and as tangata whenua in Aotearoa. It is in this way that our citizenship is wholly related to our whakapapa.’⁸⁵ Mr Shortland’s views are similar to the High Court of Australia’s ruling in *Love v Commonwealth* (discussed in chapter 2) that Aboriginal Australians cannot be considered ‘aliens’ under the Australian Constitution. And, as Ms Waldron wrote:

Engari, e mea ana a Waihoroi Shortland, ko ngā wāhanga o te Ture, ‘run counter to everything that being Māori is about, to the very essence of what it means to be Māori’. Ki tā Mr Shortland titiro: ‘It matters little where we may wander in the world; nothing changes our capacity to identify as Māori and as tangata whenua in Aotearoa. It is in this way that our citizenship is wholly related to our whakapapa’. He ōrite ngā whakaaro o Mr Shortland ki ērā o te Kōti Teitei o Ahitereira i *Love v Commonwealth* (kua kōrerotia i wāhanga 2) inā rā ehara te Iwi Taketake o Ahitereiria i te ‘manene’ e ai ki te Australian Constitution. Me te tuhi atu a Ms Waldron:

According to *tikanga*, Māori who migrate from their district of origin still have rights in relation to that district and can pass such rights on. In other words, the restrictive law

83. David Kingi, ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’, June 2006 (doc A11(b)), p 11.

84. David Kingi, ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’, June 2006 (doc A11(b)), p 11.

85. Waihoroi Shortland, brief of evidence (doc A3), p 1.

on citizenship conflicts with tikanga because it focuses on place of birth whereas tikanga focuses on whakapapa.⁸⁶

Likewise, the NZMC submitted:

I pērā hoki ngā tāpaetanga a NZMC:

tikanga is dynamic and ever evolving, therefore hapū as a fluid and adaptable social unit, is able to receive Māori who are born in another location outside of Aotearoa and identify them as part of the collective.

A person remains a member of their hapū regardless of where they reside, as their connection is genealogical and spiritual, through whakapapa and wairuatanga and not based upon geographical boundaries.⁸⁷

However, as the NZMC stated, the Citizenship Act 1977 ‘creates a legal framework that does not reflect this flexibility’. Rather, the Act ‘requires individuals of Māori descent who are born overseas to apply for citizenship by descent or grant, often through costly and bureaucratic processes.’⁸⁸

Heoi anō, i mea atu te NZMC, te Citizenship Act 1977, ‘creates a legal framework that does not reflect this flexibility’. Engari kē ia, te Ture ‘requires individuals of Māori descent who are born overseas to apply for citizenship by descent or grant, often through costly and bureaucratic processes’.

In our view, the lack of any provision requiring the Act to adhere to the principles of the Treaty of Waitangi has led to it breaching those principles in three key ways. First, that the Act has no treaty clause reflects the lack of consultation with Māori when the legislation was being designed in the 1970s. This lack of consultation occurred prior to 1992. Under section 6AA of the Treaty of Waitangi Act 1975, the Tribunal has no jurisdiction to make findings or recommendations for historical (pre-1992) matters for a contemporary claim (filed post 1 September 2008) – such as this claim. In our case, the initial lack of consultation is beyond the Tribunal’s jurisdiction when making findings on contemporary claims. However, the Crown did commission internal advice regarding the Act and its implications for Māori children of citizens by descent in 1999–2000 and 2006. As mentioned, to our knowledge,

Ki tā mātou titiro, nā te korenga o tētahi wāhanga e mea nei me tahuri te Ture ki ngā mātāpono o te Tiriti o Waitangi, i hua ake ai ko ngā takahitanga matua e toru. Tuatahi, kāhore tō te Ture tētahi whiti tiriti, e tohu ana tērā i te tamōtanga o tā rātou noho tahi me te Māori nō rātou e whakairo ture ana i ngā tau o te 1970, e tohu ana hoki i te takahitanga ki te mātāpono o te houruatanga. I puta tēnei tamōtanga noho ngātahitanga i mua i te tau 1992. E ai ki a wehenga 6AA o the Treaty of Waitangi Act 1975, kāhore he mana tō te Taraipiunara ki te tuku i ngā kitenga, i ngā tūtohunga rānei mō ngā take ā-hitoria (i mua i te 1992) kua tukuna i tētahi kerēme o inaiānei (i tukuna whai muri i te 1 September 2008) – pēnei i tēnei kerēme. I tēnei horopaki, ka noho te tamōtanga tuatahi kei waho atu o tō te Taraipiunara mana i a mātou e tuku nei i ngā kitenga mō ngā kerēme o inaiānei. Engari i ngā tau 1999–2000 me te 2006, i

86. Holly Waldron, ‘Overseas-Born Māori and New Zealand Citizenship’, Victoria University of Wellington Institute of Policy Studies, May 2011 (doc A15), p16.

87. Submission 3.3.2, p5.

88. Submission 3.3.2, p5.

the Crown chose not to consult widely during the development of this advice. It is imperative that the Crown consult with Māori when applying any legislation that impacts them, and especially so if that law could sever something as centrally important as whakapapa or connection to whenua. By *continuing* to apply the Act without engaging in full consultation with Māori, the Crown is in breach of the principles of partnership, active protection, and good government.

Secondly, without a treaty clause or any acknowledgement of Māori as New Zealand's indigenous people, the Act cannot be said to actively protect Māori citizenship rights. While the Act does allow for overseas Māori born to parents with citizenship by descent to apply for citizenship, this is a passive mechanism that places administrative burdens on the applicant (the application process is analysed in greater detail in the next section). The Act, therefore, does not actively seek to protect Māori whakapapa links, connection to whenua or tūrangawaewae, or other aspects of Māori culture that can only survive by Māori being legally allowed to remain in New Zealand, such as the transmission of language, mātauranga, and tikanga.

Thirdly, the Act effectively empowers the Crown to determine the legitimacy of someone's whakapapa, in breach of the principles of active protection and rangatiratanga. If a member of a hapū cannot return to or reside in New Zealand because of their status under the Act, the Crown's kāwanatanga powers are essentially overriding the rangatiranga guaranteed to Māori under article 2 of the treaty. Only hapū, as a collective, can decide who

tonoa e te Karauna kia whiwhi ia i ētahi kupu tohutohu mō te Ture me ana pānga ki ā ngā mātua kiri-heke tamariki. Hei toai noa, ki tā mātou titiro, i whakatauhia e te Karauna kia kaua ia e kōrero whānui ki te iwi i te wā o tēnei kaupapa. Me noho tahi te Karauna ki te Māori mō ngā ture katoa e hāngai nei ki a rātou, mātāmua ake ko ngā ture e pēhia kinotia nei ngā hirahiritanga matua pērā i te whakapapa, i te hononga ā-whenua hoki. Nā te haerenga tonutanga o tā rātou whakamahi i te Ture, me te kore e noho tahi ki te Māori, e takahi ana te Karauna i ngā mātāpono o te houruatanga, te matapopore moroki me te kāwanatanga whai i te tika.

Tuarua, i a ia e noho whiti tiriti kore ana, kāhore hoki e tahuri ana ki te Māori hei iwi taketake o Aotearoa, kāhore te Ture i te matapopore moroki i ngā mōtika ā-tangata whenua. Ahakoa e tuku ana te Ture i te āheinga ki ngā Māori i whānau mai ai i tāwāhi ki ngā mātua kiri-heke, kia tonoa mō te tangata whenuatanga, he whakaritenga rere noa tēnei e whakataumahatia ana ngā kaitono (hei te wāhanga whai mai, āta tātarīhia ai te hātepe tonu). Nō reira, kāhore te Ture i te matapopore moroki i te whakapapa o te Māori, i ngā hononga whenua, tūrangawaewae rānei, i ētahi atu wāhanga o te ahurea Māori ekore rawa e ora pena kāhore e whakaaetia ana tā te Māori noho mana nei ki Aotearoa, pērā i te tuku ihotanga o te reo, o te mātauranga, o te tikanga anō hoki.

Tuatoru, i tōna tikanga ka tuku te Ture i te mana ki te Karauna kia whakatauhia taratahitia te tika o tō te tangata whakapapa, he takahitanga tēnei ki ngā mātāpono o te houruatanga me te rangatiratanga. Ki te kore tētahi mema o tētahi hapū e āhei ana te hoki, te noho rānei ki Aotearoa nā tō rātou tūrangā e ai ki te Ture, kua aukatihia te rangatiratanga o te Māori i whakapūmautia ai e atikara 2 o te Tiriti, e te mana ā-kāwanatanga o te Karauna.

belongs to that hapū, but their decision means little if one of their own can be prevented from returning to their rohe by the Crown.

Lastly, by limiting citizenship by descent to one generation in the Act, the Crown essentially imposes a decision on Māori that does not exist in tikanga. Māori who wish to pursue opportunities overseas, or who have no choice but to leave New Zealand for whatever reason, must weigh this action up against the risk of potentially losing the ability to pass on their citizenship to their children. This is a breach of the principle of options.

3.3.2 Are the processes for applying for citizenship by grant and special grant compliant with the treaty?

In chapter 2, we outlined the processes for applying for citizenship by grant or special grant. These processes provide a pathway for those who whakapapa Māori to apply for and – if successful – acquire New Zealand citizenship. Moe Milne (an Officer of the New Zealand Order of Merit for her services to Māori and health), however, stated that the idea of someone with Māori whakapapa having to apply for any type of citizenship at all ‘is wrong and scary.’⁸⁹ Meanwhile, Mr Shortland submitted that the process for obtaining citizenship ‘appears to bar Māori from coming home.’⁹⁰ Countering this view, ‘An analysis of New Zealand citizenship by descent’ concluded that it was ‘not necessary to introduce multi-generational citizenship by descent in order to recognise ongoing links with New Zealand’ because the Act ‘already provides for this by way of a special grant

Mā te hapū anahe, me tana kotahitanga, e whakatau ko wai ngā mema o te hapū, engari kāhore he mana o tā rātou whakatau ki te aukatihia tā te mema hoki ki tō rātou rohe e te Karauna.

Hei whakakapi ake, i tā rātou whakawhāiti i te tūranga kiri-heke ki te whakareanga kotahi anahe i roto i te Ture, e tukuna kinotia ana e te Karauna tētahi whakataunga e tukituki nei ki te tikanga Māori. Mō ngā Māori e hiahia ana ki te whai mahi ki tāwāhi, ngā Māori rānei me wehe i a Aotearoa mō tētahi take, ka mate rātou ki te kōwhiri i tētahi huarahi e whakakore nei pea i te āheinga ki te tuku i te tūranga kirirarau ki ā rātou tamariki. He takahitanga tēnei ki te mātāpono o te kōwhiringa.

3.3.2 Āe rānei, e noho tahi ana ngā hātepe tonono mō te kiri-tuku me te kiri-whakaae ki te tiriti?

I wāhanga 2, i whakatakoto mātou i te hātepe tonono hei whai mō te kiri-tuku me te kiri-whakaae. Ko ēnei hātepe ngā huarahi hei whai mā te tangata, he whakapapa Māori ōna, kia tonono mō – kia whiwhi rānei, pena e whakaaetia ana te tonono – te kiriraraunga Aotearoa. Engari i mea atu a Moe Milne (he Officer of the New Zealand Order of Merit mō āna mahi hei hāpai i te hauora o te Māori), he ‘wrong and scary’ te whakaaro me tonono tētahi tangata, he whakapapa Māori ōna, kia whiwhi i tētahi momo kiriraraunga. Mō te hātepe kia whiwhi kiriraraunga, i mea atu a Mr Shortland ‘appears to bar Māori from coming home’. Hei whakautu i tērā, i mea atu te ‘An analysis of New Zealand citizenship by descent’, he ‘not necessary to introduce multi-generational citizenship by descent in order to recognise ongoing links with New Zealand’ inā hoki ko te Ture ‘already

89. Moe Milne, brief of evidence (doc A2), p3.

90. Waihoroi Shortland, brief of evidence (doc A3), p1.

of citizenship’ – as in, under section 9.⁹¹ Furthermore, Mr Kingi considered that ‘there are no practical barriers to children of parents with citizenship by descent being granted New Zealand citizenship so long as “a demonstrable ongoing link with New Zealand” can be shown.’⁹²

The Act allows Māori born overseas to apply to have their citizenship by descent converted into citizenship by grant (under section 8), and it allows Māori born overseas to parents with citizenship by descent to apply for citizenship by special grant (under section 9). But are the processes for doing so treaty-compliant?

As discussed in chapter 2, when applying under sections 8 or 9, applicants must meet the conditions of the Act, provide evidence in support of this, pay a fee, and wait for their application to be processed. Chapter 2 also detailed how, despite it not being prescribed in the Act, a consideration of whakapapa is included in DIA’s *New Zealand Citizenship – Citizenship Guidance Document* for determining cases of citizenship by grant and special grant. However, Mr Kingi did harbour two concerns about this:

The first is that the requirement for ‘a demonstrable ongoing link with New Zealand’ is DIA policy written into a citizenship office manual to guide officials making recommendations to the Minister about applicants seeking citizenship by grant. There is no requirement that the Minister must or even may take this policy into account. Office manuals are written and may be amended with relative ease. If it were a regulatory or statutory requirement, there would be more peace of mind for Māori concerned about their relatives or themselves losing citizenship.

The second concern is that there is no further guidance as to how the phrase ‘a demonstrable ongoing link with New Zealand’ is to be interpreted. For example, if the applicant could show that they had an ancestor who had citizenship by birth, would that be

provides for this by way of a special grant of citizenship’ e ai ki wehenga 9. Hei tāpiri ake, i kī a Mr Kingi, ‘there are no practical barriers to children of parents with citizenship by descent being granted New Zealand citizenship so long as “a demonstrable ongoing link with New Zealand” can be shown.’

Ahakoia e tuku ana te Ture i te āheinga ki te Māori i whanau mai ai i tāwāhi te tono kia whakarerekētia tana kiri-heke kia noho hei kiri-tuku (e ai ki wehenga 8), ka mutu, e whakaaetia ana e te Ture kia tonoa e te Māori i whānau mai ai i tāwāhi ki ngā mātua he kiri-heke, mō te kiri-whakaae (e ai ki wehenga 9), āe rānei e noho tahi ana aua hātepe ki te tiriti?

Hei tā te kōrero ki wāhanga 2, i tā rātou tono e ai ki wehenga 8 me 9, me whakatatuki ngā kaitono i ngā paearu o te Ture, tukua ngā taunakitanga hei tautoko i tēnā, utua te moni, katahi ka tatari kia kōkiritia tā rātou tono. I mea atu hoki a wāhanga 2, ahakoia kāhore i kōrerotia e te Ture te take o te whakapapa, kua whakaurua ia ki tā te DIA *New Zealand Citizenship – Citizenship Guidance Document* mō te whakatau i ngā kēhi kiri-tuku, kiri-whakaae anō hoki. Heoi anō, e rua ō Mr Kingi āwangawanga ki tēnei:

91. Department of Internal Affairs, ‘Citizenship issues for Māori born outside New Zealand’, July 2006, p 14 (doc A11(a), p 27).

92. David Kingi, ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’, June 2006 (doc A11(b)), p 13.

enough? Or would that ancestor also need to have left other descendants still living in New Zealand for the applicant to qualify?⁹³

Mr Kingi stated there existed ‘a clear distinction between someone with *whakapapa* or genuine sanguine links to New Zealand, and someone whose remote ancestor lived in New Zealand for as little as three years.’ However, there remained a concern that ‘[t]he only place this distinction is recognised is in the office manual, and the recognition is not unequivocal.’⁹⁴ The Tribunal did not receive evidence as to who wrote the guide to practice or whether they consulted with Māori when doing so.

However, the methods by which a Māori applicant might ‘prove’ their *whakapapa*, raises questions in respect of treaty principles. For example, actress and witness to this inquiry, Keisha Castle-Hughes (Ngāti Porou, Tainui, Ngāpuhi), who was born in Australia to an Australian father and a Māori mother, recently went through the process in order to acquire New Zealand citizenship for her daughter born in the United States. She submitted:

Once I had gathered the information from my iwi, which was also tricky because Māori systems are different from bureaucratic systems, the department asked me things like, ‘oh, well, can you prove that you’re Ngāti Porou?’ And I thought, ‘well, my tūpuna are buried in an urupā there.’ I did not know what else to tell them.

My whānau and I gathered our paperwork, such as letters of support from people in our hapū who are on boards, and then put together a petition essentially saying, ‘we support Keisha’s daughter as our whanaunga.’ I was then told that that was not acceptable paperwork that could be considered by Internal Affairs.

The citizenship process ultimately challenges our own mauri as Māori. At one point I was asked, ‘why aren’t you registered to your iwi?’ Then I went to register on the online registry for my maternal side, for Ngāti Te Ata o Waiohua, and I was questioned, ‘why did you only register now?’ The Government is asking me to prove *whakapapa* in a western

I mea atu a Mr Kingi, i reira ‘a clear distinction between someone with *whakapapa* or genuine sanguine links to New Zealand, and someone whose remote ancestor lived in New Zealand for as little as three years’. Engari he āwangawanga tonu ka puta ‘[t]he only place this distinction is recognised is in the office manual, and the recognition is not unequivocal’. Kāhore i tae mai ki te Taraipiuara ngā taunakitanga mō te kaituhi o te tuhinga tukanga, mō te pātai hoki āe rānei kua kōrero ia ki ngā Māori i a ia e tuhi ana i tana pūrongo.

Heoi anō, ki te titiro tātou ki ngā huarahi hei whai mā te Māori kia whakaatu ai i tana whakapapa, ka puta mai ētahi pātai mō ngā mātāpono o te tiriti. Hei tauria, i ngā rā tata i whāia te hātepe kirirarau o Aotearoa e Keisha Castle-Hughes (Ngāti Porou, Tainui, Ngāpuhi), tētahi kaiwhakaari, he kaikōrero anō hoki ki tēnei ruku tātari i whānau mai ai i Ahitereiria ki tētahi pāpā nō Ahitereiria me tētahi māmā Māori, mō tana kōtiro i whānau mai ai i Amerika. Hei tāna:

93. David Kingi, ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’, June 2006 (doc A11(b)), p 14.

94. David Kingi, ‘Impact of the Citizenship Act on Māori Born Outside of New Zealand’, June 2006 (doc A11(b)), p 14.

capacity which is actually impossible. It is not something you hang up on your wall like a degree. It is inherently part of us.

The Government wanted proof of how much time I had spent on the marae and whether I was participating in Māori culture, such as kapa haka. That is not quantifiable to us.

It is this real te ao Pākehā lens of what being Māori is. It is in these ways that I believe the system is deeply, systemically racist. That it is asking, 'well, how Māori are you?'⁹⁵

Ms Castle-Hughes described the process as 'long and distressing' and 'incredibly racist'.⁹⁶ Meanwhile, Mr Ruddock described it as 'lengthy' and 'demeaning'.⁹⁷

Not all Māori will have the type of documentation that DIA considers adequate proof of whakapapa, such as Māori Land Court and iwi membership documents or letters from whānau. Additionally, not all Māori know their iwi or hapū, and this is likely to be even more common amongst overseas Māori, the very people being asked to provide such information. Meanwhile, some Māori may have documentation that proves their affiliation to a certain iwi or hapū, but not to others, forcing them to highlight one aspect of their whakapapa while ignoring another just for the sake of satisfying a Government checklist. The issue of the appropriateness of the evidence is mirrored in the appropriateness of those evaluating it; they might be DIA staff with no knowledge of tikanga Māori, and even if they did have this knowledge, is it for a Crown official (be they staff or the Minister) to approve or disapprove of someone's whakapapa? Furthermore, while section 9 empowers the Minister to use discretion, Ms Castle-Hughes noted that during her daughter's application process, 'the Minister changed three times'.⁹⁸ She submitted that she and her husband were put through 'a full-blown, merry-go-round

I tana whakamārama atu mō te āhua o te hātepe i kī ia, he 'long and distressing', he 'incredibly racist'. Me te tāpiri hoki i tā Mr Ruddock kōrero, he 'lengthy', he 'demeaning'.

Ehara i te mea kei a ngā Māori katoa ngā momo tuhinga e meatia nei e DIA koira ngā mea e tika ana kia whakaatuhia te whakapapa, pērā i ngā tuhinga nā te Kooti Whenua Māori, nā te Rūnanga ā-Iwi, ngā reta ā-whānau anō hoki. Ka mutu, ehara i te mea e mōhio ana ngā Māori katoa i tō rātou iwi, hapū rānei, kāhore e kore ka horapa tēnei āhuatanga ki ngā Māori e noho tāwāhi ana, koia hoki ngā Māori e inoitia nei kia tukua aua mōhiohio. He mea anō, kei a ētahi Māori ngā tuhinga e whakaatu nei i tā rātou hono ki tētahi iwi, hapū rānei, engari kāhore i pērā ki ērā atu hono, nā konā, ka mate rātou ki te tautuhi i tētahi taha o tō ratou whakapapa, engari e arokore ana ki tērā atu kia ea ai tā te Kāwanatanga arowhai. E noho tahi ana te take o te tika o ngā taunakitanga ki te tika o ngā tāngata mā rātou e aromātai; tērā pea he kaimahi DIA kāhore ōna mōhiotanga ki ngā tikanga Māori, māna he mōhiotanga ōna engari e tika ana ka riro mā tētahi āpiha Karauna (kaimahi mai, Minita mai rānei) te whakae, te whakahē rānei i te whakapapa o te tangata? Hei tāpiri ake, ahakoa mā wehenga 9 e tuku te āheinga ki te Minita kia whakamahia tana mana, i kī a Ms Castle-Hughes mō te hātepe tonu

95. Keisha Castle-Hughes, brief of evidence (doc A5), pp 3, 6.

96. Keisha Castle-Hughes, brief of evidence (doc A5), p1; Transcript 4.1.1, p 87.

97. John Ruddock, brief of evidence (doc A1), p 2.

98. Keisha Castle-Hughes, brief of evidence (doc A5), p 2.

process where we tried to find a pathway for our daughter's citizenship so we could move back [to New Zealand] as a whānau.⁹⁹

a tana kōtiro, 'the Minister changed three times'. I mea atu ia mō te haerenga āna me tana hoa, he 'a full-blown, merry-go-round process where we tried to find a pathway for our daughter's citizenship so we could move back [to New Zealand] as a whānau.

Another key issue that arose in this inquiry is that most people simply do not know that legal distinctions between types of citizenship even exist. As Ms Waldron noted, '[a]n individual must know that this option is available as well as the consequences of being a citizen by descent who was born overseas.'¹⁰⁰ But she added:

Ko tētahi take anō i puta i tēnei ruku tātari, ko te kuare o te nuinga o ngā tangata ki ēnei momo kiriraraunga me ngā rerekētanga ā-ture. E ai ki a Ms Waldron, '[a]n individual must know that this option is available as well as the consequences of being a citizen by descent who was born overseas'. I ki hoki ia:

Knowledge of this process is unlikely to be widespread because the consequences of being a citizen by descent compared with being a citizen by grant are not widely publicised. It is also unlikely to be widely known (because relevant information is not readily available) that an individual who is a New Zealand citizen by descent can become a New Zealand citizen by grant.¹⁰¹

The terminology is also confusing from a te ao Māori viewpoint; why would citizenship by descent (which evokes whakapapa) be considered less valuable than citizenship by grant (which evokes te ao Pākehā)? As Ms Castle-Hughes submitted:

Ki tā te tirohanga Māori, e rangirua ana te tangata i ēnei rerenga; he aha e kiia ai, kei raro kē atu te wāriu o te kiri-heke (mā te whakapapa tēnei) i te kiri-tuku (mā tētahi hātepe ao Pākehā)? E ai ki a Ms Castle-Hughes:

I was asked many times directly by case managers at Internal Affairs over this process, 'well, why didn't you at some point in your life change your citizenship from "citizenship by descent" to "citizenship by grant"?' I said, 'well, firstly, I didn't know there was a difference, and secondly, why would I change my citizenship from a whakapapa citizenship to "by grant", which is often given to foreigners?' I have since learned in this process that had I had citizenship by grant, I would not have had this issue.¹⁰²

As noted in chapter 2, DIA ran the Staykiwi campaign for those affected by the requirement to register citizenship

Hei toai i tā wāhanga 2, i whakahaerehia e DIA te whakatairanga o Staykiwi mā te hunga ka pāngia e te tikanga kia rehitatia

99. Keisha Castle-Hughes, brief of evidence (doc A5), p 1.

100. Holly Waldron, 'Overseas-Born Māori and New Zealand Citizenship', Victoria University of Wellington Institute of Policy Studies, May 2011 (doc A15), p 8.

101. Holly Waldron, 'Overseas-Born Māori and New Zealand Citizenship', Victoria University of Wellington Institute of Policy Studies, May 2011 (doc A15), p 8. We note that at the time of writing this report, DIA's website currently does now provide this information, see <https://www.govt.nz/browse/passports-citizenship-and-identity/nz-citizenship/types-of-citizenship-grant-birth-and-descent>.

102. Keisha Castle-Hughes, brief of evidence (doc A5), p 4.

by descent before age 22 (which was then dropped by the 2001 amendment). However, we received no evidence from the Crown that the Government has ever run any awareness campaigns to highlight the different types of citizenship provided by the Act, particularly the restriction it places on those with citizenship by descent compared to those with other types of citizenship. While it could be argued that one of the duties citizenship places on citizens is informing themselves of the law, we were shown no evidence that the Crown has ever actively sought to inform citizens by descent that their rights are different.

With respect to processing times for applications, which appear to average around 200 days, or roughly six months (see chapter 2), this does not appear inherently problematic. At the hearing, Ms Carpenter and Mr Jarvis noted a key focus of their work is reducing the processing time for all applicants as much as possible.¹⁰³ With measures in place to process an application urgently when circumstances require (as outlined in chapter 2), it does not appear that the processing time for applicants is in breach of the treaty principles. However, this is just the time it takes for an application to be processed by DIA, and does not account for the time it takes an applicant to gather all the evidence that DIA requires (which, as discussed above, can be difficult to do for proving whakapapa). It also does not account for the time delays experienced by people who attempt to navigate a system of which the Crown has not attempted to raise awareness. For example, Ms Castle-Hughes said her first application for her daughter's citizenship was denied with a letter that said she 'has

tō tūranga kirirarau i mua i te huringa tau 22 (nā te panonitanga 2001 tērā i whakakore). Engari, kāhore mātou i kite i ētahi taunakitanga o te Karauna e whakaatu nei i tā te Kāwanatanga whakahaere i tētahi whakatairanga whakaohooho kia mōhio ai te iwi i ngā momo kiriraraunga e tukuna nei e te Ture, me ngā herenga ka tau ki te hunga kiri-heke engari anō ērā ātu tūranga kirirarau. Tērā pea e taea ana te kī, koia hoki tētahi o ngā kawenga kiriraraunga ka tau ki runga i te kirirarau, me mōhio ia ki ngā ture, engari kāhore ētahi taunakitanga i tae ki a mātou e whakaatu nei i tā te Karauna ngana kia whakamōhio atu ki ngā kiri-heke i te rerekētanga o ō rātou mōtika.

Mō te angawā o te ora o tētahi tono, i te āhua nei, he 200 rā, āra he 6 marama te roa (tirohia wāhanga 2), ehara i te mea he raru ki te tai tēnei. I te nohoanga, i whakamōhio mai a Ms Carpenter rāua ko Mr Jarvis, ko tētahi o ō rātou mahi matua, ko te whakaheke i te roa o te wā tatari mō ngā tono katoa, pena e āhei ana. Ki te titiro tātou ki ngā whakaritenga e hāpai nei i te haere ohotata atu o tētahi tono, pena he take o tērā (kua kōrerotia ki wāhanga 2), kāhore e kitea ana tētahi takahitanga o ngā mātāpono o te tiriti ki roto i ēnei angawā. Engari, koina noaiho te wā e tukuna ana e DIA kia kōkiritia tētahi tono, kāhore e whai wāhi mai ana te wā e whakapauhia nei e te kaitono ki te kohikohi i ngā taunakitanga katoa e hiahiatia nei e DIA (nā, kua kōrerotia ki runga, he uaua te whakaatu atu i te hono whakapapa). Kāhore hoki e whai wāhi mai ana te āhuatanga o te pūnaha me ngā tōmuritanga i puta nā te korenga o tā te Karauna ngana ki te tuku whakamāramatanga. Hei tauira, i mea atu a Ms Castle-Hughes, nā tētahi reta i whakakore te tono tuatahi kia whai kiriraraunga

103. Transcript 4.1.1, p140.

no pathway to New Zealand citizenship.¹⁰⁴ It was only upon receipt of this letter that alternative options (such as those provided by sections 8 and 9 of the Act) were made known to Ms Castle-Hughes, costing her and her whānau valuable time.¹⁰⁵

In our view, the processes to apply for citizenship by grant and special grant breach the treaty in various ways. First, the only place in which Māori status as tangata whenua is acknowledged anywhere in these processes is in the DIA's *New Zealand Citizenship – Citizenship Guidance Document*, which briefly notes that whakapapa can be considered as a piece of evidence of longstanding ties to New Zealand in someone's application, alongside other evidence such as bank statements and insurance records. In our view, this could be seen to diminish the importance of whakapapa to being equal to something like a financial document. Despite its name, the guidance document offers no further information about how whakapapa should be considered, or even that it must be, only that it can be. A reading of the guidance document would suggest that whakapapa alone is insufficient evidence, and it must be supported by other evidence to create an overall picture of the applicant's right to New Zealand citizenship. Additionally, the Crown could not provide any evidence about who wrote the guidance document, when it was written, or whether any Māori were consulted when it was produced. This is also a breach of the principle of partnership.

tana kōtiro me tana kī, 'has no pathway to New Zealand citizenship'. Nā te whiwhi i tēnei reta nahe nei i mōhio ai a Ms Castle-Hughes ki ngā kōwhiringa kē atu (pērā i ēra mea kei roto i a wehenga 8 me 9 o te Ture), nā konā kua whakapau ia me tana whānau i ō ratou taima mō te kore noa iho.

Ki tā mātou titiro, e takahi ana ngā hātepe tonu mō te kiri-tuku me te kiri-whakaae i ngā mātāpono o te tiriti. Tuatahi ake, i roto i ēnei hātepe katoa, ko te tuhinga o te DIA ko *New Zealand Citizenship – Citizenship Guidance Document* te tuhinga anahe e aro nei ki te tūranga o te Māori hei tangata whenua, me tana wāhi ki ake, ka whai wāhi mai te whakapapa hei taunakitanga ki tētahi tonu kia whakaatu ai hoki tā te tangata hononga mauroa ki Aotearoa, ko ētahi atu taunakitanga, ko ngā tauākī pūtea me ngā rekoata unihana. Ki te mātou titiro, mā tēnei pea e tuku te hirahiratanga o tō te whakapapa wāriu ki raro, kia noho tahi ki tētahi mea pērā i te tuhinga pūtea. Hāunga tana ingoa, kāhore te tuhinga ārahi i te tuku i ētahi anō mōhiohio mō te āhua o te whai whakaaro ki te whakapapa, me te pātai kē ia, ae rānei me whai whakaaro. Ki te titiro ki ana kupu anahe, i te āhua nei, kāhore e pai ana te whakapapa me tōna kotahi kia noho hei taunakitanga, me whai wāhi mai ētahi atu taunakitanga kia kite ai te katoa o tō te kaitono mōtika kia whiwhi kiriraunga. Hei tapiri ake, tē taea e te Karauna te tuku mōhiohio mai mō te kaituhi o te tuhinga ārahi, nōnaheia i tuhi ai, waihoki, pena rānei kua noho tahi ki te Māori i te wā o tana whakaputanga. He takahitanga anō tēnei o te mātāpono o te houruatanga.

104. Keisha Castle-Hughes, brief of evidence (doc A5), p 2. The letter read that her daughter 'does not have a claim to New Zealand citizenship by descent through you, as you are a citizen by descent yourself. For [redacted] to have a claim through you, you would need to be a New Zealand citizen otherwise than by descent'; Secretary for Internal Affairs to Keisha Castle-Hughes, 21 September 2021 (Keisha Castle-Hughes, supporting documents (doc A5(c)(i)), p [1]).

105. Secretary for Internal Affairs to Keisha Castle-Hughes, 21 September 2021 (Keisha Castle-Hughes, supporting documents (doc A5(c)(i)), pp [1]–[2]).

Secondly, we consider that a process to apply for citizenship which requires a Māori applicant to prove their whakapapa to an unknown and potentially untrained Government official to also breach the principle of active protection. While we acknowledge that asking someone to prove their whakapapa through documentary evidence (such as iwi membership or Māori Land Court documents) is perhaps reasonable in circumstances such as this, it should also be acknowledged that doing so does run counter to what whakapapa is and therefore must be handled appropriately; as Dr Jones stated, whakapapa is ‘more than simply a “genealogical table” or a “family tree” . . . whakapapa provides the foundational explanation not only of why life came to be, but also of how it should be lived.’¹⁰⁶ However, requiring such a central part of Māori cultural identity to conform to a checklist to satisfy the decision-making of an unknown Government official, who might be far removed from the applicant and who might not be adequately trained to interpret such evidence, only serves to further degrade it. It is simply not appropriate for Crown officials to determine the validity of someone’s whakapapa. In this way, this process is also a breach of rangatiratanga, as determining someone’s whakapapa does not fall within the Crown’s kāwanatanga powers. A process such as this is likely to result (and evidently has resulted) in applicants having to prove their ‘Māoriness’ in ways wholly inappropriate, such as answering questions about any previous kapa performances. Furthermore, not all Māori will have documentary evidence available to them. This is even more likely to be the case for Māori overseas, the very people that make applications under the Act, as they are more likely to be further removed from their whānau or hapū – which is why they are making the application in the first

Tuarua, e mea ana mātou ko te hātepe tonu e kia nei me whakaatu atu e te kaitono tana whakapapa ki tētahi āpiha Kāwanatanga kāhore i te mōhiotia, kāhore hoki pea i te whai pūkenga, he takahitanga ki te mātāpono o te matapopore moroki. E mārama ana mātou, i roto i ngā horopaki pēnei i tēnei, ekore e taea te pēhea kia tukua mai e te tangata ngā tuhinga taunaki (pērā i ngā rārangi mema iwi, tuhinga nā te Kōti Whenua Māori rānei) hei whakaatu atu i tōna whakapapa, engari me mātua mōhio hoki, ki te whāia tērā huarahi, e tukituki ana ki te āhuatanga o te whakapapa, nā me āta whāia; hei tā Dr Jones, te whakapapa he ‘more than simply a “genealogical table” or a “family tree” . . . whakapapa provides the foundational explanation not only of why life came to be, but also of how it should be lived’. Engari, ki te ki ake me whai wāhi atu tētahi mea hirahira matua o te ahurea me te tūākiri Māori ki tētahi arawhai kia ea ai tā tētahi āpiha Kāwanatanga mahi whakatau, engari kāhore i te mōhiotia ia, kāhore hoki pea i te mōhio me pēhea te whakamāori i ērā momo taunakitanga, he takahi tērā ki tana mana ake. I te mutunga iho, kāhore e tika ana kia riro mā ngā āpiha Kāwanatanga te whakatau i te whakapapa o tētahi atu. Nō reira, he takahiatanga hoki tēnei hātepe ki te rangatiratanga, inā hoki ehara i te mea ka noho atu te mana whakatau o tō tētahi whakapapa ki te roherohenga o te mana ā-kāwanatanga o te Karauna. Kāhore e kore, ko te otinga ka puta i tētahi hātepe pēnei i tēnei (nā, kua pērā), ka mate te kaitono ki te whai i ngā huarahi kāhore e tika ana kia whakaatu ai i tōna ‘Māoriness’, pērā i te whakautu i ngā pātai mō ētahi tū kapa haka. Ka mutu, ehara i te mea e wātea ana ngā tuhinga taunaki ki ngā Māori katoa. Kāhore e kore ka horapa tēnei āhuatanga ki ngā Māori e noho tāwāhi ana, koia hoki ngā Māori e tuku nei i ngā tonu e ai ki te Ture, inā hoki ko rātou hoki te hunga e noho wehe ana i ō rātou whānau, hapū anō

106. Carwyn Jones, brief of evidence (doc A8), p 6.

place. Any process designed in such ways falls far short of the standards of active protection and rangatiratanga.

Lastly, the process designed by the Crown invariably leads to a breach of the article 3-linked principle of equal treatment. While the intention of the Crown at the time the Act came into force was to treat everyone equally – notably women – it did not consider what is now widely understood as the Crown's duty to pursue equity, that is identifying unique challenges facing Māori and developing, in partnership with them, specific provisions, accommodations, and policies to address these challenges. As the Tribunal has found repeatedly in recent inquiries, it is insufficient to merely impose or refer to 'equal' arrangements, especially where inequities requiring targeted assistance exist.¹⁰⁷ And as the Tribunal noted in *The Te Arawa Mandate Report: Te Wahanga Tuarua* (2005), the principle of equal treatment means that 'the Crown must treat each group fairly vis-à-vis the others, and in doing so, it must do all in its power not to create (or exacerbate) divisions and damage relationships'.¹⁰⁸ However, by placing the emphasis on *where* someone is born rather than *to whom*, the Crown unfairly disadvantages particular groups of Māori, forcing upon them a distinction that does not exist in tikanga. This results in the Crown differentiating between groups of Māori in a way that would not occur in te ao Māori and potentially exacerbating

hoki – te take tuatahi e tukuna nei e rātou te tono. Ko ngā hātepe e whai nei i tēnei āhuatanga, kāhore e eke ki te taumata e tika ana mō te matapopore moroki me te rangatiratanga.

Hei whakakapi ake, kāhore e kore, ka whai tētahi takahitanga o te mātāpono atikara 3, arā te ngākau ōrite, i te hātepe nā te Karauna anō i hangā mai. Ahakoa i reira te hiahia o te Karauna i te wā o te whakamanatanga o te Ture kia ngākau ōrite rātou ki ngā tāngata katoa – arā ko ngā wāhine – kāhore ia i whai whakaaro ki te mea e mōhio nei tātou inaiānei, ki te kawenga o te Karauna kia whai i te mana taurite, ara ko te tautuhi i ngā wero motuhake ka tau ki te Māori, me te hanga tahi mai i ngā wāhanga motuhake, i ngā aheinga me ngā kaupapa here kia tirohia ēnei wero. E ai ki ngā kitenga o ngā Taraipiunara o mua, kāhore e tika ana kia tuku noa, kia aro noa ki ngā whakaritenga 'equal', me whai whakatikahanga marika aua rerekētanga pena e ora ana. I mea atu te Taraipiunara i *The Te Arawa Mandate Report: Te Wahanga Tuarua* (2005), ko te whakamāramatanga o te ngākau ōrite, the Crown must treat each group fairly vis-à-vis the others, and in doing so, it must do all in its power not to create (or exacerbate) divisions and damage relationships'. Engari, ko tā te Karauna waitohu i te *wāhi* i whānau mai ai te tangata, engari anō *nō wai* te tangata, i whakarite mai ia i tētahi āhuatanga kāhore e tika ana, e tukituki ana hoki ki te tikanga Māori, ki ētahi hunga Māori. Me te aha ka tautuhia e te Karauna ētahi hunga Māori nā runga anō i ētahi whakaaro e tukituki ana

107. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wellington: Legislation Direct, 2023), pp 33–35; Waitangi Tribunal, *Ngā Mātāpono – The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies* (Wellington: Waitangi Tribunal, 2024), pp 77–78.

108. Waitangi Tribunal, *The Te Arawa Mandate Report: Te Wahanga Tuarua* (Wellington: Legislation Direct, 2005), p 73.

divisions between native and foreign born Māori and their descendents.

3.4 SUMMARY OF FINDINGS

Are the Citizenship Act 1977 and the processes for applying for citizenship by grant compliant with the principles of the treaty? In our analysis in the previous section, we determined that both the Act and its associated processes breached numerous treaty principles. We provide a summary of our findings here.

We find that the Crown has breached the principle of partnership:

- ▶ By continuing to apply the Citizenship Act 1977 without engaging in full consultation with Māori on the basis for rights to citizenship of Aotearoa New Zealand.
- ▶ By failing to consult with Māori about the citizenship application process.

We find that the Crown has breached the principle of active protection:

- ▶ By continuing to apply the Citizenship Act 1977 without amending the Act to include a treaty clause acknowledging Māori as tangata whenua.
- ▶ By designing an application process in which a Government official is empowered to determine the legitimacy of someone's whakapapa.

We find that the Crown has breached the principle of rangatiratanga:

ki te ao Māori, ka mutu, e pūpū ake ana pea i ētahi āhuatanga wehewehe kei waenga i te Māori i whānau mai ai i Aotearoa me te Māori i whānau mai ai i tāwāhi me ā rātou uri.

3.4 NGĀ KITENGA

Ae rānei e noho tahi ana te Citizenship Act 1977 me ngā hātepe tono mō te kiri-tuku, ki ngā mātāpono o te tiriti? I tō mātou tātaritanga ii te wāhanga o runga rā, i whakatauhia ai e mātou, nā te Ture me āna hātepe whai take i takahi ngā mātāpono o te tiriti. E mea nei tētahi whakarāpopototanga o ā mātou kitenga:

Kua takahi te Karauna i te mātāpono o te houruatanga:

- ▶ Nā tā rātou whakamahi tonu i te Citizenship Act 1977 ahatia te korenga o tā rātou noho tahi ki te Māori mō te take o te tangata whenuatanga ki Aotearoa.
- ▶ Nā te korenga o tā rātou noho tahi ki te Māori kia wānangahia te hātepe tono mō te kiriraraunga.

Kua takahi te Karauna i te mātāpono o te matapopore moroki:

- ▶ Nā tā rātou whakamahi tonu i te Citizenship Act 1977 me te korenga o te tahuri kia panonitia te Ture kia whakaurua tētahi whiti tiriti e tahuri nei ki te Māori hei tangata whenua.
- ▶ Nā tā rātou waihanga mai i tētahi hātepe tono e tuku ana i te mana ki tētahi āpiha Kāwanatanga kia whakatauhia te tika, e hē rānei o te whakapapa o te tangata.

Kua takahi te Karauna i te mātāpono o te rangatiratanga:

- By designing an application process in which a Government official is empowered to determine the legitimacy of someone's whakapapa.

We find that the Crown has breached the principle of equal treatment:

- By prioritising location of birth over whakapapa during the citizenship application process.

We find that the Crown has breached the principle of good government:

- By continuing to apply the Citizenship Act 1977 without at any point engaging in full consultation with Māori on the basis for rights to citizenship of Aotearoa New Zealand.

We find that the Crown has breached the principle of options:

- By limiting citizenship by descent to one generation in the Citizenship Act 1977 and therefore forcing Māori to choose between pursuing opportunities overseas and the right of their tamariki to return to their whenua.

3.5 PREJUDICE

Have the Citizenship Act 1977 and the citizenship by grant and special grant application processes caused prejudice to Māori?

As we noted in chapter 2, empirical evidence on how many overseas Māori might be prejudiced by the Act was not available to us. (However, we noted that as the Act applies in a blanket fashion to all New Zealanders, it has the potential to

- Nā tā rātou waihanga mai i tētahi hātepe tonu e tuku ana i te mana ki tētahi āpiha Kāwanatanga kia whakatauhia te tika, te hē rānei o te whakapapa o te tangata.

Kua takahi te Karauna i te mātāpono o te ngākau ōrite:

- Nā tā rātou whakamātāmua ake i te wāhi i whānau mai ai te tangata engari anō te whakapapa, i roto i te hātepe tonu.

Kua takahi te Karauna i te mātāpono o te kāwanatanga whai i te tika:

- Nā tā rātou whakamahi tonu i te Citizenship Act 1977 ahatia te korenga o tā rātou noho tahi mō tētahi wā ki te Māori, mō te take o te tangata whenuatanga ki Aotearoa.

Kua takahi te Karauna i te mātāpono o te kōwhiringa:

- Nā tā rātou whakawhāiti i te tūranga kiri-heke, i roto i te Citizenship Act 1977, ki tētahi whakareanga kotahi; nā konā ka mate te Māori ki te kōwhiri i te huarahi e whai nei i ngā pitomata o tāwāhi, i te huarahi rānei e tuku nei i te mōtika ki ngā tamariki kia hoki ki tōna whenua.

3.5 TE WHAKAHĀWEATANGA

Ae rānei, kua whakataumahatia ngā Māori e ngā whakahāweatanga i puta i te Citizenship Act 1977 me ngā hātepe tonu o te kiri-tuku, o te kiri-whakaae?

Hei toai noa i tā mātou kī i wāhanga 2, kāhore e wātea ana ki a mātou ngā taunakitanga marika mō te nama o ngā Māori e noho nei ki tāwāhi, ka whakataumahatia pea e tēnei Ture. (Engari, i kī ake mātou he pitomata tōna kia whakataumahatia ngā

affect all Māori.) But we did hear evidence from Māori who have recently engaged with the system. Their experiences highlighted various ways in which the Act and the processes it prescribes can result in prejudice. These ranged from not knowing the restriction on citizenship by descent existed, to this restriction causing disconnection from whenua, whānau, language, and culture, to being treated as an ‘alien’ on their tūrangawaewae – and being denied access to essential services as a result (such as education) – to having to prove their ‘Māoriness’ to the Crown to remedy their situations.¹⁰⁹ This type of prejudice that effects the very identity and culture of an individual, is in our opinion immeasurable.

Counsel for Mr Ruddock submitted that the Act caused prejudice at three different levels. First, at a whānau level, they described the ‘mana diminishing’ experience of the costly immigration process that has still provided ‘no certainty’ for Mr Ruddock and his tamariki. Secondly, at a hapū and iwi level, they stated that ‘Māori systems of belonging and tikanga have been undermined’. Thirdly, at a Māori-wide level, counsel pointed to other evidence in this inquiry which ‘demonstrates that Māori apart from the claimant have had similar mana-diminishing experiences when returning to New Zealand’.¹¹⁰

In its submissions, the NZMC described the prejudice suffered by overseas Māori under the Act to a form of ‘persecution’. It explained:

While tikanga is not a religion, it is still rooted in beliefs of the spiritual connection with the whenua, specific to the locality of Aotearoa. To prevent Māori from being able to practice their tikanga in accordance with these beliefs causes significant prejudice and

Māori katoa nā tā te Ture whai take ki ngā tāngata katoa o Aotearoa.) Engari, i rongō mātou i ngā taunakitanga a ngā Māori katahi anō ka whai wāhi atu ki te pūnaha. Nā ō rātou wheako i whakamārama mai ngā whakahāweatanga ka puta pea i te Ture me ōna momo huarahi. Ka tae ēnei ki te kuaretanga o ngā herenga mō te kiriheke, ki ngā mea ka puta i taua herenga, ko te noho wehetanga mai i te whenua, i te whānau, i te reo me te ahurea, ki te tū hei ‘manene’ ki tōna ake tūrangawaewae – me te putanga ake, ko te aukatinga kia whiwhi i ngā ratonga matua (pērā i te mātauranga) – ki te āhua o tā rātou whakaatu atu ki te Karauna te ‘Māoriness’ kia tika ai te kaupapa.

I mea atu te rōia mō Mr Ruddock, e toru ngā taumata o te whakahāweatanga i puta i te Ture. Tuatahi, kei te taumata whānau, he ‘mana diminishing’ ō ratou wheako mō te hātepe manene e nui ana te utu, engari he ‘no certainty’ tonu i puta mō Mr Ruddock me āna tamariki. Tuarua, kei te taumata hapū, iwi hoki, i mea atu rātou ‘Māori systems of belonging and tikanga have been undermined’. Tuatoru, kei te taumata iwi Māori whānui, i tahuri atu te rōia ki ētahi atu o ngā taunakitanga e ‘demonstrates that Māori apart from the claimant have had similar mana-diminishing experiences when returning to New Zealand’.

I āna tāpaetanga, i mea at the NZMC, e ōrite ana te whakahāweatanga i puta ake i te Ture, ka mutu ka tau ki ngā Māori nō tāwāhi, ki tētahi momo ‘persecution’. Hei ko tāna:

109. Transcript 4.1.1, p87.

110. Submission 3.3.8, pp22–23.

irreversible harm to Māori who attempt to live in Aotearoa and cannot obtain citizenship which is analogous to persecution.¹¹¹

Furthermore, the NZMC stated that the prejudice caused by the Act is not limited to those it directly impacts, but in fact can cause harm to wider hapū, including those who are New Zealand citizens. NZMC stated:

Hei tāpiri ake, i mea atu te NZMC ehara i te mea ka whāiti te titiro o te whakahāweatanga ka puta i te Ture ki tētahi hunga nahe nei, ka whānui ake tana kikinotanga ki ngā hapū, tae atu ki ngā tangata whenua o Aotearoa. I mea atu a NZMC:

The current system of citizenship which may deny Māori born overseas a place of belonging in Aotearoa causes irreversible prejudice and significant harm for Māori through barring the ability to experience whakapapa connection upon both those individuals' denied citizenship and their whānau and hapū who continue to reside in Aotearoa.

Where the application of the citizenship process acts to restrict or alienate a Māori individual from living in Aotearoa, this effectively restricts their ability to participate in their cultural identity through the separation from whakapapa connection. This causes significant harm to their essence – mauri and wairua which is psychologically and spiritually damaging.

This harm is also inflicted upon the hapū as it fractures the collective identity for Māori generally through this disconnection of whakapapa.¹¹²

Mr Ruddock described the harm he and his children have suffered as 'profound'.¹¹³ He said it has been 'devastating' that his children's 'first experience of their own ancestral home has to be treated as unlawful immigrants'.¹¹⁴ It was 'painful', he said, 'to see them treated as outsiders in their own tūrangawaewae'.¹¹⁵ Mr Ruddock said he was 'shocked to discover that my New Zealand citizenship by descent did not automatically extend to my children, even though they are Māori, carry whānau names, and have ancestral rights to the whenua through me'.¹¹⁶ More than being just a surprise, however, he said 'it was devastating' to learn his children were

I tana whakamārama atu i te āhua o te kikinotanga ka pā ki a ia me āna tamariki, i tuku a Mr Ruddock i te kupu, he 'profound'. Me te ki he 'devastating' te āhua o tā ngā tamariki 'first experience of their own ancestral home has to be treated as unlawful immigrants'. Hei tāna, he 'painful' to see them treated as outsiders in their own tūrangawaewae. I mea a Mr Ruddock, 'shocked to discover that my New Zealand citizenship by descent did not automatically extend to my children, even though they are Māori, carry whānau names, and have ancestral rights to the whenua through me'. Engari atu i tana ohorere, i kī ia, 'it was devastating' te rongo atu, kāhore

111. Submission 3.3.2, p 11.

112. Submission 3.3.2, pp 3-4.

113. John Ruddock, brief of evidence (doc A1), p 3.

114. John Ruddock, brief of evidence (doc A6), p 4.

115. John Ruddock, brief of evidence (doc A1), p 3.

116. John Ruddock, brief of evidence (doc A1), p 2.

not 'entitled to be recognised as tangata whenua'.¹¹⁷ Ultimately, he felt like he was 'being punished for being Māori born overseas'. His children 'being told they have no place here' left him with *mamae* that he carries 'every day'.¹¹⁸

Meanwhile, Ms Castle-Hughes stated that it 'rocked my entire world' when her daughter's initial citizenship application was rejected. She added:

It was like my greatest fear as a parent had come to fruition. It was May 2021 and we were in the midst of COVID, so we had to make the difficult decision to have our pēpi overseas because my husband could not enter New Zealand due to travel restrictions. My older daughter was in New Zealand at kura, so I was separated from my older daughter for 16 months and my children did not get to meet for 12 months. It was just this push and pull of 'where do I go?' In every parents' worst case scenario, you want to at least know that you can all be in the same place if the world goes wrong. Then all of a sudden, I was in this position where I did not have the same passport as my daughter.¹¹⁹

Ms Castle-Hughes submitted that it was only after Green Party Members of Parliament (whom she knew personally) hand-delivered a letter to Internal Affairs Minister Brooke van Velden regarding her case that the issue was resolved; 'seven days later I got an email saying that our daughter was finally granted her citizenship'.¹²⁰ Ms Castle-Hughes acknowledged that she has 'privilege in terms of the resources that are available to me' – resources others may not have.¹²¹

In Mr Ruddock's opinion, 'this is more than a technical immigration issue'. He submitted:

It reflects a structural injustice that prevents Māori children of descent from living on their whenua with their whānau, learning their reo and tikanga, and maintaining

āna tamariki i 'entitled to be recognised as tangata whenua'. I te mutunga iho, ko te whakaaro i puta, kua 'being punished for being Māori born overseas'. Me te mamae i puta i te kōrero mō āna tamariki, 'being told they have no place here', he mamae ka mau 'every day'.

Ki tā Ms Castle-Hughes, i tana whiwhi i te whakahētanga o tā tana kōtiro tonu tuatahi mō te tangata whenuatanga, i 'rocked my entire world'. Me tana kī atu:

I mea atu a Ms Castle-Hughes, nā tā ētahi Mema Paremata o te Pāti Kākārikī tuku ā-ringa nahe nei i tētahi reta ki a Minita Brooke van Velden o Internal Affairs mō tana kēhi i tau ai te take; 'seven days later I got an email saying that our daughter was finally granted her citizenship'. Ka tahuri atu a Ms Castle-Hughes ki tōna ake hōnore 'privilege in terms of the resources that are available to me' – ko ēnei rauemi, kāhore pea e wātea ana ki ētahi atu.

I ō Mr Ruddock whakaaro, 'this is more than a technical immigration issue'. I tāpae ake ia:

117. John Ruddock, brief of evidence (doc A1), p 2.

118. John Ruddock, brief of evidence (doc A1), p 3.

119. Keisha Castle-Hughes, brief of evidence (doc A5), pp 2–3.

120. Keisha Castle-Hughes, brief of evidence (doc A5), p 4.

121. Keisha Castle-Hughes, brief of evidence (doc A5), p 8.

their connections to hapū and iwi. It undermines our mana and tino rangatiratanga as whānau.¹²²

Even when aspects of the situation were ‘remedied’, prejudicial impacts remained. For example, while Mr Ruddock acknowledged that as of 4 September 2025 his children can attend school in New Zealand (see chapter 2), the roughly four-month period that they were unable to do so had deprived them of ‘routine, learning, friends and stability’. He added that this situation has ‘affected their confidence and sense of belonging’ and it has ‘created anxiety and uncertainty for them and for me’. He submitted that he was worried about their education and wellbeing, but also ‘the message this sends about their place as Māori children in Aotearoa’.¹²³ Even though his children have found some relief under section 61 of the Immigration Act 2009, Mr Ruddock said that the question of their citizenship status is still ‘uncertain’. Also uncertain is the wider issue, he submitted, ‘the fact that, as children with Māori whakapapa they are still being required to go through all these immigration processes instead of just having the right to be here’.¹²⁴

Similarly, although her daughter was granted citizenship in August 2025, Ms Castle-Hughes described the consequences of her daughter not having citizenship earlier, stating that when they brought her to New Zealand ‘she was only able to come in as a tourist for 90 days or up to six months if we extended it, otherwise we would have to leave the country to reset her visa’.¹²⁵ If they could not secure citizenship for her daughter, Ms Castle-Hughes stated that ‘we were going to have to enrol her in

Ahakoia i ‘remedied’ ētahi wāhanga o ngā whakaritenga, kei reira tonu ngā whakahāweatanga. Hei tauria ake, ahakoia kua marama atu a Mr Ruddock i te āheinga o āna tamariki kia tae atu ki tētahi kura o Aotearoa mai i te 4 Hepetema 2025 (tirohia wāhanga 2), mō aua whā-marama koni atu, te wā o te kore āhei kia tae ki te kura, kua ngaro ko te ‘routine, learning, friends and stability’. I mea atu hoki ia, nā taua āhuatanga i ‘affected their confidence and sense of belonging’ me te ‘created anxiety and uncertainty for them and for me’. I ki atu ia, i te āwangawanga ia ki ō rātou whai mātauranga, whai hauora anō hoki, ka mutu, ‘the message this sends about their place as Māori children in Aotearoa’. Ahakoia kua wāhi whai oranga āna tamariki e ai ki a wehenga 61 o te Immigration Act 2009, i mea atu a Mr Ruddock, e noho ‘uncertain’ tonu ana te take o ō ratou tangata whenuatanga. Waihoki, e mea ana ia, ka noho tarewa tonu te take whānui, ‘the fact that, as children with Māori whakapapa they are still being required to go through all these immigration processes instead of just having the right to be here’.

Tōna ōrite nei ki tērā, ahakoia i tukuna te kiriraraunga ki te kōtiro a Ms Castle-Hughes i te Akuhata 2025, i whakamārama mai i ngā āhuatanga i puta i te roa o tā tana kōtiro noho kirirarau kore, me te ki ake, i tā rāua whakahoki mai i a ia ki Aotearoa, ‘she was only able to come in as a tourist for 90 days or up to six months if we extended it, otherwise we would have to leave the country to reset her visa’. Ki te kore rātou e whiwhi kiriraraunga mō tana kōtiro, i kī ake a Ms Castle-Hughes ‘we were going to

122. John Ruddock, brief of evidence (doc A6), pp 4–5.

123. John Ruddock, brief of evidence (doc A6), p 4.

124. John Ruddock, brief of evidence (doc A6), p 4.

125. Keisha Castle-Hughes, brief of evidence (doc A5), pp 1–2.

school as an international student and pay international fees.¹²⁶ However, she stated her daughter's grant of citizenship does not resolve the issue, because her daughter now also has citizenship by descent and 'is in the exact same boat unless she has her future tamariki in Aotearoa.'¹²⁷

James Lewis (Ngāti Whitikaupeka) stated he was expecting his second child in late-September 2025 with his partner, Dislorei Small-Rodriguez, who descends from the Northern Chayenne tribe in the United States. Mr Lewis explained that their family reside permanently in Hamilton, however, they have 'temporarily relocated to California in order to bring our pēpi into the world'. He stated that they made this decision 'so that our pēpi can be born in amongst its Cheyenne whānau'. They intend to return to New Zealand later in 2025.¹²⁸

Mr Lewis submitted that '[d]espite our pēpi having whakapapa Māori we will be required to apply for citizenship to be registered on his or her behalf as a descendent'. Furthermore, '[s]hould our tamariki decide to return to the USA or reside in another country whilst maintaining their status as a *citizen by descent*, their own children born overseas will not be entitled to citizenship by descent despite their whakapapa Māori'. If this were to happen, he stated, 'there will be significant barriers to my own uri whakaheke [descendants] maintaining a meaningful connection to their taha Māori, which will include hononga that can only be attained by living on one's own tūrangawaewae.'¹²⁹

have to enrol her in school as an international student and pay international fees'. Engari i ki ake ia, ehara i te mea i ea te take i tā tana kōtiro whiwhi i te kiriraraunga, inā hoki kei a tana kōtiro te kiri-heke, ko ia 'is in the exact same boat unless she has her future tamariki in Aotearoa'.

I mea atu a James Lewis (Ngāti Whitikaupeka), i te tatari rāua ko tana hoa a Dislorei Small-Rodriguez, nō tētahi iwi Northern Chayenne o Amerika, kia whānau mai tā rāua tamaiti tuarua. I whakamārama mai a Mr Lewis, ka noho tūturu tana whānau ki Kirikiriroa, engari, kua 'temporarily relocated to California in order to bring our pēpi into the world'. I ki atu ia, i whakatau pērā rāua 'so that our pēpi can be born in amongst its Cheyenne whānau'. E hiahia ana rāua kia hoki mai ki Aotearoa hei te mutunga o 2025.

I tāpae mai a Mr Lewis, '[d]espite our pēpi having whakapapa Māori we will be required to apply for citizenship to be registered on his or her behalf as a descendent'. Ka mutu, '[s]hould our tamariki decide to return to the USA or reside in another country whilst maintaining their status as a *citizen by descent*, their own children born overseas will not be entitled to citizenship by descent despite their whakapapa Māori'. Ki te puta mai tēnei āhuatanga, i ki ia, 'there will be significant barriers to my own uri whakaheke [descendants] maintaining a meaningful connection to their taha Māori, which will include hononga that can only be attained by living on one's own tūrangawaewae'.

126. Keisha Castle-Hughes, brief of evidence (doc A5), p1. Following the hearing, Ministry of Education Deputy Secretary Policy Andrew Jackson submitted: 'There are no restrictions on funded early childhood education (ECE) enrolments because of domestic or international student status. This includes enrolment at Kōhanga Reo.' Andrew Jackson, brief of evidence (doc A16), p[2].

127. Keisha Castle-Hughes, brief of evidence (doc A5), pp7-8.

128. James Lewis, brief of evidence (doc A10), p1.

129. James Lewis, brief of evidence (doc A10), pp1-2.

Mr Lewis described a further potential complication resulting from the Citizenship Act 1977. He submitted that ‘our uri whakaheke will have to grapple with . . . what will happen if they seek to be buried in their urupā in order to maintain a tangible whakapapa link’. He stated that it is ‘unclear if the law has the ability to accommodate this tikanga.’¹³⁰

To avoid any complications, Mr Lewis said his family faces an ‘arduous’ process. He expressed concerns that residency requirements ‘will limit the duration of time our whānau can spend outside of Aotearoa with their Cheyenne whānau.’ The Act, he stated, ‘does not accommodate the diverse ways in which Māori, such as my whānau, now live their lives.’¹³¹

Mr Shortland summarised the prejudice as follows:

Nō reira, i mea ai kua e tuhia he ture e hāngai ana ki te wewete i tēnei, 10 tuhia he ture hei whakapakari i tēnei. Kua rahi rawa ngā mea e wetewete ana i te ao Māori, kia ūhia atu e koutou ko tēnei ki runga i tērā. Nō reira, āe, i te mutunga koinei te tangi a te ngākau. E kite mai nei koutou e kore e tawhiti kua heke a roimata mā. I runga i te mōhio atu ki te tukua tēnei mea, koinei ngā roimata o aku uri kāhore anō i tae mai. E tangi ake nei 15 kia tiakina rātou. Te hunga kua tae mai i raro i te maru o ēnei whakararu ki mua i a koutou i te rā nei, koia ēnei ko te tangi o āku uri ā tōna wā. Kua e tukua kia tinana ngā roimata e heke nei i a au mō rātou te take.

3.6 RECOMMENDATIONS

In their closing submissions, counsel for Mr Ruddock submitted that he sought ‘an overriding recommendation that the Crown consult with hapu and iwi to revamp the current citizenship policy settings’. Counsel put forward two ways this could be done. The first option would be a ‘tangata whenua pathway to citizenship’, one ‘which accounts for tikanga and whakapapa’ and ‘recognises the special relationship Māori have with the whenua

I whakamōhio mai hoki a Mr Lewis i tētahi anō raru tērā pea ka puta i te Citizenship Act 1977. I kī ia, ‘our uri whakaheke will have to grapple with . . . what will happen if they seek to be buried in their urupā in order to maintain a tangible whakapapa link’. Me te kōrero nei, he is ‘unclear if the law has the ability to accommodate this tikanga.’

Hei kaupare atu i ētahi raru, i mea atu a Mr Lewis, kei a tana whānau tētahi mahi ‘arduous’. I tuku ia i ōna āwangawanga mō ngā herenga ā-noho ‘will limit the duration of time our whānau can spend outside of Aotearoa with their Cheyenne whānau’. I mea atu ia, te Ture, ‘does not accommodate the diverse ways in which Māori, such as my whānau, now live their lives.’

E mea nei ngā kupu a Mr Shortland mō te mamae ka puta i ēnei mahi:

3.6 NGĀ TŪTOHUNGA

I tana tāpaetanga whakakapi, i tāpae ake te rōia mō Mr Ruddock, i te kimi ia i ‘an overriding recommendation that the Crown consult with hapu and iwi to revamp the current citizenship policy settings’. I tukua e te rōia ngā huarahi e rua kia tutuki ai tēnei. Ko te huarahi tuatahi, ko te ‘tangata whenua pathway to citizenship’, ‘which accounts for tikanga and whakapapa’ and ‘recognises the special relationship Māori have with the whenua and the Crown’. I

130. James Lewis, brief of evidence (doc A10), p 2.

131. James Lewis, brief of evidence (doc A10), p 2.

and the Crown.' They noted that such an approach 'would not be unprecedented' and pointed to the example of Israel allowing 'a distinct pathway of return for Jewish people'.¹³²

The second option put forward by Mr Ruddock's counsel was to make 'citizenship multi-generational for all New Zealanders'. They noted:

there seems to be some reluctance in present time to legislate for Māori specifically, even though Article 2 of the Treaty allows, and even requires in some instances, differentiation between Māori and non-Māori. Allowing for multigenerational citizenship by descent would provide a uniform pathway while ensuring that Māori could maintain their connection with their whenua and would thus also be consistent with te Tiriti o Waitangi.¹³³

Again, counsel maintained that this would also not be unprecedented, noting that 'Ireland allows for citizenship by descent across two generations as long as certain formalities are met' (discussed in chapter 2).¹³⁴ That said, counsel stated that it preferred the first option 'as it would provide a future-proof pathway for Māori living overseas and mitigate any floodgate concerns the Crown may have by limited the grant of citizenship to those who are indigenous to New Zealand'. To mitigate any Crown concerns surrounding 'the integrity of the New Zealand citizenship process', counsel suggested it 'could be cross-linked to iwi or hapū registers and for those who are not registered, these could be considered by a tangata whenua panel'.¹³⁵

Similarly, in its submissions, the NZMC also made two recommendations to the Tribunal. First, that 'the Citizenship Act 1977 be amended to align with the principles of te Tiriti o Waitangi and to provide for recognition of Māori status as tangata

mea atu rātou, ko tēnei huarahi 'would not be unprecedented' me te tahuri atu ki tētahi tauira o Iharaia e tuku nei 'a distinct pathway of return for Jewish people'.

Ko te huarahi tuarua i tukuna rā e te rōia mō Mr Ruddock, ka noho ko te 'citizenship multi-generational for all New Zealanders'. I mea atu rātou:

Hei toai noa, i whakāu ake te rōia, ehara i te mea he hou tēnei, me te ki ake, 'Ireland allows for citizenship by descent across two generations as long as certain formalities are met' (kua kōrerohia ki wāhanga 2). Heoi anō, i mea atu te rōia ko te kōwhiringa tuatahi te manakohanga 'as it would provide a future-proof pathway for Māori living overseas and mitigate any floodgate concerns the Crown may have by limited the grant of citizenship to those who are indigenous to New Zealand'. Hei kaupare atu i ētahi o ngā āwangawanga o te Karauna mō 'the integrity of the New Zealand citizenship process', i mea atu te rōia, 'could be cross-linked to iwi or hapū registers and for those who are not registered, these could be considered by a tangata whenua panel'.

E āhua ōrite ana ki āna tāpaetanga, i tuku te NZMC i ngā tūtuhonga e rua hei whakaaro mā te Taraipūnara. Tuatahi, 'the Citizenship Act 1977 be amended to align with the principles of te Tiriti o Waitangi and to provide for recognition of Māori

132. Submission 3.3.8, p 24.

133. Submission 3.3.8, pp 24–25.

134. Submission 3.3.8, p 25.

135. Submission 3.3.8, p 25.

whenua'. Secondly, that 'the pathways for granting of Citizenship contain a separate provision allowing tangata whenua rights of automatic citizenship'.¹³⁶

Mr Kingi concluded his 2006 paper with two recommendations as well. First, that 'the office manual be amended to ensure that applicants with strong ancestral links and close ongoing links with living relatives in New Zealand be recognised as having "a demonstrable ongoing link with New Zealand"'. Secondly, that 'if and when the Citizenship Act is amended, favourable consideration be given to incorporating the office manual provisions into the legislation'.¹³⁷

Meanwhile, Ms Waldron concluded her 2011 paper with the following recommendation:

Given the uncertainties, risks, and problems that have been presented in this paper, a claim for a blanket set of rights for Māori is likely to be unworkable. Therefore, it is unlikely that automatic citizenship rights would be required by the Treaty of Waitangi. However, the examples provided above show that it is important that there is room for individual Māori, as well as other 'New Zealanders', to be granted citizenship on a case-by-case basis.¹³⁸

Further, she acknowledged that 'a mechanism exists in the Citizenship Act 1977 to enable this case-by-case discretion to occur'. Quoting Mr Kingi's paper, she added:

However, to better enable citizenship to be granted on a case-by-case basis, the Act (specifically section 9) could be amended so that the Minister of Internal Affairs, after receiving advice from an advisory committee within the Department of Internal Affairs, could grant citizenship if an individual were able to demonstrate a 'significant ongoing association with New Zealand' (DIA 2006).¹³⁹

status as tangata whenua'. Tuarua, 'the pathways for granting of Citizenship contain a separate provision allowing tangata whenua rights of automatic citizenship'.

I te mutunga o tana tuhinga, i tuku a Mr Kingi i ngā tūtohunga e rua. Tuatahi, 'the office manual be amended to ensure that applicants with strong ancestral links and close ongoing links with living relatives in New Zealand be recognised as having "a demonstrable ongoing link with New Zealand"'. Tuarua, 'if and when the Citizenship Act is amended, favourable consideration be given to incorporating the office manual provisions into the legislation'.

Ko taua āhua tonu, i te mutunga o tana tuhinga, i tuku a Ms Waldron i tēnei tūtohunga:

Hei tāpiri ake, i mea atu ia, 'a mechanism exists in the Citizenship Act 1977 to enable this case-by-case discretion to occur'. E tahuri ana ki te tuhinga a Mr Kingi, i kī hoki ia:

136. Submission 3.3.2, p13.

137. David Kingi, 'Impact of the Citizenship Act on Māori Born Outside of New Zealand', June 2006 (doc A11(b)), p14.

138. Holly Waldron, 'Overseas-Born Māori and New Zealand Citizenship', Victoria University of Wellington Institute of Policy Studies, May 2011 (doc A15), p27.

139. Holly Waldron, 'Overseas-Born Māori and New Zealand Citizenship', Victoria University of Wellington Institute of Policy Studies, May 2011 (doc A15), p27.

Moe Milne suggested a more explicit amendment of the Act was required, stating that ‘the law needs to incorporate te Tiriti o Waitangi and not the principles’ – with the Act needing to refer to the treaty and specifically Article 3. She said that ‘the regime that is in place fails to provide for te Tiriti o Waitangi, whenua, tangata, whakapapa and tikanga, and impacts Māori’. She argued that the Crown has, through the Act, ‘made our people aliens’. She added that the Crown needs ‘to understand Article 3; it is for them to understand why we say that to have tangata whenua status and whakapapa is enough.’¹⁴⁰ She argued that through the Act, the Crown ‘is trying to implement draconian rules about our ability to function on our land’. She said that legislative changes were needed ‘so that whānau get better access’, and that ‘these matters are given priority, because the risk of not doing so is more severance and more alienation.’¹⁴¹

An amendment of the kind Ms Milne is suggesting is not without international precedent. As noted by Mr Ruddock’s counsel above, and as Ms Waldron also stated: ‘Having a special route to citizenship or at least some rights of return for Māori would not be unique (for example, Israel’s nationality law includes a right of return for Jewish diaspora).’¹⁴² And, again, Ireland allows for multi-generational citizenship, extending it to two generations upon application. While New Zealand’s citizenship by grant process does provide a similar pathway to multi-generational citizenship, the conditions that must be met are more stringent than Ireland’s (which simply requires that you have at least one grandparent born in Ireland and a parent who is registered).

I mea atu a Moe Milne, me mārāma rawa atu tētahi panonitanga ki te Ture, me te ki ake, ‘the law needs to incorporate te Tiriti o Waitangi and not the principles’ – me tā te Ture whakaingoa atu i te tiriti, ka mutu, ko atikara 3 ake nei. I mea atu ia ‘the regime that is in place fails to provide for te Tiriti o Waitangi, whenua, tangata, whakapapa and tikanga, and impacts Māori’. Ko tāna tohe e mea ana, nā te Karauna, mā te Ture ‘made our people aliens’. I ki hoki ia, ko tā te Karauna ‘to understand Article 3; it is for them to understand why we say that to have tangata whenua status and whakapapa is enough’. Hei tāna, e ngana ana te Karauna, mā te Ture ‘is trying to implement draconian rules about our ability to function on our land’. I mea atu ia, me whai panonitanga ngā ture ‘so that whānau get better access’, ka mutu, ‘these matters are given priority, because the risk of not doing so is more severance and more alienation’.

Ehara i te mea kāhore ōna tauira nō tāwāhi, te panonitanga e whakaarohia nei e Ms Milne. Hei tā te rōia mō Mr Ruddock ki runga, ki tā Ms Waldron anō hoki: ‘Having a special route to citizenship or at least some rights of return for Māori would not be unique (for example, Israel’s nationality law includes a right of return for Jewish diaspora)’. Waihoki, e whakawātea ana a Airani i te kiriraraunga whakareangamaha, ka mutu, e whakawhānui ana ki te whakareanga tuarua mā te tono. Ahakoa e tukuna ana e te hātepe kiri-tuku tētahi huarahi e ōrite ana mō te kiriraraunga whakareanga maha, he uaua kē atu ngā herenga me whakatutuki i ngā mea o Airani (arā ko te whānau mai i tētahi karani matua i Airani me te noho mai o tētahi mātua ki te rēhita).

140. Moe Milne, brief of evidence (doc A2), p 3.

141. Moe Milne, brief of evidence (doc A2), p 3.

142. Holly Waldron, ‘Overseas-Born Māori and New Zealand Citizenship’, Victoria University of Wellington Institute of Policy Studies, May 2011 (doc A15), p 19.

Counsel for Mr Shortland noted that, at hearing, DIA officials ‘signalled the Act could benefit from a full review to modernise the Act, at which point Māori citizenship issues could also be explored’ but that ‘there is no current work program for such a reform’. In counsel’s view, however, ‘the notion that Māori citizenship issues are dealt with as part of a broader review is a policy approach that fails in treaty terms because it means there is no practical pathway to address live treaty issues for Māori.’¹⁴³ As such, they also suggested several recommendations. First, that a treaty clause be added to the Act ‘requiring decision-makers to give effect to, and act consistently with, the principles of the treaty’. Secondly, that Māori and DIA ‘engage and co-design’: a treaty framework to guide and direct decision-makers performing functions under the Act; a process that is ‘more culturally appropriate for Māori and takes into consideration tikanga and whakapapa’; and a review ‘of all guidance documents’ used by decision-makers ‘to bring them in line’ with a new treaty framework.¹⁴⁴

Lastly, they submitted:

In an inquiry such as this, where the Crown’s policy landscape is silent on te Tiriti o Waitangi, there is an opportunity for the Tribunal to provide the Crown with a clear pathway or framework to revisit its laws and policies and redevelop them in a way which honours and provides for te Tiriti o Waitangi.¹⁴⁵

Given our analysis of the evidence before us, the findings we have made, our assessment of prejudice, and in acknowledging the recommendations submitted to us, we recommend that the Crown enter into consultation with Māori to provide for co-design of, or full reflection of Māori

I mea ake te rōia mō Mr Shortland ki te nohoanga, ko ngā āpiha o DIA ‘signalled the Act could benefit from a full review to modernise the Act, at which point Māori citizenship issues could also be explored’ engari, ‘there is no current work program for such a reform’. Engari ki tā te rōia tirohanga, ‘the notion that Māori citizenship issues are dealt with as part of a broader review is a policy approach that fails in treaty terms because it means there is no practical pathway to address live treaty issues for Māori’. Nā konā, i tuku hoki rātou i ētahi tūtohunga. Tuatahi, me whakauru tētahi whiti tiriti ki te Ture, ‘requiring decision-makers to give effect to, and act consistently with, the principles of the treaty’. Tuarua, mā te Māori me te DIA e ‘engage and co-design’: tētahi whakatakotoranga tiriti kia ārahi, kia tohutohu anō hoki i ngā kaituku whakataunga i ā rātou mahi e ai ki te Ture; tētahi hātepe ‘more culturally appropriate for Māori and takes into consideration tikanga and whakapapa’; me tētahi arotake ‘of all guidance documents’ e whakamahia ana e ngā kaituku whakatau ‘to bring them in line’ ki tētahi tūāpapa tiriti.

Hei whakakapi ake, i tāpae ake rātou:

Nā runga anō i tā mātou tātari i ngā taunakitanga ki mua i a mātou, ā mātou kitenga, tā mātou tiro tiro ki ngā whakahāweatanga, waihoki, tā mātou whai whakaaro ki ngā tūtohunga kua tukuna mai, e meinga ana mātou ki te Karauna me noho tāhi me te Māori kia whai wāhi atu ki

143. Submission 3.3.7, p7.

144. Submission 3.3.7, pp16–17.

145. Submission 3.3.7, p11.

views in, an amendment of the Citizenship Act 1977 to:

- ▶ include an acknowledgement of the status of Māori as tangata whenua;
- ▶ include a provision requiring the Act to give effect to the Treaty of Waitangi and its principles;
- ▶ establish a tikanga pathway to citizenship that allows for hapū and iwi to assess whakapapa evidence. The details of such a pathway would be a main consideration in the consultation and design process.

While the above consultation is taking place, we also recommend that the Crown take immediate action to:

- ▶ extend citizenship by descent to two generations for Māori;
- ▶ amend section 8(2)(e) of the Citizenship Act 1977 to include 'or te reo Māori';
- ▶ provide automatic citizenship by grant to Mr Ruddock, should he wish to have it.¹⁴⁶ This should be processed as a matter of urgency and at no additional cost to Mr Ruddock.

te hanga tahi mai, ki te tahuri marika rānei ki ngā tirohanga Māori, i tētahi panonitanga o te Citizenship act 1977, kia:

- ▶ whakaurua tētahi whakamāramatanga mō te tūranga o te Māori hei tangata whenua;
- ▶ whakaurua tētahi wāhanga e mea ana me hāpai te Ture i te Tiriti o Waitangi me ōna mātāpono;
- ▶ whakaritea tētahi huarahi tikanga e whai wāhi ai te hapū, te iwi anō hoki ki te aromātai i ngā taunakitanga whakapapa mō ngā tono tūranga kirirarau. Mā te noho tahi me te hanga tahi e whakatau ngā taipitopito mō tēnei huarahi.

E tuku hoki ana mātou i te tutohunga ki te Karauna, i te wā e whakahaerehia ana taua hātepe noho ngātahi, me kotahi atu rātou kia:

- ▶ whakawhānuitia te tūranga o te kiriheke ki te whakareanga rua mō ngā Māori.
- ▶ panonitia wehenga 8(2)(e) o te Citizenship Act 1977 ki whakaurua te 'or te reo Māori';
- ▶ tukuna noa atu te kiri-tuku ki a Mr Ruddock, ki te hiahia ia kia whāia tēnā. E tika ana kia taihorotia te hātepe, kia whakakāhoretia hoki te take o tā Mr Ruddock tuku i te utu.

Hei toai noa i ngā mihi i tukuna rā i te timatanga o tēnei rīpoata, e mihi nui ana ki ngā tāngata katoa i whai wāhi mai ki tēnei ruku tātari, kaikeremē mai, Karauna mai, rōia mai, kaikōrero mai, pou tikanga mai, tae atu ki ngā kaimahi katoa o te Taraipiunara, tēnā koutou katoa. Koira katoa ō mātou whakaaro, kei te iwi. Ko te tūmanako ia ka whai hua, ka whai take tēnei rīpoata ki ngā kaupapa o te wā.

¹⁴⁶ We understand following the evidence of Ms Castle-Hughes that this may not be desirable for all Māori with citizenship by descent and we acknowledge that this is an individual choice.

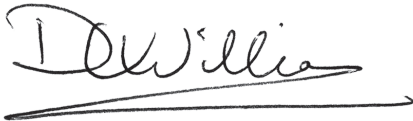
Dated at Wellington this 31st day of October 20 25



Judge Alana Thomas, presiding officer



Professor Tafaomalo Tologata Leilani Tuala-Warren, member



Professor Emeritus David V Williams, member



Ken Williamson, member



