Citizenship issues for Māori born outside New Zealand

Identity & General Policy Team
Regulation and Compliance Branch

July 2006

The Department of Internal Affairs
Te Tari Taiwhenua

Disclaimer

The views, opinions, findings and conclusions expressed in this paper are those of the authors, and they do not reflect the views of the Department of Internal Affairs or the government. All reasonable measures have been taken to ensure the accuracy of the information contained in this paper. The Department of Internal Affairs takes no responsibility for any errors or omissions in, or for the correctness of, the information in this paper.

CITIZENSHIP ISSUES FOR MĀORI BORN OUTSIDE NEW ZEALAND

TABLE OF CONTENTS

EXECUTIVE SUMMARY

This paper looks at the development of New Zealand's citizenship law and the implications for Māori who are born in foreign countries. The paper was prepared by the Identity and General Policy Team of the Regulation and Compliance Branch as a project under the Department of Internal Affairs' Effectiveness for Māori Strategic Plan 2006 – 2009.

The first official New Zealand document dealing with citizenship was the Treaty of Waitangi. Article 3 of the Treaty, and colonial law on annexation, provided that Māori became British subjects. Since that time, there has been no distinction between Māori and Pakeha in New Zealand citizenship law. On New Year's Day 1949, the British Nationality and New Zealand Citizenship Act 1948 came into force, creating the legal status of a 'New Zealand citizen'. Under that Act, 'New Zealand British subjects' (including Māori) became New Zealand citizens.

One of the ways that a person can become a New Zealand citizen is by descent from a New Zealand citizen. However, citizenship by descent is limited to the first generation born outside New Zealand. Chapter four of the paper examines whether the current restriction on citizenship by descent recognises multi-generational links to New Zealand that foreign-born Māori may have. The chapter concludes that the Citizenship Act provides for recognition of ongoing connections to New Zealand by way of a special grant of citizenship. Under section 9(1)(b) of the Act, the Minister of Internal Affairs may authorise the grant of citizenship to any person whose father or mother was, at the time of the person's birth, a New Zealand citizen by descent.

A person born in New Zealand on or after 1 January 2006 is a New Zealand citizen only if, at the time of the birth, at least one of his or her parents was a New Zealand citizen or a person entitled to reside indefinitely in New Zealand. The possible implications for Māori of this provision are discussed in Chapter five. It is expected that almost all Māori born in New Zealand on or after 1 January 2006 will be New Zealand citizens. In any cases where a Māori born in New Zealand is not a New Zealand citizen, he or she would acquire the citizenship by descent of his or her parents' homeland, with the benefits that flow from that citizenship.

CHAPTER ONE: INTRODUCTION

This paper looks at the development of New Zealand's citizenship law and the implications for Māori who are born in foreign countries. It was prepared by the Identity and General Policy Team of the Regulation and Compliance Branch as a project under the Department of Internal Affairs' Effectiveness for Māori Strategic Plan 2006 – 2009.

New Zealand's citizenship law does not differentiate on the basis of race or ethnicity. A person can become a citizen if he or she has a recognised connection to New Zealand[1]. The Citizenship Act 1977 (the Act) provides that a person can become a citizen by virtue of:

- birth in New Zealand[2];
- having a parent who is a New Zealand citizen; or
- living in New Zealand for a set period and meeting character, English language and other requirements for a grant of citizenship.

A person born in a foreign country who has a New Zealand citizen parent may be a New Zealand citizen *by descent*. Citizenship by descent is based on the principle of *jus sanguinis* (the 'law of blood'). In these cases, the person's bloodline (as opposed to place of birth or residence) establishes the connection to New Zealand that determines whether he or she is a New Zealand citizen. A person who has been adopted in a foreign county by a New Zealand citizen can also be a citizen by descent.

A citizen by descent has the same rights and privileges as any other New Zealand citizen. This means that citizens by descent:

- are entitled to Crown protection within New Zealand and when overseas;
- cannot be deported from New Zealand;
- can enter and re-enter New Zealand at any time without a permit;
- are entitled to a New Zealand passport (which allows visa-free access to more than 50 countries); and
- are eligible to stand for local and central government.

In addition, some educational scholarships and public sector jobs are only available to New Zealand citizens, and only citizens can represent New Zealand in some international sport.

[1] The Citizenship Act defines 'New Zealand' as including 'the Cook Islands, Niue and Tokelau'.

[2] Since 1 January 2006, birth in New Zealand is not enough to guarantee citizenship. As well as birth in the country, at least one parent must be a New Zealand citizen or a person entitled to reside indefinitely in New Zealand. The implications of this provision for Māori are discussed in chapter five.

There is one difference between citizens by descent and other New Zealand citizens (such as citizens by birth in New Zealand or by grant). Unlike other citizens, citizens by descent cannot automatically pass on citizenship to their children who are born in a foreign country. In almost all cases, citizenship by descent is limited to the first generation born outside New Zealand, irrespective of any on-going connections to New Zealand.

The implications for Māori of the restriction on citizenship by descent are discussed in **Chapter four**.

CHAPTER TWO: MĀORI AS NEW ZEALAND CITIZENS: A LEGISLATIVE HISTORY

1840 to 1949: Māori as New Zealand British subjects

The Treaty of Waitangi was the first official New Zealand document relating to citizenship. The Māori text of the third article of the Treaty (along with a modern English translation by Professor Sir Hugh Kawharu) provides that the Māori people had:

> ngā tikanga katoa rite tahi ki ana mea ki ngā tāngata o Ingarani
> the same rights and duties of citizenship as the people of England[3]

The English text of the third article provides that the Queen of England "extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects".

There was initially some uncertainty around the scope of article 3 – in particular, whether Māori were in fact British subjects or whether Māori were to be treated as if they had the same rights and duties as British subjects. The status of Māori was subsequently clarified in the Native Rights Act 1865, which declared Māori to be the natural-born subjects of the Queen.

Article 3 of the Treaty is consistent with the position in colonial law that Māori would have become British subjects on the annexation of New Zealand as a British colony. As the Waitangi Tribunal observed in the Ngāti Rangiteaorere claim:

> As far as British citizenship is concerned, Ngāti Rangiteaorere were [in 1840], as article 3 of the Treaty assured them, under Her Majesty's protection and entitled to the rights and privileges of British subjects. This was no more than a declaration of the colonial law that, on annexation as a British colony, the indigenous people became British subjects[4].

Article 3 is regarded by the Waitangi Tribunal as being a source of the Treaty principle of equality or equal treatment. In the Waitangi Tribunal's view, the principle of equality means that the protections of citizenship apply equally to Māori and non-Māori, and requires the Crown to treat Māori and non-Māori fairly and equally.[5] The Treaty grants citizenship rights to Māori as individuals and therefore provides no privileges for Māori above other citizens.[6]

---

[3] *He Tirohanga ō kawa ki te Tiriti o Waitangi: A Guide to the Principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal* (Te Puni Kōkiri, Wellington, 2001): 10 – 12.

[4] Waitangi Tribunal *Ngāti Rangiteaorere Claim Report* (Wai 32), 1990: 29, available at: www.waitangi-tribunal.govt.nz/reports

[5] The principle of equality is discussed in the following Waitangi Tribunal reports: Tarawera Forest Report (Wai 411) 2003: 28; Maori Development Corporation Report (Wai 350) 1993: 31 – 32; and the Report on the Crown's Foreshore and Seabed Policy (Wai 1071) 2004: 133.

[6] Waitangi Tribunal, Napier Hospital and Health Services Report (Wai 692) 2001: 61 – 64.

A Māori born *outside New Zealand* after annexation could have become a 'New Zealand' British subject *by descent* if his or her father or grandfather had been born in New Zealand. Until 1915, the acquisition of British subject status by descent had been determined by British common law and two Imperial 18th century statutes. The acquisition of British subjecthood by descent extended to two generations born in foreign countries (i.e. places outside 'his Majesty's dominions and allegiance').

The British Nationality and Status of Aliens Act came into force on 1 January 1915. This Act provided that the automatic transmission of British subjecthood by descent was generally limited to the first generation born outside the British Empire. A British subject by birth could no longer pass British subject status on to his grandchildren. The rationale for the restriction was to limit instances of 'dual nationality'[7]. This provision had effect throughout the British Empire.

Accordingly, from 1915 until 1949, a Māori born outside New Zealand would be a 'New Zealand' British subject by descent if his or her father were a British subject by birth in New Zealand.

There were some exceptions to the restriction on British subject status by descent. If the person's father was a British subject by descent, the person would also be a British subject by descent if:

- the father was on Crown Service at the time of the person's birth; or
- the father was a British subject by descent and the person was born in a place where by treaty, capitulation, or other lawful means, His Majesty was exercising jurisdiction over British subjects[8]; or
- the person's birth was registered at a British consulate, and the person made a declaration of retention of British nationality before turning 22 years of age. At the time of declaration, the person may have had to give up any foreign nationality. [9]

During this period, a person could not become a British subject by virtue of having a mother who was a British subject. The patriarchal line determined whether a person acquired British subject status by descent.

1949 to 1977: Māori as New Zealand citizens

Before 1949 there were no New Zealand citizens. On New Year's Day 1949, the British Nationality and New Zealand Citizenship Act 1948 came into force. This Act created the legal status of a 'New Zealand citizen'. Under the Act's transitional provisions, 'New Zealand British subjects' (including Māori) automatically became New Zealand citizens.

---

[7] L Fransman, *British Nationality Law*, Fourmat Publishing, London, 1989, page 43.

[8] The British Monarch had jurisdiction over British subjects born in specified foreign countries at certain times. At one time, these countries included China, Japan and Turkey.

[9] If the person was no longer a minor at the time of registration, he or she did not need to make a declaration. The declaration requirement was waived if the person was working for the Crown during World War Two or engaged in work of national importance.

The Act provided that, in almost every case, a person born in New Zealand on or after 1 January 1949 became a New Zealand citizen by birth[10].

The 1948 Act's provisions for New Zealand citizenship by descent mirrored the restrictions on British subject status by descent that had existed since 1915. Accordingly, a Māori born outside New Zealand on or after 1 January 1949 and before 1978 could be a citizen by descent if his or her *father* was a New Zealand citizen. However, if the father was himself a citizen by descent, the person became a citizen only if:

- the person or the person's father was born in a British protectorate, protected state, mandated or trust territory, or any place in a foreign country where the British Monarch had jurisdiction over British subjects[11]; or
- the person was born in a foreign country and his or her birth was registered at a New Zealand consulate before he or she attained 16 years of age; or
- the person's father was on Crown Service for the New Zealand Government.

Until 1970, a person could not become a citizen by descent by virtue of having a mother who was a New Zealand citizen. However, the citizenship provisions were amended by the Status of Children Act 1969 to provide for citizenship by descent through the person's mother from 1970. To address the previous gender discrimination, section 10 of the Citizenship Act 1977 provides that a person born before 1978 can receive a grant of citizenship as of right if his or her mother was a New Zealand citizen (other than by descent) at the time of the person's birth.

The Citizenship Act 1977

The Citizenship Act 1977 (the Act) came into force on 1 January 1978, and the 1948 Act was repealed.

The Act provided that, in almost every case, a person born in New Zealand on or after 1 January 1978 became a New Zealand citizen *by birth*[12]. This provision was amended in 2005 to restrict citizenship by birth in New Zealand to the children of New Zealand citizens and permanent residents. The implications of this change for Māori are discussed in **chapter five**.

The Act provides that a person born or adopted outside New Zealand on or after 1 January 1978 became a New Zealand citizen *by descent* if he or she is:

- born to a parent who is a New Zealand citizen (provided the parent is not a citizen by descent); or
- adopted overseas by a New Zealand citizen (provided the adoptive parent is not a citizen by descent, and the adoption meets specified legal requirements).

[10] The only exceptions were children born aboard a foreign ship or aircraft in New Zealand territory, and some children born to foreign diplomats.

[11] The British Monarch had jurisdiction over British subjects born in specified foreign countries at certain times. At one time, these countries included China, Japan and Turkey.

[12] The only exceptions were children born aboard a foreign ship or aircraft in New Zealand territory, and some children born to foreign diplomats.

There were two major changes to the citizenship by descent provisions:

1. *Registration* - New Zealand citizens by descent born after 1977 had to register their citizenship before they turned 22 years of age or else they would automatically lose it. This required citizens by descent to make a decision on whether to retain citizenship. Registration is discussed in detail in **chapter three**;

2. *Restriction* – Citizenship by descent was restricted to the first generation born outside New Zealand. A person born after 1977 could no longer acquire 'second-generation citizenship by descent' by registering at a New Zealand consulate, by being born in a territory under British jurisdiction, or by being born while a parent was on overseas service for New Zealand. The purpose of this change was to ensure that New Zealand citizenship was acquired only by people who had a genuine, direct link to New Zealand. The implications of this provision for Māori are discussed in **chapter four**.

CHAPTER THREE: REGISTRATION OF NEW ZEALAND CITIZENSHIP BY DESCENT

As noted in chapter two, when the Citizenship Act 1977 came into force, retention of citizenship was conditional upon registration. Citizens by descent born on or after 1 January 1978 had to register their citizenship before turning 22 years of age in order to keep it. Accordingly, these citizens by descent (or their parents on their behalf) had to make a decision about whether to retain citizenship. The deadline for registration was the day before the person's 22nd birthday. The people affected by this provision would start turning 22 years of age from 1 January 2000[13].

To allow more time for people to register, the Citizenship Act was amended in 1999 to extend the deadline by two years. The Department of Internal Affairs also launched a 'staykiwi' campaign to promote awareness about the registration requirement.

The necessity to register to retain citizenship by descent posed practical problems. Despite the 'staykiwi' campaign, many affected citizens by descent living overseas would have remained unaware of the need to register and would unknowingly have lost their New Zealand citizenship on their 24th birthdays.

As well as creating practical problems, the requirement to register could be seen as contrary to the principle of *jus sanguinis*. It could be argued that if a person acquired citizenship as a 'birthright' by virtue of a whakapapa connection to New Zealand, then it would be inappropriate to make retention of that citizenship dependent on an administrative act.

In December 2001, the Citizenship Act was amended to remove the registration requirement (less than one month before some citizens by descent born in January 1978 would have lost New Zealand citizenship)[14]. All the political parties supported this amendment to the Citizenship Act. Hon Marie Hasler, National's spokeswoman on citizenship matters called the bill "about as non-controversial as one can get in this House".[15]

While retention of citizenship by descent is no longer conditional upon registration, there is still provision for people to register their citizenship in order to obtain proof of their citizenship status. If citizens by descent want to receive the benefits of citizenship, such as access to a New Zealand passport, they need the proof of citizenship that registration brings.

---

[13] Even before the end of 1999, a small number of individuals had already lost their New Zealand citizenship by descent status. This is because they were born prior to 1978, subsequently became New Zealand citizens by descent through adoption, and reached the age of 22 without registering.

[14] The amendments also provided that people who had already lost New Zealand citizenship by failing to register had their citizenship reinstated.

[15] As reported in *The Dominion* 5/12/2001.

On average, 5000 to 6000 people register their citizenship by descent each year. It is not known how many of the people who register each year are Māori because ethnicity is not recorded at the time of registration. Information about ethnicity would, however, be useful in future policy deliberations. We will explore the feasibility of collecting this information from registration applicants.

Connection to New Zealand without registration

Māori born outside New Zealand can maintain ongoing connections with this country without registration of their citizenship by descent and, of course, citizenship does not affect a person's identity as Māori. They may not see any practical benefits for themselves in registration, either because they do not intend to come to New Zealand, or because they could visit family in New Zealand, invest here and, in some cases, live here as foreign citizens.

A Māori who is an unregistered citizen by descent could come to New Zealand as a foreign citizen under one of the many visa-free arrangements that New Zealand has with other countries or on a temporary visa issued by the Department of Labour. In addition, where the person is an Australian citizen, he or she could live in New Zealand indefinitely under the terms of the Trans-Tasman Travel Arrangement[16].

[16] The Trans-Tasman Travel Arrangement provides for New Zealand citizens to live indefinitely in Australia, and for Australian citizens to live indefinitely in New Zealand.

CHAPTER FOUR: THE GENERATIONAL RESTRICTION ON CITIZENSHIP BY DESCENT

Since 1 January 1978, the transmission of citizenship by descent has generally been restricted to the first generation born outside New Zealand. In other words, the overseas-born child of a citizen by descent is not a New Zealand citizen[17]. It is no longer possible for a child of a citizen by descent to acquire New Zealand citizenship by registering at a New Zealand consulate or by virtue of being born in a territory where the British Monarch has jurisdiction over British subjects.

The purpose of this restriction is to ensure that citizenship by descent can only be acquired by a person who has a genuine and direct connection with New Zealand. When the Citizens and Aliens Bill (which became the Citizenship Act) was being debated in Parliament, the then Minister of Internal Affairs, Hon D.A. Highet, stated[18]:

> it is undesirable to provide for New Zealand citizenship to be available as of right to people who have no connection with this country.

This restriction is consistent with the principles of international law. Under international law, each sovereign state is entitled to determine the rules relating to the acquisition and loss of its nationality, subject to any obligations flowing from treaties to which the state is a party. In addition, each state's nationality laws must be recognised by other states where they are consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.[19] However, the International Court of Justice has determined that while domestic law on nationality is binding within that state, a person's nationality determined in accordance with that law would only be recognised in international law where the individual has a *genuine and effective link* with the state[20].

The issue of significant connections to New Zealand

It could be claimed that the current restriction on citizenship by descent fails to recognise multi-generational cultural and spiritual attachments to this land and its people that are

---

[17] There are two exceptions. The foreign-born child of a citizen by descent will be a citizen by descent if: 1) the child would otherwise be stateless; or 2) a parent was on recognised overseas service at the time of the child's birth.

[18] NZPD Vol 415, 9 November 1977, page 4378.

[19] Articles 1 and 2 of the *Convention on Certain Questions relating to the Conflict of Nationality Laws* (League of Nations, 1930).

[20] *Nottebohm (Liechtenstein v. Guatemala)*, (1951-1955), judgment of 6 April 1955, International Court of Justice Reports 1955. A case summary can be found on the International Court of Justice website http://www.icj-cij.org/icjwww/idecisions/isummaries/ilgsummary550406.htm.

distinctly 'New Zealand' in origin. This argument can be illustrated by looking at the principle of *jus sanguinis* as it applies to Māori born outside New Zealand.

In 1977, when Members of Parliament debated the impact of the restriction on citizenship by descent, there was no consideration of the effect on Māori born outside New Zealand. This is because in New Zealand, Māori and Pakeha are equal before the law. Māori, however, have been well represented in the exodus of New Zealand citizens during the last thirty years. The majority of these citizens left for Australia under the terms of the Trans-Tasman Travel Arrangement, which provides that New Zealand citizens can live in Australia, and vice versa.

By the time of the 2001 Australian census, the number of Māori living in Australia was approximately 73,000[21]. This figure includes Australian-born Māori[22], and a growing number of second-generation Australian-born Māori. This latter generation will generally be Australian citizens, but not New Zealand citizens.

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[23].

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

Multi-generational citizenship

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.

However, providing for multi-generational citizenship by descent would create significant risks. These include:

- large numbers of people, many generations removed from New Zealand, arriving here *en masse* should an economic, political or environmental disruption occur

[21] Australia 2001 Census, Table 1.7, available at: www.grc.nsw.gov.au/statistics. The next census will be conducted in August 2006, with data available in 2007.
[22] According to the 2001 Census, 28% of the Māori living in Australia were born there.
[23] D Kingi, Discussion paper: *Impact of the Citizenship Act on Maori born outside New Zealand*, page 10.

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.

It is, however, not necessary to introduce multi-generational citizenship by descent in order to recognise ongoing links with New Zealand. The Citizenship Act already provides for this by way of a special grant of citizenship.

The grant of citizenship for children of citizens by descent

During the passage of the Citizens and Aliens Bill (which became the Citizenship Act), the proposed restriction on citizenship by descent prompted submissions from the Salvation Army and the University of Waikato on the impacts for future generations. The submissions were summed up by Mr McLay, the then Member for Birkenhead:

> there may well be persons in the academic community who are of a second or third generation born outside New Zealand, and thereby, by a simple quirk of fate, denied New Zealand citizenship by descent. This does not apply just to members of the academic community. It also applies to members of the diplomatic corp who might have served outside the country for some years, and to their families. It also applies – and this may perhaps be where we find the most common application of the principle – to the families of missionaries.[24]

Following consideration of the submissions, the select committee proposed a provision to:

> give the Minister of Internal Affairs discretion to deal with what one might call 'second generation cases' on criteria that are not as rigid as the other [grant] criteria.[25]

Accordingly, the Citizens and Aliens Bill was amended to provide that a child of a New Zealand citizen by descent who applied for a grant of citizenship would not necessarily have to meet the standard grant requirements. Section 9(1)(b) of the Act provides that the Minister may authorise the grant of citizenship to any person whose father or mother was, at the time of that person's birth, a New Zealand citizen *by descent*.

In considering whether to authorise a grant under this section, the Minister must be satisfied that the applicant is of 'good character', and cannot generally authorise a grant to an applicant with serious criminal convictions, or an applicant who has recently received a conviction[26]. The Minister may have regard to the other standard grant requirements (such as a specified period of residence in New Zealand, an entitlement to

[24] NZPD Vol 415, 9 November 1977, page 4382.
[25] NZPD Vol 415, 9 November 1977, page 4382.
[26] See section 9A (Disqualifying convictions) of the Citizenship Act 1977.

reside in New Zealand indefinitely, and sufficient knowledge of the English language), but does not have to.

The grant of citizenship has the effect of making any subsequent overseas-born children of the grant recipient New Zealand citizens by descent. A consequence of this is that the grant recipient's overseas-born grandchildren may also be able to make an application for the grant under section 9(1)(b).

Section 9(1)(b) does not distinguish between children of citizens by descent who have an existing association with New Zealand and those who do not, although as at June 2006, the policy of the Citizenship Office of the Department of Internal Affairs is to recommend that, if the applicant meets the character requirement and has a *demonstrable, ongoing link with New Zealand*, the Minister may approve the application without having regard to the other standard grant requirements.

Comment

The grant option acknowledges the strong associations with New Zealand that some overseas-born children of citizens by descent have, while avoiding the possible disadvantages of multi-generational citizenship by descent.

Section 9(1)(b) is rarely used. There have been only nine grant applications under this section in the last five years (out of approximately 130,000 grant applications made during that period). In every case where the applicant referred to whakapapa and iwi relations as a demonstrable, ongoing link with New Zealand, the Minister has approved the application.

Given the low number of applications for a grant of citizenship under section 9(1)(b) it would be difficult to justify any amendments to the section. However, were section 9(1)(b) to be used frequently, it might be desirable to amend the section by specifying that the Minister, when considering an application under this section, may take into account whether the applicant can 'demonstrate a significant ongoing association with New Zealand'. Examples of factors that might be taken into consideration in determining if a child of a citizen by descent has a significant ongoing association with New Zealand could be:

- whakapapa ties to New Zealand;
- a period of residence in New Zealand; or
- having family members who are New Zealand citizens living here.

CHAPTER FIVE: POSSIBLE IMPACTS ON MĀORI OF RECENT CHANGES TO CITIZENSHIP BY BIRTH IN NEW ZEALAND

In almost every case, a person born in New Zealand on or after 1 January 1949 and before 1 January 2006 became a New Zealand citizen by birth[27]. The only exceptions were children born aboard a foreign ship or aircraft in New Zealand territory, and some children born to foreign diplomats.

The citizenship by birth provisions were amended in 2005 to limit who could become citizens by birth in New Zealand. Section 6 of the Citizenship Act 1977 now provides that a person born in New Zealand on or after 1 January 2006 is a New Zealand citizen only if, at the time of his or her birth, at least one parent was:

- a New Zealand citizen; or
- entitled in terms of the Immigration Act 1987 to be in New Zealand indefinitely; or
- entitled to reside indefinitely in the Cook Islands, Niue or Tokelau[28] .

The earlier exceptions relating to the children of foreign diplomats and children born on foreign ships and aircraft still apply. In addition, a child born in New Zealand would not be a citizen if his or her parents were 'enemies of New Zealand' and the birth occurred in a place occupied by the enemy. Despite these exceptions, a person born in New Zealand will be a New Zealand citizen if he or she would otherwise be stateless.

The rationale for the restrictions on citizenship by birth was to ensure that "citizenship and its benefits are limited to the children of people who have a genuine and ongoing link to New Zealand"[29].

The restrictions on citizenship by birth do not affect the status of Māori who are already New Zealand citizens. Their children born in New Zealand on or after 1 January 2006 will be New Zealand citizens, their grandchildren will be citizens, and their grandchildren's children who are born in New Zealand will be citizens. There is, however, the remote possibility that a Māori could be born in New Zealand and not be a New Zealand citizen.

As already noted, citizenship by descent is generally limited to the first generation born overseas. Although the first generation born outside New Zealand will be citizens by descent, their foreign-born children (the 'second-generation') will not automatically be

[27] British subjects born in New Zealand before 1949 (including Māori) automatically became New Zealand citizens on New Year's Day 1949.
[28] The Citizenship Act defines 'New Zealand' as including the 'Cook Islands, Niue and Tokelau'.
[29] Hon George Hawkins, Minister of Internal Affairs, Identity (Citizenship and Travel Documents) Bill second reading speech, Hansard, Vol 625, page 20089, 12 April 2005.

New Zealand citizens. If somebody of the 'second generation' has a child born in New Zealand, that child will only be a New Zealand citizen if:

- either parent is a New Zealand citizen[30]; or
- either parent has a residence permit issued by the Department of Labour; or
- either parent is in New Zealand as an Australian citizen or permanent resident[31]; or
- either parent has a residence permit issued by the Cook Islands, Niue or Tokelau; or
- the child would otherwise be stateless (if the child does not acquire the citizenship by descent of another country, he or she would be deemed to be a New Zealand citizen by birth).

If none of the above conditions have been met, the child would not be a New Zealand citizen. The only way that such a child could become a New Zealand citizen is by way of a grant of citizenship.

Comment

It is not expected that many Māori would fall into this category. This is because the vast majority of Māori of the 'second generation' born outside New Zealand would be Australian citizens, and therefore any of their children born in New Zealand would become New Zealand citizens at birth.

In any cases where a Māori born in New Zealand is not a New Zealand citizen, he or she would acquire the citizenship by descent of his or her parents' homeland, with the benefits that flow from that citizenship.

[30] The parent who is of the 'second generation' born outside New Zealand may have acquired a grant of citizenship under section 9(1)(b) of the Citizenship Act. The other parent may be a citizen by birth, grant or descent.

[31] Under the Trans-Tasman Travel Arrangement, an Australian citizen or Australian permanent resident who is in New Zealand is deemed to be entitled to reside in New Zealand in terms of the Immigration Act 1987.

CHAPTER SIX: SUMMARY

This paper looked at the implications of New Zealand citizenship law for Māori born outside New Zealand, and for any of their children who are born in New Zealand.

Most Māori born outside New Zealand are New Zealand citizens by descent. This is because at least one of their parents was born in New Zealand. However, some Māori born in foreign countries are not New Zealand citizens because their parents were also born outside New Zealand. New Zealand citizenship by descent is limited to the first generation born outside New Zealand.

The only way that a foreign-born child of a citizen by descent can become a New Zealand citizen is by way of a grant of citizenship. Section 9(1)(b) of the Citizenship Act provides that the Minister of Internal Affairs may authorise a grant of citizenship to the child of a New Zealand citizen by descent. This section is rarely used (there have been only nine applications under section 9(1)(b) in the last five years).

Restrictions on citizenship by birth in New Zealand mean that a person born in New Zealand on or after 1 January 2006 is a New Zealand citizen only if at least one parent is a New Zealand citizen, the holder of a New Zealand residence permit, an Australian citizen or the holder of an Australian residence permit.

These restrictions do not affect the status of Māori who are already New Zealand citizens. Their children born in New Zealand on or after 1 January 2006 will be New Zealand citizens, their grandchildren will be citizens, and their grandchildren's children who are born in New Zealand will be citizens. There is, however, the remote possibility that a Māori could be born in New Zealand and not be a New Zealand citizen. This could happen if neither of the person's parents were New Zealand citizens, the holders of New Zealand residence permits, Australian citizens, or Australian permanent residents. In such cases, the child would acquire the citizenship by descent of his or her parents' homeland.