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REPORT ON CITIZENSHIP LAW: NEW ZEALAND

Kate McMillan and Anna Hood

July 2016



<http://eudo-citizenship.eu>

European University Institute, Florence
Robert Schuman Centre for Advanced Studies
EUDO Citizenship Observatory

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EUDO Citizenship Observatory
**Robert Schuman Centre for Advanced
Studies**
in collaboration with
Edinburgh University Law School
Country Report, RSCAS/EUDO-CIT-CR 2016/9
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

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Published in Italy European
University Institute Badia
Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy www.eui.eu/RSCAS/Publications/
www.eui.eu
cadmus.eui.eu

Research for the EUDO Citizenship Observatory Country Reports has been jointly supported by the European Commission grant agreement JLS/2007/IP/CA/009 EUCITAC and by the British Academy Research Project CITMODES (both projects co-directed by the EUI and the University of Edinburgh).

The financial support from these projects is gratefully acknowledged.

For information about the Project please visit the project website at <http://eudo-citizenship.eu>

Report on Citizenship Law

New Zealand/Aotearoa

Kate McMillan and Anna Hood

1. Introduction

As a former British colony, Dominion, and then member of the British Commonwealth, New Zealand's current citizenship laws developed out of and in response to those of the United Kingdom. They share much in common with the citizenship policies of other former British colonies, particularly Australia and Canada. As is the case in the United Kingdom, New Zealand's contemporary citizenship regime combines elements of limited *ius soli* and *ius sanguinis*, while a third method of bestowing citizenship, 'citizenship by grant', makes New Zealand citizenship available to permanent residents who meet a combination of language, character, residency, knowledge and intention to reside requirements.

One striking feature of the New Zealand case is the low salience of citizenship as a marker of political or national identity. This may be attributable in part to the evolutionary rather than revolutionary development of citizenship status and policy in New Zealand. National citizenship was created rather reluctantly in 1948 after nationalist sentiment among Canada's Quebecois led Canada to adopt national citizenship and thus to the dissolution of a common code of nationality across the British Empire and Commonwealth. British subject status remained a legally significant category for several decades after 1948 and was only gradually phased out. Also reducing the political salience of citizenship were immigration laws and policies that severely restricted the entry of 'race aliens' into the country from the late nineteenth century through to the late 1980s. Such restrictions acted as a gate that opened easily for those who already 'belonged' by dint of their character as ethnic 'kin' (McKinnon 1996) to existing British settlers and their descendants, but was usually closed to those who did not (Pearson 2001). Racialised immigration policies thus rendered citizenship's significance as a marker of belonging somewhat peripheral. Moreover, citizenship has never been a barrier to residents accessing social services, and in 1975 national voting rights became available to all permanent residents, further reducing citizenship's instrumental value.

This historical disinterest in citizenship as a marker of social or political belonging has so far endured the current period of record immigration and rapid demographic change. Since abandoning the official preference for immigrants from 'traditional source countries' and the adoption of an open immigration policy in the late 1980s and early 1990s, New

Zealand has experienced high levels of inward and outward migration (Greif 1995; McMillan 2006; Trlin *et al.* 2010; Spoonley and Bedford 2012). There has also been a marked diversification of the source countries from which migrants come. By 2013 over 25% of New Zealand's population of 4.47 million was born abroad, and a third of the overseas-born were born in an Asian country (Statistics New Zealand 2014). Much official effort has been expended on reorienting New Zealand's foreign policy and national identity towards the Asia-Pacific region, and promoting the idea that New Zealand is now a country that welcomes skilled and business migrants from all around the world. Coming a little later to the demographic reality of a multicultural society than Canada or Australia, New Zealand also largely resisted the exclusionary, nationalistic turn which saw citizenship tests introduced or made more difficult in already multicultural countries such as Australia, the United Kingdom, the Netherlands, and Canada. Official publications frame citizenship as a way for immigrants from a diverse set of national backgrounds to express a sense of belonging and identity in New Zealand but downplay any specific cultural or historical specificities associated with citizenship. Citizenship has, however, become more difficult to acquire since 2005. The *Citizenship Amendment Act 2005* restricted the right of *ius soli* to those born to a citizen, permanent resident or resident parent, and increased the residency requirement from three to five years.

A second notable feature of New Zealand's citizenship arrangements is the role that the 1840 Treaty of Waitangi played in incorporating Māori, first into British imperial membership and subsequently into New Zealand citizenship. Scholars continue to debate what demands the Treaty of Waitangi imposes on the New Zealand government to protect the specific rights of Māori identified in the Treaty, and the extent to which the Treaty provides the legal basis for a differentiated as opposed to equalitarian model of citizenship (Fleras & Spoonley 1999; Havemann 1999; Maaka and Fleras 2005; Humpage 2008; Jones 2016; Stephens 2016).

New Zealand's own colonial relationships in the Pacific Islands, and the ongoing citizenship arrangements associated with them, constitute a third feature of its contemporary citizenship regime.

2. Historical Background

New Zealand's citizenship laws and practices have their origins in both British common law and the imperial modes of membership and belonging associated with the British Empire (Dummet & Nicol 1990). In common with other British settler societies, loyalty to the ethnic and cultural mores of the 'mother country', periods of rabid anti-Asian sentiment, and an evolutionary rather than revolutionary movement towards independence from the United Kingdom were all significant factors shaping the development of New Zealand's contemporary citizenship regime. Alongside these influences, the Treaty of Waitangi signed in 1840 by the British Crown and a number of Māori Chiefs extended British subject status and then citizenship to Māori, and lent a distinctive biculturalism to New Zealand's political

and constitutional development. Additionally, New Zealand's colonial relations with the Pacific Islands during the period when British subject status still applied throughout the Commonwealth have given New Zealand's post-colonial citizenship arrangements a multi-national character.

The major milestone in the development of New Zealand citizenship was the *British Nationality and New Zealand Citizenship Act 1948* which ushered in the status of New Zealand citizenship. Citizenship differed from British subject status most significantly in that it assumed a link between one's formal membership status and a 'nationally'-construed political community; British subjecthood, on the other hand, was a political status held by linguistically and culturally diverse, and geographically distant, peoples supposedly united by their loyalty to the same monarch (Karatani 2003). However, the precise boundaries and characteristics of the 'national' New Zealand political community have been and continue to be complicated by enduring loyalties amongst some of its population to the United Kingdom and the British Commonwealth, the bicultural and later multicultural nature of its society, and the multi-national nature of the New Zealand realm.¹ The transition from subjecthood to citizenship was, moreover, gradual as 'over time, the legal political and social rights of modern citizenship were "grafted" on to the "much older notions of mutual duties of allegiance and protection that subsisted between monarch and subject" (Vincenzi 1988, cited in McMillan 2004).

This section sets out the major developments in New Zealand's citizenship regime and explores the influences behind them.

2.1. Pre-1840

Prior to British annexation of *Aotearoa* (New Zealand), sovereignty rested with the existing inhabitants, the Māori. The central features of citizenship: relations between the governed and the governors; a legal system; allocation of rights and duties; rules governing inclusion and exclusion; group identity and structures of political loyalty, were organised along territorially-based tribal (*hapū*) and confederated tribal (*iwi*) lines. Many *hapū* and *iwi* exert significant social, economic and political power in contemporary New Zealand, although all suffered a severe and in some cases catastrophic depletion of such power during and after the period of British colonisation. Debate continues about the nature of 'citizenship' in pre- and post-colonial Aotearoa (Fleras & Spoonley 1999; Humpage 2008; Maaka & Fleras 2005).

2.2 British Subjects: 1840-1948

Great Britain declared sovereignty over the whole of New Zealand on 21 May, 1840. It did so in relation to the North Island on the basis of the Treaty of Waitangi, signed by some but not all Māori chiefs and representatives of the British Crown, and by 'right of discovery' in relation to the Southern Islands (Ministry of Culture and Heritage 2014). New Zealand

¹ The realm of New Zealand is the entire region over which the Queen of New Zealand is sovereign, and includes New Zealand, the Cook Islands, Niue, Tokelau and the Ross Dependency in Antarctica.

thenceforth became part of the British Empire, to which British subjecthood was the official marker of belonging. In November 1840 New Zealand was declared a separate British colony following a short period in which had been part of the colony of New South Wales. The term ‘citizenship’ was sometimes used during the colonial period synonymously with subjecthood, but the status of New Zealand citizenship was not created until the passing of the British Nationality and New Zealand Citizenship Act of 1948.

Under the British imperial model of subjecthood all those born in territories over which Britain claimed sovereignty were British subjects by virtue of *ius soli*. As Sawyer and Wray (2013) note in their contribution to this series, the United Kingdom’s concepts of membership derived both from common law and, during the period of British colonialism, rules that were inclusive enough to accommodate the diverse peoples of the British Empire:

Historically, and in common with other common law countries, the UK operated on the basis of complete *ius soli*, a concept that... originated in ideas about allegiance that predate the modern concept of nationality. Elements of *ius sanguinis* have also been present, and nationality was overwhelmingly inclusive. This was congruent with British expansionism which, combined with a pragmatic attribution of various legal statuses, meant that the legal and physical boundaries of Empire were uncertain, with ramifications that are still felt (Sawyer and Wray 2013, p. 7).

From 1840 *ius soli* applied to anyone born in New Zealand, as well as to New Zealand residents born elsewhere in the Empire. The right to *ius soli* subjecthood was also extended to Māori, a principle first set down in Article 3 of the Treaty of Waitangi, the English version of which 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 Subject’.² It was then confirmed by section 2 of the *Native Rights Act 1865*. The passage of the *Native Rights Act 1865* was necessary because uncertainty had emerged as to whether Article 3 of the Treaty of Waitangi conferred British subjecthood on Māori or whether it simply determined that they were to be treated in the same manner as British subjects (McMillan 2004: 270).

Those not born within the British Empire could become British subjects through naturalisation. Naturalisation first became possible in 1844 after French and German immigrants, whose rights to own land were limited by not being British subjects, successfully lobbied for the ability to become British subjects. Until 1866 the way that individuals became naturalised was by requesting that their name be included in an annual ordinance issued by the Governor or an annual act passed by parliament (Archives New Zealand). In 1866 the *Aliens Act 1866* overhauled the naturalisation process and bestowed the power to naturalise people on the Department of Internal Affairs. Government officials in the Department of Internal Affairs had to follow the criteria for British subject status set down in the *Aliens Act 1866*, which stated that individuals had to be of good repute and had to pay a one pound naturalisation fee.

The laws determining who was eligible for naturalisation were altered a number of times over the course of the nineteenth century. The primary factor that influenced the

² A translation of the Māori text of Article 3 states ‘In return for their acknowledging the Government of the Queen, the Queen of England will protect all the natives of New Zealand, and will allow them the same rights as the people of England’.

changes was a desire to limit the ability of Chinese migrants to become British subjects. In 1882 the *Aliens Amendment Act 1882* lowered the fee for naturalisation for all persons except Chinese and then in 1892 the naturalisation fee was eliminated for everyone but the Chinese. The barriers that Chinese people faced in attaining British subject status continued well into the twentieth century. Most significantly, between 1908 and 1951 there was a complete ban on Chinese being naturalised in New Zealand.

By the beginning of the twentieth century, there was a desire in Britain to create a uniform system of conferring British subject status on people throughout the Empire and in so doing establish a system of imperial membership (Hansen 2000: 39). Accordingly, a common code of nationality was developed and embedded in the *British Nationality and Status of Aliens Act 1914* (UK). The Act codified for the first time the idea that all persons born in the Empire were British subjects (Karatani 2003). It also set out model naturalisation provisions that dominions could adopt if they so wanted. New Zealand did not adopt these provisions in 1914 but instead continued to set down its own independent legislation regarding naturalisation.

Throughout the First World War naturalisation in New Zealand was stopped altogether. In the inter-war period, the criteria for naturalisation were augmented. In the *British Nationality and Status of Aliens (in New Zealand) Act 1923*, applicants for British subject status had to prove they were of good character, satisfy English language requirements, prove they had been resident in New Zealand for 3 years, and prove they had no disability. In 1928 New Zealand finally brought its naturalisation rules into compliance with the British common code. The result of this was that the residence requirement that applicants for naturalisation had to meet was changed. It was necessary for applicants to have lived for 5 years in the British Empire, 12 months of which must have been in New Zealand. Additionally, New Zealand allowed persons who had been naturalised in other parts of the British Empire to automatically become British subjects in New Zealand. With the onset of the Second World War, New Zealand's naturalisation procedures were once again halted except for those who wanted to serve in New Zealand's armed forces.

The other significant aspect of New Zealand's nationality laws during this period was the legislative provisions that allowed the government to revoke individuals' British subject status. During the nineteenth century and the first few decades of the twentieth century, women and children had their British subject status revoked if their husbands or fathers lost their British subject status. In 1917, the *Revocation of Naturalisation Act 1917* was passed. This Act enabled the Governor-General to revoke the nationality of naturalised subjects during the war. No criteria for revocation were set down, leaving the Governor-General with very broad discretion. In the *British Nationality and Status of Aliens (in New Zealand) Act 1923* the conditions for revocation were revised. The Act provided that women and children would no longer lose their subject status if their husbands or fathers lost their British subject status. It further provided that the Minister of Internal Affairs could revoke the British subject status of a naturalised person if they obtained their status via misrepresentation, fraud or the concealment of material circumstances; or if it was in the public interest or if there were special reasons for doing so.

It is apparent from the above discussion that it was relatively easy for most individuals (with the exception of the Chinese) to obtain British subject status in New Zealand in the period of 1840 to 1948 either by birth or naturalisation. It is important to

appreciate, however, that it was only possible for a person to obtain this status if he or she was actually present in New Zealand. This meant that New Zealand's immigration laws had a significant effect on the constitution of New Zealand society.

In the century following the signing of the Treaty of Waitangi, New Zealand's immigration laws operated to limit access to New Zealand for a number of different groups. In the nineteenth century a series of acts were passed to limit the number of Chinese who could enter New Zealand. For example, the *Chinese Immigrants Act 1881* stated that only one Chinese person could arrive in New Zealand for every 10 tons of ship that arrived and all Chinese immigrants had to pay a poll tax of ten pounds. In 1896 this law was amended to allow one Chinese person to enter New Zealand for every 200 tons of ship that arrived and the poll tax for Chinese immigrants was raised to one hundred pounds (Ip 1995). In the early twentieth century English language tests were introduced for all immigrants, which had the effect of excluding many persons from non-English speaking backgrounds. Further, at the conclusion of the First World War, the *Undesirable Immigrants Exclusion Act 1919* was passed. This act prevented Germans and Austro-Hungarians from arriving in New Zealand as well as others who were thought to be 'disaffected or disloyal'.

2.3 New Zealand Citizenship Arrives: 1948

It was not until 1948 that New Zealand adopted its first citizenship laws and even then it did so under duress. In the post-Second World War years most people in New Zealand still identified strongly with Britain and felt very secure with their British subject status. When Canada passed its own nationality law, the *Canadian Citizens Act 1946*, it unilaterally broke the common code of nationality that had pertained since 1914 (Karatani 2003), in effect forcing the other Dominions to pass nationality legislation.

The *British Nationality and New Zealand Citizenship Act 1948* created three categories of citizenship: birth right citizenship; citizenship by descent through the male line; and citizenship by naturalisation. The Act provided that persons could obtain citizenship via these three categories from 1 January 1949 onwards. It also stated that British subjects, who immediately prior to the commencement of the Act had been born in New Zealand, naturalised in New Zealand, living in New Zealand for twelve months, born to a father who had been born or naturalised in New Zealand, born in Western Samoa, or married to someone who was eligible for New Zealand citizenship, became New Zealand citizens. The Act further determined that all persons who were New Zealand citizens, were also automatically British subjects.

With respect to citizenship by naturalisation, persons from Commonwealth countries could automatically acquire citizenship by naturalisation if they had been living in New Zealand for 12 months. All other persons had to satisfy a number of criteria including being of good character and meeting English language and residency requirements, exhibiting a knowledge of the responsibilities and privileges of citizenship, and showing an intention to reside in New Zealand permanently.

It is thus apparent that, as they had been in the nineteenth century and early twentieth century, New Zealand's nationality and citizenship laws continued to be influenced strongly

by New Zealand's connection to Britain and the Commonwealth more generally. Further, New Zealand's immigration policy continued to play a role in affecting who could access British subject status in New Zealand and New Zealand citizenship. While New Zealand's immigration laws did not explicitly limit immigration from any particular country in the post-war years, a preference for migrants from 'traditional source countries' was embedded in policy, particularly in schemes established to encourage migration from particular parts of the world. Specifically, there was a heavy emphasis on encouraging persons from Western European countries to emigrate to New Zealand to assist with skills shortages, as it was believed that such migrants would assimilate easily into New Zealand society. Consequently, a large number of immigrants arrived from Britain and the Netherlands, along with smaller numbers from countries such as Austria, Germany, Denmark, Switzerland and Greece (McKinnon 1996: 37-39; Ongley 2004: 201). Following the Second World War New Zealand also accepted 5000 refugees and displaced people from Europe, and another 1100 Hungarians during the late 1950s (Schroff 1989; Beaglehole 2013).

Before concluding this section it is worth noting that the discomfort New Zealanders felt about embracing New Zealand citizenship in 1948 did not evaporate quickly. To the contrary, New Zealand's desire to emphasise its connections to Britain persisted well into the second half of the twentieth century. This is apparent from the approach that it took to legislating who was entitled to vote in New Zealand elections. The *New Zealand Electoral Act 1956* required voters to be British subjects who had been resident in New Zealand for a year, not New Zealand citizens. It was not until 1975 that the requirement to be a British subject to vote in New Zealand was dropped. However, even then citizenship was not made a requirement for voters. Contrary to the approach of other Commonwealth countries such as Canada and Australia, the *Electoral Amendment Act 1975* simply required voters to have been resident in New Zealand for one year. Today New Zealand is still the only country to grant national voting rights to all legal residents after a year's continuous residence (Barker and McMillan 2014; McMillan 2015).

2.4 Updated Citizenship Legislation: 1977

The *Citizenship Act 1977* maintained the three forms of New Zealand citizenship that had been set down in the 1948 Act: *ius soli*, *ius sanguinis* and naturalisation. However, it did make a few significant changes. First, it extended citizenship by descent so that it could be obtained through the female line as well as the male line. Second, it abolished the term 'naturalisation' and replaced it with the term 'citizenship by grant'. Finally, it abolished any distinction for citizenship purposes between persons from Commonwealth countries and other parts of the world. This change reflected New Zealand's changing relationship with Britain and the Commonwealth and its gradual move towards greater independence.

The change in New Zealand's relationship with Britain was reinforced by Britain a few years later when it passed the *British Nationality Act 1981* (UK). The Act removed the status of British subject from persons in New Zealand and other Commonwealth countries unless they did not possess another form of citizenship, and also removed the right of abode in the United Kingdom from New Zealand citizens without a British-born father or grandfather.

Changing immigration flows also began to exert an influence on New Zealanders' sense of national identity during the 1950s to 1970s. Beginning in the 1950s, Pasifika peoples from Samoa, Fiji and Tonga were recruited to fill labour shortages in New Zealand's manufacturing sector. Many such migrants arrived on work visas rather than as permanent residents, and when the manufacturing sector retracted in the mid-1970s, Pasifika people resident in New Zealand became the target of campaigns designed to locate and deport visa overstayers (Fleras & Spoonley 1999; MacPherson 2004; Spoonley & Bedford 2012).

In the 1970s refugees arrived from Laos, Cambodia, Vietnam, Chile, Uganda and Iran, most of whom were eligible for and were granted New Zealand citizenship (Liev 1995; Ongley & Pearson 1995; Beaglehole 2013). These arrivals, along with the growing Pasifika population added a little diversity to what had hitherto been an almost exclusively European and Māori population base. It was not until the introduction of a new immigration act in 1987 that New Zealand officially abandoned its preference for migrants from 'traditional source countries'. This change, combined with New Zealand's adoption of a points-based immigration system in 1991 under which there was a radical increase in levels of inward migration, led to a rapid ethnic, religious, linguistic and cultural diversification of the population.

By 2013 New Zealand had the third-highest level of overseas-born as a proportion of the total population in the OECD (OECD 2013). Much of the migration that drove this development was of skilled and entrepreneurial migrants and their families, but a more recent trend has been a growth in temporary migration programmes designed to meet short-term labour shortages. Many of those on short-term work visas seek to transition onto permanent visas, as do many of the thousands of international students studying in New Zealand. Combined, these two temporary forms of people movements into New Zealand will likely have increased the proportion of the resident population who are noncitizens and who are currently not on a path to citizenship.

New Zealand's immigration trends in many respects mirror those of Australia and Canada, as well as other developed democracies experiencing significant ageing of their populations. In recognition of their common policy interests, goals and capacities, New Zealand immigration and citizenship officials meet regularly with their counterparts from Australia, Canada, the United Kingdom and the United States, facilitating policy transfer and sharing among these countries and New Zealand (Five Country Conference 2014).

Emigration also plays a significant role in shaping New Zealand's demography. It is estimated that somewhere between 460,000 (Bryant & Law 2004) and 850,000 (Bedford 2001) New Zealanders live outside of the country, but no accurate data are available. In 2015 the OECD estimated that New Zealand had the second-largest diaspora per capita in the world (OECD 2015). High levels of outward and return migration combine with high levels of immigration to create considerable 'churn' in the local population. Children born outside of New Zealand to New Zealand citizen parents are eligible for New Zealand citizenship by descent, but New Zealand citizens by descent cannot pass this citizenship on to their own overseas-born children, unless those children would otherwise be stateless.

The most common destination country for New Zealand emigrants is Australia, with migration to Australia facilitated by a free travel arrangement, the Trans-Tasman Travel Arrangement (TTTA). The TTTA was signed by the countries' Prime Ministers in 1976 but

the practice of free travel between the countries dates back to the colonial era. Under the TTTA New Zealanders and Australians are able to travel freely between the two countries without first seeking a visa, and to live and work indefinitely in both. Over 600,000 New Zealand citizens are thought to be in Australia at any one time, including around 550,000 who are residents (McMillan and Hamer 2013).

Prior to law changes in 2001 New Zealanders resident in Australia were counted as permanent residents for the purposes of the Australian Citizenship Act 1948, and were, therefore, eligible for Australian citizenship after meeting Australian residency requirements. New Zealanders who arrived to live in Australia after 2001 under the terms of the TTTA, however, ceased to count as permanent residents under the Citizenship Act, and many now find themselves unable to transition into citizenship, despite being permanently resident in Australia. Moreover, changes to the social security legislation in 2001 similarly excluded New Zealanders who arrived after 2001 from the definition of Australian permanent resident, with the result that they were no longer eligible for the same social services and support as permanent residents. By contrast, Australian citizens and permanent residents who move to New Zealand under the TTTA continue to have permanent residence status there, providing them with a path to citizenship. The situation of New Zealanders in Australia post-2001 has led to hardship for many New Zealanders resident in Australia and caused political tensions in the formal Australian-New Zealand relationship (Hamer 2014; McMillan 2014).

2.5 The Abolition of Pure *Ius Soli* Citizenship: 2005

The most significant change in New Zealand's citizenship laws in the twenty first century to date has been the decision to alter the rules surrounding citizenship by birth (*ius soli* citizenship). The *Citizenship Amendment Act 2005* determined that simply being born in New Zealand no longer entitled a person to citizenship. Instead a person born in New Zealand from 1 January 2006 onwards can only obtain citizenship by birth automatically if one of his or her parents is a New Zealand citizen, permanent resident or resident or was a citizen, permanent resident or resident in New Zealand, the Cook Islands, Niue or Tokelau.³

The Act created two exceptions to this rule. Persons born in New Zealand who would be stateless as a result of the rule and persons who were abandoned at birth in New Zealand and whose parents could not be identified are entitled to New Zealand citizenship by birth. All other persons who are born in New Zealand to non-citizen, non-resident parents are afforded the immigration status of their parents. Where the immigration status of a child's two parents differs, the child is entitled to the more favourable immigration status.

³ Note that a person who is born outside New Zealand is also deemed to be a citizen by birth if his or her father or mother is a New Zealand citizen and the father or mother is the head of a mission, an employee of the State services or Armed Forces, a person working overseas for the public service of Niue, Tokelau or the Cook Islands, an officer or employee of New Zealand Trade and Enterprise, or an officer or employee of the New Zealand Tourism Board. Further, a person who would ordinarily have been born in Tokelau but is born in Samoa for reasons of medical necessity will be a New Zealand citizen if they would have been a New Zealand citizen if born in Tokelau.

A notable feature of the *Citizenship Amendment Act 2005* changes was that they did not set out a pathway to citizenship for children born in New Zealand to non-citizen, non-permanent resident or non-resident parents. This is in contrast to other Commonwealth countries such as Australia and the United Kingdom where such persons can apply for citizenship after ten years living in their country of birth. Individuals born in New Zealand to non-citizen, non-permanent resident or non-resident parents can now become a citizen in one of two ways. First, their parents could file a successful citizenship by grant application on their behalf. Alternatively, they could apply for citizenship by grant independent of their parents. This, however, would first require them to gain a Permanent Resident visa in order to meet the residency requirements for citizenship, and could, therefore, require them to meet the immigration criteria that determine allocation of permanent visas. This latter situation is likely to affect only a very few people, as the parents of a child born in New Zealand would ordinarily need themselves to become a permanent resident in order to continue living in the country.

Several rationales have been put forward to explain the move away from pure *ius soli* citizenship. The government of the day explained that the move was to ‘ensure that citizenship and its benefits are limited to people who have a genuine and an ongoing link to New Zealand’.⁴ Looking behind this rhetoric, however, it appears that the two forces that shaped much of New Zealand’s earlier citizenship debates — British and Commonwealth law changes and concerns about ‘foreigners’ — were also influential factors.

In the two decades preceding the law change, a number of Commonwealth countries, including Britain, Australia, India and Ireland, had moved away from allowing pure *ius soli* citizenship. Thus in many respects the change in the *Citizenship Amendment Act 2005* can be seen as an effort to fit within a broader international trend (Sawyer, 2013: 658-660).

In addition to a desire to have New Zealand’s citizenship laws aligned with those of its Commonwealth cousins, there was also a popular demand to end pure *ius soli* citizenship because of a perception that it provided foreign over-stayers with a means of staying in New Zealand permanently. There was a belief at the time that foreigners were coming to New Zealand, giving birth to children who were entitled to New Zealand citizenship by birth and then using their citizen children as a tool to prevent them from being deported for overstaying their visas. This belief was fostered by the high profile *Ye* case⁵ which was running at the time. In that case two Chinese couples, who had overstayed their visas, were arguing that they should be allowed to stay in New Zealand because their children were New Zealand citizens. As Caroline Sawyer has pointed out, the popular perception that overstaying adults could stay in New Zealand if they had New Zealand citizen children was misplaced (Sawyer, 2013: 661-663). The *Ye* case did not determine that families where the parents were over-stayers and the children were citizens could remain in New Zealand. Rather, it found that in any deportation dispute, ‘primary consideration’ had to be given to the interests of the children in the family. The fact that a child was a New Zealand citizen would not be enough by itself to warrant a family being allowed to stay in New Zealand. It would only be in cases where the child’s education, health and well-being needs could not be met elsewhere that the courts might decide to allow families in this situation to stay (Sawyer: 661-663). Despite the law not automatically allowing the families of citizen children to remain in New Zealand, the

⁴ Hawkins, G. Minister of Internal Affairs, *New Zealand Hansard*, vol. 635, 12 April 2005.

⁵ *Ye and Qiu v Minister of Immigration* [2009] NZSC 76.

general public's belief that this was how the law operated was a factor that created the environment for legislative change.

In addition to changing the citizenship by birth criteria, the *Citizenship Amendment Act 2005* also changed the residency requirement for citizenship by grant from three to five years. The government explained that the increased period of residency by saying that it 'will provide a sufficient basis for the assessment of applicants' suitability for citizenship and commitment to New Zealand.'⁶

2.6 New Zealand citizenship and the Pacific

2.6.1 Cook Islands

Since the late nineteenth century, the legal status of the inhabitants of the Cook Islands has been linked to the nationality systems of both Britain and New Zealand. In 1888, the Cook Islands became a British protectorate and its inhabitants became British subjects. Thirteen years later, in 1901, the Cook Islands became a territory of New Zealand. As New Zealand was also part of the British Empire at that time, this change in the country's legal position did not affect the legal status of Cook Islanders: they remained British subjects. When the *British Nationality and New Zealand Citizenship Act 1948* was passed in New Zealand, the legal status of Cook Islanders changed along with that of the inhabitants of New Zealand: they retained their British subject status but also gained New Zealand citizenship.

In 1965, the Cook Islands became a self-governing state in free association with New Zealand. This meant that it gained legislative control over internal affairs' matters but that the New Zealand government continued to exercise control over matters of foreign affairs. For citizenship and nationality purposes, the Cook Islanders retained their New Zealand citizenship but also gained Cook Island nationality/permanent residence.⁷

In recent years, the Prime Minister of the Cook Islands, Henry Puna, has been advocating full independence for the Cook Islands so that the country can exercise more autonomy on the international stage and become a member of the United Nations. One of the key issues in the debates around independence is citizenship. Most Cook Islanders would like to retain New Zealand citizenship but the New Zealand government has indicated that citizenship would likely cease in the event of the country obtaining full independence.⁸

2.6.2 Niue

In many respects the legal status of the inhabitants of Niue has mirrored that of the inhabitants of the Cook Islands. In the early twentieth century Niue was briefly a British protectorate before becoming a New Zealand territory on 11 June 1901, the same date that the

⁶ Hawkins, G. Minister of Internal Affairs, *New Zealand Hansard*, vol. 635, 12 April 2005.

⁷ Art 76A of the Cook Islands Constitution sets down the provisions of who may be a permanent resident of the Cook Islands. It should be noted that while Cook Islanders can have both New Zealand citizenship and permanent residence in the Cook Islands, non-Cook Island New Zealanders do not have a right to permanent residence in the Cook Islands.

⁸ V. Small & S. Day, 'Cook Islands push for independence from New Zealand', *Stuff* [online New Zealand newspaper], 31 May 2015.

Cook Islands assumed this status. As such, the inhabitants of Niue were British subjects until the passage of the *British Nationality and New Zealand Citizenship Act 1948* at which point in time they also assumed New Zealand citizenship.

In 1974, pursuant to a referendum, Niue became a self-governing state in free association with New Zealand. Similarly to the Cook Islands, the people of Niue were entitled to retain their New Zealand citizenship after Niue became a self-governing state but they could also assume Niue nationality/permanent residence.

2.6.3 Tokelau

Tokelau came under British protection in 1877 and was formally acknowledged as a British protectorate in 1889. In 1925 Britain ceded the administration of Tokelau to New Zealand and Tokelau formally became part of New Zealand on 1 January 1949 pursuant to the *Tokelau Islands Act 1948*. Prior to 1949, Tokelauans were British subjects and from 1949 onwards the legal status of the people of Tokelau has followed that of people living in New Zealand: between 1948 and 1981 they were British subjects and New Zealand citizens; and since the passage of the *British Nationality Act 1981* they have been New Zealand citizens but not British subjects.

2.6.4 Western Samoa

The history of the legal status of persons living in Samoa (formerly Western Samoa) is slightly different to that of the Cook Islands, Niue and Tokelau. From 1900 until the First World War I, Western Samoa was a German territory. At the conclusion of the First World War, it became a Class C Mandate under the League of Nations trusteeship system and was administered by New Zealand. In light of the fact that Western Samoa had not been within the British Empire prior to the First World War, its inhabitants were not British subjects when New Zealand became its mandate power in 1920. This left the status of Western Samoans somewhat uncertain.

In 1923 and 1928 New Zealand passed legislation that allowed the inhabitants of Western Samoa to become naturalised British subjects regardless of whether they met the English language requirements set down for others seeking naturalisation. However, there was uncertainty about the status of persons from Western Samoa who did not select to go through the formal naturalisation process.

In 1962, Samoa gained its independence from New Zealand and the legal status of Samoans in New Zealand continued to be shrouded in uncertainty. It was not until 1982, when Falema'i Lesa, a woman born in Western Samoa while New Zealand was the mandate power, took a case to the Privy Council claiming that she had New Zealand citizenship that the legal status of Western Samoans was clarified.⁹ The Privy Council ruled that the *British Nationality and Status of Aliens (in New Zealand) Act 1928* had bestowed British subject status on all persons born 'within His Majesty's dominions and allegiance'. It further determined that 'His Majesty's dominions and allegiance' included Western Samoa because section 7(1) of the 1928 Act stated that 'this Act shall apply to the Cook Islands and to

⁹ *Lesla v Attorney-General* [1982] 1 NZLR 165.

Western Samoa in the same manner in all respects as if those territories were for all purposes part of New Zealand'. Given that persons born in Western Samoa after the passage of the 1928 were British subjects, the Privy Council stated that they had then become New Zealand citizens with the passage of the *British Nationality and New Zealand Citizenship Act 1948*. Thus Lesa and others born in Western Samoa while the 1928 Act was in force were New Zealand citizens.¹⁰

The New Zealand government was very concerned by the Privy Council's ruling and acted swiftly to pass legislation that overturned the effect of the decision. Under the *Citizenship (Western Samoa) Act 1982*, all persons who could have been New Zealand citizens because of the Privy Council's decision, were deemed not to be New Zealand citizens. The Act did, however, make provision for a certain number of Samoans to become New Zealand citizens. Specifically, it provided that the Minister would grant citizenship to all persons who were Samoan citizens and were in New Zealand on 14 September 1982 (the day before the Act commenced). It further determined that Lesa (the woman at the centre of the Privy Council case) was a New Zealand citizen, and that Samoans who legally entered New Zealand from 14 September 1982 and are entitled to reside indefinitely in New Zealand would not be required to meet the usual requirements before becoming eligible to apply for New Zealand citizenship. Under the Samoan Access Scheme 1,100 permanent visas are available to Samoan citizens who wish to migrate to New Zealand (Immigration New Zealand 2016); such migrants are eligible to apply for citizenship on arrival.

3. The Current Citizenship Regime

3.1 Acquisition of Citizenship

The three models of acquiring citizenship that were first set down in the *British Nationality and New Zealand Citizenship Act 1948* — citizenship by birth, citizenship by descent and citizenship by naturalisation/grant — are still the three models that exist today in the *Citizenship Act 1977*. However, the precise content of each looks different to how it did seven decades ago.

3.1.1 Citizenship by birth

As has already been set out above, New Zealand's citizenship by birth laws were significantly altered in 2005. Between 1948 and 2005 all persons born in New Zealand had automatically acquired New Zealand citizenship. Pursuant to the *Citizenship Amendment Act 2005* any person born in New Zealand on or after 1 January 2006 is only able to acquire citizenship through birth if one of their parents is either a citizen, a permanent resident or a resident in New Zealand, the Cook Islands, Niue or Tokelau. It should be noted that the Act did not alter the citizenship of persons born in New Zealand before 1 January 2006: they

¹⁰ *Lesa v Attorney-General* [1982] 1 NZLR 165, 174-177.

retained their citizenship by birth status. Further, as explained above, persons who would be rendered stateless by this rule and persons who do not know who their parents are because they have been abandoned are entitled to citizenship by birth.

3.1.2 *Citizenship by descent*

There are two ways of obtaining citizenship by descent under the *Citizenship Act 1977*. First, a person is entitled to citizenship by descent if he or she is born outside New Zealand to a mother or father who is a New Zealand citizen otherwise than by descent. In other words, only the foreign born children of citizens who have themselves been born or naturalised in New Zealand obtain New Zealand citizenship by descent. Second, a person can obtain citizenship by descent if he or she is born outside New Zealand to a mother or father who is a New Zealand citizen by descent and the person would be stateless without New Zealand citizenship. New Zealand citizens by descent may apply for and be granted citizenship by grant when they return to the country, thus ensuring their ability to pass on New Zealand citizenship if their own children are born overseas.

3.1.3 *Citizenship by grant*

Under section 8 of the *Citizenship Act 1977*, the Minister of Internal Affairs has the discretion to bestow citizenship by grant on individuals who are 16 years or older and who are of full capacity, provided they meet a number of criteria. These criteria include being entitled to be in New Zealand indefinitely; being present in New Zealand for 1350 days in the five years preceding their application, including at least 240 days in each of those years; being of good character; having sufficient knowledge of the responsibilities and privileges attaching to New Zealand citizenship; having sufficient knowledge of English; and having an intention to reside in New Zealand going forward (Department of Internal Affairs 2016a).¹¹

In addition to satisfying the criteria that have been set down in the *Citizenship Act 1977*, persons seeking citizenship by grant must also ensure that they are not disqualified for any reason. Section 9A of the Act provides that a person will be disqualified from being granted citizenship if: they have been sentenced to a term of imprisonment of 5 years or more or to an indefinite term of imprisonment capable of running for 5 years or more; they have been sentenced to a term of imprisonment of less than 5 years in the preceding 7 years; or they have been convicted of an offence within the preceding 3 years but not sentenced to imprisonment. There is provision in section 9A(2) of the Act, however, for the Minister to grant citizenship despite a person's convictions if there are exceptional circumstances relating to the conviction. Exceptional circumstances may include where a person has been convicted of an offence in a foreign country that is not a crime in New Zealand, such as homosexuality.

¹¹ In order to determine whether someone intends to reside in New Zealand, regard will be had as to whether the person is currently residing in New Zealand, whether the person has indicated on the application form that they intend to continue to reside in New Zealand, and whether there is any information that would suggest that the applicant may not intend to continue to reside in New Zealand. If a person lies about their intention to remain in New Zealand, they may lose their citizenship under s 17 of the *Citizenship Act*. The New Zealand courts have indicated that in such cases regard will be had as to what the individual's intention was at the time he or she made their application for citizenship (*Yan v Minister of Internal Affairs* [1997] 2 NZLR 450).

A final point to note about citizenship by grant is that under section 9 of the *Citizenship Act 1977* the Minister of Internal Affairs has the discretion to grant citizenship to people in special circumstances outside of the circumstances in section 8 of the Act. The special circumstances set down in section 9 include where: a person is under the age of 16; a person's mother or father was a New Zealand citizen by descent; the minister considers that it would be in the public interest because of exceptional circumstances of a humanitarian or other nature relating to the applicant; and where the person would otherwise be stateless. When the Minister of Internal Affairs is exercising his or her discretion under this part of the Act, he or she may have regard to any convictions the applicant has as well as the general requirements of citizenship by grant set down in section 8.

3.1. iv Discussion about New Zealand's laws regarding the acquisition of citizenship

The above three grounds of acquiring citizenship are the primary means of acquiring citizenship in New Zealand. There is no current law providing the Prime Minister, cabinet or Governor-General with the power to bestow citizenship on individuals. It is possible, that the parliament could pass a piece of legislation providing an individual with citizenship, as the parliament did for Falema'i Lesa in the *Citizenship (Western Samoa) Act 1982*. Save an exceptional case such as Lesa's, however, it is highly unlikely that the parliament would take such a step.

There is no provision in the *Citizenship Act 1977* that explicitly provides children adopted in New Zealand or by New Zealanders with New Zealand citizenship. However, the Act does provide that an adopted child will be deemed to be the child of a New Zealand citizen in a number of circumstances. First, an adopted child will be deemed the child of a New Zealand citizen if the child has been adopted by a New Zealand citizen, resident or permanent resident in New Zealand, the Cook Islands, Niue or Tokelau. Second, an adopted child will be deemed the child of a New Zealand citizen if the child has been adopted by a New Zealand citizen outside New Zealand by an adoption order under the *Adoption Act 1955* and the adoption either took place before the commencement of the *Citizenship Amendment Act 1992* or the child is under fourteen years of age. Third, an adopted child will be deemed the child of a New Zealand citizenship if he or she has been adopted by a New Zealand citizen outside New Zealand and the adoption was certified in accordance with the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. The effect of these provisions is that persons adopted in New Zealand by New Zealand citizens, residents or permanent resident, and persons adopted outside New Zealand by New Zealand citizens will be New Zealand citizens either by birth or descent.

It is important to appreciate that, for the most part, there is no hierarchy between the different forms of citizenship available in New Zealand. The only difference that exists is that citizens by descent cannot pass on their New Zealand citizenship to any children they have who are born abroad. The purpose of this provision is to prevent generations of people who have no attachment to New Zealand acquiring New Zealand citizenship.

For those persons who are citizens by descent and would like to pass New Zealand citizenship onto their own foreign-born children (something they cannot do as citizens by descent) there are two options, both of which involve converting their citizenship by descent

into citizenship by grant. First, they can seek to convert their citizenship by descent into citizenship by grant, by following the procedures set out in the citizenship by grant section. Second, they can apply to the Minister of Internal Affairs for a grant of citizenship and the Minister has the discretion to make them a citizen by grant as a special case. As citizens by grant they are eligible to pass their New Zealand citizenship on to their children.

One final point to note is that New Zealand tolerates dual citizenship. This has been permissible since New Zealand's citizenship laws were first introduced in 1948 and holds for citizens by birth who have inherited a foreign citizenship at birth by descent, for citizens by descent who have obtained a second citizenship at birth abroad, for naturalised citizens who do not have to renounce a previously held citizenship and for New Zealand citizens acquiring a foreign citizenship.

3.2 Loss of Citizenship

The ways that persons can lose their citizenship in New Zealand are fairly limited. They fall into three main categories: renunciation; deprivation through acting in a manner that is contrary to the interests of New Zealand; and deprivation because of fraud, false representation, concealment or mistake. Each of these categories will be explained below but at the outset it is worth noting that New Zealanders cannot lose their citizenship simply by leaving the country, choosing to live abroad or taking on a second nationality.

3.2.1 Renunciation

Section 15 of the *Citizenship Act 1977* provides that New Zealand citizen may renounce their citizenship if they are 18 years of age or more, are of full capacity and have citizenship of another country. Once a person has renounced his or her citizenship the Minister of Internal Affairs must register the renunciation and from that time onwards the person ceases to be a New Zealand citizen. The exceptions to the registration requirement are that the Minister may decline to register a renunciation if the person concerned is resident in New Zealand or New Zealand is at war with another country.

3.2.2 Deprivation through acting in manner that is contrary to the interests of New Zealand

Pursuant to section 16 of the *Citizenship Act 1977* the Minister of Internal Affairs may deprive a person of his or her New Zealand citizenship in two circumstances. The first is if the person, while a New Zealand citizen and while of or over the age of 18 and of full capacity, has acquired the nationality or citizenship of another country and acted in a manner that is contrary to the interests of New Zealand. The second is if the person, while a New Zealand citizen and while of or over the age of 18 and of full capacity, has voluntarily exercised any of the privileges or performed any of the duties of another nationality of citizenship that he or she has in a manner that is contrary to the interests of New Zealand. It is thus apparent that a person can only be deprived of his or her citizenship for acting contrary to the interests of New Zealand if he or she has dual citizenship.

In order to deprive a person of their citizenship under section 16, the Minister of Internal Affairs must first follow the procedure under section 19 of the *Citizenship Act 1977*. Specifically, he or she must serve the affected person with a notice that informs the person the Minister is intending to make an order for deprivation; cites the section of the Act under which the order will be made; specifies the grounds on which the order will rest; and advises the person of the right to have the decision reviewed by a court. Within 28 days of receiving this notice, the affected person is then entitled to apply to the High Court of New Zealand for a declaration that there are insufficient grounds to justify the order. There is currently no case law under section 16.

3.2.3. *Deprivation because of fraud, false representation, concealment or mistake*

The final category for loss of citizenship in New Zealand applies to persons who have obtained their citizenship by grant. Under section 17 of the *Citizenship Act 1977*, the Minister of Internal Affairs may deprive these persons of their citizenship if the grant of citizenship or any grant requirement was procured by fraud, false representation or wilful concealment of relevant information. The Minister may also deprive persons of their citizenship if the grant of citizenship or any grant requirement was procured by mistake except where that deprivation would result in the person becoming stateless.

As with deprivation of citizenship under section 16 of the Act, the Minister must follow the procedural requirements set out in section 19 and the person affected must be given an opportunity to apply to the High Court for an order that there are insufficient grounds for a deprivation order to be made.

What is interesting about the operation of section 17 of the Act is that, unlike section 16, some persons may be rendered stateless by its operation. If a person has acquired New Zealand citizenship by grant, does not possess any other citizenship, and then is deprived of his or her New Zealand citizenship because of fraud, false representation or wilful concealment of relevant information, he or she will become stateless.

3.2 iv *Discussion of loss of citizenship*

It is rare for New Zealanders to be deprived of their citizenship. Between 1990 and 2010 there were only around 40 cases of people being deprived of their citizenship (Ryken 2010: 11).

Pursuant to section 75 of the *Immigration Act 2009*, a person who is deprived of his or her citizenship status under either section 16 or section 17 of the *Citizenship Act 1977*, while in New Zealand, is given a resident visa and is allowed to stay in New Zealand. However, if the person was deprived of his or her citizenship because it was procured by fraud, false representation or wilful concealment of information and that fraud, false representation, or wilful concealment of relevant information occurred in the context of procuring the immigration status that enabled the person to meet the requirements for a grant of citizenship, then that person is liable for deportation under section 158(2) of the *Immigration Act 2009*.

3.3 Barriers to citizenship by grant

As discussed in 3.1.iii above, the requirements for citizenship by grant include residency, language, character, knowledge of the rights and responsibilities of New Zealand citizenship, and an intention to permanently reside in New Zealand. While not onerous, these requirements can be problematic for some permanent residents.¹² The residency requirements, for example, which require applicants to have been in New Zealand for a minimum of 1,350 days in the five years preceding the citizenship application; and ii) for at least 240 days in each of those five years can present a challenge to people whose work commitments require frequent travel. University academics who spend six months on sabbatical outside of New Zealand during any five year period, for example, often fall foul of the requirement that they be resident in New Zealand for at least 240 days in each of the previous five years.

The English language requirement for citizenship requires that an applicant ‘know enough English to be able to deal with everyday situations such as shopping or banking’ (Department of Internal Affairs 2016a). If a citizenship officer is uncertain as to whether an applicant meets this standard the applicant may be asked to come in for a citizenship interview. According to the Department of Internal Affairs ‘eighty percent of applicants lodge their applications in person during an interview with a case officer. Their English language ability is assessed then. For those who lodge by mail, if they do not come from an English-speaking country they must provide documentary evidence of their ability to speak English. If they cannot provide sufficient evidence they will be invited to attend an interview’ (Correspondence with the Department of Internal Affairs, 2016).

A final non-legislative barrier to citizenship by grant is the cost. In 2016 the fee for citizenship by grant was NZ\$470.20 per adult and \$235.10 per child. Citizenship by descent cost NZ \$204.40 (Department of Internal Affairs 2016 b). While undoubtedly these costs are difficult for some migrants, and particularly those with a large family, they are unlikely to be prohibitive in most cases.

3.4 Statistics regarding the acquisition of New Zealand citizenship since 1948

Little data is collected on the citizenship status of New Zealanders. The five-yearly census does not ask a question about respondents’ citizenship status, and no official statistics are available on how many citizens and noncitizens are in the country at any one time. This is a significant barrier to any understanding about the relationship between citizenship status and other social and political outcomes. The Department of Internal Affairs, which has responsibility for implementing citizenship legislation, has, however, collected data on the numbers and source countries of those who have naturalised since 1949 (Table 1). Such data

¹² Under subsection 8(7) the Minister may accept a lesser period of presence in New Zealand if satisfied that the applicant has exceptional circumstances that would justify such a course, provided the applicant was physically present in New Zealand for not less than 450 days during the 20 months prior to the date of application.

suggest there are considerable differences in levels of citizenship uptake among migrants from different national backgrounds. High levels of inward migration from China, for example, have not translated into Chinese constituting a high proportion of those granted citizenship (Table 2). A contributing factor may be that China does not allow dual citizenship, although higher rates of naturalisation are evident among migrants from India, which also does not allow dual citizenship. One of the effects of the diversified immigration flows into New Zealand since 1991 has thus been a changing demographic profile of those within the population who are citizens and those who are non-citizens.

Table 1: Country of origin for people acquiring New Zealand citizenship between 1949 and 2014

Rank	Country	Number of applicants	% of total applicants
1.	United Kingdom*	198291	26.5
2.	China***	70588	9.4
3..	Samoa**	65434	8.8
4.	India	47323	6.3
5.	South Africa	45940	6.1
6.	Fiji	38955	5.2
7.	Philippines	23521	3.1
8.	Korea****	19636	2.6
9.	Taiwan	19274	2.6
10.	The Netherlands	14268	1.9

Source: New Zealand Department of Internal Affairs 2015a.

* Includes data for United Kingdom, England, Northern Ireland, Scotland, Wales and Great Britain.

** Includes data for Samoa and Western Samoa

*** Includes data for China, Hong Kong, Tibet, Inner Mongolia, Macau and Macao.

**** Includes data for Korea and South Korea.

Table 2: Top ten source countries of those granted citizenship in 2014

Rank	Country	Number of applicants	% of total applicants
1.	United Kingdom*	4420	15.8
2.	South Africa	3693	13.2
3.	Philippines	2721	9.7
4.	Samoa**	2593	9.3
5.	Fiji	2236	8.0
6.	India	2218	7.9
7.	China***	1327	4.7
8.	Zimbabwe^^	575	2.1
9.	Tonga	501	1.8
10.	Malaysia^	402	1.4

Source: New Zealand Department of Internal Affairs 2015a.

* Includes data for United Kingdom, England, Northern Ireland, Scotland, Wales and Great Britain.

** Includes data for Samoa and Western Samoa

*** Includes data for China, Hong Kong, Tibet, Inner Mongolia, Macau and Macao.

^ Includes data for Malaysia, Malaya, North Borneo, Sabah and Sarawak.

^^ Includes data for Zimbabwe, Rhodesia, Rhodesia and Nyasaland, and Southern Rhodesia.

Currently no reliable data exist on what *proportion* of new migrants apply for and are granted citizenship after they meet the residency requirements. A 2010 survey carried out by Statistics New Zealand which interviewed migrants in New Zealand found 78.4 per cent of those interviewed had either gained New Zealand citizenship or intended to apply for it. The people who were most likely to have applied for citizenship or who intended to apply for citizenship came from South Africa, the Pacific and South Asia (Statistics New Zealand 2010: 1). A Department of Internal Affairs' 2009 study, however, found that 39 per cent of non-citizens in New Zealand had not considered or had decided against applying for citizenship (Department of Internal Affairs 2009). This same research found the most common reasons that non-citizens gave for not applying were that they saw no advantage in becoming a citizen (24%), the cost of becoming a citizen was too high (18%), they were not eligible (10%), they were not interested (8%), and they did not want to lose the advantages of their existing citizenship (7%). Different rates of uptake are, therefore, most likely the result of some combination of whether the migrants' home country allows dual citizenship and migrants' own estimation of the emotional and instrumental value of New Zealand citizenship.

In 2014, more than 11,000 people overseas registered for citizenship by descent (Department of Internal Affairs 2015b).

4. Current political debates and reform plans

Citizenship remains a generally uncontroversial aspect of New Zealand politics. Nonetheless, several issues pertaining to citizenship have gained academic or media interest over the past few years.

First, there is ongoing debate about the appropriateness of New Zealand's citizenship by descent laws, particularly but not only for Māori. As discussed above, under the *Citizenship Act 1977* New Zealand citizenship by descent may only be passed on to one generation. In 2006 a Department of Internal Affairs internal paper asked 'whether the current restrictive approach to citizenship by descent fails to recognise multi-generational cultural and spiritual attachments to New Zealand for people who are distinctly "New Zealand" in origin' (DIA 2006, cited in Waldron 2011). Waldron (2011) has similarly argued that in relation to Māori:

Not only does this restriction fail to recognise the strong cultural and spiritual relationship that Māori may have with New Zealand, but it also goes against *tikanga* (Māori customary practices). 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 on citizenship conflicts with *tikanga* because it focuses on place of birth whereas *tikanga* focuses on *whakapapa* (genealogy) (Waldron 2011).

Gamlen (2007) and Waldron (2011) both suggest that there may be a case to be made that denying Māori children born overseas to citizenship by descent may be a breach of the Treaty of Waitangi. Waldron additionally queries whether it might be a breach of New Zealand's obligations under the United Nations Declaration on the Rights of Indigenous Peoples. Legislating for multi-generational citizenship by descent for Māori is one possible policy solution, but 'incorporating an ethnic- or race-specific component to the law may breach international legal obligations such as the International Covenant on Civil and Political Rights and breach the New Zealand Bill of Rights Act 1990' (Waldron 2011). A non-ethnically-specific law could get around this, but as Waldron argues, there may be legal, fiscal and political difficulties with this as well, as people whose connection to New Zealand is quite distant will have the right to live in New Zealand and enjoy all the welfare advantages of doing so.

It is likely the numbers would be relatively small but they may not be insignificant. While this approach would solve the potential problem around multigenerational citizenship it could bring about a great deal of debate and controversy because it would grant citizenship, and thus rights, to a group of people based on their ancestral links alone. After the historic move away from an ethnic- or country based pattern of migration, sometimes described as a "white-only" policy, such a move would revive ethnic-based policies (19).

The question of whether Māori ought to retain the right to citizenship by descent for more than one generation was also raised in 2011 by Sir Doug Kidd, former National Minister,

during a Waitangi Rua Rautau lecture (Kidd 2011). At this point, however, there appear to be no moves to reform legislation so as to allow multi-generational citizenship.

The inter-generational rights of both Maori and non-Maori New Zealand citizens born outside of New Zealand may be seen as related to, but not the same as, the question of differentiated Maori rights under the Treaty of Waitangi. Scholars continue to debate whether indigenous forms of membership, belonging and rights are protected under the Treaty and necessitate a differentiated form of citizenship for Maori.

A second issue concerns the ability of noncitizens to vote in New Zealand, which politician Winston Peters argued in 2016 was inappropriate. Peters is the leader of the New Zealand First Party, a populist party which currently has eight MPs in the New Zealand Parliament. Peters' comments related to a 2016 public referendum on whether to change the New Zealand flag. In Winston Peters' view, only citizens should have the right to make a decision that was so closely tied to national identity (Sachdeva 2016). While the issue of noncitizen voting rights is more properly seen as concerning franchise laws, not citizenship laws, Peters' comments did represent an unusual attempt by a politician to politicise citizenship. They did not, however, appear to effect significant support for a law change, or any moves by Parliament to consider such legislative change.

A third issue that gained some media coverage in 2009-2102 was the case of a Chinese immigrant, Yong Ming Yan, who was granted citizenship but was later said to be wanted in China for fraud-related charges. The case embarrassed several New Zealand MPs who were said to have assisted with his application, and whose political parties received donations from him (Howie 2012). Yong Ming Yan was found not guilty of using fraudulent documents to obtain immigration and citizenship status in New Zealand, but High Court Judge Justice Brewer nonetheless ruled that the way Yan was granted citizenship was 'highly suspicious' (Field 2012). The case raised public concerns about the ability of entrepreneurial migrants to 'buy' citizenship in New Zealand, although there is no further evidence of this having occurred.

5. Conclusion

National citizenship was a long time coming in New Zealand. Even after its introduction in 1948, more than 100 years after New Zealand became a British colony, British subjecthood continued to be a significant marker of belonging in New Zealand. Perhaps reflecting a citizenship status that was gradually assumed, rather than fought for, citizenship is rarely seen as relevant to social or political outcomes in New Zealand and is thus not commonly studied as a variable in social or political research. It may well be that citizenship status is not a significant predictor of social or economic outcomes in New Zealand, as most social and political rights are available to permanent residents as well as citizens, although noncitizens cannot stand for parliament, take some governmental roles, or represent New Zealand in some international sports. Nor is there any difference in terms of the rights that accrue to

different types of citizens, except that citizens by descent cannot pass on their citizenship to their own overseas-born children. A 2014 government document outlining the history and import of New Zealand citizenship is entitled *Choice – The New Zealand Citizenship Story* (2014), which appears to emphasise that naturalisation is a choice available to New Zealanders, not a prerequisite to membership of the national community. However, until data is collected on the citizenship status of those resident in New Zealand, and more is known about the numbers of New Zealand citizens outside the country, the effects of citizenship in New Zealand, and of policies such as noncitizen voting, will not be known.

Three potential areas of controversy were identified in this report that may lead to pressure for change to New Zealand's current citizenship laws. The first is the lack of a path to citizenship for children born to noncitizen parents or parents without permanent residence or residence visas. Although this situation is likely to affect very few individuals it has the potential to have unduly negative consequences for those who are so affected. A second issue may arise if the Cook Islands again seeks independence from New Zealand, as New Zealand indicated in 2015 that if the relationship of free association is severed, Cook Islanders will no longer be entitled to New Zealand citizenship. The third area of potential controversy highlighted here was that of the cut-off after one generation of citizenship by descent. This is likely to become an increasingly important issue as the numbers of New Zealanders living abroad continues to grow, and as more New Zealanders travel overseas to work during childbearing age. One researcher's finding that 18% of Maori live abroad (Kukutai, cited in Collins 2011) also highlights the potential of this particular aspect of New Zealand's citizenship law to become contentious.

In the meantime, New Zealand citizenship rules are largely unchanged since they were first introduced in 1948. The two major changes – the end to pure *ius soli* and an extension of the residency requirement from three to five years – both made access to citizenship more restrictive than it had been, and in this, New Zealand follows a trend for previously highly liberal citizenship regimes to become somewhat more restrictive, while other, highly restrictive regimes become less so.

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