

Regulatory Impact Statement

Executive Summary

The Citizenship Act 1977 sets out how a person can become a New Zealand citizen and how a person can lose citizenship. The current provisions could be improved to provide a more inclusive system that positions New Zealand well in the competitive global migration environment. The Citizenship Act does not always adequately provide for family groupings of applicants for the grant of citizenship and also has a number of provisions that could be refined and improved. Legislative amendments are required in order to address the problems with the Citizenship Act.

Adequacy statement

The Department of Internal Affairs confirms that this regulatory impact statement is adequate according to the criteria agreed by Cabinet.

Status quo and problem

Citizenship is a common link between different ethnic, cultural and other social groups in New Zealand society. The Citizenship Act 1977 (the Act) provides for the ways in which people can become New Zealand citizens by birth (either in New Zealand, or overseas to a New Zealand citizen parent) and by grant (for those that have migrated here), as well as lose their citizenship by renunciation or deprivation.

The current requirements for a person to become a citizen by grant could be improved. Any requirement that is unduly harsh or limiting may exclude some migrants unjustifiably. For instance, the Act disqualifies migrants from obtaining the grant if they have been convicted of any offence within the preceding three years (longer periods exist for people sentenced to a term of imprisonment). In some cases this is disproportionately severe when compared to the offence for which the person was convicted.

The rules around citizenship are likely to be one factor skilled migrants take into account when deciding whether to migrate and, if so, where to. New Zealand should position itself well in the competitive global migration environment, particularly against countries (such as Australia, Canada, the United Kingdom, and the United States of America) that are often competing for similar migrants.

By way of example, under the current law, all applicants for the grant of citizenship must have been present in New Zealand for a certain number of days in the five years before applying, being days when they were entitled under immigration law to reside indefinitely in the country. Unlike in Australia, Canada and the United Kingdom, time spent on temporary permits does not count. Yet 81 percent of people who became residents in 2007/08 had spent some time here on temporary permits. Australia and the United States of America also provide a reduced presence period for military personnel, while New Zealand does not.

While it is important that our Citizenship Act provides an inclusive system, it is equally important that it protects New Zealand. For instance, there is currently no express ground to deprive a person of citizenship where that person has committed a

serious offence before applying for the grant, but was charged with and convicted of that offence afterwards. In these cases, the Minister may be unaware of these offences when making a decision.

Finally, there are a number of provisions in the Act that could be updated, refined and improved. For instance, persons born on foreign ships and aircraft within New Zealand's territorial waters and airspace are considered to be born, for citizenship purposes, in the country the ship or aircraft is registered. This is inconsistent with other enactments, such as the Births, Deaths, Marriages, and Relationships Registration Act 1995 which provides that these children will be considered to be born in New Zealand (and will therefore have New Zealand birth certificates).

Objectives

These reforms seek to amend the Act to provide a citizenship system that best meets New Zealand's needs. The reforms seek to balance competing goals, namely to provide —

- a fair and inclusive citizenship system that positions New Zealand well to compete for the migrants we need; and
- a citizenship system which protects New Zealand.

Alternative options

Non-regulatory options

The requirements for citizenship are set down in the Act. While the Act provides the Minister of Internal Affairs with the discretion to grant citizenship to people who do not meet the standard grant requirements, the threshold for using the discretionary powers is high. For instance, in order to reduce the presence period (so that applicants who have been in New Zealand for five years but on temporary permits for part of that time can be granted citizenship), the Minister would need to be satisfied that exceptional circumstances exist. For the Minister to grant citizenship to a person with a minor disqualifying conviction, the Minister must be satisfied that there are exceptional circumstances relating to the conviction such that the grant should not be precluded. These are high thresholds that cannot be reached in all cases where a grant of citizenship may be appropriate.

Alternative regulatory options

For each proposed amendment, a number of different regulatory measures were considered and discounted as they offered a weak or partial solution. Some options did not adequately balance the different competing policy objectives, while others failed to achieve the desired goal.

Status quo

Problems with the status quo were the impetus for the development of the proposed amendments. Therefore, retaining the status quo in each case would only serve to perpetuate the particular problem under consideration.

Preferred option – legislative reform

The preferred options involve amending the Act to—

- provide that the requirements for the grant of citizenship:
 - allow applicants to spend one year of the five year presence period on temporary permits;
 - allow New Zealand Defence Force regular force personnel to meet a two year presence period, instead of five years;
 - clarify the operation of the existing provisions that allow time spent in the Cook Islands, Niue or Tokelau to count towards the five year presence period, and provide that the grant must not be contrary to New Zealand's interests;
 - allow applicants who are overseas accompanying a citizen parent on Crown service for the New Zealand Government to have that time counted towards the five year presence period;
 - subject to their meeting the other requirements, allow applicants who intend to accompany their New Zealand citizen spouse/partner/parent on service for an international organisation which the New Zealand Government is a member of to be granted citizenship; and
 - no longer disqualify applicants who have been convicted of an offence in the preceding three years when no sentence of imprisonment was received and the court could not impose a sentence of 3 months imprisonment or more;
- no longer provide a grant, as of right, to persons born overseas between 1 January 1949 and 1 January 1978 to citizen by grant or birth mothers, and instead provide that people born overseas between 1 January 1949 and 1 January 1979 to New Zealand citizen by grant or birth mothers may register as citizens by descent, with citizenship effective from registration;
- require most applicants to take a different, more modern, oath of allegiance rather than the current out-dated oath;
- provide that persons born on foreign ships and aircraft within New Zealand's territorial waters and airspace be considered to be born in New Zealand for citizenship purposes;
- provide additional ways for persons to lose citizenship:
 - voluntarily, by allowing persons to renounce citizenship if they will immediately become a citizen of a country that prohibits dual citizenship, provided that they have been accorded assurance of obtaining that citizenship; and
 - by Ministerial deprivation order, by allowing the Minister to make a deprivation order when people have committed an offence prior to becoming citizens but convicted and sentenced to imprisonment afterwards; and
- provide for a number of administrative changes to:

- enable the Citizenship Office of the Department of Internal Affairs to disclose citizenship information to the New Zealand Transport Agency for the purpose of verifying the identity of a person applying for a driver licence;
- move to the Act the offence provision currently found in the Citizenship Regulations 2002 (which relates to persons failing to surrender citizenship certificates and travel documents when they lose citizenship), and to increase the penalty to a maximum fine of \$2000 or 3 months imprisonment; and
- remove the requirement for the Secretary of Internal Affairs, or delegate, to sign citizenship by descent certificates and instead provide they must be in the prescribed form.

Benefits

The proposed reforms will make the citizenship system more inclusive and better position New Zealand to attract skilled migrants. The proposals also ensure that only people with a genuine connection to New Zealand, and who do not pose a risk, become citizens.

The changes will also better provide for family members who are serving, or who are planning to serve, New Zealand overseas in some capacity.

The proposals will also update and improve a number of existing provisions with the Act.

Costs

Any implementation costs are likely to be minimal and will fall within Vote Internal Affairs. There will be some costs in adjusting current processes and training case officers about the new requirements. Costs will be met within existing funding arrangements.

Implementation and review

The proposals will be implemented through the Citizenship Amendment Bill.

Consultation

The following government agencies were consulted on the Cabinet paper: the Department of Labour (Immigration New Zealand), the Ministries of Foreign Affairs and Trade, Justice, Defence, Transport, and Pacific Island Affairs, Te Puni Kōkiri, the New Zealand Defence Force, the New Zealand Transport Agency, the Office of Ethnic Affairs, and the Office of the Privacy Commissioner. The Department of the Prime Minister and Cabinet were informed.