

Verification of good character for grant of citizenship

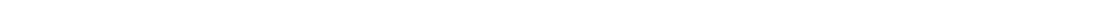
Introduction

This policy outlines the relevant legislation and policy relating to the good character requirement of the Citizenship Act 1977.

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Legislation

Citizenship Act 1977 Section 8 Citizenship by Grant

Section 8(2)(c) of the Citizenship Act 1977 require an applicant to satisfy the Minister:
'that the applicant is of good character'.

Advice to the Minister

Citizenship is unable to make a definitive statement to the Minister that an applicant is of good character, however, case officers can make enquiries to determine whether anything detrimental is known about an applicant, which may be considered relevant to their character.

Citizenship advises the Minister that it is either:

- unaware of anything that may be considered detrimental to the applicant's character, or
- aware of information that the Minister may wish to consider when determining whether the applicant is able to satisfy the good character requirement.

If Citizenship is aware of information that may affect an applicant's ability to meet the good character requirement, it makes a recommendation to the Minister concerning the applicant's ability to meet the requirement.

Applicants not yet 14 years of age

- The Minister has agreed not to have regard to the good character requirement for applicants who are not yet 14 years of age.
 - An applicant who turns 14 prior to the date of the Minister's decision must fulfil the good character requirement.
 - In general all other applicants applying under sections 9(1)(a), 9(1)(b), 9(1)(c) and 9(1)(d) of the Act should fulfil the good character requirement.
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Reports

SIS Report

All citizenship by grant applicants, except those being considered under section 10 of the Citizenship Act 1977 or section 7 of the Citizenship (Western Samoa) Act 1982, are referred to the New Zealand Security Intelligence Service (SIS).

Citizenship should always advise the Minister if the SIS comments on an applicant.

Note:

If an application is not submitted to the Minister within 12 months of an SIS check, a further check must be made.

Police Reports

All citizenship by grant applicants, except those being considered under section 10 of the Citizenship Act 1977 or section 7 of the Citizenship (Western Samoa) Act 1982, are referred to the New Zealand Police.

If the New Zealand Police have instigated a prosecution against an applicant, the Police will:

- provide Citizenship with details of the conviction(s) an applicant may have, and
- any overseas convictions of which they are aware.

Note:

If an application is not submitted to the Minister within six months of a Police check, a further check must be made.

Releasing information

New Zealand Police prohibits Citizenship releasing information to applicants about:

- overseas convictions
- arrest warrants, or the fact that there may be an arrest warrant in force
- pending charges.

Note:

Permission to release information relating to the above three situations must be determined with the New Zealand Police before an applicant can be informed.

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Reports, Continued

Charges pending

If the Police advise that an applicant has charges pending, a further Police check must be made either at the time indicated by the Police, or in a further three months.

Disqualifying convictions

Section 9A Disqualifying Convictions

Assessments of the applications from people with convictions are to be based on section 9A of the Citizenship Act 1977.

1. 'Except as provided in subsection (2), the Minister must not authorise a grant of citizenship under section 8 or section 9 to a person who has been convicted of an offence if -
 - a. the person was sentenced on conviction to -
 - i. a term of imprisonment of 5 years or more; or
 - ii. an indefinite term of imprisonment capable of running for 5 years or more; or
 - b. within the preceding 7 years the person was subject to a sentence of imprisonment of less than 5 years or was subject to release under subpart 2 of Part 1 of the Parole Act 2002; or
 - c. within the preceding 3 years the person was convicted of an offence but did not receive a sentence of imprisonment.
2. The Minister may however authorise a grant of citizenship to a person to whom subsection (1) applies and who otherwise meets the requirements of section 8 or section 9 if satisfied that there are exceptional circumstances relating to the conviction such that a grant of citizenship should not be precluded.
3. Nothing in this section limits the Minister's discretion to refuse a grant of citizenship if the Minister is not satisfied that the applicant is of good character.'

All applicants with convictions who are referred to the Minister as a submission must be given the opportunity to comment, in writing, on their convictions.

If the applicant has a sentence that falls within one of the categories specified in section 9A(1) of the Citizenship Act 1977, the applicant must be advised that they do not meet the grant requirements.

Criminal Records (Clean Slate) Act 2004

Background

Applicants with previous criminal convictions in New Zealand may be able to conceal their criminal record under the Criminal Records (Clean Slate) Act 2004.

The Criminal Records (Clean Slate) Act (CRCSA) establishes a clean slate scheme to limit the effect of an individual's convictions for relatively minor offences in most circumstances. It should be noted that the scheme does not extend to the concealment of offences that may have occurred in a foreign country.

What this means for Citizenship

- If an individual satisfies the eligibility criteria under the clean slate scheme, then that applicant may state that they have no criminal record, and should be assessed accordingly when considered under the good character requirement for New Zealand citizenship.
- Citizenship cannot disclose to any agency or individual any conviction of an eligible individual covered under the clean slate scheme (except under very restricted circumstances).
- The New Zealand Police vetting section cannot disclose to Citizenship any eligible individual's convictions covered by the clean slate scheme.
- An applicant may request, pursuant to the Privacy Act 1993, a copy of personal information held by the Department including a copy of their own criminal record.

An applicant may choose to disclose or consent to disclosure of their criminal record, however the assumption should always be that the applicant has not given consent or freely disclosed unless expressly stated by the applicant.

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Criminal Records (Clean Slate) Act 2004, Continued

Citizenship case officers

- When questioning an applicant about their criminal history, case officers should advise the applicant that they do not have to disclose any convictions covered under the clean slate scheme.
 - Applications should be assessed using Citizenship's guidelines for assessing whether an applicant is covered by the Act.
 - If an applicant is considered eligible under the clean slate scheme, then they must be treated for citizenship purposes as if they have no criminal record.
 - You must not suggest to an applicant that they disclose any criminal history that is covered under the clean slate scheme, or request that they consent to the disclosure of this information.
-

Other adverse information or comment

Other information relevant to character

Citizenship may receive adverse information or comment from sources other than the Police or the SIS concerning an applicant.

Any decision on whether the adverse information is sufficient for Citizenship to recommend to the Minister that the applicant cannot clearly meet the good character requirement must be made on a case-by-case basis. In general, for Citizenship to recommend that the Minister decline to authorise a grant of citizenship on the basis of information received, Citizenship should have established the veracity of the information or allegation.

If the adverse information or comment has been received from another Government agency (e.g. Ministry of Social Development or Inland Revenue Department) it will generally be accepted without requiring further investigation, however the applicant must be given the opportunity to comment on the adverse information or comments.

Detrimental comments from individuals

Allegations about an applicant may be received from individuals. If the allegation could be regarded as adversely affecting an applicant's ability to meet the good character requirement, Citizenship should attempt to establish the veracity of the allegation.

If an allegation is found to be false, it must be disregarded and the application can be scheduled.

If an allegation is found to be true, or if it is not possible to confirm whether an allegation is true or false, the applicant should be advised, and invited to comment in writing on the allegation. The application should then be referred to the Citizenship Legal Advisor for a decision on:

- whether the file should be referred to the Minister as a submission, and
- whether Citizenship will recommend to the Minister that the applicant is unable to fulfil the good character requirement.

The Citizenship Legal Advisor will make an assessment on a case-by-case basis, taking into account the source of the allegation, and whether veracity could be established.

Concerns from other agencies

General

Details of concerns raised by other Government agencies (e.g. Ministry of Social Development or Inland Revenue Department) should generally be brought to the Minister's attention in an individual submission. This includes debts incurred with the Ministry of Social Development, where the Ministry has found the debt to be fraudulent but has not prosecuted the applicant. In deciding if the matter should be brought to the Minister's attention in an individual submission, regard should be given to the reason for the non-prosecution, the length of time that has passed since the fraudulent debt was incurred, the amount of the debt, and what repayments the applicant has made since the debt was incurred.

If an agency has prosecuted the applicant, and the applicant has been convicted of an offence, the conviction will be dealt with according to the sentence imposed by the Court.

Immigration New Zealand

All citizenship applicants must have a recent paper printout of their Immigration New Zealand computer record (called an AMS report) included within their physical file, if this record exists. An applicant's AMS report may contain information in the form of an alert which could adversely affect the applicant's ability to meet the good character requirement. If this is the case, then Immigration New Zealand should be contacted directly to establish the veracity of the information. If Immigration New Zealand states that they are still investigating the information contained in the AMS alert, then the applicant's citizenship file should either be referred to the Investigations Unit for them to comment or be put on hold until the immigration investigation has been completed.

If the information contained in the AMS alert is found to be false, it must be disregarded and the application can be scheduled. If it is established that the information contained in the AMS report is correct, or it is not possible to confirm whether the allegation is true or false, the applicant should be advised, and invited to comment in writing. If the information contained in the AMS alert is found to be correct, or remains unproved, the application must be referred to the Minister as a submission. Any decision on whether the information is sufficient for the Citizenship Unit to recommend to the Minister that the applicant is unable to fulfil the good character requirement must be made on a case-by-case basis.

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Concerns from other agencies, Continued

Work and Income

For character purposes, Citizenship will only take into account debts with the Work and Income if:

- the debt is deemed to be fraudulent by Work and Income, or
 - the applicant has been successfully prosecuted.
-

Civil judgements

General

Court judgements for civil debts should generally be disregarded, but may result in an individual submission, depending on the circumstances.

Civil judgements may result from genuine disputes about contractual details or quality of work. A large number of judgements may reflect financial hardship, but can also indicate a pattern of obtaining goods and services with no intention or ability to pay for them.

Bankruptcy orders may be relevant depending on the circumstances and could result in an individual submission.

Protection (non-molestation) orders

Undischarged protection orders

All applications involving undischarged protection orders must be referred to the Minister as a submission. Each application is assessed on a case-by-case basis before a recommendation is made regarding ability to meet the character requirement.

Discharged protection orders

Discharged protection orders generally do not need to be brought to the Minister's attention, unless they were discharged recently. Team leaders may use their discretion to determine whether a discharged protection order should be brought to the attention of the Minister by submission. It is expected that regard will be given to the applicant's explanation, in addition to any other relevant information.

Infringements

General

Infringement offences are matters that are dealt with by way of instant fine rather than a Court hearing, and do not carry convictions. For example, speeding offences, bringing fruit into the country, and some fisheries offences are infringement matters.

Infringements are only drawn to the Minister's attention in an individual submission if the applicant has received four or more infringements of the same nature in the two years prior to the Minister's consideration of the application.

If the four or more infringements are of the same nature (e.g. all fisheries offences, or all traffic offences) it could indicate a pattern of that type of offending. In these cases, the submission may recommend a decline for one year from the date of the last infringement.

If a submission is required, it will take account of any other infringements of a different nature, including any that occurred at the same time.

New Zealand Police have advised that they regard two or more infringements incurred on the same day as separate offences, even if they arise out of the same incident (e.g. speeding in an unregistered car is two separate offences).

When considering whether infringement offences should result in a submission, you should consider the nature of the infringement and apply a common sense approach.

Generally, infringements should only be considered if they are serious enough to appear on the Police report (e.g. speeding and other traffic offences). Infringement offences against local authority bylaws (e.g. parking and overdue library books) should not generally result in a submission, even if several such offences are declared. It is not reasonable to deny citizenship to a person on the basis of parking fines or fines for overdue library books.

Youth offending

General

Use the following table to determine requirements for youth offenders (persons who have not yet attained 17 years of age.)

If the applicant committed offences ...	then the offences should be...
that were dealt with in the Youth Court	disregarded.
in the three years prior to the date of the Minister's decision (that were dealt with in the Youth Court	drawn to the Minister's attention in an individual submission.
dealt with in the District or High Court	dealt with in the same manner as other convictions in the District or High Court.

Diversion

General

If the applicant has disclosed that they were charged with an offence but received diversion, the offence should not be taken into account.

Pending charges

General

If the Police advise that there are charges pending, the application should be deferred, pending the outcome of the charges.

Note:

Citizenship is prohibited by New Zealand Police from releasing information to an applicant about pending charges.

Minister's decision

Requirement of the Act

The Citizenship Act 1977 does not allow the Minister to authorise the grant of citizenship if not satisfied that an applicant is of good character (unless the application is being considered under section 9 and the Minister decides not to have regard to the good character requirement).

When communicating with applicants who have been, or who may be, declined on the basis of the good character requirement, refer to the requirement of the Citizenship Act 1977, i.e. that the applicant must satisfy the Minister that they are able to meet the good character requirement. Do not, under any circumstances, state that an applicant is not of good character.

False or misleading information

Provision of false or misleading information

Section 17 of the Citizenship Act 1977 gives the Minister of Internal Affairs authority to deprive a person of their New Zealand citizenship if the grant of citizenship was:
' Procured by fraud, false representation, or wilful concealment of relevant information, or by mistake'.

Section 20 of application form

Section 20 asks the applicant to provide details of any:

- convictions they have received in New Zealand or overseas
- traffic infringements
- legal action that they are, or have been, involved in.

If the applicant fails to provide any of the above information, or provides false or misleading information, the Minister may make an order depriving the applicant of their New Zealand citizenship (if not detected prior to the grant).

Any deliberate provision of false information, if detected prior to the application being referred to the Minister, is an indication that the applicant cannot clearly meet the character requirement, and may make the applicant liable to prosecution under the Citizenship Act 1977. Any case where it is suspected that an applicant has provided false or misleading information should be referred to the Manager, Citizenship Operations.

If the applicant is subsequently prosecuted under the Citizenship Act 1977 and is convicted, the conviction will be dealt with according to the sentence imposed.

However, if the investigation has found that the applicant has deliberately provided false or misleading information, but the applicant is not prosecuted, the application should be referred to the Minister by submission, drawing attention to the provision of false information.

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False or misleading information, Continued

Minister can rescind approval

- Section 9B of the Citizenship Act 1977 provides that the Minister can rescind the approval of a grant application at any time before the date that the person becomes a citizen, if no longer satisfied that the person meets the requirements for a grant.
-
- If it comes to light that the applicant has criminal charges pending, or had undisclosed convictions, and the applicant has been approved but has not yet become a citizen (for example he or she has not yet taken the oath or affirmation of allegiance at a public ceremony), the application should be submitted to the Minister with the new information.
-

Non-disclosure of information

If the applicant has not disclosed relevant information, the application may be referred to the Minister as a submission, depending on the nature of the non-disclosure. If the undisclosed information would have resulted in a submission, then the non-disclosure of that fact should result in a submission.

For example, if the applicant did not disclose that they had served a prison sentence overseas, the application would generally be referred by submission.

The submission should include the:

- fact that information was not disclosed
- nature of the information that was not disclosed
- applicant's explanation for the non-disclosure.

Whether the submission recommends that the application be approved or declined will depend on the applicant's explanation for the non-disclosure, and whether the applicant could reasonably be expected to know that the information must be disclosed. Factors to consider in deciding whether to recommend decline include the applicant's explanation for non-disclosure and whether the wording on the application form is sufficiently clear that the applicant should have known they had to disclose the information.

If the information that was not disclosed would not have resulted in a submission, then the non-disclosure does not need to be brought to the Minister's attention.

Legislation links

[Citizenship Act 1977](#)

[Citizenship \(Western Samoa\) Act 1982](#)

[Parole Act 2002](#)

[The Criminal Records \(Clean Slate\) Act](#)

[Privacy Act 1993](#)

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