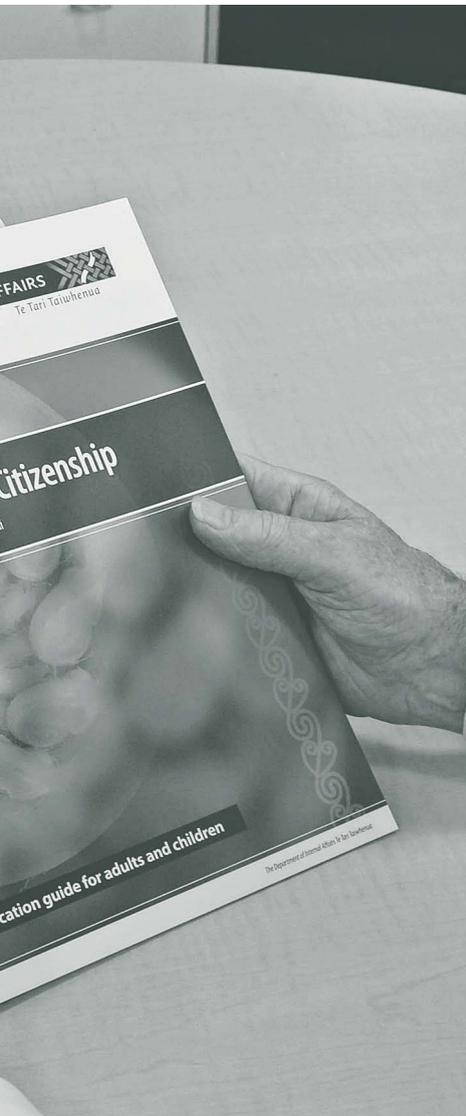




Inquiry report

Inquiry into decision by Hon Shane Jones to grant citizenship to Mr Yang Liu





Office of the Auditor-General
PO Box 3928, Wellington 6140

Telephone: (04) 917 1500
Facsimile: (04) 917 1549

Email: reports@oag.govt.nz
Website: www.oag.govt.nz

Inquiry into decision by Hon Shane Jones to grant citizenship to Mr Yang Liu

This is the report of an inquiry we
carried out under section 18 of the
Public Audit Act 2001.

March 2013

ISBN 978-0-478-41009-9 (print)
ISBN 978-0-478-41010-5 online)

Contents

Auditor-General’s overview	5
Our recommendations	11
Part 1 – Introduction	13
Reason for the inquiry	13
What our inquiry covered	14
Investigation process	15
Structure of report	15
Part 2 – Timeline of main events and decisions	17
Part 3 – Citizenship and permanent residency	21
Citizenship	21
Relationship between citizenship and permanent residency	25
The “good character” requirement	26
Dealing with unproven allegations	27
Part 4 – Investigation by Immigration New Zealand	31
May 2005: Start of Immigration’s investigation	31
March 2006: Submission to revoke	31
July 2006: First deferral of decision	32
November 2006: Second deferral of decision	32
September 2007: The Minister’s decision	32
Our comments	34
Part 5 – Investigation by the Department of Internal Affairs	35
May 2005: Receipt and deferral of citizenship application	35
October 2007: Re-activation of citizenship application	35
November 2007 to January 2008: Management of the file	36
March 2008: Processing of citizenship application	38
May 2008: File returned to Wellington	42
Our comments	43
Part 6 – Mr Jones’ decision	49
The submission	49
14 July 2008: Delivery of submission and Minister’s first briefing	50
Our comments	53
24 July 2008: Minister’s second briefing	56
29-30 July 2008: Attempts to organise briefing from New Zealand Police	58
4-5 August 2008: Minister’s request for legal advice	59
Further attempt to arrange briefing with New Zealand Police and with Immigration	59
6 August 2008: The Minister’s decision	60
11 August 2008: The citizenship ceremony	61
Our comments	62

Part 7 – Mr Barker’s involvement in Mr Liu’s application	69
Cabinet Office guidelines on conflicts of interest	69
Background to Mr Barker’s involvement	70
Mr Barker’s conversation with Mr Cunliffe	70
Letter from Mr Liu’s lawyers to Mr Barker	71
Mr Barker’s reply to Mr Liu’s lawyers	71
Our comments	73
Transfer of citizenship decisions to Mr Jones	74
Our comments	75
Part 8 – Other matters related to this inquiry	77
Mr Samuels’ involvement	77
Shane Te Pou	78
Daniel Phillips	79
Our comments	80

Auditor-General's overview

On 30 May 2012, I announced that my Office would carry out an inquiry into the decision by the former Associate Minister of Immigration, Hon Shane Jones, to grant citizenship to Mr Yang Liu (also known as Yong Ming Yan). I appointed Francis Cooke QC to lead the inquiry on my behalf.

Although this inquiry arose because of concerns about the way an individual application had been handled, those concerns raised questions about whether aspects of the system for considering applications for citizenship were strong enough. Put bluntly, the underlying question was whether the system included enough protection against the risk of corruption.

That risk always exists when an individual decision-maker has a broad discretion to make decisions affecting individual rights and interests. Supporting administrative systems should be designed to minimise that risk but cannot remove it entirely. All those involved, whether they are advisers, decision-makers, or advocates, carry personal responsibility for ensuring that the system operates with integrity.

An unfortunate combination of circumstances, but no evidence of corruption

We found no evidence that there was any improper motive, collusion, or political interference in the decision to authorise citizenship for Mr Liu. However, the combination of unusual circumstances and decisions associated with this case meant that it was not surprising that questions started to be asked. We found reason to criticise most of those involved in different aspects of the decision-making process. In the public sector, decisions not only have to be right, they have to be seen to be right.

How the perception of improper influence arose

Minister of Internal Affairs

Mr Liu had connections with senior politicians, including the then Minister of Internal Affairs, Hon Rick Barker. The Minister of Internal Affairs normally makes decisions on citizenship applications. Although Mr Barker took steps to set up a formal transfer of responsibilities for applications from people he knew, this transfer was not in place when a letter arrived from Mr Liu's lawyers asking about Mr Liu's application.

The Department of Internal Affairs (the Department) provided a draft response for the Minister to sign. It was in the standard form for procedural correspondence of this kind, which included an apparently personal assurance from the Minister that he would ask officials to encourage government agencies to take steps to

speed up the processing of Mr Liu's application and that the application would be forwarded to Mr Barker for a decision. Mr Barker signed the letter, even though he had no intention of involving himself in the decision about Mr Liu's application.

Mr Barker acted properly in deciding that he could not make the citizenship decision for Mr Liu, but we do not consider it was wise for him to have signed the letter – at least in that form. We appreciate that the letter was one of many pieces of correspondence that a Minister has to deal with in the course of a busy week, and that it related to procedure rather than any substantive decision. Nonetheless, it created an impression that Mr Barker would be taking a personal interest in Mr Liu's file.

Mr Barker would have been better either to amend the letter to make clear that he would not be personally involved in the file or to arrange for someone else to sign the letter.

Mr Barker had no other involvement with Mr Liu's file. The Prime Minister later approved a standing transfer to give the Associate Minister of Immigration (Mr Jones) responsibility for ministerial decisions on citizenship files where Mr Barker had some personal connection.

Department officials

In the months that followed, Department officials decided not to continue with some investigatory steps and to prioritise Mr Liu's file. We looked at when, how, and why those decisions were made.

Officials were aware that Mr Liu's application had attracted high-profile support from several members of Parliament. Supporting constituents and others as they interact with public entities is a normal part of the work of a member of Parliament. We found no evidence that any politicians attempted to interfere or apply pressure in any unusual or inappropriate way in the decisions that Department officials made about the management of Mr Liu's file.

Officials were under pressure to deal with Mr Liu's application urgently, but this was largely because of repeated requests from Mr Liu's lawyers and from Mr Liu. The decision not to continue with some standard investigatory steps was made because these matters had already been investigated by another unit and Mr Liu wanted the file put to the Minister for decision in its current form, despite the unresolved issues.

The Department provided Mr Jones with a formal submission on the application and recommended that it be declined. The Minister chose not to follow this advice. In our view, the information and advice that the Department gave Mr Jones about Mr Liu's application was inadequate.

Mr Liu's application was the first and only citizenship application that Mr Jones decided. It was also a particularly difficult and complex application that involved confidential material from other agencies. Despite these obvious risks, Mr Jones was never given a formal briefing from a senior official on the requirements of the Citizenship Act 1977 or of relevant departmental policies.

The briefings that Mr Jones did receive about Mr Liu's file were provided by officials with no previous experience of briefing a Minister. Officials omitted important information from the submission they prepared for the Minister. In particular, although Mr Jones was told about ongoing investigations by Immigration New Zealand and the New Zealand Police, he was not told that the Minister of Immigration's earlier decision not to revoke Mr Liu's permanent residency was not a final decision; the Minister of Immigration had specifically directed that investigation of Mr Liu should continue and that the Minister had not ruled out the possibility of revoking Mr Liu's permanent residency in the future.

As a result, when Mr Jones made his decision, he did so without having all the important information. Nor did he fully understand the factors that were legally relevant to the decision or the effect his decision would have on the ongoing immigration investigation.

Associate Minister of Immigration

Mr Jones' understanding of the advice he was given when he was briefed on Mr Liu's application was that Mr Liu might have to return to China to resolve the outstanding issues concerning his citizenship application, and that there were risks to his safety if he did.

Mr Jones had significant concerns about the advice he was given, but did not take steps to clarify that advice with other officials. He also knew that both the New Zealand Police and Immigration New Zealand were still actively investigating Mr Liu, but did not consult those agencies before making his decision. In keeping with his usual approach for ministerial decisions, he wanted to make a final decision quickly.

Mr Jones authorised granting citizenship to Mr Liu, effectively under section 9(1)(c) of the Citizenship Act. This provision gives Ministers a broad discretion to approve an application if there are exceptional circumstances that make it in the public interest, such as humanitarian concerns. He did not record the reasons for his decision, and Mr Liu's advisers were notified of his decision before the Department was notified. This effectively deprived officials of an opportunity they might otherwise have had to correct the misunderstandings on which Mr Jones' decision was based.

The next day, Mr Jones annotated a letter from Mr Samuels in which Mr Samuels asked for consent to officiate at Mr Liu's citizenship ceremony. Department officials understood the annotation to be approval for a private ceremony and then gave approval for the ceremony to be held urgently. Mr Jones did not appreciate that the Act required him to approve a private ceremony or that the application did not satisfy the normal criteria for urgency.

Potential weaknesses in the way individual submissions are handled

We recognise that the circumstances leading to the decision to grant Mr Liu citizenship were unusual, and may have involved a unique combination of events. Mr Liu's file was complex and presented issues that were challenging both for officials and for the Minister. It was also one of a relatively small sub-set of applications that are presented to the Minister by way of individual submission. We found nothing to suggest that the Department's systems to support most citizenship decisions do not operate satisfactorily.

Nonetheless, this case has exposed potential weaknesses in the way that submissions to the Minister are handled – particularly where the applicant is supported by individuals who may have, or be seen to have, the ability to influence the Minister's decision.

Ministers have a mix of roles as politicians, members of Parliament, and Ministers of the Crown. It is inevitable that they have a wide range of interests and contacts. They are regularly approached by individuals, business interests, lobby groups, and parliamentary colleagues on a wide range of issues. This spread of interests and contacts means that there is a constant risk that they will be perceived as having made decisions on how to use government power or resources for improper reasons. All those involved in the decision-making process, including advocates, need to be aware of this risk.

The usual approach to managing this risk is for Ministers to confine themselves to matters of broad direction and policy and leave officials to make decisions that affect individual rights and interests. However, that is not always possible or appropriate. Decisions about citizenship are so closely related to core aspects of sovereignty that the law has always given Ministers the power to decide who can become a New Zealander.

Although there is an administrative system that enables straightforward applications to be dealt with efficiently, the law still gives Ministers a reasonable measure of personal discretion. In particular, the Minister makes the final judgements on whether applicants have satisfied him or her that they are of good character, or that there are exceptional circumstances that make it in the public interest to grant them citizenship anyway. New Zealand citizenship is highly

prized; it is inevitable that people will attempt to influence a Minister to make a favourable decision.

In our view, this amount of personal discretion at the ministerial level requires strong supporting systems and processes to manage the risk that Ministers will make, or will be seen to have made, a decision for reasons unrelated to the merits of the case. When they make citizenship decisions, Ministers are acting in their capacity as agents of the Crown and are applying statutory criteria. However, because of the other roles they are called on to play, there is an inevitable risk that they will be seen to be motivated by political or personal interests. Therefore, the systems supporting the decision-making process need to:

- provide support to ensure that those judgements are being made for appropriate reasons; and
- demonstrate that the decision has not been made for inappropriate reasons, so that the decision can be defended if it is questioned.

Supporting good decision-making

In our view, the Department could do more to support Ministers to make appropriate decisions about difficult cases. It is the role of officials to ensure that Ministers are properly briefed. This means ensuring that Ministers have clear advice on the legal constraints governing the decision (statutory criteria, the scope of discretion, and any relevant and irrelevant factors) and that all relevant information is drawn to their attention. Officials must also be ready to escalate a matter internally if communication with a Minister is not going well, so that senior staff can take steps to ensure that the Minister understands the information and advice being provided.

The Liu file required Mr Jones to address a difficult issue – one that had troubled other Ministers before him. That is, how should the Minister determine whether the “good character” requirement in the Citizenship Act is met when there are allegations of criminal conduct but no formal finding of wrongdoing or clear evidence.

For Mr Liu, that question was further complicated because the Department was not able to put to him all of the allegations made against him because of confidentiality concerns. Mr Jones had concerns, from a natural justice perspective, about making an adverse decision based on information that Mr Liu had not seen.

There are no easy answers to these issues and the Act undoubtedly requires the Minister to make some difficult judgement calls. In such cases, it is particularly important that Ministers have a good understanding of the requirements of the Citizenship Act and of the relevant facts, and that they are able to demonstrate a clear basis for the judgements they make.

Protecting decisions against challenge

In the public sector, decisions not only have to be right but have to be seen to be so. In this type of decision-making environment, the systems and papers also need to be able to rebut allegations of improper decision-making. Simple steps that can be taken include:

- ensuring that all interactions with applicants or their advocates are recorded in file notes;
- having a standard practice of the Minister having another person present if they meet with an applicant; and
- designing the standard form for briefings and decisions to make it easy for the Minister to record the statutory basis and reasons for the decision.

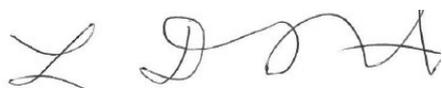
In our view, there is scope to strengthen the current procedures to provide more active support for Ministers making individual citizenship decisions. We have made several recommendations to help the Department strengthen the systems operating within the Department and relevant ministerial offices.

Ministers and their staff also need to recognise the need for care when making decisions of this kind. Procedural developments of the kind we have proposed are not designed to encroach on the right of Ministers to make judgements, but to help them defend the judgements they have made if the judgements are challenged. In our experience, accusations of wrongdoing flourish when there is a lack of information about what actually happened.

Concluding comments

It is beyond the scope of this inquiry to explore these systemic issues and options for change in any detail. Our recommendations are designed to help those involved in the decision-making process to strengthen the system to provide better support and protection for the system and for those involved in it.

I would like to thank all of those individuals who met with us and provided information during this inquiry for their co-operation and openness. This has been a complex inquiry involving many sensitive issues. I appreciate that it has taken us some time to complete this inquiry, which has required patience from the individuals involved. I simply note that it often takes longer to “prove a negative” and reach a conclusion that there is no evidence of wrongdoing than it does to document obvious problems.



Lyn Provost
Controller and Auditor-General

8 March 2013

Our recommendations

Recommendation 1

We recommend that the Department of Internal Affairs improve its system for:

- **identifying high-risk citizenship application files;**
- **ensuring that those files are managed by officials with an appropriate level of experience and expertise; and**
- **ensuring that the Minister making the decision fully understands the issues and risks.**

Under the current system, the Department prepares a separate submission on each application that requires individual consideration. In our view, additional steps could be introduced to identify high-risk files in this group and ensure that those risks are appropriately managed.

Applications we would consider high risk include those:

- in which other departments or agencies have an active interest;
- supported by advocates who might be seen to be able to exercise particular influence over the Minister's decision;
- where a departure from normal policy or procedure has been requested or approved; or
- where the decision has been transferred to a Minister who would not normally make such decisions. In such cases, the decision-making Minister will need to be fully briefed on the requirements of the Citizenship Act 1977 and relevant policies.

Recommendation 2

We recommend that the Department of Internal Affairs introduce a standard practice, each time a new Minister of Internal Affairs is appointed, of helping the Minister set up a system for dealing with citizenship application files in the event of a personal conflict of interest.

The Cabinet Manual contains guidance on the range of options available to Ministers for managing conflicts of interest when they arise.

There is always a risk that the Minister of Internal Affairs will have a personal connection with someone applying for citizenship. Whenever a new Minister takes up the portfolio, the standard introductory briefing process should include discussing and deciding on arrangements to manage such situations.

Recommendation 3

We recommend that the Department of Internal Affairs and the Minister record the reasons for any significant decisions they make on citizenship applications, particularly when the decision involves a departure from normal policy or procedure.

Recording the reasons for decisions is important to ensure transparency. It also provides an important protection if concerns are raised that the decision has been made for an improper purpose.

Recommendation 4

We recommend that a Minister considering making a citizenship decision against the advice of officials should explain their reasons, and give officials the opportunity to respond, before finalising the decision.

Although ultimately the decision is for the Minister to make, this additional step would give officials the opportunity to confirm that the proposed decision is within the terms of the Citizenship Act 1977 and is not based on any misunderstanding of relevant policies or the facts.

Recommendation 5

We recommend that the Minister of Internal Affairs require that any representations made on behalf of citizenship applicants are made “on the record”, preferably in writing.

Informal approaches to discuss particular applicants are understandable if the advocate knows the Minister (for example, if the advocate is a fellow member of Parliament). However, informal interactions are also open to misinterpretation.

Similarly, it is not uncommon for advocates, such as immigration consultants, to request a meeting with the Minister to discuss a particular applicant. If such meetings are held, a witness should be present and the minutes of the meeting should be recorded.

Part 1

Introduction

Reason for the inquiry

- 1.1 Mr Yang Liu applied for citizenship in May 2005. His application was approved in August 2008 by the then Associate Minister of Immigration, Hon Shane Jones. Mr Jones was acting in place of the Minister of Internal Affairs, Hon Rick Barker, who had decided he should not make the decision because he had connections to Mr Liu. The day after his application for citizenship was approved, Mr Liu applied for an urgent private citizenship ceremony, which took place at Parliament four days later.
- 1.2 Shortly after Mr Liu was granted citizenship, documents were leaked to the media showing that officials in the Department of Internal Affairs (the Department) had recommended that the Minister decline Mr Liu's application because there were concerns about whether he satisfied the "good character" requirement of the Citizenship Act 1977.
- 1.3 A particular concern was that, at the time he was granted citizenship, Mr Liu was being investigated by Immigration New Zealand (Immigration) for alleged identity fraud. Allegations were made that he had used his influence with politicians to gain citizenship and that there had been improper political interference in the decision by a number of members of Parliament (MPs) and other associates who either knew Mr Liu or were connected to the citizenship decision in some way.
- 1.4 In May 2012, Mr Liu appeared before the High Court, having been charged with fraudulently using documents to obtain permanent residency and with making a false statement for the purpose of procuring citizenship. He was found not guilty of those charges on grounds that they had not been proven to the required standard. During the Court case, the allegations that Mr Liu had used his political influence to gain citizenship resurfaced in the media.
- 1.5 On 23 May 2012, the Leader of the Labour Party, Mr David Shearer, wrote to the Auditor-General asking her to inquire into the probity of the decision to grant citizenship to Mr Liu. We agreed to do so because we considered that the matter raised significant questions about the strength and effectiveness of the systems supporting this area of government decision-making. We carried out the inquiry with the agreement of Mr Jones.

What our inquiry covered

- 1.6 Our inquiry examined how and why the Minister decided to authorise the grant of citizenship to Mr Liu. The purpose of our inquiry was to determine whether Mr Liu received any form of preferential treatment and, if so, whether that was the result of his association with MPs or their associates.
- 1.7 A relevant factor in this case was that, shortly after Mr Liu applied for citizenship in May 2005, Immigration began investigating whether to revoke Mr Liu's permanent residency status. We took account of Immigration's investigation into Mr Liu as part of the background to this inquiry. However, the focus of our inquiry was Mr Jones' decision to authorise the grant of citizenship to Mr Liu, rather than the Immigration investigation and matters relating to his permanent residency status.
- 1.8 In carrying out our inquiry, we considered:
- the requirements of the Citizenship Act in relation to the grant of citizenship and the scope of ministerial discretion to authorise the grant of citizenship;
 - how the Department administers the system for checking and processing applications for citizenship and supports ministerial decision-making;
 - the relationship between permanent residency and citizenship, and the communication protocols between Immigration and the Department, in particular where the permanent residency status of a citizenship applicant is under investigation;
 - the reasons for the decision of the Minister of Immigration (Hon David Cunliffe), in September 2007, not to revoke Mr Liu's permanent residency permit at that time, although he did not discount the possibility of reconsidering the matter again in the future;
 - the Department's management of Mr Liu's application and the allegations of political interference;
 - the rules applicable to ministerial conflicts of interest, and when and why the decision on Mr Liu's application was transferred from the Minister of Internal Affairs, Hon Rick Barker, to Mr Jones; and
 - the information and advice given to Mr Jones by Department officials about Mr Liu's application, and Mr Jones' reasons for authorising the grant of citizenship to Mr Liu.
- 1.9 Our inquiry did not consider the substance of any of the allegations made against Mr Liu, whether in China, Australia, or New Zealand.

Investigation process

- 1.10 We reviewed documents about Mr Liu provided by the Department, Immigration, and the Department of the Prime Minister and Cabinet.
- 1.11 We also interviewed:
- Hon Shane Jones, his Political Adviser, and his Senior Private Secretary, Mr Daniel Phillips;
 - Hon Rick Barker, his Political Adviser, and his Private Secretary for citizenship matters;
 - Hon David Cunliffe, who was supported at the interview by Hon Lianne Dalziel;
 - Department officials who were involved in processing Mr Liu’s application for citizenship and providing advice to the Minister;
 - officials from Immigration;
 - Hon Dover Samuels;
 - Mr Shane Te Pou; and
 - the Secretary to the Cabinet.
- 1.12 We provided a copy of our draft report, or relevant sections of it, to the individuals or organisations named in it, and to the Department officials involved in processing Mr Liu’s citizenship application and providing advice to the Minister on it. This step is necessary to allow for comment on the factual accuracy and reasonableness of our draft findings and to enable us to provide natural justice to those affected by our work.
- 1.13 We did not interview Mr Liu, but we provided him with a copy of our draft report for comment.

Structure of report

- 1.14 In Part 2, we provide a timeline of the main events and decisions in relation to Mr Liu’s permanent residency permit and citizenship application.
- 1.15 In Part 3, we provide background information that is relevant to the citizenship decision, including a summary of the main provisions of the Citizenship Act and an explanation of the relationship between citizenship and permanent residency. We also explain the “good character” requirement in the Citizenship Act, which was the central concern in Mr Liu’s application.
- 1.16 In Part 4, we explain Immigration’s consideration of Mr Liu’s permanent residency status and the reasons for Mr Cunliffe’s decision, in September 2007, not to

revoke his permanent residency permit at that time, although he did not discount reconsidering the matter in the future.

- 1.17 In Part 5, we explain the Department's management of Mr Liu's application up to when it was referred to Mr Jones for his decision.
- 1.18 In Part 6, we address the processes and advice leading to the Mr Jones' decision to authorise the grant of citizenship to Mr Liu, and the decision itself.
- 1.19 In Part 7, we explain Mr Barker's involvement in Mr Liu's citizenship application, and when and how the decision was transferred to Mr Jones.
- 1.20 In Part 8, we address other matters that arose during our inquiry.

Part 2

Timeline of main events and decisions

- 2.1 The events leading to Mr Jones' decision to authorise the grant of citizenship to Mr Liu took place over three years, and involved investigations by two different departments – Immigration, about Mr Liu's permanent residency permit, and the Department, about Mr Liu's citizenship application.
- 2.2 This brief timeline and overview covers the key events and decisions made in relation to Mr Liu between May 2005 and August 2008. These events and decisions are described in more detail in later Parts of this report.

April 2002	<p>Grant of permanent residency in Australia</p> <p>Mr Liu arrives in Australia in May 2001 and is granted permanent residency in April 2002.</p>
June 2002	<p>Grant of permanent residency in New Zealand</p> <p>Mr Liu arrives in New Zealand in December 2001 and is granted permanent residency in June 2002.</p>
May 2005	<p>Application for New Zealand citizenship</p> <p>Mr Liu applies for New Zealand citizenship.</p>
2005 – 2007	<p>Immigration investigation</p> <p>Shortly after Mr Liu applies for New Zealand citizenship, Immigration New Zealand receives information that Mr Liu is wanted in China in connection with alleged economic crimes and passport fraud. Interpol issues a notice for Mr Liu's arrest.</p> <p>Immigration New Zealand begins an investigation to determine whether Mr Liu's permanent residency should be revoked. It passes the information it has received about the Chinese allegations to the Department and, as a result, Mr Liu's citizenship application is effectively put on hold.</p>
September 2007	<p>Decision not to revoke permanent residency</p> <p>In March 2006, a submission is forwarded to the Minister of Immigration, Hon David Cunliffe, recommending that he revoke Mr Liu's permanent residency permit.</p> <p>The decision on Mr Liu's application is deferred twice for different reasons but is eventually referred back to Mr Cunliffe in March 2007. By this time, Mr Liu's Australian permanent residency has been cancelled.*</p> <p>In September 2007, Mr Cunliffe decides not to revoke Mr Liu's permanent residency permit at that time. However, he records on the decision papers that Mr Liu's file should continue to be assessed as a potential prosecution file, and that he does not discount the possibility of reconsidering the matter in the future.</p>

October 2007	<p>Re-activation of Mr Liu’s citizenship application</p> <p>After he is notified of Mr Cunliffe’s decision not to revoke his permanent residency at that time, Mr Liu’s lawyers write to the Department and to the Minister of Internal Affairs, Mr Barker, requesting that a decision now be made on his citizenship application.</p> <p>In the following months, the Department’s Investigations Unit investigates the application. There is regular correspondence between the Department and Mr Liu’s lawyers about the status of his citizenship application. Mr Liu is told that, because of the Interpol notice, he is unable to satisfy the “good character” requirement in the Citizenship Act and that, if his application is to proceed to the Minister, officials would be obliged to recommend that it be declined. They suggest Mr Liu contact the Chinese authorities to try to resolve matters.</p> <p>Mr Liu, through his lawyers, replies that it is not possible to resolve matters because the allegations are politically motivated. He says his life would be in danger if he returned to China and that the uncertainty surrounding his future is causing stress and hardship to him and his family. He says he wants his application put to the Minister urgently.</p>
March 2008	<p>Processing of citizenship application</p> <p>Mr Liu’s application is sent to the Citizenship Office in Manukau for formal processing, with instructions to give the application priority and then return the file to Wellington, where a submission to the Minister would be drafted.</p>
May 2008	<p>Drafting of submission to Minister</p> <p>Toward the end of May 2008, the file is returned to Wellington and a submission is drafted to the Minister of Internal Affairs, Hon Rick Barker.</p>
30 June 2008	<p>Transfer of ministerial responsibility</p> <p>When officials contact Mr Barker’s office to arrange a time to deliver the submission, they are told the decision has been transferred to the Associate Minister of Immigration, Hon Shane Jones, because Mr Barker has a conflict of interest.</p>
14 July 2008	<p>Minister’s first briefing</p> <p>The submission and file are delivered to Mr Jones by the official who had investigated Mr Liu and who had helped draft the submission. He and Mr Jones discuss the file for about an hour. Mr Jones keeps the submission and file to consider them further.</p>
28 July 2008	<p>Minister’s second briefing</p> <p>On 24 July, Mr Jones’ office receives a request from John Billington QC, asking for a copy of the submission and for the opportunity to make representations on Mr Liu’s behalf.</p> <p>On 28 July, Mr Jones requests a briefing from officials on how to respond to this request. The briefing is attended by the investigator who had briefed him on 14 July and a solicitor from the Department’s legal team, who was based at the time in the Citizenship Office. Mr Jones’ Political Adviser is also present at this meeting.</p> <p>Two days later, on 30 July, a redacted version of the submission is sent to Mr Billington.</p>

5 August 2008	<p>Minister requests legal advice</p> <p>On 4 August 2008, a response is received from Mr Billington addressing various matters in the submission and making representations on Mr Liu's behalf.</p> <p>The next day, Mr Jones requests legal advice from the Department by the end of that day because he was leaving for Australia and wanted to make a decision on the citizenship application before he went.</p> <p>The advice is drafted and sent to Mr Jones mid-afternoon on 5 August.</p>
6 August 2008	<p>Minister approves Mr Liu's application for citizenship</p> <p>Mr Jones tells his officials that he has approved Mr Liu's application for citizenship and asks them to notify Mr Billington. Mr Billington is notified by email at about 9:30 am.</p>
7 August 2008	<p>Request for urgent citizenship ceremony</p> <p>Mr Liu's lawyers write to the Department saying that Mr Liu wants an urgent private citizenship ceremony and that Hon Dover Samuels, who had supported Mr Liu's application, would be contacting the Department about this.</p> <p>After some discussion between Department officials, the General Manager of the Citizenship Office agrees that, if the Minister approves a private ceremony, then the General Manager would approve it being held urgently.</p> <p>A letter is received in Mr Jones' office from Mr Samuels, asking for the Minister's consent to him officiating at the ceremony. Mr Jones writes the following note at the bottom of that letter:</p> <p><i>Kia ora. OK. Deal with the officials.</i></p>
11 August 2008	<p>Mr Liu's citizenship ceremony takes place</p> <p>A private ceremony takes place at Parliament.</p>

* Mr Liu later successfully appealed the cancellation of his Australian residence permit.

Part 3

Citizenship and permanent residency

3.1 In this Part, we summarise the main features of the Citizenship Act that were relevant to Mr Liu’s application for citizenship. We explain the “good character” requirement in the Citizenship Act and some of the particular difficulties that requirement has given rise to, at times, with unproven allegations.

3.2 We also explain the relationship between citizenship and permanent residency, and between the Department, which manages applications for citizenship, and Immigration, which manages applications for permanent residency permits.

Citizenship

3.3 Citizenship is an important concept in international and domestic human rights law. Citizenship of a country recognises that that is where you have a right to be. Stateless people (with no citizenship or nationality) are recognised in international law as needing special protection.

3.4 In New Zealand, the defining special rights of a citizen are set out in section 13 of the Immigration Act 2009:

... every New Zealand citizen has, by virtue of his or her citizenship, the right to enter and be in New Zealand at any time;

... no New Zealand citizen is liable under this Act to deportation from New Zealand in any circumstances.

3.5 Citizenship in New Zealand is superficially similar to permanent residency. Citizens and permanent residents enjoy certain rights and protections, including the right to reside permanently in New Zealand. However, citizenship recognises a particular relationship between the citizen and the state, which does not apply in the same way to permanent residents. The grant of citizenship can be seen as giving three main benefits:

- a greater sense of national identity;
- a greater degree of “security of tenure” for being in New Zealand (and, indirectly, Australia), because it removes the need to hold a residency visa; and
- the right to travel internationally on a New Zealand passport.

Grant of citizenship

3.6 The Citizenship Act sets out how and when people acquire and lose New Zealand citizenship. Most citizens automatically acquire that status because they are born in New Zealand or because one of their parents is a citizen. However, if you are not automatically a citizen, you can apply to the Crown to be granted that status.

- 3.7 The grant of citizenship is more a privilege than a right. To grant citizenship is to exercise a core power of state sovereignty. The Citizenship Act gives this decision to a Minister and sets out the grounds on which the Minister can grant that status.
- 3.8 New Zealand citizenship and a New Zealand passport, in particular, are highly prized internationally because of New Zealand's reputation as a country largely free from corruption, and because of the relative ease of access to other countries a New Zealand passport provides.

Citizenship criteria

- 3.9 There are two sections of the Citizenship Act under which the Minister may authorise the grant of citizenship. Section 8 of the Act sets certain criteria that the applicant needs to satisfy to qualify for citizenship, including having the right to be in New Zealand indefinitely, having been present in New Zealand for a minimum number of days in the preceding five years, intending to continue to live in New Zealand, having sufficient command of English, and being of "good character".
- 3.10 The other section of the Citizenship Act under which an applicant can apply for citizenship is section 9. Section 9 gives the Minister the power, in a limited range of circumstances, to authorise the grant of citizenship to someone who may not satisfy the section 8 criteria. Those circumstances include if, for example, the applicant would otherwise be stateless, or if there are:
- ... exceptional circumstances of a humanitarian or other nature, which means it is in the public interest for the applicant to be granted citizenship.*
- 3.11 If the Minister authorises the grant of citizenship under section 9, they can take into account whether the applicant satisfies the section 8 criteria but are not obliged to apply them.

Scope of ministerial discretion

- 3.12 Powers such as those given to the Minister under the Citizenship Act inevitably involve a degree of discretion. The role of Department officials is to provide advice and guidance to the Minister on applying the criteria in the Act. The Minister must be satisfied that the criteria in the Act have been met, but they are not bound to follow the Department's recommendation. Ministers usually, but not always, follow the Department's recommendations.
- 3.13 Ministerial discretion is an important feature of the Citizenship Act. It was generally agreed by those we spoke to that the exercise of ministerial discretion provides an important protection against the risk of inflexible and unduly bureaucratic decision-making.

- 3.14 However, as with any ministerial decision, when authorising a grant of citizenship, the Minister must ensure that the decision is consistent with the statutory requirements, and that the Minister acts within the normal principles recognised by administrative law.

Processing applications

- 3.15 When an application for citizenship is received, it is usually referred to one of the Citizenship Offices located around the country, where it is checked to ensure that the applicant qualifies for citizenship under the Citizenship Act.
- 3.16 The checks are carried out by applying the relevant sections of a Policy Manual maintained by the Department to help staff determine whether the criteria in the Act have been satisfied. The purpose of the Policy Manual is to ensure that all parties – applicants, Department staff, and the Minister – have a common understanding of the basis on which citizenship will be granted.
- 3.17 The Policy Manual requires Citizenship Officers to apply the policies and guidelines in it consistently, but not overly rigidly. Citizenship Officers can make recommendations outside the guidelines to take account of mitigating or aggravating factors, as long as they provide information to support their recommendations.
- 3.18 The Policy Manual is not a statement of citizenship law. Citizenship policies are subject to change, depending on the views of the Government of the day and the views of the Minister as decision-maker.

Schedules and submissions

- 3.19 If an applicant satisfies the “standard” section 8 criteria, their name is entered on a schedule that is forwarded to the Minister for approval. Schedules are usually sent to the Minister weekly and include between 300 and 650 names, depending on the number of applicants. Little detail is provided about the applicants, other than their name and nationality and confirmation that, according to the Policy Manual, they satisfy the section 8 criteria.
- 3.20 If there is a question about whether the applicant clearly satisfies the criteria, or if they wish to apply for citizenship under section 9, an individual submission is prepared for the Minister’s consideration.
- 3.21 At the time of the decision about Mr Liu, the Department was experiencing a particularly high volume of citizenship applications due to imminent changes to the Citizenship Act. According to statistics provided by the Department, in the four years from 2005 to 2008, about 2395 applications were made by submission.

This is an average of just under 600 each year, or 50 each month. The number of submissions has since decreased to around 270 in 2011.

- 3.22 The Department's practice is to recommend whether to accept or decline the application for citizenship. Ultimately, it is the Minister's decision. Between 2005 and 2011, on average, about 8% of submissions were decided against the recommendation of the Department.

Citizenship ceremonies

- 3.23 Under the Citizenship Act, the Minister can require applicants who have been granted citizenship to take an oath (or make an affirmation) of allegiance to New Zealand. Under current policy, all applicants over the age of 14 are required to take an oath or make an affirmation of allegiance unless they qualify for a specific exemption (for example, if they live overseas or cannot speak English).
- 3.24 The oath of allegiance may be taken before a District Court Judge, a solicitor, a Justice of the Peace, a member of Parliament, the mayor or deputy mayor of a territorial authority, the chairperson or deputy person of a regional council, or the Secretary of Internal Affairs.
- 3.25 As a general rule, the oath or affirmation must be taken or made at a public citizenship ceremony. The timing of ceremonies is determined by local authorities. Local authorities provide dates for ceremonies for the year or wait until there are sufficient applicants available for a ceremony.
- 3.26 The Department has a policy for approving urgent ceremonies, where the applicant is accepted in the next available public citizenship ceremony. Urgency can be approved, for example, for members of a sports team who need a passport urgently to travel overseas to represent New Zealand. Under the policy, the General Manager of Citizenship has discretion to approve a departure from this policy.
- 3.27 Under the Citizenship Act, private ceremonies require the consent of the Minister. If a private ceremony is requested, the Department provides the Minister with information about the applicant's circumstances and makes a recommendation to the Minister about whether to waive the requirement to take the oath or affirmation of allegiance at a public ceremony.

Loss of citizenship

- 3.28 A decision to authorise the grant of citizenship can be rescinded at any time before the date the person becomes a citizen, if the Minister is no longer satisfied that the person meets the requirements for citizenship. In practical terms, that means that the Minister's decision to authorise the grant of citizenship can be rescinded at any time before a citizenship ceremony takes place.

- 3.29 It is hard for a person to lose citizenship once they have it. An adult who becomes a citizen in another country can choose to give up New Zealand citizenship. There is a formal process to control how this step is taken. Otherwise, the Minister can remove a person's citizenship only if the Minister is satisfied that:
- as an adult, a person has effectively taken on the citizenship or nationality of another country and “acted in a matter contrary to the interests of New Zealand”; or
 - a person was granted citizenship under the Act as a result of fraud or mistake.
- 3.30 Once a person renounces or is deprived of citizenship, they are automatically deemed to hold a resident visa. A former citizen is liable for deportation if both the citizenship and the original residency status were the result of fraud.

Relationship between citizenship and permanent residency

- 3.31 The right to be in New Zealand indefinitely is a prerequisite to the grant of citizenship under section 8 of the Act (but not under section 9). Usually, but not always, the right to reside indefinitely in New Zealand arises because the applicant holds a New Zealand permanent residency permit. Australian citizens, for example, have the right to reside indefinitely in New Zealand without being permanent residents of New Zealand.
- 3.32 Permanent residency permits are issued under the Immigration Act 2009, which is administered by Immigration.

The Department's access to Immigration information

- 3.33 The Department and Immigration are parties to a Heads of Agreement that enables the Department to access Immigration's client database, known as the Applicant Management System (AMS). The two agencies also liaise with each other regularly when there are applicants who are of interest to them both. However, immigration and citizenship matters essentially operate under two separate decision-making systems. Except in limited circumstances, there is no requirement for the Department to consult Immigration about citizenship applicants who are also of interest to Immigration.
- 3.34 When someone applies for citizenship, the Department checks whether they are entitled to reside permanently in New Zealand by accessing the AMS. The Department is also able to view other relevant information about the applicant, such as alerts, that has been entered into the database by Immigration staff. Where there is an alert on the system, the Department will make further inquiries with Immigration.

- 3.35 If the AMS shows that an applicant for citizenship has had a permanent residency permit for the right number of days, the applicant is deemed to satisfy the permanent residency requirements in the Citizenship Act. This is so even if an investigation is under way into the applicant's permanent residency status. An active investigation by Immigration might provide evidence that the "good character" requirement of the Citizenship Act has not been satisfied, but does not mean that the permanent residency requirement has not been met.

Effect of granting citizenship on permanent residency status

- 3.36 Once someone has been granted citizenship, their permanent residency permit (if they had one) is obsolete. Legal proceedings can still be brought for any offences committed under the Immigration Act. However, revoking the right to reside permanently in New Zealand is no longer an option, unless the individual is deprived of citizenship. Citizenship is a stronger and more protected status than permanent residency.

The "good character" requirement

- 3.37 One of the standard criteria in the Citizenship Act under section 8 is that the Minister be satisfied that the applicant is of "good character".
- 3.38 When someone applies for citizenship, Department officials carry out certain procedures and enquiries so that they can advise the Minister whether or not an applicant satisfies this test. They then either:
- advise the Minister that they are not aware of anything that might be considered detrimental to the applicant's character; or
 - provide the Minister with information the Minister might want to consider when determining whether the applicant is able to satisfy the "good character" requirement.
- 3.39 Under the Citizenship Act, the Minister determines whether the applicant meets the "good character" requirement, after taking into account the Department's views.
- 3.40 If information comes to light suggesting that an individual might not satisfy the "good character" requirement, that information is usually presented to the applicant, giving them an opportunity to respond and, if possible, to resolve any concerns. Detrimental information does not automatically mean that the individual will not be eligible for citizenship. That determination is made case by case.
- 3.41 If, as a result of the detrimental information, the Department decides to recommend that the application be declined, the applicant is given the option to defer their application until the outstanding issues have been resolved. It is

the applicant's choice. We were told that it was unusual, but not unheard of, for an applicant to choose to continue with their application when there were unresolved matters relating to good character.

- 3.42 If the Minister is satisfied that the applicant is of good character, despite the information suggesting they are not, the Minister can authorise the grant of citizenship under section 8.
- 3.43 If the Minister is not satisfied that the applicant is of good character, the applicant might still be eligible for citizenship under section 9 of the Act. Section 9 allows the Minister to authorise the grant of citizenship if, for example, the applicant would otherwise be stateless, or if there are exceptional circumstances of a humanitarian or other nature which mean it would be in the public interest to grant citizenship.
- 3.44 When considering an application under section 9, the Minister has discretion to consider the section 8 requirements, such as good character, but is not required to do so.

Dealing with unproven allegations

- 3.45 At the time of Mr Liu's application, the application of the "good character" requirement in the Citizenship Act had given rise to a particular concern for the then Minister (Hon Rick Barker).
- 3.46 Mr Barker was concerned about cases where allegations had been made about the applicant but the Department was not able to establish whether the allegations were true.
- 3.47 The concern about unproven allegations was heightened when the applicant was from a country whose judicial system might not be subject to the same standards of natural justice as would apply in New Zealand, or with a questionable human rights record, or that might apply the death penalty.
- 3.48 Mr Barker was not alone in his concerns. Similar concerns were also a feature of immigration cases. We were told that a previous Minister of Internal Affairs had raised similar concerns, which led to a number of delayed citizenship applications.
- 3.49 A solution was achieved, in part, by inserting section 9A into the Citizenship Act. Section 9A set out certain "mandatory" disqualifying convictions. However, it was still considered necessary to preserve a ministerial discretion to deal with harsh cases – such as convictions for offences that would not be considered criminal in New Zealand (for example, witchcraft). Section 9A did not address the issue of unproven allegations.

- 3.50 The Minister was still required to exercise discretion about where to draw the line about past criminal convictions and to form a view about the weight to be given to unproven allegations.
- 3.51 Mr Barker sought legal and policy advice about how such cases should be approached. In summary, the advice provided by Crown Law was that:
- The onus is on the applicant to assert good character and to satisfy the Minister that he or she is a suitable candidate for citizenship.
 - The Department must provide the applicant with details of all of the relevant material and an opportunity to rebut the allegations.
 - Ministers do not have to decide beyond reasonable doubt whether the unproven allegations are true. The existence of unproven allegations will be a relevant factor in the decision to authorise the grant of citizenship, but must be considered along with all other relevant factors.
 - It is not possible to provide strict guidelines about the weight to be given to unproven allegations. That will depend on whether there is “sufficient basis” for the allegations and any countervailing factors, including the persuasiveness of the applicant’s response.
- 3.52 In 2007, a policy paper was prepared for the Minister in response to this advice. In summary, the Department advised the Minister that:
- If it received allegations about criminal activity from another agency, such as Interpol, it would seek permission from that agency to disclose the information to the applicant.
 - If the information could not be disclosed (for example, because of concerns about jeopardising an investigation), the applicant would be told that detrimental information had been received, but would not be given specific details. The processing of the citizenship application would then be put on hold until the applicant could be notified or the outstanding concerns had been resolved.
 - In almost all applications involving unproven allegations, the applicant gets a police clearance from the relevant country, or provides proof that the charges have been dismissed, or withdraws their application. There is usually only one case each year where the applicant requests that their application be submitted without the issue being resolved.
 - In such cases, the Department would provide the Minister with the relevant information and make a recommendation, but could not determine whether the applicant committed the alleged offences or whether charges had been laid for political or spurious reasons.

- 3.53 Mr Barker told us he did not find the advice he was given particularly helpful. In particular, he thought that the policy advice provided by the Department was not entirely consistent with the legal advice provided by Crown Law. In his view, the Crown Law advice had placed greater emphasis on the need to consider natural justice concerns.
- 3.54 He told us that, in individual cases, he expected the Department to provide some analysis of the information available, such as a summary of the key information that would support or disprove the allegations being made and the Department's opinion on the next steps in the process. Mr Barker told us that, on one occasion, he instead received a large file containing information on an applicant that had been submitted to the Department in defence of the allegations that had been made. Officials had not provided any advice about whether the material was relevant or addressed the allegations.
- 3.55 We consider that the difficulties faced by Ministers and the Department when unproven allegations have been made about an applicant are an important factor in understanding the background to Mr Liu's application for citizenship. They are also relevant when considering the advice given to Mr Jones about Mr Liu's application.
- 3.56 In summary, Mr Barker thought the Department should provide clearer guidance on where the truth of the allegations lay. Department officials, for their part, thought they were not in a position to determine such matters, that it was not their role to do so, and that the Citizenship Act clearly placed the obligation on the Minister to exercise judgement in such matters.
- 3.57 We acknowledge the Department's concerns about being seen to determine an applicant's guilt or innocence, and agree that – ultimately – the burden of proof is on the applicant to satisfy the Minister that the criteria in the Citizenship Act are met. We acknowledge, too, that the approach of simply presenting the Minister with all the relevant information might be intended to avoid giving the impression that the Department is attempting to interfere in the exercise of ministerial discretion.
- 3.58 However, we also understand the concern that Mr Barker raised. Ministers are required to deal with a heavy workload and, in the case of the Minister of Internal Affairs, citizenship decisions represent just one part of a broad portfolio of matters they are called on to deal with.
- 3.59 In our view, in those rare but difficult cases where the Minister is required to consider an application involving unproven allegations, the Department could do more to support ministerial decision-making.

- 3.60 Although it is for the applicant to satisfy the Minister that he/she is a suitable candidate for citizenship, and for the Minister to make the judgement call, these factors do not relieve the Department of the responsibility of carefully reviewing the material put forward and providing a view.

Part 4

Investigation by Immigration New Zealand

- 4.1 In this Part, we summarise Immigration’s investigation of Mr Liu’s permanent residency status between May 2005 and September 2007. The investigation culminated in the decision of the Minister of Immigration, Hon David Cunliffe, not to revoke Mr Liu’s permanent residency status at that time. However, in the paper recording his decision, he said that the file should continue to be assessed as a potential prosecution file and that he did not discount the possibility of reconsidering the matter in the future.

May 2005: Start of Immigration’s investigation

- 4.2 Mr Liu arrived in New Zealand in December 2001 and was granted permanent residency in June 2002. In May 2005, shortly after he had applied for New Zealand citizenship, Immigration began investigating him with a view to considering his status as a permanent resident.
- 4.3 The investigation was prompted by an alert the New Zealand immigration authorities had received from the Australian immigration authorities. The Australian authorities had been told by the Chinese authorities that Yang Liu was believed to be a false identity and that Mr Liu was Yong Ming Yan. Yong Ming Yan was wanted in China for passport fraud and “economic crimes”. Interpol had issued a Red Notice in his name, which meant that he was wanted with a view to extradition to China.
- 4.4 As a result of discussions with the Australian immigration authorities, Immigration officials became aware that Mr Liu had married shortly after he had arrived in Australia. He had not declared his Australian marriage when he applied for his New Zealand permanent residency permit.
- 4.5 Under the legislation at the time (the Immigration Act 1987), a permanent residency permit could be revoked if it had been procured by fraud, forgery, false or misleading representation, or by concealing relevant information. Immigration began investigating Mr Liu with a view to considering whether to revoke his permanent residency permit on the grounds that he had not declared his marriage, or that he had a passport in another name.

March 2006: Submission to revoke

- 4.6 In March 2006, a submission was forwarded to the Minister of Immigration (Hon David Cunliffe) recommending that Mr Liu’s permanent residency permit be revoked. The submission recorded that, in response to the allegations made against him, Mr Liu claimed that the Chinese authorities were politically

motivated because of his involvement in pro-democracy activities in China and overseas, and that his life would be in danger if he returned to China.

- 4.7 Mr Cunliffe told us that, given the potential risks to Mr Liu's life if he returned to China, he was particularly concerned to understand whether the charges faced by Mr Liu were likely to be well-founded, and the implications of revoking his residency permit. He asked the officials for further advice.

July 2006: First deferral of decision

- 4.8 In July 2006, Immigration officials advised the Minister that, although it would be possible to proceed with the revocation, they recommended deferring the decision pending the outcome of the Australian authorities' investigations.
- 4.9 Officials believed that evidence the Australian authorities obtained during their investigation might help establish whether Mr Liu's permanent residency had been procured by fraud, rather than by mistake. If the authorities could prove fraud, the case for revocation would be stronger and it was less likely that a decision to revoke would be successfully appealed. They anticipated knowing the outcome of the Australian authorities' investigation by September 2006.
- 4.10 The Minister accepted this recommendation and deferred the revocation decision.

November 2006: Second deferral of decision

- 4.11 In September 2006, a warrant to arrest Mr Liu was issued in Australia, for allegedly opening and operating bank accounts under a false name. In November 2006, his Australian permanent residency was cancelled (although Mr Liu was later successful in having this decision overturned by the courts).¹
- 4.12 Proceedings had also been started by the Australian authorities and funds owned or controlled by Mr Liu had been frozen. A settlement was agreed with the authorities under which the proceedings that had been initiated were discontinued and Mr Liu agreed to forfeit A\$3.75 million (which was later repatriated to China).
- 4.13 In the meantime, Mr Liu's file had been referred to Immigration's Fraud Branch. The Fraud Branch asked for the revocation submission to be deferred again, because of concerns that references to their investigation in the submission could prejudice their investigation.

September 2007: The Minister's decision

- 4.14 In March 2007, after Mr Cunliffe had queried the reason for the delay, the revocation submission was referred back to him.

¹ Liu v Minister of Immigration [2008] FMCA 595.

- 4.15 The submission was comprehensive. It explained that the proposed basis for revocation was Mr Liu's failure to declare his marriage and that he had a passport in a different name, and outlined the factors Mr Cunliffe had to weigh in making his decision. On the one hand, there were the suspicions of fraud and other offending in New Zealand and China, Mr Liu's settlement with Australian authorities, and the cancellation of his Australian residency permit. On the other hand, Mr Cunliffe had to take account of Mr Liu's personal and domestic circumstances in New Zealand, and his claims that he would be killed if he returned to China.
- 4.16 The submission also explained Mr Liu's appeal rights under the Immigration Act if his permanent residency permit were revoked.
- 4.17 Mr Cunliffe told us it was the most difficult and complex case he was called on to consider in his time as Minister of Immigration. He was mindful that, if he revoked residency, it was likely that his decision would be judicially reviewed. He was concerned to ensure that, if he did decide to revoke Mr Liu's residency, the case for revocation was as solid as possible.
- 4.18 Mr Cunliffe sought further advice on the submission from a senior legal adviser at the Department of Labour. That advice confirmed that there were valid grounds for revoking Mr Liu's permanent residency under the Immigration Act.
- 4.19 Mr Cunliffe told us that he did not take issue with that advice, and recognised there were strong grounds for suspicion. However, he was faced with two contradictory versions of events, and none of the allegations against Mr Liu had been proven before an appropriate authority. Immigration's fraud investigation was continuing. Mr Cunliffe decided that the appropriate course of action was to defer the decision to revoke until the investigation was completed.
- 4.20 The revocation submission that had been presented to him by Immigration officials provided him with two options – "sign revocation" or "not sign revocation". He crossed both these options out and wrote the following note at the bottom of the paper:
- I have decided that the most appropriate route for this case at this time is for it to continue to be assessed by [Border Security Group] as a potential prosecution file. I do not discount the possibility of reconsidering it in the future.*
- 4.21 The note is dated 24 September 2007.
- 4.22 Immigration notified Mr Liu of Mr Cunliffe's decision in October 2007, including advising him that the Minister did not discount the possibility of reconsidering the matter in the future as a consequence of further investigations.

Our comments

- 4.23 The issues confronting Mr Cunliffe were difficult. The allegations made against Mr Liu raised a question about whether Mr Liu should retain his New Zealand residency. But the political situation in China, and concerns about its human rights record, meant that the revocation of Mr Liu's New Zealand residency could have serious implications for his safety. It is apparent from our review of the files, and discussions with him, that Mr Cunliffe was particularly concerned to know whether the allegations were true.
- 4.24 The advice provided to Mr Cunliffe by officials, in particular the advice provided by the senior legal adviser in August 2007, conveyed, in reasonably strong terms, that it was open for the Minister to revoke Mr Liu's residency. We were told that Immigration does not usually provide advice that strongly advocates that the Minister should make a particular decision. The strongly worded advice on this occasion was not common.
- 4.25 However, despite this advice, from the information provided to the Minister it remained unclear whether Mr Liu had committed the offences that were alleged. In those circumstances, the decision Mr Cunliffe made not to revoke Mr Liu's residency until the fraud investigation was complete was both open to him and understandable. He effectively put the issue on hold until the prosecution investigation had been brought to an appropriate conclusion. That is how his decision was understood by Immigration, and its investigation of Mr Liu continued.
- 4.26 In our view, this decision was made in an appropriate way. It represented a sensible way in which the difficult decisions arising from unproven allegations could be addressed. The reasons for the Minister's decision were made clear, and were formally recorded on the file in the way that was understood.
- 4.27 Also, although the Department's effective recommendation was not being followed, the decision-making process shows that Mr Cunliffe addressed the issues with considerable thought and care. There was no evidence of favouritism or that the Minister made the decision for improper reasons.

Part 5

Investigation by the Department of Internal Affairs

- 5.1 In this Part, we explain how Mr Liu's application was managed by the Department, from May 2005 when it was originally filed to July 2008, when his application for citizenship was submitted to the Minister.
- 5.2 We also address the allegations that have been made that the management of Mr Liu's file was subject to inappropriate political interference.

May 2005: Receipt and deferral of citizenship application

- 5.3 Mr Liu's citizenship application was filed at the Department's Citizenship Office in Manukau in May 2005. However, shortly after it was filed, during standard processing checks with Immigration, Department staff were made aware that Mr Liu was under investigation by Immigration. As a result, rather than proceeding with standard processing, his citizenship application was referred to the Department's Investigations Unit in Wellington and his file was assigned to one of the Investigators there.
- 5.4 Between May 2005 and September 2007, the Investigator periodically liaised with Immigration, Interpol, and other agencies to obtain updates on the Mr Liu's file. The Investigator also corresponded with Mr Liu's lawyers in response to their requests for progress reports and information from Mr Liu's file. However, the citizenship application was effectively on hold until September 2007, when the Minister of Immigration, Mr Cunliffe, decided to defer his decision about whether to revoke Mr Liu's residency permit.

October 2007: Re-activation of citizenship application

Letter from Mr Liu's lawyers to Mr Barker

- 5.5 Shortly after receiving Immigration's letter notifying them of Mr Cunliffe's decision, Mr Liu's lawyers wrote to the Minister of Internal Affairs (Hon Rick Barker) seeking his assistance to progress Mr Liu's citizenship application. Mr Liu knew Mr Barker, who had been introduced to Mr Liu before Mr Barker became Minister of Internal Affairs.
- 5.6 The lawyers' letter noted that the Minister of Immigration had recently confirmed Mr Liu's permanent residency status, and that the Department had told Mr Liu that checks were being carried out on him. Mr Liu had not been told which agencies were involved. Mr Liu's lawyers said the undue delay in considering Mr Liu's citizenship application was causing Mr Liu and his family unnecessary stress and hardship.

- 5.7 In response to this letter, as is standard practice in the Minister's office when dealing with correspondence about citizenship applicants, Mr Barker's Private Secretary emailed officials at the Department to ask them to provide background information on Mr Liu's file and to prepare a response to the letter.
- 5.8 The file note provided to the Minister's office explained that Mr Liu's citizenship application had been delayed because he was subject to an Interpol Red Notice, and that the Department did not have consent to disclose that information to Mr Liu.

November 2007 to January 2008: Management of the file

Privacy Act complaint

- 5.9 In late November 2007, Mr Liu's lawyers complained to the Privacy Commissioner about information on Mr Liu's file being withheld from him. Department officials met with officials from the Office of the Privacy Commissioner to discuss the matter.

Mr Barker's response to letter from Mr Liu's lawyers

- 5.10 In early December 2007, while these discussions were taking place, Mr Barker's Private Secretary contacted the Investigator to request more up-to-date information about Mr Liu's file.
- 5.11 The Department prepared a draft letter for the Minister to send in reply to the letter from Mr Liu's lawyers. The letter explained that Mr Liu's application had been delayed because checks were still being carried out by other agencies. It went on to say that Mr Barker would ask his officials to encourage government agencies to give Mr Liu's application their urgent attention and gave assurance that Mr Barker would take Mr Liu's personal circumstances into account when Mr Liu's application was forwarded to him for consideration.
- 5.12 Mr Barker told us he was already aware that, because he knew Mr Liu, he could not make the decision about Mr Liu's citizenship application and had no intention of doing so. However, he signed the letter that was then sent on 13 December. We discuss the letter, and Mr Barker's reasons for signing it, in more detail in Part 7.

Correspondence with Mr Liu's lawyers

- 5.13 In the meantime, the Department had obtained Interpol's consent to tell Mr Liu about the Red Notice. On 17 December, the Investigator wrote to Mr Liu's lawyers advising that, although Mr Liu satisfied most of the criteria for the grant of citizenship in the Citizenship Act, he would be unable to satisfy the "good character" requirement until the matter of the Interpol Red Notice was resolved. In

keeping with departmental policy at the time, the Investigator suggested that Mr Liu contact the Chinese Embassy in Wellington.

- 5.14 The Investigator went on to explain that Mr Liu had two options at that point; he could either withdraw his application until the Interpol notice was resolved or proceed with his application based on the information currently available. However, he explained that if Mr Liu decided to proceed with his application, the Department would be obliged to recommend that his application be declined.

Mr Liu's response to allegations

- 5.15 On 15 January 2008, Mr Liu's lawyers sent a comprehensive letter of explanation to the Department setting out Mr Liu's response to the alleged "economic crimes" in China and his explanation for his two identities and two passports.
- 5.16 Through his lawyers, Mr Liu repeated his assertions that no credible evidence had been provided by the Chinese authorities to substantiate the allegations made against him, and that the allegations were politically motivated. Therefore, it was neither possible nor safe for Mr Liu to approach the Chinese authorities to try to resolve the allegations.
- 5.17 Mr Liu said that, notwithstanding the unresolved matters, he wanted a decision to be made urgently.

Mr Barker's discussion with Cabinet Office about conflicts of interest

- 5.18 Around this time (January 2008), Mr Barker approached the Cabinet Office to discuss concerns he had about potential conflicts of interest in citizenship decisions. He told us that his concerns did not relate specifically to Mr Liu's application, but to other applicants he was aware of whose applications might shortly be presented to him.
- 5.19 As a result of his discussion with the Cabinet Office, a standing transfer of citizenship decisions was put in place for cases where Mr Barker had a conflict of interest. The standing transfer of decisions from Mr Barker to Mr Jones was formally approved by the Prime Minister on 28 April 2008.

Letters of support from Pansy Wong, Dover Samuels, and Chris Carter

- 5.20 In the following weeks, there was further correspondence between the Department and Mr Liu's lawyers and between the Department and other agencies about the good character issue. Letters of support for Mr Liu's application were sent by three MPs – the first on 22 January 2008 from Hon Pansy

Wong, the second on 30 January 2008 from Hon Dover Samuels, and the third on 12 February 2008 from Hon Chris Carter. The letter from Mr Samuels was the first of four he sent in support of Mr Liu between January and July 2008.

Interview

- 5.21 In late February 2008, Mr Liu was interviewed by officials from the Department. During this interview, he repeated the explanations he had previously provided for having passports with two different names and birth dates, and again said that he was being persecuted because of his pro-democracy and Falun Gong associations. He also claimed that the Chinese authorities had him under surveillance.
- 5.22 Shortly after this interview, it was decided that Mr Liu's file should be returned to the Citizenship Office in Manukau so that normal processing steps could be completed. The General Manager of Citizenship told us that it was he who made this decision.

March 2008: Processing of citizenship application

File note from Investigations Unit

- 5.23 The file was returned to the Manukau office on 12 March and assigned to one of the Citizenship Officers for processing. The file was accompanied by a note from the Investigator, explaining that the Investigations Unit had determined that Mr Liu could not satisfy the "good character" requirement and the reasons why.
- 5.24 The file note recorded that part of Mr Liu's file, which contained classified information, was being retained by the Investigations Unit. Once the Manukau team had completed their work, the file was to be sent back to Wellington, where the classified section would be re-inserted before Mr Liu's application was presented to the Minister. The file note also recorded that the General Manager of Citizenship had agreed that the file would be processed expeditiously.

Processing of application

- 5.25 When he received the file, the Citizenship Officer in Manukau proceeded to carry out a number of standard processing steps. These included checks with various agencies, such as the New Zealand Police, Immigration, and the New Zealand Security Intelligence Service, and asking Mr Liu to provide copies of documents (such as his birth certificate and passport). The Citizenship Officer also asked Mr Liu to complete a new application, because his original application was now out of date.

- 5.26 After receiving Mr Liu's new application form and supporting documents, the Citizenship Officer asked a number of follow-up questions about the investigation carried out by the Australian authorities, Mr Liu's use of different passports to travel in and out of Australia, and his different identities. He told Mr Liu's lawyer that the Department needed to know which of his two names and birth dates were correct because this information was required for Mr Liu's citizenship certificate, if citizenship were granted.
- 5.27 The Citizenship Officer told us the particular concern he had was Mr Liu's use of two passports. He said that although he could understand the explanation Mr Liu had given for having two identities, he was not satisfied that it explained why he had two passports with different names and birth dates, and why he had used both passports at different times when travelling. The requirement to verify the identity of the applicant is one of the key obligations of Citizenship Officers when processing citizenship applications.
- 5.28 Mr Liu's lawyers provided various emails and letters responding to the Citizenship Officer's requests, but at the same time, in an email to the Investigator at the Investigations Unit in Wellington, they expressed surprise at being asked to provide this information again. They had already provided it to the Investigations Unit. The next month, Mr Liu's lawyers emailed the Investigator again to ask if there was anything that could be done to expedite the processing of the file.

Second letter from Mr Samuels

- 5.29 On 9 April 2008, Mr Samuels sent a second letter of support for Mr Liu to Mr Barker. In the letter, Mr Samuels asked the Minister to give "urgent consideration making a decision bringing this matter to closure one way or another."
- 5.30 The letter went on:
- In my view Mr Liu has been denied his rights to natural justice, no New Zealander would put up with the continuous scrutiny re questioning, invasion of privacy, raid on his residence when his wife a children were present.*
- You should require your officers to place the relevant and substantiated information before you so you can make an informed decision on the fate of Mr Liu and his family based on facts and not unsubstantiated allegations and innuendo.*
- 5.31 Officials were asked to prepare a response to this letter, but it was later withdrawn before the Department had finished preparing a response to it. A letter on very similar terms was sent the following month (see paragraph 5.46). Neither Mr Samuels nor anyone else we interviewed could recall why the letter was withdrawn but then re-sent.

General Manager's telephone call to Citizenship Officer

- 5.32 Around 11 April 2008, the General Manager of the Citizenship Office called the Citizenship Officer to discuss Mr Liu's file. The Citizenship Officer told us that this was the first time the General Manager had ever called him about an application. He told us that the General Manager told him to "stop digging" because there was political pressure to return the file to Wellington.
- 5.33 The General Manager had a different recollection of this conversation. He told us that his instructions to the Citizenship Officer were that he should complete normal processing of Mr Liu's file, but that he did not need to re-investigate matters that had already been investigated.
- 5.34 The General Manager told us that, in his view, further investigations were unlikely to resolve the outstanding issues and that the Department had enough information to inform the Minister's decision, despite the unresolved issues.
- 5.35 Given that Mr Liu had indicated that he wanted the Minister to consider his application, even though he had been told the Department was going to recommend that his application would be declined, the pragmatic thing to do was to get the file to the Minister as soon as possible so that a decision could be made.
- 5.36 The General Manager said that he had not come under pressure from Mr Barker, his officials, or any other politician to give Mr Liu's file special treatment. He acknowledged that Mr Liu's case had attracted some high-profile support. However, although support from three MPs for one person was relatively unusual, high-profile support of that nature from MPs and other prominent figures was not unusual.
- 5.37 The request to process the file urgently had been made, through his lawyers, by Mr Liu. Since October 2007, when Mr Liu's citizenship application had been re-activated, his file had generated a large amount of correspondence. Mr Liu's lawyers (and, on occasions, Mr Liu) were contacting the Department frequently, requesting updates on the application and making requests for information under the Privacy Act 1993.
- 5.38 Also, each time a letter was received in the Minister's office about Mr Liu's case, it prompted a request from the Minister's staff for staff in the Department to provide background information on the file and prepare a letter of response.
- 5.39 The level of correspondence Mr Liu's file had generated had created a significant workload. It was putting pressure on the staff involved, who were already under pressure because of a backlog in citizenship applications. The General Manager told us that the most pragmatic way to relieve this pressure was to agree to Mr Liu's request to process his application urgently.

5.40 The Citizenship Officer later told us the General Manager had not explained this context at the time. He also told us that he did not agree that there had been a backlog of applications, or that if there had been, it would have affected his ability to process Mr Liu's application.

5.41 It is not possible for us to determine what was said during the telephone conversation between the General Manager and the Citizenship Officer. But it is clear that, as a result of that conversation, the Citizenship Officer stopped questioning Mr Liu's lawyers and processed the application based on the information available to him.

Mr Liu's first visit to the Citizenship Office

5.42 On 22 April 2008, Mr Liu came to the Manukau Citizenship Office to ask about the status of the police check that was being carried out for his application.

5.43 The Citizenship Officer showed him a status report on his application to confirm that a response had not yet been received from the New Zealand Police.

Third letter from Mr Samuels

5.44 On 13 May 2008, Mr Liu's lawyers wrote to Mr Samuels asking for his help to expedite Mr Liu's application. Their letter said:

Mr Liu remains of the view that he is being politically persecuted by the Chinese authorities due to his involvement in political activities that promote democratic principles in China. He has no proof that the processing of his application is being delayed but he is concerned about the number of technical issues and repetitive questions the Department of Internal Affairs has raised on separate occasions which contribute to the delays.

5.45 The letter went on to note that the letter in which Mr Barker had said he would ask officials to encourage other agencies to give Mr Liu's application their urgent attention had been written seven months before (in December 2007), and to describe the effect the uncertainty was having on Mr Liu and his family. The letter ended by seeking Mr Samuels' assistance to expedite his application, given the "long delays, overall fairness, requirements for natural justice and the harm the delays and uncertainty were causing Mr Liu and his family".

5.46 On the same day, presumably in response to this request, Mr Samuels sent a further letter to Mr Barker, requesting urgency. The letter was on similar terms to the one he had written and later withdrawn in early April (see paragraphs 5.29 to 5.31).

Mr Liu's second visit to the Citizenship Office

- 5.47 On 23 May 2008, Mr Liu visited the Manukau Citizenship Office again. At this meeting, the Citizenship Officer went through Mr Liu's application form with him and asked him questions about his identity, use of different visas to travel in and out of Australia, and use of different signatures.
- 5.48 The Citizenship Officer told us that, at this second meeting, he re-iterated that Mr Liu was unlikely to be granted citizenship because of the outstanding issues with the Interpol Red Notice and Immigration's investigation. He said it was at this point that Mr Liu told him he was confident he would be granted citizenship because of the support he had received from MPs.
- 5.49 Mr Liu told us through his lawyers that he did not say this, and that he did not say anything that would suggest or imply that he was confident he would be granted citizenship because of the support he received from MPs.

May 2008: File returned to Wellington

Drafting of submission to the Minister

- 5.50 Towards the end of May 2008, Mr Liu's file was returned from the Manukau Citizenship Office to the Investigations Unit in Wellington. It was decided that the Investigator, rather than one of the Citizenship Officers, would draft the submission to the Minister because some of the information was classified and the Investigator was already familiar with the file.
- 5.51 Before finalising his draft, the Investigator contacted the other agencies that had supplied information about Mr Liu (including the New Zealand Police and Immigration) to check that the information those agencies had given him was still up to date.

Mr Liu's telephone calls to the Department

- 5.52 Shortly after the file was returned to Wellington, Mr Liu telephoned the Investigator and claimed that he was stateless because the Chinese government had cancelled his passport. Mr Liu's lawyers emailed the Investigator the next day with the same information. The email also said that Mr Liu feared for his personal safety if he was to be returned to China.
- 5.53 The following month, on 12 June 2008, Mr Liu called the Investigator again. During their conversation, Mr Liu repeated that he could not return to China because doing so would be a death sentence for him.

Fourth letter from Mr Samuels

- 5.54 On 1 July 2008, Mr Samuels sent a further letter to Mr Barker, noting that he had not received any substantive response to his earlier letter of 13 May. The letter ends:

I would appreciate if you would advise where this case is at and when a decision will be made.

Delivery of submission

- 5.55 After the submission was drafted, it was reviewed by the Department's legal staff and General Manager, then signed off by the General Manager.
- 5.56 The Investigator then contacted Mr Barker's Private Secretary to arrange a time to deliver the submission. At this point, on 30 June, he was told that Mr Barker would not be making the decision on Mr Liu's application because Mr Barker had a conflict of interest. The decision was going to be transferred to the Associate Minister of Immigration, Hon Shane Jones. A letter transferring the decision to Mr Jones was signed by Mr Barker on 3 July 2008.
- 5.57 The submission and the Department's file on Mr Liu were delivered to Mr Jones' office on 14 July 2008.

Our comments

- 5.58 Concerns have been raised that the Department's management of Mr Liu's file was subject to political pressure because of his connections with various MPs and their associates, and that Mr Liu received preferential treatment as a result of these connections.
- 5.59 These concerns have arisen because Mr Liu knew Mr Barker, having met him before he became Minister of Internal Affairs, and also because of the support he had received from the three MPs who advocated on his behalf. Mr Liu is also known to have made donations to certain individuals and political parties.
- 5.60 Also, in the course of the High Court case brought against Mr Liu in 2012, specific concerns about political interference were raised by the Citizenship Officer who processed Mr Liu's application.
- 5.61 In our inquiry, we found no evidence that any of the politicians connected to Mr Liu attempted to interfere in an improper way in the decisions made about the management of his file or to improperly influence the decision that was eventually made.

- 5.62 The General Manager told us that it was his decision to give Mr Liu's file priority and to discontinue the investigation, and that he made these decisions for pragmatic reasons – largely to relieve the pressure on staff caused by the high workload Mr Liu's file was generating, and because further investigation on the Department's part would be unlikely to resolve the outstanding issues, or relieve that pressure.
- 5.63 We consider that his decision might also have been influenced, at least in part, by general concerns at the time about a backlog in citizenship applications and about the risk that further undue delay might lead to a judicial review. Applicants have a right to apply for citizenship. They can agree to an application being put on hold pending the receipt of further information, but they do not have to – and the Department cannot unilaterally delay an application.
- 5.64 At the time, the Department did not have a formal policy or process for prioritising files, and the General Manager was acting within his authority when he exercised his discretion to prioritise Mr Liu's file. Similarly, decisions to depart from normal policies and procedures when processing an application were also usually made at a managerial level and without formality. The General Manager was acting within his authority when he decided to discontinue the investigation into Mr Liu's different identities.
- 5.65 In our view, the General Manager's decisions were made for legitimate reasons but, with hindsight, were unfortunate. They created the impression that Mr Liu was not being subject to the normal process of scrutiny that would apply to other citizenship applicants, and that he was able to "queue jump". Given Mr Liu's political connections and the later decision to authorise the grant of citizenship against the advice of officials, the General Manager's decisions helped create the impression that Mr Liu had received favourable treatment.
- 5.66 Although we found no evidence of improper political interference in this case, we consider that the Citizenship Officer's suspicions are to some extent understandable. The decisions made about the management of Mr Liu's file were not made by reference to any clear or understood practice or policy, and the rationale for the decisions was not documented. From the information available to him, it appeared to the Citizenship Officer that those decisions were being made as a reaction to pressure being applied to (or felt by) officials in Wellington to give Mr Liu's file special treatment, and that that pressure resulted from Mr Liu's political connections.
- 5.67 During our inquiry, we were provided with information about other files involving support from MPs or their associates – some from around the same time as Mr Liu's application, some occurring later – and were told of concerns among some

Citizenship Officers about the possibility that favouritism was operating within the system.

- 5.68 Some of these cases involved common links between different applicants, MPs, and their agents (for example, applicants with the same immigration consultant or legal adviser and supported by the same MP). In others, the applicants, or more often their agents or advocates, had sought meetings with the relevant Minister or lobbied the Minister to intervene in the processing of the application (for example, to consider an application urgently).
- 5.69 We were also shown communications received by one official from applicants (for example, invitations to coffee or dinner), which, it was said, suggested attempts were being made to engender favourable treatment by officials.
- 5.70 In response to these concerns, we asked the Department to provide us with further information about applications that had been approved despite the Department's recommendation that they be declined, and also samples of some of the files (dating from 2006 to 2010) that had caused concern.
- 5.71 Our review of these sample files showed that, although all were cases where a decision was made against the Department's recommendation, they did not all involve good character issues. Not all of the applications were successful in the first instance.
- 5.72 A common reason for recommending that citizenship be declined was that the applicant did not satisfy the English language requirement or had not been resident in New Zealand the required number of days. In some cases, a practice appears to have developed where these types of applications were deferred to allow the applicant time to satisfy the requirements. The applications were then prioritised when they were later resubmitted.
- 5.73 Our review of the files also showed that, in some cases where applications were deferred, the result was that the applications were subsequently re-considered and approved by a different Minister to the one who had originally declined the application. It also showed that several different MPs were involved in advocating for citizenship applicants.
- 5.74 A detailed investigation of these cases was beyond the scope of our inquiry. We did not find anything in our review of the files to suggest that decisions had been made as a result of improper influence. However, it is clear that the apparent links between different applicants and their agents or supporters, coupled with strong support from various MPs and subsequent questions about the applications from the relevant Minister or ministerial officials, caused disquiet among some Citizenship Officers.

- 5.75 Concern was expressed about the pressure placed on them by particularly assertive applicants or agents (some of whom had had personal meetings with the relevant Minister), particularly where the Minister's office had later asked for information about the file. Citizenship Officers asked for guidance from more senior managers about whether it was appropriate for the Minister to intervene in this way, and sought advice on the division of functions between the Minister and officials.
- 5.76 The advice they were given was that it was acceptable for Ministers to ask for information about an application where the Minister had received communication independently from an applicant or agent, and that this was not the same as a Minister instructing officials to process an application in a particular way. Guidelines were later prepared to help Citizenship Officers manage files where there was ministerial involvement.
- 5.77 We agree that applicants and their advocates are entitled to approach the Minister directly, and that, in such circumstances, the Minister and ministerial officials need to be able to obtain information about a file in order to respond to the applicant's concerns.
- 5.78 We also recognise that advocacy – by professional advisers, business and community leaders, and others seen to be able to influence the Minister – is an inevitable part of the decision-making process. There is nothing unlawful or improper in citizenship applicants seeking support, including support from MPs. Advocacy and support for constituents and others is an important part of the role of elected representatives in New Zealand.
- 5.79 Conversely, there is nothing unlawful or improper in Ministers considering representations and advocacy by or on behalf of applicants in the course of considering an application for citizenship. The ability to gain direct access to decision-makers is often cited as one of the benefits and privileges of living in a small and closely connected country.
- 5.80 However, advocacy of this kind, in particular where the advocate is a fellow MP or known to the Minister, clearly presents risks to the integrity of the decision-making system and to the reputations of those involved, including the Minister.
- 5.81 In our view, some of the wider concerns expressed to us during our inquiry about citizenship applications and the role played by advocates are valid. For reasons we explain in more detail in Part 8, we consider that citizenship decisions are particularly vulnerable to the risk of improper influence, or the appearance of it. Particular care needs to be taken to ensure that this risk is properly managed.

- 5.82 Given the value attached to New Zealand citizenship and the obligation the Citizenship Act places on the Minister to exercise a degree of judgement and discretion, it is inevitable that applicants for citizenship will seek ways to ensure that their applications are viewed in the most favourable light.
- 5.83 The suspicions that were aroused in Mr Liu’s case, and wider concerns some people had about the system generally, raise a question about where the line is drawn between proper and improper influence.
- 5.84 We consider it would be impractical and undesirable to seek to draw this line by artificially restricting interactions between the Minister and those advocating for citizenship applicants. The key to managing the risks and maintaining confidence in the integrity of the decision-making system is for all those involved in the decision-making process – officials, the Minister, and ministerial advisers – to actively consider not only whether their actions are lawful and proper, but how those actions might look to outside observers.
- 5.85 Interactions of this kind need to be open and transparent and steps need to be taken by all those involved to ensure that their actions are not open to misinterpretation. That means representations should always be “on the record” and preferably in writing. If meetings take place between the Minister and advocates, a witness should be present who can independently verify what took place.
- 5.86 Meetings should be minuted, and any decisions made as a result of those meetings should be documented and the rationale for the decisions clearly explained. This is particularly important if the decision involves a departure from normal policy or procedure. Although MPs are entitled to advocate on behalf of applicants, they need to exercise caution about appearing to request special treatment or depart from normal processes for applicants (such as urgency). Ministers, for their part, need to be clear that their decisions have a statutory basis, and that if they are waiving particular requirements of the Act (which, in some circumstances, they are entitled to do) or authorising a grant of citizenship to someone who, on the face of it, does not satisfy the normal policy requirements, they have a justifiable reason for doing so.
- 5.87 There may well be circumstances in which it may be appropriate to give a person’s application priority or to refer it to the Minister without completing all the usual investigative steps. We also recognise that it is important that officials are able to exercise discretion in such matters.
- 5.88 However, in our view, the Department should consider establishing more formal procedures that determine when exceptions to normal processes should apply

and on what basis certain applicants should be given priority. This is particularly so when the applicant receives support from MPs or other prominent people who might be seen to be able to influence the Minister called on to make the decision.

- 5.89 Although we found nothing to suggest there was improper political interference in the decisions made about the management of Mr Liu's application, the decisions helped to create a perception of improper influence that was reinforced by later events.
- 5.90 It is also possible that the informality of the decisions to expedite Mr Liu's application and discontinue investigations may have affected the quality of the advice provided to Mr Jones. We discuss this in more detail in the next Part of this report.

Part 6

Mr Jones' decision

6.1 In this Part, we discuss the processes and advice leading to Mr Jones' decision, the reasons why the Department recommended that Mr Liu's application be declined, and Mr Jones' reasons for authorising the grant of citizenship.

The submission

6.2 As well as the file the Department held on Mr Liu, Mr Jones was provided with a written submission drafted by Department officials.

6.3 The submission recommended that Mr Liu's application for citizenship be declined because, according to departmental policy:

- he did not satisfy the "good character" requirement of section 8(2) of the Citizenship Act;
- there were no exceptional circumstances of a humanitarian or other nature that meant it was in the public interest to grant him citizenship under section 9(1)(c); and
- he was not stateless, and was therefore not eligible for a grant of citizenship under section 9(1)(d).

6.4 The submission was reasonably lengthy – eight pages, with a large number of attachments. The attachments included:

- records of the Department's correspondence with other agencies about Mr Liu;
- correspondence from Mr Liu's lawyers setting out his response to the allegations made against him;
- the transcript of Mr Liu's interview with the Department officials;
- the letters of support received from Hon Pansy Wong, Hon Dover Samuels, and Hon Chris Carter; and
- a number of letters of support from members of the Chinese community and others.

6.5 The submission included an extract of the relevant legislation and a summary of it. It identified those requirements in section 8(2) that were clearly fulfilled (in the Department's view) and discussed, with reasons, why the other requirements had not (in the Department's view) been clearly fulfilled.

6.6 All of the section 8(2) criteria (including "entitlement to reside permanently in New Zealand") were stated to be clearly fulfilled except for the "good character" requirement.

- 6.7 The submission drafted by the Department clearly recorded that Mr Liu was the subject of an active Immigration investigation into his true identity. But it did not include any direct reference to Mr Cunliffe's decision or explain that Mr Cunliffe had said Mr Liu's file should continue to be assessed as a prosecution file and that he had not ruled out the possibility of revoking Mr Liu's residency in the future.
- 6.8 The submission also did not make specific mention of the Australian authorities' decision to revoke Mr Liu's residency. The settlement of the Australian proceedings was referred to in one of the attachments to the submission (in one of the letters from Mr Liu's lawyers). However, it was not a matter that was specifically drawn to the Minister's attention.

14 July 2008: Delivery of submission and Minister's first briefing

- 6.9 The submission and file were delivered to Mr Jones' office on 14 July 2008 by the Investigator who had largely been responsible for managing Mr Liu's file and for drafting the submission.
- 6.10 The Investigator told us he wanted to hand-deliver the submission and file because they contained classified information, but that he was not expecting to discuss them with Mr Jones (other than perhaps providing a short briefing). He told us it was not part of his normal role to brief the Minister. If the Minister wanted to discuss an application, the officials who would normally be called to the Minister's office were the General Manager of Citizenship or Head of Legal.
- 6.11 However, as matters transpired, there was a more extensive briefing. The meeting between Mr Jones and the Investigator lasted about one hour. It was the first of two meetings Mr Jones had with Department officials about Mr Liu's application.

The Investigator's account of the meeting

- 6.12 When he returned from the meeting, the Investigator made a brief file note of the meeting, which said:
- I met with delegated Minister Jones to present Mr Liu's submission.*
- The submission was left securely with him. He would consider the case and following up with Immigration concerning their investigation.*
- I reiterated that it was the Department's view that Mr Liu was not able to meet the good character requirement.*
- 6.13 He also emailed the General Manager as follows:

This morning I met with Minister Jones to discuss this case. The meeting lasted 1 hour. He is yet to make a final decision. I have left the file with him so that he can read the submission and carefully consider the facts.

Before making his final decision Minister Jones would like to:

- *Find out the status of the INZ fraud investigation (he will ask for a report through his own office – given he is the Associate Minister of Immigration)*
- *Possibly consult with the three MPs who have written in support of Mr Liu.*

Minister Jones was particularly interested in the harsh penalties Mr Liu may face if he ever returned to China to face justice.

After reading the submission he may have further questions for me or you (as Citizenship Manager).

I have spoken to Mr Liu this morning. He is aware that his application is under consideration.

- 6.14 The Investigator also spoke to the Immigration investigator with whom he had been dealing about Mr Liu's case. The Immigration investigator recorded in a file note that he had asked the Department's Investigator why Mr Jones, rather than Mr Barker, was making the decision, and that the Department's Investigator had told him that Mr Jones had asked about the ramifications of Mr Liu being sent back to China.

Mr Jones' account of the meeting

- 6.15 Mr Jones provided us with an affidavit outlining his recollection of events, and also a copy of a hand-written document which he explained was the file note he had made of the meeting immediately after it. The note is reasonably lengthy (three pages) and records both the topics that were discussed and Mr Jones' impressions of the Investigator.
- 6.16 Mr Jones told us that he did not keep file notes as a matter of course, but that, after discussions with his political adviser, he felt it important to keep a record in this case because of particular concerns he had about the case and the advice he had been given. He said he did not provide this note to anybody else at the time, because he made it for his own purposes.
- 6.17 In summary, Mr Jones' file note records the following points:
- The Investigator explained that the Citizenship Act has certain criteria and that Mr Liu satisfied all of them except for the "good character" requirement. He had explained that the Act allows the Minister to make the decision, but the decision could be reviewed, so would need to be within the confines of the Act.
 - The Investigator had said that Mr Liu had character problems and that he

ought to go back to China to sort out his issues with the Chinese authorities. His unwillingness to go back to China or to approach the local embassy indicated that he was not of good character.

- They went on to discuss concerns about human rights in China, which the Investigator acknowledged, but told the Minister were "... not relevant to his role as he is not required to verify the accuracy etc of the claims either way."
- The Investigator then "noted that this decision is made under Citizen Act and not immigration. Feels that this man will never want to go back to China because when he arrives there he will be arrested, imprisoned, executed & have his organs harvested. Not a concern though for the Dept ..."
- The Investigator pointed out that Mr Liu may have been living in New Zealand under a false identity but that that was a matter for Immigration and the Department did not have a report to consider as part of the file.
- He agreed with the Minister that Mr Liu had no convictions in New Zealand and appeared to be getting on with his life. However, he had said the outstanding allegations in China and Mr Liu's unwillingness to address them meant he was unfit for citizenship.
- Mr Jones' response was that it was not his approach to "send people back to a future which ends in execution" to which the Investigator had again replied that "such considerations are not germane to this decision. He has the option of going back to China & sorting his issues out and then coming back in the future."
- The Investigator expressed scepticism about Mr Liu's associations with Falun Gong and business commitments in New Zealand.
- He had said that Mr Liu's family situation was not important and, in his view, did not constitute a humanitarian argument. However, he had pointed out to the Minister that family ties are covered in the Citizenship Act and suggested he read the submission from Mr Liu's wife.
- The Investigator had said that the representations Mr Liu had received from MPs were also not relevant in the view of the Department because MPs do not have all the information and the applicant may not have told them the truth.

6.18 In the closing paragraphs, Mr Jones' note records that the Investigator had stressed the importance of not looking for proof because this was not necessary in determining an applicant's character.

6.19 The note also records that, when Mr Jones asked about the natural justice implications of this approach, the Investigator had said this was "not his role" and that the Interpol alert showed that Mr Liu could not be of good character. The Investigator had referred the Minister to the Crown Law opinion, which had been

provided to Mr Barker in relation to a similar case, and which provided guidance on the “good character” requirement and unproven allegations.

- 6.20 In conclusion, Mr Jones' note records that he found the briefing “harrowing” and that he felt it was designed to close down the exercise of ministerial discretion.

The Investigator's response to Mr Jones' file note

- 6.21 We provided the Investigator with a copy of Mr Jones' file note and asked for his response. He told us he did not recall in detail what happened at the meeting, but said he did not think that Mr Jones' note accurately recorded what was discussed – that some of the comments Mr Jones had attributed to him were comments he would not have made.
- 6.22 His recollection was that the focus of the meeting was the Minister's concern about whether the allegations against Mr Liu were true. He said he did not specifically recall the discussion about human rights but agreed it was possible they discussed them. However, he specifically denied referring to the death penalty or the potential harvesting of organs.

Our comments

- 6.23 We were not able to fully resolve the different accounts of Mr Jones and the Investigator about what occurred at the meeting. However, there are certain matters that either are not in dispute or which are, in our view, likely to have been discussed:
- The meeting lasted for about one hour. The Investigator's file note, and emails he wrote to the General Manager and to the Immigration officer, do not record the entire content of the meeting.
 - Both parties agree that they discussed whether the allegations against Mr Liu were true.
 - We consider that the Investigator attempted to explain to the Minister that, according to departmental policy at the time, the existence of the allegations meant that Mr Liu could not satisfy the “good character” requirement under section 8, and that the Department was not required to go further than this and make findings about an applicant's guilt or innocence. Under the Citizenship Act, the burden of proof about good character matters rested with the applicant rather than the Department.
 - However, that stance caused Mr Jones some concern (as it had for Mr Barker, in a similar case). Mr Jones wanted information or analysis that would help him to assess whether the allegations had any substance.
 - The Investigator attempted to explain to the Minister that Mr Liu had the

option of returning to China or approaching the Chinese Embassy in New Zealand to seek to resolve the allegations made against him. The option of approaching the relevant authorities to resolve unproven allegations was in keeping with departmental policy at the time.

- However, Mr Jones was concerned about the consequences for Mr Liu if he returned to China and the potential penalties he might face. The Department did not have any information, or provide advice to the Minister, about the possibility of Mr Liu being subject to the death penalty; these were issues raised by Mr Liu's lawyers, in submissions made on behalf of Mr Liu. However, we consider that there was a discussion about human rights issues because this is also recorded in the Investigator's records of the meeting. We consider it likely that that discussion also included reference to the death penalty because this was something Mr Liu and his lawyers had specifically alluded to in their conversations with the Investigator when he was drafting the submission (see paragraphs 5.52-5.53).

- 6.24 Overall, our impression was that the meeting between the Minister and the Investigator probably involved a reasonably high level of miscommunication and misunderstanding.
- 6.25 The Investigator acknowledged that he had never briefed a Minister before, and that it was not something he had anticipated having to do when he delivered the submission. He said he found it a fairly intimidating experience and that his approach was to "stick to the departmental line".
- 6.26 With unproven allegations, that meant that it was not the Department's job to assess whether an applicant was guilty or innocent, and that the existence of the allegations meant he did not meet the criteria for citizenship.
- 6.27 Similarly, from the Department's perspective, the potential risks to Mr Liu's life were irrelevant, because a decision not to grant him citizenship would not have resulted in Mr Liu being sent back to China. He had the right to permanent residency in New Zealand, so these risks would only have arisen if his permanent residency permit were revoked – which was a matter for Immigration.
- 6.28 Although he was married to a New Zealand citizen and had New Zealand-born children, neither his family circumstances nor the potential risks to his life were relevant considerations under the "exceptional circumstances" provision of the Citizenship Act according to departmental policy at the time. Similarly, any business interests he might have did not satisfy the "public interest" test, because it was not necessary for him to have citizenship to pursue those interests.

- 6.29 Mr Jones, for his part, appears to have become frustrated with the Investigator's approach and interpreted his unwillingness to address the substance of the allegations made against Mr Liu as unquestioning acceptance of unsubstantiated allegations, and his statements that Mr Liu's concerns about the risks to his life were not relevant as callous and inhumane.
- 6.30 In our view, that was unfair to the Investigator, who was simply attempting to explain the Department's approach to unproven allegations. However, Mr Jones' frustration is also understandable. We do not consider that the Investigator intended to close down the Minister's discretion. When we spoke to the Investigator, he was clearly aware of, and accepted, that it was for the Minister to make the decision. Nor do we consider that he intended to avoid the issues. However, in his attempt to "stick to the departmental line", his perceived unwillingness to engage on matters that were of serious concern to Mr Jones might have come across that way.

Summary

- 6.31 In summary, this first meeting probably involved a reasonably high level of miscommunication and misunderstanding on both the Investigator's and Mr Jones' part.
- 6.32 Mr Jones' central concerns – whether the allegations were true and the potential risks to Mr Liu's life if he returned to China – were not resolved. Nor did Mr Jones clearly understand why the Investigator had insisted that these concerns were not relevant.
- 6.33 In our view, there were also problems with the submission. The submission had made Mr Jones aware that there was an on-going Immigration investigation into Mr Liu. The Department had not pointed out that, although the Minister of Immigration, Mr Cunliffe, had previously considered revoking Mr Liu's permanent residency, he had decided not to at that time but had not ruled out the possibility of reconsidering the matter in the future. Nor did the submission explain that the Australian authorities had revoked Mr Liu's Australian permanent residency permit,² and that authorising the grant of citizenship would effectively override those decisions.
- 6.34 The result was that, at the end of this first briefing, Mr Jones did not have a clear understanding of the relevant background facts, the way the Citizenship Act worked, or the policies and approach applied by the Department for the "good character" and "exceptional circumstances" provisions.

² As noted above, the decision of the Australian authorities to cancel Mr Liu's Australian permanent residence was overturned by the Australian courts in June 2008.

- 6.35 The nature of his misunderstanding is evident in one section of the affidavit Mr Jones provided to us:

The application involved was about granting citizenship, not extradition, but the officials saw it as somehow enabling the applicant to be forced back to China. I did not understand this approach, as the applicant was a permanent resident and the official's attempt to revoke the same had been refused on the 15th of October 2007 by then Minister of Immigration – Hon David Cunliffe.

Citizenship would not change the Chinese government's position should it wish to avail itself of using the New Zealand legal system to require the return of the applicant.

From the outset, I was deeply troubled by the attitude of the New Zealand officials, the callous approach to the forcing of a human being to return to China with the risk of execution, as the suggested outcome of a refusal to grant citizenship. The applicant is the father of two young New Zealanders, and I was not going to risk making them orphans based on the information I had to consider.

- 6.36 In our view, the omissions from the submission and the misunderstanding between the Minister and the Investigator at this first meeting are significant. Although the Minister went on to receive further advice from officials, these fundamental misunderstandings were never resolved.

24 July 2008: Minister's second briefing

- 6.37 After his meeting with Mr Jones on 14 July, the Investigator sent an email to Mr Liu's lawyers telling them that the file was now with the Minister. The following day, on 24 July, Mr John Billington QC wrote to Mr Jones on Mr Liu's behalf asking for a copy of the submission under the Official Information Act 1982. This request led to Mr Jones requesting a second meeting with Department officials.
- 6.38 The request for a meeting came at short notice (about half an hour). Attempts were made to contact the General Manager of Citizenship and Head of Legal, who would normally have briefed the Minister. Neither was available, so the meeting was attended by the same Investigator and one of the Department's Solicitors (who was familiar with the file and had helped draft the submission). The Solicitor told us that, in the time available, she sought advice from one of the other senior legal advisers before attending the meeting.
- 6.39 Mr Jones' Political Adviser was also at the meeting.
- 6.40 Mr Jones told us that he had no recollection of this meeting. The Investigator's recollection was also limited. The Solicitor had some recollections of the meeting

and also provided us with a file note she had written about the meeting. Mr Jones' Political Adviser was able to provide us with an account of the meeting, but his recollection was that discussions took place over more than one meeting.

- 6.41 Despite the unclear recollections of the participants, it is clear that the focus of this second meeting was to decide how to respond to the Official Information Act request from Mr Billington and, in particular, whether Mr Liu should be given a copy of the submission. There were concerns about doing this because the submission included some information that had been withheld from him under the Official Information Act.
- 6.42 Mr Jones' view was that Mr Liu should be given the opportunity to review the submission in full and he questioned the natural justice implications of withholding information from Mr Liu.
- 6.43 The Solicitor told us she explained to the Minister that the Department's view was that there were grounds for withholding information under the Official Information Act, and that the general principle that official information should be disclosed can be outweighed by countervailing factors that applied in this case.
- 6.44 Both the Investigator and the Solicitor told us that Mr Jones reiterated his concern about being asked to make a decision about Mr Liu's character based on unproven allegations. They explained that most of the information on Mr Liu's file, and the substance of the Department's concerns, had been provided to Mr Liu, that he had been given several opportunities to respond, and that it had been Mr Liu's choice to have his application presented to the Minister even though these matters were unresolved.
- 6.45 They also both told us that the Minister expressed his impatience with the Investigator and told him, at one point, that he did not want to hear anything more from the Investigator.
- 6.46 At the end of the meeting, the decision was made to provide the submission to Mr Liu and his lawyers but with certain parts – principally about the ongoing investigations by Immigration and other agencies that Mr Liu was not already aware of – redacted from the document.
- 6.47 After the meeting, the Solicitor left a voice message with the Head of Legal to brief him on what had happened at the meeting. She also briefed the Head of Legal and General Manager of Citizenship the following morning.

29-30 July 2008: Attempts to organise briefing from New Zealand Police

- 6.48 In the two days after their meeting with Mr Jones, the Investigator and the Solicitor liaised with Mr Jones' Senior Private Secretary to prepare a redacted version of the submission and a response to Mr Billington's letter. These documents were reviewed and approved for release to Mr Billington by the Head of Legal.
- 6.49 A covering letter was also drafted for the Minister, in which he agreed to receive further information about Mr Liu's application from Mr Billington. The letter and redacted submission were sent to Mr Billington on 30 July 2008.
- 6.50 During this two-day period, the Investigator made attempts to ensure that the Minister would be briefed by the New Zealand Police before making his decision. He emailed first the Solicitor and then the General Manager, suggesting that it would be a good idea if the Minister were to be given a briefing by the New Zealand Police before he made a decision. In his email to the General Manager, the Investigator noted that "[the Department] is not in a position to talk about either the police investigation or to present their intelligence holdings".
- 6.51 In his reply, the General Manager said that he had spoken to Mr Barker's Private Secretary about a proposed briefing from the New Zealand Police and that she had wanted to talk to her predecessor in the role, who was now Mr Barker's political adviser. He had not heard back from them at that point. We understand that Mr Barker's office was approached, rather than Mr Jones' office, simply because the Department officials knew the officials in Mr Barker's office but had had no previous dealings with Mr Jones' officials.
- 6.52 Neither Mr Barker's Private Secretary nor his Political Adviser could recall any conversations on the topic of arranging a briefing, but agreed that it might have happened. The Private Secretary told us that, if she had been asked to organise such a briefing, she would have been unsure how to respond, because it was a relatively unusual situation, and it is likely that she would have asked her colleague's advice.
- 6.53 The Political Adviser told us that, if she had been asked about organising a briefing, her advice would probably have been that the Department needed to contact officials in Mr Jones' office to arrange it because Mr Barker had declared a conflict of interest and it was not appropriate for his office to become involved.
- 6.54 Although it is not clear from the file exactly what was discussed, it is clear that no briefing took place.

4-5 August 2008: Minister's request for legal advice

- 6.55 On 4 August 2008, Mr Billington faxed a nine-page submission with enclosures to the Associate Minister, on Mr Liu's behalf.
- 6.56 At about 10.00 am the following day, Mr Jones' Political Adviser sent Mr Billington's letter by email to the Solicitor, stating that the Minister wanted any comments by the end of the day because he was due to go to Australia and wished to make a decision before he left. Mr Jones did not give any particular reason why he wanted to make his decision before he left for Australia. He told us that it was simply because the case had been dragging on for so long and he thought the right thing to do was make a decision promptly one way or another.
- 6.57 Within the time available, the Solicitor prepared a draft response which was then reviewed by the Head of Legal and sent by email under his name at around 3.15 that afternoon.
- 6.58 The Head of Legal told us that his assumption at that stage was that if Mr Jones declined Mr Liu's application then Mr Jones' decision would be judicially reviewed. His email set out advice about the requirements for citizenship, and concluded:
- It is of course open to the Minister to defer making a decision on the application pending the outcome of any investigation to give him a greater degree of certainty as to the veracity of the allegations made about Mr Liu. It is also open to the Minister to defer making a decision until Mr Billington's submissions had been given more detailed consideration and any necessary points of clarification referred back to him. That latter course would be highly advisable if a decline were contemplated at this stage, given the reasonably clear suggestion that an application for judicial review action might follow.*

Further attempt to arrange briefing with New Zealand Police and with Immigration

- 6.59 On 5 August, the Investigator repeated the earlier attempts he had made to arrange for the Minister to be briefed by the New Zealand Police before making his decision. The Investigator sent another email to the Solicitor, copied to the General Manager, recommending that the Minister be given an oral briefing from the Police, and also Immigration officials, and asking the General Manager whether he had heard back from anyone in Mr Barker's office.
- 6.60 The Solicitor replied that the General Manager was away sick and that she presumed he had not heard back from Mr Barker's officials. Her email continued:
- If the Minister wants to make a decision today (once he had received the Department's response to Mr Billington's submissions) then he can of course do*

so. If it is decided recommending a Police briefing is still appropriate then we first need to hear back from Minister Barker's office. [Name of senior official] would you like me to follow up with [Mr Barker's Private Secretary] on this matter?

- 6.61 Later that day, the Investigator contacted his counterpart at Immigration to find out whether the Minister or anyone in the Minister's office had been in touch about Mr Liu's application. He was told they had not, and passed this information on to the Solicitor.
- 6.62 We did not find a record of a response to the Solicitor's email referred to in paragraph 6.60. But, in the event, the Solicitor's offer to follow up with Mr Barker's officials was overtaken by Mr Jones' decision, the next day, to approve Mr Liu's application.

6 August 2008: The Minister's decision

- 6.63 The next morning, on 6 August, the Minister decided to authorise the grant of citizenship to Mr Liu.
- 6.64 When he came to do so, he crossed out the line of the decision paper saying that the application was declined, and ticked the line that said that the grant of citizenship was authorised.
- 6.65 Before doing so, he asked his Political Adviser whether he should record the reasons for his decision. His options were to grant citizenship under:
- section 8(1), on the grounds that Mr Liu satisfied the relevant criteria, including the "good character" requirement;
 - section 9(1)(c), on the grounds that he believed it was in the public interest to grant citizenship because of exceptional circumstances of a humanitarian or other nature; or
 - section 9(1)(d), on the grounds that Mr Liu would otherwise be stateless.
- 6.66 Mr Jones told us his reasons for granting citizenship were essentially humanitarian, so he was effectively granting citizenship under section 9(1)(c). Authorising citizenship under section 9(1)(c) meant that Mr Jones had implicitly rejected the Department's advice that Mr Liu did not satisfy the "exceptional circumstances" or "public interest" requirements of section 9(1)(c). It is unclear whether he took "good character" into account, because good character is not a mandatory consideration under section 9.
- 6.67 Mr Jones' Political Adviser told us that they discussed whether Mr Jones should record the reasons for his decision, and that he advised him not to in the absence of legislative requirement, convention, or a request from the Department. He

told us this was because, in his experience as a political adviser, there were both legal and political risks in doing so. For example, if the Minister's decision became public for any reason, any reference to Mr Liu's potential treatment by the Chinese authorities might cause a degree of political embarrassment.

- 6.68 His other main concern was that, unless Ministers were extremely careful about how they recorded their reasoning, there was the risk that it would expose them to the risk of judicial review.
- 6.69 Mr Jones followed the advice he was given and simply signed the submission and annotated it to show that he had approved the citizenship application.
- 6.70 Mr Billington was notified of Mr Jones' decision at about 9.30 that morning. A copy of the email notifying Mr Billington was sent to the Department.

11 August 2008: The citizenship ceremony

- 6.71 On 7 August, the day after Mr Jones approved Mr Liu's application for citizenship, Mr Liu's lawyer wrote to the Department requesting an urgent citizenship ceremony for Mr Liu, saying "he cannot wait to be a New Zealand citizen" and wanted to travel overseas urgently. The letter noted that Mr Samuels would be getting in touch with the Department about the ceremony.
- 6.72 In an email exchange between one of the officials responsible for organising citizenship ceremonies and Mr Barker's Private Secretary, the official advised that they were going to recommend that Mr Liu's application for an urgent ceremony be declined because he did not meet the general criteria for urgent ceremonies. However, she said that if the Minister approved a private ceremony, then the General Manager would consider approving an urgent ceremony.
- 6.73 In an undated letter, but presumably also written on 7 August, Mr Samuels wrote to Mr Jones asking his consent to officiate at the ceremony. Mr Jones scribbled a note on the bottom of the letter saying "Kia ora. OK. Deal with the officials."
- 6.74 Under the Citizenship Act, Mr Jones' consent was not needed for Mr Samuels to officiate. As an MP, Mr Samuels is authorised to conduct citizenship ceremonies. But Mr Jones' consent was needed for a private ceremony.
- 6.75 Mr Jones told us that, by this stage, he had had enough of the matter and that his note meant that Mr Samuels should sort it out with the officials rather than with him. He said that he was not aware that ministerial approval was needed for a private ceremony and his note was not intended to be read as an approval.
- 6.76 The General Manager told us his understanding was that the Minister had given approval for a private ceremony. He said that, although Mr Liu did not meet the

standard criteria for an urgent ceremony, equally there was no particular reason for not agreeing to one if it could be arranged in the time frame requested. Officials were able to organise a ceremony in consultation with staff in Mr Samuels' office, so the General Manager approved it, seeing no particular reason not to.

- 6.77 The arrangements for the ceremony were made by officials in Mr Samuels' office liaising with the Department officials.
- 6.78 On 11 August 2008, Mr Liu's citizenship ceremony took place in the Māori Affairs Committee Room in Parliament with Mr Samuels officiating.

Our comments

- 6.79 We found no evidence to suggest that Mr Jones' decision to grant Mr Liu citizenship was made for any improper reasons.
- 6.80 Although the Department had advised that Mr Liu did not satisfy the section 9(1)(c) criterion, Mr Jones granted Mr Liu citizenship because he was genuinely concerned about matters of a humanitarian kind relating to Mr Liu and his family. His understanding of the advice he had been given was that the New Zealand authorities did not know whether the allegations against Mr Liu were true, and that if Mr Liu were forced to return to China to respond to them, there was a risk that he might be executed.
- 6.81 Mr Jones did not realise the consequences his decision would have on Immigration's investigation because he did not know that revocation of residency was still being actively considered by Immigration. He believed that, if Immigration's investigation established evidence of wrong-doing on Mr Liu's part, these matters could be appropriately dealt with by the New Zealand Courts and that the courts were the proper forum for such matters to be determined.
- 6.82 Although it is not our role in this inquiry to comment on the substance of Mr Jones' decision, we consider that the process leading to that decision was flawed in a number of respects.

Adequacy of advice

- 6.83 Mr Liu's application was known to be both unusual and particularly complex. Although a standing transfer of citizenship decisions to Mr Jones had been agreed several months earlier, Mr Jones had never before been called on to make a citizenship decision. This turned out to be the only citizenship decision he made. Mr Jones was called on to decide Mr Liu's application under conditions of apparent urgency, and without any formal briefing on the requirements of the Citizenship

Act. Although citizenship decisions appear in some ways similar to immigration decisions (which Mr Jones was experienced in making), they require the Minister to apply quite different considerations.

- 6.84 Given these circumstances, we consider that the advice the Minister was given was inadequate.
- 6.85 The submission did not include two important pieces of information.
- 6.86 First, it did not explain that, although Mr Cunliffe had decided not to revoke Mr Liu's permanent residency permit at that time, he had recorded in the decision paper that Mr Liu's file should continue to be investigated as a potential prosecution file and that he did not discount the possibility of reconsidering the matter in the future.
- 6.87 Secondly, it did not explain that the Australian authorities had earlier decided to revoke Mr Liu's Australian permanent residency permit.³
- 6.88 Because this information was not included in the submission, the effect granting citizenship would have on these decisions was not evident – that if Mr Liu were granted New Zealand citizenship:
- he would no longer require a permanent residency permit, so any process that was under way to revoke it was likely to be undermined; and
 - he would obtain the right to reside in Australia, undermining the decision of the Australian authorities to revoke that right.
- 6.89 We discussed with officials whether the details of Mr Cunliffe's decision and the decision of the Australian authorities to revoke Mr Liu's Australian residency permit would have been available to them at the time – and if so, why it had not been included in the submission.
- 6.90 Our inquiries confirmed that the information was available to the Department. It was unclear why it was not included. It was suggested that the decision of the Australian authorities might not have been considered a relevant consideration under the Citizenship Act.
- 6.91 It was also suggested that the detail of Mr Cunliffe's decision might not have been considered directly relevant given that:
- the scheme of the Citizenship Act simply required the Department to confirm whether the applicant had the right to reside permanently in New Zealand, which, at the time of his application, Mr Liu did have; and
 - the Minister was Associate Minister of Immigration, so it would have been assumed he was generally familiar with immigration processes. He had also

³ We note that, by this time, the decision to cancel Mr Liu's Australian permanent residence permit had been overturned by the Australian Federal Court. It is not clear whether the New Zealand authorities were aware of this.

been made aware that there was an on-going investigation into Mr Liu's permanent residency status, and that this had been triggered as a result of concerns about the basis on which residency had been granted. Also, the Minister had himself indicated that he intended to talk to Immigration officials further about the matter.

- 6.92 Although we understand the Department's point of view, ultimately it was its responsibility to ensure that the Minister was properly briefed and that all the relevant information was put before him, particularly for a difficult case.
- 6.93 We consider it likely that one of the reasons for the gaps in the advice was that, at the time the submission was drafted, the assumption was that it would be Mr Barker making the decision on Mr Liu's application. A certain level of knowledge and ability to "read between the lines" might have been assumed.
- 6.94 In our view, once the Department became aware that the decision was being transferred to a Minister who had never been called on to make a citizenship decision before, it should have taken stock and considered whether the submission included everything it needed to for a different Minister to make a fully informed decision.

Minister should have been briefed by senior officials

- 6.95 We also consider that, once the Department became aware that the decision was going to be transferred to Mr Jones, it should also have taken steps to ensure that he was properly briefed on the requirements of the Citizenship Act and that the briefing was provided by officials with the appropriate level of experience and seniority.
- 6.96 The officials involved in briefing the Minister about Mr Liu had no previous experience of briefing Ministers and on both occasions were required to brief the Minister at short notice. Both acknowledged that they found the experience reasonably intimidating.
- 6.97 In our view, they should not have been put in that position, especially given that the file was known to be particularly sensitive and complex. We also consider that, once it became clear that the Minister had concerns about the file, senior staff should have done more to escalate matters to ensure that the Minister's concerns were addressed.

The Department should have ensured that the Minister was briefed by other agencies involved in investigating Mr Liu

- 6.98 It is clear from our review of the files and our discussions with the Department officials that they were concerned about briefing the Minister on matters that were outside their immediate mandate. They were also concerned about disclosing information that had been given to them under an obligation of confidence. We recognise these concerns.
- 6.99 We also accept the point made to us that the current legislative framework effectively requires separate and, to an extent, independent decision-making processes for immigration and citizenship matters.
- 6.100 However, in our view, the investigations being carried out by other agencies were relevant to the citizenship decision. Ultimately, it was the Department's responsibility to ensure that all the relevant information was placed before the Minister before he made his decision.
- 6.101 If officials were concerned about briefing the Minister on matters outside their immediate mandate, then they should have recommended, as part of the submission, that he consult the other agencies involved. Once the Department became aware that Mr Jones had not been briefed by the New Zealand Police and Immigration, the matter should have been escalated to ensure that he was.
- 6.102 We acknowledge that attempts were made to organise a briefing, and that the reason a briefing did not take place was partly because of uncertainty about the protocol for arranging such a briefing, and partly because the steps that were under way to organise a briefing were overtaken by Mr Jones making his decision.
- 6.103 In the end, though, concerns about administrative protocol effectively took precedence over the need to ensure that the Minister had all the information he needed to make an informed decision.

The Minister's decision

- 6.104 Suggestions have been made that Mr Jones' decision was influenced by Mr Liu's connections with some of Mr Jones' colleagues and associates, or by his investments in the fishing industry (an industry with which Mr Jones has long-standing associations).
- 6.105 We found no evidence to support this. There is no evidence of any direct association between Mr Liu's investments and any interests Mr Jones might have, or that Mr Liu's connections with Mr Jones' colleagues and associates played a particular part in the decision that was reached.

- 6.106 However, given that responsibility for the decision rested with the Minister, there are aspects of the process followed by Mr Jones that we consider are open to criticism.
- 6.107 We acknowledge that Mr Jones gave considerable thought to Mr Liu's application, and that, in his view, it was important to make a decision reasonably promptly. However, in our view, he made his decision too hastily and without ensuring that he had a full understanding of all the relevant information. In particular, Mr Jones either did not understand or did not accept the Department's advice that neither section 8 nor section 9 of the Citizenship Act were applicable.
- 6.108 Given that, as Mr Jones acknowledged, there were aspects of the Department's advice that he did not understand, he should have clarified these matters before making his decision.
- 6.109 In our view, given that he knew there were ongoing investigations by Immigration and the New Zealand Police, he should also have consulted them before making his decision, as the Investigator's note of the first meeting suggested he was intending to do.
- 6.110 We also consider that Mr Jones should have recorded his reasons for authorising the grant of citizenship. He was making a decision against the Department's recommendation, and the basis for his decision and reasons for departing from normal policy would not have been obvious from the papers. Indeed, on the face of the decision-making papers, it was not even clear under which section of the Citizenship Act he had authorised the grant.

Decision to approve urgent, private citizenship ceremony

- 6.111 When seen in isolation, there was nothing particularly unusual about Mr Liu's citizenship ceremony. Although not the norm, private ceremonies, including ceremonies at which MPs officiate, do take place regularly. MPs are specifically authorised to conduct citizenship ceremonies under the Citizenship Act.
- 6.112 However, when viewed in the context of the events immediately preceding it, the decision to approve an urgent private ceremony, presided over by an MP and colleague of the Minister who had approved the citizenship decision, only served to fuel speculation that Mr Liu was able to "pull strings" as a result of his political connections.
- 6.113 We were not given any information that suggested this. The General Manager agreed to an urgent ceremony because he believed Mr Jones had approved a private ceremony. Mr Jones, not being familiar with the specific requirements of the Citizenship Act, was not aware that his consent was needed for a private

ceremony and thought he was simply directing Mr Samuels to arrange the ceremony with officials.

- 6.114 We note that this was another example where the Minister did not clearly explain or document the reasons for his decision.
- 6.115 The decision to approve an urgent private ceremony, following so closely the decision to authorise the grant of citizenship against the recommendation of officials, caused a degree of consternation among the Department's staff. It added to the impression that Mr Liu was receiving special treatment.
- 6.116 As we have discussed elsewhere in this report, although we found no evidence of wrong-doing in this case, citizenship decisions are particularly vulnerable to undue influence – or the appearance of it.
- 6.117 The decision to approve an urgent private ceremony is another example of the need for decision-makers to consider carefully not only whether their decisions are lawful and proper, but how they might look to an outside observer.

Part 7

Mr Barker's involvement in Mr Liu's application

7.1 In this Part, we explain the involvement of Hon Rick Barker in Mr Liu's application for citizenship and the process by which the decision was transferred to Mr Jones.

7.2 We begin by outlining the Cabinet office guidelines on conflicts of interest.

Cabinet Office guidelines on conflicts of interest

7.3 The "rules" that apply to ministerial conflicts of interest are set out in the Cabinet Manual.

7.4 The Cabinet Manual recognises that a Minister, while holding a ministerial warrant, acts in a number of different capacities. They act:

- in a ministerial capacity, making decisions and determining and promoting policy within particular portfolios;
- in a political capacity as an MP, representing a constituency or particular community of interest; and
- in a personal capacity.

7.5 Given their multiple roles, it is likely that Ministers will face conflicts of interest from time to time, as a result of either the different roles they are required to play or associations or relationships they develop when fulfilling these roles.

7.6 The processes that apply to managing ministerial conflicts of interest have evolved over time. The current version of the Cabinet Manual (which is available on-line) includes some steps that would not have been in place at the time of the events giving rise to this inquiry. However, the basic principles have remained fundamentally unchanged.

7.7 The Cabinet Manual states:

Ministers are responsible for ensuring that no conflict exists or appears to exist between their personal interests and their public duty. Ministers must conduct themselves at all times in the knowledge that their role is a public one; appearances and propriety can be as important as an actual conflict of interest. Ministers should avoid situations in which they or those close to them gain remuneration or other advantage from information acquired only by reason of their office.

7.8 The management of any conflicts that are identified is agreed between the Prime Minister and the Minister concerned, with advice as required from the Cabinet Office.

- 7.9 In common with all MPs, Ministers are required to disclose certain assets and interests in an annual Register of Pecuniary Interests of Members of Parliament. However, there is a heightened risk of conflicts of interest arising for Ministers because of the influence and power that they exercise, and the information to which they have access, when carrying out their portfolio responsibilities and as members of the Executive. Because Ministers are making decisions all the time, conflict of interest issues need constant management.
- 7.10 The Cabinet Manual emphasises that Ministers are responsible for proactively identifying and reviewing possible conflicts of interest and ensuring that any conflicts of interest are promptly addressed. However, steps are also taken by the Cabinet Office to assist Ministers to manage conflicts.
- 7.11 These steps include briefing new Ministers, supporting an annual review of Minister's interests, and periodic briefings on potentially relevant issues, such as insider trading or receiving gifts. The Cabinet Office is available during the year to provide guidance on any conflict issues that may arise and on the acceptance of payments or gifts.

Background to Mr Barker's involvement

- 7.12 Mr Barker became Minister of Internal Affairs in October 2005. He had met Mr Liu before Mr Barker became Minister of Internal Affairs and they had mutual friends.
- 7.13 Mr Barker told us that, at some point, he became aware of concerns about Mr Liu. He was not able to pinpoint exactly when that was, or from whom he learned of these concerns, but it seems likely that it was during 2007 and that the information came to his attention as a result of the problems Mr Liu was having with his permanent residency permit.
- 7.14 Mr Barker told us that his recollection was that mutual friends of Mr Liu had told him over a dinner that Mr Cunliffe was considering revoking Mr Liu's permanent residency permit. He later approached Mr Cunliffe to talk to him about it.

Mr Barker's conversation with Mr Cunliffe

- 7.15 Mr Cunliffe told us that Mr Barker had approached him to talk about Mr Liu (as did Mr Carter and Mr Samuels), and that Mr Barker had asked that the conversation be kept confidential. Mr Barker confirmed that he had talked to Mr Cunliffe, but did not recall requesting confidentiality.
- 7.16 Mr Barker told us his object in talking to Mr Cunliffe was not to advocate on Mr Liu's behalf and that he had not given Mr Liu or anyone associated with him any indication that he would do so. At that time, Mr Barker was not aware of Mr

Liu's citizenship application and did not discuss any decisions he might make as Minister of Internal Affairs, or any decisions Mr Cunliffe might make as Minister of Immigration. Instead, Mr Barker wanted to ascertain the substance of the allegations being made against Mr Liu, and whether Mr Barker needed to be concerned about continuing to associate with him.

7.17 Mr Barker said that Mr Cunliffe had told him that Mr Liu was allegedly a "bad man", or words to that effect, but that Mr Cunliffe would not elaborate. Mr Barker did not attempt to pursue the matter because he knew Mr Cunliffe would not provide information if he did not consider it to appropriate to do so.

7.18 Mr Barker told us that he did not tell Mr Liu or any of their mutual friends about his conversation with Mr Cunliffe, but, as a result of the concerns he had about Mr Liu, he took steps to avoid social situations at which they might meet.

Letter from Mr Liu's lawyers to Mr Barker

7.19 In October 2007, after Mr Cunliffe's decision not to revoke Mr Liu's residency application, Mr Liu's lawyers sought to reactivate his citizenship application. They wrote to Mr Barker as Minister of Internal Affairs, telling him that Mr Cunliffe had recently confirmed Mr Liu's permanent resident status, and seeking Mr Barker's assistance to expedite Mr Liu's citizenship application.

7.20 The letter goes on to say:

We are advised that there are further agencies currently being carried out but we are not advised which agencies are undertaking the checks.

We seek your assistance to expedite our client's application because the delays have been grossly unfair and have caused our client, his partner and children who are all New Zealand citizens, unnecessary stress and hardship.

Mr Barker's reply to Mr Liu's lawyers

7.21 As is standard practice when a letter is received by the Minister about a citizenship application, Mr Barker's Private Secretary contacted officials at the Department for information about Mr Liu's file so that they could reply to the letter.

7.22 The Department provided a brief report explaining that Mr Liu's application had been delayed because he was subject to an Interpol Red Notice. The Department said it was unable to disclose this information to Mr Liu because it had been asked not to.

7.23 The next month, the Private Secretary requested a further update on Mr Liu's file. In response, the Department investigator who was managing Mr Liu's file

and also dealing with a Privacy Act complaint Mr Liu's lawyers had made on the same matter, said he would contact Interpol to see if the information about the Interpol Red Notice could be released to Mr Liu. Department officials also drafted a response to the lawyers' letter for the Minister to sign.

7.24 That letter that was later signed by Mr Barker included the following paragraphs:

While I can understand Mr Liu's frustration about the time it is taking to process his application, it is important that the checks by other government agencies are completed to the satisfaction of those agencies.

I have asked my officials to encourage those agencies to give Mr Liu's application their urgent attention.

To discuss the progress of Mr Liu's application, you may wish to contact [name of Investigator] on freephone 0800 225171, extension []. I assure you that I will take Mr Liu's personal circumstances into account when his application is forwarded to me for a decision.

7.25 From our review of citizenship files, it appears that the letter to Mr Liu's lawyers was fairly standard. For example, the sentence "I assure you I will take Mr Liu's personal circumstances into account when his application is forwarded to me for a decision" was used in responses to other applicants. It was also used in a letter sent by Mr Barker's predecessor in the role of Minister of Internal Affairs, in response to an earlier request for urgency from Mr Liu.

7.26 We asked Mr Barker and the officials about the sentence "I have asked my officials to encourage those agencies to give Mr Liu's application their urgent attention", because this sentence did not appear in the draft originally sent to Mr Barker's office. We were unable to clearly establish when it was added and by whom. Mr Barker told us that he did not add the sentence, and would not have instructed his officials to do so because that could have been seen as interfering in operational matters of the Department.

7.27 We consider it likely that the sentence was added by Department officials because there was a general concern then about delays in processing applications (as a result of a backlog caused by changes to the Citizenship Act).

7.28 The letter was sent to Mr Liu's lawyers on 13 December 2007.

7.29 We discussed with Mr Barker whether it was appropriate for him to sign the letter, given that he knew Mr Liu. Mr Barker told us that he thought it was acceptable for him to do so for two main reasons.

7.30 First, he was not being called on to make a substantive decision about Mr Liu's application for citizenship. He was merely signing a letter, drafted by officials,

which explained the status of his application. His understanding was that it was acceptable to sign a letter to someone he knew in those circumstances.

- 7.31 Secondly, he had no intention of considering Mr Liu's application and his assumption was that he would never actually do so. He said he had previously dealt with an application involving similar concerns about an Interpol Red Notice. After he had asked for more information on that case, it had been deferred and he had never seen it again. He assumed Mr Liu's application would be deferred in the same way.
- 7.32 He also told us that he had no Associate Minister at the time to transfer the matter to, and did not think asking one of his staff to sign the letter in his place would have made any practical difference. He told us that he was required to deal with a large volume of correspondence and, rightly or wrongly, sometimes the focus was simply on dealing with it as quickly and efficiently as possible. In this instance, six weeks had passed since Mr Liu's lawyers had written to him. If the letter were not signed in December, it might not be attended to until after the holiday period, resulting in an even longer delay.

Our comments

- 7.33 Although we understand Mr Barker's reasons for signing the reply to Mr Liu's lawyers in October 2007, we do not consider it was wise for him to have done so, for two main reasons.
- 7.34 First, what he was saying in the letter was not true. If he never intended to make the decision on Mr Liu's citizenship application, it was not appropriate for him to suggest that he would. Given the connections he had with Mr Liu, the giving of a personal assurance of that kind could have given the impression that those connections might influence the decision that would be made on his citizenship application.
- 7.35 Secondly, if Mr Barker had not intended to ask officials to encourage government agencies to process Mr Liu's application urgently, he should not have signed a letter suggesting he would. We acknowledge Mr Barker's points that the letter was drafted by officials, and that he had concerns about being seen to alter it (because that too could be interpreted as interfering in an operational decision of the Department). However, by signing a letter in those terms, a perception was created that Mr Barker had some involvement in directing the management of the file, and intended to make the decision on it.
- 7.36 Mr Barker emphasised to us that there was little guidance available about when it was inappropriate for Ministers to make decisions or engage in ministerial

activities about people that they might be connected to. He said he did not recall being given a briefing by the Cabinet Office when he was first appointed a Minister, possibly because he was initially a Minister outside Cabinet.

- 7.37 We found information that showed Mr Barker was intended to be invited to a briefing given for Ministers in November 2002, but could not confirm whether that briefing took place or, if it did, whether Mr Barker attended. We also agree that non-financial conflicts of interests, such as conflicts arising because of relationships or associations with other individuals or groups are often less clear cut than financial conflicts of interest. It is more difficult to establish rules about how to manage them.
- 7.38 However, given the terms of the Cabinet Manual, the references it makes to the need to avoid the appearance of conflicts as much as actual conflicts, and the availability of advice from the Cabinet Office, we consider that appropriate guidance was available.
- 7.39 We accept that, with conflicts of interest, the necessary judgement calls are not always easy, and that decisions about how to manage them sometimes need to be made quickly based on the information available at the time. Although we consider that Mr Barker should not have signed the letter, we have not encountered any information in the course of our inquiry that suggests that Mr Barker attempted to involve himself in, or interfere with, the Department's management of Mr Liu's application in any way, or in the decision later made by Mr Jones.
- 7.40 It is also apparent that any error in judgement Mr Barker made in signing the letter has been magnified by later events and circumstances that were not of his making.

Transfer of citizenship decisions to Mr Jones

- 7.41 In early 2008, Mr Barker told us that he approached the Secretary of the Cabinet to seek her advice about some potential conflicts of interest. He said this was not a formal request for advice but a discussion at the cafe at Parliament.
- 7.42 He said his concerns did not relate specifically to Mr Liu's citizenship application which, he told us, he assumed he would never see. They related to two other potential applications he was aware of – a family who had approached him in his constituency, and an individual he knew who was applying for citizenship.⁴

4 Neither of those applications resulted in any decisions by Mr Barker or Mr Jones.

- 7.43 Unlike the Immigration portfolio, where there is an Associate Minister to whom the Minister can transfer decisions in the case of a conflict of interest, at the time there was no Associate Minister of Internal Affairs to whom Mr Barker could transfer decisions as a matter of course. Ministers are able to transfer decisions to any other Minister as need arises. However, Mr Barker told us that the Secretary's advice was to set up a standing transfer with the approval of the Prime Minister.
- 7.44 Mr Barker told us it was he who recommended to the Prime Minister that decisions be transferred to Mr Jones. His reason for choosing Mr Jones was largely because the immigration portfolio was considered to have the strongest parallel with the citizenship portfolio. Mr Jones, as Associate Minister of Immigration, was considered a "natural fit".
- 7.45 Documents provided by the Department and the Department of the Prime Minister and Cabinet show that it took some time to organise the transfer. The decision to transfer citizenship decisions to Mr Jones in the case of a conflict was approved by the Prime Minister in April 2008.
- 7.46 After the Prime Minister had approved the standing transfer to Mr Jones, there was a further delay in finalising the letter to be signed by Mr Barker transferring decisions to Mr Jones. Various versions of the letter were drafted before the final form was adopted. We were told that this delay might have been due to changes in Mr Barker's personnel at the time.
- 7.47 The letter confirming that decisions on citizenship applications would be transferred to Mr Jones in the event that Mr Barker had a conflict was not signed until 26 June 2008.
- 7.48 By that time, officials were aware that Mr Liu's application was shortly to be presented to the Minister. A second letter, transferring the decision about Mr Liu's application to Mr Jones, was prepared by officials and signed by Mr Barker a week later (on 3 July 2008).

Our comments

- 7.49 The decision to organise a transfer of responsibility to Mr Jones was appropriate and in keeping with the principles set out in the Cabinet Manual.
- 7.50 The identification of the Associate Minister of Immigration as the person to make such decisions was appropriate. As it happened, this was the only decision that Mr Jones made under this delegation.

- 7.51 Although it might have appeared, from the timing of these letters, that the decision to select Mr Jones as the decision-maker was made specifically in response to Mr Liu's application, that was not so.
- 7.52 The decision that it would be Mr Jones who would deal with such applications had effectively been made in April 2008, when the Prime Minister approved a general transfer of citizenship decisions to Mr Jones in the event that Mr Barker had a conflict of interest. This appears to have been before any of the parties involved knew that Mr Liu's application was about to be submitted to the Minister.

Part 8

Other matters related to this inquiry

- 8.1 In this Part, we explain the involvement of Hon Dover Samuels and other associates of Mr Liu in his application. We also explain some of the particular features of citizenship decision-making that makes it vulnerable to the risk of undue influence, and that have given rise to the perception of undue influence in this case.

Mr Samuels' involvement

- 8.2 Mr Samuels told us that he got to know Mr Liu and his wife through fund-raising events organised for the Labour Party. He became friends with them, and became aware of the difficulties Mr Liu was having with his residency permit.
- 8.3 Mr Samuels said he became concerned at the way Mr Liu's case was being handled by Immigration, particularly the apparent assumption that the allegations made against him were true even though no formal findings had been made. Mr Samuels was also concerned about the length of time it was taking to conclude the investigation and the stress this was placing on Mr Liu and his family.
- 8.4 He spoke to Mr Cunliffe about his concerns and, after the decision was made not to revoke Mr Liu's permanent residency permit, he wrote letters of support for Mr Liu about his citizenship application. Mr Samuels said that he might have approached Mr Barker about the matter but could not recall specifically doing so. Mr Barker told us that, if Mr Samuels had approached him, his response would have been that he should put his concerns in writing, which Mr Samuels later did.
- 8.5 Mr Samuels told us that once he learned Mr Jones, rather than Mr Barker, was going to make the decision on Mr Liu's application, it is likely that he approached Mr Jones about it. He could not recall specifically doing so, and said that if he did, it was probably a brief and informal conversation in the lobby of Parliament. Mr Jones also could not recall specifically discussing Mr Liu's case with Mr Samuels, but also agreed that he might well have done in the context Mr Samuels described because that was often the way such matters were dealt with.
- 8.6 Mr Samuels told us that although he supported Mr Liu's application for citizenship, his primary concern was to push for a decision to be made, so that Mr Liu and his family were not "in limbo" and that the proper processes could continue to take their course.
- 8.7 He told us he did not know Mr Liu had made a donation to his election campaign until after he was called on to sign his election return.

- 8.8 We found nothing to suggest that Mr Samuels behaved inappropriately in his support for Mr Liu or that Mr Samuels tried to improperly influence the decision made in relation to Mr Liu's citizenship application.
- 8.9 The approaches Mr Samuels made to Mr Barker were open and "on the record". Although Mr Samuels received a donation from Mr Liu, we found nothing to suggest that his support of Mr Liu was prompted by that donation. Politicians in New Zealand are required to fund their own election campaigns and Mr Liu made similar donations to other individuals and political parties.

Shane Te Pou

- 8.10 Shane Te Pou was an active Labour Party member and fund-raiser at the time of Mr Liu's citizenship application. He knew Mr Samuels and Mr Barker through his involvement in the Labour Party, and he also knew Mr Barker because they had both once been involved in the trade union movement.
- 8.11 Mr Te Pou told us that he met Mr Liu and his wife at a fund-raising event and was interested in getting to know them better, partly in a professional capacity because of the financial support they might be willing to make to the Labour Party, and partly for personal reasons because he was interested in pursuing business opportunities in China.
- 8.12 In March 2005, he arranged a business trip for Mr Liu and his wife to the Hawke's Bay to visit wineries there. Mr Te Pou said that, in the course of that visit, he took the opportunity to catch up with Mr Barker, who was an old friend, and introduced him to Mr Liu. Mr Barker was not Minister of Internal Affairs at the time, and the subject of citizenship did not come up.
- 8.13 However, on the way home from the trip, Mr Te Pou said that he and Mr Liu discussed the possibility of Mr Liu applying for citizenship. Mr Liu said that he did not think he would be eligible because he had not been in New Zealand the required length of time. Mr Te Pou said that he was aware, through previous dealings, that failure to satisfy all the relevant criteria did not mean citizenship would automatically be declined. He offered to help Mr Liu with his application if he decided to apply for citizenship.
- 8.14 Mr Liu accepted his offer but said he wanted to keep the matter on a business footing. They agreed that Mr Te Pou would be paid \$10,000 for his help, of which \$5,000 would be paid up front and the balance would be paid if Mr Liu's application was successful.
- 8.15 Mr Te Pou told us that at some point, after the application was filed, Mr Liu told him about the problems he was facing with his immigration application. Mr Te

Pou said that he realised these were matters beyond his expertise and that Mr Liu needed legal advice. When it became obvious that Mr Liu's citizenship application was unlikely to progress because of the outstanding immigration matters, Mr Te Pou said he withdrew and returned the \$5,000 he had been given. He had no further involvement after that.

8.16 Our inquiry found nothing to indicate any improper conduct on Mr Te Pou's part, and we did not find any evidence of any attempt to improperly influence the citizenship decision. Our review of the Department files and discussions with officials show that the only involvement Mr Te Pou had with Mr Liu's application was to help him complete the application form when Mr Liu first applied for citizenship in May 2005.

8.17 There is also a letter on file dated August 2006, in which Mr Te Pou wrote a letter on Mr Liu's behalf, asking for the return of Mr Liu's Chinese birth certificate. We found no evidence of any involvement after that time.

Daniel Phillips

8.18 Daniel Phillips is Shane Te Pou's brother. Like Mr Te Pou, Mr Phillips was an active Labour Party member at the time. Through his involvement in the Labour Party, Mr Phillips knew Mr Samuels. Mr Phillips worked for Mr Samuels for a time in Wellington.

8.19 Mr Phillips told us that he recalled meeting Mr Liu, probably in 2005, and probably at a dinner in Auckland, also attended by Mr Samuels. He said he was also aware of correspondence between Mr Samuels and Mr Liu but was not aware of the nature of it. He did not know at the time that his brother was acting as Mr Liu's agent.

8.20 Mr Phillips later became Mr Jones' Senior Private Secretary. He explained that, as Mr Jones' Senior Private Secretary, his role was largely administrative and involved managing the correspondence into and out of Mr Jones' office. He said that some Senior Private Secretaries also provide advice to Ministers on political or other substantive matters, but he did not because Mr Jones already had a Senior Political Adviser.

8.21 Mr Phillips said that he became aware that Mr Jones was going to be called on to consider Mr Liu's citizenship application shortly after the decision was made to transfer it to Mr Jones. He told us he was called into Mr Jones' office, along with Mr Jones' Private Secretary for immigration matters, and they were told that a file was due to arrive that needed to be kept in the safe because it contained sensitive information. Mr Phillips said it was necessary for him to know the location of the

file, in case the other Private Secretary needed access to it, because he was the one who knew the code.

- 8.22 He said that when he was told about the file he recognised Mr Liu's name but did not mention that he had met him and knew about him through Mr Samuels. He said that this was because he had no expectation that he would be called on to be involved in any discussions about the application. He also assumed that, given he had previously worked in Mr Samuels' office, the connection was generally known about.
- 8.23 Mr Phillips said that, with hindsight, he probably should have formally declared his connection. But it was one of many matters they were dealing with, and not a matter that had dominated their attention.
- 8.24 We agree that it would have been wise for Mr Phillips to make his connection with Mr Liu known. However, our review of the Department files and discussions with officials show that Mr Phillips had no involvement in Mr Liu's case other than in a minor administrative capacity. He was not present at either of the briefings Mr Jones had with officials. His only involvement was in liaising with the Department officials to help prepare a response to Mr Billington's request for a copy of the submission, and later in notifying Mr Billington of Mr Jones' decision.
- 8.25 Other than his failure to declare his connection to Mr Liu, we found nothing to suggest that Mr Phillips acted improperly.

Our comments

- 8.26 Links and relationships of the kind we have described in this Part and elsewhere in this report are not unusual, and are to be expected in political circles.
- 8.27 However, there are a number of features of citizenship decisions which make them, in our view, particularly vulnerable to concerns about the risk of undue influence – both actual and perceived – where links and relationships of this kind exist.

Citizenship decisions are decisions about individuals

- 8.28 The first feature is that citizenship decisions require the Minister to make decisions about individuals. This is a relatively unusual position for Ministers to be in because, as a rule, the decisions Ministers make are more likely to relate to policy or affect sections of the public as a whole.

The Minister is required to exercise judgement and discretion

- 8.29 The second feature is that citizenship decisions involve the exercise of ministerial discretion. Although there are criteria in the Act that are required to be fulfilled, the Act also requires the Minister to exercise judgement and/or gives the Minister discretion to waive certain requirements. Ministerial discretion was recognised by Ministers and officials as an important feature of the Act.

Advocacy and political donations

- 8.30 The third feature is that citizenship applications often involve an element of advocacy, whether by lawyers, immigration consultants, community leaders, or others. Where the advocate is known to the Minister, a risk of undue influence – or the perception of it – is automatically created. This is particularly so if the advocate is an MP and the applicant has donated, or later makes a donation, to the MP or the MP's political party.
- 8.31 This does not mean that MPs and others should be deterred from advocating for citizenship applicants where they consider it appropriate to do so. Advocacy of that kind is an important part of the role of an MP as an elected representative.
- 8.32 Nor is there anything unlawful or improper in MPs and political parties seeking to raise funds for their election campaigns, provided that it is lawful. Political parties in New Zealand are not state-funded, so they rely on donations to fund their activities.
- 8.33 However, receiving donations from a person who later seeks help can present difficulties to MPs – particularly if the donation is anonymous (which is permitted within certain limits) and there are obvious difficulties in knowing where the donation has come from. We were told of various methods used by political parties to try to insulate MPs from donations for this reason.

Different cultural expectations

- 8.34 Finally, citizenship applications, by definition, are often made by people from cultures that are different to New Zealand's. Those people might have different ideas about how they are expected to interact with politicians and government officials.
- 8.35 All of the MPs we spoke to told us about experiences they had had, or concerns they had felt, about the potential for misunderstandings in this regard. A common example was being photographed at community or fund-raising events and then finding out later that their photograph had been used, without their knowledge or consent, to promote a particular business activity.

- 8.36 They saw this, to some extent, as an “occupational hazard”, but also told us of steps they took to try to avoid the risk that they might be introduced to someone and later, unknowingly, be called on to make a decision about that person, thereby compromising their own reputation or the integrity of the decision-making process.
- 8.37 Mr Cunliffe, for example, told us about the “double-blind” system that was instigated when he became Minister of Immigration. If a constituent approached Mr Cunliffe’s constituency office for help with an immigration matter, the request was automatically referred to another Auckland MP. If the matter progressed as far as requiring a ministerial decision, it would automatically be referred to his Associate Minister.
- 8.38 Mr Barker told us about his concern that the system for managing ministerial conflicts of interest were not always able to fully protect Ministers from risks of this kind. Often, it was a case of relying on friends, colleagues, and other informal networks to alert Ministers to concerns about particular individuals they might have met in the course of their ministerial or political duties.
- 8.39 He told us about a ministerial colleague who made a practice of asking people he was introduced to at fund-raising or other public functions to provide him with a copy of their business card. The card was then provided to his staff with instructions to ensure that any correspondence from that individual be dealt with without his involvement, so as to avoid any claims that he had acted for an improper purpose. Mr Barker told us that this practice only came to his attention when the events of this inquiry became public. Had he been aware of this earlier, he said he would have implemented a similar system.
- 8.40 During our inquiry, we were also shown examples of citizenship applicants offering gifts or hospitality to officials. This was done openly, so the applicant’s assumption was presumably that this was either normal or expected behaviour. In all the cases we were made aware of, the intended recipients managed the situation appropriately by declining the offers that had been made to them. But the cases show that people with different cultural backgrounds sometimes have very different ideas about what is expected of them.
- 8.41 A detailed consideration of these matters is beyond the scope of our inquiry. However, we considered it was important to record them here, because they provide an important part of the context of this case. They also influenced the recommendations we have made.

Publications by the Auditor-General

Other publications issued by the Auditor-General recently have been:

- Ministry for Primary Industries: Preparing for and responding to biosecurity incursions
- Inquiry into the Government's decision to negotiate with SkyCity Entertainment Group Limited for an international convention centre
- New Zealand Police: Enforcing drink-driving laws
- New Zealand Defence Force: The civilianisation project
- Effectiveness and efficiency: Stories from the public sector
- Department of Conservation: Prioritising and partnering to manage biodiversity
- Auckland Council: Transition and emerging challenges
- Matters arising from the 2012-22 local authority long-term plans
- Education sector: Results of the 2011 audits
- Response of the New Zealand Police to the Commission of Inquiry into Police Conduct: Third monitoring report
- Annual Report 2011/12
- Roles, responsibilities, and funding of public entities after the Canterbury earthquakes
- Effectiveness of arrangements to check the standard of services provided by rest homes: Follow-up audit
- Inquiry into aspects of ACC's Board-level governance
- Education for Māori: Context for our proposed audit work until 2017
- How the Far North District Council has administered rates and charges due from Mayor Wayne Brown's company, Waahi Paraone Limited

Website

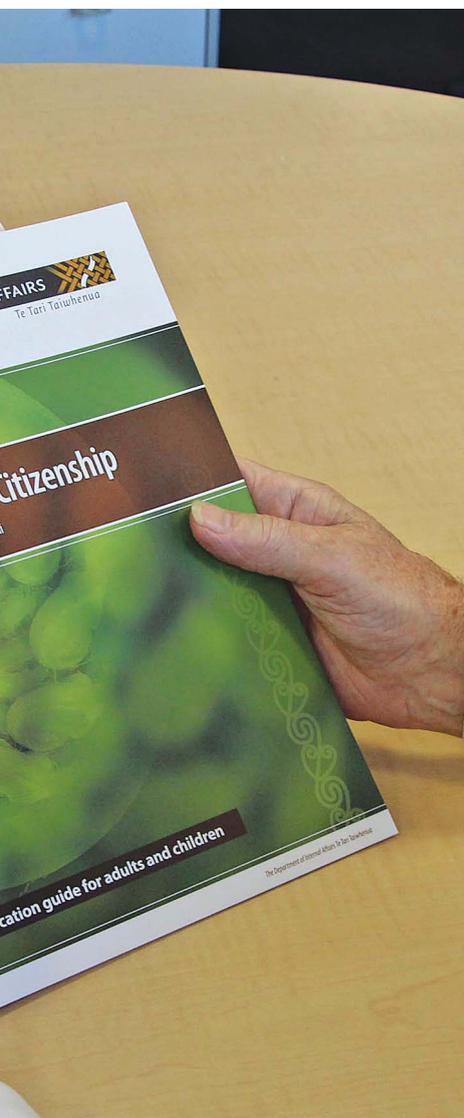
All these reports, and many of our earlier reports, are available in HTML and PDF format on our website – www.oag.govt.nz. Most of them can also be obtained in hard copy on request – reports@oag.govt.nz.

Notification of new reports

We offer facilities on our website for people to be notified when new reports and public statements are added to the website. The home page has links to our RSS feed, Twitter account, Facebook page, and email subscribers service.

Sustainable publishing

The Office of the Auditor-General has a policy of sustainable publishing practices. This report is printed on environmentally responsible paper stocks manufactured under the environmental management system standard AS/NZS ISO 14001:2004 using Elemental Chlorine Free (ECF) pulp sourced from sustainable well-managed forests. Processes for manufacture include use of vegetable-based inks and water-based sealants, with disposal and/or recycling of waste materials according to best business practices.



Office of the Auditor-General
PO Box 3928, Wellington 6140

Telephone: (04) 917 1500
Facsimile: (04) 917 1549

Email: reports@oag.govt.nz
Website: www.oag.govt.nz