

*Citizenship Laws and
Statelessness*



Federated States of Micronesia

Overview of Citizenship and Statelessness

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BACKGROUND

The Cook Islands is a small archipelago located between Samoa and French Polynesia, South of Hawaii. The islands were first colonised by James Cook in 1773 and consequently became a British protectorate in 1888. The islands were annexed to New Zealand in 1901. Cook Islands is a self-governing nation in free association with New Zealand.

Its autonomy has gradually evolved over time. Cook Islands has had full treaty making-capacity recognised by the UN Secretariat since 1992 and 'interacts with the international community as a sovereign and independent state'.¹

The Cook Islands have taken a more active role in their external affairs in recent years. For example, the Cook Islands have acceded to:

- The *Convention on the Rights of Persons with Disabilities*;
- The *Convention on the Elimination of All Forms of Discrimination Against Women*; and
- The *Convention on the Rights of the Child*.

Several states do not recognise Cook Islands' sovereignty, despite the countries' increased engagement with other nations and organisations at a diplomatic level.²

Nevertheless, the *Constitution of Cook Islands* grants New Zealand citizenship power over Cook Islanders and vests defence power in New Zealand.³ This power may only be exercised at the request of the Cook Islands.

Given the Cook Islands' unique constitutional status there are some largely theoretical quirks around its citizenship law. In theory, none of the amendments to the *Citizenship Act 1977* have been incorporated into Cook Islands law. This, however, is a matter of academic interest only and is likely to have no practical implications. As Elizabeth Perham notes:

The fact that the citizenship legislation on the books in the Cook Islands and Niue is not up to date is unlikely to have any practical consequences. It is for the state of New Zealand alone to grant and regulate its citizenship. The only real issue here is one of

¹ *Joint Centenary Declaration of the Principles of the Relationship between the Cook Islands and New Zealand 2001*; United Nations General Assembly, *Repertory of Practice of the United Nations Organs – Volume VI*, UN GAOR, Supp No 8 [10]-[11] ('Repertory Practice – Volume VI').

² *Ibid* [11].

³ *Constitution of Cook Islands* s 5 ('*Constitution*'); United Nations Office of Legal Affairs, *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*, UN Doc ST/LEG/7/Rev.1 (1 February 1994) 24.

*appearances: if the statutes are on the books, they should be consistent.*⁴

The following analysis precedes on the basis of the law in practice, that is, as applied by New Zealand authorities who have power over citizenship in the whole New Zealand realm. Some idiosyncrasies remain, however and these are duly noted.

ACQUISITION

Descent

Cook Islands citizenship does not exist. Persons of Cook Islands descent are entitled to New Zealand citizenship through the *Citizenship Act* of New Zealand.⁵ Section 2 of the Act formally recognises the Cook Islands as a part of New Zealand for the purposes of the Act, and is considered a part of Her Majesty of New Zealand's realm.

The Act permits acquisition of citizenship by descent, for children born in and out of wedlock.⁶ For children born within the territory of a State considered a part of the realm of New Zealand, acquisition is automatic. For those born outside of the realm of New Zealand, but who has a parent who is a national, citizenship will be granted by registration.⁷

Further, children who are adopted by nationals of New Zealand may be granted citizenship pursuant to section 3 of the Act. This is consistent with articles 1 and 4 of the *Convention on the Reduction of*

Statelessness ('1961 Convention'). The Act provides expressly for the prevention of statelessness in section 9.

Of note, the Act contains recognition of foundlings. If a child is found within the realm of New Zealand, it is assumed to be a citizen in absence of evidence which would indicate otherwise.⁸ While New Zealand is not a signatory to the *Convention Relating to the Status of Stateless Persons*, the inclusion of provisions for foundlings are consistent with New Zealand's signatory status of the 1961 Convention.

However, the reservation by New Zealand on its 2006 ratification of the 1961 Convention, explicitly states the application of the Convention should only extend to the trust territory of Tokelau.⁹ This reservation is consistent with the Cook Islands' management of its own external affairs.

This does lead to some ambiguity as to whether the domestic provisions relating to foundlings were intended to extend to the Cook Islands, particularly given that the unamended 'Cook Islands version' of the New Zealand *Citizenship Act* does not contain the same protections for foundlings.

This constitutional and international law idiosyncrasy is unlikely to have any practical effect however, as New Zealand authorities would likely err on the side of avoiding statelessness and the best interests of the child.

⁴ Elizabeth Perham, 'Citizenship Laws in the Realm of New Zealand' (2009) 9 *New Zealand Yearbook of International Law* 219.

⁵ *Constitution* (n 3) s 6; *Citizenship Act 1977* (New Zealand) ('*Citizenship Act*'); *British Nationality and New Zealand Citizenship Act 1948* (United Kingdom) ('BNNZCA 1948').

⁶ *Citizenship Act* (n 5) ss. 6, 7.

⁷ *Ibid* ss. 7(1)(a)-(b), 7(2).

⁸ *Ibid* 6(3)(a) and 6(3)(b)(i).

⁹ United Nations Treaty Collection Depository, 'Chapter V: Refugees and Stateless Persons – Convention on the Reduction of Statelessness', *United Nations Treaty Collection – Status of Treaties* (Treaty, 20 September 2006) New Zealand Territorial Application'

<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5#5>.

Naturalisation

The *Citizenship Amendment Act* permits application for citizenship by naturalisation by residence. The Act requires the applicant to reside in the territory for at least 1,350 days in the five years preceding the date of application,¹⁰ a requirement which may be waived by the Minister for Internal Affairs.

The applicant must have a 'sufficient knowledge of English', this requirement may be waived by the Minister as well, if they are satisfied that the applicant would suffer undue hardship if this rule were applied to them.

While a citizenship test is not required, the Minister may, at their discretion, request an oath of allegiance to the realm of New Zealand. The applicant must have an intention to reside within the realm of New Zealand.

There is also an age requirement of 16 years of age, but it remains unclear if children may be included on an application as there is no provision in the Act which permits it, despite the existence of a Fee Schedule which includes minor children in the Citizenship Regulations.¹¹

No legislation explicitly permits dual nationality, but it is allowed. The *British Nationality and Citizenship Act* provides that a citizen may hold dual citizenship unless their behaviour or continued status as a citizen is 'not conducive to the public good'.¹²

There are no provisions for acquisition of citizenship by virtue of marriage to a citizen of the Cook Islands. A person who lives in

the Cook Islands for the period of time required for naturalisation, however, may apply for residency, regardless of their marital status.

RENUNCIATION

The *Citizenship Act* allows for voluntary renunciation of citizenship. Section 15 of the Act sets out limitations to this right: the person must be 18 years of age, have full mental capacity and must be legally recognised as a citizen of another country in order to make a formal declaration of renunciation.

While there is no subsection of the act which explicitly protects a person who seeks to renounce their citizenship from statelessness, the practical operation of this section achieves this goal. This is consistent with provisions found in the 1961 Convention, namely article 7.

LOSS

A person may be deprived of their citizenship on two main grounds: a breach of loyalty to the realm of New Zealand, or if it is found their acquisition of citizenship was achieved through fraudulent means.

If a person is deprived of their citizenship under section 16 or 17 of the *Citizenship Act*, the deprivation occurs at the date of the order by the Minister.¹³ This is consistent with the rights afforded to States in the 1961 Convention under article 8.

Breach of Allegiance

In special cases, if a person has 'acted in a manner that is contrary to the interests of

¹⁰ *Citizenship Amendment Act 2005* (New Zealand) s 8(2)(b) ('*Citizenship Amendment Act*').

¹¹ *Citizenship Regulations 2002* (New Zealand) Schedule 1, No 2.

¹² BNNZCA 1948 (n 5) s 22.

¹³ *Citizenship Act* (n 5) s 18.

New Zealand', the Minister may deprive them of their citizenship.¹⁴

Further, if a person has exercised the duties of another nationality in a manner inconsistent with the interests of New Zealand, the Minister may deprive them of their citizenship.¹⁵ While the language implies that no person would be deprived of citizenship pursuant to this section unless they possessed citizenship or nationality of another state, there is no express provision which prevents statelessness.

Fraud or Misrepresentation

The Minister may deprive a person of citizenship if they are 'satisfied' that the acquisition was by fraud, misrepresentation, mistake or deliberate concealment of facts that would have affected their successful acquisition of citizenship.¹⁶ This power may only be exercised against a person who gain citizenship via registration or naturalisation.

The inclusion of mistake as a ground for deprivation, however, is inconsistent with section 17(3) of the Act which stipulates that the Minister may not deprive a person of their citizenship if it was acquired by mistake. This subsection, however, prohibits the Minister from depriving a person of citizenship if it would result in their statelessness.

Temporal Requirements for Deprivation and Judicial Review

In advance of an order under section 16 or 17, the Minister must serve notice on the person who they intend to revoke citizenship from.¹⁷ The notice must contain: the Minister's intention to make an order depriving them of their citizenship, the

relevant section of the Act which invokes their power to revoke citizenship, the grounds upon which they believe they may make an order, and outlining the person's entitlement to judicial review of such an order.

The person about whom the order is made is then entitled to a 28-day period in which they are able to apply for judicial review of the grounds for deprivation, should they disagree with their imposition or that they are insufficient to result in a deprivation of citizenship. The decision of the court will be final.

A person who ceases to be a citizen of the realm of New Zealand is not discharged of any 'obligation, duty or liability' with respect to their citizenship which was 'done or omitted to be done' before they ceased to be a citizen.

UNHCR Representation in Canberra

***Note:** This factsheet only provides information of a general nature. It should not be relied on for any other purpose, such as legal advice. This factsheet should be read in light of the last date on which it was updated.*

¹⁴ *Citizenship Act* (n 5) s 16(a); *Citizenship Amendment Act* (n 10) s 10(1).

¹⁵ *Citizenship Act* (n 5) s 16(b).

¹⁶ *Ibid* s 17(2).

¹⁷ *Ibid* s 19(1).