

Citizenship Laws and  
Statelessness



## Samoa

### Overview of Citizenship and Statelessness

Last Update: 4 December 2020

#### BACKGROUND

Samoa was the first Pacific Island state to achieve independence in 1962. It became a United Nations Member state in 1976.

Samoa has signed five human rights treaties:

- The *Convention Relating to the Status of Refugees*,
- The *International Covenant on Civil and Political Rights*;
- The *Convention on the Rights of the Child*;
- The *Convention on the Elimination of All Forms of Discrimination Against Women* and
- The *Convention of the Rights of Persons with Disabilities*.

Samoa has not signed the *Convention relating to the Status of Stateless Persons*, or the *Convention on the Reduction of Statelessness* ('1961 Convention').

#### ACQUISITION

##### Descent

Persons of Samoan descent are entitled to citizenship through the *Citizenship Act*.<sup>1</sup> If a child is born inside Samoa, in or out of

wedlock, citizenship is automatically passed if either parent is a citizen.<sup>2</sup>

Persons born in Samoa are not automatically entitled to citizenship if their parents are not citizens. A child born outside of Samoa, born in or out of wedlock, is entitled to the automatic acquisition of citizenship if either parent is a citizen.<sup>3</sup> If born outside of Samoa, the parent must be a citizen otherwise than by descent.

Further, a person born outside of Samoa who had a grandparent who was a citizen by birth is entitled to apply for citizenship by descent.<sup>4</sup> To be eligible for citizenship on these grounds, the parent must have been resident in Samoa for three years,<sup>5</sup> but that period of time need not be continuous. These provisions are consistent with article 4 of the 1961 Convention.

Foundlings are not recognised under the *Citizenship Act*. This is inconsistent with article 2 of the 1961 Convention. The only express acknowledgement of the prevention of statelessness is regarding persons born on a ship or aircraft from Samoa, who are not eligible for citizenship by birth or descent, who would be stateless if not for Samoan citizenship, and who are unable to gain citizenship of another State.<sup>6</sup>

<sup>1</sup> *Citizenship Act 2004* (w amendments to 2018) (Samoa) ('Citizenship Act 2018 consolidation').

<sup>2</sup> *Ibid* s 6(1).

<sup>3</sup> *Ibid* s 7(1).

<sup>4</sup> *Ibid* s 7(4); See *Citizenship (Amendment) Act 2016* s 2.

<sup>5</sup> *Citizenship Act 2018 consolidation* (n 1) s 7(1)(b).

<sup>6</sup> *Ibid* s 6(3).

This is consistent with the 1961 Convention.

### Naturalisation

Persons who are not of Samoan descent are entitled to citizenship by naturalisation through three channels: permanent residence, marriage, or investment. The Minister requires successful applicants for citizenship by naturalisation to take an oath of allegiance.<sup>7</sup>

#### 1. Permanent Residence

The *Citizenship Act* permits persons who have validly held a permanent residence permit for the five years preceding the application to apply for naturalisation.<sup>8</sup>

Permanent residence permits are granted pursuant to the *Immigration Act*. There is no explicit age requirement. The applicant must intend to reside in Samoa, must be of good health and character, and must understand the rights and responsibilities of citizenship. As a matter of policy the number of applications for citizenship in any given year is capped. In 2017, this number was 15.

#### 2. Marriage

A person who is the spouse of a citizen may apply for citizenship by marriage.<sup>9</sup> Provisions for the application of citizenship by marriage may pass through a male or female citizen to their spouse.

The applicant must be of good health and character, and must have resided with their spouse, in Samoa or elsewhere, for a period of five years preceding the application. The person must reside with their spouse in Samoa at the time of application, and must intend to continue to do so. An applicant must also understand

the responsibilities and privileges of citizenship.

#### 3. Investment

A person may be granted citizenship by permanent residence if they have applied for citizenship by investment.<sup>10</sup> Their application may include 'family members', including the spouse of an investor, as well as any unmarried child under the age of 18.

'Unmarried child' includes stepchildren and legally adopted children of the investor or their spouse. The Citizenship Investment Committee is empowered to determine the outcome of applications for investment.

If an application is granted under section 13(a), the permanent residence permits are valid for three years. The investor must withdraw the set amount of funds to be used in the investment, and must maintain 15% of the original sum in that investment account.

A citizen of any other country is entitled to apply for citizenship by investment.<sup>11</sup> In order to be eligible to apply, the applicant must have made one or more qualifying investments.

Qualifying investments include: lease and development of government owned land within three years of the application; manufacturing of agricultural produce or fishery products; tourism; information technology; solar, bio-fuel, water or wind electricity generation; investment in development funds or charitable trusts; and, any other service included in the *Foreign Investment Act 2000*.

An applicant must: intend to invest in a qualifying investment; show willingness to invest a minimum of 4 million Samoan Tala within three years of the application for citizenship; and have a minimum net worth

<sup>7</sup> Ibid s 12.

<sup>8</sup> Ibid s 8(2)(a).

<sup>9</sup> Ibid s 9(1).

<sup>10</sup> Ibid s 8(3); *Citizenship (Investment) Act 2015* (Samoa) s 16(1) ('Citizenship Investment Act').

<sup>11</sup> Citizenship Investment Act (n 10) s 4(1).

of 2.5 million Samoan Tala at the time of the application.

Any funds used to prove the net worth of the applicant must: be owned by the investor or jointly owned by the investor and family members; be earned legally; and be unencumbered.

## RENUNCIATION

The *Citizenship Act* stipulates that a person may not renounce their citizenship unless they hold another citizenship or nationality.<sup>12</sup> Further, Samoan citizenship will not be formally renounced until the citizenship of that person in another state is registered. This is consistent with article 7 of the 1961 Convention.

## LOSS

Citizenship cannot be cancelled for persons who are citizens by birth or descent, loss or deprivation is only applicable for those who obtain citizenship by marriage, residence or investment.<sup>13</sup>

A person may have their citizenship cancelled if they are disloyal toward Samoa.<sup>14</sup> If it is discovered that citizenship was successfully acquired by fraud, misrepresentation, or concealment of fact, citizenship will be lost automatically, unless the Minister is satisfied that the offence was minor.<sup>15</sup> This is consistent with article 8 of the 1961 Convention.

If a person obtains citizenship by permanent residence or by marriage may have their citizenship revoked if the Minister is satisfied that the person has resided overseas continuously for two years and is unlikely to reside in Samoa in the future. This is inconsistent with article 7 of the 1961 Convention.

Any person who is liable to lose their citizenship under sections 15, 16 or 17 must receive notice from the Minister in Samoan or English. The notice must advise the person of their right to review by the Court.

## DUAL CITIZENSHIP

Dual citizenship is not permitted for Samoan nationals, although there is no express prohibition against it and it is widely practiced. In 1982, the Privy Council ruled that all Samoans born under New Zealand administration between 1924 and 1948 were entitled to New Zealand citizenship.<sup>16</sup> This entitlement was found to extend to their children as well.

In response, the New Zealand government passed the *Citizenship (Western Samoa) Act 1982*, which limited this entitlement to Samoans who were: in New Zealand on 14 September 1982; or, who arrived in New Zealand after that date as permanent residents.<sup>17</sup> This effectively stripped any Samoan born before 1949 and their children from entitlement to New Zealand citizenship.

## UNHCR Representation in Canberra

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

<sup>12</sup> Citizenship Act 2018 consolidation (n 1) s 14(1).

<sup>13</sup> Ibid s 15(2).

<sup>14</sup> Ibid s 15(1).

<sup>15</sup> Ibid s 17.

<sup>16</sup> *Falema'i Lesa v The Attorney General* [1982] UKPC 30, 8.

<sup>17</sup> *Citizenship (Western Samoa) Act 1982* (New Zealand) s 4.