

*Citizenship Laws and
Statelessness*



Tonga

Overview of Citizenship and Statelessness

Last Update: 14 December 2020

BACKGROUND

Tonga gained independence in 1970. It became a United Nations Member State in 1999, Tonga has signed three human rights treaties:

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

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

ACQUISITION

Descent

A child born inside,¹ or outside,² of Tonga, either in or out of wedlock, will automatically acquire citizenship if either of their parents is a citizen. These provisions are consistent with article 4 of the 1961 Convention.

A person who marries a Tongan subject is deemed to become a Tongan subject at the

time they marry on the following conditions: they lodge a written declaration with the Minister for Foreign Affairs of their intent to assume Tongan citizenship; and, they take an oath of allegiance.

It is unclear if the additional requirements for an application for naturalisation apply to a person who marries a Tongan subject, as the requirements for naturalisation apply to any foreigner, despite the separate classification in section 2 of the *Nationality Act*.

Naturalisation

Persons who are not Tongan subjects by birth or marriage are entitled to apply to the King for naturalisation. Dual citizenship has been permitted since the 2007 *Nationality Act Amendment*.³ Minor children, under the age of 16, may be included in applications for citizenship by naturalisation.

Foundlings are not recognised under any legislation in Tonga. This is inconsistent with the 1961 Convention. However, the King has absolute discretion to grant naturalisation to a minor child in a special case, where the provisions of the Act may not be expressly complied with.⁴

Further, in instances where the nationality of a person as a Tongan subject is in doubt,

¹ *Nationality Act 1915 (amendments to 2016)* (Tonga) s 2(a) ('Nationality Act').

² *Ibid* ss. 2(b), 2(c).

³ *Nationality Act (Amendment) 2007* ('Tonga').

⁴ *Nationality Act* (n 1) s 11(2).

the King has absolute discretion to grant that person a certificate of naturalisation.⁵

It is unclear if an applicant must reach the age of maturity, which defined in the *Constitution* as 18 years of age, before applying for naturalisation; or if they are able to apply when they reach 16 years of age, as included in the sections regarding minor children.

The *Nationality Act* allows persons who have legally resided in Tonga for not less than five years preceding the application to apply for citizenship.⁶ An applicant must intend to reside in Tonga, and must be of good character and have adequate knowledge of the Tongan language. The application requires an oath of allegiance. All decisions on applications are at the absolute discretion of the King.⁷

Naturalisation grants a person the rights and privileges of a subject by birth except for rights to hereditary tax schemes. A woman who was previously a Tongan subject, but whose spouse was not, may regain her status as a Tongan subject if that marriage has dissolved or she has been widowed.⁸

RENUNCIATION

The *Nationality Act* does not permit for the renunciation of Tongan nationality for any reason.

LOSS

Citizenship cannot be cancelled for persons who are citizens by birth or descent. This is consistent with article 8 of the 1961 Convention. If the King is made aware that a certificate of naturalisation was obtained through misrepresentation or

fraud, he may order that the certificate be revoked.⁹

In addition to the relevant criminal sentences, the King, with the consent of the Privy Council, may revoke a certificate of naturalisation for any person who is convicted of: terrorism, treason, sedition, defamation of the King or Queen; or, any offence which involves dishonesty or fraud.

Further, a certificate of naturalisation may be cancelled if a person is convicted of an offence which carries a prison sentence of two or more years.¹⁰ If a person poses a threat to Tonga's national security, the King may, with the consent of the Privy Council, revoke that person's certificate of naturalisation. Revocation on these grounds may result in statelessness.

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.*

⁵ Ibid s 10.

⁶ Ibid s 8(1)(a).

⁷ Ibid s 8(2).

⁸ Ibid s 8(4).

⁹ Ibid s 12(1).

¹⁰ Ibid s 12(2)(f).