

Citizenship Laws and
Statelessness



Nauru

Overview of Citizenship and Statelessness

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BACKGROUND

Nauru became a United Nations Member State in 1999 and has signed six 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 Racial Discrimination*;
- The *Convention on the Elimination of All Forms of Discrimination against Women*; and
- The *Convention of the Rights of Persons with Disabilities*.

Nauru 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 Nauruan descent are entitled to citizenship through the *Constitution of the Nauru* and the *Citizenship Act*.¹

If a child is born inside Nauru, in or out of wedlock, citizenship is automatically passed if either parent is a citizen.² A child born outside of Nauru, born in or out of

wedlock, is entitled to the automatic acquisition of citizenship if either parent is a citizen.³

Any person who is born in wedlock to a Nauruan citizen and a citizen of another Pacific Island state, and their parents have not indicated within seven days of birth that they intend for that child to become the citizen of the other Pacific state, then the child automatically becomes a citizen of Nauru. If a child's parents have renounced their Nauruan citizenship, that person is entitled to apply for citizenship, if at the time of the application, at least one of their biological grandparents were citizens. These provisions are consistent with article 4 of the 1961 Convention.

There is no recognition for foundlings in Nauru's laws, which is inconsistent with article 2 of the 1961 Convention.

Naturalisation

Persons who are not of Nauruan descent are entitled to citizenship by naturalisation through three channels: residence (by birth), marriage, or honorary citizenship.

Dual citizenship is permitted,⁴ and any applicants for citizenship through naturalisation must be 20 years of age. All decisions regarding applications will be

¹ *Constitution of Nauru 1968* (w amendments to 2015) ('Constitution'); *Citizenship Act 2017* (No 35) (Nauru) ('Citizenship Act').

² Constitution (n 1) s 72(1); Citizenship Act (n 1) s 9.

³ Constitution (n 1) s 72(1); Citizenship Act (n 1) s 12(1).

⁴ Citizenship Act (n 1) s 16.

made at the discretion of the Minister for Justice and Border Control.

1. Residence (by Birth)

The *Citizenship Act* permits persons who were born in Nauru, but whose parents were not citizens, to apply for citizenship.⁵ The applicant must have resided in Nauru for 20 years preceding the application, and a temporary absence from the country does not affect the temporal requirement for an application.

A similar provision exists in the *Constitution* which grants citizenship upon application to any person born in Nauru after 31 January 1968, if at the time of their birth, they would be stateless. These provisions are consistent with article 1 of the 1961 Convention.

Applications made under this section are decided at the discretion of the Cabinet. Any person who is granted citizenship as the result of an application made under the *Citizenship Act* is required to take an oath of allegiance.⁶

Minor children under 20 years of age, or those considered to be a dependant, may be included on the application of their parent and will be naturalised as citizens when, and if, the primary applicant is granted naturalisation.

Applications for citizenship for minor children may also occur after the date in which their parents are granted citizenship under the *Citizenship Act*.⁷ This is also consistent with article 1 of the 1961 Convention.

2. Marriage

Provisions regarding the acquisition of citizenship by marriage are inconsistent. The *Constitution* explicitly states that only

women can acquire citizenship through marriage.⁸ The *Citizenship Act*, however, does not specify a gender limitation on acquisition of citizenship by marriage,⁹ and explicitly uses 'his' and 'her' pronouns.

Given that the *Citizenship Act* was drafted in 2017, it can be assumed that there is legislative intent to remove this limitation, but until an amendment is made to the *Constitution*, there may be a legislative inconsistency.

Relying on the requirements set out in the *Citizenship Act*, a person may apply for citizenship if they are lawfully married to a citizen and have resided with their spouse in Nauru for a continuous period of seven years.

They must be permanently living in Nauru and be willing to fulfil the duties and responsibilities of citizenship. They must be in good health, be of good character, and have no criminal convictions.

A child who is not a citizen but who is present in Nauru, who is adopted by one or more citizens is automatically granted citizenship on the day the adoption order is granted.¹⁰

A child from the previous relationship of a person who marries a Nauruan citizen is not entitled to acquire citizenship by virtue of their parents' marital status.¹¹ That child is only eligible to become a citizen if they are adopted by the spouse who is a citizen.

3. Honorary Citizenship

A person may be granted honorary citizenship at the discretion of the President, in consultation with the Cabinet.¹² The Cabinet has the power to

⁵ Ibid s 11(1)(a).

⁶ Ibid s 20(1).

⁷ Citizenship Act (n 9) s 19A(1); *Citizenship (Amendment No 14) Act 2019* (Nauru) s 4 ('Citizenship Amendment').

⁸ Constitution (n 1) s74.

⁹ Citizenship Act (n 1) s 13(1).

¹⁰ Ibid s 15.

¹¹ Ibid s 14(1).

¹² Ibid s 19(1).

modify the terms and conditions for honorary citizenship.

The President was also vested with the power, in conjunction with the Cabinet, to grant citizenship on the 50th anniversary of Independence.

This path to citizenship was only available between 31 January 2018 and 30 June 2018, and was available to persons who did not qualify for citizenship at Independence or otherwise, who had demonstrated long term commitment and dedication to Nauru and who had adapted to the culture and traditions of Nauru.¹³

These persons must have resided in Nauru for a cumulative period of 30 years and must have had a desire to be a citizen. Children of persons who were granted citizenship under this section are not entitled to citizenship by descent.

RENUNCIATION

A person who has reached 20 years of age and who has full mental capacity is entitled to renounce their citizenship.¹⁴

Renunciation may only be made where the Minister is satisfied that the person has obtained the citizenship of another country. These provisions are consistent with article 7 of the 1961 Convention and operate to protect persons from statelessness.

A person who has renounced their citizenship is entitled to re-apply for citizenship in accordance with section 7 of the *Citizenship Act*.

LOSS

A person who acquired citizenship by virtue of their birth on a vessel or aircraft, by birth in Nauru, or by marriage, may lose their citizenship.¹⁵ If it is discovered that

citizenship was acquired by fraud, bribery, misrepresentation, or concealment of fact, citizenship may be cancelled. This is consistent with article 8 of the 1961 Convention.

Further, if there is evidence that a person has failed to return or live in Nauru for a period of three years, their citizenship may be cancelled.¹⁶ This is inconsistent with the 1961 Convention, given that it places a limitation on the period of time that a citizen may be outside of their country of origin.

A person who has engaged in, or financed, terrorism or any related activities may have their citizenship cancelled.¹⁷ Other convictions which can result in the cancellation of citizenship include: an offence found in the *Anti-Money Laundering Act 2008*; an offence found in the *Counter Terrorism and Transnational Organised Crime Act 2004*; and a sexual offence involving a child.

This is consistent with the 1961 Convention, which permits countries to deprive a person of their citizenship if they act in a manner inconsistent with the interests of the state.

Further, when the Minister and Cabinet are considering cancelling an individual's citizenship, they must take into account if that cancellation would practically result in that person's statelessness. This is consistent with article 8 of the 1961 Convention.

A person who is granted citizenship by marriage shall lose their citizenship if they re-marry a non-Nauruan following divorce or the death of their spouse.¹⁸

The wording of this section refers to section 14 of the Act, but section 13 relates to

¹³ Ibid s 18(1)(b).

¹⁴ Ibid s 22(1).

¹⁵ Ibid s 23.

¹⁶ Ibid s 23(2)(b).

¹⁷ Ibid ss. 23(2)(a), 23(2)(d).

¹⁸ Ibid s 24(1).

citizenship by marriage. Children of a marriage shall not have their citizenship revoked upon the dissolution of their parents' marriage. This is consistent with article 6 of the 1961 Convention.

If the Minister decides that a person's citizenship shall be cancelled or revoked, they must notify the affected person in writing, with the opportunity for that person to respond within seven days.¹⁹

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.*

¹⁹ Ibid s 23(4).