

Gender and
Statelessness



Cook Islands

Gender, Citizenship Laws and Statelessness

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CONFERRAL TO BIOLOGICAL CHILDREN

Children born in the country

In the Cook Islands, citizenship is conferred to biological children automatically where either parent is a citizen.¹

Children born outside of the country

Where a child is born outside of the Cook Islands, the child is conferred citizenship where either parent is a citizen.²

ADOPTED CHILDREN

A child who is a citizen of the Cook Islands by birth does not lose his or her citizenship where the child is adopted by a parent or parents who are non-citizens of the Cook Islands.³

A person is deemed a citizen of the Cook Islands if he or she has been adopted by a citizen of the Cook Islands or a person who is entitled to reside indefinitely in the Cook Islands.⁴ This is to occur under an adoption order.

FOUNDINGS

Every person born in the Cook Islands is deemed to be a citizen in the case that the person having recently been born has been abandoned; and all investigations have failed to establish the identity of at least one of the person's parents.⁵

The Minister is also able to grant citizenship in special cases, where the Minister is satisfied that the grant of citizenship would be in the public interest because of exceptional circumstances of a humanitarian or other nature relating to the applicant.⁶

REGISTRATION OF THE BIRTH OF A CHILD

The father and mother of any child born in the Cook Islands are responsible for informing the Registrar of the particulars required to be registered concerning the birth of a child.⁷ This is to occur within 14 days of the date of birth.

The father has no responsibility for registering the birth of a child if he is not married to the mother at the time of the

¹ *Citizenship Act 1977* (NZ) s 6(1). At s 2(1), "New Zealand" is defined to include the Cook Islands. Note also s 28 regarding application of the Act to the Cook Islands ('*Citizenship Act*').

² *Ibid* s 7.

³ *Ibid* s 6(6).

⁴ *Ibid* ss. s 3(2)(aa), 3(2B).

⁵ *Ibid* s 6(3).

⁶ *Ibid* s 9.

⁷ *Births and Deaths Registration Act 1973* (Cook Islands) s 11(1).

child's birth and was not married to her at the time of conception.⁸

Where the mother is not married, the particulars of the father of the child shall not be entered onto the register except where the mother and father jointly request so.⁹

LOSS AND RENUNCIATION OF CITIZENSHIP

A citizen who has attained the age of 18 years and who is recognised by the law of another country as a citizen of that country may, at any time, make a declaration of renunciation of their Cook Islands citizenship in the prescribed manner.¹⁰

A person may be deprived of their citizenship by the Minister in special cases, where the individual has acquired the nationality or citizenship of another country, and has acted in a manner contrary to the interests of the Cook Islands.¹¹ A person may also be deprived of citizenship where they have voluntarily exercised any of the privileges or performed any of the duties of another nationality or citizenship possessed by him in a manner that is contrary to the interests of the Cook Islands.¹²

It is to be noted that these provisions of the Citizenship Act use gendered language, stating only "his" or "him".¹³

NATURALISATION FOR SPOUSE OF CITIZEN

Naturalisation by marriage is not provided for by the Cook Islands citizenship legislation. Citizenship is provided by grant where an applicant was present in Cook Islands for a minimum of 1,350 days during the five years immediately preceding the

date of the application; and for 240 of those days was entitled to reside indefinitely.¹⁴

DUAL NATIONALITY

The Cook Islands allows for dual nationality. A holder of dual nationality may be deprived of Cook Islands citizenship in special cases contrary to the interests of the Cook Islands, as set out above.¹⁵

GENDER EQUALITY ACHIEVED

Gender equality was achieved in the Cook Islands with the introduction of the *Citizenship Act* in 1977. The prior legislation, the *British Nationality and New Zealand Citizenship Act* discriminated on grounds of gender, for example, only conferring citizenship by descent through the father.¹⁶

GENDER AND STATELESSNESS RISKS

The Cook Islands benefits from the comprehensive nature of the New Zealand *Citizenship Act*, in that the risk of statelessness is mitigated through provisions with respect to foundlings, adopted children, and grant of citizenship by the Minister in special cases.

The introduction of the *Citizenship Act*, allowing for citizenship through either parent, also provided gender equality in relation to parental conferral citizenship.

The *Citizenship Act* does however contain gendered language within some provisions, using only "he", "him" or "his". This is not uniform throughout the legislation, as some provisions instead state "he or she".

There are also gendered requirements regarding application of births, which differ

⁸ Ibid s 11(1).

⁹ Ibid s 19(1).

¹⁰ *Citizenship Act* (n 1) s 15.

¹¹ Ibid s 16(a).

¹² Ibid s 16(b).

¹³ Ibid ss 15, 16.

¹⁴ Ibid s 8(b).

¹⁵ Ibid s 16.

¹⁶ *British Nationality and New Zealand Citizenship Act 1948 (NZ)* s 7. At s 2, "New Zealand" is defined to include the Cook Islands. Note also s 33 regarding application of the Act to the Cook Islands.

between the mother and father in some circumstances, under the Cook Islands *Births and Deaths Registration Act*. The provisions of the Act are not necessarily discriminatory at face value, as they make distinctions to account for the death or absence of the mother, the absence of the father, or the parents being unmarried. However, it is important to note these distinctions made on the basis of gender and the potential for discrimination in their application.

UNHCR Representation in Canberra

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