

SAMOA

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2004, No. 3**AN ACT to make provision with respect to the status of
Samoan citizenship.** *[21st January 2004]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement—(1) This Act may be cited as the Citizenship Act 2004.

(2) This Act shall come into force on the day it is assented to by the Head of State.

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Interpretation—(1) In this Act, unless the context otherwise requires:

“Alien” means a person who is not a citizen of Samoa:

“Applicant” means any alien applying for citizenship under sections 8 or 9 of this Act:

“Constitution” means the Constitution of the Independent State of Samoa:

“Court” means the Supreme Court of Samoa:

“family” in relation to a person, means the person's father, mother, spouse, child, sister, brother, grandparent, uncle, aunt, or cousin in the first degree:

“Government” means the Government of the Independent State of Samoa:

“Minister” means the Minister responsible for Citizenship from time to time:

“Ministry” means the Ministry responsible for Citizenship from time to time:

"permanent resident permit " means a permanent resident permit under the provisions of the Immigration Act 2004:

"Samoa" means the Independent State of Samoa.

(2) Any reference in this Act to the status or description of a parent of a person at the time of that person's birth shall, in relation to a person born after the death of a parent, be construed as a reference to the status or description of the parent at the time of the parent's death.

2. Administration of Act and delegation by Minister-(1)

The Minister is responsible for the administration of this Act.

(2) The Minister may from time to time, by writing under the Minister's hand, either generally or particularly, delegate to such officer or officers of the Ministry as the Minister thinks fit all or any of the powers and functions exercisable by the Minister under this Act or under any regulations made under this Act, other than the power of delegation conferred by this subsection.

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

(4) Any delegation under this section may be made to a specified officer or to officers of a specified class, or may be made to the holder for the time being of a specified office or class of office.

(5) Any delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power or function by the Minister.

(6) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Minister by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Minister.

4. Act binds Government - This Act binds the Government.

PART 2
ACQUISITION OF CITIZENSHIP

5. Continuance of citizenship originating under previous legislation – Any person having the status of citizen of Samoa originating under the Citizenship Act 1972 or the Citizenship of Western Samoa Ordinance 1959 shall continue to hold that status as fully and effectually as if it had originated under the corresponding provisions of this Act.

6. Citizenship by birth–(1) Subject to subsection (3), any person born in Samoa shall be a citizen of Samoa by birth provided that at the time of the person's birth at least one parent of the person is a Samoan citizen.

(2) Subject to subsection (3) and despite the provisions of any other law, any person born aboard a ship or aircraft from Samoa (irrespective of whether the ship or aircraft is registered or unregistered in Samoa) shall not be regarded as having been born in Samoa.

(3) Where:

- (a) A person is born in Samoa or on a ship or aircraft from Samoa; and
- (b) As a result of subsection (1) or (2) the person is not eligible for Samoan citizenship; and
- (c) The person is stateless (that is without citizenship of any State); and
- (d) The person is unable to obtain citizenship of any other State,

the Minister may grant the person Samoan citizenship by birth.

7. Citizenship by descent–(1) Any person born outside Samoa shall be a citizen of Samoa by descent provided that at the time of the person's birth at least one parent of the person is a Samoan citizen:

- (a) Otherwise than by descent; or
- (b) Who has resided in Samoa for a period of three years or more.

(2) For the purposes of calculating the period of residence in Samoa under subsection (1)(b):

- (a) Such period is not required to be continuous; and
- (b) May be calculated by adding together periods of residence in Samoa by the parent.

(3) Any person seeking citizenship under subsection (1)(b) shall provide such documentation as may be required by the Minister in order to prove the residency of the parent required under subsection (1)(b).

8. Citizenship by permanent residence—(1) Subject to subsection (2), any person, being an alien, may apply to the Minister in a form approved by the Minister to be registered as a citizen of Samoa by permanent residence.

(2) The Minister may, upon receipt of any such application, register as a citizen by permanent residence such person who:

- (a) Has continuously held a valid permanent resident permit to Samoa for five (5) years preceding the application; and
- (b) Is of good health and character; and
- (c) Understands the responsibilities and privileges of being a citizen of Samoa; and
- (d) Intends to continue to reside in Samoa; and
- (e) Has paid the required fee.

9. Citizenship by marriage to a Samoan citizen—(1) Subject to subsection (2), any person, being an alien, may apply to the Minister in a form approved by the Minister to be registered as a citizen of Samoa by marriage to a Samoan citizen.

(2) The Minister may, upon receipt of any such application, register as a citizen of Samoa by marriage to a Samoan citizen a person who is married to a Samoan citizen provided that the person:

- (a) Has continuously been married to and residing with the person's husband or wife, as the case may be, in Samoa or elsewhere for a period of five (5) years preceding the application;

- (b) Is residing in Samoa with the person's husband or wife, as the case may be, and intends to continue to do so;
- (c) Is of good health and character;
- (d) Understands the responsibilities and privileges of being a citizen of Samoa; and
- (e) Has paid the required fee.

10. Provision of written reasons for refusal of citizenship—(1) Where the Minister has refused an application for citizenship under sections 6(3), 8 or 9 the Minister shall cause to be served on the applicant notification of such refusal within 21 days of the Minister's decision.

(2) If a person who has been refused citizenship under sections 6(3), 8 or 9 applies to the Minister in writing within 14 days of the person being notified of such refusal the Minister shall provide the person with reasons in writing for such refusal within 30 days of the application for written reasons being received by the Minister.

11. Review of decision for refusal of citizenship—(1) Any person who has been refused citizenship under sections 6(3), 8 or 9 may apply in a form approved by the Minister and upon payment of the required fee to the Minister for a review of the refusal within 14 days of receipt by the person of the Minister's written reasons for refusal of citizenship.

(2) The Minister shall, upon receiving such application, select a Committee of three (3) independent persons to review the matter.

(3) The Committee shall, in reviewing the matter, give due regard to:

- (a) The grounds for refusal; and
- (b) The process undertaken by the Minister in considering the applicant's application for citizenship; and
- (c) Any documents, submissions or arguments, either written or oral, which the applicant may furnish in relation to the review.

(4) After considering the matter the Committee shall provide the Minister and the applicant with a written report, including recommendations and reasons for such recommendations.

(5) Upon receipt of the Committee's report the Minister shall consider the report and may:

(a) Accept or reject the Committee's recommendations; and

(b) Grant or refuse citizenship to the applicant.

(6) The decision of the Minister under subsection (5) shall be final and not subject to review or challenge in any Court on any grounds, including but not limited to any prerogative writ or judicial review, save that the Minister has breached a provision of the Constitution.

12. Oath of Allegiance – The Minister may require any successful applicant for citizenship to take an oath of allegiance in a form approved by Notice by the Minister.

13. Effect of registration of citizenship—(1) A person registered as a citizen under sections 6(3), 8 or 9, as the case may be, shall be a citizen of Samoa as from the date on which registration takes place.

(2) Any person who obtains citizenship under sections 6(1) or 7 is deemed to be a citizen as from birth.

PART 3 RENUNCIATION OR LOSS OF CITIZENSHIP

14. Renunciation of citizenship—(1) Any citizen of Samoa who is also a citizen or intends to become a citizen of any other state which does not permit dual citizenship may make a declaration in a form approved by the Minister declaring the person's renunciation of their Samoan citizenship.

(2) Subject to subsection (3), where such a declaration is made, the Minister shall cause the declaration to be registered, and upon registration, that person shall cease to be a citizen of Samoa.

(3) Notwithstanding subsection (2), in the case of a person intending to be a citizen of another state, such person shall be deemed to be a citizen of Samoa until their citizenship status in the country in which they intend to become a citizen is proclaimed or registered.

15. Cancellation of citizenship—(1) Subject to subsection (2) and section 18, the Minister may order that a person's citizenship be cancelled where the Minister is satisfied that the person has been or is disloyal or disaffected towards Samoa.

(2) The power of cancellation of citizenship does not apply to those persons who are citizens of Samoa by birth or descent.

16. Deprivation of citizenship in certain cases of residence abroad – Subject to section 18, the Minister may order that a person who obtains citizenship by permanent residence under section 8 or by marriage to a Samoan citizen under section 9 be deprived of citizenship where the Minister is satisfied that:

- (a) Such person has continuously resided overseas for a period of two (2) years; and
- (b) The person is unlikely to reside in Samoa in the future.

17. Deprivation of citizenship in case of fraud – Subject to section 18, the Minister may order that any citizen of Samoa be deprived of that citizenship where the Minister is satisfied that such citizenship was obtained by means of fraud, false representation, concealment of any material fact or mistake.

18. Notice by Minister - Before making an order under sections 15, 16 or 17, as the case may be, the Minister shall cause to be served on that person a notice in Samoan or English

- (a) Stating that the Minister intends to make such an order; and
- (b) Citing the section of this Act under which the Minister proposes to act; and

- (c) Specifying the grounds on which the Minister intends to make such an order; and
- (d) Advising the person of the person's right to have the matter reviewed by the Court in accordance with section 19.

19. Review by Supreme Court-(1) Every person upon whom a notice is served under section 18 may, within 28 days after service of the notice, apply to the Court for a declaration that there are insufficient grounds to justify the making of an order under sections 15, 16, or 17, as the case may be, and the Court may make or refuse to make such a declaration accordingly.

(2) For the purposes of removal of doubt the Court shall not have the jurisdiction and power under sections 19 and 20 to make any other order or decision than is provided explicitly by such sections.

(3) In hearing an application under this section the Court shall provide the applicant and the Minister with an opportunity to be heard on the matter.

(4) Where the Court makes a declaration under subsection (1), the Minister shall not thereafter, without fresh cause, make an order under sections 15, 16 or 17, as the case may be.

20. Rules of Court-(1) Subject to this section, the procedure in respect of an application to the Court under section 19 shall be in accordance with Rules of Court.

(2) When hearing any application under section 19, the Court may receive as evidence any statement, document, information or matter that, in the opinion of the Court, may assist it to deal justly with the application before it, whether or not the same would be otherwise admissible.

(3) Where the Court is satisfied that it is desirable to do so by reason of the confidential nature of any evidence submitted or to be submitted to it in respect of any application under this Act, the Court may, on the application of any party to the proceedings,-

- (a) Take or hear the evidence in private: and/or
 - (b) Make an order prohibiting the publication of any report or account of the whole or any part of any such evidence whether heard or taken in public or private.
- (4) Where the Court makes an order under subsection (3)(b) any person who breaches such order commits an offence and upon conviction is subject to a fine not exceeding 50 penalty units or imprisonment not exceeding six (6) months, or both.

21. Court decision to be final - The determination of the Court on any application made pursuant to section 19 shall be final save for any right of appeal provided in the Constitution.

PART 4 MISCELLANEOUS

22. Certificate of citizenship-(1) The Minister may, upon the written request and payment of the required fee by any person, certify that a person is a citizen of Samoa.

(2) A certificate issued under this section shall be conclusive evidence for all purposes that the person is a citizen of Samoa unless either the citizenship or certificate or both were obtained by means of fraud, false representation, concealment of any material fact or mistake.

23. Service of notices etc-(1) Where under this Act a notice or other document is required or permitted to be served on any person it may be served -

- (a) By delivering it personally to the person; or
- (b) By leaving it at the address in Samoa nominated by the person in their application for citizenship with a person apparently over the age of 16 years; or
- (c) By sending it by pre-paid post addressed to the person at the postal address in Samoa nominated in the person's application for citizenship.

(2) Any notice or other document served on a person in accordance with subsection (1) shall be deemed to have come to the attention of the person three days after service.

24. Evidence – In any proceedings under this Act -

(1) Any document purporting to be a certificate, application, report, declaration, order, or an entry in a register made under this Act shall be admissible as evidence.

(2) Unless the contrary is proved, such document shall be deemed to have been made by or on behalf of the person by or on whose behalf it purports to have been made.

(3) Any document produced to the Court purporting to be certified as a true copy by such person and in such manner as may be approved by the Minister by Notice shall be sufficient evidence of the document in the absence of proof to the contrary.

(4) Any entry in a register made under this Act shall be received as sufficient evidence of the matters stated in the entry in the absence of proof to the contrary.

25. Offences and penalties – Any person who knowingly -

- (a) Makes a false or misleading statement or provides a false or misleading document concerning any matter under this Act; or
- (b) Does any act in contravention of any provision under this Act; or
- (c) Aids or abets any person in contravening any provision under this Act; or
- (d) Conspires with any person to do any act in contravention of any provision under this Act – commits an offence, and shall be liable upon conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding 100 penalty units, or both.

26. Powers – The Government, the Minister and the Court shall have such powers as necessary to exercise any power, function, authority, duty or other act of authority conferred on such person or body or authority under this Act.

27. Jurisdiction of the Courts – Despite any other law and subject only to the jurisdiction conferred on the Court of Appeal and the Supreme Court under Articles 4, 80 and 81 of the Constitution, the Court of Appeal and the Supreme Court shall have only such original, appellate and revisional jurisdiction in relation to and concerning this Act as provided explicitly by this Act.

28. Minister to determine fees and charges—(1) The Minister may by Notice determine fees and charges concerning:

- (a) Any application made under this Act;
- (b) The grant of citizenship under this Act;
- (c) The issue of any document under this Act; and
- (d) The exercise of any power or function under this Act.

(2) Any fee or charge determined by the Minister under subsection (1) shall be non-refundable unless the Minister determines otherwise.

29. Regulations—(1) The Head of State, acting on the advice of Cabinet, may make regulations required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act and without limiting the generality of this power, such regulations may prescribe offences in respect of the contravention of or non-compliance with any regulations made under this Act, and prescribing the amount of any fine that may be imposed in respect of any such offence, being an amount not exceeding 50 penalty units.

30. Transitional – All applications submitted before the second day of September 2003 to the Minister arising out of or under the provisions of the Citizenship Act 1972 shall be determined in accordance with the provisions of the Citizenship Act 1972 as if this Act had not commenced and all other matters shall be dealt with in accordance with the provisions of this Act.

31. Repeal and savings—(1) The Citizenship Act 1972 is repealed.

(2) Save for sections 5, 30 and this section, nothing in this Act applies to or affects anything done under the Citizenship Act 1972.

(3) Every document so far as it is subsisting or in force at the time of the repeal of the Citizenship Act 1972 shall continue and have effect under the corresponding provisions of this Act.

(4) The Citizenship Regulations 1978 made under the Citizenship Act 1972 shall continue in force as if made under this Act, until such time as they are amended or repealed.

**The Citizenship Act 2004 is administered
in the Ministry of the Prime Minister**

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