

Restoring Citizenship Removed By Citizenship (Western Samoa) Act 1982 Bill

Member's Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Restoring Citizenship Removed By Citizenship (Western Samoa) Act 1982 Bill and recommends unanimously that it be passed. We recommend all amendments unanimously except for clauses 6, 10 and 14.

Introduction

This is a Member's bill in the name of Teanau Tuiono. The bill seeks to provide the right to receive New Zealand citizenship to certain persons whose citizenship was removed by the Citizenship (Western Samoa) Act 1982 (the 1982 Act).

As introduced, the bill would provide the right to New Zealand citizenship to people who were born in Samoa on or after 13 May 1924 and before 1 January 1949, and whose citizenship was removed by the 1982 Act. The bill as introduced would repeal the 1982 Act to achieve this.

We are recommending, by majority, changes to make it clear that the people eligible to apply for and receive citizenship are people described in section 4(1)(a) to (d) of the 1982 Act. Broadly, that is:

- people born in Western Samoa on or after 13 May 1924 and before 1 January 1949; and
- descendants of those people who were born before 1 January 1949; and
- any female who, on 1 January 1949, became a New Zealand citizen by virtue of being married to a person in one of those groups.

Under the bill, this group would be able to receive New Zealand citizenship as of right upon applying, rather than having to go through standard residency and citizenship application pathways.

For the avoidance of doubt, the committee is clear that any benefits of citizenship only apply from the date citizenship is granted to the individual and do not apply retrospectively. We are also clear that benefits of citizenship are limited only to those individuals who meet the qualifying cohort and are subsequently granted citizenship. No people born on or after 1 January 1949 would be eligible to receive citizenship as of right under the bill. We also recommend that the bill amend, rather than repeal, the 1982 Act.

Appreciation

We would like to thank the individuals, organisations, aiga (families), and communities who shared their experiences and views on the bill. Approximately 24,581 individuals and groups submitted on the bill, including a large number of submissions sent from Samoa. One submission included the views of 5,951 other people. We acknowledge that many shared deeply felt, personal, and generational stories of their experiences with the 1982 Act and the history between New Zealand and Samoa.

Structure of our report

Bill commentaries usually only cover a select committee's proposed changes to a bill. However, given the high number of submissions, community engagement with the bill, and its complex legal and historical context, we consider it important to include a more complete picture of our consideration of the bill.

Our commentary is structured as follows:

Historical and legal context—This section provides a brief summary of the relationship between New Zealand and Samoa, leading up to the enactment of the Citizenship (Western Samoa) Act 1982 and the introduction of this bill.

Legislative scrutiny—This section notes that scrutiny of this bill against legislative principles has been done by the committee.

Proposed amendments—This section covers major changes to the bill proposed by the committee and the reasoning behind them. We propose to:

- amend, rather than repeal, the Citizenship (Western Samoa) Act 1982. This includes changing the name of the bill to the Citizenship (Western Samoa) (Restoration) Amendment Bill
- set out who is eligible to apply for and receive citizenship under the bill, clarifying that their descendants will in most cases not be eligible for citizenship under the bill or citizenship by descent
- set an application fee of \$177.78 (\$204.40 including GST) for citizenship applications under the bill.

Other matters—In our final section, we detail matters raised by submitters that we discussed but that did not result in proposed amendments to the bill. We also note the position of the Samoan Government on the bill and address certain questions around the bill’s implementation if it were to be passed.

Historical and legal context

Our consideration of this bill has necessarily included consideration of the complex historical and legal context that underpins the bill and the relationship and immigration settings between New Zealand and Samoa. Although this bill does not provide redress for these events, we consider them important to highlight in this report.

New Zealand’s colonial administration of Samoa

New Zealand became the administrator of Samoa (then Western Samoa) at the beginning of World War I. In 1914, it established a military occupation on behalf of Great Britain to take possession of Samoa from the German Empire. In 1920, New Zealand was formally acknowledged as administrator of Samoa by the League of Nations; this status was upheld by the United Nations after World War II. Samoan leaders were not consulted on this decision.

New Zealand controlled Samoa from 1914 to 1962, an administration marked by tragedy and mismanagement. In November 1918, passengers on a New Zealand passenger ship carrying pneumonic influenza (or “Spanish flu”) were allowed to disembark in Apia without quarantine measures. The resulting epidemic caused the deaths of an estimated 8,500 Samoans, 22 percent of the population at the time.

Continuing dissatisfaction with New Zealand’s colonial administration, which often took an autocratic approach to governance and lacked consideration of Samoan culture, led to the rise of the Mau a Tumua ma Pule resistance movement (the Mau). Through the late 1920s, the Mau organised a campaign of non-violent resistance to the New Zealand administration. On 28 December 1929, in the events known as Black Saturday, New Zealand police fired into a crowd of Mau supporters after the Mau Secretary resisted arrest. Eleven Samoans, including Tupua Tamasese Lealofi III, and one New Zealand policeman were unfortunately killed. In 2002, then-Prime Minister Helen Clark apologised to the Samoan people on behalf of the Government for the injustices perpetrated by the New Zealand administration.

Samoa independence, the Treaty of Friendship, and the Dawn Raids

Samoa became the first South Pacific nation to achieve independence in 1962. As those living in Samoa were now Samoan citizens, New Zealand removed their “New Zealand protected person” status. The Treaty of Friendship between the Government of New Zealand and the Government of Western Samoa was also signed in that year. The Treaty pledges that relations between the two countries would be governed by the spirit of close friendship, and that their governments would work together to promote the welfare of Samoans.

However, the signing of the Treaty did not mark the end of tensions between New Zealand and Samoa. Rising racial tensions in New Zealand and fears of Pacific overstayers gave rise to the “Dawn Raids” of 1974–76. During this time, Samoans, alongside other Pacific peoples, Māori, and other ethnic communities in New Zealand faced random checks and targeted raids by police and immigration officials. In her 2021 apology to Pacific communities affected by the raids, then-Prime Minister Jacinda Ardern acknowledged that New Zealand had implemented its immigration laws in a discriminatory way.

Citizenship status of Samoans and Lesa v Attorney-General

The citizenship status of Samoans has historically been complex. Since New Zealand’s administration, multiple pieces of citizenship legislation have built on each other, replaced each other, and been reinterpreted in different ways. Before the concept of New Zealand citizenship was established in 1948, people born in New Zealand were considered British subjects. However, although Samoa was formally administered by New Zealand from 1920, Samoans’ status as British subjects and whether they then became New Zealand citizens in 1948 was uncertain. This formed the basis of Falema’i Lesa’s case in 1982.

Falema’i Lesa, a Samoan citizen charged with overstaying her visa in New Zealand, appealed her conviction to the Judicial Committee of the Privy Council in 1982. She contended that, according to New Zealand law, she was a New Zealand citizen and could therefore not be an overstayer. The Privy Council, then the highest court of appeal in New Zealand, considered that she was a New Zealand citizen. It also found that all people born in Samoa between 13 May 1924 and 31 December 1948 were New Zealand citizens. The Privy Council’s decision was based on earlier legislation, which treated this group of people as “natural-born British subjects”. It concluded that this group became New Zealand citizens when New Zealand citizenship was established in 1948.¹

The Citizenship (Western Samoa) Act 1982

In response to the Privy Council ruling, New Zealand passed the Citizenship (Western Samoa) Act 1982. The 1982 Act removed the New Zealand citizenship of Samoans who were not in the country the day before the Act came into force, and deemed that they had never held New Zealand citizenship in the first place. However, the Act also responded to a new Protocol to the Treaty of Friendship by establishing a new pathway to citizenship for Samoans who arrived in New Zealand after that date, and are entitled to remain indefinitely in New Zealand. These people are granted New Zealand citizenship immediately after application.

¹ More information about the history of Samoans’ citizenship status can be found in the departmental report for this bill, under “The legal background of New Zealand citizenship and Western Samoa is complex”. The departmental report, along with other advice and submissions on the bill, is published on the Parliament website.

The new Protocol was added to the Treaty of Friendship between New Zealand and Samoa in 1982. It stated that Samoan citizens would receive special treatment when applying for New Zealand citizenship. This included the provision that Samoans with the right to remain in New Zealand indefinitely could apply for, and immediately be granted, citizenship. The Treaty was also updated to acknowledge that the two countries would consult each other on matters related to citizenship and immigration.

Petition to repeal the 1982 Act

A petition to repeal the 1982 Act with over 90,000 signatures was presented to Parliament in 2003. The petition argued that the 1982 Act was discriminatory, breached international human rights principles, and failed to honour New Zealand's special relationship with Samoa. The New Zealand Government chose not to act on the petition's request. It agreed with the findings of the Government Administration Committee, that:

- the 1982 Act was consistent with relevant international law principles, including international human rights law
- the effect of the 1982 Act was to place Samoan residents, as far as citizenship of New Zealand was concerned, in the same position as the inhabitants of other comparable League of Nations mandated territories that had become independent, and of other newly independent States
- a repeal of the 1982 Act would be inappropriate from an international law perspective.

The Government's response to the select committee's report on the petition in 2004 acknowledged the strong feelings in the Samoan community about access to New Zealand. It agreed, in talks with the Samoan Government, on the importance of strengthening the relationship between New Zealand and Samoa.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Repealing the 1982 Act

The bill as introduced would repeal the Citizenship (Western Samoa) Act 1982. Most of us think it is not necessary to repeal the Act, and see some important reasons to retain several of its provisions. Therefore, we recommend by majority that the bill amend, rather than repeal, the 1982 Act. We note that Green Party and Labour Party members of the committee voted against this.

The intent of this bill is to provide for Samoans who were directly affected by the 1982 Act to apply for, and receive, New Zealand citizenship by right. We do not consider that its purpose is to retrospectively undo the effects of the principal Act. If this bill is passed, people eligible would receive citizenship after the Minister grants it—they would not be considered New Zealand citizens before that point. We have reached the conclusion that amending the 1982 Act would be a more appropriate and clearer way of achieving this outcome. Repealing the 1982 Act would remove the pathway to New Zealand citizenship agreed in the 1982 Protocol to the Treaty of Friendship between New Zealand and Samoa.

We recommend amending clause 1 to change the title of the bill accordingly, to the Citizenship (Western Samoa) (Restoration) Amendment Bill.

Clause 3 in the bill as introduced sets out the purpose of the bill. This includes giving the right to citizenship to eligible people under the bill, and repealing the 1982 Act. We recommend that this clause be deleted, as the bill would now not repeal the 1982 Act.

Clause 4 states that, when enacted, the bill binds the Crown. We also recommend that clause 4 be deleted, as it is unnecessary; each of the Acts that the bill would amend already bind the Crown.

Compliance with the Treaty of Friendship

Any repeal of the 1982 Act would have significant implications for New Zealand's relationship with Samoa, including the Treaty of Friendship between the two countries.

The Treaty of Friendship commits to provisions in section 7 of the 1982 Act, allowing easier pathways to citizenship for Samoans with the right to remain indefinitely in New Zealand. If the Act were repealed, it would remove these provisions. While those Samoans eligible for citizenship under the bill would benefit from the repeal, others would be disadvantaged by the removal of these pathways to citizenship.

Further, the Treaty of Friendship requires New Zealand and Samoa to consult on matters relating to the operation of their citizenship and immigration laws, at the other's request. Repealing the 1982 Act without renegotiating the Treaty of Friendship with Samoa would be a breach of the Treaty. We have been advised by the Ministry of Foreign Affairs and Trade that the bill as we have recommended it would be consistent with the Treaty and would allow for the preservation of existing citizenship pathways for Samoans. Consultation on the bill has occurred between the Samoan Government and the Minister of Foreign Affairs.²

² For more information, see the "Position of the Samoan Government on the bill" section of this report.

Eligibility for citizenship and citizenship by descent

We recommend by majority that the bill should provide the right to apply and receive New Zealand citizenship to people covered by section 4(1)(a) through (d) of the 1982 Act:

- (a) every person—
 - (i) who was born in Western Samoa on or after 13 May 1924 and before 1 January 1949; and
 - (ii) who, immediately before 1 January 1949, was a British subject by virtue only of having been born in that country; and
- (b) every female who, on 1 January 1949, became a New Zealand citizen by virtue only of having been married to any person to whom paragraph (a) applies; and
- (c) every person—
 - (i) who is the descendant of a person who was born in Western Samoa on or after 13 May 1924 and before 1 January 1949; and
 - (ii) who was born before 1 January 1949; and
 - (iii) who was a British subject immediately before 1 January 1949; and
- (d) every female who, on 1 January 1949, became a New Zealand citizen by virtue only of having been married to any person to whom paragraph (c) applies

We also recommend, by majority, that the bill make it clear that eligible people who receive New Zealand citizenship should not be able to automatically pass down citizenship to any future descendants born or adopted outside New Zealand. The bill should clarify that a parent's eligibility for citizenship under this bill does not provide eligibility for any children they already have who were born or adopted outside New Zealand.

Our recommendation would insert new section 7A into the 1982 Act to create a new category of citizenship by grant, where citizens are unable to pass on their citizenship to descendants born or adopted outside New Zealand. We note that, after a parent is granted citizenship under the bill, any future children born or adopted in New Zealand would be New Zealand citizens by birth under Section 6 of the Citizenship Act 1977. However, we understand that there are likely to be few instances of this happening due to the age-group of those eligible and the New Zealand adoption system.

Section 6 of the 1982 Act establishes that every person subject to that Act has never been a citizen of New Zealand unless they have been granted citizenship under section 7 of the 1982 Act or sections 8 to 10 of the Citizenship Act 1977. Our proposed clause 8 of the bill would amend this section to allow the granting of citizenship under new section 7A (explained below). Clause 12 of the bill would amend the Citizenship Act to clarify that descendants of those granted citizenship under the bill are not automatically eligible for New Zealand citizenship by descent.

New section 7A would be inserted by clause 10 into the 1982 Act. It sets out who may apply for citizenship (subsection (1)), the special nature of citizenship accorded

by the bill (subsections (2) and (3)), and how citizenship would be granted (subsections (4) and (5)).

New section 7A(1) specifies that any person to whom one or more paragraphs from section 4(1)(a)–(d) of the 1982 Act apply could apply for citizenship under that new section.

New section 7A(4) would require the Minister of Internal Affairs to grant New Zealand citizenship to people who have applied in the way specified by this bill and who are able to satisfy the Minister of their eligibility.

New section 7A(5) would apply certain sections of the Citizenship Act and any regulations made under that Act to citizenship applications under this bill. These sections set out the general application process and certain other matters. In particular, by applying section 12 of the Citizenship Act 1977, the bill clarifies that people who receive New Zealand citizenship under the new section 7A will be New Zealand citizens as from the following specified date:

- the date on which they take an oath of allegiance or make an affirmation to the same effect (if they are required to take or make an oath or affirmation of allegiance); or
- the date specified in their certificate of citizenship (if their grant of New Zealand citizenship is not made conditional upon them taking or making an oath or affirmation of allegiance).

This follows the usual process for citizenship by grant, and reflects our intent that citizenship granted under the bill is not retrospective, but instead only applies after the Minister grants citizenship.

Views of committee members on eligibility under the bill

There was some difference of opinion among members of the committee about who the bill should apply to.

We agreed unanimously to National's proposal that the bill should apply to people covered by paragraphs (a) and (b) of section 4(1) of the 1982 Act, that is, people born in Western Samoa between 13 May 1924 and 31 December 1948 and any female who, on 1 January 1949, became a New Zealand citizen by virtue of being married to someone born in Western Samoa during that timeframe.

In addition to paragraphs (a) and (b), Labour Party, Green Party, and NZ First members of the committee agreed to include people covered by paragraphs (c) and (d) of section 4(1) of the 1982 Act. This is the version of the bill we recommend by majority.

Green Party and Labour Party members further proposed that, in addition to people covered by paragraphs (a) through (d), the bill should provide eligibility for any of their descendants born prior to 1 January 1962. This was not agreed to by the committee.

Examples of how the bill would apply

We consider it important to clearly set out who would be eligible for New Zealand citizenship under the bill, and who would not be. For this reason, we offer the following examples of how the bill would affect certain people:

1. **A person born in Samoa on or after 13 May 1924 and before 1 January 1949:** would be able to apply for and receive citizenship under this bill.
2. **A female who, before 1949, married a person to whom example 1 (above) applies:** would be able to apply for and receive citizenship under this bill.
3. **A descendant of a person born in Samoa on or after 13 May 1924 and before 1 January 1949, where the descendant was born before 1 January 1949 and was a British subject immediately before 1 January 1949:** would be able to apply for and receive citizenship under this bill.
4. **A female who, before 1 January 1949, married a person to whom example 3 (above) applies:** would be able to apply for and receive citizenship under this bill.
5. **Any descendant born in Samoa on or after 1 January 1949:** would not be eligible for citizenship under this bill. They would also not be eligible to claim citizenship by descent, unless their parent later receives a different type of New Zealand citizenship (detailed under the next section, “Pathways to different types of citizenship”).
6. **A child of a person who has received New Zealand citizenship under the bill if it becomes law, who is born or adopted in New Zealand after their parent receives citizenship:** would automatically be considered a New Zealand citizen by birth.
7. **A child of a person who has received New Zealand citizenship under the bill if it becomes law, who is born or adopted outside New Zealand after their parent receives citizenship:** would not be eligible for citizenship under the bill or by descent.

Pathways to different types of citizenship

New section 7A(2) would make it clear that the citizenship granted under this section does not confer citizenship by descent for a child born or adopted outside New Zealand. However, new section 7A(3) and clause 9 (which inserts new section 7(3)) provides for a person granted citizenship under this section to later apply for different types of New Zealand citizenship, which in some cases would allow their citizenship to be passed on. It allows for later application of citizenship under either of the following:

- section 7(1)(b)(i) of the 1982 Act, which applies to Samoans who were in New Zealand on the day before the commencement of the Act
- sections 8, 9, or 10 of the Citizenship Act 1977, which provide standard citizenship pathways for those seeking New Zealand citizenship, regardless of whether they are a Samoan citizen or a citizen of another country.

New section 7A(3) also specifies that they may not apply for citizenship under section 7(1)(b)(ii) of the 1982 Act, which grants the right to citizenship to Samoans who have entered New Zealand lawfully and are entitled to stay in New Zealand indefinitely.

Concerns about citizenship rights

We heard many requests from submitters that the bill should confer citizenship rights to the descendants of those whose citizenship was removed by the 1982 Act. Some submitters maintain that the bill should extend citizenship to all Samoans. We recognise the concerns of these submitters and acknowledge that the 1982 Act has had a significant effect on the descendants of those affected and Samoa as a whole.

However, we consider that either of these options would go beyond the intent of the bill: to provide citizenship eligibility for the group of people born in Western Samoa between 13 May 1924 and 1 January 1949 whose citizenship was removed by the 1982 Act. The updated policy intent for the bill provided to us by the Member in charge specifies that it “would not create new rights to citizenship for descendants of those whose citizenship rights were removed.” Additionally, we understand that granting citizenship to descendants would have significant implications for New Zealand’s immigration systems, its relationships in the South Pacific, and its domestic health and welfare infrastructure.

We are therefore not proposing any amendment to the bill in response to these concerns.

Complications with including descendants

Rough estimates indicate that, if the bill provided citizenship to descendants, the number of Samoan citizens potentially eligible could vary widely, depending on the approach taken. The bill as we recommend it would apply to persons born in Western Samoa between 13 May 1924 and 31 December 1948 who had citizenship removed under the 1982 Act. This group is estimated to be about 3,480 people, ranging from nearly 76 to 100 years old.³

If the bill provided citizenship to the immediate children (now likely to be 27–75 years old) of this original group, it is estimated that the number of eligible people would increase by 15,600. Expanding eligibility to people born in Samoa before 1962 or 1982 would extend the right to New Zealand citizenship to an estimated 19,434 or 49,248 Samoans, respectively.

During our hearings on the bill, we heard that many submitters expected the bill to provide citizenship for all descendants and that this would be their preferred outcome. If all descendants of those born in Western Samoa between 1924 and 1948 became

³ This estimate is based on 2021 Samoan Census data. It does not capture people in this group who do not live in Samoa. We also have no indication of how many in this group already have New Zealand citizenship or have since passed away.

eligible for New Zealand citizenship, it has been estimated that this could apply to more than 100,000 people.⁴ That number could have a significant effect on both New Zealand and Samoa. The committee agreed by majority to adhere to the intent as provided by the Member in charge, that the bill “would not create new rights to citizenship for descendants of those whose citizenship rights were removed”. Therefore, the committee recommends that the bill does not grant eligibility for citizenship to all descendants.

According to the 2021 census, the total population of Samoa is about 205,557. New Zealand’s current quota of Samoans able to apply for New Zealand residence is 1,100⁵ each year. A bill providing citizenship so widely could have significant implications for both Samoa and New Zealand, including with regards to population mobility. Additionally, the Department of Internal Affairs notes that extending eligibility beyond the original cohort of 3,480 would challenge its current processing capacity. This could result in longer processing times.⁶

Application fees

We recommend, by majority, that the bill set a fee of \$177.78 (\$204.40 including GST) for citizenship applications under this bill. To achieve this, clauses 13–16 of the bill would amend the Citizenship Regulations 2002.

We acknowledge the submitters who requested that there be no application fee, so as to reduce barriers to application. Labour Party and Green Party members of the committee were opposed to having an application fee, whereas National Party, and NZ First members were in favour of setting a fee that reflects the cost of processing these applications. We consider it important to keep applications accessible.

The Department of Internal Affairs recovers its costs for processing citizenship applications from the application fees it charges. In the absence of a fee or other source of funding, the cost of these applications would have to be paid for by other customers of citizenship services. A fee would ensure the financial sustainability of the application process.

We understand that application fees also encourage potential applicants to consider carefully whether they are eligible, resulting in fewer ineligible applicants. This will help the department to spend its time and resources making sure that eligible applications under this bill are processed promptly.

Not specifying a fee in the bill would leave Cabinet and the Minister of Internal Affairs to set fees through amending the Citizenship Regulations. The process to

⁴ These numbers are provided on page 5 of the Initial Briefing for the bill.

⁵ This quota has been increased to 1,650 per year for the 2022–2025 ballots to account for the unfilled places caused by the COVID-19 border closures.

⁶ Wait times are 2–3 months for applications on the current Samoan pathway to citizenship as of September 2024.

amend these regulations would likely not finish before the potential passing of the bill, resulting in an initial lack of fees. We consider it important to avoid the uncertainty this could cause.

We propose a fee of \$177.78 (\$204.40 including GST). This would be consistent with fees for citizenship applications involving similar processes to establish entitlement.⁷ It compares to a fee of \$470.20 (including GST) for a grant for citizenship for people over 16 years old under section 7(1) of the 1982 Act.

Clause 16 of the bill would amend section 18A of the Citizenship Regulations 2002. It sets out that applicants would receive a partial refund of \$136.30 (about two-thirds of the GST-inclusive fee) if they withdrew their application before initial processing was completed.⁸ This is proportionate to refunds provided for withdrawn citizenship-by-grant applications, which refund about two-thirds of the original fee.

Other matters

The following are other topics raised by submitters that did not lead to amendments, in addition to the matters discussed above.

General themes raised by submitters

An overwhelming majority of submitters were in support of the bill in some form. Submitters stated that the bill could:

- provide some reparation for historical injustices perpetrated by New Zealand
- contribute to fairness, human rights, and the spirit of the Treaty of Friendship between New Zealand and Samoa
- benefit eligible Samoans who would be able to travel freely or receive the benefits of moving to New Zealand
- acknowledge the contributions made by Samoans to New Zealand
- improve New Zealand's relationship with Samoa and the wider Pacific region.

Many submitters argued that the bill should include the descendants of those affected by the 1982 Act, or even the entirety of Samoa. We have discussed questions around the scope of eligibility in the "Eligibility for citizenship and citizenship by descent" section above.

⁷ A certificate of citizenship to confirm unregistered citizenship under section 12(1)(b) of the Citizenship Act is \$204.40 including GST.

⁸ Initial processing is defined in the Citizenship Regulations 2002, regulation 18A(3). During initial processing, the department would assess the application. If the applicant does not meet the requirements for eligibility, the department would notify the applicant and give them the option of withdrawing their application or having it considered by the Minister of Internal Affairs. If the applicant chose to progress their application to the Minister, they would no longer be eligible for the partial refund of the fee and initial processing would be considered completed.

Submitters also raised concerns about the accessibility of the application process. Some suggested that there should be no application required, with citizenship being granted automatically to eligible people. We consider that an application process is necessary to allow the Department of Internal Affairs to verify the identity and eligibility of applicants. The issue of application fees is discussed in more detail in the “Application fees” section of this report.

Requests for changes to visa settings

Some submitters raised the possibility of the bill granting Samoans visa-free entry into New Zealand. They described negative experiences with the visa application process, noting that it was complex and often faced delays. Currently no Pacific countries are granted visa-free status by New Zealand and conditions for Samoan citizens to apply for resident-class visas are the same as for citizens from most other foreign countries. However, we understand that Samoan applicants often face significant barriers to application, including language barriers, lack of access to a computer, and financial barriers. Although there is an Immigration New Zealand office in Apia, it is open for in-person appointments for only one hour per day.

We consider that any change to visa settings is outside the scope of this bill. However, we have heard the concerns of submitters and encourage the Government to review visa arrangements between New Zealand and Samoa.

Comparisons with New Zealand Realm countries

Comparisons between Samoa and the Cook Islands, Tokelau, and Niue were raised by submitters. People born in the Cook Islands, Tokelau, and Niue are conferred New Zealand citizenship automatically. However, these countries differ significantly from Samoa as they have chosen since the early 1900s to be part of the Realm of New Zealand rather than establish full independence.

Position of the Samoan Government on the bill

The Prime Minister and the Minister of Foreign Affairs have each consulted with the Samoan Government on the bill. In the Minister of Foreign Affairs’ letter to the committee, he indicated that the Samoan Government does not have a formal position on the bill. The Prime Minister of Samoa has discussed in Samoan news media that she considers the bill a matter for New Zealand to decide internally.⁹

Implementation of the bill

The bill should be clearly communicated to affected communities

We consider that, if the bill is passed, there should be clear communication to affected communities in English and Samoan from the agencies involved with the legislation.

⁹ “We did not make submissions: PM” Samoa Observer, 5 July 2024 <https://www.samoaoobserver.ws/category/samoa/109970>

This communication should make it clear what the legislation would do and who would be eligible for citizenship under it. In our view, it is important that this information is available in both languages to aid understanding.

View of the Department of Internal Affairs and Immigration New Zealand on the bill's feasibility

As the bill would not confer eligibility to descendants of the original cohort affected by the 1982 Act, the Department of Internal Affairs maintains that processing the applications of the estimated 3,480 people eligible would be within its processing capacity. We understand that verifying the identities of applicants may not be straightforward due to a number of factors. These include decentralisation of record keeping systems in Samoa and issues with the preservation of historical records due to environmental conditions.

In addition, the department considers that providing a partial refund of the fee might lead to a larger number of ineligible applicants, which might not be manageable for the department. It would need to investigate all applications, and offer a partial refund to those who were not eligible under the bill. We acknowledge DIA's concerns about providing a partial refund. However, we have decided that providing a refund is worthwhile and consistent with other application processes.

Immigration New Zealand considers that it would be feasible to implement the bill as recommended by the committee.

Effect of the bill on NZ Super

To receive New Zealand Superannuation, a person must meet certain age and citizenship requirements, and have lived in New Zealand for a certain period of time. People born before 30 June 1959 must have lived in New Zealand for a total of 10 years after age 20 to qualify for NZ Super. This would apply to applicants eligible for citizenship under the bill (people born in Samoa on or after 13 May 1924 and before 1 January 1949).

People who do not meet those criteria would not qualify for New Zealand Superannuation. We currently have no indication of how many people eligible for citizenship under the bill would meet these requirements.

A person granted New Zealand citizenship under the bill who qualified for New Zealand Superannuation could apply to the Ministry of Social Development to receive their payments in Samoa if they intended to reside there for more than 52 weeks. People receiving the Samoan pension have their payments halted if they leave Samoa for more than 30 days.

Appendix

Committee process

The Restoring Citizenship Removed By Citizenship (Western Samoa) Act 1982 Bill was referred to the committee on 10 April 2024. We invited the Member in charge of the bill, Teanau Tuiono, to provide an initial briefing on the bill.

We called for submissions on the bill with a closing date of 31 May 2024. We received and considered submissions from approximately 24,581 interested groups and individuals. We heard oral evidence from 142 submitters at hearings in Auckland and Wellington.

Advice on the bill was provided by the Department of Internal Affairs, the Ministry of Business, Innovation and Employment, the Ministry of Foreign Affairs and Trade, and the Ministry for Pacific Peoples. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Rachel Boyack (Chairperson)

Cameron Brewer

Tim Costley

Andy Foster

Tom Rutherford

Lemauga Lydia Sosene

Celia Wade-Brown

Teanau Tuiono replaced Celia Wade-Brown for our consideration of the bill. Miles Anderson, Hon Marama Davidson, Ryan Hamilton, Francisco Hernandez, Hon Jo Luxton, Jenny Marcroft, James Meager, Hon Priyanca Radhakrishnan, Hon Jenny Salesa, Hon Carmel Sepuloni, Chlöe Swarbrick, Tanya Unkovich, Hon Dr Ayesha Verrall, and Dr Lawrence Xu-Nan also participated in consideration of this bill.

Related resources

The documents we received as advice and evidence are available on the Parliament website.

**Restoring Citizenship Removed By Citizenship
(Western Samoa) Act 1982 Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

text inserted unanimously

~~text deleted by a majority~~

~~text deleted unanimously~~

Teanau Tuiono

Restoring Citizenship Removed By Citizenship (Western Samoa) Act 1982 Bill

Member's Bill

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Part 1

Amendments to Citizenship (Western Samoa) Act 1982

<u>7</u> Principal Act	<u>3</u>
<u>8</u> <u>Section 6 amended (Persons to whom this Act applies not New Zealand citizens)</u>	<u>3</u>
<u>9</u> <u>Section 7 amended (Grant of citizenship as of right in certain cases)</u>	<u>3</u>
<u>10</u> <u>New section 7A inserted (Grant of citizenship of special nature as of right in certain other cases)</u>	<u>3</u>
<u>7A</u> <u>Grant of citizenship of special nature as of right in certain other cases</u>	<u>3</u>

Part 2

Amendments to other legislation

Subpart 1—Amendment to Citizenship Act 1977

<u>11</u> Principal Act	<u>4</u>
<u>12</u> Section 7 amended (Citizenship by descent)	<u>4</u>

**Restoring Citizenship Removed By Citizenship
(Western Samoa) Act 1982 Bill**

<u>Subpart 2—Amendments to Citizenship Regulations 2002</u>		
<u>13</u>	<u>Principal regulations</u>	<u>5</u>
<u>14</u>	<u>Regulation 4 amended (Application for grant of citizenship)</u>	<u>5</u>
<u>15</u>	<u>New regulation 17A inserted (Fee for application under section 7A of Citizenship (Western Samoa) Act 1982)</u>	<u>5</u>
<u>17A</u>	<u>Fee for application under section 7A of Citizenship (Western Samoa) Act 1982</u>	<u>5</u>
<u>16</u>	<u>Regulation 18A amended (Refund for withdrawal of application for grant of citizenship in certain cases)</u>	<u>5</u>
<u>Subpart 3—Amendments to Immigration Act 2009</u>		
<u>17</u>	<u>Principal Act</u>	<u>5</u>
<u>18</u>	<u>Section 174 amended (Effect of suspension)</u>	<u>5</u>
<u>19</u>	<u>Section 213 amended (Effect of suspension)</u>	<u>6</u>

The Parliament of New Zealand enacts as follows:

- 1 Title** 5
- This Act is the ~~Restoring Citizenship Removed By Citizenship (Western Samoa) Act 1982 Act~~ Citizenship (Western Samoa) (Restoration) Amendment Act 2023.
- 2 Commencement**
- This Act comes into force on the day after the ~~date on which it receives the~~ Royal assent.
- 3 Purpose** 10
- The ~~purposes of this Act are—~~
- (a) ~~to enable people whose New Zealand citizenship was removed by the Citizenship (Western Samoa) Act 1982 to receive, on application, New Zealand citizenship as of right; and~~
- (b) ~~to repeal the Citizenship (Western Samoa) Act 1982.~~
- 4 Act binds the Crown** 15
- ~~This Act binds the Crown.~~
- 5 Grant of citizenship as of right to specified persons**
- (1) This section applies to a person (a **specified person**) who,—
- (a) ~~immediately before the commencement of the Citizenship (Western Samoa) Act 1982, was a New Zealand citizen; and~~ 20
- (b) ~~under section 6 of the Citizenship (Western Samoa) Act 1982, was deemed never to have been a New Zealand citizen; and~~

- (e) ~~has not, since the commencement of the Citizenship (Western Samoa) Act 1982, obtained New Zealand citizenship.~~
- (2) ~~The Minister of Internal Affairs must authorise the grant of New Zealand citizenship to a specified person who applies for New Zealand citizenship under this Act.~~ 5
- (3) ~~The Citizenship Act 1977, and any regulations made under that Act, apply with any necessary modifications to an application made under **subsection (2)** as if it were an application under section 10 of that Act.~~
- (4) ~~Despite the repeal of the Citizenship (Western Samoa) Act 1982 by **section 6**, the provisions of that Act continue to apply for the purpose of determining whether **subsection (1)(b)** applies to a person.~~ 10
- 6 ~~Repeal of Citizenship (Western Samoa) Act 1982~~**
~~The Citizenship (Western Samoa) Act 1982 (1982 No 11) is repealed.~~

Part 1

Amendments to Citizenship (Western Samoa) Act 1982 15

7 Principal Act

This Part amends the Citizenship (Western Samoa) Act 1982.

8 Section 6 amended (Persons to whom this Act applies not New Zealand citizens)

In section 6, after “under section 7”, insert “or **7A**”. 20

9 Section 7 amended (Grant of citizenship as of right in certain cases)

After section 7(2), insert:

- (3) A person granted New Zealand citizenship under **section 7A**—
- (a) may later apply for and be granted citizenship under subsection (1)(b)(i);
but 25
- (b) may not later apply for or be granted citizenship under subsection (1)(b)(ii).

10 New section 7A inserted (Grant of citizenship of special nature as of right in certain other cases)

After section 7, insert: 30

7A Grant of citizenship of special nature as of right in certain other cases

Who may apply for citizenship under this section

- (1) A person to whom any 1 or more of paragraphs (a) to (d) of section 4(1) apply may apply in the prescribed manner to the Minister of Internal Affairs for New Zealand citizenship under this section. 35

- Special nature of citizenship under this section*
- (2) A mother's or father's New Zealand citizenship granted under this section is not a basis for citizenship by descent for a child born outside New Zealand (see **section 7(1)(a)(ii)** of the Citizenship Act 1977).
- (3) A person granted New Zealand citizenship under this section— 5
- (a) may later apply for and be granted New Zealand citizenship under—
- (i) section 7(1)(b)(i) of this Act (see **section 7(3)(a)** of this Act); or
- (ii) section 8, 9, or 10 of the Citizenship Act 1977; but
- (b) may not later apply for or be granted New Zealand citizenship under section 7(1)(b)(ii) of this Act (see **section 7(3)(b)** of this Act). 10
- Minister's duty in response to application*
- (4) The Minister must grant New Zealand citizenship under this section to a person if the person has—
- (a) applied in the prescribed manner to the Minister under this section; and
- (b) proved to the Minister's satisfaction that the person is a person to whom any 1 or more of paragraphs (a) to (d) of section 4(1) apply. 15
- Application is subject to Citizenship Act 1977 sections and regulations*
- (5) An application for citizenship under this section is subject to the following sections of the Citizenship Act 1977 and to any regulations made under that Act (which apply, with all necessary modifications, to the application under this section as if it were an application under section 10 of that Act): 20
- (a) section 4A (delegation of powers by Secretary):
- (b) section 11 (Minister may require oath of affirmation of allegiance to be taken):
- (c) section 12 (certificate of New Zealand citizenship): 25
- (d) section 24 (general provisions as to certificates and other documents):
- (e) section 27 (offences and penalties):
- (f) section 28 (regulations).

Part 2

Amendments to other legislation 30

Subpart 1—Amendment to Citizenship Act 1977

11 Principal Act

This subpart amends the Citizenship Act 1977.

12 Section 7 amended (Citizenship by descent)

Replace section 7(1)(a) with:

35

- (a) his or her mother or father was a New Zealand citizen otherwise than by—
- (i) descent; or
 - (ii) grant under **section 7A** of the Citizenship (Western Samoa) Act 1982; or

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Subpart 2—Amendments to Citizenship Regulations 2002

13 Principal regulations

This subpart amends the Citizenship Regulations 2002.

14 Regulation 4 amended (Application for grant of citizenship)

In regulation 4, insert as subclause (2):

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- (2) In subclause (1), a reference to an application under section 10 of the Act includes a reference to an application under section 7 or **7A** of the Citizenship (Western Samoa) 1982 Act (*see* sections 7(2) and **7A(5)** of that Act).

15 New regulation 17A inserted (Fee for application under **section 7A** of Citizenship (Western Samoa) Act 1982)

15

After regulation 17, insert:

17A Fee for application under **section 7A** of Citizenship (Western Samoa) Act 1982

- (1) The fee for an application for grant of citizenship under **section 7A** of the Citizenship (Western Samoa) Act 1982 is \$177.78.
- (2) The fee is exclusive of goods and services tax.

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16 Regulation 18A amended (Refund for withdrawal of application for grant of citizenship in certain cases)

After regulation 18A(1)(b), insert:

- (c) \$136.30, in the case of a person who has paid the fee set out in **regulation 17A**.

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Subpart 3—Amendments to Immigration Act 2009

17 Principal Act

This subpart amends the Immigration Act 2009.

18 Section 174 amended (Effect of suspension)

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In section 174(1)(c), replace “section 7(1)(b)(i)” with “sections 7(1)(b)(i) and **7A**”.

19 Section 213 amended (Effect of suspension)

In section 213(1)(d), replace “section 7(1)(b)(i)” with “sections 7(1)(b)(i) and **7A**”.

Legislative history

3 August 2023
10 April 2024

Introduction (Bill 277–1)
First reading and referral to Governance and Administration
Committee