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Chairperson
Governance and Administration Committee
Parliament

DEPARTMENTAL REPORT – RESTORING CITIZENSHIP REMOVED BY CITIZENSHIP (WESTERN SAMOA) ACT 1982 BILL

1. The Department of Internal Affairs (the Department) produced this report to support the Governance and Administration Committee (the Committee) in its consideration of Restoring Citizenship Removed By Citizenship (Western Samoa) Act 1982 Bill (the Bill). The Bill is proposed by Member of Parliament, Teanau Tuiono.
2. The paper also includes advice provided by other advisors to the Committee: the Parliamentary Counsel Office (PCO), the Ministry of Foreign Affairs and Trade (MFAT), the Ministry for Pacific Peoples (MPP), along with the Ministry of Business, Innovation and Employment (MBIE).
3. This report covers the following:

Section 1:	The Bill and current regulatory settings
Section 2:	Overview of submissions
Section 3:	The Department's view on the Bill's feasibility in its present state
Section 4:	Key issues for the Committee's consideration
Section 5:	Responses to information requests
Section 6:	Out of scope submissions
Appendix A:	Table of submission types received and approach to analysis
Appendix B:	Memo: Restoring Citizenship Removed By Citizenship (Western Samoa) Act 1982 Bill – response to questions raised by the Committee on 28 May 2024
Appendix C:	MFAT Memo: New Zealand – Samoa Treaty of Friendship 1962
Appendix D:	Information provided by MBIE on visa and immigration settings relevant to Samoans
4. The report outlines several obstacles we identified on the Bill's feasibility including breaching the Treaty of Friendship with Samoa, implementation issues and providing enough detail on eligibility for New Zealand citizenship under the Bill. These issues will all require consideration by the Committee.¹

¹ Samoa and Western Samoa are used interchangeably throughout the document.

Section 1: The Bill and current regulatory settings

The Bill intends to provide entitlement to New Zealand citizenship for a group of people whose citizenship was removed by the Citizenship (Western Samoa) Act 1982

5. The general policy statement of the Bill proposes to provide entitlement to New Zealand citizenship for a group of people born in Western Samoa whose citizenship was removed through the enactment of the Citizenship (Western Samoa) Act 1982 (the 1982 WS Act). By repealing the 1982 WS Act, the Bill intends that a person whose New Zealand citizenship was removed by the 1982 WS Act will be eligible for New Zealand citizenship as of right, instead of having to go through the standard residency and citizenship application processes.
6. The Bill acknowledges the need to consult the Government of Samoa about changing the Treaty of Friendship that exists between New Zealand and Samoa. According to the Member of Parliament responsible of the Bill, it will need to be amended in light of the Bill. Potential amendments are not specified.
7. The Committee sought clarification on the Bill's policy intent from the Member for the Bill, Teanau Tuiono, on 17 June 2024. The Member provided an updated policy intent document on 12 July 2024, which stated that:

"The intention of this Bill is to repeal the Citizenship (Western Samoa) Act 1982 and to set up a pathway to citizenship for people personally impacted by the removal of their citizenship through this Act. Affected people would be entitled to apply for and receive "citizenship by grant" under section 8 of the Citizenship Act 1977. It creates automatic eligibility to apply for and receive citizenship. It would not create new rights to citizenship for descendants of those whose citizenship rights were removed."

There are varying interpretations of who is captured within the group of "those whose citizenship was removed by the 1982 WS Act", which is reflected in both written and oral submissions

8. In analysing written submissions on the Bill, the Department found that some submitters who expressed support for the Bill assume that descendants of people born in Samoa between 1924 and 1948 would be eligible for New Zealand citizenship. Within this, there were differences in the generations of descendants assumed to be captured, with some submissions assuming only direct descendants would be eligible, to others assuming that eligibility includes all generations of descendants.

"I know that this is a necessary and appropriate situation and a fair process for all Samoan Citizens born from 1924 to 1948 and all their descendants are subjects to New Zealand and have the right to apply to be granted citizen without any other requirements." – Diana Leota (individual)

"My parents were born in 1944 and although they are deceased, they are deemed citizens of NZ according to the July 28 1982, Privy Council decision. In 1982, my parents were both 38 years of age and have had 8 children then, including myself. I support the Bill because my parents were entitled and as a descendant I am also entitled, although we are treading carefully considering the socio-economic impact." – Aterina Samasoni (individual)

“(a) Persons born in Western Samoa on or after 13 May 1924 but before 1 January 1949 and any descendants, also born in Western Samoa on or after 13 May 1924, but before 1 January 1949, become New Zealand citizens.

(b) The child of a male descendant in (a), who was born in Western Samoa on or after 1 January 1949, but before 1 January 1962, becomes a New Zealand citizen.

The Mau submits that these are the classes of people whose citizenship was removed by the Act of 1982.” – Mau a Samoa i le Sitiseni a Niu Sila 2024

“The creation of a distinct New Zealand citizenship came with the British Nationality and New Zealand Citizenship Act 1948, deeming Samoans and their descendants who were British subjects before 1949, as New Zealand citizens. The Citizenship Act 1977 repealed the 1948 Act but maintained the citizenship rights of those affected by it.” – Human Rights Commission

9. The Department sets out submitters’ views on the issue of descendants, including their reasons for why descendants should be eligible for New Zealand citizenship, in more detail in Section 2: Overview of submissions.

Considering this ambiguity, the Department has taken the intended scope of the Bill to mean a group of people born on or after 13 May 1924 and before 1 January 1949, for the purposes of submissions analysis and providing advice on workability of the Bill

10. Taken together, this Departmental report therefore focuses on analysing and providing advice on the workability of providing entitlement to New Zealand citizenship to the group of Western Samoans **born on or after 13 May 1924 and before 1 January 1949** (referred to as the **‘affected group’** throughout the report).
11. This approach aligns with the Member’s First Reading speech, in which he said:

“It was in 1982 that the Privy Council ruled that all Samoans born between 1924 and 1948 were British subjects and, because of that, from 1949 onwards, they were New Zealand citizens. As the years go by, more of these elders will pass. It is estimated that there are less than 5,000 remaining. These are important stories that need to be heard and that is why this House needs to send this bill to the select committee... the people who lost citizenship in 1982 will be entitled to apply for and receive citizenship by a grant under the Citizenship Act 1977. This is important. The bill does not confer citizenship directly, but it instead creates automatic eligibility to apply for and receive citizenship. It would not create new rights to citizenship for descendants of those whose citizenship was removed. As I said earlier, the youngest of these elders is now 75. That is why it is important that now is the time for us to address these issues while they are still here.”²

12. However, because of the strong interest in the issue of descendants, Section 4 of the report sets out policy questions on descendants, for the Committee’s consideration and decision.

² https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20240410_20240410_28

The Bill interacts with legislation related to citizenship settings in New Zealand but also international agreements with Samoa

13. The Citizenship Act 1977 (Citizenship Act) provides the right of persons born in New Zealand to be citizens if one of their parents is a citizen or entitled to reside indefinitely in New Zealand. It also sets out in what circumstances a person born overseas to a New Zealand citizen can be considered a New Zealand citizen by descent. Citizenship by descent is usually limited to a first generation of descendants born overseas but the Citizenship Act sets out extraordinary circumstances where a second generation of descendants born overseas can be considered a New Zealand citizen by descent. The Citizenship Act repealed the British Nationality and New Zealand Citizenship Act 1948. However, the New Zealand Citizenship Act 1948 still applies in certain circumstances (for example, for parents born before 1948) to determine citizenship by descent.
14. The 1982 WS Act was enacted to address the status of Western Samoans under New Zealand law, after the Privy Council ruled that all Western Samoans born between 12 May 1924 and 31 December 1948 were British subjects, and that in 1949 they and their descendants had become New Zealand citizens. This case came about after Falema'i Lesa took a case to clarify that she was a New Zealand citizen after being prosecuted for overstaying. The 1982 WS Act removed the New Zealand citizenship status of people born in Samoa between 13 May 1924 and 1 January 1949 their spouses and descendants.
15. Section 7 of the 1982 WS Act facilitates access to New Zealand citizenship for Samoan citizens holding a New Zealand resident class visa. This was enabled following provisions in the Protocol to the Treaty of Friendship between the Government of New Zealand and the Government of Western Samoa (Treaty of Friendship).
16. The Protocol to the Treaty of Friendship (the Protocol) supplements and clarifies the Treaty of Friendship. It recognises that *"the ties of history, friendship and law between New Zealand and Samoa are such as to give the citizens of Samoa a claim to special treatment under the New Zealand law governing citizenship"*.
17. Article I of the Protocol establishes that at the request of either, the two governments shall consult on any issue relating to the operation of their respective laws governing citizenship and immigration. Article II grants Samoan citizens that were present in New Zealand on the day the Protocol came into force the right to become New Zealand citizens immediately after application.³ It also grants the additional right of Samoan citizens to become New Zealand citizens immediately upon application after acquisition of a residence-class visa.

The legal background of New Zealand citizenship and Western Samoa is complex

18. The historical and legal context surrounding the Bill is complex. The Department has identified several categories of people that may have different citizenship entitlements based on their age, gender, marital status, place of birth, and the legislation in place at the time including the British Nationality and Status of Aliens Act 1914 (UK), the British Nationality and Status of Aliens Acts 1923 and 1928, the British Nationality and Status of Aliens (in New Zealand) Amendment Act 1924 and the British Nationality and New

³ In this case the Minister is not able to use discretion providing the grant.

Zealand Citizenship Act 1948, among others.⁴ Applications to access citizenship are different depending on those categories, but the Department has focused on explaining the main primary eligibility as natural-born British subjects and the first generation of descent.

19. At the end of the 19th century, the Samoan islands were experiencing an increase in trade with western countries with the introduction of large plantation crop operations. That increase in trade also increased tensions to the traditional leadership structure inside the islands.
20. Germany, Great Britain and the United States of America all had interests in the Samoan islands. In the late 1800s, a civil war broke out between local factions backed by each of these countries. A joint commission with representatives from the three countries decided, without consulting the Samoan population, that the western islands of Samoa would be occupied by Germany and the eastern islands of Samoa would be occupied by the United States. Following the outbreak of the First World War, the Secretary of State in London requested that New Zealand take control of the western Samoan islands' German colony.
21. Although the option of returning New Zealand-held Samoa to German authority after the war had been considered plausible during the early stages of occupation, by 1919 it was apparent that Germany was to lose all its overseas territories. To fill the perceived administrative vacuum in Western Samoa, a League of Nations mandate was conferred on New Zealand to make laws for the peace, order and good government of the former German colony. This led to the New Zealand Government passing the Samoa Act 1921 (1921 Act), with the preamble to the Act reading: *"the Government of the Dominion of New Zealand shall have full power of administration and legislation over the said territory, subject to the terms of the mandate, as an integral portion of the Dominion of New Zealand"*.
22. Samoans did not become British subjects by virtue of the 1921 Act, which was silent on the issue of nationality. However, Samoans were entitled to British protection, a privilege normally reserved for British subjects.
23. The British Nationality and Status of Aliens (in New Zealand) Act 1923 (1923 Act) provided for the naturalisation of aliens in Western Samoa (in this case native Samoans) as New Zealand British subjects. Persons naturalised under the 1923 Act were British subjects only in New Zealand. However, under the British Nationality and Status of Aliens (in New Zealand) Act 1928 (1928 Act) the general position was that persons naturalised in New Zealand would be recognised as British subjects throughout the British Empire, and vice versa.
24. Under the 1928 Act, Western Samoans who wished to be naturalised did not have to meet the 'adequate knowledge of the English language' requirement for naturalisation. However, a person naturalised under this exception became a British subject *only in New Zealand* (which, for this purpose, included Western Samoa). Section 8(2) of the 1928 Act provided that a naturalisation certificate granted to a

⁴ 'Aliens' at the time were foreign-born residents who were not a citizen by virtue of parentage or naturalization and who were still a citizen or subject of another country.

- Samoan who did not have an adequate knowledge of English did not confer on the holder the rights and obligations of a British subject elsewhere than in New Zealand.
25. The British Nationality and New Zealand Citizenship Act 1948 (1948 Act) created the legal concept of New Zealand citizenship. The first reading speech by the Minister of Internal Affairs, Hon William Edward Parry, conveyed the government's view that people born in Western Samoa had not become British subjects automatically because of New Zealand's administration of the islands or the 1923 and 1928 Acts. Hon Parry stated that *"the inhabitants of Western Samoa ... are not British subjects, because trust territories and protectorates are not in the legal sense part of His Majesty's dominions; and in fact, they have no nationality at all in the sense in which that term is used in international law"*.⁵
 26. At that time, the New Zealand Government considered that Samoans were stateless. Hon Parry continued: *"Our feelings toward British-protected persons, and particularly towards the inhabitants of New Zealand's trust territory, Western Samoa are kindly, and we have tried to show this by suggesting that, although these protected persons are not British subjects, they should not be treated as aliens either, but as an intermediate class ... We have also made especially easy conditions for the naturalisation of protected persons as New Zealand citizens."*⁶
 27. Section 13 of the 1948 Act provided for the naturalisation of British protected persons, including Western Samoans. Under this section, the Minister of Internal Affairs could grant New Zealand citizenship to a Samoan who had been ordinarily resident in 'mainland' New Zealand for only one year before application (instead of the standard five years for aliens), provided that the applicant could meet the standard requirements including the knowledge of the English language.
 28. The Citizenship of Western Samoan Ordinance 1959 created the legal concept of Samoan citizenship. The establishment of Samoan citizenship was a means of denoting Samoan statehood and was an important step in Samoa's path to independence. In 1962, Western Samoa was internationally recognised as an independent nation state. From that time, relations between New Zealand and Western Samoa have been between sovereign nations.
 29. The Citizenship Act 1977 repealed and replaced the 1948 Act. In a significant change to the grant of citizenship, the preferential treatment for British subjects was removed. For the first time, grant applicants who were British subjects had to meet the same requirements as alien applicants. With the standardisation of grant requirements, there was no longer any special provision for Samoan applications in citizenship legislation.
 30. In 1977, Falema'i Lesa, a Western Samoan citizen, was prosecuted for being in New Zealand unlawfully. She had come to New Zealand on a temporary permit and had remained in the country after the permit expired. In response to the prosecution, she sought a determination from the court as to whether she was a New Zealand citizen by birth and therefore not in need of a permit to remain here. Her case relied on whether Western Samoa had been part of New Zealand.

⁵ New Zealand Parliamentary Debates (NZPD) Vol 281, 17 August 1948: 1523.

⁶ NZPD Vol 281, 17 August 1948: 1523.

31. Falema'i Lesa's argument was:
- a person born in New Zealand was a British subject;
 - the 1928 Act defined New Zealand as including Western Samoa;
 - a person born in Western Samoa was therefore a British subject;
 - as a result, Falema'i Lesa, who was born in Western Samoa on 28 November 1946, was a British subject;
 - New Zealand's citizenship legislation provided that a British subject born in Western Samoa before the commencement of the 1948 Act became a New Zealand citizen on 1 January 1949; and
 - therefore, she became a New Zealand citizen on 1 January 1949 and, as a citizen, could not be an 'overstayer' in New Zealand.
32. Falema'i Lesa's lawyers filed a case in the High Court and requested the case to be removed to the Court of Appeal to expedite the process. The Court of Appeal rejected her argument on the grounds that the definition of 'New Zealand' as including Western Samoa in the 1928 WS Act was solely for the purpose of providing a process for the naturalisation of Samoans as British subjects, and not a provision that people born in Samoa automatically became New Zealand British subjects.
33. The Court of Appeal held that only children born to Samoans who were naturalised became British subjects at birth. The fact that 30 ethnic Samoans were naturalised as New Zealand British subjects under the special provisions in the 1923 and 1928 Acts demonstrated that British subject status was not considered to be an automatic consequence of birth in Western Samoa.
34. Falema'i Lesa appealed the Court of Appeal's decision to the Privy Council.⁷ The Privy Council overturned the decision and determined that, irrespective of what the New Zealand Parliament may have intended, earlier legislation provided that people born in Western Samoa on or after 13 May 1924 and before 1 January 1949 were treated as "natural-born British subjects" and therefore became New Zealand citizens on the commencement of the 1948 Act. Any children they had would also be New Zealand citizens.
35. The Western Samoa and New Zealand governments estimated at the time, that in light of the Privy Council's decision, approximately 100,000 Samoans (over three-fifths of the Western Samoan population) were New Zealand citizens, with each entitled to obtain a New Zealand passport and live in New Zealand indefinitely.
36. In response to the Privy Council decision, the New Zealand and Western Samoa governments met and signed the 1982 Protocol to the Treaty of Friendship. The Protocol provided that the two governments would consult on matters relating to the operation of their respective laws governing citizenship and immigration (Article I), and that New Zealand would grant citizenship to certain Samoan citizens under preferential conditions (Article II). The 1982 WS Act, which followed the Protocol, had two main implications: some Samoans would lose New Zealand citizenship status, and some would be able to receive a grant of citizenship as of right.

⁷ New Zealand's highest court at the time.

Section 2: Overview of the submissions

37. The Committee received a total of 24,581 written submissions. It heard oral submissions in Wellington on 24 June, 26 June and 9 July 2024, and in Auckland on 1 July 2024. Submissions were received from individuals, aiga/families, and public and private sector organisations. The breakdown of the types of written submissions received, along with an explanation of how each type of submission has been analysed, can be found in **Appendix A**.

Key themes raised in submissions

A vast majority of submissions support the Bill

38. Submissions tended not to provide feedback on specific clauses of the Bill, therefore the Department has not done a clause-by-clause analysis. Instead, several key themes were raised in the submissions, which we outline in more detail below. Due to the large volume of submissions received, and the varying types and sources of the submissions, we could not quantify the number of submissions that have raised the key themes discussed below. However, we include extracts of submissions under each key theme to give the Committee a better idea of the issues that have been raised by submitters.
39. Of the 24,581 total submissions, 12,039 explicitly expressed support for the Bill. Nine submissions explicitly stated opposition to the Bill. The rest of the submissions did not explicitly express support or opposition, but most provided views that tended towards being positive about the intent of the Bill or specific aspects of it.
40. It is important to note that while 12,039 explicitly expressed support for the Bill, **there were varying interpretations of the Bill's scope**. As noted in Section 1, some submitters expressed support while assuming that the Bill applied to descendants. While we discuss those that expressly stated in their submission that descendants should be eligible for citizenship further below, the Department is not able to provide an exact number of submissions that support the Bill if it applied to descendants, as many submissions were not clear on this point.
41. There were several reasons given by those who support the Bill, with many raising more than one reason for their support. The reasons fall into the following broad categories:
- **Reparation of historical injustices, like the Dawn Raids⁸**: This is the most common reason given by those who explained their support. Submissions brought up the many historical injustices dating back to New Zealand's administration of Western Samoa, through to the Dawn Raids and the enactment of the 1982 WS Act.

"[The 1982 WS Act] added to historical injustices faced by Samoa throughout the colonial era: diseases introduced by foreign settlers, land alienation, and a lack of respect for Samoan culture and customs. [It] was seen as an extension and

⁸ Between 1974 and 1976, rigorous enforcement of immigration policies was applied, with officials conducting targeted raids on the homes of Pacific families. These raids were often carried out early in the morning or late at night, giving rise to the term the "Dawn Raids".

*continuation of this pattern of injustice and abuse.” – Justice & Peace Commission
Catholic Diocese of Auckland*

- **Fairness and upholding human rights:** Many stressed that the Bill is about fairness, that passing it is the right thing to do, and that New Zealand would be upholding both its domestic and international human rights commitments by doing so.

*“There is a question of human rights being affected; where one’s right to citizenship, a fundamental human right, was stripped without consent and without an opportunity to be heard. New Zealand is known for better humane treatment of her international partners. The close and healthy relations and friendships between Samoa and New Zealand must be nurtured and maintained; thus, this grave injustice must be addressed now and without delay.” - Teleai Lalotoa
Sinaalamaimaleula Mulitalo S R Seumanutafa (individual)*

- **Ease of travel/visa-free travel to New Zealand:** The next most common reason given for supporting the Bill is that it would make it easier for Samoans to travel to New Zealand, either to visit family and friends, access medical care, and/or for education and employment purposes.

*“To make it more convenient for people to travel without applying [for a] visa, especially during funerals, weddings, urgent meetings, etc.” – Te’o Mu Raeli
(individual)*

- **Access to healthcare and education:** Submitters stated that they want to be New Zealand citizens so that they can receive better healthcare and/or education for themselves and/or their families.

“To be able to give the opportunity to those who are in need of seeking for medical assistance and needs. Some are unable to receive the right treatment in Samoa due to lack of access to certain equipment.” – Faatapu Moetu (individual)

- **Access to other services and opportunities in New Zealand:** Others talked about their desire to access other opportunities, including better employment and career opportunities, and New Zealand Superannuation.

*“New Zealand citizenship offers Samoan people the right to work and live in the country without restrictions, providing them with access to a wider range of job opportunities and career advancement prospects.” – Crossway Church Masterton –
Samoan Fellowship Group*

- **Contributions that Samoans have made to New Zealand:** Many talked about the contributions that Samoans have made to New Zealand over the last few decades, including in sports, politics, media, and especially to the economy. They argue that this justifies Samoans’ right to New Zealand citizenship.

“The Samoan community in New Zealand has played a vital role in enriching the country’s multicultural landscape. From arts and culture to sports and business, Samoans have made significant contributions that enhance the fabric of New Zealand society.” – Losi Aniseko (individual)

- **Improving international relations:** Some submissions expressed that passing the Bill would contribute to improved relations between New Zealand and Samoa, particularly in the areas of trade and investment, and would help to address China’s increasing role and influence in the Pacific.

“Restoring citizenship to affected Samoans... will demonstrate New Zealand's respect for its Pacific neighbours and contribute to strengthening diplomatic and bilateral relations with Samoa, fostering greater regional solidarity and cooperation, particularly during these times of when the influence of superpowers such as China in the region has been growing at an alarming rate and New Zealand will need a strategic partner in the centre of the Pacific such as Samoa, with a demonstrative strong and stable government that mirrors that of New Zealand, to stand strong against the influence of countries that do not share the same values and commitment such as China.” – Faletose Asaua (individual)

- **Comparisons between Samoa and the Realm of New Zealand:** A small number of submissions pointed out the unfairness of Samoa being the only country that was administered by New Zealand to have its New Zealand citizenship removed, and argued this must be corrected.

“Samoa's history is closely related to New Zealand and Samoa was a colony of New Zealand just like Cook Islands, Niue and Tokelau and like them should have the same status as New Zealand citizens.” – Ioane Malaki (individual)

- **Recognising Te Tiriti o Waitangi:** A handful of submissions mentioned that passing the Bill would be in line with the Crown's commitments under the Treaty of Waitangi.

“This bill is more than a correction of past policy; it reaffirms our commitment to the principles of Te Tiriti o Waitangi. It shows the partnership, participation, and protection we must uphold as a nation. By supporting this bill, we are restoring citizenship and honouring the spirit of Kotahitanga and whanaungatanga that defines us as New Zealanders.” – Dr Will Flavell (individual)

A handful of submissions opposed the Bill

42. Of the submissions that the Department analysed, eight submitters opposed the Bill. Three submitters provided reasons for their opposition, which were:
- concerns about a potential increase in Samoans migrating to New Zealand if they become citizens;
 - that the 1982 WS Act already granted citizenship to many Western Samoans who were living in New Zealand at the time or who subsequently obtained a residence-class visa; and
 - a fear that some may be deported back to Samoa. The Department notes that it is unclear why the submitter expressed this concern as no explanation was provided in their submission.

There are submitters who think that the descendants of the affected group should also be eligible for New Zealand citizenship

43. Many submissions explicitly said that descendants should be eligible for New Zealand citizenship under the Bill. As noted in Section 1, restoring citizenship for descendants of those born between 1924 and 1948 goes beyond the intended scope of the Bill. However, as the matter of descendants has been a prominent point of discussion both in written and oral submissions, we set out our analysis about expanding the scope of the Bill to include descendants, in Section 5.

44. Some of the reasons given for why descendants should be eligible for citizenship are:
- Restoring citizenship for descendants is the right and fair thing to do, particularly as many of the 1924 – 1948 group have passed away.

“Please reconsider that many people who were born in those years have died, but their children are still alive. There is a belief that they are the ones who should receive this citizenship.” – Orepa Poe (individual)

- Descendants should be eligible because this aligns with citizenship legislation and the Privy Council’s ruling.

“The Bill should be clear that it allows for ‘citizenship by descent’ for the descendants of those whom the Bill would apply to. This would be consistent when interpreted with the transitional provisions of sections 16(3) and 7(1) of the British Nationality and British Citizenship Act 1948 and therefore consequently sections 7 & 13 of the Citizenship Act 1977.” – Pacific Lawyers Association

- Removing citizenship from the 1924 – 1948 group was an injustice that has had flow-on impacts to their descendants.

“The Western Samoa Act had far-reaching consequences for many individuals and their families, impacting their access to fundamental rights, benefits, and opportunities associated with New Zealand citizenship.” – Paulo Pio (individual)

Submissions raised concerns about the process to access New Zealand citizenship if the Bill passed

45. As people affected by the Bill are of advanced age, likely live in Samoa, and may not have good access to technology, some submitters said that the process to access New Zealand citizenship should be as simple, quick and affordable as possible. Some of the suggestions for enabling this include:

- **There should be little to no cost involved with applying for New Zealand citizenship.** Many submissions that commented on the application process provided for in Clause 5 of the Bill stated it should either be free, subsidised by the Government, or that the fee should be lower.

“I am concerned however that the current fee of \$460 for such an application may be a barrier to uptake. I therefore recommend that either the bill be amended to state that no fee may be charged for such an application, or that it amend the schedule of the Citizenship Regulations 2002 to specify a lower fee.” – Malcom Harbrow (individual)

- **Processing citizenship applications for the affected group should be prioritised.** Submissions stated that processing the applications of the affected group should be made a priority, including having dedicated resources to process such applications.

“We recommend that the bill include provisions for expedited processing of citizenship applications to ensure that those affected by the Western Samoa Act can promptly regain their citizenship status.” – Aumaga Sonelau Development

- **Other efforts should be made to ensure that the affected group is supported to apply for citizenship.** This includes providing legal, translation, administrative, and other forms of support to those seeking to apply for citizenship. There were also suggestions for there to be public awareness campaigns and engagement to ensure that affected individuals are informed about their rights to citizenship as well as the process involved.

“Provide support services: Offer dedicated help desks and partner with community organisations for guidance and assistance.” – Lopati Peniata (individual)

- **Citizenship should be granted automatically/there should not have to be an application process.** A small number of submissions suggested that the affected group should not have to apply for New Zealand citizenship. We discuss some of the issues and operational challenges involved in automatic citizenship in Section 4.

“... a person who was a New Zealand citizen by law should not in equity and fairness have had that citizenship arbitrarily deprived from them, and if that New Zealand citizenship is to be restored, then people who were arbitrarily deprived of it should not, in equity and fairness, be made to reapply for the New Zealand citizenship status that was once rightly theirs in law.” – Nigel Allardyce (individual)

Passing the Bill would honour the Treaty of Friendship between Samoa and New Zealand

46. Many submissions said that passing the Bill is a way to honour the Treaty of Friendship with Samoa:

“At the heart of this bill is doing the right thing... It’s about honouring Article 1 of the Treaty of Friendship, signed in 1962, which reads, “Relations between New Zealand and Western Samoa shall continue to be governed by a spirit of close friendship.” – Vinepa Trust

47. Some agree with the Bill’s acknowledgement that the Treaty should be reviewed:

“Then let us honour the Treaty of Friendship, review it and make the necessary amendments so that the events, the mistakes, the losses, and unfinished business laid out in this historical narrative will never happen again.” – Polynesian Panther Party Legacy Trust

“[The Bill] acknowledges the need for the New Zealand Government to consult with the Samoan Government to amend the Treaty of Friendship between the two nations. This amendment is necessary to reflect the restored citizenship rights and ensure continued strong relations between New Zealand and Samoa.” – Tailo Duffy (individual)

48. Some submissions think more can be done to honour the Treaty of Friendship:

“New Zealand has shown that the Treaty of Friendship with Samoa is not well understood. After this law is passed New Zealand should pass a new law that means the Treaty of Friendship is better incorporated how New Zealand is run. A process should be set up so that everyday people can be heard regularly by New Zealand on what we feel about treatment and inclusion of The Treaty of Friendship between New Zealand and Samoa, including improvements we wish to call for. This would not need to require action, but we should have a way to be regularly heard.” – Potogi Aмоса Tuala (individual)

Section 3: The Department's view on the Bill's feasibility in its present state

The current drafting of the Bill creates obstacles to its workability

49. It is not necessary to repeal the 1982 WS Act to allow impacted people to either apply for, or automatically receive, New Zealand citizenship. We have identified a few important policy reasons for preserving several provisions of the 1982 WS Act and set these out below.

Repealing the 1982 WS Act would increase requirements for Samoan citizens to access New Zealand citizenship

50. By repealing the 1982 WS Act, the Bill as currently drafted would also repeal the provisions in section 7 of the 1982 WS Act that facilitate easier New Zealand citizenship uptake by Samoan citizens with New Zealand Resident status. If the Act is repealed, these provisions would be removed. The Bill as currently drafted would therefore obstruct access to New Zealand citizenship to Samoan citizens outside the group of people affected by the Bill.

There is a potential inconsistency with the 1982 Protocol to the Treaty of Friendship

51. As noted above, the Bill as currently drafted would repeal section 7 of the 1982 WS Act, thereby removing the facilitated pathway to citizenship currently available to Samoans. Notably, under section 7, Samoan citizens who are Permanent Residents in New Zealand applying for a citizenship grant do not need to meet the following standard requirements (as per the Citizenship Act):
- maintaining a presence in New Zealand for the five years prior to making an application;
 - understanding the responsibilities and privileges of New Zealand citizenship;
 - intend, if granted citizenship, to continue to reside in New Zealand;
 - good character; and
 - ability to understand and speak English.
52. If section 7 is repealed, there will be no other domestic law or regulation supporting Article II of the Protocol, which commits New Zealand to the same obligations of section 7. New Zealand would therefore not have domestic law implementing the Treaty of Friendship. Failing to retain section 7 would likely cause serious negative implications for the diplomatic relationship between New Zealand and Samoa.
53. While there are no specific dispute resolution provisions in the Treaty, MFAT considers that Samoa would have the option to seek urgent consultation, and perhaps seek a negotiated pathway forward. This would risk opening the Treaty itself to renegotiation, which would be both politically and legally complex. At present, MFAT does not think it is likely that Samoa would take any further dispute settlement procedures against New Zealand.

54. To avoid this scenario, MFAT's strong preference is for section 7 of the 1982 WS Act to either not be repealed or be transferred into another appropriate piece of legislation. Both approaches would ensure New Zealand upholds its Treaty obligations.
55. The General Policy Statement of the Bill notes the need to amend the Treaty in light of the repeal of section 7 and recalls a recommendation from 2004 by the then Governance and Administration Select Committee to revisit, review and renew the Treaty of Friendship. MFAT's recommendation would be to approach such a process carefully in consultation with Samoa, with the anticipation that this could take several years and touch on a variety of areas extending beyond Article II of the Protocol.
56. If changes to the Treaty were to go ahead, any negotiation with Samoa would need to be completed, and any new Protocol to the Treaty of Friendship would need to enter into force, *prior to* the Bill being passed. Otherwise, New Zealand would be non-compliant with the Treaty.
57. A new Protocol would have the status of a new international treaty. All "major bilateral treaties of particular significance" must be presented to the New Zealand House of Representatives for examination. MFAT assesses that a new protocol to the Treaty of Friendship, especially if it alters Samoans' access to New Zealand citizenship, would be considered "of particular significance."
58. Retaining section 7 with amendments (e.g., adding a good character test to have access to New Zealand citizenship) may add conditions to the current requirements under Article II of the Protocol, which may be construed as inconsistent with the current text. Therefore, MFAT advises that section 7 be retained in as close a form as possible, to ensure consistency with the Treaty of Friendship and avoid the need to negotiate a new Protocol. Any proposal to alter the criteria or operation of section 7 or Article II should be consulted in advance with the Government of Samoa.

Operational challenges presented by the Bill

59. As officials have previously advised the Committee, it is difficult to know the exact number of people in the affected group. Using data from the 2021 Samoan National Census, it is estimated that a maximum of 3,480 people would be able to benefit from the Bill if the policy intent is to include the group of people born in Samoa between 1924 and 1948 who are still alive today.
60. It is also difficult to accurately estimate the number of descendants that could be eligible, if the Committee recommends giving access to New Zealand citizenship to descendants, and to which classes of descendants. Using 2021 Samoa Census data, officials estimate this could be tens of thousands of people out of Samoa's approximately 219,000 population, but the exact figure is difficult to assess. Many Samoan citizens that could be eligible under an amended Bill might already be New Zealand citizens.

61. The following table shows the estimated figures for the 1924 – 1948 affected group, as well as for different classes of descendants:

Table: Number of Samoan citizens potentially eligible for citizenship if the Committee decides to expand eligibility beyond the affected group⁹

Cohort of people born in Samoa	Age range	Estimated number of people
People born between 1924 - 1948	76 – 100	3,480
Direct descendants (children) of the cohort above	27 – 75	15,600 ¹⁰
People born before 1962	62 – 100	19,434
People born before 1982	42 – 100	49,248

62. To better understand the impact of providing citizenship by descent we would need to work with Samoan statistical authorities to accurately understand how many people were born in Samoa between 1924 and 1948 including those who have since passed away and are not included in the table above. We would also need to better understand if descendants had children with people inside the same cohort, and how many children they had. There may also be descendants that could potentially benefit from the Bill who were not born, and do not reside, in Samoa, so may not be captured by Samoan Census data.
63. The Department considers that processing and managing New Zealand citizenship for a potential cohort of 3,480 people would be manageable. However, providing eligibility for New Zealand citizenship to a wider group than this would have an operational impact on the Department and would be difficult to absorb within current processing capacity. The Department is already planning for an expected increase in passport and citizenship by grant applications in the next 12-24 months, which will take the Department to its full capacity.
64. An increase in requests for certificates of citizenship, applications of citizenship grants, and potential applications for passports to travel to New Zealand may result in longer processing timeframes for all citizenship applications more generally. For example, some applications are currently taking up to 14 months to be allocated for assessment. Applications that rely on the current Samoan pathway are currently facing wait times of up to 4.5 months.

⁹ The estimated figures in this table were put together by MFAT officials using data from the 2021 Samoan National Census.

¹⁰ The number of children is calculated using either completed fertility rates for women 45-49 (i.e. the number of children that women in the 45-49 age range have had in their lifetime, in the census year corresponding to when the cohort were in this age range), or for later generations where this statistic was unavailable, the average fertility rate taken from the years corresponding to when each year of the cohort was 15-49 (e.g. for people born in 1948, the average fertility rate from 1963-1997). The number of children by a cohort was also modified by considering what percentage the cohort makes up of their age-group in the wider population to estimate in-group vs out-group pairings. The 1924-1948 cohort alive today represents only about 20% of the people in this cohort who were alive in 2001, indicating a likely large number of outgroup pairings. As such, the fertility rate should account for all the women in the cohort and men who may have had children with women outside of the cohort.

65. In addition, the Department currently operates citizenship applications on a cost recovery basis, so any decision to waive fees for citizenship applications related to the Bill may require Crown funding. For reference, current fees for citizenship applications are: \$470.20 for a grant, \$112.40 for a citizenship certificate and \$204.40 to register your citizenship by descent. As we note in Section 4 of the report, fees will depend on the type of citizenship.
66. Another operational challenge is that verifying identity for the affected cohort may not be straightforward. Samoa's system for registering births relies on registration at the village level. We understand the Samoan Government is creating a digitised civil registration register but there is still a backlog of documents to capture. Identity documents may have been difficult to preserve for some of the cohort due to climate conditions, weather events and historic record-keeping infrastructure.
67. There would still need to be some form of application process to implement the Bill, as affected individuals will need to identify themselves to the Department to verify their citizenship or if they wish to obtain a New Zealand passport. Identification would be more challenging for applicants who have not left Samoa before and do not hold a Samoan passport.

Section 4: Key issues for the Committee's consideration

68. For the reasons identified in Section 3, the Bill is not workable in its current form. We set out four key issues below that the Committee needs to decide on, to ensure the Bill is workable and to provide PCO with sufficient instruction to draft the revision-tracked Bill.

A. Should citizenship be granted on application, or automatically?

69. The Bill could provide that citizenship is deemed to be restored (or to exist) automatically, or it could require people to make an application for a grant of citizenship. If deemed automatically, unless the individual wanted to do something that required proof of New Zealand citizenship, such as apply for a New Zealand passport, they would not be required to do anything further.

70. The Bill currently provides for an application process, but some submitters communicated that people affected by the Bill should not be applying for something that was taken from them, and that requiring an application for a grant of New Zealand citizenship decreases accessibility, particularly for a group of people who are elderly and may not have access to reliable technology.

"Restore New Zealand Citizenship act for Samoans born within 1924 to 1948, to gain our 'Rights' as New Zealand Citizens without going through the process of applying." – Emuei Aiono Ma'ia'I (individual)

71. The Department may face operational difficulties when providing travel documents. For example, if an affected person wishes to apply for a New Zealand passport, the Department will still need to establish their identity and their entitlement to hold a New Zealand passport. However, these potential difficulties may be manageable, depending on the Committee's decision on the size of the group who should be eligible for, or automatically receive, citizenship. Relevant fees will depend on the pathway option the Committee chooses.

Recommendation:

1. That the Committee considers and decides whether the Bill should provide for citizenship to be granted upon application, or whether it should be given automatically by a provision in the Bill.

B. Who should be eligible to apply for, or automatically receive, citizenship?

72. Three different categories have been identified for who could be eligible for, or receive, citizenship, which we set out below. The Bill should contain provisions clarifying the categories of people who should be entitled to New Zealand citizenship using the process in the Bill. It will be important for the application of the Bill to be clear to avoid unintended consequences.

73. As discussed in Sections 1 and 2 of the report, several submissions supporting the inclusion of descendants communicated the desire for those descendants to benefit from all the opportunities and possibilities that may come through New Zealand citizenship.

Category 1: The Committee could decide that people covered by section 4(1)(a) of the 1982 WS Act should be eligible to apply for, or receive, citizenship

74. Category 1 would apply to people born in Western Samoa on or after 13 May 1924 and before 1 January 1949, who were British subjects immediately before 1 January 1949 only by virtue of having been born in Western Samoa. This is the group we have been referring to as the 'affected group' throughout the report.

Category 2: The Committee could decide that people covered by section 4(1)(a), (b), (c) or (d) of the 1982 WS Act should be eligible to apply for, or receive, citizenship

75. Category 2 would apply to:

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

Category 3: The Committee could decide that some or all of the descendants of those in Category 2 should be eligible to apply for, or receive, citizenship

76. Category 3 could apply to some or all descendants of those in Category 2. Some examples of such groups of descendants include:

- any child of a male descendant of a person born on or after 1 January 1949 but before 1 January 1962, if that child or their father was born in Western Samoa¹¹;
- any descendant who would have been able to claim citizenship but for the passage of the 1982 WS Act; or
- any descendant of a person in Category 2 regardless of when or where they were born.

77. As discussed in Section 3, providing New Zealand citizenship eligibility to a wider group of people than the affected group (that is, those born between 1924 – 1948) would have an operational impact on the Department. The size and extent of the operational impact would be dependent on how widely citizenship eligibility is expanded.

78. In addition to operational challenges, providing citizenship to a larger group than the affected group could have implications for population mobility between Samoa, New Zealand and Australia. It could also have implications for New Zealand's relationships with other countries and territories in the Pacific region. Additionally, an increase in migration of people receiving New Zealand citizenship could have potential impacts on New Zealand's health, welfare and other infrastructure.

¹¹ This, together with Category 2, aligns with who the *Mau a Samoa i le Sitiseni a Niu Sila 2024* group submits are the classes of people whose citizenship was removed by the 1982 WS Act.

79. The Committee may want to evaluate if such a change in the scope of the Bill may take the Bill beyond what is allowed under Standing Orders.

Recommendations:

2. That the Committee considers and decides the categories of people who should be entitled to apply for, or automatically receive, New Zealand citizenship. This should involve an evaluation of whether the decision is within Standing Orders.
3. That the Committee consults the Minister of Internal Affairs about potential costs of operationalising citizenship entitlement if the Committee decides to expand the categories of people eligible beyond the affected group.

C. What type of citizenship should eligible people receive?

80. Depending on the mechanism that the Committee chooses for providing a pathway to citizenship for eligible people, the Committee could decide to include a provision in the Bill which clarifies the type of citizenship that eligible people would receive.
81. If the citizenship is provided automatically, then any first generation of children born outside New Zealand could access citizenship by descent. The Committee could recommend excluding this group from passing down citizenship to children born overseas if they choose to.
82. A person who receives a grant of citizenship is a citizen other than by descent. If the Committee decides that eligible people should apply for a grant of citizenship, they may pass that citizenship on to descendants born after they receive the grant. Any subsequent children will be New Zealand citizens by descent.
83. Under the Citizenship Act, citizenship by descent can be passed down to children born outside New Zealand if a parent was a New Zealand citizen other than by descent, or if a parent was a New Zealand citizen by descent and they would otherwise be stateless. The assessment is undertaken when the person applies for registration.
84. If the Committee decides that the Bill should provide a citizenship pathway only to those born in Western Samoa between 13 May 1924 and 31 December 1948, then it is unlikely that any descendants will be born after those people receive citizenship, due to their age. However, it is possible that some adoptions may take place, in which case adoptees would be eligible for citizenship. If the Committee considers that citizenship should be available to a broader category of people, then limiting further citizenship by descent may be preferred.
85. It may be that the Committee considers that all eligible people should receive citizenship by descent. Citizenship by descent can only be passed down to children born outside of New Zealand if they would otherwise be stateless.
86. Alternatively, a citizenship category in the Citizenship Act could also be created clarifying that people born in Samoa between 1924 and 1948 are considered citizens but cannot pass down citizenship. Specifying that this type of citizenship cannot be passed down may cause reputational risks to New Zealand.

Recommendations:

4. That the Committee considers the type of citizenship that eligible people should receive.
5. If the Committee concludes that eligible people should not be able to pass down citizenship to their descendants, that this is specifically provided for in the Bill.

D. Should the 1982 WS Act be repealed?

87. Repealing the 1982 WS Act is not necessary to grant citizenship to a group of people impacted by the Bill. However, we acknowledge that the Committee may still choose to repeal the 1982 WS Act for symbolic reasons.
88. Several submitters have raised that they believe the 1982 WS Act should be repealed.

“the repeal of the citizenship (Western Samoa) Act 1982 is necessary to remove legislation that initially stripped citizenship from many individuals, thereby correcting a historical injustice.” – Pasifika Law Students at Te Herenga Waka – Victoria University

89. If the Committee decides to repeal the 1982 WS Act, the effect of the repeal needs to be clarified, and certain provisions need to be retained and provided for in the Bill. Specifically, there is a need to create transitional provisions to ensure that:
 - quashed convictions under section 8 stay quashed;
 - “a certain person” (Falema’i Lesa) declared to be a New Zealand citizen under section 5 remains a New Zealand citizen;
 - the pathway for certain people to access New Zealand citizenship under section 7 remains available;
 - people who were granted New Zealand citizenship under section 7 remain citizens; and
 - that the retained provisions continue to apply in Tokelau.
90. If the 1982 WS Act is repealed, or if a new mechanism providing for New Zealand citizenship is created, it will be necessary to make consequential amendments to several primary and secondary legislation that refer to the 1982 WS Act. These include the Citizenship Act, Citizenship Regulations 2002, Immigration Act 2009, Intelligence and Security Act 2017 and Privacy (Information Sharing agreement between the Department of Internal Affairs and the Registrar-General) Order 2019.
91. To enable these changes, the Committee will need to authorise PCO to work with the Department and other relevant agencies to make the necessary consequential amendments to other legislation, in line with the Committee’s decisions on the Bill.
92. In addition, other minor or technical changes may arise as the Department and PCO progress any amendments required to the Bill to give effect to the Committee’s decisions. To facilitate this, the Department recommends the Committee also authorise PCO to make minor, technical and/or tidy-up drafting changes to the Bill.

Recommendations:

- 6.** That the Committee considers and decides whether the 1982 WS Act should be repealed.
- 7.** If the Committee decides that the 1982 WS Act should be repealed, that the Committee include transitional provisions in the Bill saving the existing citizenship pathway in section 7 of the 1982 WS Act, clarifying that the repeal does not reverse the actions under the current sections 5, 6 and 8 and 11 of the 1982 WS Act.
- 8.** If the Committee decides that the 1982 WS Act should be repealed, the Committee should also decide if the new provisions (including transitional provisions) in the repeal Bill would be easiest to find if located in the Citizenship Act 1977.¹²
- 9.** That the Committee authorises the Department to work with the Parliamentary Counsel Office to make necessary consequential amendments to other legislation to implement decisions of the Committee.
- 10.** That the Committee authorises the Parliamentary Counsel Office to make minor or technical drafting changes or tidy-ups to the Bill.

¹² On this recommendation, PCO advises that stand-alone amendment Acts are quite rare nowadays, as the law is more accessible if located in the one main Act on the relevant topic.

Section 5: Responses to information requests

93. On 22 May, 29 May, 24 June and 26 June 2024, members of the Committee made information requests. The Department responded to some of the information requests from 22 May 2024 in a memo provided to the Committee on 28 May 2024 (attached as **Appendix B** for ease of reference). Some of the information requests were also covered in MFAT’s memo to the Committee on 29 May 2024 (attached as **Appendix C** for ease of reference).
94. Responses to the outstanding information requests are set out below. Where applicable, MFAT, MPP, MBIE and PCO have contributed to a response.

Request	Departmental response
How did New Zealand handle similar citizenship issues with Niue and the Cook Islands?	<p>People born in the Cook Islands and Niue had different historical and legal backgrounds from the beginning.</p> <p>In 1900, the Cook Island authorities petitioned for the islands to be incorporated into the British Empire. In 1901, the boundaries of New Zealand were extended to include them. From that date, a person born in the Cook Islands was a New Zealand British subject as was a person born in New Zealand.</p> <p>British colonial status was granted to Niue in 1900 and incorporated to New Zealand in 1903. As with Cook Islanders, Niueans automatically became New Zealand British subjects on annexation.</p> <p>Both countries are still part of the Realm of New Zealand and people born in these countries hold New Zealand citizenship by birth.</p>
What are the implications for any Samoans born before 1924?	See: <i>The legal background of New Zealand citizenship in Western Samoa is complex</i> in Section 1 of the report.
How could the two mechanisms facilitating New Zealand citizenship uptake in the 1982 WS Act be improved to make it easier for Samoan applicants?	These two mechanisms appear in section 7 of the 1982 WS Act. They are linked to applicants’ ability to prove their presence in New Zealand at the time or to prove they arrived in New Zealand afterwards holding a resident-class visa.

	<p>Improving the mechanisms would depend on our capacity to receive applications in the New Zealand High Commission in Apia but also depends on personal information gathering in Samoa or New Zealand by applicants. The New Zealand High Commission (NZHC) currently takes around four citizenship applications per week. Facilitating this will require additional resource and clear information packs/media strategy about who can and cannot apply for citizenship to address a potentially large increase of applications at the NZHC.</p>
<p>Why did the 2003 attempt to repeal the Act not go ahead?</p>	<p>The then Government considered that a repeal of the 1982 Act would be inappropriate from an international law perspective. The effect of the 1982 Act was to place Samoan residents in the same position as the inhabitants of other comparable League of Nations mandated territories that had become independent.</p>
<p>Could the Bill be structured differently if the repeal element was taken out of the Bill?</p>	<p>PCO's advice is that it is not necessary to repeal the 1982 WS Act in order to provide for the policy intent of allowing certain persons to apply for, and automatically receive, New Zealand citizenship. Provided that the Committee is comfortable it is within scope, the Bill could be reframed as an amendment Bill. Clause 6 would be removed, and a new pathway for citizenship could be inserted into either the Citizenship (Western Samoa) Act 1982 or the Citizenship Act 1977. See Section 4: Key issues for the Committee's consideration.</p>
<p>Why were Samoans whose NZ citizenship was removed by the 1982 WS Act, not given British citizenship?</p>	<p>The Privy Council ruled that all Western Samoans born between 1924 and 1948 were British subjects and that in 1949 they and their descendants had become New Zealand citizens.</p> <p>Britain did not govern Western Samoa. The League of Nations and then the United Nations gave the mandate to administer Samoa to New Zealand as a Mandated Territory then a Trust Territory.</p> <p>New Zealand does not have the authority or right to provide citizenship from another country. See: <i>The legal background of New Zealand citizenship in Western Samoa is complex</i> in Section 1.</p>

<p>The Committee requested clarification on Western Samoan people born in the following periods: 1914-1924, 1924-1948, 1948-1962, 1962-1982.</p>	<p>See: <i>The legal background of New Zealand citizenship in Western Samoa is complex</i> in Section 1.</p>
<p>The Committee wanted advice on the pros and cons of going down citizenship by descent pathway.</p>	<p>See Section 3: The Department's view on the Bill's feasibility in its present state, and Section 4: Key issues for the Committee's consideration.</p>
<p>Why is not every person in Samoa entitled to citizenship under the Bill? Wouldn't everyone technically have a claim?</p>	<p>The policy intent of the Bill specifies that it would apply to a group of people born between 1924 to 1948 who were found by the Privy Council to be deemed to be "Natural Born British Subjects" in the terms of previous legislation. There is a limit when passing down New Zealand citizenship to descendants born overseas.</p>
<p>The Committee asked MFAT about the 1982 WS Act's consistency with UN human rights laws at various points in time.</p>	<p>MFAT considers that the advice it provided to the Committee in 2003, relating to Petition 2002/44, remains valid. MFAT further considers that New Zealand's current legislative, policy and administrative settings in relation to Samoa are consistent with international human rights law.</p>
<p>What impact would the Bill have on superannuation?</p>	<p>New Zealand superannuation is a retirement pension for those who are aged 65, hold New Zealand citizenship or a resident class visa and have lived in New Zealand for 10 to 20 years depending on their date of birth.</p> <p>New Zealand and Samoa do not share a bilateral pension portability agreement. However, New Zealanders who qualify for New Zealand superannuation and intend to reside in Samoa for more than 52 weeks, can apply to MSD to receive their payments in Samoa under a Special Portability Arrangement.</p> <p>Samoans who qualify for Samoa's pension will have their payments halted if they leave Samoa for more than 30 consecutive days.</p>
<p>Would it be possible to create a completely different citizenship category that is set up specifically for the impacted group? And a category that ringfences a particular generation?</p>	<p>See Section 4: Key issues for the Committee's consideration.</p>

<p>Have other jurisdictions faced similar situations and what have they done?</p>	<p>It is difficult to find similar situations, due to the differences between how countries provide access to citizenship.</p> <p>The case of Samoa is quite unique due to the changes of citizenship status of people born in Samoa due to various pieces of legislation and the Privy Council ruling.</p> <p>In the South Pacific region, we could potentially make comparisons with the case of Papua New Guinea (PNG) administered by Australia as a single territory from 1945.</p> <p>PNG comprised the former British protectorate of Papua, which had been an Australian territory since 1906, and the former German colony of New Guinea, which became Australia's responsibility as a Mandated Territory of the League of Nations (1921–42) and a United Nations Trust Territory following World War II.</p> <p>To be eligible for Australian citizenship by conferral, generally, a person must meet several requirements, including being a permanent resident, understanding basic English, having knowledge of Australia, and passing the citizenship test. However, there are specific provisions for individuals born in PNG before 16 September 1975. If one of the parents was an Australian citizen born in Australia, it may be possible for the individual to claim Australian Citizenship.¹³</p>
<p>If section 7 of the 1982 WS Act is repealed through this Bill, would the potential need to renegotiate the Treaty of Friendship delay the progress of the Bill? Could section 7 be retained, with amendments?</p>	<p>See Section 3: The Department's view on the Bill's feasibility in its present state.</p>

¹³ [Become a citizen \(by conferral\) Person born in Papua before independence in 1975 \(homeaffairs.gov.au\)](http://homeaffairs.gov.au)

<p>What are the barriers that Samoans are facing when applying for New Zealand visas? How do these compare with other Pacific Islands and other countries?</p>	<p>Some barriers that Samoans citizens face when applying for New Zealand visas include:</p> <ol style="list-style-type: none">1. Language barriers: not everyone in Samoa is fluent in English.2. Technological barriers: some Samoan citizens lack access to a computer, or the internet access needed to make an online application. Some applicants use a family member overseas to apply on their behalf or use the services of travel agents to lodge visa applications on behalf of applicants.3. Financial barriers: some Samoans citizens do not have a credit card or bank account to make application fee payments.4. Logistical barriers: including limited opening hours (one hour a day) for in-person appointments at Immigration New Zealand's Apia office. <p>Similarly to any other visa-required country in the Pacific, Samoan citizens must apply for a visa to enter New Zealand if they do not hold citizenship or a resident class visa. As the purpose of travel is more often family-related than other groups (due to the social ties to communities in New Zealand), this means travel for urgent events such as funerals is often requested.</p> <p>In response to these circumstances, the New Zealand High Commission in Apia is the only one in the world that includes an Immigration New Zealand office that the public can visit.</p> <p>Further information about visa and immigration settings relevant to Samoans can be found in Appendix D.</p>
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Section 6: Out of scope submissions

95. This section covers submissions which were outside the scope of the Bill as currently drafted. Aside from repealing the 1982 WS Act, many submissions advocated for other forms of reparation:
- **Monetary compensation** was the most suggested form of reparation beyond repealing the 1982 WS Act, with many considering it necessary to make up for the loss of opportunities that would have come with New Zealand citizenship. Submissions also argued that compensation would provide tangible recognition of the harms suffered by the Samoan people.
 - Some submissions also called for a **formal apology** from the New Zealand Government.
 - A handful of submissions think that **the history** of New Zealand's administration of Western Samoa and the decades following that **should be taught in schools**.
 - Others said there should be **other forms of compensation** made available to the affected group, such as counselling services.
96. Several submissions also discussed issues with New Zealand's visa and immigration settings. While the majority of those that brought up visas did so as a reason for supporting the Bill (that is, acquiring citizenship would mean visa-free travel to New Zealand), there were some that also criticised New Zealand's visa and immigration settings as it relates to Samoan applicants.
97. Some think that a review of the Samoan Quota scheme is needed.¹⁴ A handful of submissions suggested descendants of the affected group should fill the unfilled numbers of the Samoan Quota. Some also spoke of the need to consider giving residence or citizenship opportunities for Samoan overstayers in New Zealand.

¹⁴ A description of the Samoan Quota scheme can be found in Appendix D.

Appendix A: Table outlining types of submissions received on the Bill and analysis approach for each type of submission

Submission type	Number of submissions	Approach to analysis
<p>Submissions made in English via Parliament website.</p> <p>These include:</p> <ul style="list-style-type: none"> • submissions with 'unique' text; • submissions that used the Green Party postcard's template text; • Mau a Samoa i le Sitiseni submissions in English. 	5,093	Each submission has been analysed and counted towards the overall submission count.
<p>Submissions made in Samoan language via Parliament website.</p> <p>These include:</p> <ul style="list-style-type: none"> • Mau a Samoa i le Sitiseni submissions in Samoan; • Other submissions in Samoan. 	1,842	Each submission has been analysed and counted towards the overall submission count.
Bluespur Consulting Limited and 5,951 others	1	Common themes across the submissions in English have been pulled out to analyse.
Mau a Samoa i le Sitiseni physical copies sent from Apia	9,801	<p>A single representative submission has not been selected and tabled by the Committee in time for the delivery of this report and has therefore not been analysed.</p> <p>However, each submission has been counted towards the overall submission count.</p>
Postcard submissions organised by the Green Party	7,785	Each submission has been counted towards the overall submission count.

<p>Late/ supplementary submissions as of 22 July 2024. These include:</p> <ul style="list-style-type: none">• submissions received after the 31 May 2024 deadline;• supplementary material provided during oral hearings;• The petition of Esmee Salesa and 6,985 others.	59	Each submission has been counted towards the overall submission count.
Oral submissions	142	As with written submissions, key themes from oral submissions were considered as part of submissions analysis and development of advice.

Appendix B: Memo: Restoring Citizenship removed by Citizenship (Western Samoa) Act 1982 Bill – Response to questions raised by the Committee on 22 May 2024

Memo

To	Rachel Boyack, Chairperson Governance and Administration Committee
Cc	Kim Refshauge
From	Jayne Beggs, Policy Director
Date	28 May 2024
Subject	Restoring Citizenship removed by Citizenship (Western Samoa) Act 1982 Bill – response to questions raised by the Committee on 22 May 2024

Purpose

This memo provides responses from the Department of Internal Affairs (the Department) to questions raised by the Governance and Administration Committee (the Committee) on the Restoring Citizenship removed by Citizenship (Western Samoa) Act 1982 Bill (the Bill) on 22 May 2024.

Introduction

The Department has included all questions asked by the Committee in this memo, as written down by the Clerk of the Committee. The Department has provided a response or indicated where a question will be responded to in the Departmental report; where further analysis and more time are needed to respond to a question; and where a question has been, or will be, responded to by another agency.

Responses from the Department

Question 1: What prevented the 3,850 people from acquiring New Zealand Citizenship another way?

- Section 7 of the Citizenship (Western Samoa) Act 1982 (1982 WS Act) provides two mechanisms for people born between 1924 and 1948 to access New Zealand citizenship. They could access a citizenship grant if:
 - they can prove they were in New Zealand on 14 September 1982, the day before the Act came into force; or
 - they can prove they lawfully entered New Zealand after 14 September 1982 holding a resident-class visa.
- Samoan citizens can access New Zealand citizenship after holding a permanent resident class visa and applying for a grant.
- Conditions for Samoan citizens to apply for resident-class visas are the same as other citizens from foreign countries. There are several pathways to obtaining a resident-

class visa, many of which start with a temporary visa allowing them to work, study or own a business.

- Further detail on citizenship pathways is outlined in **Appendix A** and **B** of the initial briefing provided to the Committee.
- Further detail on the practical difficulties Samoan citizens face acquiring New Zealand citizenship will be addressed in the briefing from the Ministry of Foreign Affairs and Trade (MFAT).

Question 2: How many people receive New Zealand citizenship each year?

- According to the Department's data, since 1924 a total of 1,047,062 people received New Zealand citizenship by grant, 86,165 of them were Samoan citizens.
- Since 1971, a total of 302,344 people accessed citizenship by descent status, 17,361 of them were Samoan residents.
- In 2023 a total of 2,058 Samoan citizens received a resident class visa, while a total of 2,366 Samoan citizens received New Zealand citizenship (including citizenship by grant and citizenship by descent categories).
- In the same year, a total of 49,213 people received New Zealand citizenship (including citizenship by grant and citizenship by descent categories).
- You can find more information on the different ways to obtain New Zealand citizenship in **Annex B** of the initial briefing.

Question 3: Why did the NZ government not want to enact changes based on the 2003 petition to repeal the 1982 WS Act?

- The Governance and Administration Committee's May 2004 report on the '*2002/44 Petition of Dr George Paterson Barton Vaitoa Sa and 100,000 others requesting the repeal of the Citizenship (Western Samoa) Act 1982 and a return of the law to its state as declared by the Judicial Committee of the Privy Council in Lesa v Attorney-General on 28 July 1982*', found 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.
 - However, the committee understood that the Privy Council's judgment occurred at a time when the Samoan community perceived New Zealand's immigration policy as discriminatory and contrary to the spirit of the 1962 Treaty of Friendship between New Zealand and Samoa. In acknowledging that these events had left a sense of grievance in the Samoan community, which was manifest in the petition, the committee recommended to the Government that New Zealand, in consultation with the Samoan Government,

revisit, review, and renew the 1962 Treaty of Friendship between New Zealand and Samoa.

- We note that this information is from a publicly available source.¹⁵ The Department cannot provide further information on this matter as we consider this matter to be outside of the scope of the Department's role as advisors to the Committee on the citizenship regulatory system.

Other questions

Question 4: How did New Zealand handle similar citizenship issues with Niue and the Cook Islands?

- MFAT will provide comments on the visa/immigration regimes in Niue and the Cook Islands. As indicated in a separate letter to the Chair dated 28 May 2024, responding to this question will require a significant amount of historical and legal analysis that will likely take weeks to complete.

Question 5: What are the implications for any Samoans born before 1924?

- As indicated in a separate letter to the Chair dated 28 May 2024, responding to this question will require a significant amount of historical and legal analysis that will likely take weeks to complete.

Question 6: How could the two mechanisms mentioned in paragraph 29 in the briefing paper be improved to make it easier for Samoan applicants?

- Information on how the two pathways could be improved will be covered in the Departmental report.

Question 7: Has the Samoan Government been consulted yet?

- For MFAT's response.

Question 8: What are the Bill's implications for New Zealand's broader foreign relations?

- For MFAT's response.

Question 9: What are the potential implications for New Zealand superannuation, social services and hospital care?

- The Department cannot provide a response to this question. We consider this matter outside the scope of the Department's role in advising the Committee on the citizenship regulatory system.

Question 10: What are the potential implications of the Bill for the RSE scheme?

- On 27 May 2024, the Ministry of Business, Innovation and Employment (MBIE) as the responsible agency for this information, provided the Department with the following response to pass on to the Committee:

¹⁵ <https://www.scoop.co.nz/stories/PA0405/S00456.htm>

- MBIE does not consider that there would be any material impact on demand for RSE work if facilitated pathways to New Zealand citizenship under the 1982 WS Act were removed.
- As a circular labour mobility scheme, where workers come to New Zealand for up to seven months to work in the horticulture/viticulture sectors to earn money and make remittances back to family and then return home, it is quite different in nature to residence and citizenship. The conditions of the RSE visa specify that it is not possible to use it as a pathway to residence even if a worker returns for several seasons.

Appendix C: MFAT Memo: New Zealand – Samoa Treaty of Friendship 1962

History of the Treaty of Friendship 1962

- New Zealand administered Western Samoa, on behalf of the United Kingdom, under different mandates, from World War I onwards. As other agency officials have briefed, this period was the source of the rights and claims of some Samoans to eventual New Zealand citizenship.
- New Zealand's track record in administering Western Samoa has been subject to significant criticism. New Zealand was blamed for mismanagement of the influenza epidemic in 1918, which involved the death of an estimated one fifth or more of Samoa's population. New Zealand's suppression of the Mau movement for independence was also controversial, particularly the shootings in 1929 of eight Mau protesters, including a highly respected chiefly leader.
- In 1962, Western Samoa declared independence, and New Zealand and Samoa signed the Treaty of Friendship, to govern their new diplomatic relationship as sovereign states. This remains the only Treaty of its kind which New Zealand is a party to.
- The Treaty of Friendship remains highly respected by both countries today, as the basis for our relationship. When signed, it was an important step in acknowledging that New Zealand needed to move forward with Samoa respectfully and as equals, in a manner different to the colonial past.
- Under the Treaty, the bilateral relationship with Samoa has continued to strengthen over the years. Samoa is one of New Zealand's closest bilateral partners in the Pacific, with extensive official and people to people ties.
- In 2002, former Prime Minister, Rt Hon Helen Clark delivered a formal apology from the Government of New Zealand for the events which had occurred during New Zealand's administration of Samoa prior to independence. In 2021, former Prime Minister, Rt Hon Jacinda Ardern apologised for the Dawn Raids of the 1970s.
- New Zealand and Samoa now sign Statements of Partnership, setting out our bilateral priorities, particularly under the development cooperation programme, over a four-year period, under the auspices of the Treaty. The most recent one, signed in February 2024, commits New Zealand to ensure our policies remain in alignment with the 1962 Treaty and the 1982 Protocol.

1982 Protocol to the Treaty of Friendship

- In 1982, at the same time as the passage of the Citizenship (Western Samoa) Act 1982, New Zealand and Samoa signed the Protocol to the Treaty of Friendship 1982. This Protocol:
 - placed into the Treaty of Friendship the obligation for New Zealand to immediately grant citizenship, upon application, to any Samoans in New Zealand at that date, or to any Samoans who had received permanent residency and arrived in New Zealand after that date (see Section 3 of this report); and

- introduced the obligation for New Zealand and Samoa to consult each other on citizenship and immigration matters which would impact each other's inhabitants.

Obligation to Consult the Government of Samoa

- Under the 1982 Protocol to the Treaty of Friendship, New Zealand has an obligation to consult with the Government of Samoa on matters of citizenship and immigration which would impact its inhabitants. This consultation can be requested by either party.
- The Protocol does not provide specific direction for the method or timing of consultation. The Protocol also does not explicitly distinguish between the Legislative or Executive branches of the Government of New Zealand.
- MFAT's interpretation is that New Zealand has broad discretion to design an appropriate proposal for consultation with the Government of Samoa, subject to their agreement.
- On 27 June 2024, New Zealand's High Commissioner to Samoa met with the Chief Executive of the Samoa Ministry of Foreign Affairs and Trade and requested advice on the Government of Samoa's preferences on the timing and format of consultation on this Bill.

Appendix D: Information provided by MBIE on visa and immigration settings relevant to Samoans

Visa required

Samoan nationals must apply for a visa to enter New Zealand (like any other visa-required country in the Pacific or internationally). As the purpose of travel is more often family-related than other groups (due to the social ties to communities in New Zealand), this means travel for urgent events such as funerals is often requested. Immigration New Zealand (INZ) processes these applications with priority.

Visitor visas

As with all countries where a visa is required, visitor visas permit a stay of up to nine months. Multiple entry visas can also be issued for up to three years that allow people to come and go if they do not exceed the maximum allowable stay on their visa. Longer term multiple entry visas may be granted where people can show a need to travel regularly, for example, business-related travel and diplomats.

Applicants must show that:

- They are genuine and will leave at the end of their stay;
- Have sufficient funds for their stay or a sponsor who will support them; and
- They are in good health and of good character.

For Samoan citizens (and for citizens of other Pacific countries) the cost is \$171. This is \$40 less than required for visitors from countries outside the Pacific in recognition of New Zealand's close relationship with Pacific countries. Applicants are also not required to pay the \$35 International Visa Levy.

The Parent and Grandparent Visitor Visa is also available to Samoan citizens who wish to visit family in New Zealand. This allows people to visit children or grandchildren who are New Zealand residents. Applicants must be sponsored by their child or grandchild and meet the same requirements as for a Visitor Visa. Visas are valid for three years. Visas provide for multiple entry and holders may stay for up to six months at a time, with a maximum stay of 18 months over the three years. The application fee is also \$171.

Visitor visa applications online

Visitor visa applications can only be made online (since May 2022, applicable to applicants from all countries). Visa application fees must be paid at the time of application, usually by credit card. This can cause issues for Samoan (and other Pacific) applicants due to the low availability/uptake of credit card facilities. Some applicants use a family member overseas to apply on their behalf or use the services of travel agents to lodge visa applications on behalf of applicants (which attracts an additional payment to the application fee).

INZ is currently looking into how to allow other forms of payment, including use of mobile phone platforms (commonly used in the Pacific to conduct transactions). Volumes of travellers across the Pacific have not changed significantly when pre- and post-border closure volumes are compared, and Samoan people are adapting to the changes.

There are several significant benefits to the online channel for Samoan people, including:

- ease of moving applications around the visa processing network to manage processing times especially when volumes are high;
- the ability for an individual applicant to check progress of their application themselves;
- the ability for family and friends to assist with submitting an application from anywhere in the world;
- faster processing of future applications due to system availability of previously uploaded documents;
- availability to the customer of submitted documents, after their application has been decided; and
- customers no longer need to travel long distances to lodge visitor applications at a physical office.

Residence visas

Samoan Quota

The Samoan Quota provides for 1,100 Samoan citizens per annum to apply for residence in New Zealand. The number of places available is currently 1,650 per annum over four years to enable the unfilled places caused when the border was closed during COVID-19 to be filled.

The quota was established under the 1962 Treaty of Friendship between New Zealand and Samoa and has been operating since 1970. It recognises the strong historical connections between New Zealand and Samoa and is an important part of the ongoing relationship.

Places are selected by ballot. Those who are successful in the ballot are invited to apply for residence for themselves and their families within eight months of the invitation being issued. They must meet certain eligibility requirements including:

- being between 18 and 45 years old;
- having a genuine job offer in New Zealand;
- meeting health and character requirements; and
- having a minimum level of English language ability.

INZ holds regular seminars to support customers who have been successfully drawn from the Samoan Quota ballot.

Pacific Access Category

The Pacific Access Category is modelled on the Samoan Quota and is also run through a ballot process. It provides 650 residence visas to citizens of Fiji (250 places), Tonga (250 places), Tuvalu (75 places) and Kiribati (75 places). It has been in place since 2001.

While there is a registration fee (\$85) for the Pacific Access Category, registration is free for the Samoan Quota in recognition of the Treaty of Friendship special relationship.

Other residence categories

Skilled migrants

There are a range of skills-based pathways for people to become New Zealand residents including the skilled migrant category, Green List, and sector agreements. These are not targeted to people from the Pacific, but skilled Pacific people are able to access these categories on the same basis as others.

Family

A range of visas enable New Zealand citizens and residents, including those from the Pacific, to sponsor parents, partners and dependent children for residence visas.

Temporary work visas

Recognised Seasonal Employer (RSE) scheme

The RSE scheme is a circular labour mobility scheme which enables employers in the horticulture and viticulture sectors to recruit workers from Pacific countries to harvest, plant, pack and maintain crops. Workers generally participate in the scheme to enable them to remit money back to benefit their families and communities at home.

The RSE visa provides for a maximum stay of seven months each season, except for workers from Kiribati and Tuvalu who may stay for nine months in recognition of the cost and distance of travel. Samoa is a significant contributor of RSE workers, with 3,922 Samoan workers participating in the scheme during 2023/24.

Accredited Employer Work Visa

The Accredited Employer Work Visa is not targeted to Pacific people, but accredited employers may secure workers to fill skilled labour shortages from Pacific countries.

Other immigration settings that support relationships with Samoa

Visas for diplomatic and official passports

Visas for diplomatic and official passport holders are processed by INZ's priority visa office, are issued free of charge and require only light documentation. Three-year, multi-entry visas are issued in most cases.

INZ Office in Samoa which can process applications locally

Apia has the only INZ office in the world which has opening hours for the public. Customers are invited to attend the office in person on an appointment basis when interviews or a face-to-face discussion is necessary. A public counter is opened for a limited timeframe daily for the purpose of submitting passports. Physical visitor applications cannot be made in person and customers often also use the daily opening timeframe to make visa related enquiries.

There is also a New Zealand-based Immigration Contact Centre which customers can call from anywhere in the world (although call charges apply and call waiting times are often extended during peak seasons and it is cost prohibitive to some customers).