

CITIZENSHIP (WESTERN SAMOA) BILL

EXPLANATORY NOTE

THIS Bill implements the Protocol to the Treaty of Friendship between the Government of New Zealand and the Government of Western Samoa, and makes new provisions relating to the entitlement to New Zealand citizenship of certain persons born in Western Samoa before 1949, and others claiming by descent or marriage through such persons.

In *Lesa v The Attorney-General*, the Privy Council advised Her Majesty to the effect that persons born in Western Samoa during the period beginning with the commencement of the British Nationality and Status of Aliens (in New Zealand) Act 1928 and ending with the repeal of that Act by the British Nationality and New Zealand Citizenship Act 1948 on the 1st day of January 1949 have the status of natural-born British subjects. It is probable that the same argument would be upheld in respect of persons born in Western Samoa after the commencement of the British Nationality and Status of Aliens (in New Zealand) Act 1923 on 13 May 1924.

By virtue of section 16 (3) of the British Nationality and New Zealand Citizenship Act 1948, all persons who were British subjects immediately before the commencement of that Act and who were born in Western Samoa became New Zealand citizens on the commencement of that Act. These rights are preserved by section 13 of the Citizenship Act 1977.

The effect of their Lordships' advice (which has been accepted by Her Majesty) is, therefore, that every person who was born in Western Samoa during the currency of the 1928 Act (and, probably, the 1923 Act) is a New Zealand citizen, and so are certain others who can claim by descent or marriage through such persons.

It is in respect of all such persons that this Bill makes provision.

It should be noted that the Protocol relates to all Western Samoan citizens whether or not they are affected by the Privy Council's advice. Conversely, there may be a few persons who are affected by that advice, but are not Western Samoan citizens. The rights conferred by *clause 7* of this Bill are therefore extended to all persons affected by the advice (whether or not they are Western Samoan citizens) and all Western Samoan citizens (whether or not they are affected by the advice).

Clause 1 relates to the Short Title.

Clause 2 defines New Zealand to exclude the Cook Islands, Niue, and Tokelau. The point is of particular significance in respect of *clause 7*.

Clause 3 provides that the Crown is bound.

Clause 4 defines the persons to whom this Act applies. They are all those persons who can claim New Zealand citizenship under the *Lesa* case but in no other way.

Clause 5 declares Miss *Lesa* to be a New Zealand citizen.

Clause 6, in effect, negates the Privy Council's advice in the *Lesa* case. It declares that no person to whom this Bill applies shall be a New Zealand citizen.

Clause 7 gives the right to apply for and be granted New Zealand citizenship to every person to whom this Bill applies, and to every other person who is a citizen of Western Samoa, if that person was in New Zealand immediately before its enactment, or if he lawfully enters New Zealand at any time thereafter and is given the right under the Immigration Act 1964 to reside in New Zealand permanently.

Clause 8 does 3 things. First, it quashes all "overstaying" convictions entered against any person to whom this Bill applies. Secondly, it removes from any such person who has been deported consequent upon such a conviction the status of a prohibited immigrant. Thirdly, it protects every person from liability in respect of his actions committed in good faith in relation to such offences and convictions.

Clause 9 specifies certain rules by which parentage and status are to be determined for the purposes of *clause 4*.

Clause 10 applies the Bill to Tokelau.

Hon. Mr McLay

CITIZENSHIP (WESTERN SAMOA)

ANALYSIS

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A BILL INTITULED

An Act to implement the Protocol done at Apia on the 21st day of August 1982 to the Treaty of Friendship between the Government of New Zealand and the Government of Western Samoa done at Apia on the 1st day of August 1962, and to make provision relating to the New Zealand citizenship of certain persons born in Western Samoa before 1949 and others claiming by descent or marriage through such persons

10 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Citizenship (Western Samoa) Act 1982.

15 **2. Interpretation**—In this Act the term “New Zealand” does not include the Cook Islands, Niue, or Tokelau.

3. Crown bound—This Act binds the Crown.

4. Application—(1) Subject to subsection (2) of this section, this Act applies to—

(a) Every person—

(i) Who was born in Western Samoa on or after 5
the 13th day of May 1924 and before the 1st day of
January 1949; and

(ii) Who, immediately before the 1st day of
January 1949, was a British subject by virtue only of
having been born in that country; and 10

(b) Every female who, on the 1st day of January 1949,
became a New Zealand citizen by virtue only of
having been married to any person to whom
paragraph (a) of this subsection applies; and

(c) Every person— 15

(i) Who is the descendant of any person to whom
paragraph (a) or paragraph (b) or paragraph (d) of
this subsection applies; and

(ii) Who, if born before the 1st day of January
1949, was a British subject immediately before that 20
date; and

(d) Every female who, on the 1st day of January 1949,
became a New Zealand citizen by virtue only of
having been married to any person to whom
paragraph (c) of this subsection applies. 25

(2) This Act does not apply to any person who is a New
Zealand citizen otherwise than by virtue only of—

(a) That person's birth in Western Samoa and his status as
a British subject immediately before the 1st day of
January 1949; or 30

(b) That person's descent from any person to whom
paragraph (a) or paragraph (b) or paragraph (d) of
subsection (1) of this section applies; or

(c) That person's marriage to any person to whom
paragraph (a) or paragraph (c) of that subsection 35
applies.

5. Certain person deemed New Zealand citizen—
Falema'i Lesa of Wellington is hereby declared to be and
always to have been a New Zealand citizen.

6. Persons to whom this Act applies not New Zealand citizens—Notwithstanding anything in the Citizenship Act 1977 or in any other enactment but subject to section 5 of this Act, no person to whom this Act applies shall be or be deemed
5 ever to have been a New Zealand citizen.

7. Grant of citizenship as of right in certain cases—
(1) Notwithstanding anything in section 8 or section 9 of the
Citizenship Act 1977, the Minister of Internal Affairs shall,
upon application made to him, authorise the grant of New
10 Zealand citizenship to any person who proves to the
satisfaction of the Minister—
(a) That he is a citizen of Western Samoa or a person to
whom this Act applies; and
(b) That he—
15 (i) Was in New Zealand immediately before the
commencement of this Act; or
(ii) Has lawfully entered New Zealand after the
commencement of this Act and is entitled, in terms
of the Immigration Act 1964, to reside in New
20 Zealand permanently.
(2) Sections 11 and 12 of the Citizenship Act 1977, and any
regulations made under that Act, shall apply with any
necessary modifications in respect of an application under
subsection (1) of this section as if it were an application under
25 section 10 of that Act.

8. Certain convictions quashed—(1) Where any person
to whom this Act applies has been convicted, at any time
before the commencement of this Act, of an offence against
section 5 (1) (a) of the Immigration Act 1964 or any of the
30 provisions of Part II (except section 19A) of that Act, or any
corresponding former enactment, that conviction is hereby
quashed.
(2) No person to whom this Act applies shall be a
prohibited immigrant for the purposes of the Immigration
35 Act 1964 merely because he has been deported from New
Zealand consequent upon his conviction of any offence to
which subsection (1) of this section applies.
(3) Without limiting or affecting any privilege, immunity,
defence, or justification conferred by any other enactment or
40 rule of law, no person shall be guilty of an offence or liable to
any civil proceeding by reason of anything done in good faith
to or in respect of any person to whom this Act applies in
relation to or arising out of any matter referred to in
subsection (1) of this section.

9. Special provisions relating to parentage—(1) For the purposes of determining whether any person is or is not a person to whom this Act applies, every person whose parents married each other subsequent to his birth but before the 1st day of January 1978 shall be treated as if his parents had been 5 married to each other at the time of his birth.

(2) Without limiting subsection (1) of this section, for the purposes of determining whether any person, other than a person who was born outside Western Samoa before the 1st day of January 1949, is or is not a person to whom this Act 10 applies,—

(a) A person shall, in the absence of evidence to the contrary, be presumed to be the father of another person if his paternity of that other person has been established by one or more of the types of evidence 15 specified by section 8 of the Status of Children Act 1969; and the term “father” shall be construed accordingly:

(b) A person shall be deemed to be the child of another person if he has been adopted by that other person, 20 either by an adoption order within the meaning of and made under the Adoption Act 1955 or by an adoption to which section 17 of that Act applies; and—

(i) The terms “father”, “mother”, and “parent” 25 shall be construed accordingly; and

(ii) The person shall be deemed to have been born when and where the adoption order was made:

Provided that, on the discharge for any reason of the adoption order in accordance with section 20 of 30 that Act, the person shall cease to be deemed to be the child of that other person.

(3) References to the status or description of the father or mother of a person at the time of that person’s birth shall, in relation to a person born after the death of his father or 35 mother (as the case may require), be construed as referring to the status or description of the father or mother at the time of his or her death.

(4) Where the relevant parent died before, and the person was born on or after, the 1st day of January 1949, the status or 40 description that would have been applicable to the parent had he or she died on or after the 1st day of January 1949 shall be deemed to be the status or description applicable to him or her at the time of his or her death.

(5) Where the relevant parent died before, and the birth occurred on or after, the 1st day of January 1978, the status or description that would have been applicable to the parent had he or she died on or after that date shall be deemed to be the
5 status or description applicable to him or her at the time of his or her death.

(6) Without limiting the foregoing provisions of this section, for the purposes of determining whether any person is or is not a person to whom this Act applies, the status of any
10 person at any material time shall be determined in accordance with the rules of law that applied, or were subsequently deemed to have applied, at that time.

10. Act in force in Tokelau—This Act shall be in force in Tokelau.