



ANALYSIS

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1982, No. 11

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

[14 September 1982

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

(2) This Act shall come into force on the 15th day of September 1982.

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 subsections (2) and (3) of this section but without limiting section 7 (1) (a) of this Act, this Act applies to—

(a) Every person—

(i) Who was born in Western Samoa on or after 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

(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—

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

(ii) Who was born before the 1st day of January 1949; and

(iii) Who was a British subject immediately before the 1st day of January 1949; 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; and

(e) Every person—

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

(ii) Who was or is born on or after the 1st day of January 1949.

(2) This Act does not apply to any person who is a New Zealand citizen otherwise than by virtue only of being a person to whom any one or more of paragraphs (a) to (e) of subsection (1) of this section applies.

(3) This Act, except section 8, does not apply to any person to whom a New Zealand passport has been properly issued before the commencement of this Act in accordance with the Passports Act 1980.

5. Certain person declared to be New Zealand citizen—Falema'i Lesa of Wellington (being the petitioner in the case of *Lesa v The Attorney-General of New Zealand*, argued

before the Judicial Committee of the Privy Council in London in July 1982) is hereby declared to be a New Zealand citizen otherwise than by descent.

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, every person to whom this Act applies shall be deemed never to have been a New Zealand citizen, and no such person shall be a New Zealand citizen unless the Minister of Internal Affairs authorises the grant of such citizenship to that person under section 7 of this Act or any of sections 8 to 10 of the Citizenship Act 1977.

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, immediately authorise the grant of New 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—

(i) Was in New Zealand at any time on the day before the date of 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 Zealand permanently.

(2) Sections 11, 12, 27, and 28 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 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 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

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 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,—

(a) A person shall, in the absence of evidence to the contrary, be presumed to be the father of another person if he is or was married to that other person's mother at the time of that other person's conception or birth:

(b) 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 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 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 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, 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" 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 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 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 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 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 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. Citizenship Act 1977 consequentially amended—Section 17 (1) (c) of the Citizenship Act 1977 is hereby amended by adding the words "or the Citizenship (Western Samoa) Act 1982".

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