

**HUMAN
RIGHTS
COMMISSION**

REPORT NO 17

THE PASSPORTS ACT 1938

November 1985

Australian Government Publishing Service
Canberra 1985

Commonwealth of Australia 1985

ISSN 0813-3506

ISBN 0 644 04601 5

- Report No.1 The Australian Citizenship Act 1948
(August 1982)
- Report No.2 Proposed ACT Mental Health Ordinance 1981
(October 1982)
- Report No.3 Testamentary Guardianship in the Australian
Capital Territory
(April 1983)
- Report No.4 Human Rights and the Deportation of
Convicted
Aliens and Immigrants
(June 1983)
- Report No.5 Review of Crimes Act 1914 and Other
Crimes
Legislation of the Commonwealth
(August 1983)
- Report No.6 The Observance of Human Rights at the
Villawood
Immigration Detention Centre
(August 1983)
- Report No.7 Proposal for Amendments to the Racial
Discrimination Act to Cover Incitement to Racial
Hatred and Racial Defamation
(August 1984)
- Report No.8 Deportation and the Family: A Report on the
Complaints of Mrs M Roth and Mr C J Booker
(September 1984)
- Report No.9 Community Services (Aborigines) Act 1984
(January 1985)
- Report No.10 The Human Rights of Australian Born Children: A
Report on the Complaint of Mr and Mrs R C Au Yeung
(January 1985)
- Report No.11 Human Rights of the Terminally Ill: The Right of
Terminally Ill Patients to have Access to Heroin
for Painkilling Purposes
(March 1985)
- Report No.12 The Queensland Electricity (Continuity of Supply)
Act 1985
(March 1985)
- Report No.13 Human Rights and the Migration Act 1958
(April 1985)
- Report No.14 Queensland Electricity Supply and Related
Industrial Legislation
(May 1985)
- Report No.15 The Human Rights of Australian-born Children: A
Report on the Complaint of Mr and Mrs M. Yilmaz
(August 1985)
- Report No.16 Freedom of Expression and Section 116 of the

Broadcasting and Television Act 1942
(November 1985)

Our Ref

GPO Box 629,
CANBERRA A.C.T. 2601
Telephone: 434122
Telegrams Rightscom Canberra
Telex: AA 62090

13 November 1985

The Hon. Lionel Bowen, M.P.,
Deputy Prime Minister and Attorney-General,
Parliament House,
CANBERRA. A.C.T. 2600

Dear Attorney-General,

Pursuant to paragraph 9(1) (a) of the Human Rights Commission Act 1981 this report is presented to you following the Human Rights Commission's examination of the Passports Act 1938.

Yours sincerely,



Acting Chairman
for and on behalf of the
human Rights Commission

Members of the Human Rights Commission

Chairman

The Hon. Dame Roma Mitchell, D.B.E.

Deputy Chairman

Mr P. H. Bailey, O.B.E.

Members

Associate Professor M. J. Aroney, O.B.E.

Professor P. J. Boyce

Mrs N. C. Ford

Mrs E. Geia

Ms E. Hastings

The Functions of the Commission	(vi)
I. Introduction	1
II. Passports and Human Rights	3
III. Review of Passports Act	R 5
IV. The Manual of Australian Passport Issue	11
Birth Certificates	11
Certification of Identity of Applicants	13
V. Recommendations	16

Appendixes

1. Relevant Sections of Passports Act 1938	17
2. Relevant Articles of International Covenant on Civil and Political Rights (ICCPR)	28
3. Relevant Articles of International Convention on the Elimination of All Forms of Racial Discrimination	29
4. Relevant Principles of Declaration of the Rights of the Child	3

FUNCTIONS OF THE COMMISSION

Section 9 of the Human Rights Commission Act 1981 reads:

9.(1) The functions of the Commission are -

- (a) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to any human rights, and to report to the Minister the results of any such examination;
- (b) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and -
 - (i) where the Commission considers it appropriate to do so - endeavour to effect a settlement of the matters that gave rise to the inquiry; and
 - (ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect a settlement of those matters - to report to the Minister the results of its inquiry and of any endeavours it has made to effect such a settlement;
- (c) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to human rights;
- (d) when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, of the Declarations or of any relevant international instrument;
- (e) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination;
- (f) to promote an understanding and acceptance, and the public discussion, of human rights in Australia and the external Territories;

(h) to perform -

- (i) any functions conferred on the Commission by any other enactment;
- (ii) any functions conferred on the Commission pursuant to any arrangement in force under section 11; and
- (iii) any functions conferred on the Commission by any State Act or Northern Territory enactment, being functions that are declared by the Minister, by notice published in the Gazette, to be complementary to other functions of the Commission; and

(j) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Commission shall not -

- (a) regard an enactment or proposed enactment as being inconsistent with or contrary to any human right for the purposes of paragraph (1) (a) or (b) by reason of a provision of the enactment or proposed enactment that is included solely for the purpose of securing adequate advancement of particular persons or groups of persons in order to enable them to enjoy or exercise human rights equally with other persons; or
- (b) regard an act or practice as being inconsistent with or contrary to any human right for the purposes of paragraph (1) (a) or (b) where the act or practice is done or engaged in solely for the purpose referred to in paragraph (a).

(3) For the purpose of the performance of its functions, the Commission may work with and consult appropriate non-governmental organizations.

One of the functions of the Commission under Section 9 of the Human Rights Commission Act 1981 (Cwlth) (the Act), is, pursuant to paragraph (1) (a), to examine enactments that may be inconsistent with, or contrary to, any human rights and to report to the Minister concerned the results of such an examination.

2. The Passports Act 1938 (Cwlth) provides for the issue of passports to Australian citizens. Related provisions include offences relating to improper use, forgery and issue of passports and the prosecution of offences.

3. The Commission is concerned that legislation such as the Passports Act, which directly affects the relationship between the individual and the State, does not infringe the human rights of the individual.

4. With this in mind, the Commission commenced an examination of the Passports Act in the context of the International Covenant on Civil and Political Rights (the ICCPR) and the three Declarations - the Declaration of the Rights of the Child, the Declaration on the Rights of Mentally Retarded Persons and the Declaration on the Rights of Disabled Persons. Further, the legislation has Discrimination Act 1975 (Cwlth) which gives effect to the International Convention on the Elimination of All Forms of Racial Discrimination (the Racial Discrimination Convention) and the Sex Discrimination Act 1984 (Cwlth) which gives effect to the Convention on the Elimination of All Forms of Discrimination Against Women.

5. The Commission expresses its thanks to its Senior Legal Officer, Ms Cynthia Cheney, who has been the officer mainly involved in preparing the drafts of this report, and to Mrs Jan Churcher for her capable assistance in the keyboard processes. It also expresses its appreciation to the Department of Foreign Affairs for its assistance and co-operation during the inquiry phase.

II. PASSPORTS AND HUMAN RIGHTS

5. Article 12 of the International Covenant on Civil and Political Rights (ICCPR) states:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2 Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4.No one shall be arbitrarily deprived of the right to enter his own country.

Thus Article 12 provides for the right of free movement for all persons lawfully in a country, for the right to leave a country and the right to return to one's own country. The granting or withdrawal of passports by a State is a process directly related to Article 12. Therefore, the Commission is of the view that legislation relating to passports must reflect the fundamental human rights and freedoms as contained in Article 12.

6.Literally the word "passport" meant a licence to pass a port or city gate or haven; or in other words a licence to pass safely from one place of one country to another place or country.'¹ 'Originally, a passport was a document identifying a citizen, requesting foreign powers to allow its bearer to enter and pass freely and safely, and recognizing the right of the bearer to the protection and good offices of his own country's diplomatic and consular officers. Today, however, another crucial function is control over exit.'² Hence the

1. 'The Right to a Passport'- 48 AU J 61.

2. Paul Sieghart, The „International Law of Human Rights, p.183.

passport is a document without which an individual is virtually unable to leave any country, including his own, and to return to his country. It is, therefore, a document which allows a person freedom to travel. At present in international law, no person has a legal right to the grant of a passport by the country of which the person is a national. However, in recent years there has been a growing international acceptance of the concept that freedom of travel is an aspect of human rights which needs to be protected, even though the issue of passports is a matter of policy within the discretion of the State and not a matter within the area of international law.

7. It seems established, therefore, that a passport is a vital prerequisite to the rights to freedom of movement as set out in Article 12. This is supported by the decision of the U.N. Human Rights Committee in Vidal Martins v. Uruguay (1982) 3 H.R.L.J. 165 at p.166 in which it was stated that 'a passport is a means of enabling him (a person) "to leave any country, including his own", as required by Article 12(2) of the Covenant'. This view was further reiterated in another Committee decision in Varela v. Uruguay (1983) 4 H.R.L.J. 204 at p.205. The Commission is of the view that in order to protect this right to freedom of movement, an Australian citizen should have an inherent right to a passport. Accordingly, it recommends that the Passports Act confer on the citizen a right to a passport, subject to the conditions laid down in that Act, which themselves should be within the restrictions allowed by Article 12.3. The Commission's review of the Passports Act itself is designed to determine whether the individual's right to freedom of movement conferred by Article 12 is respected by that legislation.

8. During the Commission's examination of the Act, the Passports Amendment Act 1984 (Cwth) was introduced into the Commonwealth Parliament and assented to on 25 October 1984. It was proclaimed on 22 November 1984.

9. The principal changes to the Act resulting from the Passports Amendment Act are as follows:

- removal of the present distinction between British subjects who are not Australian citizens and other
- non-citizens, thereby prohibiting the issue of passports to all non-citizens;
- simplified procedure for the issue of passports to children in exceptional circumstances;
- inclusion of a review procedure whereby certain decisions, either by the Minister or approved officers,
- may be reviewed by the Administrative Appeals
- Tribunal. This amendment implements one of the recommendations of the Committee on Administrative Discretions (the 'Bland Committee') in 1973 which was also supported by the Administrative Review Council.'

These amendments, and other relevant provisions in the Act, are discussed in the succeeding paragraphs. The text of all the relevant provisions is attached as Appendix 1.

10. Section 5. The definition of 'British subject' and 'British passport' has been deleted from section 5. The effect is that the Minister may issue passports only to Australian citizens (section 7). Prior to the 1984 amendment, the Act

1. Administrative Review Council, Third Annual Report, paras 53-54 p.13.

Administrative Review Council, Fourth Annual Report, paras 212-213 p.49

2. Administrative Review Council, Fourth Annual Report, paras 212-213 p.49.

provided for the issue of passports to Australian citizens and also to British subjects who were not Australian citizens. The removal of references to British subjects in the Act places all persons who are not Australian citizens on an equal footing and hence removes discrimination on these grounds. This brings the legislation into accord with Article 2.1 of the ICCPR and Articles 1.3 and 2.1(c) of the Racial Discrimination Convention. It has the support of the Commission for reasons expressed in its First Report on the Citizenship Act.'

11. Section 7. Section 7 authorises the issue of passports. There is no absolute right provided in the Act that a person shall be issued a passport. Prior to the recent amendments to this section, the Minister had a broad discretionary power to grant or refuse passports. However, sub-section (4) has now been inserted which makes clear that the Minister is not entitled to refuse to issue a passport except in circumstances provided in sections 7A-7E. Sub-section (5) requires that written notice of a decision to refuse a passport under sub-section 7(1) be given to an applicant along with reasons for the decision.

12. Sections 7A-7E may preclude the issue of passports when -

- the applicant is an unmarried minor (section 7A); there is reason to believe a warrant for the arrest of the applicant or a court order to inhibit the issue of a passport has been issued (section 7B);
- moneys are owing to the Commonwealth (section 7C);
- a person already has a concurrent valid passport (section 7D); and
- disruption could result in Australia or in other

Commission notes the view of a distinguished commentator on this area of the law that 'the question Of the right to travel as a fundamental freedom remains essentially a matter for local jurisdiction, as does the question whether any form of appeal is to be allowed against an adverse decision'.¹ It notes also that, by section 11A, decisions under sections 7-7E are now subject to review by the Administrative Appeals Tribunal. The Commission welcomes the initiative taken in the legislation to provide such an appeal mechanism. It sees the review procedure now available as affording the Australian citizen protection against adverse decisions involving the right to freedom of movement under Article 12 of the ICCPR.

14. The view of the Department of Foreign Affairs is that the present Passports Act creates a positive right to a passport. The Department states that an Australian passport may only be lawfully refused in circumstances allowed for in the ICCPR and that in all other cases the Minister must issue a passport. However, the legislation falls short of stating that a citizen has a right to a passport. In view of the wording of Article 12.2 of the ICCPR, it is the Commission's view that there exists an inherent right to a passport. It is acknowledged that that inherent right is not absolute, in that it is subject to the limitations authorised in Article 12.3 of the ICCPR. However, as Australia has ratified the ICCPR, and as indicated in paragraph 7 above, the Commission considers the legislation should declare that a citizen has an inherent right to a passport and then proceed to specify the restrictions which, in line with Article 12.3 of the ICCPR, could or would be imposed on this right.

1- Guy S. Goodwin-Gill, International Law and the movement of persons between States, p.50.

15. Section 7E and Section 8. Section 7E authorises refusal to issue a passport on grounds of national security, health or potential violation of human rights, and section 8 the cancellation of passports in similar circumstances. The amended sections incorporate direct reference to the rights as set out in the ICCPR. These two sections appear in the main to be consistent with Article 12 of the ICCPR, and the reference to the rights of others under the ICCPR is a welcome innovation in Commonwealth legislation which the Commission applauds.

16. However, paragraph 8(1A) (a) allows the Minister to cancel a passport if he becomes aware of circumstances which 'may have or would have prevented' the original issue, had the circumstances been known at the time of issue. The Commission is concerned that the phrase 'may have' imparts a degree of retrospectivity and uncertainty into the discretion that could be used to deprive a person of a passport simply because it 'may' rather than 'would' not have been issued had the circumstances been before the issuing authority. The powers to cancel a passport appear wide - see for example sub-sections (1) and (1B). The Commission questions the need for introducing the contingency 'may have' in paragraph (a).

17. The Department has explained that the inclusion of 'may have' in sub-section 8(1A) was to link the power to cancel to the discretionary power vested in the Minister in sections 7A, 7B, 7C and 7D under which he may authorise, or refuse to authorise, the grant of a passport in the circumstances outlined in these sections. The Commission is concerned nevertheless that sub-section 8(1A) is too broad and therefore recommends that it provide that a passport may be cancelled if the circumstances that have become known would have precluded the issue of a passport at the time the cancellation is under consideration. It does not regard as satisfactory the point made by the Department that decisions under section 8 are reviewable by the Administrative Appeals Tribunal. Although no

18. Section 9. Section 9 authorises an officer to order a passport to be delivered up where it has been, or is reasonably suspected of having been, obtained by false means or used in the commission of an offence against the Act. Sub-section (4) allows such a passport to be retained or returned as the officer thinks fit. Although such a decision is reviewable under section 11A by the Administrative Appeals Tribunal (see paragraph 20) the section does not impose any positive obligation to return a passport once investigations have cleared the holder of such a passport of any offence. To protect a person's right under Article 12.2 of the ICCPR, the Commission believes that if an investigation under section 9 leads to the conclusion that no offence has been committed, the passport should be returned to the passport holder. The Commission recommends an amendment to the section accordingly.

19. Section 10. Section 10 provides penalties for the making of false or misleading statements in connection with the obtaining of a passport. The Commission welcomes the amendment to sub-section (1), which inserts the word 'knowingly' in connection with the offences for the making of false and misleading statements. This gives the person protection where in fact the statements were of an incorrect nature but were made in good faith.

20. Section 11A. This important new section provides for most decisions made under the Act to be subject to review by the Administrative Appeals Tribunal, and for related procedures. The effect is that decisions to issue, renew or endorse a passport, or to refuse to do so, or to cancel a passport or endorsement are subject to appeal. This is the type of protection which has been sought for some years. 'Ideally a person denied the right to a passport should be able to appeal, by way of a specific procedure for the matter, to an independent

tribunal of review, whether judicial or administrative.' In all cases, except decisions made under paragraphs 7E(1) (b) or 8(1B) (b), in which the determining factors are matters of international relations, the Administrative Appeals Tribunal is able to exercise the full range of its powers under section 43 of the Administrative Appeals Tribunal Act 1975 (Cwlth). Sub-section (6) of section 11 provides that where a Minister makes a decision under paragraphs 7E(1) (b) or 8(1B) (b), the Minister may issue a certificate that that decision involves questions of international relations. If the Minister makes such a declaration the Administrative Appeals Tribunal may still review the Minister's decision but may only affirm that decision or remit the decision to the Minister for his reconsideration in accordance with the recommendation of the Tribunal. In terms of human rights and the ICCPR, a person's right to travel under Article 12.2 is protected by a review mechanism. Any adverse decision is able to be reviewed and thus the restrictions allowed under Article 12.3 are also subject to review. The Commission approves the review procedures introduced.

1. 'The Right to a Passport', 48 AU J 61 at p.62.

as a matter of administration, has drawn up a Manual of Australian Passport Issue (M.A.P.I.) to provide guidelines for officers. These instructions are subject to frequent amendments to take notice of amendments to the Passports Act and Regulations and of changes of policy on various matters. M.A.P.I. addresses itself mainly to procedural matters which officers or the Department are likely to encounter in the day to day discharge of their duties. Some discretion is also provided to allow for particular situations and individual circumstances. The Commission has been informed by the Department that M.A.P.I. is readily available to members of the public upon request. However, two areas of concern in it have been identified by the Commission. These relate to the requirements to produce birth certificates and to certify the identity of applicants.

Birth Certificates

22. Persons unable to obtain birth certificate. At present one of the requirements for issue of a passport is production of a birth certificate showing name, date and place of birth.¹ The Commission has had brought to its attention circumstances in which persons may not be able to meet this requirement. For example, persons, especially if born overseas, might be placed in the predicament of not being able to obtain their birth certificate as such documentation no longer exists. Aboriginal persons may not have had their births registered under State or Territory legislation and hence there are no records of their

1. The Commission notes that since late 1984 persons adopted in the State or Victoria have been able to apply pursuant to s.92 of the Adoption Act 1984 (Vic.) for a birth certificate which indicates place of birth, hence satisfying the requirement for a passport application. Prior to this legislation, such details were unavailable, thereby placing adopted persons at a disadvantage: they were required to produce further evidence of their Australian citizenship than was required of other persons.

births nor the issue of the requisite birth certificate. However, in M.A.P.I. there are instructions to meet such events. If a person cannot meet the requirement to produce a birth certificate, other documentation can be substituted in order to prove date of birth. The application may then be accepted and forwarded to the passport office with an explanation of the circumstances. This seems on the face of it to alleviate the problems raised with the Commission and thereby avoid discrimination. However, in the interests of persons applying for passports, the Commission recommends that instructions in the information notes provided to applicants for passports should indicate specifically that where a birth certificate is not available, other documentation may be produced.

23. Sexually Re-assigned Persons. Since 1980, all Australian passports have recorded the sex of the bearer in accordance with the specification recommended by the Passports Panel of the International Civil Aviation Organisation. The problem which faced a sexually re-assigned person until recently when applying for a passport was that the sex shown in the passport had to be that shown on the birth certificate, which did not reflect present sex status. It became the practice to issue a sexually re-assigned person with a document of identity which did not show the sex of the bearer, but this involved a distinction between such persons and other people. The different practice gave rise to a complaint to the Commission from a sexually re-assigned person who wished to obtain a passport indicating that person's present gender. The applicant was of the opinion that a passport which showed sexual status at birth and not present sex status could be disadvantageous to the person and also to the person's career. The Department of Foreign Affairs informed the Commission of a recent change in policy for passports of sexually re-assigned persons. It stated that on 21 November 1984 the Minister approved that passports issued to such persons 'may show the sex of re-assignment subject to

involving passports for sexually re-assigned persons are being amended to accommodate this latest decision, the revised instructions have not yet been sighted by the Commission. Further, the Commission notes that the passport stating the person's present new sex status does not in any way indicate that there has been a change in the person's general legal status but rather an administrative arrangement which avoids unnecessary embarrassment while travelling. The Commission therefore recommends that without prejudice to the legal situation passports issued to sexually re-assigned persons show the sex of re-assignment.

Certification of Identity of Applicants

25. Another area of concern arises from the instructions contained in the passport application form. Paragraph 11 (and corresponding paragraph 11 of the accompanying information notes) provides that a certificate as to the identity of the applicant must be completed by a person serving or practising in one of the categories listed who has known the applicant for at least 12 months and is not related by birth or marriage.¹

1. The categories listed in paragraph 11 are:

Members of Federal and State Parliament; Members of the House of Assembly of the ACT and the Legislative Assemblies of the Northern Territory and Norfolk Island; Aldermen and Councillors of Municipal and Shire Councils; Town Clerks and Shire Clerks/Secretaries; Medical Practitioners; Dentists; Pharmacists; Veterinary Surgeons; Barristers; Solicitors; Judges, Stipendiary Magistrates, Clerks of Petty Sessions, Clerks of Courts, Sheriffs, Bailiffs; permanent Commissioned Office of the Regular Defence Forces; Police Officers of the rank of Sergeant and above and Officers in charge of Stations; Ministers of Religion designated as authorised Marriage Celebrants; Full-time Teachers of at least five years service at schools and tertiary education institutions; Postmasters of Official Post Offices; Federal, State, Territory and Norfolk Island Public Servants of at least 10 years permanent service; Holders of statutory offices in respect of which an annual salary is payable.

Further, if the application is lodged in Australia, the person completing the certificate must be an Australian citizen. The aim is to combat fraudulent applications by ensuring that persons easily identifiable in the community are able to verify the statements made in the application.

26. The position was explained by the Minister for Foreign Affairs in an answer to a question by Senator Puplick in the Senate on 10 May 1985¹. In his answer, the Minister stated :

The categories of persons eligible to certify the identity of passport applicants was (sic) determined by the former Government in 1982 as one of its responses to recommendations of the Royal Commission of Inquiry into Drug Trafficking. These responses were supported by the present Government when in opposition and we have proceeded with their implementation.

It was agreed that the categories of persons entitled to provide the Certification Regarding Applicant should be restricted to those persons who clearly meet the following criteria :

- (i) the group should be wide enough for each applicant for a passport to know at least one person in one of the categories,
- (ii) the categories should include people on whom passport offices can check readily and with whom they can make contact fairly easily to confirm the bona fides of the passport applicant, and
- (iii) the categories should be limited to people whose careers would be affected if they were found to be involved in fraudulent practices.

27. Instances inevitably occur where applicants do not know persons from within any of the listed categories. Recent amendments to M.A.P.I. provide instructions (in the section relating to the Department's Australia Post Procedures) where an applicant does not know any person from within the specified categories listed. However, on the information notes given to

IV. RECOMMENDATIONS

28. As indicated in Chapter III, the Commission generally endorses the recent amendments to the Passports Act as reflecting the human rights set out in the ICCPR and in the other international instruments within the Commission's charter. Nevertheless, the Commission recommends that-

- (1) the Passports Act confer on the citizen a right to a passport, subject to the conditions laid down in that Act, which themselves should be within the restrictions allowed by Article 12.3 (paragraph 7);
- (2) the power to cancel a passport in the event of new circumstances being known that is contained in paragraph 8(1A) (a) of the Act be rephrased to allow cancellation only in the event the circumstances would have led to the passport not being issued at the date the cancellation is under consideration (paragraph 17);
- (3) section 9 of the Act be amended to ensure a person's right to travel through return of a surrendered passport, where no offence has been committed (paragraph 18);
- (4) passports issued to sexually re-assigned persons should show the sex of re-assignment (paragraph 24); and
- (5) the information notes accompanying the application for a passport be amended to indicate how an applicant should proceed where -
 - (a) a birth certificate is not available (paragraph 22); and

5. (a) In this Act, unless the contrary intention appears -
- 'Administrator', in relation to an external Territory, means the person charged with the duty of administering the Government thereof on behalf of the Commonwealth;
- 'approved officer' means the person who is the approved officer for the purposes of this Act by virtue of an appointment under section 6AB;
- 'approved representative' means a person holding, or performing the duties of, any of the following offices (being an office of Australia) in a country or place outside Australia:
- (a) Ambassador;
 - (b) High Commissioner;
 - (c) Minister;
 - (d) Head of a Mission;
 - (e) Consul-General; or
 - (f) Consul;
- 'approved senior officer' means the person who is the approved senior officer for the purposes of this Act by virtue of an appointment under section 6AA;
- 'Australia' includes the Territories;
- 'Australian passport' means a passport issued under this Act;
- 'Australian citizen' means a person who is an Australian citizen within the meaning of the Australian Citizenship Act 1948-1973;
- 'authorized officer' means an officer authorized by the Minister under sub-section 7(1) to issue Australian passports;
- 'offence against this Act' includes -
- (a) an offence against this Act that is deemed to have been committed by virtue of section 5 of the Crimes Act 1914; and
 - (b) an offence against section 7 of the Crimes Act 1914 in relation to this Act,
- but does not include an offence against the regulations;

'officer' means any officer of the Department, and includes any officer of Customs, any member or special member of the Australian Federal Police, any member of the Police Force of a State or Territory of the Commonwealth, and any person authorized by the Minister to exercise the powers conferred on officers by this Act;

'prescribed minor' means a person who has not attained the age of 18 years, not being a person who is, or has been, married;

'this Act' includes any regulations made thereunder.

(2) A reference in this Act to an officer shall be read as including a reference to a person authorized by the Administrator of an external Territory who holds a delegation from the Minister under section 6 to exercise, in and in relation to that Territory, the powers conferred on officers by this Act.

(3) Where regulations empower the Minister or officers to issue certificates of identity or other documents of identity for travel purposes, a reference in section 6A, 8 (other than paragraph (1A) (a)) 8A, 9. 9A (other than paragraph (f)), 9B (other than paragraph (f)), 9C (other than paragraph (2)(a)), 10, 11A or 12 to an Australian passport, to a passport granted in pursuance of this Act or to a passport shall be read as including a reference to a certificate of identity of other document of identity issued by virtue of those regulations.

(4) A reference in paragraph 9A(f) or 9B(f) to a passport issued by or on behalf of the government of a foreign country shall be read as including a reference to a document of identity issued by or on behalf of the government of a foreign country for travel purposes (whether or not also issued for any other purpose).

(5) For the purposes of this Act, where an overseas custody order within the meaning of Part VII of the Family Law Act 1975 is registered in a court in Australia in accordance with regulations under section 68 of that Act, that order shall be deemed to be an order of that court made in pursuance of that Act.

7. (1) Subject to the regulations, the Minister or an officer

authorized in that behalf by the Minister may issue Australian passports to Australian citizens.

(2) Australian passports shall be issued in the name of the Governor-General and shall be in such forms as are approved by the Minister.

(3) The exercise by an authorized officer of a power under this section is subject to any directions of the Minister and to

(b) in circumstances where the Minister may notify an authorized officer under sub-section 7E(1) that an Australian passport is not to be issued.

(5) Where the Minister or an authorized officer makes a decision under sub-section (1) refusing to issue a passport, the Minister or an authorized officer shall cause to be served, either personally or by post, on the applicant for the passport a notice in writing setting out that decision and the reasons for that decision.

7A. (1) Subject to sub-sections (2), (5) and (7), an authorized officer shall not, unless otherwise directed by the Minister, issue an Australian passport to a prescribed minor;

(2) An authorized officer may, unless otherwise directed by the Minister, issue an Australian passport to an Australian citizen who is a prescribed minor if -

(a) the minor furnishes to the authorized officer the consent in writing to the issue to the applicant of an Australian passport of each person who, under a law of the Commonwealth or of a State or Territory, is entitled to custody or guardianship of, or access, to the minor;

(b) the minor furnishes to the authorized officer a copy of an order of a court made in pursuance of a law of the Commonwealth or of a State or Territory permitting the minor to leave Australia; or

(c) the authorized officer is satisfied -

(i) that the physical or mental welfare of the minor would be adversely affected if an Australian passport were not issued to the minor; or

(ii) that -

(A) by reason of a family crisis, the minor urgently requires an Australian passport to enable him to travel outside Australia; and

(B) if there is a person who, under a law of the Commonwealth or of a State or Territory, is entitled to custody or guardianship of, or access to, the minor whose written consent to the issue to the minor of an Australian passport has not been obtained - that person cannot be readily contacted.

(3) Where -

- (a) an application has been made for the issue of an Australian passport to an Australian citizen who is a prescribed minor; and
- (b) the applicant for the passport has furnished to an authorized officer a written statement declaring that special circumstances exist by reason of which the passport should be issued and setting out particulars of those circumstances,

the authorized officer shall refer the application and statement to the approved senior officer.

(4) Where an application for the issue of an Australian passport is referred to the approved senior officer under sub-section (3), the approved senior officer shall, unless he refers the application to the Minister -

- (a) consider the application having regard to any guidelines issued under sub-section (6); and
- (b) if he is satisfied that special circumstances exist by reason of which the passport should be issued, give an authorized officer written notice that he is so satisfied.

(5) Where the approved senior officer gives an authorized officer a notice under paragraph (4) (b) in relation to an application for the issue of a passport to a prescribed minor, the authorized officer shall, unless otherwise directed by the Minister, issue a passport to that minor.

(6) The Minister may, by instrument in writing, issue guidelines relating to the consideration of applications under paragraph (4) (a).

(7) Where an authorized officer is satisfied that an Australian passport issued to a prescribed minor has been lost, stolen or destroyed, the officer may issue an Australian passport to that minor, not being a passport the period of validity of which extends beyond the period of validity of the first-mentioned passport.

7B. An authorized officer shall not, unless otherwise directed by the Minister, the approved senior officer or the approved officer issue an Australian passport to a person if.

- (a) the authorized officer has reason to believe that there is in force a warrant issued in Australia for the arrest of the person; or
- (b) the authorized officer has reason to believe that the

- (a) expenses incurred by the Commonwealth on behalf of the person in a foreign country;
- (b) moneys lent to the person by the Commonwealth at a time when the person was outside Australia; or
- (c) expenses incurred by the Commonwealth in, or in connection with, effecting the return of the person to Australia from a foreign country.

(2) An authorized officer may, unless otherwise directed by the Minister or an approved representative, issue an Australian passport to a person who owes money to the Commonwealth as mentioned in sub-section (1) if the authorized officer is satisfied -

- (a) that the physical or mental welfare of the person would be adversely affected if an Australian passport were not issued to the person; or
- (b) that, by reason of a family crisis, the person urgently requires an Australian passport to enable the person to travel outside Australia.

7D Where an authorized officer believes that an applicant for an Australian passport is in possession of, or has under his control, an Australian passport that was issued to the applicant, being a passport that is in force, the authorized officer shall not, unless otherwise directed by the Minister, an approved representative or the approved senior officer, issue to the applicant an Australian passport that would be in force at any time when the first-mentioned Australian passport is in force unless the authorized officer considers that there are special reasons for so doing.

7E (1) Where the Minister -

- (a) has formed an opinion that, if an Australian passport were issued to a person, that person would be likely to engage in conduct that -
 - (i) might prejudice the security of Australia or of a foreign country;
 - (ii) might endanger the health or physical safety of other persons, whether in Australia or in a foreign country; or
 - (iii) might interfere with the rights and freedoms of other persons, as set out in the International Covenant on Civil and Political Rights, whether in Australia or in a foreign country; and

- (b) considers that, in the circumstances, action to prevent that person engaging in that conduct should be taken by way of not issuing an Australian passport to that person,

the Minister may notify an authorized officer or authorized officers that, by virtue of this section, an Australian passport is not to be issued to that person.

(1A) An authorized officer shall not issue an Australian passport to a person if the Minister has notified him under sub-section (1) that an Australia passport is not to be issued to that person.

(2) A notification under sub-section (1) given by the Minister to an authorized officer ceases to have effect upon the giving to the authorized officer of a notification by the Minister stating that the notification under sub-section (1) has ceased to have effect.

8. (1) An Australian passport, whether in the possession or custody of that person to whom it was issued or otherwise, may be cancelled by the Minister, an approved representative or the approved senior officer, and a passport on being cancelled under this sub-section becomes void.

(1A) Without limiting the generality of sub-section (1), the Minister, an approved representative or the approved senior officer, may cancel an Australian passport if -

- (a) the Minister, the approved representative or the approved senior officer, as the case may be, becomes aware of circumstances which, if they had existed immediately before the passport was issued (whether or not they did exist at that time), may have or would have prevented the issue of the passport by an authorized officer by virtue of the operation of section 7A, 7B, 7C or 7D; or
- (b) the Minister or the approved representative or the approved senior officer, as the case may be, becomes aware that the passport has been lost or stolen.

(1B) Without limiting the generality of sub-section (1), where the Minister -

- (a) has formed an opinion that a person to whom an Australian passport has been issued is likely to engage in conduct that -
 - (i) might prejudice the security of Australia or of a foreign country;

(b) considers that, in the circumstances, action to prevent that person engaging in that conduct should be taken by way of cancelling that passport,

the Minister may cancel that passport.

(1C) A person who has in his possession or under his control an Australian passport that has been cancelled under sub-section (1) shall, on demand by an officer, forthwith deliver up the passport to the officer.

Penalty: \$2,000 or imprisonment for I year.

(1D) An Australian passport issued to a person may be cancelled by an authorized officer when the officer issues another passport to that person.

(2) Any renewal or endorsement of a passport granted or made in pursuance of this Act or in pursuance of the Act repealed by this Act may be cancelled by the Minister, or an approved representative or the approved senior officer, and thereupon the renewal or endorsement shall be void.

(3) Any officer may take possession of any passport bearing a renewal or endorsement which has been cancelled, and any person having in his possession or under his control any such passport shall, on demand by an officer, forthwith deliver it up to the officer.

Penalty: \$2,000 or imprisonment for I year.

(4) The exercise by an officer of a power of cancellation under this section is subject to any directions of the Minister, an approved representative or by the approved senior officer.

9. (1) In this sub-section, 'prescribed document' means -

- (a) a passport that has been obtained, or is reasonably suspected by an officer of having been obtained, by means of a false or misleading statement; or
- (b) a passport or other document that has been used, or is reasonably suspected by an officer of having been used, in, or in connection with, the commission of an offence against this Act or the regulations.

(1A) A person who has in his possession or under his control a prescribed document shall, on demand by an officer, forthwith deliver up the passport or document to the officer.

Penalty: \$2,000 or imprisonment for 1 year, or both.

(2) Any person entering the Commonwealth or any external Territory, who is required by or under any law of the Commonwealth or of the external Territory to be in possession of a passport, shall, if required, deliver up his passport to an officer, before leaving the vessel or aircraft in which he entered the Commonwealth or the external Territory.

Penalty: \$2,000 or imprisonment for 1 year.

(3) If any person specified in sub-section (2) is allowed to retain his passport, he shall, if required by an officer at any time, deliver it up to the officer.

Penalty: \$2,000 or imprisonment for 1 year.

(4) Any passport delivered up to an officer in accordance with the provisions of this section may, subject to any direction of the Minister, an approved representative or the approved senior officer, be retained by the officer or be returned to the person who delivered it up, as the officer thinks fit.

10. (1) A person shall not knowingly make any false or misleading statement, whether orally or in writing -

- (a) for the purpose of obtaining an Australian passport or a renewal or endorsement of an Australian passport; or
- (b) in support of an application by another person for an Australian passport or for a renewal or endorsement of an Australian passport.

(2) A person shall not, with intent to defeat the provisions of a law of the Commonwealth or of a Territory, make, within Australia, a false or misleading statement, whether orally or in writing -

- (a) for the purpose of obtaining a passport other than an Australian passport or renewal or endorsement of a passport other than an Australian passport; or
- (b) in support of an application by another person for a passport other than an Australian passport or for renewal or endorsement of a passport other than an Australian passport.

Penalty: \$5,000 or imprisonment for 2 years.

11A. (1) In this section -

'decision' has the same meaning as it has in the Administrative Appeals Tribunal Act 1975;

- (j) a decision for the purposes of paragraph 7E(1) (a);
- (k) a decision for the purposes of paragraph 7E(1) (b);
- (m) a decision under sub-section 8(1) to cancel a passport;
- (n) a decision under sub-section 8(1A) to cancel a passport;
- (p) a decision for the purposes of paragraph 8(1B) (a);
- (q) a decision for the purposes of paragraph 8(1B) (b);
- (r) a decision under sub-section 8(2) to cancel the renewal or endorsement of a passport;
- (s) a direction under sub-section 9(4);
- (t) a decision under sub-section (2) of this section; or
- (u) a decision under sub-section (4) of this section;

'reviewable decision' means -

- (a) a decision by an approved representative, being -
 - (i) a direction under sub-section 7C(2);
 - (ii) a decision under sub-section 8(1) to cancel a passport;
 - (iii) a decision under sub-section 8(1A) to cancel a passport;
 - (iv) a decision under sub-section 8(2) to cancel the renewal or endorsement of a passport; or
 - (v) a direction under sub-section 9(4);
- (b) a decision by the approved senior officer, being -
 - (i) a decision for the purposes of sub-section 7A(4);
 - (ii) a direction under section 7B;
 - (iii) a decision under sub-section 8(1) to cancel a passport;
 - (iv) a decision under sub-section 8(1A) to cancel a passport;
 - (v) a decision under sub-section 8(2) to cancel the renewal or endorsement of a passport; or
 - (vi) a direction under sub-section 9(4);
- (c) a direction by the approved officer under section 7B;
- (d) a decision by an authorized officer, being -
 - (i) a decision under sub-section 7(1) to issue a passport;
 - (ii) a decision under sub-section 7(1) refusing to issue a passport;
 - (iii) a decision for the purposes of section 7A;
 - (iv) a decision for the purposes of section 7B;
 - (v) a decision for the purposes of section 7C;
 - (vi) a decision for the purposes of section 7D;
 - (vii) a decision under sub-section 8(1D) to cancel a passport; or
 - (viii) a decision for the purposes of sub-section 9(1); or

(e) a decision by an officer, being -

- (i) a decision for the purposes of sub-section 8(1C);
or
- (ii) a decision for the purposes of sub-section 9(1A).

(2) Where a reviewable decision is made, a person affected by the decision who is dissatisfied with the decision may, within the period of 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Minister (either before or after the expiration of that period) allows, make a written application to the Minister for the review of the decision by the Minister.

(3) There shall be set out in the application under sub-section (2) the reasons for making the application.

(4) Upon the receipt of an application under sub-section (2) for the review of a reviewable decision, the Minister shall review that decision and shall make a decision -

- (a) affirming the decision under review;
- (b) varying the decision under review; or
- (c) setting aside the decision under review and making a decision in substitution for the decision so set aside.

(5) Application may be made to the Administrative Appeals Tribunal for review of a Ministerial decision.

(6) Where the Minister makes a Ministerial decision for the purposes of paragraph 7E(1) (b) or 8(1B) (b) in the making of which the determining factors were matters relating to relations between Australia and a foreign country or relations between Australia and foreign countries, the Minister may issue a certificate signed by him that that decision involved questions of international relations.

(7) Notwithstanding section 43 of the Administrative Appeals Tribunal Act 2975, the Administrative Appeals Tribunal shall not make a decision in relation to a Ministerial decision for the purposes of paragraph 7E(1) (b) or 8(1B) (b) in respect of which the Minister has issued a certificate under sub-section (6) other than a decision -

- (a) affirming the decision under review; or
- (b) remitting the decision under review to the Minister for his reconsideration in accordance with recommendations of the Tribunal.

(8) If an application is made for the review (whether by the Minister or the Administrative Appeals Tribunal) of a

Minister or his delegate relates was given; and

- (b) the person who made the application for the review of that reviewable decision.

International Covenant on Civil and Political Rights
(Relevant Articles)

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:
- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have An effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of that State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

- (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
- (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

- (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
- (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
- (e) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

