



# **Australian Passports Act 2005**

**No. 5, 2005**

**An Act to provide for Australian passports, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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# Australian Passports Act 2005

No. 5, 2005

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## An Act to provide for Australian passports, and for related purposes

[Assented to 18 February 2005]

The Parliament of Australia enacts:

### Part 1—Preliminary

#### 1 Short title

This Act may be cited as the *Australian Passports Act 2005*.

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**2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	18 February 2005
2. Sections 3 to 58	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 9 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 July 2005 (see F2005L01517)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

**3 Principal object of this Act**

The principal object of this Act is to provide for the issue and administration of Australian passports, to be used as evidence of identity and citizenship by Australian citizens who are travelling internationally.



#### **4 Act extends to the external Territories**

This Act extends to the external Territories.

#### **5 Act extends to things outside Australia**

This Act extends, unless the contrary intention appears:

- (a) to acts, omissions, matters and things outside Australia; and
- (b) to all persons, irrespective of their nationality or citizenship.

#### **6 Definitions**

- (1) In this Act, unless the contrary intention appears:

***Australia***, when used in a geographical sense, includes the external Territories.

***Australian passport*** means a passport issued under this Act.

Note: Australian passports must be issued in forms approved by the Minister (see subsection 53(2)). These forms may include diplomatic, official and emergency passports.

***Australian travel document*** means an Australian passport or a travel-related document.

***child*** means a person who is under 18 and who has never been married.

***competent authority*** means a competent authority for the purposes of section 12, 13, 14 or 16.

***conduct*** has the same meaning as in the *Criminal Code*.

***document*** includes:

- (a) any paper or other material on which there is writing; or
- (b) any paper or other material on which there are marks, figures, symbols or perforations that are:
  - (i) capable of being given a meaning by persons qualified to interpret them; or

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- (ii) capable of being responded to by a computer, a machine or an electronic device; or
- (c) any article or material from which information is capable of being reproduced with or without the aid of any other article or device.

Note: A disk, tape or chip is an example of an article from which information is capable of being reproduced.

***engage in conduct*** has the same meaning as in the *Criminal Code*.

***Minister's determination*** means an instrument made by the Minister for the purposes of this Act under section 57.

***officer*** means any of the following:

- (a) an APS employee in the Department;
- (b) a member of the diplomatic staff of an Australian mission, being a person who is a member of the diplomatic staff of the mission within the meaning of the Vienna Convention on Diplomatic Relations;
- (c) a consular officer of an Australian consulate, being a person who is a consular officer (but not an honorary consular officer) within the meaning of the Vienna Convention on Consular Relations;
- (d) an officer of Customs within the meaning of the *Customs Act 1901*;
- (e) a member or a special member of the Australian Federal Police;
- (f) an officer of the police force of a State or Territory;
- (g) a person, or a person who is one of a class of persons, authorised in writing by the Minister under section 52.

Note 1: The text of the Vienna Convention on Diplomatic Relations is set out in Australian Treaty Series 1968 No. 3. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

Note 2: The text of the Vienna Convention on Consular Relations is set out in Australian Treaty Series 1973 No. 7. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

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***personal information*** has the same meaning as in the *Privacy Act 1988*.

***refusal/cancellation request*** has the meaning given in section 18.

***travel-related document*** means a document issued under section 9.

- (2) For the purposes of this Act, if an overseas child order within the meaning of section 70F of the *Family Law Act 1975* is registered in accordance with regulations made under section 70G of that Act, the order has the same force and effect as if it were an order of the Family Court of Australia made in accordance with that Act.

## **Part 2—Australian travel documents**

### **Division 1—Issue of Australian travel documents**

#### **Subdivision A—Issue of Australian passports**

##### **7 Australian citizen is entitled to be issued an Australian passport**

- (1) An Australian citizen is entitled, on application to the Minister, to be issued with an Australian passport by the Minister.
- (2) An Australian citizen's entitlement to be issued with an Australian passport is affected by section 8 and by Division 2.
- (3) An application for an Australian passport must be:
  - (a) made in the form approved by the Minister; and
  - (b) accompanied by the applicable fee (if any).

##### **8 Minister to be satisfied of person's citizenship and identity**

Before issuing an Australian passport to a person, the Minister must be satisfied:

- (a) that the person is an Australian citizen; and
- (b) of the identity of the person.

Note: See sections 42 and 43 for details about how the Minister satisfies himself or herself of an Australian passport applicant's citizenship and identity.

#### **Subdivision B—Issue of travel-related documents**

##### **9 Minister may issue travel-related documents**

- (1) The Minister may, on application by or on behalf of a person, and in the circumstances specified in a Minister's determination, issue the person with a document of a kind specified in a Minister's determination, being a document issued for the purposes of travel.

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Note: Convention travel documents, certificates of identity, documents of identity and provisional travel documents are examples of these kinds of documents.

- (2) Subsection (1) is subject to section 10.
- (3) An application for a travel-related document must be:
  - (a) made in the form approved by the Minister; and
  - (b) accompanied by the applicable fee (if any).

**10 Minister to be satisfied of person's identity**

Before issuing a travel-related document to a person, the Minister must be satisfied of the identity of the person.

## **Division 2—Reasons the Minister may refuse to issue an Australian passport**

### **Subdivision A—Children**

#### **11 Reasons relating to child without parental consent or court order for travel**

- (1) The Minister must not issue an Australian passport to a child unless:
  - (a) each person who has parental responsibility for the child consents to the child travelling internationally; or
  - (b) an order of a court of the Commonwealth, a State or a Territory permits the child to travel internationally.
- (2) Subsection (1) does not prevent the Minister from issuing an Australian passport to a child if:
  - (a) circumstances specified in a Minister's determination as special circumstances exist; or
  - (b) the Minister is satisfied that the child's welfare (physical or psychological) would be adversely affected if the child were not able to travel internationally; or
  - (c) the Minister is satisfied that:
    - (i) the child urgently needs to travel internationally because of a family crisis; and
    - (ii) if there is a person who has parental responsibility for the child and whose consent to the child travelling internationally has not been given—it is not possible to contact that person within a reasonable period; or
  - (d) in the case of a child who is outside Australia—the child departed Australia less than 12 months before the application for the passport was made and the Minister considers that a passport should be issued to enable the child's return to Australia.

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- (3) If the Minister refuses to issue a passport to a child, the Minister may declare that he or she is refusing to exercise the discretion under subsection (2) because the matter should be dealt with by a court.

Note: For example, the Minister may make a declaration under this section if the persons who have parental responsibility for the child disagree about the child travelling internationally.

- (4) For the purposes of subsection (1), a reference to:
- (a) a person consenting to a child travelling internationally includes a reference to a person consenting to the issue of an Australian passport to the child; or
  - (b) an order of a court permitting a child to travel internationally includes a reference to an order permitting:
    - (i) the issue of an Australian passport to the child; or
    - (ii) contact outside Australia between the child and another person.

- (5) For the purposes of this section, a person has ***parental responsibility*** for a child if, and only if:

- (a) the person:
  - (i) is the child's parent (including a person who is presumed to be the child's parent because of a presumption (other than in section 69Q) in Subdivision D of Division 12 of Part VII of the *Family Law Act 1975*); and
  - (ii) has not ceased to have parental responsibility for the child because of an order made under the *Family Law Act 1975*; or

Note: The presumptions in the *Family Law Act 1975* include a presumption arising from a court finding that a person is the child's parent, and a presumption arising from a man executing an instrument under law acknowledging that he is the father of the child.

- (b) the person has a residence order or a contact order in relation to the child; or
- (c) the person has a specific issues order in relation to the child under which the person is responsible for the minor's long-term or day-to-day care, welfare and development; or

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**Division 2** Reasons the Minister may refuse to issue an Australian passport

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- (d) the person is entitled to guardianship or custody of, or access to, the child under a law of the Commonwealth, a State or a Territory.
- (6) In this section:
  - contact order* has the meaning given by the *Family Law Act 1975*.
  - residence order* has the meaning given by the *Family Law Act 1975*.
  - specific issues order* has the meaning given by the *Family Law Act 1975*.

**Subdivision B—Law enforcement and security**

**12 Reasons relating to Australian law enforcement matters**

- (1) If a competent authority believes on reasonable grounds that:
  - (a) a person is the subject of an arrest warrant issued in Australia in respect of an indictable offence against a law of the Commonwealth, a State or Territory; or
  - (b) a person (including a person who is in prison) is prevented from travelling internationally by force of:
    - (i) an order of a court of the Commonwealth, a State or Territory; or
    - (ii) a condition of parole, or of a recognisance, surety, bail bond or licence for early release from prison, granted under a law of the Commonwealth, a State or Territory; or
    - (iii) a law of the Commonwealth, or an order or other direction (however described) under a law of the Commonwealth;

the competent authority may make a refusal/cancellation request in relation to the person.

Note: See also Subdivision D.

- (2) If a competent authority makes a request under subsection (1), the Minister must not issue an Australian passport to the person.



(3) In this section:

**competent authority**, in relation to a circumstance mentioned in paragraph (1)(a) or (b), means:

- (a) a person who has responsibility for, or powers, functions or duties in relation to, that circumstance under a law of the Commonwealth, a State or Territory (other than a person who is specified in a Minister's determination as not being a competent authority in relation to the circumstance); or
- (b) a person specified in a Minister's determination as a competent authority in relation to the circumstance.

**prevented from travelling internationally** includes:

- (a) required to remain in Australia; and
- (b) required to surrender an Australian passport; and
- (c) not permitted to apply for an Australian passport; and
- (d) not permitted to obtain an Australian passport.

### **13 Reasons relating to international law enforcement cooperation**

(1) If a competent authority believes on reasonable grounds that:

- (a) a person is the subject of an arrest warrant issued in a foreign country in respect of a serious foreign offence; or
- (b) a person (including a person who is in prison) is, in connection with a serious foreign offence, prevented from travelling internationally by force of:
  - (i) an order of a court of a foreign country; or
  - (ii) a condition of parole, or of a recognisance, surety, bail bond or licence for early release from prison, granted under a law of a foreign country, or other similar arrangement made under a law of a foreign country; or
  - (iii) a law of a foreign country, or an order or other direction (however described) under a law of a foreign country;
- (c) if an Australian passport were issued to a person, it is likely that proceedings (of any kind) under a law of a foreign country in relation to a serious foreign offence that the person

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committed, or is alleged to have committed, would be compromised;

the competent authority may make a refusal/cancellation request in relation to person.

Note: See also Subdivision D.

(2) If a competent authority makes a request under subsection (1), the Minister may refuse to issue an Australian passport to the person.

(3) In this section:

**competent authority**, in relation to a circumstance mentioned in paragraph (1)(a) or (b), means:

- (a) an officer within the meaning of paragraph (a), (b) or (c) of the definition of **officer** in subsection 6(1); or
- (b) an employee of the Commonwealth who is specified in a Minister's determination as a competent authority in relation to the circumstance; or
- (c) an agency (within the meaning of the *Financial Management and Accountability Act 1997*) that is specified in a Minister's determination as a competent authority in relation to the circumstance.

**prevented from travelling internationally** includes:

- (a) required to remain in the foreign country concerned; and
- (b) required to surrender a passport; and
- (c) not permitted to apply for a passport; and
- (d) not permitted to obtain a passport.

**serious foreign offence** means an offence against the law of a foreign country:

- (a) for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months; or
- (b) if the offence does not carry a penalty under the law of the country—the conduct constituting which is, under a treaty to which the country and Australia are parties (being a treaty relating in whole or in part to the surrender of persons accused or convicted of offences), required to be treated as an

- offence for which the surrender of persons is allowed by the country or Australia; or
- (c) the conduct constituting which would, if engaged in in Australia, constitute an indictable offence against this Act; or
  - (d) the conduct constituting which would, if engaged in in Australia, constitute an offence specified in a Minister's determination made for the purposes of subparagraph 14(1)(a)(v).

#### **14 Reasons relating to potential for harmful conduct**

- (1) If a competent authority suspects on reasonable grounds that:
    - (a) if an Australian passport were issued to a person, the person would be likely to engage in conduct that:
      - (i) might prejudice the security of Australia or a foreign country; or
      - (ii) might endanger the health or physical safety of other persons (whether in Australia or a foreign country); or
      - (iii) might interfere with the rights or freedoms of other persons (whether in Australia or a foreign country) set out in the International Covenant on Civil and Political Rights; or
      - (iv) might constitute an indictable offence against this Act; or
      - (v) might constitute an indictable offence against a law of the Commonwealth, being an offence specified in a Minister's determination; and
    - (b) the person should be refused an Australian passport in order to prevent the person from engaging in the conduct;
- the competent authority may make a refusal/cancellation request in relation to the person.

Note 1: The text of the International Covenant on Civil and Political Rights is set out in Australian Treaty Series 1980 No. 23. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

Note 2: See also Subdivision D.

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- (2) If a competent authority makes a request under subsection (1), the Minister may refuse to issue the person an Australian passport.
- (3) In this section:

***competent authority:***

- (a) in relation to a circumstance mentioned in subsection (1) that relates to Australia, means:
- (i) a person who has responsibility for, or powers, duties or functions in relation to, the circumstance under a law of the Commonwealth, a State or Territory (other than a person who is specified in a Minister's determination as not being a competent authority in relation to the circumstance); or
  - (ii) a person specified in a Minister's determination as a competent authority in relation to the circumstance; or
- (b) in relation to a circumstance mentioned in subsection (1) that relates to a foreign country, means:
- (i) an officer within the meaning of paragraph (a), (b) or (c) of the definition of ***officer*** in subsection 6(1); or
  - (ii) an employee of the Commonwealth who is specified in a Minister's determination as a competent authority in relation to the circumstance; or
  - (iii) an agency (within the meaning of the *Financial Management and Accountability Act 1997*) that is specified in a Minister's determination as a competent authority in relation to the circumstance.

**Subdivision C—Administrative reasons**

**15 Reasons relating to repeated loss or thefts**

The Minister may refuse to issue an Australian passport to a person if, in the 5 years before the passport application under consideration is made, 2 or more Australian passports issued to the person have been lost or stolen.

## **16 Reasons relating to financial assistance to travellers**

- (1) If a competent authority believes on reasonable grounds that a person (the *debtor*) owes money to the Commonwealth in respect of:
- (a) expenses incurred by the Commonwealth on behalf of the debtor in a foreign country; or
  - (b) money lent to the debtor by the Commonwealth when the debtor was outside Australia; or
  - (c) expenses incurred by the Commonwealth in, or in connection with, effecting the debtor's departure from a foreign country;
- the competent authority may make a refusal/cancellation request in relation to the debtor.

Note: See also Subdivision D.

- (2) If a competent authority makes a request under subsection (1), the Minister must not issue an Australian passport to the debtor.
- (3) Subsection (2) does not prevent the Minister from issuing an Australian passport to the debtor if the Minister is satisfied:
- (a) that the debtor's welfare (physical or psychological) would be adversely affected if the debtor were not able to travel internationally; or
  - (b) that the debtor urgently needs to travel internationally because of a family crisis.

- (4) In this section:

*competent authority*, in relation to a debtor, means a person who has authority to incur expenses on behalf of, or lend money to, the debtor on behalf of the Commonwealth.

## **17 Reasons relating to concurrently valid Australian travel document**

- (1) The Minister must not issue an Australian passport to a person if the person has already been issued with an Australian travel document and that document is still valid.

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- (2) Subsection (1) does not prevent the Minister from issuing an Australian passport to the person in the circumstances specified in a Minister's determination.

**Subdivision D—Matters relating to requests by competent authorities**

**18 Refusal/cancellation requests**

- (1) For the purposes of this Act, a *refusal/cancellation request* is a request made to the Minister under subsection 12(1), 13(1), 14(1) or 16(1) by a competent authority, being a request that the Minister do either or both of the following:
- (a) refuse to issue an Australian passport to a person;
  - (b) cancel an Australian passport or travel-related document that has been issued to a person.
- (2) A competent authority may make a refusal/cancellation request in relation to a person:
- (a) whether or not the person has applied for an Australian passport; and
  - (b) whether or not an Australian travel document has been issued to the person; and
  - (c) whether or not the person is an Australian citizen.
- (3) To avoid doubt, a competent authority may suspect on reasonable grounds that circumstances in subsection 14(1) apply in relation to a person, even if the competent authority knows that the person has already been issued with an Australian passport.

**19 Acting on refusal/cancellation requests**

The Minister must not act on a refusal/cancellation request if that request:

- (a) has been withdrawn by the competent authority who made it; or
- (b) can no longer be regarded as current in accordance with the Department's usual administrative practices.

## **Division 3—When Australian travel documents cease to be valid**

### **20 When Australian passports cease to be valid**

- (1) An Australian passport ceases to be valid:
  - (a) in accordance with a determination made for the purposes of subsection (2); or
  - (b) when cancelled under this Division;whichever happens first.
- (2) A Minister's determination may specify the time at which, or circumstances in which, Australian passports cease to be valid.

### **21 When travel-related documents cease to be valid**

A travel-related document ceases to be valid:

- (a) in accordance with a Minister's determination made in relation to a document of that kind for the purposes of subsection 9(1); or
  - (b) at the time specified on the document; or
  - (c) when cancelled under this Division;
- whichever happens first.

### **22 When an Australian travel document may be cancelled**

- (1) The Minister may cancel an Australian travel document.
- (2) Without limiting subsection (1), the Minister may cancel an Australian travel document that has been issued to a person if:
  - (a) the document is still valid at the time when the person applies for, or is issued with, another Australian travel document; or
  - (b) the document has been lost or stolen; or
  - (c) the person dies; or
  - (d) a competent authority makes a refusal/cancellation request in relation to the person; or

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- (e) if the document is an Australian passport—the Minister becomes aware of a circumstance that would have required or permitted the Minister to refuse to issue an Australian passport to the person because of section 8, 11 or 17, had the Minister been aware of the circumstance immediately before the document was issued; or
- (f) if the document is a travel-related document—the Minister becomes aware of a circumstance that would have required the Minister to refuse to issue a travel-related document to the person:
  - (i) because of section 10; or
  - (ii) because a Minister's determination made for the purposes of subsection 9(1) in relation to that kind of travel-related document no longer applies; or
- (g) circumstances specified in a Minister's determination exist.



## **Part 3—Powers of officers**

### **23 Demand for surrender of suspicious Australian travel document**

- (1) An officer may demand that a person surrender a document to the officer if:
  - (a) the document is an Australian travel document that has been obtained, or that the officer suspects on reasonable grounds has been obtained, by means of a false or misleading statement, false or misleading information or a false or misleading document; or
  - (b) the document is an Australian travel document or other document that has been used, or that the officer suspects on reasonable grounds has been used, in the commission of an offence against this Act.
- (2) A person commits an offence if:
  - (a) an officer demands under subsection (1) that the person surrender a document; and
  - (b) the officer informs the person that the officer is authorised to demand that document; and
  - (c) the officer informs the person that it may be an offence not to comply with the demand; and
  - (d) the person has possession or control of the document; and
  - (e) the person fails to surrender the document to the officer immediately.

Penalty: Imprisonment for 1 year or 20 penalty units, or both.

### **24 Demand for surrender of cancelled or invalid Australian travel document**

- (1) An officer may demand that a person surrender an Australian travel document to the officer if:
  - (a) the document has been cancelled; or

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- (b) the document has otherwise ceased, under section 20 or 21, to be valid.
- (2) A person commits an offence if:
- (a) an officer demands under subsection (1) that the person surrender an Australian travel document; and
  - (b) the officer informs the person that the officer is authorised to demand that document; and
  - (c) the officer informs the person that it may be an offence not to comply with the demand; and
  - (d) the person has possession or control of the document; and
  - (e) the person fails to surrender the document to the officer immediately.

Penalty: Imprisonment for 1 year or 20 penalty units, or both.

**25 Demand for surrender of debtor's Australian travel document**

- (1) An officer may demand that a person surrender an Australian travel document to the officer if the officer suspects on reasonable grounds that the person owes money to the Commonwealth in respect of:
- (a) expenses incurred by the Commonwealth on behalf of the person in a foreign country; or
  - (b) money lent to the person by the Commonwealth when the person was outside Australia; or
  - (c) expenses incurred by the Commonwealth in, or in connection with, effecting the person's departure from a foreign country.
- (2) A person commits an offence if:
- (a) an officer demands under subsection (1) that the person surrender the person's Australian travel document; and
  - (b) the officer informs the person that the officer is authorised to make the demand; and
  - (c) the officer informs the person that it may be an offence not to comply with the demand; and
  - (d) the person has possession or control of the document; and

- (e) the person fails to surrender the document to the officer immediately.

Penalty: Imprisonment for 1 year or 20 penalty units, or both.

## **26 Customs officers may seize a suspicious document**

- (1) A Customs officer may seize a document if:
  - (a) the document is not in the possession or control of any individual; and
  - (b) the officer suspects on reasonable grounds that the document is an Australian travel document or other document that has been used in the commission of an offence against this Act.
- (2) If:
  - (a) a Customs officer suspects on reasonable grounds that a document that has been used in the commission of an offence against this Act is inside a container; and
  - (b) the container is not in the possession or control of any individual;the officer may search the container for the purposes of determining whether such a document is inside.
- (3) This section does not authorise a Customs officer to enter premises that the officer would not otherwise be authorised to enter.
- (4) In this section:

***container*** includes baggage, a mail receptacle, and any other thing that could be used for the carriage of goods (whether or not designed for that purpose).

***Customs officer*** means an officer within the meaning of paragraph (d) of the definition of ***officer*** in subsection 6(1).

## Part 4—Offences relating to Australian travel documents

Note 1: An offence against this Act that is punishable by a term of imprisonment of more than one year is an indictable offence (see section 4G of the *Crimes Act 1914*).

Note 2: In certain circumstances, an indictable offence may be tried summarily (see section 4J of the *Crimes Act 1914*).

Note 3: Some offences are also contained in Part 3.

### Division 1—Preliminary

#### 27 Definitions

In this Part, unless the contrary intention appears:

***dishonest***, in relation to a person's conduct, means:

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the person to be dishonest according to the standards of ordinary people.

***false Australian travel document***:

- (a) means a document:
  - (i) that is not an Australian passport but that purports to be an Australian passport; or
  - (ii) that is not a travel-related document but that purports to be a travel-related document; and
- (b) includes a document that is an Australian travel document that has been altered by a person who is not authorised to alter that document.

#### 28 Geographical jurisdiction

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to offences against this Act.

**Division 2—Offences****29 Making false or misleading statements in relation to Australian travel document applications**

- (1) A person commits an offence if:
- (a) the person makes a statement (whether orally, in writing or any other way) to another person; and
  - (b) the statement:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the statement is misleading; and
  - (c) the statement is made in, or in connection with, an application for an Australian travel document.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (2) Subsection (1) does not apply:
- (a) as a result of subparagraph (1)(b)(i)—if the statement is not false or misleading in a material particular; or
  - (b) as a result of subparagraph (1)(b)(ii)—if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

**30 Giving false or misleading information in relation to Australian travel document applications**

- (1) A person commits an offence if:
- (a) the person gives information to another person; and
  - (b) the information:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the information is misleading; and

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- (c) the information is given in, or in connection with, an application for an Australian travel document.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (2) Subsection (1) does not apply:
  - (a) as a result of subparagraph (1)(b)(i)—if the information is not false or misleading in a material particular; or
  - (b) as a result of subparagraph (1)(b)(ii)—if the information did not omit any matter or thing without which the statement is misleading in a material particular.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

**31 Producing false or misleading documents in relation to Australian travel document applications**

- (1) A person commits an offence if:
  - (a) the person produces a document to another person; and
  - (b) the document is false or misleading; and
  - (c) the document is produced in, or in connection with, an application for an Australian travel document.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate):
  - (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and

- (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

### **32 Improper use or possession of an Australian travel document**

- (1) A person commits an offence if:
- (a) the person uses an Australian travel document in connection with travel or identification; and
  - (b) the document has been cancelled.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (2) A person commits an offence if:
- (a) the person uses an Australian travel document in connection with travel or identification; and
  - (b) the document was not issued to the person.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (3) A person commits an offence if:
- (a) the person provides another person with an Australian travel document that was issued to the first-mentioned person; and
  - (b) the person is reckless as to whether the document is or will be used by the other person in connection with travel or identification.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (4) A person commits an offence if:
- (a) the person has possession or control of an Australian travel document; and
  - (b) the person knows that the document was not issued to the person.

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Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (5) Subsections (1), (2), (3) and (4) do not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

**33 Selling an Australian travel document**

A person commits an offence if the person sells an Australian travel document.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

**34 Damaging an Australian travel document**

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct damages or destroys an Australian travel document.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

**35 Dishonestly obtaining an Australian travel document**

- (1) A person commits an offence if:
- (a) the person obtains an Australian travel document; and
  - (b) the person does so:
    - (i) dishonestly; or
    - (ii) by threats.



Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.

(3) In this section:

*obtain* includes:

- (a) obtain for another person; and
- (b) induce a third person to do something that results in another person obtaining.

*threat* includes a threat that is:

- (a) express or implied; or
- (b) conditional or unconditional.

### **36 Possessing false Australian travel documents**

(1) A person commits an offence if:

- (a) the person has possession or control of a document; and
- (b) the person knows that the document is a false Australian travel document.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

### **37 Bringing, taking or sending a document across international borders**

(1) A person commits an offence if:

- (a) the person:
  - (i) brings a document into a country; or
  - (ii) takes a document out of a country; or

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- (iii) sends a document to or from a country; and
- (b) the person knows that:
  - (i) the document is a false Australian travel document; or
  - (ii) the document is an Australian travel document that was not issued to the person.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

**38 Issue of passport contrary to this Act**

A person commits an offence if:

- (a) the person is an officer to whom the Minister has delegated the function of issuing Australian passports; and
- (b) the person issues an Australian passport; and
- (c) the person knows that the issue of the passport is contrary to a provision of this Act.

Penalty: Imprisonment for 10 years, or 1,000 penalty units, or both.

**39 Issue of travel-related document contrary to this Act or Minister's determination**

A person commits an offence if:

- (a) the person is an officer to whom the Minister has delegated the function of issuing travel-related documents; and
- (b) the person issues a travel-related document; and
- (c) the person knows that the issue of the document:
  - (i) is contrary to this Act; or
  - (ii) is contrary to a Minister's determination.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

#### **40 Abuse of public office**

- (1) An officer commits an offence if:
- (a) the officer:
    - (i) exercises any influence that the officer has in the officer's capacity as an officer under this Act; or
    - (ii) engages in any conduct in the exercise of the officer's duties as such an officer; and
  - (b) the officer does so with the intention of:
    - (i) dishonestly obtaining a benefit for himself or herself or any other person; or
    - (ii) dishonestly causing a detriment to another person.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

- (2) In a prosecution for an offence against subsection (1), the determination of dishonesty is a matter for the trier of fact.
- (3) In this section:

***benefit*** includes any advantage and is not limited to property.

***detriment*** includes any disadvantage and is not limited to personal injury or to loss of, or damage to, property.

***obtain*** includes:

- (a) obtain for another person; and
- (b) induce a third person to do something that results in another person obtaining.

#### **41 Failure to notify officer of lost or stolen Australian travel document**

A person commits an offence if:

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- (a) an Australian travel document issued to the person is lost or stolen; and
- (b) the person knows that the document has been either lost or stolen; and
- (c) the person fails to report the loss or theft to an officer as soon as practicable after the first time the person knows that the document has been either lost or stolen.

Penalty: Imprisonment for 1 year or 20 penalty units, or both.

## **Part 5—Administrative matters**

### **Division 1—Information relating to Australian travel documents**

#### **42 Disclosure of personal information for the purposes of this Act**

*Information that may be disclosed to the Minister*

- (1) For the purposes of performing functions under this Act, the Minister may request:
  - (a) an applicant for an Australian travel document; or
  - (b) a person mentioned in an application for an Australian travel document; or
  - (c) a person to whom an Australian travel document has been issued; or
  - (d) a competent authority; or
  - (e) a person specified in a Minister's determination;to disclose to the Minister, or a delegate of the Minister, personal information about:
  - (f) an applicant for an Australian travel document, or a person who is connected with an applicant or an application; or
  - (g) a person to whom an Australian travel document has been issued.
- (2) If a person mentioned in paragraph (1)(b), (d) or (e) holds the information under a law of the Commonwealth, the Minister may direct the person to disclose the information.
- (3) For the purposes of:
  - (a) paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*; and
  - (b) paragraph 2.1(g) of National Privacy Principle 2 in Schedule 3 to the *Privacy Act 1988*; and

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(c) a provision of a law of a State or Territory that provides that information that is personal may be disclosed if the disclosure is authorised by law;

the disclosure of information by a person in response to a request or direction under this section is taken to be a disclosure that is required or authorised by law.

- (4) Nothing in this section has the effect of authorising a disclosure that, despite subsection (3), is prevented by a law of the Commonwealth, a State or Territory.

*Information that may be disclosed by the Minister*

- (5) For the purposes of performing functions under this Act, the Minister may disclose personal information to a person specified in a Minister's determination.

**43 Minister may determine information required for the purpose of satisfying Minister of person's citizenship and identity etc.**

- (1) A Minister's determination may specify kinds of personal information that may be requested by the Minister for the purposes of Part 2.
- (2) This section does not prevent the Minister from requesting under subsection 42(1) information that is not specified in a determination made for the purposes of subsection (1) of this section.

**44 Method of disclosing information to Minister**

- (1) A Minister's determination may specify that personal information:
- (a) of a kind specified in the instrument; and
  - (b) that the Minister may request under subsection 42(1);
- is to be disclosed in a particular manner or particular form.

- (2) A Minister's determination made for the purposes of subsection (1) may specify that, if information covered by the instrument is not disclosed in the manner or form specified:
- (a) the information is taken not to have been disclosed; or
  - (b) in specified circumstances, the information is taken not to have been disclosed.
- (3) A Minister's determination made for the purposes of subsection (1) may specify circumstances in which information covered by the instrument, despite not being disclosed in the manner or form specified, is still taken to have been disclosed.

#### **45 Minister may disclose information about Australian travel documents that are lost, stolen, suspicious etc.**

The Minister may disclose personal information, of a kind specified in a Minister's determination, to a person specified in a Minister's determination, for the purpose of informing that person about the status of an Australian travel document.

#### **46 Minister may disclose information for particular purposes**

On request, the Minister may disclose personal information, of a kind specified in a Minister's determination, to a person specified in a Minister's determination, for any of the following purposes:

- (a) confirming or verifying information relating to an applicant for an Australian travel document or a person to whom an Australian travel document has been issued;
- (b) facilitating or otherwise assisting the international travel of a person to whom an Australian travel document has been issued;
- (c) law enforcement;
- (d) the operation of family law and related matters;
- (e) the purposes of a law of the Commonwealth specified in a Minister's determination.

Note: Information disclosed under this section must be dealt with in accordance with section 14 of the *Privacy Act 1988* (including Information Privacy Principles 4(b) and 11.3).

## **Division 2—Methods of performing functions under this Act**

### **47 Minister may determine particular methods and technologies**

- (1) A Minister's determination may specify methods (including technologies) that are to be used:
  - (a) for the purposes of confirming the validity of evidence of the identity of an applicant for an Australian travel document or a person to whom an Australian travel document has been issued; or
  - (b) for performing other functions in connection with this Act.

Note: Any personal information collected as part of using a method specified in a determination must be dealt with in accordance with section 14 of the *Privacy Act 1988* (including Information Privacy Principles 1 and 4).

- (2) The determination may provide for:
  - (a) the circumstances in which the methods are to be used; and
  - (b) any other matters relating to use, or the consequences of use, of the methods.
- (3) If the determination relates to the use of personal information, the determination must specify the nature of the personal information and the purposes for which it may be used.
- (4) Subsection (1) does not imply that methods or technologies not specified in a Minister's determination must not be used for performing functions in connection with this Act.



## **Division 3—Review of decisions about Australian travel documents**

### **48 Reviewable decisions**

For the purposes of this Division, the following decisions under this Act are *reviewable decisions*:

- (a) a decision to issue an Australian travel document (other than a decision to issue an Australian passport to a child);
- (b) a decision to refuse to issue an Australian travel document (other than a decision in relation to which a declaration under subsection 11(3) has been made or a decision made because of subsection 12(2));
- (c) a decision to cancel an Australian travel document;
- (d) a decision that an Australian travel document is one to which paragraph 23(1)(a) or (b) applies;
- (e) a decision under section 24 to demand the surrender of a cancelled or invalid Australian travel document;
- (f) a decision under section 25 to demand the surrender of an Australian travel document;
- (g) a decision to extend, or not to extend, the time for making an application under section 49;
- (h) a decision under subsection 49(4);
- (i) a decision not to waive an application fee imposed under the *Australian Passports (Application Fees) Act 2005*;
- (j) a decision not to refund an application fee imposed under the *Australian Passports (Application Fees) Act 2005*;
- (k) a decision to refund part of an application fee imposed under the *Australian Passports (Application Fees) Act 2005*.

Note: Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must give to persons whose interests are affected by the decision a notification of the making of the decision and of their right to have the decision reviewed. In notifying any such persons, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act.

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**49 Review by Minister of decisions made by Minister's delegate**

- (1) If:
  - (a) a reviewable decision is made by a delegate of the Minister;  
and
  - (b) the decision is not a decision under subsection (4);a person affected by the decision may apply in writing to the Minister for review of the decision.
- (2) An application for review of a decision must be made within 28 days after the person is notified of the decision (or such longer period as the Minister allows, whether before or after the end of the 28 days).
- (3) An application for review of a decision must set out the reasons for making the application.
- (4) After receiving an application for review of a decision, the Minister must review the decision and:
  - (a) affirm the decision under review; or
  - (b) vary the decision under review; or
  - (c) set aside the decision under review and make a decision in substitution for it.

Note: Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must give to persons whose interests are affected by the decision a notification of the making of the decision and of their right to have the decision reviewed. In notifying any such persons, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act.

**50 Review by Administrative Appeals Tribunal of decisions made by Minister**

- (1) If a reviewable decision is made:
  - (a) by the Minister; or
  - (b) under subsection 49(4) by a delegate of the Minister;application may be made to the Administrative Appeals Tribunal for review of that decision.

- (2) The Minister may, if the Minister makes:
- (a) a decision in response to a refusal/cancellation request made under subsection 13(1) or 14(1); or
  - (b) a decision under subsection 49(4) on review of a decision made by a Minister's delegate in response to a refusal/cancellation request made under section 13 or 14;
- certify that the decision involved matters of international relations or criminal intelligence.
- (3) Despite section 43 of the *Administrative Appeals Tribunal Act 1975*, if the Minister has given a certificate under subsection (2) in relation to a decision, then in any review of that decision the Administrative Appeals Tribunal may only make a decision:
- (a) affirming the Minister's decision; or
  - (b) remitting the decision to the Minister for reconsideration in accordance with any directions or recommendations of the Tribunal.

## **Division 4—Officers and delegates**

### **51 Delegation of Minister’s powers**

- (1) The Minister may, in writing, delegate to a person who is an officer within the meaning of paragraph (a), (b), (c) or (g) of the definition of *officer* in subsection 6(1) any or all of the Minister’s powers and functions under the following provisions:
  - (a) section 7;
  - (b) section 9;
  - (c) subsection 11(3);
  - (d) section 22;
  - (e) section 42;
  - (f) section 45;
  - (g) section 46;
  - (h) subsection 49(4);
  - (i) section 55.
- (2) The Minister may, in writing, delegate to the Administrator of an external Territory any or all of the Minister’s powers under this Act (except subsection (1)), to be exercised by the Administrator only in, or in relation to, the external Territory.
- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

### **52 Authorisation of persons as officers**

- (1) The Minister may, in writing, authorise a person, or a class of persons, to exercise specified powers and to perform specified functions of an officer under this Act.
- (2) A person who is authorised under subsection (1) must comply with any directions of the Minister in the exercise of the powers or performance of the functions specified in the authority.

- (3) An instrument made under this section is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## Part 6—Miscellaneous

### 53 Form of Australian travel documents

- (1) Australian passports may be issued in the name of the Governor-General.
- (2) Australian travel documents must be issued in forms approved by the Minister.
- (3) The name of the person to whom an Australian travel document is issued must appear on the document. Except in the circumstances specified in a Minister's determination, the name must be:
  - (a) the name on the person's birth certificate; or
  - (b) the name on a certificate of citizenship granted to the person under the *Australian Citizenship Act 1948*; or
  - (c) the name on a certificate, entry or record of the person's marriage, being a certificate granted or entry or record made by the Registrar of births, deaths and marriages (however described) of a State or Territory; or
  - (d) the name included, by way of effecting a name change of the person, on a register kept under a law of a State or Territory by the Registrar of births, deaths and marriages (however described) of the State or Territory.

### 54 Australian travel documents are the property of the Commonwealth

An Australian travel document remains the property of the Commonwealth at all times.

### 55 Endorsements and observations

The Minister may endorse, or make observations on, Australian travel documents in the circumstances specified in a Minister's determination.

**56 Application fees**

- (1) The application fees imposed by the *Australian Passports (Application Fees) Act 2005* are payable to the Commonwealth.
- (2) A Minister's determination may specify one or more of the following:
  - (a) the circumstances in which application fees imposed under the *Australian Passports (Application Fees) Act 2005* may be waived;
  - (b) the circumstances in which application fees imposed under the *Australian Passports (Application Fees) Act 2005* may be refunded to applicants;
  - (c) the amount of the refunds in those circumstances.

**57 Minister's determinations**

The Minister may, by legislative instrument, specify any of the matters that this Act provides may be specified in a Minister's determination.

**58 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the Governor-General may make regulations prescribing penalties not exceeding 20 penalty units for breaches of the regulations.

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*[Minister's second reading speech made in—  
House of Representatives on 2 December 2004  
Senate on 9 December 2004]*

(232/04)