Every Assistance & Protection

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A History of the Australian Passport

Jane Doulman
David Lee

Australian Government
Department of Foreign Affairs and Trade

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The opinions expressed in the book represent those of the authors and not necessarily those of the Department of Foreign Affairs and Trade.

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The Governor-General of the Commonwealth of Australia, being the representative in Australia of Her Majesty Queen Elizabeth the Second, requests all those whom it may concern to allow the bearer, an Australian Citizen, to pass freely without let or hindrance and to afford him or her every assistance and protection of which he or she may stand in need.

Safe Passage Request
(*Australian Passport*)

Foreword

It gives me great pleasure to introduce *Every Assistance and Protection: A History of the Australian Passport*.

This is the first history of the Australian passport, charting its development from colonial times, when documents called 'passports' were issued to ticket-of-leave convicts, to its present form.

One of my predecessors in this portfolio, Hugh Mahon, introduced the first centralised system of Australian passport issues during World War I. From Mahon's time until 1951, the Australian Government was issuing fewer than 30,000 passports in any given year.

The contrast with the present day is dramatic: a reflection of the exponential increase in the proportion of Australians travelling to overseas countries since the onset of the age of globalisation and the jet aeroplane in the late 20th century. By 2006–2007, more than 1.3 million passports were issued, the highest number ever issued in a 12-month period.

In contrast with Mahon's time, when passport photographs were being introduced, the modern-day Australian 'ePassport' is now biometric. Australia has been a leader in the development of biometric passport technology and one of the first countries in the world to introduce an ePassport. This system has provided Australia with a more robust system for the verification of identity and the bearer with an enhanced protection against identity theft.

Since the First World War, the passport has been an indispensable prerequisite for overseas travel; it is also now one of the most authoritative documents attesting to one's citizenship and identity.

As Australia's Foreign Minister I am proud of the services which the Australian Passport Office and its predecessors have provided to the Australian travelling public. I warmly commend the Department of Foreign Affairs and Trade for sponsoring, and Federation Press for publishing, this important book.

Stephen Smith
Minister for Foreign Affairs

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Jane Doulman
David Lee
Canberra 2008

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Abbreviations

AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
ADB	Australian Dictionary of Biography
AGPS	Australian Government Publishing Service
A-G's	Attorney General's Department
AIF	Australian Imperial Force
ALJR	Australian Law Journal Reports
ALP	Australian Labor Party
APEC	Asia Pacific Economic Cooperation
APC	Australian Peace Council
APO	Australian Passport Office
ARCID	Australian Royal Commission of Inquiry into Drugs
ASIO	Australian Security Intelligence Organisation
CGP	Commonwealth Government Printer
CIB	Criminal Investigations Branch
CJ	Chief Justice
CMF	Citizen Military Forces
CPA	Communist Party of Australia
CPD	Commonwealth Parliamentary Debates
CRA	Certification Regarding Applicants
Cth	Commonwealth
Defence	Department of Defence
DFA	Department of Foreign Affairs
DFAT	Department of Foreign Affairs and Trade
DEA	Department of External Affairs
DRC	Democratic Rights Council
DRV	Democratic Republic of Vietnam
EBSVERA	Enhanced Border Security and Visa Entry Reform Act
EEC	European Economic Community
FAC	Foreign Affairs Committee of Cabinet
HR	House of Representatives

HTD	Home and Territories Department
ICAO	International Civil Aviation Organisation
Interior	Department of Interior
IWW	Industrial Workers of the World
J	Judge or Justice
ML	Mitchell Library
MP	Member of Parliament
MRP	machine readable passport
MRTD	machine readable travel documents
MRZ	machine readable zone
NAA	National Archives of Australia
n.d.	no date
NLA	National Library of Australia
NLF	National Front for the Liberation of South Vietnam
NSEERS	National Security Entry–Exit Registration System
NMM	National Maritime Museum (Greenwich)
OCR	optical character recognition
PMD	Prime Minister's Department
POWs	prisoners of war
PRC	People's Republic of China
QANTAS	Queensland and Northern Territory Aerial Services
RAAF	Royal Australian Air Force
RMAS	Regional Movement Alert System
RSL	Returned Services League
SMH	*Sydney Morning Herald*
SRNSW	State Records of New South Wales
SRC	Stewart Royal Commission
UAP	United Australia Party
UK	United Kingdom
UN	United Nations
US	United States
USSR	Union of Soviet Socialist Republics
WPA	War Precautions Act
WPC	World Peace Council

Introduction

In 1914, Atlee Hunt, Secretary of the Department of External Affairs, told the Under Secretary of the Department of the Colonial Secretary in Western Australia that the issuing of passports in Australia was a matter of 'External Affairs as it affects the relations of Australian citizens to foreign Governments'.[1] Hunt's thinking underpinned the belief of all Australian governments after 1914 that they, as the national government, had the right to exercise a discretionary power to issue, withhold or cancel passports to Australians. Every time Australians presented their passports to a foreign official, they were, as Hunt observed, relating with a foreign government. Bearing a passport rendered Australian travellers as quasi-diplomatic representatives of their country abroad, and Australian governments insisted on retaining the ultimate right not to issue or to cancel their travel documents.

Historically, the degree to which ordinary Australians have been interested in matters of foreign policy is questionable. Many have lived their entire lives with little concern or interest in the diplomacy of Australian governments. But over the course of the 20th century and into the 21st, Australians have come to be inveterate travellers. In 2004, for example, there were 4.4 million short-term resident departures from an Australian population of about 20 million, and over the decade from 1994 to 2004, the number of Australians travelling abroad increased by 84 per cent.[2] While many Australians regarded the application process as tedious and expensive, from a position of outright resistance in the 1920s, all came eventually to accept passports as a prerequisite for overseas travel. For most travelling Australians, using passports is a mere formality: they display their documents to a foreign border official and are allowed to pass. For a few, however, the passport becomes an essential conduit for consular assistance from home.

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1 Memorandum, Hunt to F.D. North, 29 January 1914, National Archives of Australia (NAA): MP56/6.

2 Australian Bureau of Statistics (ABS), *Official Year Book of the Commonwealth of Australia 2006*, Commonwealth Government Printer, Canberra, 2006, p. 532.

A common criticism of histories of Australian foreign policy is that they are elitist: empirically based accounts of the 'high policy' made by prime ministers, foreign ministers and their small circle of official advisers. This history of the Australian passport is arguably an example of this kind of history. Yet while the work is undoubtedly related to foreign policy, it is also one that touches on the lives of many ordinary Australians. In this sense, the book is a social, as well as legal and political, history.

The publication is timely. Until the 1990s, publications on the history of identity documents were few. But in the past decade, three watershed works on passports appeared overseas: Martin Lloyd's *History of the Passport*, Mark Salter's *Rights of Passage: the Passport in International Relations* and John Torpey's *The Invention of the Passport: Surveillance, Citizenship and the State*. Torpey also edited a book with Jane Caplan, *Documenting Identity: the Development of State Practices in the Modern World*, and the Canadian scholar, David Lyon, has published important works on surveillance and biometric passports.[3] That so much has been published in such a short space of time suggests the increasing importance of the passport as a subject for historical investigation and debate. The book written by Lloyd, a former British passport official, is a comprehensive insider's look at the history of the passport, witty and anecdotal. For Salter and Torpey, the passport is inextricably linked to the rise of the nation-state. Torpey argues that the territorial state invented passports because it:

> must erect and sustain boundaries between nationals and non-nationals both at their physical borders and among people within those borders. Boundaries between persons that are rooted in the legal category of nationality can only be maintained, it turns out, by documents indicating a person's nationality, for there is simply no other way to know this fact about someone.[4]

Even Lloyd, despite his generally light touch, reveals an acute awareness of the seriousness of the relationship between national identity and the

3 John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State*, Cambridge University Press, Cambridge, 2000; Mark Salter, *Rights of Passage: the Passport in International Relations*, Lynne Reinner Publications, Boulder, Colorado, 2003; Martin Lloyd, *The Passport: the History of Man's Most Travelled Document*, Sutton Publishing, Gloucestershire, 2003; Jane Caplan and John Torpey (eds), *Documenting Individual Identity: The Development of State Practices in the Modern World*, Princeton University Press, Princeton, New Jersey, 2001; David Lyon, *Surveillance and Social Sorting: Privacy, Risk and Digital Discrimination*, Routledge, London, 2002; and *Surveillance after September 11*, Polity Press, Cambridge, 2003.

4 Torpey, *Invention of the Passport*, p. 1.

passport. An entire chapter in his book is entitled: 'Passports Can Seriously Damage Your Health'.

There is, however, no detailed historical study of the Australian passport to date, notwithstanding the burgeoning historical literature on the cognate areas of immigration, national identity and citizenship.[5] The most authoritative Australian secondary source is Robert Lancy's article, 'The evolution of Australian passport law', published in 1982 in the *Melbourne University Law Review*.[6] Whereas Lancy's paper focuses on the legal aspects of Australian passport history, this book, published a quarter of a century later, is the first historical analysis based on hitherto unexamined files held in the National Archives of Australia relating to the Australian passport from the colonial period to the present day.

The book first sets out a history of the European, and largely British, origins of the Australian passport. There is no definite record when passports came to be granted, but documents permitting the individual to travel from one territory to another seem to have existed in one form or another since the advent of the written word and civilised societies.[7] While the word 'passport' did not emerge until centuries later, such documents can be traced back to antiquity. In ancient India and Persia, documents endorsing travel for individuals were issued; and from the Old Testament we read: 'And I said to the King, if it pleases the King, let letters be given me to the governors of the province beyond the river, that they may let me pass through until I come to Judah'.[8] Nehemiah was travelling around 450 BCE from Shushan in Susiana to Jerusalem. The present-day equivalent would be a journey from Iraq to Israel. As Lloyd observes, today documents endorsing this journey would be rare.

What was and remains essential, in Nehemiah's time and still today, is a bureaucracy which applicants must approach, and allow themselves to be scrutinised by, in order to gain permission to travel beyond the border of the home territory. No doubt individuals and groups have crossed spaces without the need for negotiation or protection. Yet they are, arguably, as unusual as documents endorsing unhindered travel from Baghdad to Tel Aviv. People who live in groups are aggressive, territorial and suspicious of others. Whether groups are nomadic or settled, they create boundaries in the collective imagination or on paper reflecting the notion of territory. For the

5 These are cited throughout the book.

6 Robert S. Lancy, 'The Evolution of Australian Passport Law', *Melbourne University Law Review*, vol. 13, June 1982, pp. 428–52.

7 Lloyd, *The Passport*, p. 29.

8 Nehemiah, 2.7 quoted in ibid., p. 28.

societies from which Australia draws its cultural, social and political traditions, the ability to facilitate, and usually control and monitor, human movement rests on the existence of a bureaucracy with the capacity to regulate 'in a pervasive and systematic fashion'.[9] With such bureaucracies came documents that enabled individuals to depart with expectations of moving safely from one territory to another. Yet a passport can never provide a guarantee that the bearer will reach his destination 'without hindrance', an outcome that always remains contingent on the goodwill of other nations.

The need for a highly organised bureaucracy to generate legitimate travel documents is demonstrated in antiquity by Rome's army and civil service, the twin pillars of an administrative infrastructure essential for a passport system. The army maintained the peace within the empire. With peace came stability and with stability an increase in travel, which was administered by an efficient bureaucracy and underpinned by the imperial post. Officials who needed to travel required specific and specialised authorisation – directly from the Emperor – and were issued with the *tractorium*. Carrying the name of the reigning emperor, the name of the bearer and the length of time for which it was valid, these documents were sent in blank blocks to provincial governors. Like any system of prerogative, as Lloyd notes 'those operating it were sometimes tempted to bend the rules to their own ends'; records show that the Younger Pliny informed the Emperor Trajan that he had issued a *tractorium* to his wife to facilitate a visit to a relative in need. Fortune 'shone on Pliny', for the Emperor wrote back expressing his approval.[10]

With the fall of Rome, the *tractorium* disappeared. Over the next several hundred years Europe unravelled into a 'patchwork of territories and authorities'. There were only 'frontiers' or 'large zones of transition', where violence was the pre-eminent means of negotiation.[11] Travel undoubtedly occurred: in a period of large-scale invasions, populations often had to flee. Meanwhile, pilgrimages and the business of missionaries continued as Christianity spread and consolidated itself in the outer reaches of Europe. So did commerce. But for individuals making their way across the frontiers, even into the most benign contiguous territory, travel would have been precarious and rare. A *tractorium*-type document assuring its bearer of assistance, and by extension conferring upon him a certain prestige, had no place in this period of upheaval.[12]

9 Torpey, *Invention of the Passport*, p. 7.
10 Lloyd, *The Passport*, pp. 29–30.
11 Salter, *Rights of Passage*, pp. 12, 14.
12 Lloyd, *The Passport*, p. 31.

In England the doctrine of *ne exeat regno* prevailed, further limiting movement. Interpreted in common law to mean that no subject may leave the territory without the king's specific permission, *ne exeat regno* was the legal foundation for controlling the movement of populations as the king's 'right', that is, to determine who may enter and leave his personal territory. Because the 'principal duty' of a subject was to be at the service of his king and country, being absent without leave of the ruler was illegal. This is not to deny that passport tokens of some sort were used for travel between territories, but for the 500–600 years following the fall of Rome, little is known about documentary control of such movement. Determining how individuals managed to travel is further complicated because authority was not always linked to specific territory, but across spaces, classes, and functions. Rulers often competed with other forms of authority: local, mercantile and ecclesiastical.[13]

What we do know is that history's pendulum swings inevitably from peace to war and back again and that a sound peace requires protracted negotiations. Intermediaries, the original diplomats, usually representing higher authority, attended these dialogues and sensibly concerned themselves 'with procedures to guarantee their own safety'.[14] To facilitate their safe passage a document emerged known as the *sauf conduit* (safe-conduct) or *guidaticum*. Today, a safe-conduct is an official document, issued by the enemy, giving aid and protection to the bearer. In the Middle Ages, a safe-conduct could be written by either side as the bearer moved between the lines. Some knights hedged their bets by carrying multiple documents. In the form of a letter of patent the document included the name of the bearer and the purpose of his mission. The most important aspect of the document was that it was issued by an extremely powerful individual – a sovereign – most usually a king who requested in writing that the bearer not be 'hindered' in his journey.[15] 'Hindering' could mean anything from detainment while the document was perused by an individual who had no business examining it, to a summary lynching. Typically addressed to an individual of equal status in the territory of destination, the power of these first safe-conducts lay in the implied threat of punitive action. Yet no matter how much intimidation was implied, the document's ability to protect the bearer always relied on the good will of both parties.

Salter posits the emergence of the safe-conduct as one of the most significant developments in the history of international relations. Because

13 Salter, *Rights of Passage*, pp. 11–12.
14 Lloyd, *The Passport*, pp. 30–1.
15 Salter, *Rights of Passage*, p. 13.

the document suggests mutually recognised authority, its emergence indicates that Europe was beginning to stabilise. We know that in 1051 when King Edward the Confessor's brother-in-law, Eustace of Boulogne, visited England, he carried a *sauf-conduit*. Fifteen years later, William the Conqueror and his Norman army did not. As part of their strategy of subjugating Saxon society, the Normans initiated the first organised system to monitor movement in and out of England. Not only did William build castles 'to prevent anyone from doing what he had just done', he refined what was known as the King's Licence, putting in place a form of immigration control.[16]

Complementary to the *sauf-conduit*, the King's Licence authorised departure from the realm, granting permission to leave or enter to individuals not necessarily connected with politics, diplomacy or the waging of war.[17] Nobody could land in England without the King's Licence, and the ports were now overseen by his newly constructed and heavily garrisoned castles which enforced this new 'requirement'. In 1078, when William quarrelled with Pope Gregory VII, he ordered the keepers of his castles – prototypical customs officers – to prevent the papal legates from landing without a King's Licence. As William had not signed these documents, the legates were turned away. Lloyd argues that this document suggests that:

> the frequency of travel had changed to such an extent that it was now practical to have documents issued by one person upon demand instead of prepared beforehand as the Romans had done eight centuries earlier.[18]

In feudal societies there was no such thing as travel for leisure. However, the growth of an English travel administration reflected the development of its bureaucratic counterpart on the continent. For by the 11th and 12th centuries, Europe had witnessed the re-emergence of officially defined and mutually recognised territories.[19] It was a momentous shift from the chaos of earlier centuries. Gradually, stability allowed increasing number of individuals, unconnected with war and high politics, to move across these re-firming boundaries, or borders as we call them today. Most of these individuals travelled for reasons of commerce and occasionally religion.

16 Ibid.
17 Lancy, 'Evolution of Australian Passport Law', p. 429.
18 Lloyd, *The Passport*, pp. 34–6.
19 Salter, *Rights of Passage*, p. 14.

In England, Magna Carta was decreed in 1215. Clause 50 guaranteed freedom of movement for all English subjects. This freedom was suspended in 1381 by a statute that forbade all but peers, soldiers and notable merchants to exit the realm, 'lest the King be deprived of the subject's military or other feudal services'.[20] That this statute continued Magna Carta's free movement of merchants is significant. Magna Carta had allowed merchants to leave England without specific permission if their journey was intended to raise revenue. It appears that the most common motive for travel, and the reason most likely to win royal appreciation, was the need to trade. Magna Carta declared that:

> all merchants shall have their safe and sure conduct to depart out of England, to come into England, to tarry in, and go through England, as well as by land as by water, to buy and sell … by the old and rightful customs, except in time of war go out of, and come into England and to stay there and to pass, as well as by land as by water.[21]

Thus the medieval businessman was the first exception to the requirement 'that all subjects obtain permission from the king to leave his domain'.[22]

It was not until the 16th century that, along with territorial boundaries, the form and content of safe-conducts and documents such as the King's Licence were standardised throughout Europe.[23] It was in the mid-15th century that the word 'passport' began to appear in English statutes, beginning with *Edward VI c.2*: 'No captain shall give to any of his soldiers appointed to serve under him in any town or fortress kept with garrisons of soldiers any licence or passport to depart from his service'. Today such a document would be viewed as an army pass, yet Lancy described *Edward VI c.2* as a watershed in passports history because usage indicated 'generic import'. In other words, in this context the passport enabled an individual to travel, facilitating a journey from one place to another.[24]

At first glance, the origin of the word appears self-evident. The document allowed the bearer to pass through a port to enter or to leave a territory. French being the language of diplomacy, it most likely is derived from *passer*, (to pass or to go), and *port* (literally, 'port'). Meanwhile, the

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20 Torpey, *Invention of the Passport*, p. 18.
21 Magna Carta, Clauses 41–50, quoted in Lancy, 'Evolution of Australian Passport Law', p. 430.
22 Salter, *Rights of Passage*, p. 13.
23 Ibid., p. 16.
24 Lancy, 'Evolution of Australian Passport Law', pp. 428–52.

purpose of these documents was evolving from a personal introduction and specific facilitation towards population control, 'be they subjects wishing to leave or those of another allegiance wishing to come in'.[25] The English Crown encouraged foreign merchants to come and trade. Yet no piece of paper could protect foreigners from their ambiguous position in society. During periods of crisis they became scapegoats, and simmering resentments often spilled over into violence. In England the most extreme example was the expulsion of the Jewish community in 1190 following a pogrom-like massacre. They were not permitted to return until 1656.

Due to the increase in numbers of 'aliens', legislation emerged over time to absorb or regulate foreign minorities and newcomers, as well as creating distinctions between those born in England and foreigners. The Act dealing with safe conduct of 1452, *31 Hen.VI c.4*, decreed that if any of the King's subjects injured or robbed a foreigner who was the bearer of a safe conduct, they were to be brought before the King's Court of Chancery and compelled to make restitution. Eventually, the system of Letters Patent of Denization to foreigners marked the beginning of a bureaucratic regime that underpinned the Naturalisation Acts of the 18th and 19th centuries. However, it was in the early 17th century that the clearest expression of the consciousness of belonging and difference expressed itself in British legislation. Calvin's Case of 1608 clarified 'British subjecthood' by drawing a distinction between those born as aliens and those born as subjects. It was an important distinction, this division between 'alien' and 'British subject', and it occurred at a critical juncture, just as Britain was beginning to establish colonies: extensions of the 'King's Dominion'.[26]

Salter suggests that the rise of the sovereign-endorsed passport flags the strengthening of the relationship between rulers and ruled. Certainly by the 16th century the position of sovereigns was stronger, yet each was always conscious that there was another ready to replace them. In England, treason remained a rare motive for the majority of travellers. But due to the precarious nature of Tudor politics a link was forged between national security – in actual fact, the security of the sovereign – and the right of that sovereign to monitor and control those entering and exiting the realm.

The most likely threat to the security of Elizabethan and Stuart state was perceived to be Roman Catholics and Catholic countries such as Spain. English Catholics were travelling to Spain to train as priests; their return was interpreted as an attempt to undermine the Protestant queen's rule. The

25 Lloyd, *The Passport*, p. 51.

26 John Chesterman, 'Natural-Born Subjects? Race and British Subjecthood in Australia', *Australian Journal of Politics and History*, vol. 51, no. 1, 2005, p. 30.

sovereign therefore had an interest in knowing who wished to leave the kingdom. If these subjects:

> had developed particular skills, the acquisition or knowledge of which might benefit … enemies … then it would not be wise for such people to depart the realm … Paradoxically, in the matter of enemies within the kingdom, it was considered safer to keep them in the country than to let them travel abroad since, once overseas, they might raise an army of supporters and return to press their point of view more forcibly …[27]

This right or prerogative of the ruler, or state, to decline, revoke or grant permission to exit became known as 'discretionary power'. On 11 July 1670, England and Denmark concluded a treaty providing for mutual trade requiring 'letters of passport' to accompany 'ships, goods and men of the contracting states when visiting the territories of each state'. Lancy argues these 'letters of passport' 'may well be the modern precursor to the passport' as they appear to be official documents 'issued by a state to its own subjects to enable them to travel abroad'.[28] In other words, the passport was proof of nationality. With the growth of the mercantilism in the 17th and 18th centuries, a ship, its crew and its flag 'were likely of different nationalities, making discovering national status by examination of persons alone problematic'. The nationality of a ship was authenticated by a sea-brief and *certificat de nationalite*:

> This documentation determined which rules of war applied to ship, cargo, and crew: it held a different legal personality (which itself carried dramatically different consequences) depending on whether it was a pirate, privateer, or envoy of a sovereign. The passport determined whether the ship could be the rightful victim of privateering, a rightful privateer, or a neutral vessel.[29]

Twenty years before the signing of the Anglo-Danish Treaty of Peace and Commerce, the House of Commons, on 14 April 1649, ordered that no pass be granted to 'go beyond the seas' without an undertaking that the applicant was not 'siding, assisting, advising or counselling against the Commonwealth'. King Charles I had recently been executed and while officially the Civil War was over, royalist plotting continued on the continent. For the government of the Commonwealth, verbal and written

27 Lloyd, *The Passport*, p. 36.
28 Lancy, 'Evolution of Australian Passport Law', p. 429.
29 Salter, *Rights of Passage*, p. 18.

declarations of loyalty could not be accepted at face value. Each had to be judged on the basis of whether permission to pass would compromise the republic. Here was discretionary power at work: the state deciding, on the basis of loyalty, disloyalty or threat, whether or not to grant permission to depart. Travel documents were regarded as so vital to the integrity of the realm that until the reign of Charles II, every passport was signed by the King. Perhaps the 'Merrie Monarch' found this practice a tedious burden, for during his reign a second type of passport was introduced, signed by the Secretary of State for Foreign Affairs. The two passports co-existed until 1794, eventually superseded by a passport solely issued by the Secretary of State.[30] In contrast to the generic European documents, this transfer mirrored the British political system's transition to the rule of parliament; the signatures of succeeding secretaries of state reflecting each change in government.

During this period, the word 'passport' acquired a technical meaning quite different from the current usage. In the 1758 edition of *Droit des Gens*, Vattel defined a passport as:

> a kind of privilege ensuring safety to persons in passing and repassing, or to certain things during their conveyance from one place to another … the term passport is used on ordinary occasions when speaking of persons who lie under no particular exemption as to passing and repassing in safety, and to whom it is only granted for greater security and in order to prevent all debate, or to exempt from some general prohibition.[31]

As Lancy points out, the passport in this definition is issued by the sovereign of the territory in which the document has its effect:

> by the time of the war with France, new legislation was enacted respecting aliens arriving and leaving the kingdom. In 1793 it was provided that any alien, except the domestic servants of any of His Majesty's subjects, who shall have just arrived in the kingdom, being desirous of changing the place of his or her usual residence by virtue of his or her first passport, shall obtain from the mayor, a passport in which shall be expressed the name and description of such alien and the name of the town to which such alien proposes to remove.[32]

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30 Australian Passport Office (APO), 'History of Passports', internal departmental paper, Canberra, March 1978, Department of Foreign Affairs and Trade (DFAT), p. 1.

31 Kenneth Diplock, 'Passports and Protection in International Law', *The Grotius Society*, vol. 32, 1946, pp. 42, 46, cited in Lancy, 'Evolution of Australian Passport Law', p. 430.

32 Aliens Act of 1793, *33 Geo.III, c.4, sess.9*, cited in ibid.

A special exemption was, however, granted to alien merchants to whom were extended full liberties to pass and repass within the country. The exemption was derived from Magna Carta. For Lancy, one inference seems possible:

> by the beginning of the 19th century, a passport in English law meant a written permission given by a belligerent to enemy subjects or others allowing them to travel in his territory or in enemy territory captured or occupied by him.[33]

While this is true, the administration of travel documents remained haphazard. A traveller might arrive in a certain destination and discover that further documentation was required to facilitate travel to another point in the journey. A document could be drawn up on the spot and issued to the traveller – not necessarily by representatives of the traveller's country.

By the mid-to-late-18th century there were signs that standardisation of format was being achieved. Within the definition of passport was the single-sheet document not far removed from a letter of introduction, while a safe conduct was moving towards its modern construction. A document issued in 1758 to the Venetian adventurer Casanova requested that all 'admirals, generals, governors, commanders – allow the bearer to pass freely to the Netherlands by land or by sea for fifteen days', thus permitting the bearer to enter into a country during wartime. Fahrmeir describes Casanova's travel document as a passport, strictly speaking it was a safe conduct. For Casanova, the technical details were irrelevant: its true worth lay in prestige value. A signed endorsement might facilitate border crossing, but what Casanova admired was its power to make 'people respect you'. Fahrmeir describes early modern passports as semiformalised letters of recommendation used mainly by persons on official business and travellers from the upper ranks of society who wanted preferential treatment. Devoid of security features, these documents were used within 'comparatively small networks' of diplomats, officials or professionals.[34] Merchants were included. There was no description of the bearer, or details such as date and place of birth. However the international traveller remained outside the mainstream of everyday life. In Britain, between the 17th and early 19th centuries only a few would have applied for, or been able to afford, a passport. A passport issued in

33 Ibid.

34 Andreas Fahrmeir, 'Governments and Forgers: Passports in Nineteenth Century Europe', in Caplan and Torpey (eds), *Documenting Individual Identity*, p. 220.

1778 to a Sir John Stepney cost an extraordinary six pounds, seven shillings and six pence.[35]

But in 1778 change had already arrived in Britain. In the last quarter of the 18th century, the first pangs of social, political and economic change in Britain provided impetus to what Torpey describes as increasing freedom of movement for the lower orders, beginning their liberation from the 'shackles that had once bound them to their birthplaces'.[36] Until the late 18th century, the remnants of feudalism, combined with the demands of mercantilism, the Poor Laws and the 1662 Act of Settlement and Removal, had contained their movement. Now, the Enclosure Acts and the 1795 repeal of the Act of Settlement freed hands to seek work elsewhere, particularly in the industrial cities. The resultant increase in urban populations struggling to make a living saw a commensurate increase in urban crime. In a bid to accommodate the burgeoning prison population, authorities transported many convicts to the American colonies. When this practice ended with the American Revolutionary War (1775–1783), a crisis developed in the British criminal justice system as the temporary solution of imprisoning convicts on 'hulks' moored on the Thames proved untenable. In 1786, the government decided that the solution lay in establishing a replacement penal settlement in the recently claimed colony of New South Wales, the eastern half of New Holland.[37] It is here that Chapter 1 of the book begins.

The convicts of the First Fleet did not carry passports. Nor did the officers and crew. Their safety was invested in Captain Arthur Phillip's sea brief, which established Phillip's bona fides as Governor of New South Wales and his ships' nationality as British. Phillip and his successors were bestowed with extraordinarily wide powers, but because of the punitive purpose of the colony – and the fact that passports were exceedingly rare documents anyway – it appears unlikely that passports for individuals were issued by the early governors.[38] In time, a form of colonial passport was introduced. This was an internal document given to well-behaved ticket of leave convicts that endorsed internal movement between districts in the colony. Explorers, and later protected Aboriginals, were also given similar 'passports'. By the

35 APO, 'History of Passports', p. 1.

36 Torpey, *Invention of the Passport*, p. 91.

37 For arguments as to the reasons behind Britain's settlement of New Holland, see Ged Martin (ed.), *The Founding of Australia: the Argument on Australia's Origins*, Hale & Iremonger, Sydney, 1981.

38 Further research may uncover early colonial travel documents. See also, A.C.V. Melbourne, (introduced and edited by R.B. Joyce), *Early Constitutional Development in Australia, New South Wales 1788–1856, Queensland 1859–1922*, University of Queensland Press, Brisbane, 1963, p. 9.

time free settlers began arriving in the colonies, Britain had abolished the passport for travel within the Empire, paving the way for successive waves of immigrants between the 1840s and 1860s that permanently altered the colonies' social, economic and political landscape.[39]

Chapter 1 explores at length what became known as the 'freedom of movement era'. This occurred when most of the countries of Europe and Britain either abolished passports or relaxed official control on movement from the early 19th century.[40] The development facilitated the great 19th century diasporas. International passports from around this time are therefore rare. Passports issued to Australian colonists are particularly treasured artefacts. These passports, which required endorsement by the British Secretary of State of the time, were only issued to the relatively few colonists who ventured outside the Empire before Federation in 1901.[41]

But by the late 19th century, there were signs that the era of less restricted movement was drawing to a close. States wanted to monopolise control of the movement of people into and out of their territories. Their reasons for wanting to do so included extracting military service and taxes; preventing the loss of workers with particularly valuable skills; excluding, monitoring or containing undesirables; and supervising the growth, distribution and composition of the populations within their borders. The newly federated Commonwealth of Australia issued the occasional passport for travellers journeying outside the Empire; but its major concern, at least until 1912, was monitoring those coming into, rather than those leaving, the country. This outlook changed with the outbreak of World War I, when Australian authorities soon became concerned with regulating those wishing to leave the country.

Chapter 2 examines the Commonwealth's control of passport issuance during the conflict, when the War Precautions (Passports) Regulations made it a criminal offence to leave or enter the country without a passport. As the chapter notes, there were significant obstacles in the way of the embryonic, centralised passport system, because of Australia's vast land mass and its undeveloped transportation and communications infrastructure. The chapter reveals that the centralised passport system was introduced in Australia to contain the movement of men 'of military age', to discourage 'shirkers'. The impact of this policy on ordinary lives is shown

39 Britain abolished the passport for travel within the Empire in 1826.

40 Russia and the countries of the Ottoman Empire were exceptions, with the result that, among other nationals, passports came to be seen as a symbol of a police-style state.

41 For example, Martha Ironside passport, 1855, Ironside family papers, State Library of New South Wales: Mitchell Library, Sydney, MLMSS 272/2.

in the story of the 'Blacksmith Boxer', Les Darcy, who fled Australia the night before the first conscription referendum was held on 28 October 1916. The government of William Morris Hughes had rejected Darcy's passport application to travel to the United States, and his escape was used not only to smear him but to associate all 'shirkers' with his 'cowardly' behaviour. The story highlights one of the war's key developments: the rise of the modern nation-state. The ascendancy of the nation-state saw the state's increased need to monitor, even contain, movement and to identify those who wished to cross its borders.[42] Before 1914, a passport was not a legal prerequisite to leave the Commonwealth**.** When the war ended, it remained a criminal office for an Australian to leave or enter the country without one.

Chapter 3 discusses the Passports Act of 1920 which made permanent a passport system Australians had tolerated during the war because they believed it was temporary. Several key social and economic themes emerge that recur throughout the book. These include passports for women and minors and the discretionary power of the minister. This chapter also discusses popular resistance to passports, which were widely seen as an affront to British notions of self-determinism, a gross invasion of privacy and an uncomfortable reminder of the old 'ticket-of-leave' document from the penal era.[43] Another important theme of the book introduced in Chapter 3 is the beginning of efforts to standardise and regulate passports and the use of a global passport system to intercept international criminals.

Chapter 4 explores the legal evolution of the Australian passport in the 1930s and 1940s. The *Passports Act 1920* was a rubber stamp of the wartime Regulations, and, by the early 1930s, policymakers recognised that the legislation was outdated. In particular, the minister's discretionary power to withhold or cancel a passport – increasingly used for flimsy and subjective reasons – was not adequately supported by statute or case law. Thus the chapter highlights Justice H.V. Evatt's 1937 judgment in the High Court of Australia, that the minister could not withhold the passport of a woman separated from her husband. It was an 'abuse' of statutory power, according to Evatt. But although Evatt ruled that the estranged wife should be allowed to keep her passport, he maintained that the relevant minister did have the power to withhold a passport – as long as the minister's purpose was 'conformable with the Act'. The chapter discusses how this judgment provided the catalyst for the legislation that regulated passports

42 John Torpey, 'World War One and the Birth of the Passport System', in Caplan and Torpey (eds), *Documenting Identity*, p. 269.

43 Letter, J.J.J. Moloney, Secretary of Australasian Society of Patriots, to S.M. Bruce, 9 August 1928, NAA: A1, 1928/8383.

until the early 21st century, the *Passports Act 1938*. The compulsion clause was dropped, and by amending the preamble, the relationship between the holder and foreign governments and the potential for 'embarrassment' was more firmly established, giving ministers stronger justification for withholding or cancelling a passport. The strength of the 1938 legislation is demonstrated by its longevity. The most significant amendments to this legislation occurred in 1979, when law-makers wrote into the Act the grounds on which delegates of the minister could refuse or cancel passports, and in 1984, when they introduced right of appeal to an Administrative Appeals Tribunal. The 1938 legislation was replaced in 2005.

Chapter 5 continues the examination of the use of the discretionary power, focusing on the Cold War of the 1950s. In the late 1940s, Prime Minister J.B. Chifley refused to use the passport system to stop communists from travelling abroad, arguing that it would set a disturbing precedent to inhibit an individual's freedom of movement on the basis of his or her political beliefs. But the successor government of R.G. Menzies was determined to prevent Australian communists from travelling abroad: an Australian's potential to 'embarrass' the government and its external relationships became grounds for withholding or revoking a passport. One of the first actions of Harold Holt as Minister for Immigration in 1950 was to request an opinion from the Attorney General's Department on the limits of this discretionary power; and on the balancing of an individual's 'right' to travel – a right asserted in documents stretching from Magna Carta to the 1948 UN Declaration of Human Rights – with the government's need to protect its foreign relationships, national security and the good of society.

Nowhere is this better demonstrated than in the instance of Wilfred Burchett, the most notorious case in Australian passport history. Chapter 6 is devoted to this case. Burchett's version of events has been retold in the 2005 republication of his autobiography, *Memoirs of a Rebel Journalist*.[44] As some, but not all, relevant documents have been declassified, it remains difficult for historians to corroborate or refute the Menzies government's or Burchett's version of his activities in Korea – the grounds for refusing him an Australian passport. However, some key documents were recently declassified, allowing extra light to be thrown on previously obscure facets of this controversial episode in Australian policy history. The documents show that the Australian Government believed Burchett had forfeited the privilege of an Australian passport because he had openly sided with forces

44 George Burchett and Nick Shimmin (eds), *Memoirs of a Rebel Journalist: The Autobiography of Wilfred Burchett*, University of New South Wales Press, Sydney, 2005.

directly opposed to Australian troops in Korea and Vietnam. The reasoning was simple enough, but out of that reasoning sprang an increasingly complex case that lasted almost 20 years. The reason for its complexity rested on the possibility of a treason charge – if he returned to Australia – that hung over Burchett until he did return in early 1970. The matter was further complicated by the fact that the government refused to register Burchett's three children (born in Peking and Hanoi) as Australian citizens.

Chapter 7 discusses the connection of the passport with postwar citizenship, immigration and globalisation. In 1948, parliament passed the Nationality and Citizenship Act, an Act that established Australian citizenship for the first time. Before 1948, a passport could be issued by the Commonwealth of Australia to any person able to provide proof of British nationality. After 1948, however, while Australians remained British subjects, passports were issued to them as Australian citizens. Finally, another of the amendments to the Act in 1984, removed the definition of British subject status and from this time, passports were only issued to Australian citizens. In the four decades after 1950, Australia's largely Anglo–Celtic population was transformed by mass immigration, first from Europe, and later from Asia-Pacific countries as well. During the same period, the United Kingdom restricted immigration from the (British) Commonwealth and in the 1970s joined the European Economic Community. In consequence, Australia's passport, which dropped 'British' from its cover in 1967, became a badge of a national identity for a multi-ethnic country that was becoming increasingly separate from Britain. By the 1970s, Australian passport holders were being treated as aliens in Britain.

The 1960s and the age of jet travel ushered in a period of increasing mobility of peoples across state borders. Australian passport issues increased exponentially in the 1960s and 1970s, and another international organisation, the International Civil Aviation Organisation, became the new standard setter for passports, designing the template for machine readable passports, a measure designed to facilitate cross border movements.

The final chapter of the book examines how Australian authorities grappled with the problem of identity in Australian passports from the 1980s to the present day. A royal commission examining drug trafficking uncovered such widespread abuses of the passport system in 1982 that the government strengthen its passport issuing procedures, requiring personal attendance at interviews and prohibiting the use of photocopied birth certificates and citizenship documents. After 2001, the threat of terrorism prompted all countries, including Australia, to implement a system of identifying passport holders by biometric characteristics.

In 2007, the passport is the pre-eminent document that proves the identity of Australian citizens and distinguishes them from others. In the modern era of globalisation, states are strengthening their documentary controls and other mechanisms against unwanted migration. In these circumstances, the Australian passport continues to be indispensable for travellers and governments alike.

1

An Obnoxious Inconvenience: Passports, the Australian Colonies and the Era of Free Movement

On 26 January 1788, Captain Arthur Phillip arrived at Sydney Cove with his cargo of 750 convicts. No one carried a passport. Phillip, like all 18th century ship captains, was issued a sea brief verifying the First Fleet's nationality as British: that one document was enough to establish Phillip and his crew's bona fides and assist the Fleet's epic journey halfway round the globe.[1] Eleven days after landing, in the presence of convicts and the military, Judge-Advocate Captain Collins read out Phillip's Commission as Captain-General and Governor-in-Chief of New South Wales, Britain's most distant colony. Established for a 'special and peculiar purpose', it followed that the colony's government 'should be a special and peculiar government', and the powers given to Phillip were free of all restraint, embracing everything necessary to govern a remote and virtually independent command.[2] For many years there was no separation of powers – the governor was both executive and judiciary – so while there are no references to travel documents in Phillip's commission or instructions, we can assume he possessed the authority to issue passports. But in 1788 such documents were rare and, in this obscure part of the world, unnecessary. To date there is no evidence that Phillip, or any of his immediate successors, issued passports to facilitate travel across

1 Mark Salter, *Rights of Passage: the Passport in International Relations*, Lynne Reinner Publications, Boulder, Colorado, 2003, pp. 18–19.

2 A.C.V. Melbourne, (introduced and edited by R.B. Joyce), *Early Constitutional Development in Australia, New South Wales 1788–1856, Queensland 1859–1922*, University of Queensland Press, Brisbane, 1963, pp. 5, 8.

borders and boundaries.[3] Furthermore, New South Wales was a convict settlement and the governor was instructed to prevent all intercourse with the outside world. Specifically, the governor was to 'forbid the construction of vessels by which such intercourse would be made possible, and to prohibit all communication between visiting ships and the people under his control'.[4]

But even for this far flung and most notorious of outposts, the impact of events at 'home' were felt. Eighteen months after the settlement in New South Wales was founded, the French Revolution broke out. The violent social and political turmoil, the brutal and public removal of the French royal family, the even more threatening call to 'liberty, equality and fraternity' meant that for Britain, France was now a society altering threat. Within two years both countries were at war. Despite its call to fraternal liberty and rejection of despotism, when it came to travel documents, the French Revolution was not without irony. Passports and 'papers' were associated with the *ancien regime*. But when Louis XVI attempted to flee in June 1791 carrying a false passport, his action prompted legislation that made passports obligatory for all French citizens, travelling within France as well as across the borders that were soon monitored to stop the escape of the Revolution's enemies.[5]

Because the French documents were 'intimately connected' to the concept of a distinct nation-state 'inhabited by subjects or citizens equal before the law', France's 1792 passport legislation are described as the first modern passport Regulations:

> Identity papers and restrictions on travel were supposed to prevent the assembly of discontented persons at strategic locations and the infiltration of the country by the agents of hostile foreign governments, as well as to suppress vagrancy, banditry, and crime.[6]

As a consequence, passports were introduced throughout most of Europe for the duration of the revolutionary and Napoleonic Wars. Britain felt the threat to its national security keenly and parliament legislated passport controls to monitor 'aliens' – those not British-born or 'naturalised'. However, Britain's

3 Given that early recordkeeping in the colony was piecemeal, further research may, in time, reveal some form of travel documents written by the early Governors.

4 Melbourne, *Early Constitutional Development in Australia*, p. 8.

5 Leo Lucassen, 'A Many-Headed Monster: The Evolution of the Passport System in the Netherlands and Germany in the Long Nineteenth Century', in Jane Caplan and John Torpey (eds), *Documenting Individual Identity*, Princeton University Press, Princeton, New Jersey, 2001, p. 235.

6 Andreas Fahrmeir, 'Governments and Forgers: Passports in Nineteenth Century Europe', in Caplan and Torpey (eds), *Documenting Individual Identity*, p. 219.

conceptualisation of a passport followed the older interpretation: 'written permission given by a belligerent to enemy subjects or others allowing them to travel in his territory or in enemy territory captured or occupied by him'.[7] In the late 18th and early 19th centuries, a passport was a rare, highly political document upon which the life of the bearer often depended.

By 1800, Britain and France had been at war for seven years. For the remote colony of New South Wales, war with France meant travel to England was hazardous. But because of its strategic advantages exploration continued; and in June of that year the French Republic's resident commissioner in London, Louis-Guillaume Otto, applied on behalf of his government for a French voyage of discovery to the South Seas, seeking passports for two ships under the command of Captain Nicolas Baudin. Earl Spencer, First Lord of the Admiralty, to whom the request was passed for a decision, sought advice from Sir Joseph Banks, President of the Royal Society.[8] Banks had sailed to New Holland with Captain James Cook in 1770. A man of independent means, Banks was devoted to the sciences and remained passionately interested in New South Wales; and while he held no official position, he wielded significant influence. Banks had already received a letter from his counterpart in Paris, Professor Antoine-Laurent de Jussieu of the Institut National:

> The *Institut National* is desirous that several distant voyages useful to the progress of human knowledge should begin without delay. Its wishes have been endorsed by our Government which has just issued orders for the preparation as soon as possible of expeditions led by skilful navigators as well as enlightened men of science, and will approach the Government of your country for the necessary passports or safe-conducts for our vessels.
>
> The *Institut National* considers that it is precisely at the moment when war still burdens the world that the friends of humanity should work for it, by advancing the limits of science and of useful arts by means of enterprises similar to those which have immortalised the great navigators of our two nations and the illustrious men of science who have scoured sea and land to study nature, where they could do so with the greatest success.

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7 Robert S. Lancy, 'The Evolution of Australian Passport Law', *Melbourne University Law Review*, vol. 13, June 1992, p. 430.

8 Anthony J. Brown, 'Friends of Humanity: the Scientific Origins, Objectives and Outcomes of the Voyages of Nicolas Baudin and Matthew Flinders', *South Australian Geographical Journal*, vol. 98, 1999, p. 53.

> We hasten to beg you, as one of the most distinguished members of the commonwealth of learning, to use your good offices with your Government with that zeal which, has always inspired you to work in the interests of humanity, to renew those marks of respect for science which our two nations have more than once given, and therefore to secure the prompt despatch of the passports which will be requested.[9]

Upon reading de Jussieu's appeal to a transcendent 'commonwealth of learning', Banks did not require convincing. Four years earlier, he had recommended a similar document for a French scientific voyage to the West Indies, also led by Baudin. On that occasion, Banks wrote to de Jussieu that 'whatever the fortune of War may be, Science and those who possess the liberal views' would be nearest to his heart. So, despite the war and Admiralty scepticism about French motives, on Banks's recommendation, the documents were issued on 25 June 1800.[10] Baudin's expedition was remarkably well-equipped, but he and his crew were dogged by ill-health. In June 1802, his ship, *Le Geograph*, limped into Sydney, where the Frenchmen were given medical attention and generous hospitality by Governor Philip Gidley King, another member of the 'commonwealth of learning' faithful. Later King appealed to these principles in an attempt to rescue his protégé, the brilliant cartographer and explorer Matthew Flinders, when Flinders was detained on Mauritius in December 1803 on suspicion of espionage: 'the advancement of science stands in need of no other recommendation than that common to every enlightened mind'.[11]

Relations between England and France were at a particularly low point when Flinders, in command of the small schooner, the *Cumberland*, sailed into the French colony of Mauritius. The man who became his gaoler, General Charles Decaen, is often represented as an Anglophobic pedant. Perhaps he was. Certainly the first meeting between the two men was a disaster. Flinders neglected to remove his hat and Decaen never forgave the slight.[12] But it is important to note more substantial reasons for Decaen's suspicions, that arose from a twist of fate that cruelly played against Flinders. The passport issued to Flinders in London, written by Commissioner Otto, instructed:

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9 Ibid.

10 Ibid., p. 54.

11 John Gasgoine with Patricia Curthoys, *The Enlightenment and the Origins of European Australia*, Cambridge University Press, Cambridge, 2002, p. 98.

12 Anthony J. Brown, *Ill-Starred Captains: Flinders and Baudin*, rev. edn, Fremantle Arts Centre Press, Fremantle, 2004, p. 382.

> The First Consul of the First Republic, on being advised of a request made by Lord Hawkesbury to Citizen Otto, Representative of the French Government in London, for a Passport for the Corvette Investigator for a Voyage of discovery in the Pacific ocean to be carried out by the English Government under the command of Captain Matthew Flinders, has decided that this Passport will be granted and that this expedition, the object of which is to advance human knowledge and to extend the progress of nautical Science and Geography, will receive the necessary safety and protection of the French Government.
>
> The Minister for the Navy and the Colonies directs as a result of this that all Commanders of Warships of the Republic, all his agents in the French Colonies, all the Commanders of Ships bearing Letters of marque, and to all others to whom it concerns, to let pass freely, and without obstruction the said Corvette Investigator and her officers, crew and effects, during the length of their voyage, to permit them to enter various ports of the Republic, those in Europe and other parts of the World, so that they may replenish their supplies necessary for continuing their voyage. Nevertheless, assistance and protection is dependent upon them not diverging from the route they have agreed to follow, nor committing or announcing the intention to commit hostilities against the French Republic and her allies, or supplying or trying to supply her enemies, nor engaging in commerce or shipping contraband.[13]

As soon as the *Cumberland* set anchor at the Baie de Cap, French officers came aboard and inspected Flinders' commission papers and passport. After they left, Flinders inspected his passport for the first time. Anthony Brown explains that while its 'general purport' had been explained to him in England, since then he had 'scarcely glanced at it'. Flinders' French was rudimentary but, with the aid of a dictionary, he translated the document, slowly discovering that his passport explicitly identified his original command for this voyage, HMS *Investigator*, as being the vessel to pass through enemy waters to Australia to circumnavigate the island continent.[14] As Flinders wrote later, 'the intention no doubt was to protect the voyage generally … but it appeared that if the Governor of Mauritius should adhere to the letter of the passport and disregard the intention, he might seize the *Cumberland* as a prize'.[15]

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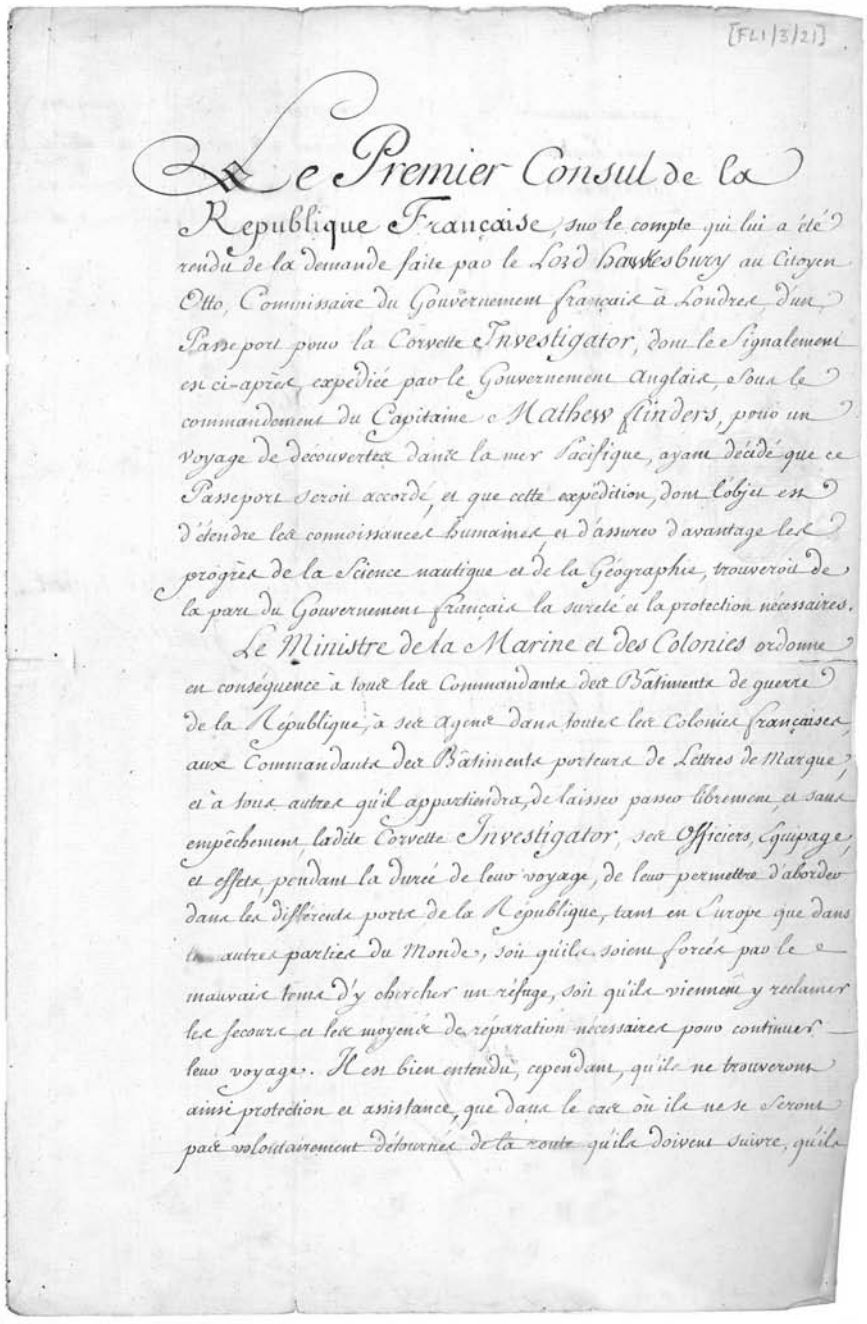
13 'French Passport for Matthew Flinders in HMS *Investigator*', National Maritime Museum, Royal Observatory, Greenwich (NMM): Flinders Papers, FL103.

14 Brown, *Ill-Starred Captains*, p. 380.

15 Flinders, quoted in ibid.

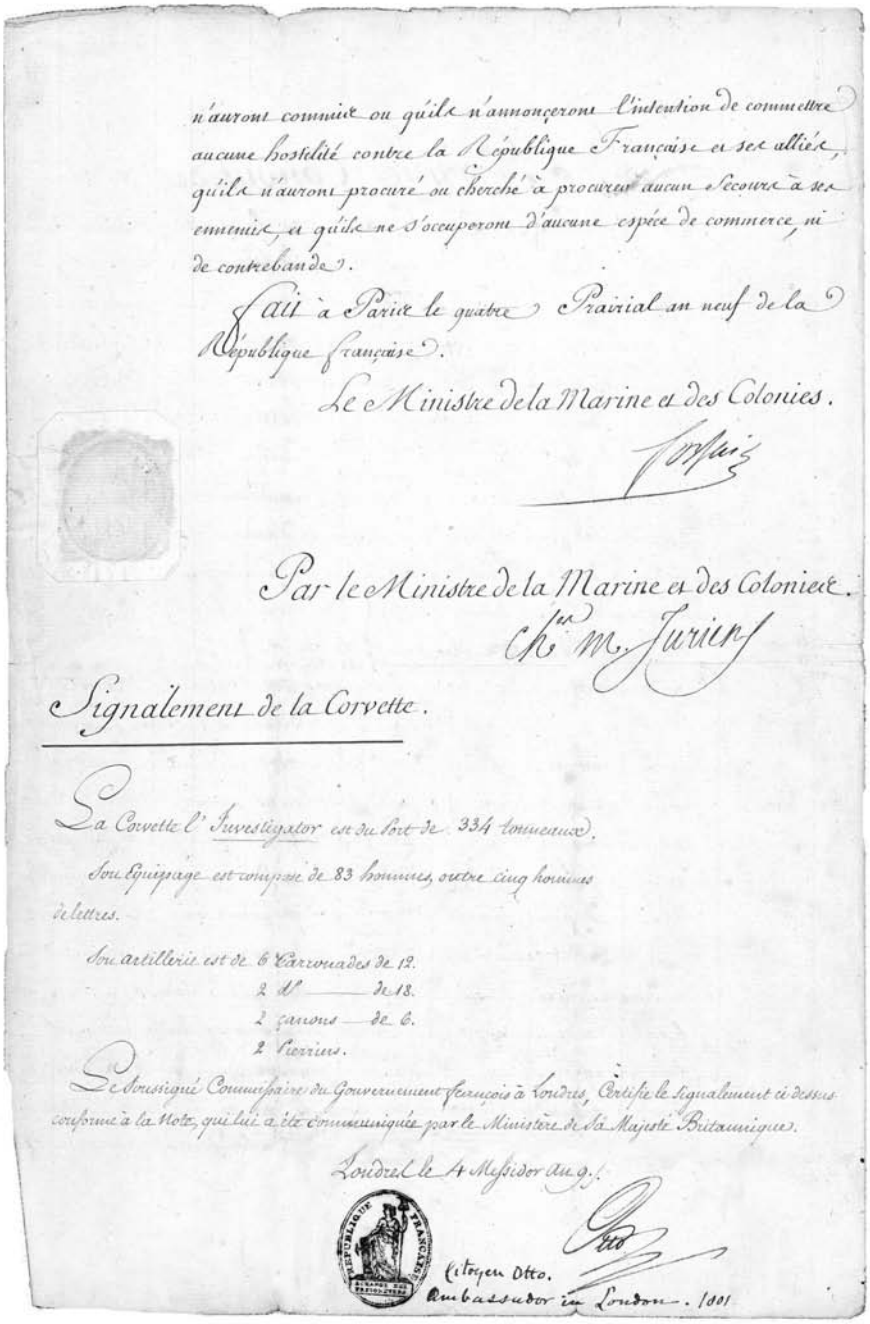


[FL1/3/21]

Le Premier Consul de la
Republique Française, sur le compte qui lui a été
rendu de la demande faite par le Lord Hawkesbury au Citoyen
Otto, Commissaire du Gouvernement français à Londres, d'un
Passeport pour la Corvette Investigator, dont le Signalement
est ci-après, expédiée par le Gouvernement Anglais, sous le
commandement du Capitaine Matthew Flinders, pour un
Voyage de découvertes dans la mer Pacifique, ayant décidé que ce
Passeport seroit accordé, et que cette expédition, dont l'objet est
d'étendre les connoissances humaines et d'assurer davantage les
progrès de la Science nautique et de la Géographie, trouveroit de
la part du Gouvernement français la sureté et la protection nécessaires.

Le Ministre de la Marine et des Colonies ordonne
en conséquence à tous les Commandants des Bâtimens de guerre
de la République, à ses Agens dans toutes les Colonies françaises,
aux Commandants des Bâtimens porteurs de Lettres de Marque,
et à tous autres qu'il appartiendra, de laisser passer librement et sans
empêchement, ladite Corvette Investigator, ses Officiers, Equipage,
et effets, pendant la durée de leur voyage, de leur permettre d'aborder
dans les différents ports de la République, tant en Europe que dans
les autres parties du Monde, soit qu'ils soient forcés par le
mauvais tems d'y chercher un refuge, soit qu'ils viennent y reclamer
les secours et les moyens de réparation nécessaires pour continuer
leur voyage. Il est bien entendu, cependant, qu'ils ne trouveront
ainsi protection et assistance, que dans le cas où ils ne se seront
pas volontairement détournés de la route qu'ils doivent suivre, qu'ils

Front: Passport written for Matthew Flinders and HMS *Investigator* by Citizen Otto, 1801
(National Maritime Museum, Greenwich, UK)



n'auront commis ou qu'ils n'annonceront l'intention de commettre aucune hostilité contre la République Française et ses alliés, qu'ils n'auront procuré ou cherché à procurer aucun secours à ses ennemis, et qu'ils ne s'occuperont d'aucune espèce de commerce, ni de contrebande.

Fait à Paris le quatre Prairial an neuf de la République française.

Le Ministre de la Marine et des Colonies.

Par le Ministre de la Marine et des Colonies.

Ch^re m. Jurien

Signalement de la Corvette.

La Corvette l'Investigator est du port de 334 tonneaux.

Son Equipage est composé de 83 hommes, outre cinq hommes de lettres.

Son artillerie est de 6 Carronades de 12.
2 id —— de 18.
2 canons —— de 6.
2 Pierriers.

Le Soussigné Commissaire du Gouvernement Français à Londres, Certifie le Signalement ci dessus conforme à la Note, qui lui a été communiquée par le Ministère de Sa Majesté Britannique.

Londres le 4 Messidor an 9.

Citoyen Otto.
Ambassador in London. 1801

Back: Passport written for Matthew Flinders and HMS *Investigator* by Citizen Otto, 1801
(National Maritime Museum, Greenwich, UK)

Matthew Flinders, water colour miniature portrait, c. 1800
(*Mitchell Library, State Library of New South Wales*)

Like most travellers, until he was in trouble, Flinders did not give his passport a second thought. His journal entries also show that Governor King had not suggested the need for a fresh document. Perhaps it was an oversight, or, possibly like Flinders, King assumed that the original document would suffice. To both men, the passport issued in London was, in effect, a safe conduct. There was also the consideration that any new document would have to come from French authorities and could take up to a year to arrive back in Port Jackson. Whatever the reason, Flinders left with his original passport on another ship, HMS *Porpoise,* and with new instructions: to complete a survey of the Torres Strait before returning to England. After the *Porpoise* struck a reef, Flinders returned to Port Jackson and departed again, on 20 September 1803, on the schooner *Cumberland*. By December, the *Cumberland* too was totally unfit for service and Flinders made the fateful decision to stop at Mauritius, hoping to find a replacement vessel. As it happened, Flinders was carrying despatches and, of course, his maps – then the most up-to-date in the world.[16] The despatches from Governor King contained requests for additional troops and armaments for the colony, one purpose for which was given as being for defence against attack from Mauritius. As Brown contends, while Flinders denied all knowledge of the contents, for Decaen, they bore out French suspicions that his voyage had a strategic purpose. Along with the obsolete passport, the despatches were enough to suggest espionage.[17]

16 Many of Flinders' maps were used until World War II.
17 Brown, 'Friends of Humanity', pp. 59, 382.

Flinders' supporters in Britain were outraged. In a letter to Flinders' wife, Ann, Banks described the detention as an 'Abominable Breech of the Law of Nations'.[18] His indignation was understandable: Flinders was young, intelligent, humane and an extraordinary talent. But Banks's charge that the French had abused a rule of international law was unsustainable. A more convincing argument might have been that a convention, that had evolved over 600 years, was being challenged. But the power of documentation written to protect an individual – be it a safe conduct, passport or letter of introduction – was contingent on the goodwill of those to whom it was addressed. There were no guarantees: a metropolitan government might look favourably upon the bearer of a passport or safe conduct but its representatives further a field might not. Decaen was a nationalist, a staunch supporter of Napoleon and detested British counter-revolutionaries. Furthermore, at the time of Flinders' arrival, British ships had been menacing Mauritius for over a year. Flinders' living conditions in detention were far from brutal but, for an individual of his dynamism and ambition, six years' confinement was difficult. Convinced that his career in the navy was now finished, he suffered deep bouts of depression. On his release from Mauritius in 1810, Flinders returned to England but less than four years later, 'fretted out by disease and failure', he died at 40.[19]

Matthew Flinders' legacy was manifold. He was the first known European to circumnavigate and reveal the mystery of the southern land. The distinctive form of the vast island continent finally took its place on global maps and found its way into the world's imagination.[20] Not only did Flinders define Australia's geographic outline, he was the first to use the word 'Australian' to describe the inhabitants of the island continent, the first to use the word in a place name (the Great Australian Bight) and, after his epic 1802–1803 circumnavigation, it was Flinders who suggested 'Australia' as a name for the continent.[21]

In the early 19th century, however, the notion of an independent nation of 'Australia' had yet to develop. The society Flinders left behind in New South Wales was highly stratified, rigidly divided along the lines of free and emancipated settlers. Outside this society, were the convicts.

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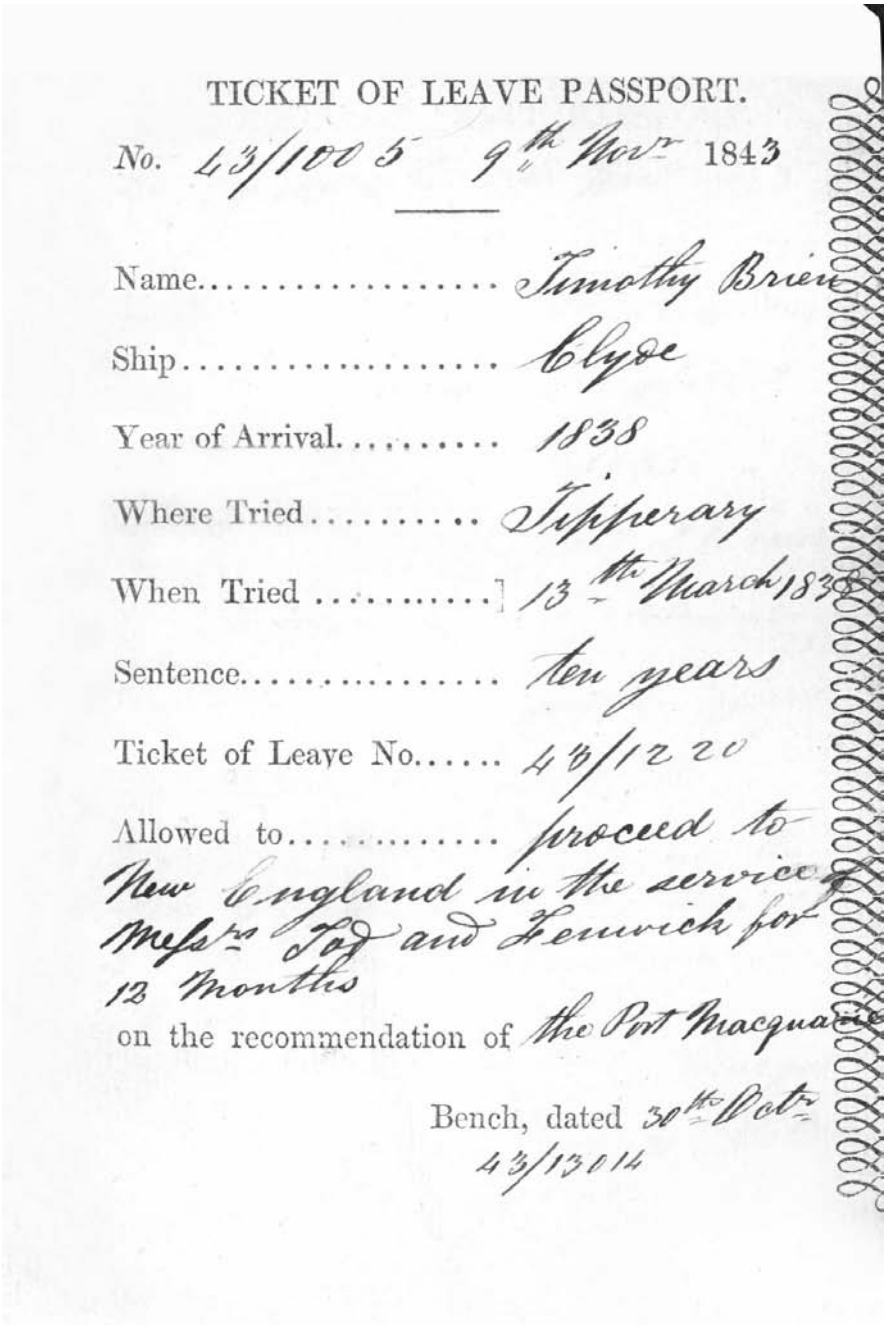
18 Letter, Banks to Ann Flinders, NMM: Flinders Papers, FL 126, no. 2.

19 Brown, *Ill-Starred Captains,* p. 477. In July 1804, Flinders wrote to Banks: 'I have too much ambition to rest in the unnoticed middle order of mankind.' Flinders in ibid., p. 467.

20 See Henry P Frei., *Japan's Southward Advance and Australia: From the Sixteenth Century to World War II*, Melbourne University Press, Melbourne, 1991, p. 25.

21 From Mauritius, Flinders wrote to Banks: 'the propriety of the name Australia or Terra Australis … must be submitted to the Admiralty and the learned in geography'. Brown, 'Friends of Humanity', p. 57.



TICKET OF LEAVE PASSPORT.

No. 43/1005 9th Novr 1843

Name..... Timothy Brien

Ship..... Clyde

Year of Arrival..... 1838

Where Tried..... Tipperary

When Tried .....] 13th March 1838

Sentence..... ten years

Ticket of Leave No..... 43/1220

Allowed to..... proceed to New England in the service of Messrs Tod and Lenvick for 12 months

on the recommendation of the Port Macquarie Bench, dated 30th Octr

43/13014

Ticket of Leave Passport
(*State Records Authority of New South Wales)*

As prisoners, they were identified, assessed, monitored and restricted. But with labour at a premium, a convict who was well-behaved was given a ticket of leave, which granted freedom to work and live within a specified district. The ticket was a detailed document, listing the holder's identity, where and when tried, sentence, ship and year of arrival, ticket of leave number and issue date, what the holder was allowed to do, by whom he or she was recommended and the date of recommendation. A convict who held a ticket of leave could also apply to a magistrate for a ticket of leave 'passport' which permitted movement between districts for a specified period of time.[22]

The issue of a passport document in the colonies was not confined to convicts. In the New South Wales State Records, most references to passports relate to documents for internal movement within the colonies issued to free settlers and visitors. For example, in November 1819, Captain Freycinet (who accompanied Baudin on *Le Geographe*) and four of his compatriots were granted passports that permitted the group to journey into the interior.[23] In 1822, and again in 1825, the explorer and botanist Allan Cunningham was issued separate passports for his expeditions.[24] In this respect, the colonial 'passport' was similar to identity papers proliferating in Europe at the same time: it facilitated internal movement and allowed authorities to assess the identity, and threat potential, of the bearer.

For most convicts transportation was a one-way journey. As Eric Hobsbawm and George Rude note, on receiving an Absolute Pardon, few returned to Britain as free passages were not provided:

> Governor Arthur told the Molesworth Committee in 1837 that 'very few indeed … seek to return home to England'; and, on an earlier occasion, he reported to the Colonial Office, that of 102 men to whom he had issued pardons between 1826 and 1833, only eight had left for England and four for Sydney …

Hobsbawm and Rude, however, believe that even these figures were exaggerated.[25] Most pardoned convicts realised that life in the colonies offered better prospects than to be found back home.

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22 See State Records of New South Wales (SRNSW), Principal Superintendent of Convicts, 1835–1869, Butts of Ticket of Leave, NRS 12204, reels 966–81.

23 SRNSW, Colonial Secretary Index, 1788–1825, Passports, Foreigners, NRS 897, reel 6007, 4/3501, pp. 70–3

24 Ibid., reel 6035, SZ13, pp. 14–15, 29, 30.

25 Eric Hobsbawn and George Rude, *Captain Swing*, Phoenix Press, London, 2001, p. 275.

But social and economic change was sweeping the British Isles as the industrial revolution, together with the end of the Napoleonic Wars, resulted in unemployment and violent unrest. British authorities endeavoured to control this situation and maintain social stability but, by the 1820s, Britain faced the prospect of revolution, with the 1819 Peterloo riots, the Swing rebellions and the Chartist Movement.[26] Meanwhile, traditional mercantilism was yielding to the discourse of free trade that had begun to dominate parliamentary debate surrounding British immigration policy. Long-standing bans on the departure of artisans and seamen, including the provision that a prospective emigrant present a certified document attesting that he was not a 'manufacturer' or 'artificer' and various other regulations pertaining to those with skills or a profession, were ignored.[27] In 1826 Britain abolished passports for travel within the Empire. There was also a transition in issues relating to immigration. Legislation enacted in 1836 stipulated that foreign-born nationals arriving in Britain carry a passport but having presented them for inspection, the 'aliens' could retain the document until departure. Lancy argues that this legislative shift resulted in a passport different from the earlier documents and one 'more akin to the modern passport'.[28] Significantly, the legislation confined entry and exit documentation to non-British subjects.

This was also the period during which an ambitious, aspiring politician, Edward Gibbon Wakefield, while a prisoner in Newgate, wrote *A Letter from Sydney* (1829).[29] Wakefield's book promulgated his 'systematic colonisation' scheme in setting out a plan for the colonisation of Australia. Systematic colonisation was a simple proposition based on a system of government-funded emigration. The costs of the emigrants' passages would be funded out of the revenues collected from the sale of land in the colonies. Wakefield stressed, however, that this was to be no 'shovelling out of paupers'.[30] He believed that the scheme's organised nature, with apposite screening, would ensure suitable migrants were selected:

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26 On these events, see ibid.; Eric Hobsbawm, *The Age of Revolution: Europe, 1789–1848*, Weidenfeld and Nicolson, London, 1962; and Dorothy Thompson, *The Chartists*, Pantheon, New York, 1989.

27 John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State*, Cambridge University Press, Cambridge, 2000, p. 68.

28 Lancy, 'Evolution of Australian Passport Law', p. 431.

29 Wakefield was serving a three-year sentence for the abduction of a 15-year-old heiress – in hopes of gaining her father's seat in parliament.

30 Wakefield quoted in Lancy, 'Evolution of Australian Passport Law', p. 431.

> The selection of young married couples, for example, would ensure that Australia would benefit from the energies of the young and ambitious and that gross disproportion in the number of men against women – the source of so many social evils – would be redressed.[31]

Wakefield's direct influence on policy making is debatable but his ideas did resonate with the shift taking place in British thinking about imperial purpose. Mercantilism interpreted the chief value of the colonies of the Empire as being for the movement of commodities. It was now argued that the colonies could provide a safety valve for unemployed labour: lifting the pressure of population on the food supply in Britain and relieving the unrest in the countryside and the cities that threatened to fuel an unceasing cycle of uprising and repression.[32] With the Select Committee on the Poor Laws recommendation for mass emigration, parliament made its first grant for subsidised colonisation in 1831.[33] As Brian Fletcher notes in his work on colonial Australia before 1850, events in the colonies, as they would be well into the 20th century, 'were vitally influenced by the situation in the mother country'.[34] In 1831, 300 free British settled in eastern Australia but between 1832 and 1837, 6546 men and women arrived. In 1840, the Colonial Land and Emigration Board was established in London to oversee land sales to subsidise mass migration. Peter Cochrane argues that the board signified 'the end of all hope for the old colonial order based on land grants and cheap labour for wealthy settlers'. The assisted migration of free settlers assured an end to transportation, the development of a free society and the emergence of a degree of political aspiration for the colonists.[35]

Assisted migrants did not carry passports. This did not mean that documentary checks and balances were ignored. A prospective immigrant to Australia had first to pass through a stringent bureaucratic process in order to qualify for passage and on arrival was issued with an immigration examination certificate. While this document eased the newcomer's way around Sydney, Hobart or Melbourne, it proved useless if the immigrant

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31 Gascoigne, *Enlightenment and the Origins of European Australia*, p. 62.

32 Peter Cochrane, *Colonial Ambition: Foundations of Australian Democracy*, Melbourne University Press, Melbourne, 2006, p. 21.

33 Report of Commissioners for Emigration to Viscount Goderich, *British Parliamentary Papers, Colonies: Australia, Volume 4: report, correspondence and papers relating to the Australian Colonies, 1830–1836*, 24 September 1831, p. 129.

34 Brian Fletcher, *Colonial Australia before 1850*, Nelson Books, Melbourne, 1989, p. 84.

35 Cochrane, *Colonial Ambition*, p. 21.

went into the countryside, as many did. A letter from the second New South Wales Agent for Immigration, Francis L. Merewether, to Colonial Secretary Edward Deas Thomson, discussed the dilemma of new immigrants being mistaken for bushrangers or escaped convicts and taken into custody. The police magistrate at Parramatta believed the problem to be so serious that he proposed that new arrivals carry passports to prove their identity. It was not the first time that a passport system had been mooted but, as Merewether reminded Thomson, the colonists of New South Wales had long resisted a system whose 'inconvenience has ever been obnoxious to Englishmen'. Furthermore, Merewether believed that passports were not required 'under the present arrangements'. These were that, if a free immigrant was detained, 'an application to this department from the committing magistrate would be immediately answered by the copy of the immigration examination, taken on his arrival, containing all the particulars of his birth, parentage etc'. He added:

> I may observe, however, that the probability of apprehension is trifling. Newly arrived Immigrants are generally engaged by Person's up the Country, and are confined to their Employer's locality; where they immediately become known to the Police and their Neighbours. I am assured that, unless under very suspicious Circumstances, Immigrants are seldom mistaken by the Police for Prisoners. But I apprehend that the evil arising from the probability of these certificates being surreptitiously obtained by Convicts, and thereby enabling them to elude the vigilance of the Police would more than Counterbalance the inconvenience which might be experienced from the want of Such Documents.[36]

Nonetheless, despite his misgivings, Merewether told Thomson that, if the Governor of New South Wales at the time, Sir George Gipps, thought it desirable to adopt 'such a system', he would 'carry it into effect'. Merewether was convinced, though, that it was 'wiser to refrain from introducing any new measures to correct an evil which … from the rapid increase of free Immigration and the probable diminution of transportation … [is] daily correcting itself'.[37]

Gipps's liberal sensibilities were no secret in the colony and Merewether's frankness suggests he knew that he would find gubernatorial support for his views. Gipps issued an order 'not to commence in this

36 Letter, Merewether to Thomson, SRNSW, Colonial Secretary, Main Series of Letters Received 1841, CGS905, 4/2551, reel 2249, p. 1.

37 Ibid.

Country a System of Passports', but it appears the problem of mistaken identity continued, as the passport proposal was resubmitted in 1841. But the governor remained firm. He continued to oppose the introduction of a system that he now saw as inimical to self-determinism. In Gipps's view, the processes within systematic colonisation, particularly the immigration certificate, provided the necessary checks and balances.[38] There would be no more talk of passports.

Systematic colonisation facilitated the entry of 600,000 migrants in the 1850s, at a rate of more than 50,000 per year – four times that of the previous decade. While some immigrants came from non-British countries such as Germany, along with a 'sprinkling of fortune seekers' from other European countries and the United States,[39] nearly 500,000 were from Britain and Ireland. Between 1851 and 1880 the total population of the Australian colonies rose from 400,000 to 2.25 million. Few of these arrivals carried passports.

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In Europe, the passport system (along with identity cards) continued after 1815, aided by the rise in forensic criminology which saw the introduction of methods and technologies to ease identification. The most notable of these was the *signalement*: anthropometric measurement for identification based on a standardised description derived from police detection techniques.[40] The *signalement* was reviled as a symbol of the police-state. The Italian jurist, Giovanni Bolis, a staunch defender of free movement, declared that the surest thermometer of a nation's liberty was found in its legislation concerning passports. He contended that discarding passports would favour commerce, industry, and progress, facilitate relations between countries, and liberate travellers from harassment and hindrances.[41] His remarks were representative of the times. Even Napoleon III, who would escape an assassination attempt made possible by the fraudulent use of passports by 'Italian' revolutionaries, praised Britain's *laissez-faire* attitude to human mobility and presciently judged the effectiveness of the passport system:

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38 See Gascoigne, *Enlightenment and the Origins of European Australia*, pp. 60–4.

39 Brian Galligan and Winsome Roberts, *Australian Citizenship*, Melbourne University Press, Melbourne, 2004, p. 51.

40 Standardised descriptions took time so that most descriptions tended to be subjective. Martin Lloyd, *The Passport: the History of Man's Most Travelled Document*, Sutton Publishing, Gloucestershire, 2003, p. 67, records that in the 1795 passport of a French farmhand, Robert Planchon, the bearer is described as having a nose shaped 'like a duck'.

41 Giovanni Bollis, quoted in Torpey, *Invention of the Passport*, p. 92.
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> In England the first of all liberties, that of going where you please, is never disturbed for there no one is asked for passports. Passports – the oppressive invention of the committee of public safety … are an embarrassment and an obstacle to the peaceable citizen but which are utterly powerless against those who wish to deceive the vigilance of authority.[42]

Despite Napoleon's personal enthusiasm for abolishing the passport, French passports were issued during his reign, including one for a Joseph Clement Deschamps, who arrived in the colony of Victoria in the 1850s.[43] The passport resembled the single sheet British passport of the time.

The British knew of the signalement passport but were sceptical of its advantages. In the 1860s, the British humorous and satirical magazine, *Punch*, presciently suggested that photographs be used as passports:

> Every traveller should have his *carte de visite* taken and attested as his likeness before he starts from home: and the production of this portrait should be an open sesame at any frontier gate. Pen and ink descriptions are usually so vague that they scarcely ever serve to identify a person: and what is said about ones 'age' or one's 'visage' in a passport is not merely not flattering but often strangely incorrect. A photograph of course would give a far more faithful picture and one that might at any rate more easily be recognisable than any written catalogue of one's features, age and height.[44]

This idea, of course, was not feasible at the time. Not only was photography cumbersome and expensive but, in the 1860s, most European countries were abolishing passports, not thinking about how to make them more complicated.[45]

Widely viewed as 'useless paper barriers to a world in prosperous motion', passports were abolished by Norway in 1859, France, Sweden and Italy in 1860, Portugal in 1863 and Denmark in 1887.[46] By the late 19th

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42 Lloyd, *The Passport*, p. 23. Italy was not yet a unified nation in the 19th century and it was part of a quest seeking unification that a Piedmontese revolutionary, Felice Orsini, led the assassination attempt on Napoleon III. For an account of the episode, see ibid., pp. 1–14, 23.

43 'Passport Issued in the Reign of the Emperor Napoleon to Joseph Clement Deschamps', NAA: A1200, L2461.

44 *Punch*, quoted in Lloyd, *The Passport*, p. 102. A *carte de visite* was a small calling card with a portrait photograph, fashionable in the mid–late 19th century.

45 See ibid., pp. 101–2 on photographic processing in the 1850s and 1860s.

46 Torpey, *Invention of the Passport*, p. 92. Passports were reintroduced in France during the 1870–1871 Franco-Prussian War.

century reciprocal passport arrangements were abolished between Belgium, France, Holland, Scandinavia and Britain; and Venezuela, Uruguay, Mexico, Ecuador, Bolivia and Peru promulgated constitutions 'in which the right to travel freely without a passport was clearly stated and extended to all foreigners'.[47] While a passport requirement was imposed for a short period in the United States during the Civil War, by the late 1890s the State Department's Alvey A. Adee boasted that 'neither law nor regulation in the United States … [required] … those who resort to its territories to produce passports'.[48] This open-door policy, however, applied only to white immigrants. In a bid to restrict Asian immigration, US authorities required Chinese nationals to carry identity papers in order to disembark at US ports. Elsewhere, there were some countries in the world where passports were irrelevant. For example, if travelling in the Sultanate of Muscat, foreigners were not required to carry a passport but it was mandatory to travel with an armed escort.[49]

Britain's abolition of the passport for travel within the empire in 1826, and the conditions placed on applicants wishing to travel to foreign countries, resulted in the infrequent issuance of British passports the mid to late 19th century. The conditions were that British passports were issued 'only to individuals known personally to the Secretary for Foreign Affairs, senior members of government, or travellers in the colonies known to the consular staff', or when identity could be certified by personal knowledge of a member of the upper classes. Salter notes that these stipulations are a reflection of the class system in Britain.[50] But it must also be noted that, during this period, the majority leaving Britain were assisted or free immigrants departing for a new life in the settler colonies of the empire, for which there was no requirement to hold a passport. As a consequence, there are few surviving examples held in Australian archives.[51] To date, the oldest known, extant passport issued to an Australian colonist is located in Sydney's Mitchell Library; a document signed in 1855 by the Earl of Cadogan, British Secretary of State for Foreign Affairs, and issued to a Martha Ironside, who sailed for London that year

47 See Lloyd, *The Passport*, p. 115; and Lancy, 'Evolution of Australian Passport Law', p. 431.

48 Alvey A. Adee, Second Assistant Secretary, US State Department, quoted in Lloyd, *The Passport*, pp. 115–6.

49 Ibid., p.116.

50 Mark Salter, *Rights of Passage: the Passport in International Relations*, Lynne Reinner Publications, Boulder, Colorado, 2003, p. 26.

51 Radhika Viyas Mongia, 'Race, Nationality, Mobility: A History of the Passport', *Public Culture*, 1999, vol. 11, pt. 3, p. 533, observes that the 'extensive annual Emigration Proceedings, published by the Emigration Branch of the Government of (British) India from 1871, contain no index entries for the term 'passport' for thirty-five years'. Australian State and National archives and libraries are similarly placed.

with her daughter Adelaide, the first Australian-born artist to study abroad.[52] In Australia, therefore the more familiar passports were the convict ticket of leave passports and those issued to explorers and travellers for internal movement within the colonies. A third category of passport was introduced as settlement spread for the protection of the indigenous people. These passports were similar to the convict ticket of leave document and were issued to sanction the internal movement of Aboriginals. Long after the cessation of the first two categories, these documents existed well into the 20th century.[53]

As in the United States, there were difficulties in the Australian colonies over the issue of non-European immigration, that arose with the shortages of labour, particularly in New South Wales where transportation ended in 1840. Between 1837 and 1844, approximately 500 Indians and a small number of Melanesians arrived, followed by over 3000 Chinese between 1848 and 1852. As the numbers of the last group grew, colonists came to believe that these predominantly unskilled labourers – 'coolies' – represented a threat to the free labour market.[54] In 1847, one Sydney newspaper declared that 'the outpourings of the hulks and gaols and penitentiaries of England are better materials for the foundation of an Empire than the best of the native inhabitants of Asia'.[55] During the 1848 NSW Legislative Council elections, William C. Wentworth, champion of the land and labour-hungry squatters, faced a hostile crowd screaming: 'No cannibals, No coolies!'. Equally vocal, Wentworth responded that it was well and good should cannibals choose to come: 'Many of them are British subjects, they have as much right to do so as anyone else'.[56] The situation worsened with the discovery of gold three years later which triggered a population explosion that far surpassed the earlier convict and settler migrations. Thousands of Chinese were among the hopefuls and by the early 1860s approximately 50,000 Chinese were resident in Australia. In Victoria, by 1858, they constituted 20 per cent of the mining population.[57]

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52 Martha Ironside passport, 1855, MLMSS 272/2. For Adelaide Eliza Ironside, see Douglas Pike (ed.), *Australian Dictionary of Biography* (*ADB*), *Volume 4*, Melbourne University Press, Melbourne, 1972, p. 461.

53 For an example of a 20th century Western Australian Aboriginal passport, see <www.slwa.wa.gov.au/federation/iss/086_abor.htm>.

54 Andrew Markus, *Australian Race Relations: 1788–1993*, Allen & Unwin, Sydney, 1994, p. 56. Historically, particularly in India and China, a coolie was an unskilled manual native worker. In the 19th and early 20th centuries, colloquially, the term became associated with Asians working cheaply in low-status jobs.

55 *Sydney Morning Herald (SMH)*, 24 November 1851, in ibid.

56 Quoted in Cochrane, *Colonial Ambition*, p. 188.

57 Galligan and Roberts, *Australian Citizenship*, pp. 50–1.

To most colonists the Chinese were anathema, replacing convicts as society's undesirables. Andrew Markus points out that the concept of restricting immigration ran counter to the *laissez-faire* ethos and the requirement to hold a passport was not imposed. But in 1855 in Victoria, and 1861 in New South Wales, legislators dispensed with the open door principle and the Chinese were subjected to poll taxes and quota restrictions.[58] Monitoring their movement proved difficult. When Victoria passed its legislation, thousands of Chinese landed instead at Robe in South Australia and walked to the Victorian goldfields.[59] Nonetheless, by the 1880s, the legislation was taking effect. But just as the colonists began to worry less and less about the numbers of Chinese immigrants, another bogey appeared in the form of Japan's transformation from secluded feudal society to potential Great Power status. The rise of Japan was observed with awe and apprehension by the colonists. When the 1894 Anglo–Japan Treaty of Commerce endorsed of reciprocal rights of travel and residence (meaning free entry of Japanese nationals to ports within the British Empire), the usually disputatious colonies took collective action to prevent unrestricted entry of Japanese into Australia. The introduction of restrictive legislation was aimed at preserving 'racial purity' and no effort was made to obscure the fact that fear of Japan was behind the colonies' motives for the legislation.[60]

For white Australian colonists, such impositions were remote and irrelevant. Those born in the colonies and those naturalised shared a membership of two distinct but overlapping political entities: the British Empire and one of the self-governing Australian colonies.[61] As British subjects they moved freely throughout the Empire. John Chesterman recounts a story about the antipodean 'Robinson Crusoe', Jemmy Morrill, a shipwrecked sailor who lived for 17 years with Aboriginal groups around Townsville.[62] According to his memoirs, one day Morrill appeared at a settlement. Confronted with a rifle pointed between his eyes he shouted:

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58 Markus, *Australian Race Relations*, pp. 60–1, 67.

59 Galligan and Roberts, *Australian Citizenship*, p. 51.

60 See Neville Bennett, 'White Discrimination Against Japan: Britain, the Dominions and the United States, 1908–1928', *New Zealand Journal of Asian Studies*, vol. 3, no. 2, December 2001, p. 92; and Neville Meaney, *Towards A New Vision: Australia and Japan Through 100 Years*, Kangaroo Press, 1999, Sydney, p. 58.

61 Galligan and Roberts, *Australian Citizenship*, p. 19.

62 John Chesterman, 'Natural-Born Subjects? Race and British Subjecthood in Australia', *Australian Journal of Politics and History*, vol. 51, no. 1, 2005, p. 30. Jemmy Morrill was also known as James Murrells.

> 'Do not shoot me, I am a British object – a British sailor'. I meant of course, subject, but in my excitement, and forgetting the proper word, I hardly knew what to say…[63]

Even after years in the frontier country of Queensland's far north, British subjecthood provided protection for Morrill, who survived to tell his tale.

To explain why revolution failed to sweep through Europe, the social and economist theorist, Karl Marx, argued that those who might have led the proletariat opted to emigrate to California and Australia.[64] Arguably, if passports had been a condition of entry, perhaps those with radical backgrounds would have been barred from departing, or turned away on arrival. Certainly, the great mid-19th century migrations would have been impossible if strict border controls had been in place. In Australia, the level of government control would begin to change towards the end of the 19th century – albeit not particularly in an organised way or coherently. But a more comprehensive change was in the air.

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In January 1901, the self-governing colonies of Australia federated and British subjecthood was enshrined in the law of the Commonwealth of Australia. Australian nationalism existed – deeply felt in certain quarters – but was contained within a larger loyalty to Britain, the 'mother country'. There was public acceptance, therefore, that the British Government would maintain responsibility for matters relating to the external affairs of the fledgling nation. Consequently, 'the powers exercised by the new Australian Government, the powers it and the British Government believed it had', were related to the institutions by which that exercise took place:

> Thus tariffs could be imposed on imports, but as Australia had no overseas diplomatic posts, trade negotiations were carried out by representatives of the British Government. Defence by land was the responsibility of the Australian Government; in the nearby seas, it was jointly managed with the British Admiralty; farther away, it was wholly British. Similarly, immigration could be controlled by Australia, but negotiated agreements required the participation and by implication the consent of the British Government.[65]

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63 Quoted in ibid.

64 Galligan and Roberts, *Australian Citizenship*, pp. 50–2.

65 T.B. Millar, *Australia in Peace and War: External Relations Since 1788*, 2nd edn, Australian National University Press, Canberra, 1991, pp. 23–4.
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Foreign relations remained a matter for London, connected to the Commonwealth through the office of the Secretary of State for the Colonies and the Governor-General. 'External Affairs', as a constitutional power, meant relations with the British Government. Australia was precluded from the discussion 'with external authorities representing Foreign Nations, of matters involving the relations between the Empire and those Nations, excepting with the express authority of His Majesty's Imperial Government'.[66] T.B. Millar argues that the restraints were psychological – not immutable, legal or physical.[67]

At this stage, no Commonwealth legislation or Regulation addressed passports. Australians were British subjects and the Commonwealth and States both issued travel documents declaring the bearer to be British subject on the few occasions they were requested. The holder for the first Australian Commonwealth-issued passport is, therefore, difficult to identify but it would seem to have been Melbourne businessman, John Edward Briscoe. In April 1901, Briscoe applied for passports for himself and his sister, Helen, so that they could travel to Europe via the trans-Siberian Railway. In these early months after Federation, he appears to have been confused as to which government department he should address his request. His first letter was addressed to Sir William Lyne, whom Briscoe believed was the Minister for Foreign Affairs. In fact, Lyne was Minister for Home Affairs. Three weeks later, Briscoe despatched another letter, this time to Edmund Barton, 'Premier of Australia', setting out his anxiety: the boat was about to depart and the documents needed to be visaed by Melbourne's Russian Consul. Four days later, an External Affairs clerk filed a note confirming that passports were 'prepared and issued to Mr and Miss Briscoe'.[68]

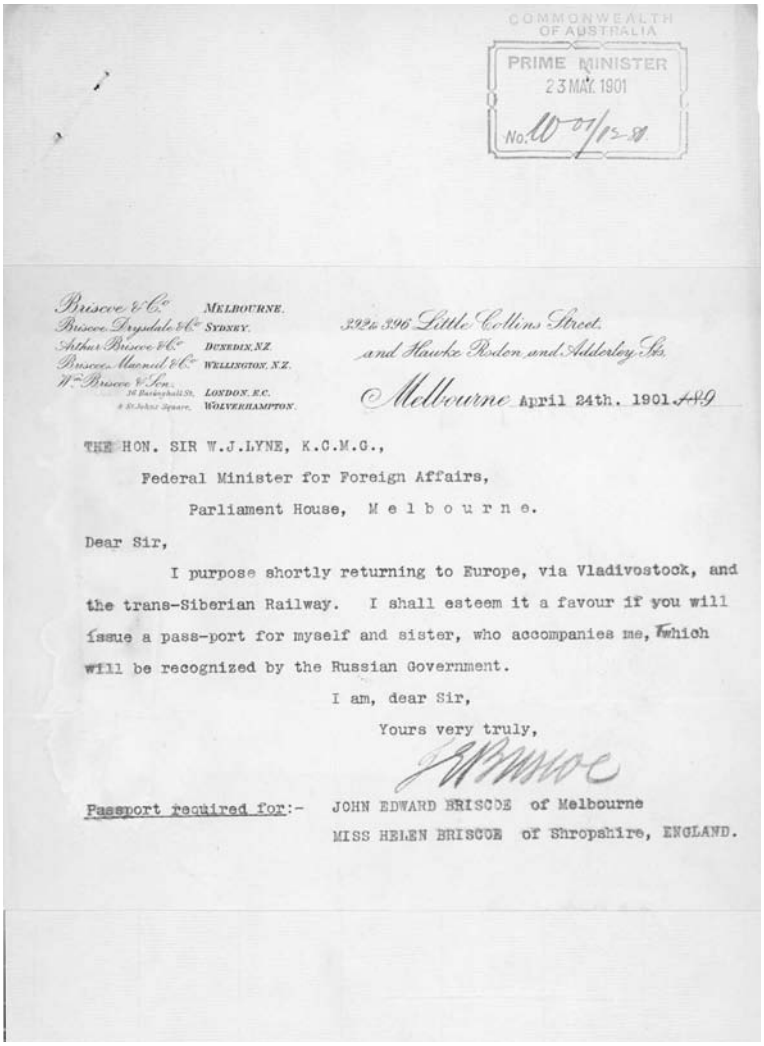
No record of another passport request appears in External Affairs files until 1908, when the former Mayor of Melbourne and wealthy shipping magnate, Sir Malcolm McEacharn, apparently advised that he wished to proceed to Europe with his family and servants by way of Russia. His request has not survived but its existence is known through subsequent events. The files reveal that the Prime Minister at the time, Alfred Deakin, personally arranged for the Russian consul to endorse the passports. The McEacharns were due to leave the following week and Deakin was 'anxious that there should be no hitch in this matter'.[69] The passports were issued in

66 Correspondence, Prime Minister Edmund Barton to Joseph Chamberlain, Secretary of State for the Colonies, March, 1902, quoted in ibid., p. 24.

67 Ibid.

68 Letters, J.E. Briscoe to Lyne; to Barton, April/May 1901, NAA: A6, 1901/1281.

69 Unsigned copy of letter addressed to 'Share' (clerk in the Governor-General's office), Melbourne, 12 May 1908, NAA: A6662, 1199.



COMMONWEALTH OF AUSTRALIA
PRIME MINISTER
23 MAY 1901
No. 10 07/05-8

Briscoe & Co. MELBOURNE.
Briscoe, Drysdale & Co. SYDNEY.
Arthur Briscoe & Co. DUNEDIN, N.Z.
Briscoe, Macneil & Co. WELLINGTON, N.Z.
W. Briscoe & Son, 76 Basinghall St. LONDON, E.C.
9 St. John's Square. WOLVERHAMPTON.

392 & 396 Little Collins Street,
and Hawke Roden and Adderley Sts.

Melbourne April 24th. 1901. A89

THE HON. SIR W.J.LYNE, K.C.M.G.,
Federal Minister for Foreign Affairs,
Parliament House, Melbourne.

Dear Sir,

I purpose shortly returning to Europe, via Vladivostock, and the trans-Siberian Railway. I shall esteem it a favour if you will issue a pass-port for myself and sister, who accompanies me, which will be recognized by the Russian Government.

I am, dear Sir,
Yours very truly,
J.E. Briscoe

Passport required for:- JOHN EDWARD BRISCOE of Melbourne
MISS HELEN BRISCOE of Shropshire, ENGLAND.

Application for passports for Mr J.E. Briscoe and Miss H. Briscoe
for travel to Britain via Russia, 1901
(*National Archives of Australia)*

time but not without a 'hitch' as the Prime Minister's Department needed 'to obtain from Sydney some wax wafers sufficiently large for us in connection with our seal'.[70]

70 Letter, Hunt to Major George Steward, Official Secretary to Governor-General, 12 May 1908, ibid.

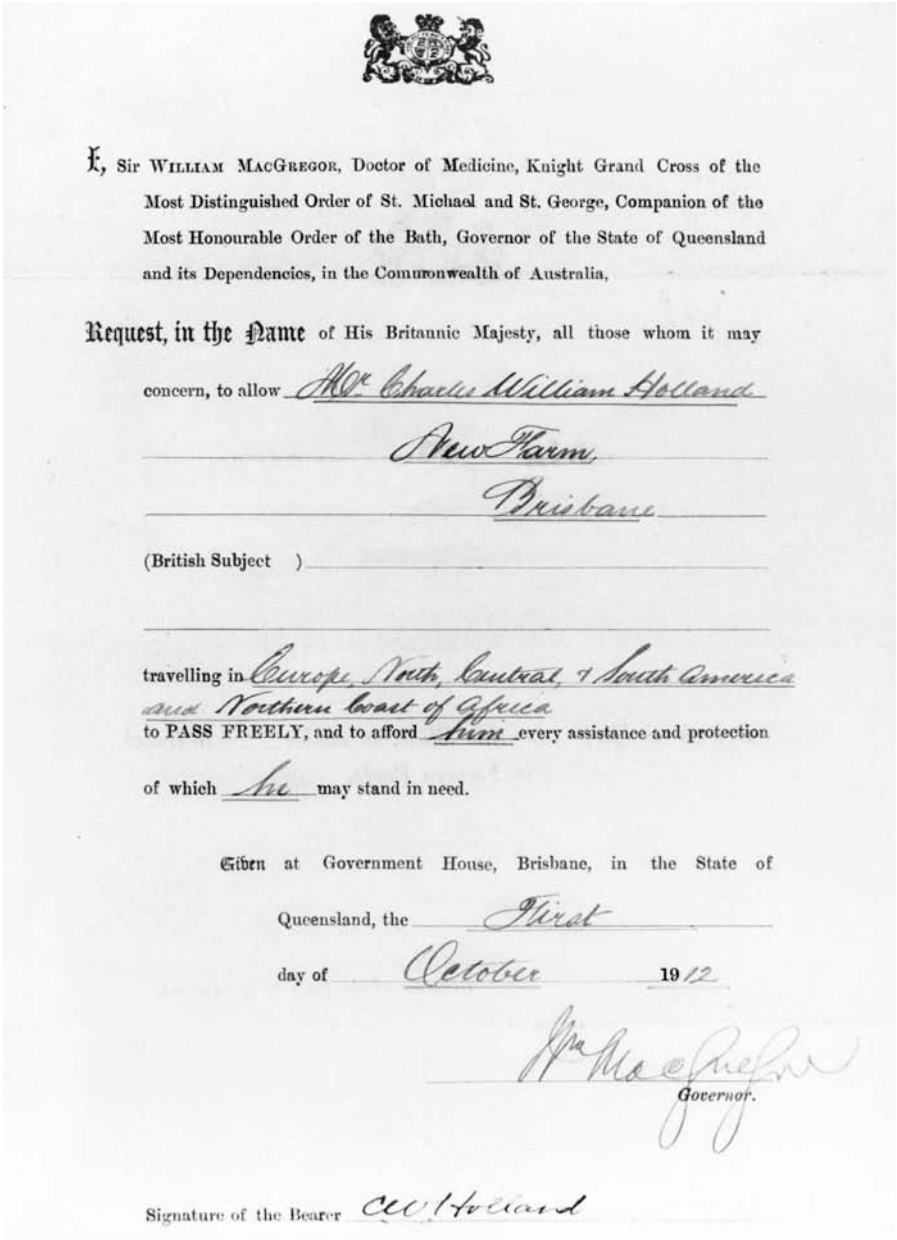
As noted previously, the States could also issue travel documents. Brisbane's Oxley Library holds a passport issued in 1912 by the Queensland Government to a Charles Holland – a member of the Prickly Pear Commission – who travelled to Europe, Africa, Central and South America seeking ways to eliminate the scourge in Queensland.[71] While the Holland passport features two pages, it otherwise follows the format of the British passport.

Charles William Holland, who was born in London in 1868 and arrived in Australia in 1880. He lived in Brisbane for over 70 years, spending most of his life working for the State Public Service (*John Oxley Library, State Library of Queensland*)

Between Federation and World War I, however, Australia's major concern was with regulating and monitoring entry. Despite the liberal attitude towards mass mobility in the mid to late 19th century, the increasing influence of Social Darwinism, around the turn of the century, meant that the white settler countries, in particular, increasingly sought to distinguish between insiders and outsiders – the latter usually stigmatised as people of colour, so-called 'Asiatics', criminals and political radicals.[72] Phillip Darby contends that most Anglo-Saxon Australians agreed with the British politician Joseph Chamberlain's boast that the British were 'the greatest of the governing races that the world has ever seen'. For them, this sense of superiority was 'proved' by Social Darwinism. With the theory's stress on racial struggle and survival of the fittest, it was easy to conclude

71 Passport, Charles William Holland, 1912, Oxley Library, State Library of Queensland, image nos 82619 and 82620.

72 Torpey, *Invention of the Passport*, p. 93.



I, Sir WILLIAM MACGREGOR, Doctor of Medicine, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Companion of the Most Honourable Order of the Bath, Governor of the State of Queensland and its Dependencies, in the Commonwealth of Australia,

Request, in the Name of His Britannic Majesty, all those whom it may concern, to allow Mr. Charles William Holland
New Farm,
Brisbane
(British Subject)

travelling in Europe, North, Central, & South America and Northern Coast of Africa
to PASS FREELY, and to afford him every assistance and protection of which he may stand in need.

Given at Government House, Brisbane, in the State of Queensland, the First day of October 1912

Governor.

Signature of the Bearer C W Holland

Passport for Charles William Holland, issues 1 October 1912
(*John Oxley Library, State Library of Queensland)*

that what seemed natural was right.[73] This thinking was officially expressed as the White Australia Policy – 'the indispensable condition' of all Australian policy.[74] David Dutton argues that the formulation of the White Australia Policy was 'less a continuation of the colonial system of immigration restriction than the outcome of a new nation-building population regime' but, with the passing of the Immigration Restriction Act in December 1901, the policy 'came to be identified solely with the Commonwealth's racially restrictive immigration policy'.[75] Exclusionist immigration policies based on race were not unique to Australia[76] but the notion of a world divided into Europeans and non-Europeans was evident in the Australian legislation's exclusionist measure that required prospective immigrants to pass a dictation test given in a European language.

White Australia was not accepted passively by all it sought to exclude. Japan protested bitterly, particularly at the assumption that the Japanese were the same as 'kanakas, Negroes, Pacific Islanders, Indians and other Eastern peoples'. The debate surrounding the introduction of the Immigration Restriction Bill in June 1901, particularly its stress on vice and sinister intentions, showed that Japan was the bill's primary target. Relations between Japan and Australia cooled and Japanese diplomats warned that improved market access for Australia's exports hinged on better entry conditions.[77] Neville Bennett argues that this 'firm diplomacy' on Japan's part won the country a 'grudgingly given' passport arrangement with Australia in 1904.[78] Henry Frei's research, however, shows that the Japanese Government was not soothed. The Diplomatic Records Office of the Japanese Foreign Ministry (the *Gaimusho*) holds nine large volumes of records related to the dispute, 1897–1921, in its archives.[79]

Under the terms of the 1904 Japan–Australia Passport Agreement, Japanese merchants, tourists and students could visit Australia for a year and on production of a valid passport, the dictation test was waived.[80] The arrangement was extended to India; an inclusion some historians believe is

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73 Phillip Darby, *Three Faces of Imperialism: British and American approaches to Asia and Africa, 1870–1970*, Yale University Press, New Haven, 1987, pp. 46, 45.

74 W.K. Hancock, quoted in David Dutton, 'A British Outpost in the Pacific', in David Goldsworthy (ed.), *Facing North: A Century of Australian Engagement with Asia, Volume 1, 1901 to the 1970s*, Melbourne University Press, Melbourne, 2001, p. 32.

75 Ibid., p. 30.

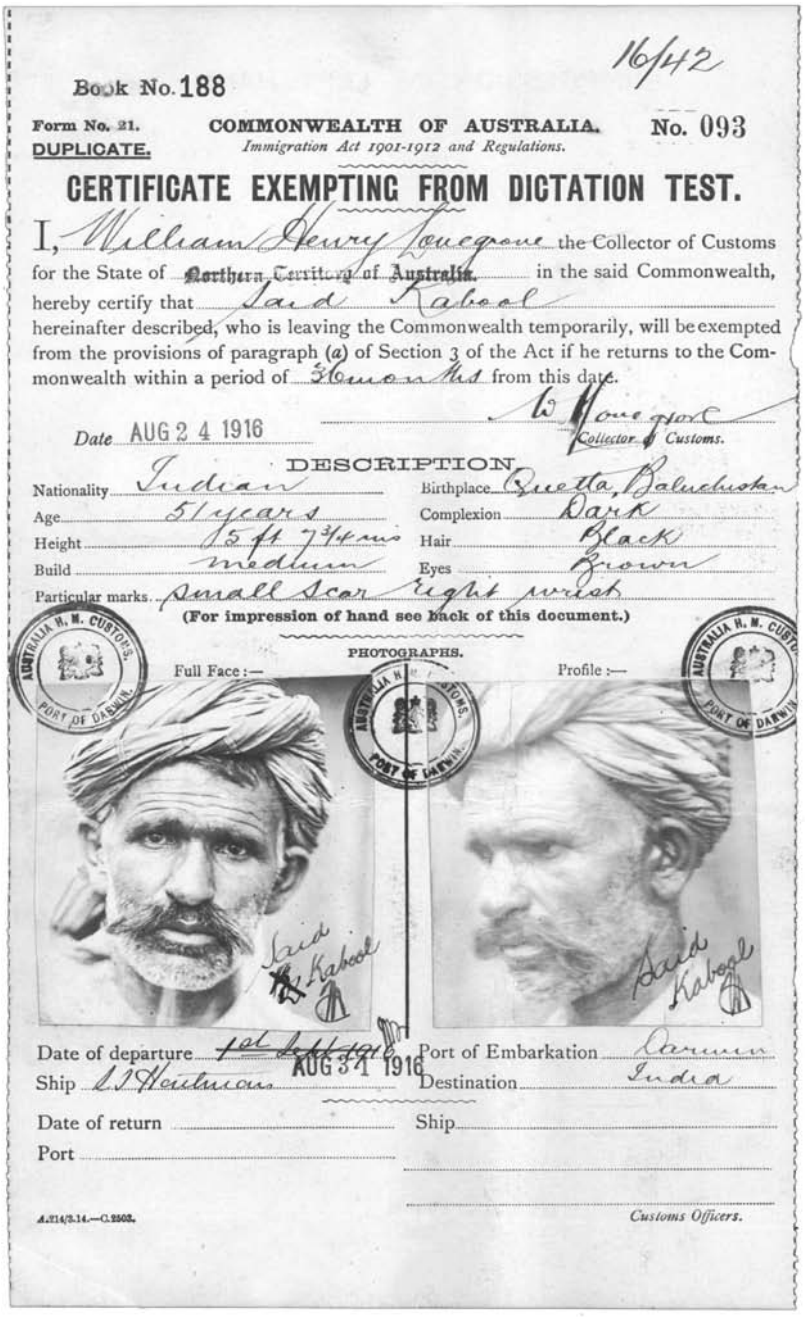
76 See Bennett, 'White Discrimination against Japan', p. 92.

77 Alison Broinowski, *About Face: Asian Accounts of Australia*, Scribe Publications, Melbourne, 2003, p. 68.

78 Bennett, 'White Discrimination against Japan', pp. 93–4.

79 Frei, *Japan's Southward Advance*, p. 83.

80 See Passports – Japan, NAA: A981, PAS109.



16/42

Book No. 188

Form No. 21. **COMMONWEALTH OF AUSTRALIA.** No. 093

DUPLICATE. *Immigration Act 1901-1912 and Regulations.*

CERTIFICATE EXEMPTING FROM DICTATION TEST.

I, William Henry Lovegrove the Collector of Customs for the State of Northern Territory of Australia in the said Commonwealth, hereby certify that Said Kabool hereinafter described, who is leaving the Commonwealth temporarily, will be exempted from the provisions of paragraph (*a*) of Section 3 of the Act if he returns to the Commonwealth within a period of 36 months from this date.

W Lovegrove
Collector of Customs.

Date AUG 24 1916

DESCRIPTION

Nationality Indian — Birthplace Quetta, Baluchistan
Age 51 years — Complexion Dark
Height 5 ft 7¾ ins — Hair Black
Build medium — Eyes Brown
Particular marks small scar right wrist

(For impression of hand see back of this document.)

PHOTOGRAPHS.

Full Face :— Profile :—

Said Kabool

Said Kabool

Date of departure 1st Sept 1916 — Port of Embarkation Darwin
Ship S.S. Heilmann — AUG 31 1916 — Destination India

Date of return — Ship
Port

A.214/3.14.—C.2503. *Customs Officers.*

Certificate of Exemption from Dictation Test — Said Cabool (Kabool), 1917.
Said Kabool arrived in Australia in 1896 and worked in Coolgardie for seven years
(National Archives of Australia)

owed to a particular fondness on Deakin's part for that country.[81] Radhika Singha notes that, for Indians, the document pejoratively known as the 'Australian passport' was evidence that they were excluded from privileges enjoyed by white British subjects: India's 'Australian passport' was 'one which gave a very complete return address'.[82]

The 1904 Japan–Australia Passport Agreement was significant for another reason: it was the Commonwealth's first direct negotiation with a foreign power.[83] Despite the rhetoric of indivisible foreign and defence policy, well before Federation the Australian colonists understood that British interests would not always commensurate with their own. For example, in 1883, Britain rejected Queensland's attempt to annexe eastern New Guinea, which resulted in Germany gaining control of the north–east quarter of the island.[84] As discussed earlier, there was also significant tension between the colonies and London over Britain's negotiation of the 1894 Anglo–Japanese Treaty of Commerce. Ostensibly the passport agreements with Japan and India were a concession on Australia's part and the Commonwealth remained guarded in its attitude towards agreement-validated passports. Entry was permitted only on 'presentation of documents sufficiently identifying them and specifying the purpose and probable duration of their visit':

> Such documents will be accepted as entitling the holders to freely enter and pass through Australia, the only condition being that the Passports must be examined at the first port of call.
>
> … On arrival in the Commonwealth the education test prescribed by the *Immigration Restriction Act* will … not be imposed, and such persons are to be permitted to land without restriction, but in the event of their wishing to stay longer than 12 months an application for a Certificate of Exemption for the desired term should be made to this Department.
>
> … All persons entering under these conditions will be required to advise the Customs Officer at the port of departure when they are about to leave the Commonwealth, and they should be informed of this fact on arrival.

81 Dutton, 'A British Outpost in the Pacific', p. 38.

82 Radhika Singha, 'A "Proper Passport" for the Colony: Border Crossing in British India, 1882–1920', paper presented in the Colloquium Series, Agrarian Studies Program, Yale University, 3 February 2006, pp. 9–10, at <www.yale.edu/agrarianstudies/papers/16passportill.pdf>.

83 Frei, *Japan's Southward Advance*, p. 84.

84 Millar, *Australia in Peace and War*, p. 13.

> … It will be the duty of the Officer at the first port of call to examine all Passports presented under it, and stamp or otherwise mark them so as to prevent them being again used. He should keep a record of all arrivals of this character, and furnish a monthly report, through you, to this Department, giving the name of the visitor, date of arrival, occupation, purpose of visit, and projected length of stay in the Commonwealth.
>
> … The Officer who examines the Passports will report any cases in which, in his opinion, the privilege now accorded is being abused.[85]

Atlee Hunt, Secretary of the Department of External Affairs, also authorised continual surveillance of the visitors and the vigorous pursuit of those who breeched conditions. Police watched visitors closely and detailed registers ensured that over-stayers were quickly identified. Most Japanese visitors returned home once their passport exemption certificate expired but it appears a few were determined to challenge the Australian authorities.[86] Terse letters were exchanged between Hunt and the Japanese consul at the time on a number of particular cases.[87] In response to the consul's request that wives be permitted to accompany endorsed Japanese visitors, Hunt believed that his role was to protect the future make-up of the Australian population. Australians had 'no wish for husbands and wives to be separated … [but]… we would prefer to see them united in their country, not ours'. If wives were permitted entry, children born on Australian soil would be British, who, in time, would either 'take white wives or are we to permit them to introduce wives of their own blood?'[88]

A similar passport agreement with China was first mooted in 1909. Australia's Chinese community was deeply insulted by the proposal. Like many Sikhs attempting to enter the west coast of Canada, the Chinese viewed passports as a tool of racial discrimination. This was true for both nationals, albeit with one significant difference: Indians were British subjects and to be asked to produce a passport to enter a British dominion such as Canada was

85 Circular 696, Hunt to State Collectors of Customs, 31 August 1904, NAA: D569, 1913/1710. See also, Memorandum, Hunt to State Collectors of Customs, 23 September 1904, in which Hunt instructs the collectors to refer all unresolved Passport Agreement cases to him, NAA: A1, 1912/16220.

86 Ibid.

87 For an example, see correspondence between Hunt and the Japanese Consul in relation to Takeshi Ashizawa, whose passport expired in 1908. Hunt was determined that Ashizawa be deported. But by 1910 the fugitive was still at large, working his way around various laundries in northern New South Wales, central and western Queensland. Relations between Hunt and the Consul became strained over the case. NAA: A1, 1912/16220.

88 Hunt quoted in Bennett, 'White Discrimination against Japan', pp. 93–4.

to be denied the same rights accorded to their white counterparts. In February 1909, the Melbourne Age reported that Australian–Chinese merchants were affronted by the suggestion that to check the smuggling of Chinese into Australia, fingerprinted passports were to be provided. For the Chinese, fingerprinting implied criminality, and the President of the Chinese Merchant's Society declared the proposal 'degrading':

> Such a law made applicable to Chinese who had been residing in Australia from twenty to forty years would be placing those who had broken no municipal or moral law on the level of thieves and the lowest criminals. They would not submit to their finger prints being taken …[89]

Politics and commerce were inseparable. The society declared that those wanting to trade with China should know that the merchant guilds were 'prepared at all times to defend the rights of and resent any affronts to their brother merchants'.[90] The Australia–China Passport Agreement took three years to negotiate and the Australian Chinese objection to fingerprinting was respected. The agreement, signed in 1912, closely resembled the similar agreements with Japan and India. Bona fide students and merchants were allowed entry for one year on presentation of a Chinese and English language passport with an affixed recent photograph, visaed by a British Consul. Neither fingerprinting nor the dictation test was applied.[91] The agreement featured a strong emphasis on status: merchants were understood to mean persons promoting trade between China and Australia. Shopkeepers, hawkers or labourers were excluded. Passport holders assessed by customs officials as 'coolies' were not permitted to land and sent back to China.[92]

Through this period, Hunt argued that, to be effective, a single passport system – maintained by the Commonwealth alone – was needed to monitor traffic into Australia. By 1912, with the growing threat of war in Europe, Hunt began seriously to look at the establishment of a Commonwealth-controlled passport system. He researched the passport formats and administration systems of other countries, particularly Canada. In looking at the problem of the issuing authority, Hunt wrote to his Canadian counterpart, Joseph Pope, outlining the difficulties associated

89 Melbourne *Age*, 'Chinese in Australia: Resent Proposed Passports', 25 February 1909.
90 Ibid.
91 See generally, '1912: Chinese Students and Merchants: Conditions of Admission to the Commonwealth for Certain Limited Periods', NAA: A1, 1919/15520.
92 Circular 14/23470, 'Chinese Merchants Arriving with Passports', Hunt to Adelaide Collector of Customs, 24 December 1914, NAA: D569, 1914/6617.

with the current Commonwealth-issued passports, which were signed by the Governor-General; an arrangement that occasionally caused considerable inconvenience.

> more especially when he is touring the Continent and it is difficult for mails to catch him and … occasions have arisen where applicants have had to leave Australia without receiving them. We have been thinking of altering the practice with regard to their issue by the Governor-General, but before taking any action in that direction I would like to know whether in Canada the Governor-General signs them.[93]

Commonwealth Public Service Permanent Heads, 1901. (L–R): Standing: Captain Muirhead Collins (Defence); Atlee Hunt (External Affairs) and Colonel David Miller (Home Affairs). Seated: Robert Garran (Attorney-General's); Harry Wollaston (Customs); Robert Scott (Post-Master General's) and George Allen (Treasury)
(National Archives of Australia)

93 Letter, Hunt to Joseph Pope, Canadian Under-Secretary, Department of External Affairs, Ottawa, 4 April 1912, NAA: MP56/6.

Canadian passports, too, were issued in the name of the Governor-General, but while Pope concurred that the practice could cause inconvenient delays, he pointed out that a passport signed by a governor-general carried more prestige than one signed by a minister, 'no matter how important or distinguished he may be'. Hunt agreed with this view and accepted that the Australian Governor-General would continue to sign passports issued by the Commonwealth.

Meanwhile, Hunt learned that members of the public invariably expressed 'surprise that such documents are issued by [the Commonwealth] free of cost'.[94] Following further international research, he advised the then Minister for External Affairs, Josiah Thomas, that the Canadians charged $2.00; the British, two shillings; Italy, eight shillings; and the governments of Italy and Russia, '8/- and 4/10 respectively'. Thomas scribbled his approval at the foot of Hunt's memorandum: 'charge 2/6'.[95]

Although a single passport system was not introduced at this stage, on 3 September 1912, the *Commonwealth Gazette* announced Australia's first passport Regulations for Commonwealth-issued passports. Australians in the 21st century will find some of these Regulations familiar but others became redundant during the course of as the 20th century. The Australian passport was to be granted 'only to natural born British subjects or to persons naturalized in the Commonwealth of Australia'. But there were further stipulations in that the person/s must be known to the Minister for External Affairs, or recommended by a person known to him; or 'upon the production of a declaration signed by a Judge, Member of Parliament, Police Magistrate, Mayor, Justice of the Peace, Minister of Religion, Physician, Surgeon, Solicitor, Barrister, or Bank Manager, resident in the Commonwealth of Australia'. A married woman was deemed to be the 'subject of the state of which her husband is … a subject'. Naturalised British subjects were required to attach the certificate of naturalisation, and their status as naturalised was specified on the passport. Those recently naturalised needed to wait 12 months for a passport. Passports were valid for five years and applications forms had to be obtained from the Department of External Affairs, then located in Melbourne. Passports would not be sent by post, but only issued at the department. If this was impracticable, the passport could be picked up at the Customs House 'at the applicant's port of embarkation'. As Britain handled Australia's relations with foreign and other dominion governments, Australia did not have

94 Memorandum, F.J. Quinlan, Chief Clerk, to Hunt, 25 March 1912, ibid.

95 Memorandum, Hunt to Thomas, 21 June 1912, ibid. 8/- represented 8 shillings; 4/10 – 4 shillings and 10 pence; and 2/6 – two shillings and six pence.

representation abroad (except in London). Consequently, an Australian document could not be issued overseas and Australians abroad had to apply to the nearest British mission or consulate to obtain a British passport.[96] As noted previously, Australians were British subjects and the passports they held signified that they were such, whether the document was issued by the Australian Government or by the British Government.

Responding to a request from the Office of the Colonial Secretary in Western Australia, in January 1914, for clarification on whether the Governor-General's authority superseded that of State governors in the issue of passports, the Attorney-General's Department advised that there was nothing in the 1912 Regulations or in any Commonwealth statute that made 'the issue of passports exclusively a Commonwealth matter'. The simultaneous issue of passports 'had gone on for the previous 13 years; it was only in 1912 that the Commonwealth … formally promulgated regulations concerning their issue'.[97] Nonetheless, Hunt told the office that while concurrent issue was not challenged, he personally thought that only the Commonwealth should issue passports and that, if State governors were to continue the practice, they should do so as deputies to the Governor-General, rather than in their own right:

> The matter is one of External Affairs as it affects the relations of Australian citizens to foreign Governments and I have no doubt that our Parliament has the power, if they chose to exercise it, to pass a law making the authority of the Governor-General in this regard exclusive, but though that is my own opinion I have never expressed it officially and until some difficulties arise, which I hardly anticipate, I daresay that things will be allowed to continue on the present basis.[98]

Hunt's observations were an indication that government's attentions were now shifting to regulating the outgoing, rather than the incoming, movement of people. His remarks that future difficulties were unlikely were disingenuous, given the threatening situation in Europe by the end of January 1914. On 29 July 1914, London advised the Dominions that war was imminent.[99] Four days before Britain declared war on Germany, Prime Minister Joseph Cook announced:

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96 *Commonwealth Gazette*, no. 58, 7 September 1912.

97 Minute, Secretary, Attorney-General's Department (A-G's), to Hunt, 29 January 1914, NAA: MP56/6.

98 Memorandum, Hunt to North, Office of the Colonial Secretary, Perth, 29 January 1914, ibid.

99 Jeffrey Grey, *A Military History of Australia*, Cambridge University Press, Melbourne, 1999, p 80.

> So far as the defences go here and now in Australia I want to make it quite clear that all our resources in Australia are in the Empire and for the Empire, and for the preservation and security of the Empire.[100]

There was bi-partisan support for Cook's statement with Opposition Leader Andrew Fisher declaring that Australia would give to the 'last man and the last shilling'.[101] With the commencement of hostilities in Europe on 4 August 1914, there was an imperative for attention to be given to Hunt's plan for a Commonwealth-controlled, single system for the issuing of passports in Australia.

100 Melbourne *Argus*, 1 August 1914.
101 Quoted in Grey, *Military History of Australia*, p. 80.

2

‘The Exigencies of War’: World War I and the ‘Temporary’ Passport

In August 1914, Australians, like their Allied counterparts in Britain and Europe, believed that the war would be over by Christmas. Ebullient self-confidence accompanied suspicion of the enemy within and hatred of the enemy without. Victory would be swift. The ‘Hun’, as the Germans were termed in allied propaganda, would be vanquished and the status quo restored. Loyalty to Britain, a sense of superiority and intense patriotism underpinned much of this thinking, which coexisted with the conviction that Australia’s security was at stake. When the war broke out, Australia was in the middle of an election campaign, and politicians attempted to outdo each other in patriotic rhetoric. Following the victory of the Australian Labor Party in the 5 September ballot, many of the peacetime tensions between parties were put aside. Australia would take its lead from Britain. Nowhere was this more evident than in wartime legislation. Four days after war was declared the British Defence of the Realm Act had been rushed through the House of Commons. In Australia, as soon as parliament resumed, the *War Precautions Act 1914* (WPA) was passed. The Act underpinned domestic wartime governance and conferred extraordinary powers on the Commonwealth Government. Read together with the *Defence Act 1903*, the WPA increased the ambit of Commonwealth powers in wartime, allowing the government to seize property, apply censorship and political surveillance, control movement, manpower and labour – whatever was deemed necessary to secure ‘public safety and defence’.[1]

1 Memorandum, ‘War Precautions Bill 1914’, n.d. [c. October 1914], NAA: A2863, 1914/10.

There is no mention of passports in the 1914 version of the WPA. Sections 5 and 10 addressed monitoring and identifying individuals: s. 5 empowered the government to secure public safety and the defence of the Commonwealth by 'controlling the landing, deportation, registration and restriction of the movement of aliens';[2] and s. 10 stipulated that the Commonwealth could revoke, alter or add to the legislation 'as occasion requires'.[3] Amendments, alterations and orders under the Act were issued in the form of Regulations. This meant that parliament did not have to pass a law. All that was required was a document prepared by the relevant minister and signed by the Governor-General. Laws, therefore, were in effect made by ministers, and parliament lost much of its control over the legislative process.

As discussed in Chapter 1, in the months before the outbreak of the war, the government's attention had shifted from controlling the entry of persons entering Australia to monitoring departures. The declaration of war raised an additional consideration for Hunt's plans to see Commonwealth control of documentation relating to people exiting Australia. The concerns lay with the importance of checking of all adult males before they left Australia and also with the control of the movement of aliens leaving the country. These considerations added impetus to the Commonwealth pressing for complete authority over a centralised passport system that would oversee application, processing and issuance. For this to happen, the States had to agree to refrain from issuing passports. The WPA authorised the Commonwealth to appropriate the issuing rights but, with national solidarity at a premium, it was decided that friendly persuasion rather than coercion would be applied to the States. On 25 August, just before the election, Prime Minister Cook sent a cable to the State premiers:

> I suggest for your consideration that it is desirable that passports should be issued by one authority only in the Commonwealth and that State Governments should refrain from issuing passports to any persons. The Department of External Affairs will deal with all requests for passports promptly and will arrange for supplies of forms of applications to be made available in all State capitals. Strongly urge your concurrence in this course.[4]

The matter was in place, therefore, when the incoming Prime Minister, Andrew Fisher, decided that the States would be requested to relinquish their powers in relation to passports at the Premiers' Conference due to be held in November.

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2 Ibid.

3 *War Precautions Act 1914* (Cth), s. 10, NAA: A2863, 1914/10.

4 Cablegram, Cook to State Premiers, 25 August 1914, NAA: A2, 1914/4115.

In the meantime, the States' reaction to Cook's cable was not encouraging. Cables and memorandums flowed back and forth between Melbourne and the State capitals. Jealousy over State powers played a large part in the Premiers' resistance but they were also convinced that Australia's transport and communication infrastructure could not support a centralised passport system. It was a valid point and in peacetime they might have won the argument but for the fact, that in the weeks leading to the Premiers Conference, a spy scandal broke in Britain. Fear of espionage, sparked by the Lody case, not only provided a sensational backdrop to the negotiations, but influenced thinking and planning about passport administration policy throughout the world.

Following the German declaration of war against Russia on 1 August 1914, foreigners were unable to leave Germany without travel documents. Embassies in Berlin were swamped by panic-stricken individuals desperate to leave. The United States was neutral, but its embassy was no exception. Besieged by citizens demanding passports they had not needed until then, conditions at the embassy were chaotic. One applicant was Charles A. Inglis. In the confusion of those weeks, it did not overly concern embassy staff that Inglis's passport went missing. What surprised everyone was the manner of its later appearance.[5] Less than a month after Inglis submitted his application, a man carrying a passport in his name was arrested at the Great Southern Hotel in Killarney, Ireland. By mid-November, the same man, a German naval officer by the name of Carl Lody, was convicted of espionage and was later executed at the Tower of London. For a public in the grip of anti-German sentiment, the Lody case confirmed its worst fears. For the allied governments, the means by which the Inglis passport fell into Lody's hands were deeply disturbing.

At the time, in order to leave Germany, foreigners were required to submit their passports to the Foreign Ministry to obtain an exit permit that endorsed a place on an evacuation train to Holland or Denmark. When Inglis's passport was not returned, US embassy staff made enquiries to the ministry, which falsely claimed that it had been collected by member of the embassy staff. By now, the passport was in Lody's possession and already on its way to Britain and Ireland via Norway. Singled out for espionage work because he had once lived in America, Lody later confessed to the British interrogators that Inglis's passport had been provided by his commanding officers, as he was eventually to go to the United States to carry out covert work. As Lloyd notes, the ease with which this could have

5 Martin Lloyd, *The Passport: the History of Man's Most Travelled Document*, Sutton Publishing, Gloucestershire, 2003, p. 90.

been achieved arose from the fact that the US passport was a single-sheet document without a photograph. Had Lody avoided capture in Britain and reached the United States who was to question his identity?[6]

The Lody spy scandal broke in September 1914 and the press coverage of the story provided a dramatic background to the enactment of the War Precautions Bill. The Lody case highlighted the need to overhaul the passport system, particularly in the area of identity verification. In the run-up to the Premiers' Conference, dialogue between the Commonwealth and the States became heated. South Australia agreed to Fisher's proposal but Queensland, Western Australia and Victoria defiantly continued to issue passports.[7] The New South Wales Premier, W.A. Holman, had reservations. He understood that passports had become a defence, and therefore a federal government matter, but his agreement to transfer issuing rights rested on the strict understanding that, at the end of the war, the previous practice would resume 'at once'.[8] For a number of weeks, the New South Wales Government diverted those passport applications it received to External Affairs in Melbourne. But the majority of New South Wales travellers refused to cooperate and simply left the country without passports. In essence, Australians were irritated with this new regulatory system and the States soon appealed for a return of their rights to issue passports. They argued that, in contrast to the Commonwealth, they possessed superior investigative machinery. This would ensure '[t]here would be therefore no lack of necessary safeguard'. Furthermore, the State governors could act on behalf of the Commonwealth authorities in signing passports, 'thus avoiding the delay of sending papers to Melbourne'. Western Australia insisted that it would be most adversely affected by a centralised passport system, its Premier John Scaddan estimating three weeks between 'application and reply'.[9] Finally, Queensland's Premier, Digby Denham, declared that if the innovation meant an improvement, he would gladly accept it, but:

> the essential consideration is the character and standing of the person who applies for a passport and as regards Queensland applicants the Queensland Government is in a better position to judge than the Commonwealth Government could possibly be. If there is any other factor that can countervail this very obvious

6 Ibid., pp. 96–7.
7 Minute, J.H. Cann, Deputy Premier NSW, to Sir Gerald Strickland, Governor of NSW, n.d. [c. 28 October 1914], NAA: A2, 1915/3565.
8 Minute, Strickland to Holman, 27 August 1914, ibid.
9 Premiers' Conference summary paper, 'Issue of Passports', November 1914, ibid.

> consideration it does not occur to me, and I should be glad to be informed of it.[10]

Any prospect of continuing State resistance ended at the Conference table in November, when Defence Minister George Pearce declared that passports were currently a 'defence matter' and insisted on the necessity for strict supervision 'over all persons leaving Australia'.[11] Following a half-hearted struggle and capitulation by Queensland, on 5 November 1914, the premiers agreed to transfer passport issuing rights to the Commonwealth.[12]

The Commonwealth Government's reasoning that passports had become a national security issue was an argument that Scaddan, Denham and Holman were unable or unwilling, for fear of being labelled unpatriotic, to dispute. There is no evidence that the Commonwealth promised the States that their issuing rights would be returned after the war. It appears, however, that most premiers returned to their respective States thinking that the centralised control was an emergency arrangement.

By December 1914, over 52,000 Australian men had enlisted in the Australian Imperial Force (AIF).[13] Nonetheless, most Australians still believed that the war would be over by Christmas. But Christmas passed, and the war had not ended:

> the pattern had been drawn … a pattern not foreseen by anyone in responsible position before the war started; not a short war of quick decisions, but a war of deadlock and prolonged battering which seemed as if it might go on indefinitely … Millions of men had been mobilized … without any realization that they would be away for years. Now the whole of civilian life had to be adapted.[14]

On 27 February 1915, Australia's first war-related passport Regulations under the WPA were announced. Passports were still optional for Australians at this stage, but those who did apply were to submit 'two unmounted photographs, one to be attached to the passport and the other to be retained at the Department of External Affairs'. One photograph was to be 'certified on the back as genuine by the person who signs the recommendation at the foot of the form of application'.[15]

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10 Letter, Denham to Fisher, 23 October 1914, ibid.

11 Premiers' Conference report, second meeting, 5 November 1914, pp. 1–2, ibid.

12 Letter, Fisher to Sir Ronald Munro-Ferguson, Governor-General, 13 November 1914, ibid.

13 See Jeffrey Grey, *A Military History of Australia*, Cambridge University Press, Melbourne, 1999, p. 87.

14 A.J.P. Taylor, *The First World War: An Illustrated History*, Penguin Books, London, 1974, p. 47.

15 *Commonwealth Gazette*, no. 16, 27 February 1915.

The Australian Government was a step ahead of Britain. Within weeks of the Australian announcement, London advised that it was introducing a photograph-based passport format. A response to the Lody episode, the new British passport was radical and almost unrecognisable from its predecessor. It also featured the unpopular *signalement*:

> a fixed term for validity and space for renewals, a printed set of regulations and an area designed to receive visas. Although it was protected by board covers bound in blue cloth and bearing a gold blocked crest, it was still a single sheet of paper, in this case now pink, which was folded so as to fit within the covers. Holders of passports in the old format of white folded sheet, which had hardly changed for eighty years, were required to have their photographs affixed to the front, usually the top-left hand corner, which was the only free space available.[16]

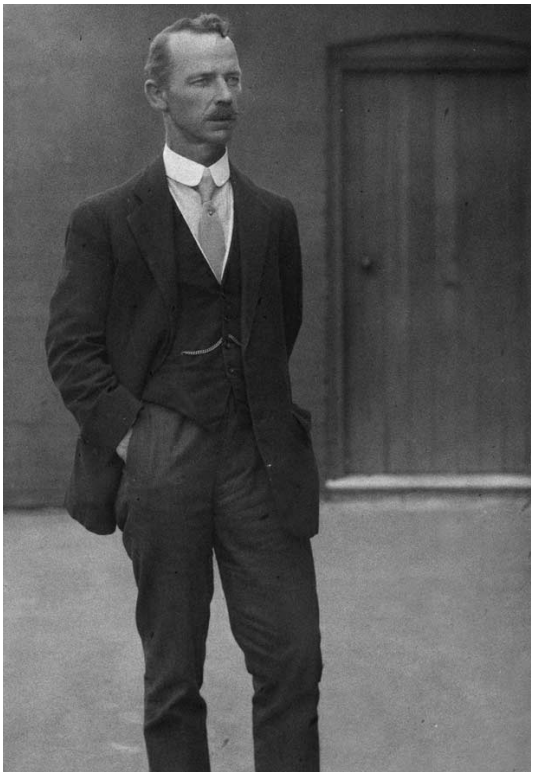
The British Government wanted this new format standardised throughout the Empire. While it meant a complete overhaul of application procedures and processing, the Australian Government agreed that Australian passports would be as uniform as practicable with the British format.[17] The wording of the new Australian document was modified slightly to indicate that it was issued by the Governor-General, otherwise it followed the lines of the British passport. The new Regulations respecting the issue of passports were promulgated on 26 June 1915 and noted:

> Passports are not valid after two years from the date of issue. They may be renewed for four further periods of two years each, after which fresh passports must be obtained. The fee for each renewal is 2s; and
>
> All applicants for passports must submit two unmounted photographs, one to be attached to the passport the other to be retained in the Department of External Affairs. One photograph must be certified on the back as genuine by the person who signs the recommendation at the foot of the form of application.[18]

But the innovation in the form of the passport created as many problems as it as assuaged. When Hunt learned that 'certain foreign ports' were complaining about the poor standard of Australian photographs, he banned 'artistic poses' and images taken against elaborate backgrounds.

16 Ibid., p. 104.
17 Memorandum, Hunt to Commonwealth Auditor-General, 1 July 1915, NAA: MP56/6.
18 *Commonwealth Gazette*, no. 61, 26 June 1915, p. 1193.

Henceforth, photographs measuring 3 inches by 3.5 inches: full face, head and shoulders, 'preferably without the hat', would be affixed onto the document.[19] An expectation that these measures would also curtail fraud proved false. Within a year, London advised that an official stamp, preferably embossed, was to be affixed partly on the photograph.[20] The problem of fraud saw authorities addressing even the most basic technical aspects of passport production, particularly the matter of attaching a photograph securely. Exchanging images, of course, was a rudimentary fraud practice that made it easy for an enemy agent to travel across borders. The simple staple, which could be unbent and re-formed, also proved fallible. In response, some countries used special rivets, extra strong glue, signature slips, or intricate wafers, pasted over one edge of the picture; others even added thumbprints.[21]



Posed passport photograph: Mr A.J. Kent, accountant (*New South Wales Government Printing Office, Collection of copy negatives 1870–1988, State Library of New South Wales*)

While the new passport Regulations were issued in the name of the then Minister for External Affairs, Hugh Mahon, Hunt steered the process for the first 18 months of the war. In peace he had looked to Canada for ideas. In war, passports were a constant theme in his correspondence with Andrew Bonar Law, British Secretary of State for the Colonies. Britain supplied solutions to many technical problems, such as the form of the document but

19 Memorandum, Hunt to State Collectors of Customs and Public Service Inspector, Perth, and Administrator Darwin, 5 November 1915, ibid; and Lloyd, *The Passport*, p. 104.

20 Cablegram, Secretary of State for the Colonies, to Department of External Affairs (DEA), 9 February 1916, NAA: MP56/6.

21 Lloyd, *The Passport*, p. 106.

there were significant administrative difficulties in installing a centralised system in a vast, undeveloped country. Furthermore, External Affairs had to maintain pace with the many changes in Britain's wartime policies and respond to the respective administrative demands of defence and security policies, particularly in regard to travel regulations imposed by Whitehall and Australia's other wartime allies.[22] So that Cabinet might 'have some idea of the inconvenience' the centralised system had caused, Mahon circulated a memorandum setting out in detail the many problems with which his department was being confronted, telling them that 'it is obvious that the system now in vogue is unworkable'.[23]

One of the war's domestic consequences was that Australians of German background became instantly suspect. In an era in which race was an important concern, ancestry inferred allegiance: even those born in Australia with parents who originated from enemy nations were investigated and often interned.[24] The Lody case fuelled determination to monitor individuals with connections to the Central Powers. From June 1915, Australian passports would be granted only:

(1) To natural-born British subjects;
(2) To the wives and widows of such persons;
(3) To persons naturalised in the Commonwealth of Australia;
(4) To persons naturalised in the United Kingdom; and
(5) To persons naturalised in the British Dominions and Colonies, or in India under an Act applying the provisions of the *British Nationality and Status of Aliens Act 1914*.[25]

Naturalised British subjects were to attach their certificate of naturalisation. Confidential instructions drawn up by Hunt ordered that special care be taken by officers processing applications submitted by naturalised British subjects. If the slightest suspicion of doubt arose as to the applicant's bona fides, a police report was to be obtained. Naturalised British subjects of enemy descent were forbidden to leave Australia without documentary evidence of Defence Minister Pearce's approval of their departure.[26] For aliens, an amendment to the 1915 Aliens Restriction Order stipulated that

22 See NAA: A2, 1918/432.
23 Memorandum, unsigned [presumably Mahon for Cabinet], n.d. [c. mid–late1916], ibid.
24 Statement, Detective N. Moore, NSW Police, 'Passports: Subject: Mr Adolph Shadler', 26 November 1914, NAA: MP56/6.
25 *Commonwealth Gazette*, no. 61, 26 June 1915, p. 1193.
26 See 'Instructions Respecting the Issue of Passports', NAA: MP56/6.

from 10 January 1916, 'aliens coming from, and … aliens intending to proceed to any place out of the Commonwealth' would not be able to land or embark in the Commonwealth 'unless they have in their possession a passport issued not more than two years previously by or on behalf of the government of the country of which they are subjects or citizens'. An attached photo was mandatory.[27]

By late 1915, it was clear the war was not going to be won in the near future nor without great suffering. On 27 October, Fisher resigned and was replaced by William Morris Hughes. The change proved a turning-point, both for Australian involvement in the war and domestic governance. For some, Hughes was first and foremost a patriot – the 'little digger'.[28] Others saw him as an erratic, scheming and dictatorial bully whose innate authoritarianism, Jeffrey Grey contends, was given 'full rein by the demands of a great industrial war'.[29] From this point in the war, power was increasingly concentrated in the hands of Hughes and the mild-mannered but like-minded, Pearce and the solicitor-general, Robert Garran. By late 1916, when the Departments of External and Home Affairs were amalgamated into the Home and Territories Department, any residual role for the States in passport policy, other than administration, was lost.[30] Passport policy was placed in the hands of Pearce and the Department of Defence.

As attorney-general in Fisher's ministry, Hughes shepherded the WPA through parliament. As prime minister and attorney-general, the Act became his personal 'legislative sausage machine', relentlessly churning out Regulations and amendments. A contemporary cartoon showed Garran in overalls turning the handle of a monstrous, clunking, war precautions machine with Hughes chiding him because two days had passed without a new Regulation.[31] In a famous story of the time, Garran was asked whether

27 Letter, Hunt to principal consular representatives, 'Aliens Embarking/ Disembarking at Australian Ports. Necessity for Passports', 31 December 1915, NAA: A1, 1916/670.

28 The name was given to Hughes by the Australian troops when he visited them in France in 1916.

29 Ernest Scott, *Official History of Australia in the War of 1914–18*, Vol. XI, *Australia During the War*, 9th edn, Angus & Robertson, Sydney, 1943, pp. 39–40; Malcolm Booker, *The Great Professional: A Study of W.M. Hughes,* McGraw Hill, Sydney, 1980; W.J. Hudson, *Billy Hughes in Paris: The Birth of Australian Diplomacy,* Nelson, Melbourne, 1978; and Grey, *Military History of Australia*, p. 95.

30 David Dutton, 'A British Outpost in the Pacific', in David Goldsworthy (ed.), *Facing North: A Century of Australian Engagement with Asia, Volume 1, 1901 to the 1970s*, Melbourne University Press, Melbourne, 2001, pp. 53–4.

31 See Robert Garran, *Prosper the Commonwealth*, Angus & Robertson, Sydney, 1958, p. 283. The cartoon was published in the Sydney *Daily Telegraph*, 8 December 1917.

it 'would it be an offence under the War Precautions Act … '. 'Yes!' said Garran, who later conceded that for the course of the war, Magna Carta was suspended and that he and Hughes possessed full and unquestionable power over the liberties of every subject.[32] Even Garran's position was a product of the Regulations. So great were the new powers conferred on the attorney-general through numerous Regulations, that Hughes created the new post of solicitor-general, to which he could delegate most of his statutory powers. The 'sausage machine' was the apparatus by which the government installed the new passport system without opposition.

There is no evidence to suggest that, between 1915 and early 1917, politicians or bureaucrats gave any consideration to the passport's postwar future. Like the State premiers in November 1914, it appears that all viewed the passport Regulations as an emergency response to meet the wartime needs of the Empire and, as such, temporary. Recruitment was booming and the principal objective of the centralised passport system was the interception of suspect aliens or naturalised British subjects of enemy origin. But from 1915, the functions of the centralised passport system widened. Recognition of the realities of this horrific world war saw the surveillance function of the new passport regime dovetail neatly with the government's need to control and monitor its most vital wartime asset: manpower. One of Hughes's first acts as Prime Minister was to conduct a war census that revealed 215,000 fit men of military age in Australia without dependants. On those statistics, the government decided that, as well as fielding 9500 men per month as reinforcements, it could raise and dispatch 50,000 more in 36 battalions.[33] In November 1915, passports became compulsory for all males of military age:

> The decision of the Federal Ministry to prohibit persons of military age from leaving the Commonwealth without passports was embodied in a regulation passed at a meeting of the Federal Executive Council yesterday, under the War Precautions Act. The regulation is as follows:
>
> No male British subject whose age exceeds 17 years and does not exceed 45 years shall leave or attempt to leave the Commonwealth unless a passport has been issued to him by the Department of External Affairs.

32 Stuart Macintyre, *Oxford History of Australia Volume 4: 1901–1942: The Succeeding Age*, Oxford University Press, Melbourne, 1986, p. 162.

33 Grey, *Military History of Australia*, p. 95.

> Any person authorised for the purpose by the competent naval or military authority, or any police constable, or officers of Customs, may arrest, without warrant, any person who attempts to leave the Commonwealth in contravention of this regulation.[34]

Implicit in these latest Regulations was the assumption that civilian males applying for passports were attempting to evade military service. The onus was on the applicant to prove otherwise. The Melbourne *Age* reported that passports had been refused 'in many cases where good and sufficient reasons have not been supplied'.[35] On behalf of the government, Hunt advised that 'good and sufficient reasons' meant proof that the aspiring traveller was not 'shirking'. The reason for the trip, its duration, and why the applicant had not enlisted were to be noted in a statutory declaration attached to the passport application form. The facts were that, '[u]nless the answers furnished by such applicants are considered to be satisfactory, and unless it is clear that the intention of the applicants in leaving the Commonwealth is not to evade military service, passports will not be issued'.[36] Business trips were regarded as especially suspect, particularly those to the United States which maintained its neutrality. If men of military age wished to conduct business in neutral countries, strong supporting evidence was needed to verify the trip's legitimacy:

> If such evidence is produced the applications for passports may be granted subject to such conditions as the Minister may think fit to impose in each case. Applications for passports to enable persons to leave Australia to complete agreements or arrangements entered into since the publication of the Government's decision referred to will be dealt with on their merits.[37]

Additionally, applicants claiming ill-health had to present a rejection certificate provided by a medical board, otherwise they were sent to a medical recruiting officer for examination.[38] The passport interview was now tantamount to an interrogation. Alongside white feathers and crude recruitment propaganda that belittled the masculinity of men who stayed at home, the application process intensified pressure on men to enlist. The unavailability of extant copies of application documents (presumably

34 Melbourne *Argus*, 'Passport System, Men of Military Age: Departure Prohibited', 30 November 1915.
35 Melbourne *Age*, 'Males of Military Age: Not to Leave Australia', 26 November 1915.
36 Letter, Hunt to Public Service Inspector, Perth, 3 December 1915, NAA: MP56/6.
37 Memorandum, Hunt to State Collectors of Customs, 3 December 1915, ibid.
38 See Melbourne *Argus*, 'Issue of Passports. Males of Military Age. Statutory Declarations', 3 December 1915.

destroyed) precludes any determination of the numbers of men coerced into enlistment by the passport interview and its physical examination. The strategy was designed to intimidate and, together with the pressures of public and family expectations, was probably successful in many cases.[39]

The use of the passport system to aid recruitment was accepted. Brisbane's *Daily Mail* declared that the Regulation's greatest virtue was placing 'a ring around our shores from which there is no escape'. In Britain, men were attempting to escape to the United States: 'Australia has taken the hint!'. The general view was that, if the November 1915 compulsory passport Regulation could not shift the 'shirker's' mentality, it could at least inhibit his escape.[40] There were also many who believed that conscription would be introduced and, once in place, those who refused to enlist would have no choice. Hunt fully supported the decision to monitor adult men: 'If we shut them out from chances of shirking are we not doing all that is required of us?'[41]

In the final months of 1915, three factors proved crucial for the Australian passport system. First, only days after the compulsory Regulation was announced, news came from London advising that all adults travelling to Britain – men and women, alien and British subjects – were required to present passports.[42] Then, on 2 December, another Regulation, one with profound long-term consequences, was gazetted:

> The issue of a passport is a matter within the discretion of the Minister for External Affairs, who may require applicants to furnish evidence on any subject regarding which he deems necessary to be informed, and may require such evidence to be furnished by statutory declaration or otherwise, and may authorise or withhold the issue of a passport without assigning any reason … [43]

Finally, the application fee was increased to 10 shillings. A significant sum in 1915, the increase may have been seen as a practical deterrent to the chances of anyone, particularly men of military service age, leaving Australia. This did not prove to be the case.

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39 See Macintyre, *Oxford History of Australia, Volume 4*, p. 154, who observes that 'freedom of choice is seldom absolute'; and Bill Gammage, *The Broken Years: Australian Soldiers in the Great War*, Penguin, Melbourne, 1981.

40 Brisbane *Daily Mail*, 2 December 1915.

41 Personal note, unsigned but in Hunt's handwriting, presumably to Mahon, n.d. [c. late 1915 – early 1916], NAA: MP56/6.

42 Melbourne *Age*, 'The Passport System. Extension to All British Subjects', 8 December 1915; and Melbourne *Argus*, 'Passport System, Travellers to England: New Regulation', 8 December 1915.

43 *Commonwealth Gazette*, no. 153, 2 December 1915.

The simultaneous introduction of compulsory passports for adult men and Britain's mandatory entry requirement for both sexes triggered a surge in applications, burdening a fledgling system already under strain. Between 1 October and 21 December 1915, 1779 passports were issued (64 applicants were refused).[44] As a consequence, Hunt was inundated with staff complaints about the workload and the unwieldy format and the logistic impossibilities of centralisation. One intrepid clerk, J.A.S. Kayser, proposed that the signatures of the Governor-General and the minister be lithographed on passports:

> At present these documents are signed by hand and much work is thus entailed, and when either the Governor-General or the Minister is absent from Melbourne considerable inconvenience is caused.
>
> Much folding and unfolding of the forms is necessitated, and the sorting into proper numerical order is always a difficult and troublesome operation as the numbers are of necessity printed on the inner folds of the form; the machine-numbering of the forms by the Printer is an Audit requirement.
>
> Under the existing pressure in the Department, and especially in the Passport Branch, this saving of work would be a considerable help.[45]

Hunt approved this suggestion but the clerks remained unsatisfied. The workload complaints were valid. Staffing remained at the prewar level and, of course, could not keep pace with the ever-increasing level of paperwork. Kayser again had a solution. Arguing that staff were working under 'great pressure and long hours', interviewing applicants the 'whole day' and undertaking manual processing after office hours, Kayser told Hunt that a separate passports branch was now 'absolutely necessary'.[46] Hunt agreed. Within 24 hours, he approved an increase in staff and the passports branch was created.[47] But the difficulties in having a centralised system persisted. For the department, a major reason for the 'unworkable' nature of the system was 'Australia's immense area and extensive coastline', which precluded a centralised system operating as it would in 'a small self-contained country':

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44 'Statistics re Issue of Passports for Period 1st October to 21st December 1915 Inclusive', NAA: MP56/6.

45 Memorandum, Kayser to Hunt, 30 November 1915, ibid.

46 Memorandum, Kayser to Hunt, 6 December 1915, ibid.

47 Memorandum, Kayser to Hunt, 7 December 1915, ibid. Hunt wrote his approval at the foot of the page.

> there is no parallel in the world to-day of any other country similarly circumstanced, and with our limited shipping facilities, etc., the collection of these passports is an absurdity which has already brought, and will continue to bring, the Authorities into bad odour amongst the travelling public both overseas and in our own Commonwealth.[48]

This argument based on the 'tyranny of distance'[49] was one that government could not easily refute. An effective centralised administration required the support of a timely and reliable process of document exchange. While telegraphic, followed by telephonic, communication had ushered modernity into Australia, transport infrastructure was undeveloped. Western Australia was a special case in point. Given the distance between Perth and Melbourne, Premier Scaddan was sceptical from the outset that the centralised system would work for West Australians. Almost immediately his doubts were realised and the Commonwealth soon agreed. In January 1915, the attorney-general approved the telegraphic processing of emergency passports by Perth.[50] Despite the concession, six months later Hunt discovered that Western Australians travelling to Britain were obtaining British passports at Colombo where the formalities were brief.[51] However deep the irritation may have been in Melbourne to this deliberate flouting of wartime Regulations, the federal government had to accept the realities of Western Australia's position. The government granted further allowances that would eventually see, in cases of 'extreme urgency', Perth regain full control of the application process.[52]

But by far the government's biggest task in relation to the new system was educating a reluctant Australian public. In February 1916, Brisbane's *Daily Mail* reported that 'complaints had been heard in Brisbane respecting alleged delay on the part of authorities in the issue of passports'; and that even though people had applied for their passports four or five days before departure, they were forced to miss their boat because of the 'non-arrival of the vitally-necessary document'. The paper, however, also reported a Queensland

48 Memorandum, unsigned [presumably Mahon for Cabinet], n.d. [c. mid–late 1916], NAA: A2, 1918/432.

49 See Geoffrey Blainey, *The Tyranny of Distance, How Distance Shaped Australia's History*, Sun Books, Melbourne, 1967.

50 Letter, Hughes, Acting Prime Minister, to Premier of Western Australia, 25 January 1915, NAA: A2, 1915/3565.

51 Letter, Peninsular and Oriental Steamship Navigation Company, to Hunt, 16 June 1915, NAA: MP56/6.

52 Memorandum, Hunt to Commonwealth Public Service Inspector, Perth, 28 June 1915, ibid.

customs official's rejection of the claims that the Commonwealth Government was at fault; saying instead that the public did not recognise 'that a passport could not be obtained like a railway or steamer ticket – on demand':

> He went on to remark that all applications for passports had to be approved by the Department of External Affairs in Melbourne, and that 12 clear days should be allowed between the time of lodging the application here and receiving the passport. As a rule this was not hard to observe. Surely a man in normal circumstances, he said, would know at least 12 days before that he intended to make a journey of such length as to call for the necessity of a passport.[53]

Hunt, of course, was delighted with the Queensland official's 'breezy commonsense', as was Mahon, who felt that his comments went 'right to the spot'.[54]

More difficult to accept was the notion of a compulsory passport, even though it was an 'exigenc[y] of war' and, as such, had to be accepted.[55] The message seemed clear: the era of free movement was over. For many Australians the *compulsory* passport system was a shocking and intrusive change. In living memory, such an imposition had only been required when travelling to the perceived 'police-states', Russia or the countries of the Ottoman Empire. Australians took pride in the Empire – it was their belief that to be a British subject was to be free. To move at will without interference was a vital component of the freedoms which Australians felt proud to have inherited from the British. It was a blow to them that they were now obliged to present a passport to leave Australia or enter the United Kingdom. Even worse was the implication of criminality for not possessing the document. The government, however, had little sympathy for such complaints as they received from disgruntled members of the public. They regarded delays in the processing of documents as the result of poor planning by the applicants. As the war progressed, this message was repeated often but enforcement of the passport regime was problematic. The Commonwealth possessed no investigative system until after 1917, when it established the Commonwealth Police Force. For most of the war, customs officials, local military commandants and state police were the key enforcers. The number of men who were able to evade the Regulations will never be known, but as another Christmas passed and the horrors of 1916 unfolded, the Hughes government made it clear that it would deal severely with those it apprehended.

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53 Brisbane *Daily Mail*, 'Issue of Passports: Are there Delays? An Official View', 28 January 1916.

54 Handwritten exchange between Hunt and Mahon, n.d. [c. mid-February 1916], NAA: MP56/6.

55 Brisbane *Daily Mail*, 'Australian Passports', 2 December 1915.

Nonetheless, in response to the figures revealed by the 1915 census, the War Precautions (Passports) Regulations were promulgated in June 1916.[56] Drafted by the Department of Defence and announced by Pearce, they refined and broadened previous Regulations, confirming the passport's function as a national security tool. The most important change was that irrespective of gender, whether alien or British subject, from 1 September 1916 every person over 15 years of age entering or leaving the Commonwealth was to possess a passport. There were exceptions: members of the military forces, whose bona fides were established by identity discs and pay book, crews of merchant vessels, residents of Norfolk Island and Papua holding return tickets, visitors from New Zealand in possession of permits and 'persons holding exemption certificates from the Dictation Test under the Immigration Act'. Enforcement and prosecution were also written into the Regulations. Persons contravening the Regulations, 'reasonably suspected' of having done so or about to do so, could be arrested 'without warrant' by any officer of customs or police or by 'any person authorised in that behalf by a competent naval or military authority'.[57]

Hunt wrote that the principal object of the June 1916 Regulations was to address the 'misuse' of passports.[58] One such incident gave particular cause for alarm. In early 1916, a woman, claiming to be a British subject, arrived in Australia without a passport. She stated that her intention was to travel onwards immediately. She was unable to nominate anyone in Australia who could 'guarantee … her good faith' but customs officials accepted her story and gave the woman an emergency passport. Subsequent investigations revealed that she was not a British subject. Indeed, her identity was questionable and the incident, according to Hunt, led to 'very serious' consequences – which he did not specify:

> It is desired that under no circumstances is any passport to be issued to strangers unless they are able to fully satisfy the responsible officer by documentary evidence that they are the persons they represent themselves to be, and that their motives in desiring a passport are lawful and proper.[59]

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56 Statutory Rules 1916, no. 126, 28 June 1916, NAA: MP56/6. These Regulations superseded the War Precautions Regulations of November 1915.

57 War Precautions (Passports) Regulations 1916, regs 3–6, 10, 30 August 1916, NAA: A432, 1937/287.

58 Letter, Hughes to Munro-Ferguson, 31 August 1916, NAA: A11803, 1914/89/89.

59 Departmental draft paper, 'Circular to Passport Officials', unsigned, n.d. [c. 1916], with handwritten marginal note [presumably Hunt], NAA: MP56/6.

No 12814

PASSPORT.

I, the Governor-General of the Commonwealth of Australia, request, in the name of His Britannic Majesty, all those whom it may concern, to allow

Claude Henry Charles Guest

to pass freely without let or hindrance, and to afford him every assistance and protection of which he may stand in need.

Given at Government House Melbourne in the State of Victoria in the Commonwealth of Australia, this 19th day of December One thousand nine hundred and Sixteen.

Governor-General.

By Command

Minister of State for External Affairs.

98

Passport photograph and document belonging to a Mr Claude Guest, 1916
(*State Library of Victoria*)

Hunt's tone suggests that the incident unnerved authorities, but whether or not the episode influenced the government's decision to make passports mandatory for women is a moot point. Passports in Britain were by now compulsory for both sexes and, for this period, it followed that Australia would pursue the same course. Perhaps in both countries' Regulations there is a hint of precaution against the age-old belief in the lethal potential of feminine wiles. The reaction in the Australian media to women holding a passport was mixed. Certainly Sydney's *Daily Telegraph* was shocked: now passports were to be obtained '*even by women*'.[60] Sydney's *Evening News*, however, took a progressive line, seeing the development as not only inevitable but a good thing: women too must contribute to the war effort.[61] The war was indeed seeing women play more palpable roles. The majority of Australian women remained in Australia but female employment rose from 24 per cent in 1914 to 37 per cent in 1918. Tens of thousands 'did their bit' by joining organisations such as the Red Cross and the Voluntary Aid Detachment.[62] Women of all ages knitted socks and balaclavas for men at the front where the most visible contribution by Australian women was the consoling and practical presence of nurses.[63]

With their strong national security focus, the passport Regulations of 1916 provided the basis for Australia's changing passport policy for the duration of the war. The Hughes government continued to issue numerous and, often trivial, amendments and insertions that proved a constant source of irritation for the Australian public. Visiting British subjects and aliens were equally, if not more, perplexed. One amendment to the 1916 Alien Registration Regulations, making it mandatory for aliens to register with state police or customs officials, stipulated that visiting British subjects and aliens submit their passports to be forwarded to Government House in Melbourne. The documents would be held there until the visitor gave notice of departure. The consular community protested bitterly against the inconvenience, but to no avail.[64]

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60 Sydney *Daily Telegraph*, 29 July 1916. Emphasis added.

61 Sydney *Evening News*, 'Passports for Women: Keeping A Close Watch', 27 July 1916.

62 See for example, Macintyre, *Oxford History of Australia, Volume 4*, p. 154; Patsy Adam-Smith, *Australian Women at War*, Penguin, Ringwood, Victoria, 1996; and Michael McKernan, *The Australian People and the Great War*, Thomas Nelson, Melbourne, 1980.

63 See Grey, *Military History of Australia*, p. 117; and Ruth Rae, 'Jessie Tomlins: an Australian army nurse – World War One', PhD thesis, University of Sydney, 2000. Over 2200 Australian nurses served overseas. As non-combatants, they were required by France and Belgium's mandatory passport requirements (February 1915) to carry travel documents.

64 DEA paper, n.d. [c. October, 1916], NAA: A2, 1918/432.

Meanwhile lapses in policy coordination led to blunders. In June 1916 a naval officer, Leslie H. Mosse-Robinson, complained to his commanding officer about an incident that occurred as he attempted to board the SS *Montoro* at Sydney the previous month:

> On stepping up the gangway, I was met by this official in plain clothes, who asked me if I was a passenger. I informed him that such was the case, upon which he told me I could not proceed on board without first showing him my papers. I told him that such were not necessary for a Naval Officer in uniform, upon which he informed me he did not know anything about my uniform, what it meant, or what it was for; they might know me in England but in Australia I should have to produce a passport the same as every one else.
>
> A considerable conversation followed, in which his manner was offensive to a degree, and I submit that I was put in a most unpleasant position; the insinuation was obvious that I was trying to get out of the country without a sufficient reason, and the whole controversy was witnessed by all the other passengers, all the officials on the wharf, and large numbers of friends standing at the dock gate.
>
> I finally informed him that, since he apparently possessed the necessary authority, it would be advisable for him to give orders that I should be allowed on board, in order than the matter might at once come under the hands of the Naval authorities at Garden Island.
>
> He then allowed me to pass, stating that he should most certainly report that a man wearing a uniform had joined S.S. 'Montoro' without the necessary passport.
>
> I submit that the whole incident was most derogatory to the Service in general that a man in plain clothes should thus be in a position to hold up the uniform of an Officer to contumely in a public place.[65]

Two months earlier the Department of Defence decided that Royal Australian Naval personnel, like the rest of the military, were not required to carry passports, provided they were 'sufficiently identified by their uniforms or documents they carry'.[66] The exemption was to be written into the June 1916 Regulations. It appears that Mosse-Robinson happened into a surveillance

65 Letter, Mosse-Robinson to commanding officer, HMAS *Psyche*, 3 June 1916, NAA: MP472/1, 40/17/7892.

66 Memorandum, Department of Defence (hereafter, Defence) to Naval Secretary, 3 March 1916, ibid.

operation to detect men in uniform leaving Australia being conducted by detectives of the New South Wales police, who as yet had not been informed of the Defence Department's decision.

But the most conspicuous examples of poor coordination in passport policy were the anomalies between the British dominions, particularly Australia and New Zealand. In early 1915, Britain urged the dominions to aim for uniform passport format and administration; but differing manpower and security policies meant that it was impossible to achieve commensurate passport practice. On certain matters, both governments were in full agreement. 'Shirkers' were abhorrent and there was agreement that every action should be taken to intercept them. The Sydney–Auckland–Vancouver shipping route, the preferred course for those attempting to enter the United States, was monitored with extreme vigilance. But the two South Pacific dominions bickered constantly over Australia's passport Regulations, which Wellington regarded as needlessly complicated.[67] Australia's June 1916 Regulations triggered a cooling in relations, particularly about Australia's entry and exit requirements for males over 15 years, which affected in-transit travellers to parts of the Empire that did not require presentation of passports on entry, such as South Africa.[68] However, the major source of disagreement in trans-Tasman relations was New Zealand's conscription legislation, the *Military Service Act 1916*. The problem was s. 33, the national status requirement, which stipulated that British subjects over 15 years of age, 'domiciled' in New Zealand for over three months, could be conscripted into New Zealand's army.[69]

Thousands of men, who identified themselves as Australian – shearers, factory and freezer workers, who travelled regularly across the Tasman for seasonal work – were prohibited from leaving New Zealand. Having spent three months in the country, they now came under New Zealand's Military Service Act. Many wrote to Australian politicians pleading for assistance. Some were angry that they were being prevented from joining an Australian regiment; others were distressed they could not return to their homes.[70] Then

67 Letters, G.F. Pearce, Acting Prime Minister, to W.F. Massey, Prime Minister of New Zealand, 28 January 1916; Pearce to Massey, 22 June 1916; G.W. Russell, for Massey, to Pearce, 17 July 1916; NAA: A2, 1917/3519/174.

68 Letter, Massey to Hughes, 16 June 1916, ibid.

69 Letter, Prime Minister's Office, Wellington, to Hughes, 1 March 1917, ibid.

70 For example, see correspondence in relation to George Hughes, Globe Mine via Reefton, New Zealand, who had been domiciled in New Zealand for two years, NAA: A2, 1917/3519/28. Hughes intervened on Hughes's behalf, but the New Zealand Government would make no exception: 'the granting of a permit to him would be a departure from this Government's policy'. Letter, Prime Minister's Office, Wellington, to Hughes, 8 December 1916, ibid.

there were those who assumed an Australian passport was their 'personal property', allowing them to cross borders as they pleased:

> May 10th, 1917
>
> Dear Sir,
>
> I came over to New Zealand last season with an Australian passport to work at the meat works. I was here nine months when I wrote and asked the Department of Internal Affairs to endorse my passport as I wanted to get back to Sydney. I sent my passport to them. I will give you a copy of the letter I received back. 'With reference to your application for a permit to leave New Zealand under the War Regulations of 15th November I have the honour, by direction, to inform you that it is regretted a permit cannot be granted in your case. Your Australian passport is retained in this office. Sgd. M. Hislop, Under-Secretary'.
>
> Now Sir, I thought the passport was my personal property as I paid your office 10/6 for it also 5/6 for photograph. Passport reads that its [sic] good for two years also to apply to you if in trouble. Sir I want to get back to go to Queensland Meat works. There are dozens of other men placed in same position as I am.[71]

This case was taken up by Hughes, who was informed by his New Zealand counterpart, William Massey, that the author, Charles Cox, was a New Zealand-born British subject and therefore not allowed to leave.[72] The case highlights emerging tensions between national identity and British subjecthood. Because Cox was born in New Zealand, he was a 'natural-born' (white) British subject, who, until the war, was able to move around the Empire without obstruction. In the course of his travels he settled in Australia, eventually identifying himself as an Australian British subject. But as far as Wellington was concerned, Cox's British subjecthood over-rode his perceived but legally non-existent national status and he legitimately came under the New Zealand Military Service Act.

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71 Letter, J.C. Cox to Prime Minister's Department (PMD), 10 May 1917, NAA: A2, 2001 1918/1395.

72 Letter, Massey to Hughes, 30 June 1917, NAA: A2, 2001 1918/1395.
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By the end of 1917, Australia was overwhelmed by profound war-weariness. Another Christmas had passed, the casualty rate remained high, and Australians were polarised by two referenda on whether the Commonwealth should introduce conscription for overseas service. For Hughes and Pearce, conscription was a just cause. L.F. Fitzhardinge posits that Hughes returned from his six-month trip to Britain and France in 1916 'half convinced of the need for compulsion' and that it was Pearce who finally persuaded him.[73] Yet Hughes's pro-conscription sentiments went back many years, and unlike some members of the Labor Party, he saw no contradiction between conscription and socialist principle.[74] Moreover, talks with the British Foreign Office had reactivated his old suspicions about Japan, which he now believed would switch sides or turn on Australia after the war. Back in Australia, Hughes freely vented his doubts, stressing the need of providing 16,500 men a month in full support of Great Britain because its help would be needed at the end of the war 'when Japan would turn to attack the White Australia policy'.[75] Furthermore, Hughes's visit to the Western Front moved him deeply. Many of the men he encountered were killed not long afterwards and Hughes returned filled with feelings of deep commitment towards them. He returned to a country grieving for the dead and wounded. In one period of 45 days in 1916 the AIF lost 23,000 men. The 5th AIF Division, newly arrived from Egypt, suffered 5533 casualties at the Battle of Fromelles in France in less than 24 hours between 19 and 20 July 1916. As Charles Bean, the official historian of Australia's involvement in the conflict, so eloquently put it, here was an area 'more densely sown with Australian sacrifice than any other place on earth'.[76]

Meanwhile, Britain called for more reinforcements in order to avoid the disbandment of the 3rd AIF Division. Total enlistments for the months June to August, however, were only 16,689. Pearce announced to parliament that the voluntary system could no longer be relied on 'and Hughes decided that the question of whether or not to conscript single men without dependents would be put to the electorate under the terms of the Conscription Referendum Bill'.[77] With 1,087,557 in favour and 1,160,033 against, the referendum was narrowly defeated. It is not within the scope of this study

73 Bede Nairn and Geoffrey Serle (eds), *Australian Dictionary of Biography* (*ADB*), *Volume 9*, Melbourne University Press, Melbourne, 1983, pp. 393–400.

74 Grey, *Military History of Australia*, p. 109.

75 Ibid. See also Henry P. Frei, *Japan's Southward Advance and Australia: From the Sixteenth Century to World War II*, Melbourne University Press, Melbourne, 1991, pp. 91–6.

76 C.E.W. Bean, quoted in Grey, *Military History of Australia*, p. 100.

77 Grey, *Military History of Australia*, p. 109.

to discuss why the compulsion proposal was defeated. Suffice to observe that the politics surrounding the debate exposed and aggravated sectarian and class animosity that took decades to heal.[78] For his advocacy of conscription, Hughes was expelled from the Labor Party. Afterwards he said: 'I did not leave the Labor Party. The Party left me'.[79] Hughes recovered quickly, establishing the Nationalist Party and taking supporters such as Pearce with him to create a new government that was arguably more zealous than its predecessor in prosecuting the war.

If Australians were divided by the turmoil unleashed by the conscription referendum, they were astonished when middleweight boxing sensation, Les Darcy, fled Australia for the United States without a passport on the eve of the referendum and his 21st birthday. Born in 1895, Darcy was already a local boxing hero by the outbreak of World War I. Around the time of the Easter Week rising in Dublin in 1916, he was coming under strong pressure to enlist and his predicament was exacerbated by his Irish Catholicism. But with a wastrel father incapable of providing for his mother and his 11 siblings, Darcy wanted to give his family a better life before he joined up.[80] In late October 1916, stories appeared in the press about his application for a passport and Darcy was forced to deny his intentions: 'I don't suppose I could go even if I wanted to ever so bad – the authorities are too wide awake and the passport system too rigid'.[81] He clandestinely left Newcastle harbour on 27 October 1916.

Many who criticised him as a 'shirker' urged that he be deported, stripped of his assets and tried. In contravening a Regulation authorised by the WPA, he was liable to six months imprisonment or a fine of £100 or both.[82] In the first bitter weeks after the defeat of the first conscription referendum, the pro-conscription camp was angry and looking for retribution. Darcy was a co-religionist of the Irish-born Archbishop of Melbourne, Daniel Mannix, who had rallied many Catholics to the anti-

78 Ibid., p. 111. For a contemporary account, see Scott, *Australia during the War*, pp. 341–62.

79 Nairn and Sere (eds), *ADB Volume 9*, pp. 393–400.

80 For biographies of Darcy, see Raymond Swanwick, *Les Darcy: Australia's Golden Boy of Boxing*, Ure Smith, Sydney, 1965; Ruth Park and Rafe Champion, *Home Before Dark: The Story of Les Darcy, A Great Australian Champion,* Viking Press, Sydney, 1995; Peter Fitzsimons, *The Ballad of Les Darcy*, Harper Collins, Sydney, 2007.

81 *Newcastle Herald*, 26 October 1916, quoted in Bob Power, *The Les Darcy American Adventure*, R.G. Power, New Lambton NSW, 1994, p. 49.

82 *War Precautions Act 1914* (Cth), s. 6: 'any person who contravenes, or fails to comply with, any provision of any Regulation or order made in pursuance of this Act, shall be guilty of an offence against this Act. Penalty: One hundred pounds or six months' imprisonment, or both'.

conscription cause. He consequently became a fitting target for the pro-conscription cause. After Darcy reached New York, he was not deported but he was hounded by allegations of cowardice. With the United States poised to enter the war, he was banned from boxing by various State governors, possibly influenced by Washington.[83] He became an American citizen and joined the US Air Corps, but fell ill and died of septicaemia on 24 May 1917.

Extracting fact from myth in Darcy's case is difficult for two reasons. One is that there is nothing extant in the government files about his rejected passport application.[84] Another is the inaccurate and unsupported claims made by journalists and biographers over the past 90 years, claims that reflect a misunderstanding of the process that the boxer faced. One of his biographers has suggested that Darcy made three applications for a passport.[85] This is unlikely and if he had, it is probable that he and his solicitor would have had an understanding of the application process by the third attempt. Earlier biographers recount how Darcy's solicitor travelled to Melbourne to lodge the application and plead his client's case with a sum of money, around £100, as a bond.[86] But there is no evidence that the Department of External Affairs accepted financial guarantees in exchange for time-restricted passports. It probably would have looked askance at the approach. More importantly, the application's conditions stated that an applicant of Darcy's age, health and fitness had to present personally at the application interview. There he was to provide 'good and sufficient' reasons in the form of a statutory declaration as to why he had not enlisted, as well as the journey's purpose.[87] The method of Darcy's reported application for a passport suggests both ignorance of the passport Regulations and bad legal advice. The fact that Darcy did not apply personally (and he could have done so in Sydney, where he lived at the time) made this a non-conforming application. The claim by another of his biographers that the application was refused 'as a matter of bureaucratic routine rather than

83 At the time, rumours alleged that the Australian ambassador in Washington was behind the campaign to blacklist Darcy. Australia's first ambassador in Washington was not appointed until 1940. However, at the time of Darcy's arrival in the United States, Britain had introduced compulsory service and Washington was about to. All three countries would have a reason for making an example of him. See Park and Champion, *Home Before Dark*, p. 293.

84 Applications forms were destroyed after the war. Further research may still reveal official attitudes to Darcy.

85 Fitzsimons, *Ballad of Les Darcy*, p. 138.

86 Park and Champion, *Home Before Dark*, p. 218.

87 Melbourne *Argus*, 'Passport System, Men of Military Age: Departure Prohibited', 30 November 1915; and Memorandum, Hunt to State Collectors of Customs, 3 December 1915, NAA: MP56/6.

high policy' is also doubtful.[88] Darcy's celebrity status and his Irish Catholicism, the latter now firmly associated with an anti-conscription stance, make it likely that his application would have been considered as a political matter at high levels. Whatever the circumstances of the rejection of his application, it set the future course of his life.

In December 1917, Hughes called another referendum, but the 'No' vote was stronger. As casualty figures mounted, recruitment numbers continued to fall. By 1918 recruitment dropped to around 2500 a month.[89] In desperation Pearce and Hughes introduced a Voluntary Enlistment Ballot but before it was fully implemented the Armistice was signed.[90] Any expectations that victory would end the passport system were quickly dashed. The Director of Military Intelligence, E.L. Piesse, instructed military district commanders that the examination of inward and outward passports would continue.[91] Piesse assumed returning soldiers, who travelled to the front on their paybook and identity discs, would be issued with passports before embarking for home. Hughes, however was determined to repatriate the First AIF as quickly as possible.[92] A month after the Armistice, a cable arrived from the Australian high commission in London, then headed by former Prime Minister, Andrew Fisher, stating that soldiers, munitions workers and dependents were no longer being issued passports.[93] Several weeks later another cable arrived: because of 'inconvenience and delays' in granting Foreign Office passports, the high commission had negotiated an arrangement with Britain agreeing to 'forego passport vise [sic] on condition that this office furnished Home Office nominal roll of such passengers each passenger furnished military travel permit in lieu of passport [sic]'.[94] The high commission's initiative was not appreciated back in Australia. The Secretary of the Department of Defence expressed outrage, in a memorandum to his counterpart at the Prime Minister's Department, that Fisher's office had taken on itself the decision to bypass the 1916 Regulations and waive passports 'without authority from Australia':

88 Swanwick, *Les Darcy*, p. 191.

89 Grey, *Military History of Australia*, p. 112.

90 Graham Donley, 'Voluntary Ballot Enlistment Scheme, 1918', *Journal of the Australian War Memorial,* no. 38, April 2003, at <www.awm.gov.au/journal/j38/vebs.htm>.

91 Memorandum, 'Supervision of Overseas Passengers and Passports', Piesse for Chief of General Staff, Defence, Melbourne to Commandant, 3rd Military District, 28 November 1918, NAA: B741/3, V72.

92 For an account of the repatriation of Australian troops from Britain, see Scott, *Australia during the War*, pp. 824–57.

93 Cablegram, London to PMD, 11 December 1918, NAA: A432, 1937/287.

94 Cablegram, London to PMD, 7 January 1919, ibid.

> rendering impossible the observance of the War Precautions (Passports) Regulations 1916. It is not the first time that the High Commissioner's Office has made itself responsible for the arrival in Australia of persons unprovided with the documents required by these Regulations; and it is requested that instructions be given to him that for the future no action be taken in conflict with these Regulations without previously obtaining authority from you.[95]

There is circumstantial evidence that the high commission did act without authority. Hughes was, at that time, in Paris preparing for the peace negotiations. According to the historian Ernest Scott, Hughes was deeply involved in the repatriation process, personally asking General John Monash to oversee the return of Australian troops.[96] Four days after receiving the Defence memorandum, the Prime Minister's Department received a secret cable from Hughes for the Acting Prime Minister, William Watt, in which Hughes recommended that in the case of soldiers, munitions workers and their dependents, 'regulations should in these cases be greatly modified':

> Strongly recommend during present great rush of repatriation that to facilitate embarkations this end, the production of photographs, declarations, etc. be done away with, and that travel permit containing declaration and signature be provided which shall coincide with the nominal call … [97]

Piesse, on the other hand, argued that because of the massive numbers involved in repatriation there was now an even greater need for 'strict enforcement'. Exemptions should be resisted, otherwise the passport system 'might easily become so relaxed as to have little value'.[98] Hughes, however, was adamant and the majority of soldiers and their dependents returned to Australia without passports.[99]

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95 Memorandum, Secretary Defence to Secretary, PMD, 14 January 1919, ibid.

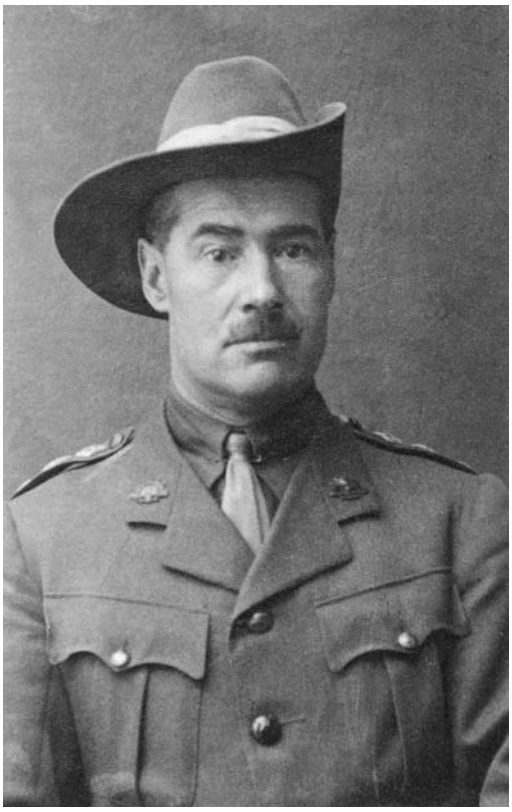
96 Scott, *Australia during the War*, pp. 824–5.

97 Cablegram, Hughes (Paris) to William Watt, Acting Prime Minister, 18 February 1919, NAA: MP367/1, 502/1/19.

98 Minute c.553/1/672, Piesse, 24 February 1919, NAA: A432, 1937/287.

99 167,000 AIF members returned home – 87,000 from France and Belgium. See Scott, *Australia during the War*, p. 825. A small number of soldiers and families, repatriated between the Armistice and December 1918, were issued with passports. Others were issued with military or 'embarkation permits'. See Military Travel Permit No. 2522, Mrs M.Q. Hart and child, issued Australia House, London, 16 December 1918, NAA: MP 367/1, 502/1/19.

As for the men at the centre of this disagreement, the abrupt end to the war left many disoriented, disillusioned and cynical. Hostilities had gone on for too long and the deaths and casualties too high for any sense of exaltation.[100] The mood in Australia in 1919 was a sour contrast to the naïve belief in 1914 that victory would be swift. At this juncture most Australians probably gave scant thought to the passport which many believed to be a temporary measure. It was not to be.



Passport photograph of Captain Charles Mills, 31st Battalion, who enlisted in Melbourne on 12 August 1915 and embarked for overseas on 9 November 1915 aboard HMAS *Wandilla*. He was wounded and captured at Fleurbaix, France, on 20 July 1916 and held prisoner of war in Germany before being transferred to Switzerland in November 1916. He returned to Melbourne in December 1919 (*Australian War Memorial*)

One of the war's most visible legacies is the passport, which represents an enduring aspect of the war's transformation of societies such as Australia. World War I gave rise to the modern nation-state, in which Torpey contends, documents such as passports helped determine who was 'in' and who was 'out'.[101] The Hughes government was disinclined to relinquish such advantages. On 10 December 1918, the Report of the Aliens Committee (Australian) contended that the 'experience gained' by the administration of the wartime passports and aliens registration Regulations

100 Grey, *Military History of Australia*, p. 117; and Michael Tyquin, *Madness and the Military: Australia's Experience of the Great War*, Australian Military History Publications, Loftus, NSW, 2006.

101 John Torpey, 'World War One and the Birth of the Passport System', in Jane Caplan and John Torpey (eds), *Documenting Individual Identity: The Development of State Practices in the Modern World*, Princeton University Press, Princeton, New Jersey, 2001, p. 269.

justified 'a more thorough control that was previously possible should be exercised over admission' into Australia:

> At present, speaking broadly, no person of whatever nationality can enter the Commonwealth without a passport. We strongly recommend that a law be passed continuing this provision. The practice of requiring passports is of immense value to the police, and we should not be nearly so likely to suffer from the possible introduction of criminals if the present regulation, which is only for the duration of the War, be made permanent.[102]

The Australian passport had arrived to stay.

102 Extract from Report of the Aliens Committee (Australian), 10 December 1918, NAA: A432, 1937/287. Piesse and Hunt were members of this committee.

3

‘A Difficult Business’: Change, Resistance and the Australian Passport During the 1920s

Any jubilation felt with the end of hostilities was short-lived. From early 1918, doctors in Europe began to report deaths from a highly infectious, pneumonia-like illness. Many of the victims were healthy young adults. Similar to the plagues of earlier centuries, this severe and deadly influenza spread with its human carriers along trade routes and shipping lines. But this time, its spread was compounded by the social and political conditions of late 1918 with the end of the first mass, industrialised war. Hundreds of thousands of soldiers exiting Europe were joined by displaced persons and political refugees taking the ‘Spanish Flu’, as the pandemic became known, with them to every corner of the world.[1] Some speculated that the virus was a result of German biological warfare, others that it originated in China or Kansas. The exact origins of the outbreak are unknown but recent research has shown that the pandemic was caused by a subtype of avian strain H5N1.[2] The pandemic lasted from 1918 to 1919 and claimed an estimated 40–50 million lives: 12,000 in Australia.

With rigorous quarantine, immigration and passport controls, Australia should have been well-placed to shield its population from the

1 The pandemic was dubbed ‘Spanish Flu’ because the press in Spain – not involved in the war and free from censorship – were the first to report extensively on its impact. Spain was afflicted early and suffered a high mortality rate, *British Medical Journal*, 31 July 1918.

2 See Jeffrey Taubenberger, *et al.*, ‘Initial Genetic Characterization of the 1918 “Spanish Influenza Virus”’, *Science*, 1997, vol. 275, pp. 1973–96; and also *Guardian* [UK], ‘Body in lead coffin may hold key to fighting pandemic’, 28 February 2007.

virus, but 167,000 men were on their way home – 87,000 from France and Belgium.[3] In mid-October 1918, Australia's Director-General of Quarantine decided to declare the disease an 'enemy' within the meaning of the Australian Quarantine Act. Thus, returning soldiers were prevented from disembarking in the transit port of Capetown, which was in a state of pandemic siege,[4] and on arrival in Australia, were quarantined on board until the ships on which they travelled were declared uninfected.[5] At the same time, strict documentary controls were introduced for incoming civilians, particularly aliens. Section 3D of the Immigration Act stipulated the Commonwealth's right to deport anyone attempting to enter Australia suffering from a contagious disease.[6] On 17 October 1918, influenza, 'or any febrile toxic septicaemic condition similar to influenza', was added to the official list of communicable diseases by proclamation.[7] Passports were not mentioned in the proclamation but, in November 1918, delegates at an emergency medical conference in Sydney recommended the refusal of landing rights for anyone presenting a passport or permit from a country reported to be suffering a pandemic.[8] Up-to-date reports on these outbreaks were now more readily available through improved international telegraphy.

At the time, the stringent quarantine control was deemed the key to containing mortality rates in Australia.[9] This is a fair assessment given that

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3 Ernest Scott, *Official History of Australia in the War of 1914–18*, Vol. XI, *Australia During the War*, 9th edn, Angus & Robertson, Sydney, 1943, p. 825.

4 Cablegram, Governor-General of South Africa to Munro-Ferguson, 12 December 1918, NAA: A2 1919/452: 'The malady is infectious in the highest degree and produces prostration with an appalling death rate among coloured persons and natives … Prime Minister is anxious that your country should be spared a similar calamity and accordingly takes this step to give you timely warning'. Australia's response to the pandemic was based on information in this cable.

5 See A.G. Butler, *Official Histories – First World, Volume III – Special Problems and Services*, Australian War Memorial, Canberra, 1943, pp. 781–5. Butler contends that the Director-General's decision 'stands out as one of the most enterprising and courageous in the history of international quarantine'. From October 1918 to April 1919, the quarantine service dealt with 149 uninfected vessels and 174 infected vessels, with a total personnel of 81,510, including 1102 actual cases. Ibid., p. 784.

6 *Immigration Restriction Act 1901* (Cth), s. 3D. 'Restriction' was dropped from the Act's title in 1912. See Alison Bashford, 'At the Border: Contagion, Immigration, Nation', *Australian Historical Studies*, vol. 120, no. 2, 2002, p. 349; and Gwenda Tavan, *The Long, Slow Death of White Australia,* Scribe Publications, Melbourne, 2005, p. 27.

7 Quarantine Proclamation no. 31, 17 October 1918, NAA: A2, 1919/452.

8 Originally the conference was to be held in Melbourne but was moved to Sydney because it was the centre of quarantine operations, Telegram, Premier of NSW to PMD, 22 November 1918, NAA: A2, 1919/482 part 2.

9 Memorandum, Director of Quarantine to Secretary, PMD, 27 January 1919, NAA: A2, 1919/952.

the returning soldiers made up the largest group of potential carriers entering the country from infected areas.[10] Australia's strict passport controls during this crisis also would have contributed to the containment of the pandemic in the country, although this factor received little attention in contemporary government reports. Nevertheless, the pandemic reinforced the linkage between health and national identity, becoming a popular metaphor for the possible detrimental effect of foreign influences on Australian's perception of their unspoiled and vulnerable way of life.[11]

Richard White in his study of image and identity in Australia contends that the terrifying pandemic confirmed suspicion of foreign contagion, and domestic political and social discourse began to reflect the global trend towards withdrawal.[12] Macintyre concludes that the strain of war forced a 'realignment of Australian politics' driven by the forces of conservative nationalism:

> The Labor Party, having lost power at the end of 1916, would not regain it for more than a decade – and then only briefly – and would fail to command a majority in both Houses of the Commonwealth parliament until 1944. The conservatives, whose pre-war programme had been aptly described by Deakin as a "necklace of negatives", would hold the initiative for a full quarter-century. The change is associated with a new valency of Australian nationalism. Nationalism at the turn of the century and into the early years of the Commonwealth, was a force for change, an expression of self-realization for the nation that was to be … But once the Commonwealth was established and its institutions created, nationalism was increasingly identified with the *status quo*. The war strengthened such affirmative connotations and, if only in retrospect, mediated the tug of loyalties between Australia and the home country.[13]

Leonie Foster builds on these views in describing the 1920s as Australia's 'mean decade': strikes, industrial unrest, ex-servicemen's grievances, demonstrations, and, of course, the sectarian and political divisions, 'laid bare by the conscription controversy'[14] spawned anxiety about unrest and

10 It was the generally held contemporary belief that the diggers had brought the pandemic with them on their return from Europe. See Richard White, *Inventing Australia*: *Image and Identity, 1688–1980*, Allen & Unwin, Sydney, 1981, p. 141.

11 See generally, ibid.; and Bashford, 'At the Border'.

12 White, *Inventing Australia*, p. 144.

13 Stuart Macintyre, *Oxford History of Australia Volume 4*: *1901–1942: The Succeeding Age*, Oxford University Press, Melbourne, 1986, pp. 190–1.

14 Leonie Foster, *High Hopes: the Men and Motives of the Round Table*, Melbourne University Press, Melbourne, 1986, p. 89.

disorder that was projected on the external world.[15] Australians turned inward, and often, on each other, but the principal scapegoat was always the foreigner or 'foreign ideas'.

In the early postwar years, Prime Minister Hughes was in constant conflict with the unions. In 1919, for example, 6.3 million days were lost in strikes and lockouts, mainly in mining and shipping industries.[16] The government saw the unrest as being incited by leftist radicals, usually described as 'foreign agitators' and 'Bolsheviks', influenced by the communist ideology behind the social and political turmoil in Russia at the time. Even before the overthrow of the Tsarist autocracy in October 1917, authorities began monitoring Russian movement in and out of Australia.[17] With the establishment of the Union of Soviet Socialist Republics and the spread of international communism, by late 1918, the government feared that 'undesirable elements of European nations' might exploit the chaotic repatriation of Australian soldiers and slip undetected into the country.[18] Australians' perception of communism as a monolith can be traced to this period: by 1919, Russians of any class or persuasion were banned from entering Australia.[19] The decision of the Hughes government to pass Australia's first distinct passport legislation in 1920, therefore, owed much to the social, economic and political conditions of post-World War I Australia. Foreigners were seen as the root cause of the industrial turbulence, the high unemployment and the emerging anti-imperial sentiment. When taken together with the increasing influence of the communist ideology and, finally, the influenza pandemic, these beliefs led to the conviction that they needed to be strictly monitored and regulated through the passport system.

The process began on 17 June 1919 when Hunt asked Solicitor-General Garran to prepare a draft Bill to replace the War Precautions (Passports) Regulations. Hunt's request came with an air of a *fait accompli*. His letter to Garran was attached to a copy of the 1916 Regulations, peppered with his editing and insertion of clauses 'necessary to conform to new conditions'.[20]

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15 Michael Tyquin, *Madness and the Military: Australia's Experience of the Great War*, Australian Military History Publications, Loftus, NSW, 2006, p. 135.

16 Macintyre, *Oxford History of Australia, Volume 4*, p. 183.

17 Letter, Russian Consulate, Melbourne, to Secretary, PMD, 9 May 1917, NAA: A2, 1918/432.

18 Letter, Pearce to Patrick Glynn, Minister for Home and Territories, 7 December 1918, NAA: MP367/1, 502/1/19.

19 Passport Instructions/Circular no. 13, 'Russians', 2 May 1919, NAA: B741/3; and letter, J.H. Starling, Official Secretary to Governor-General, to British Consul, Tahiti, 23 August 1920, NAA: A2, 1920/1046 part 2.

20 Letter, Hunt to Garran, 17 June 1919; and War Precautions (Passports) Regulations 1916 with handwritten amendments, Hunt, NAA: A2863, 1920/46.

The solicitor-general's draft Bill, which received assent on 2 December 1920, indeed conformed with Hunt's views. Taking the 1916 Regulations as its base, the *Passports Act 1920* included Hunt's insertions in relations to changed postwar conditions, such as:

> Any person who acts in contravention of this Act or the regulations made under this Act, or who is reasonably suspected of having so acted or being about to so to act, may be taken into custody without warrant by any officer of Customs or police, or by any person authorized in that behalf by the Minister.[21]

Section 6 upheld the minister's discretionary powers, while s. 5 stipulated that anyone entering the country 'shall, if required, give up his passport to an officer … until the Minister authorizes its return'.[22] Hunt later wrote, in a briefing paper to customs officials, that this section was written to complement the provision in the amended Immigration Act, requiring immigrants to produce a passport on demand. He explained that this provision was inserted into the Immigration Act instead of the passports legislation so that, if immigrants failed to prove that they held a valid document, they could be dealt with as a prohibited immigrant and deported under the provisions of that Act:

> Technically this provision will not apply to a person who is not an 'immigrant' i.e., who was born, naturalized or domiciled in the Commonwealth and who has not abandoned his Australian domicile, but it may be assumed that in nearly all such cases the persons will hold Commonwealth passports, as the *Passports Act* still requires that persons over 16 years of age shall hold passports when leaving Australia.[23]

But for Hunt, the new passport legislation's *raison d'etre* was s. 3, which codified the wartime compulsion clause:

> No person who is, or appears to an officer to be, more than sixteen years of age, shall embark at any place in the Commonwealth for a journey to any place beyond the Commonwealth unless –
>
> he is the holder of a passport or other document authorizing his departure; and

21 *Passports Act 1920* (Cth), s. 8.
22 Ibid., s. 6(1), s. 5(1)–(4).
23 Memorandum, Hunt to State Collectors of Customs, 30 December 1920, NAA: A367, C1225.

> his passport has been viseed [sic] or indorsed [sic] in the prescribed manner for the journey, and the vise [sic] or indorsement [sic] has not been cancelled.[24]

Defiance of s. 3 came at a price. At a time when the average weekly wage was four pounds, nine shillings and 10 pence, the penalty for violation of the Act was a fine of 50 pounds or imprisonment for three months.[25]

During this period, however, the most volatile element was the returning soldiers. By the end of 1915, 6000 men had returned home, many struggling with psychological as well as physical injuries.[26] It marked the beginning of the confrontation between the diggers and the trade unionists. Public violence became a regular occurrence throughout the last years of the war and the early postwar period until May 1921, when the last of a series of soldiers' riots took place at a trade union meeting in Sydney's Domain. In a bid to relieve the situation, preferential employment for returned soldiers and schemes for their settlement and employment on small blocks in rural Australia were 'hastily set up in response with support from politicians on all sides as a way of moving unemployed soldiers out of the metropolitan centres and into an occupation as quickly as possible'.[27] The preferential employment element, however, pitted soldiers directly against the trade unionists. Matters deteriorated further when the government's use of diggers as strike-breakers led to vicious confrontations at the Gladstone and Townsville abattoirs in 1918. Some of the predominantly working-class returned men gravitated back to unionism and the radical left, but 1919 was a good year and most returnees found employment in an initially buoyant labour market. This promising outlook faded with the 1920 recession. For the remainder of the decade, unemployment hovered between 7.0 per cent in 1923 and 10.8 per cent in 1928.[28]

The final soldiers' riot in 1921 prompted the *Sydney Morning Herald* to warn that if:

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24 Ibid.; *Passports Act 1920* (Cth), s. 3(1).

25 See Robert Murray, *The Confident Years: Australia in the Twenties*, Allen Lane, Melbourne, 1978, p. 18.

26 The first soldiers returned from the Dardanelles in July 1915. Scott, *Australia during the War*, p. 828. See also, Michael Cathcart, *Defending the National Tuckshop: Australia's Secret Army Intrigue of 1931*, McPhee Gribble, Melbourne, 1988, p. 88; and Tyquin, *Madness and the Military*, pp. 21–113.

27 Marilyn Lake, *The Limits of Hope: Soldier Settlement in Victoria, 1915–38*, Oxford University Press, Melbourne, 1987, pp. 88–9.

28 Murray, *The Confident Years*, pp. 7, 202.

> the authorities sow to the wind by permitting persons of the Industrial Workers of the World (IWW), Sinn Fein and Bolshevist types to organize outdoor demonstrations they must not be surprised if they have to reap the whirlwind … the creation of a wave of popular anger.[29]

(The IWW was a socialist movement, headquartered in the United States, which peaked in 1923 and aimed at both the representation of all workers in a single party and the abolition of wages. Sinn Fein, the Irish political party dedicated to republicanism and independence from Britain, had a significant number of adherents among the Irish diaspora in Australia. Its threat to the unity of the British Empire alarmed the Australian Government.) The 'whirlwind' predicted by the *Sydney Morning Herald* did not materialise, but neither did the anger abate. Right-wing elements among returned soldiers went underground, organising secret militias that identified 'anti-British' as un-Australian.

As public attention focused on the need to protect Australia and defend the Empire, the shadowy presence of the militias portrayed a society fearful of dangers within and without. The policies of Hughes and the Nationalists played on this climate of fear, deporting the perceived 'disloyal' elements. Many former wartime internees were returned to Germany, and a clause prohibiting the entry of 'any person who advocates the overthrow by force or violence of the established Commonwealth of Australia', was inserted into the revised *Immigration Act 1920*, an amendment directed at foreign-born IWW members.[30] The prewar views on race persisted, remaining the non-negotiable pre-condition of admission into Australia:

> Asiatics and coloured persons … are subject to the restrictions of the Immigration Act which means in effect … that they cannot be permitted to enter the Commonwealth for permanent residence … [and] … special authority should be obtained before they come here on a visit.[31]

Social Darwinism continued to exert a powerful influence. Because Germans were thought to behave in a certain way as a consequence of

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29 *SMH*, quoted in ibid., p. 8.

30 Memorandum, Hunt to State Collectors of Customs, 30 December 1920, NAA: A367, C1225.

31 Letter, Starling to British Consul, Tahiti, 23 August 1920, NAA: A2, 1920/1046 part 2. Exemptions conferred by the prewar passport agreements remained in place for bona fide Japanese, Indian and Chinese merchants and students.

inherent racial characteristics, it followed that Australians of German descent could not be trusted. British subjecthood was similarly deconstructed. Many of Irish extraction were regarded as disloyal, tainted by their perceived association with Sinn Feinism. In 1921 Australian immigration and customs officials were given the right to request an incoming British subject to swear an oath of allegiance, a device aimed at Irish holders of British passports.[32] Country of origin and discrete nationality were increasingly criteria for inclusion or rejection. Precedent lay with the wartime Alien Registration Regulations 1916, superseded by the *Aliens Registration Act 1920*, which used country of origin, with its implication of allegiance, ideological affiliation or undesirability, to define the enemy. In the postwar years, American IWW members, French white slave traders, Italian miners, Syrian priests and Russian refugees joined Germans, Austrians, Hungarians, Bulgarians and Turks on Australia's entry black list.[33]

Prime Minister S.M. Bruce, Hughes's successor, however, understood that the country could not cut itself off from the world. Australia needed 'Men Money and Markets'. He saw Britain as the key to Australia's success: following the pattern established between 1860 and 1890, Australia would borrow British capital to produce more exports for the British market in exchange for immigrants, capital and manufactured goods.[34] The ideal immigrant was a Briton, who often made the journey with a Certificate of Identity in lieu of a passport,[35] but the perceived need to increase the population in Australia was such that all non-British immigrants, 'aliens', could not be rejected:[36]

> Subjects of the new friendly countries such as Poland, Czecho-Slovakia, Jugo-Slavia, Lithuania, Latvia, Esthonia, Finland will be permitted to land if they hold passports or certificates of nationality, and are in sound health and of good character.[37]

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32 Macintyre, *Oxford History of Australia, Volume 4*, p. 190. See also, National Archives of Ireland, Department of Foreign Affairs, ES, Box 32, File 220, at <www.difp.ie/viewdoc.asp?DocID=105>.

33 Memorandum, Hunt to State Collectors of Customs, 30 December 1920, NAA: A367, C1225; and Letter, Starling to British Consul, Tahiti, 23 August 1920, NAA: A2, 1920/1046 part 2.

34 David Lee, *Australia and the World in the Twentieth Century*, Circa, Melbourne, 2006, pp. 44–5.

35 The arrangement was agreed to in 1922. The certificates were *gratis*, but like a passport, they contained a personal description and a photograph of the bearer. Circular, J.G. McLaren, Secretary, Home and Territories Department (HTD), to Collector of Customs, Melbourne, 25 August 1922, NAA: B13, 1925/14556.

36 David Dutton, *One of Us? A Century of Australian Citizenship*, University of New South Wales Press, Sydney, 2002, p. 97.

37 Message, Starling to British Consul, Tahiti, 23 August 1920, NAA: A2, 1920/1046 part 2.

David Dutton concludes that policymakers reduced the perceived dangers of an alien presence through 'rigorous bureaucratic administration' driven by the need to protect Australia's 'purity'.[38] The revised Immigration Act underpinned administration of Australia's immigration regime. In stipulating that any immigrant 'who, on demand by an officer, fails to prove that he is the holder of a valid passport, can be dealt with as a prohibited immigrant', the Act established the passport system as its instrument of control.[39]

Australia's decision to retain passports reflected in part the 'widening practice in the international community requiring travellers to have adequate documentation and proof of identity' but, as noted in Chapter 2, the 1918 Report of the Aliens Committee, and policymakers such as Piesse, flagged the peacetime benefits of a centralised passport system.[40] During the war, the clause compelling those entering or leaving Australia to carry a passport originated from the government's need to monitor men of military age. In the postwar years, the system's monitoring capability was similarly applied, though in differing contexts. Application forms remained unchanged and the government reserved its right to interview applicants and determine the destination and purpose of the journey. In his study of the British passport, Lloyd explains that the official reason for keeping the passport interview was that it enabled passport officials to advise the applicant of visa requirements. He also noted, however, that once officials knew an applicant's proposed destination, territorial restrictions, known as endorsements, could be written into or stamped on the passport, limiting the area of permitted travel. Alternatively, an application could be refused altogether.[41] In Australia, male applicants were required to disclose whether they had served in the AIF and, if so, to provide rank, regimental number and unit details before a passport was issued.[42] This provision was inserted to prevent returned soldiers from defaulting on repatriation loans.[43]

38 Dutton, *One of Us?* p. 97; and White, *Inventing Australia*, p. 144.

39 *Immigration Act 1920* (Cth), s. 3.

40 Robert S. Lancy, 'The Evolution of Australian Passport Law', *Melbourne University Law Review*, vol. 13, June 1982, p. 438; and report, 'War Precautions Act 1914–16: Continuation after war of Regulations and Orders made under Act', E.L. Piesse, Director of Military Intelligence, 30 October 1918, NAA: MP1049, 1918/0698.

41 Lloyd, *The Passport*, p. 244.

42 Application for Passport form, 'Passports to Repatriated and Ex-Soldiers', NAA: A1, 1922/7512.

43 Memorandum, W.B. Ryan, Deputy Commissioner, Department of Repatriation (Victoria), to Secretary, Department of Repatriation, 7 November 1921, NAA: A2487, 1922/5126.

Additionally, in subsequent years the application interview was used to assess whether the minister should intervene and refuse the issue of a passport. Over time, the reasons for refusal became wide-ranging. By the mid-1930s, they included the following, several of which were questionable under the Act and will be discussed later: for example:

(a) Single girl wanting to accompany man on trip abroad.
(b) Insufficiency of funds and possibility of becoming stranded abroad.
(c) Persons wishing to go to USA to join certain religious organisations.
(d) Single girl desiring to proceed abroad for the purpose of being married against wishes of her parents.
(e) Persons wishing to proceed abroad without consent of husband or wife.
(f) Persons wanted by police or concerned in legal proceedings.
(g) Persons of weak mentality.[44]

For Australia's security establishment, the *Passports Act 1920* was an emasculated version of its wartime predecessor and there were concerns that a number of restrictions had been lifted. By early September 1924, the Commonwealth Investigations Branch (CIB) believed that certain exemption categories under the Act hindered the proper monitoring of persons leaving and entering the country. Section 3 of the Act exempted members of the naval or military forces, *bona fide* residents of Papua or Norfolk Island, 'any aboriginal native of Asia, or of any island in the East Indies, or in the Indian or Pacific Oceans' and merchant seamen. A worrying category for the investigators was the seamen, particularly any crew of a vessel who signed on in Australia: 'This … exemption in reality enables almost anyone who is known to the maritime organisations to leave Australia without going through the formality of obtaining a Passport'. The maritime unions were among the country's most militant and volatile and the branch believed that 'several notorious communists had left and returned to Australia' using this loophole. Moreover, with the increased numbers of exemptions regarding aliens under s. 4 of the Act, the CIB Central Office director claimed that 'the administration of the Passports Act is rapidly being reduced to a mere formality'. The *Aliens Registration Act 1920,* which compelled aliens to register with, and notify, the authorities of a change of address, had been a dead letter since

44 Opinion no. 142 of 1934, G.S. Knowles, Solicitor-General, 13 September 1934, NAA: A461, A349/4/1 part 1.

late 1921 because the government believed that 'information enough about the aliens who arrived and departed from the Commonwealth might be gathered from the Passports which it was necessary for every alien to have'. Central Office contended:

> Experience has been to the contrary. Many documents accepted as Passports are not within the strict definition of the Act, and do not included detailed particulars.
>
> … the Commonwealth is coming to the point when it will have little or no information of the aliens entering its borders, beyond what is contained in passenger lists. We have to face the position that the passport has become more or less a certificate of identification of no protective value to the Commonwealth, the possession of which gives no idea to the desirability or otherwise of the holder, and his general fitness to become a member of the Commonwealth.[45]

The director further estimated that Australia, as an 'empty continent in a temperate zone', could, over the next decade, expect to 'be subject to a full tide of white emigration from a war torn and mutilated Europe'. It was, therefore, critical that the Commonwealth have at its disposal 'every knowledge … of our alien immigrants who, for weal or woe, will make their mark on our national life'.[46]

This was a time, however, when the future of the international passport was uncertain. An international conference in 1920,[47] held under the auspices of the League of Nations, addressed international issues such as communication, transport, border controls and formalities and passports. At this conference, delegates legitimised the concept of the international passport but, paradoxically, they predicted the demise of the passport system and declared it a serious obstacle to 'the economic recovery of the world'. Passports were seen as a temporary necessity until postwar conditions stabilised.[48] It was as a means of assisting that stabilisation, by expediting border formalities, that the conference

45 Memorandum, 'Passports in Australia', Central Office Melbourne, Commonwealth Investigations Branch, to all State Inspectors, 10 September 1924, NAA: A367, C1225. Hughes stated that the Act would be discontinued at the November 1921 Premiers' Conference. The Repealing Bill was passed by the Senate in 1923 but was not dealt with by the House of Representatives until 1926.

46 Ibid.

47 The International Conference on Passports, Customs Formalities and Through Tickets.

48 Mark Salter, *Rights of Passage: the Passport in International Relations*, Lynne Reinner Publications, Boulder, Colorado, 2003, pp. 78–9, n. 4.

resolution passed in October 1920 invited countries to adopt a standardised international passport on 1 July 1921:

> it should contain thirty-two pages, all numbered. It should be in at least two languages – the national language and French. Its size should be 15½ cm by 10½ cm. It should be bound in cardboard, the front cover bearing at the top the name, in the centre the coat of arms of the country and at the bottom the word 'passport'. Also, it should only be issued for a single journey or for a period of two years … [but] could be extended.[49]

Many countries, including Australia, adopted the passport proposals; others had minor reservations; and others found it difficult to change their existing Regulations.[50] As a consequence, attempts to discard the passport system punctuated the League's history into the late 1920s, but over time, the push for its abolition lost momentum. Unwittingly, the 1920 conference laid the basis for an ongoing international regime of border control. By 1922, the single-journey option gave way to the two-year alternative and, in 1925, the League recommended extending the timeframe to five years. Although delegates may not have believed, in 1920, that the passport regime would even last for the next five years, views changed and each conference on passports between 1920 and 1926 was marked by an unresolved tension: the League continued to view the passport as temporary and urged liberalised border and passport controls, while member states moved to increase border security and expand their respective passport systems.[51]

Delegates to each of the conferences agreed in principle with the notion of returning to the prewar freedom of movement but they also saw that this practice had become infeasible. Those delegates more inclined towards the freedom of movement option were persuaded by the League's liberal internationalist ethos that economic recovery was aided by personal interaction and travel.[52] The more pragmatic of their counterparts reasoned

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49 Martin Lloyd, *The Passport: the History of Man's Most Travelled Document*, Sutton Publishing, Gloucestershire, 2003, pp. 120–1.

50 Australia, Austria, Canada, Czechoslovakia, Greece, India, Luxembourg, New Zealand, Romania, South Africa, Siam [Thailand], Spain and the United Kingdom; Belgium, Bulgaria, China, Denmark, Finland, Russia, Hungary, Sweden, Norway, Japan; and Italy, the Netherlands, Poland and France. See ibid., pp. 122–7.

51 Salter, *Rights of Passage*, p. 80, n. 9.

52 Article 23(e) of the League of Nations Covenant: 'to secure and maintain freedom of communications and transit and equitable treatment for the commerce of all members of the League'.

that no country could abolish the passport if there were other countries that did not. As Salter describes the quandary: 'It would be impossible for a state to require a passport from a traveller whose country did not issue them. So, if one country required passports, all countries would be obliged to issue passports'.[53]

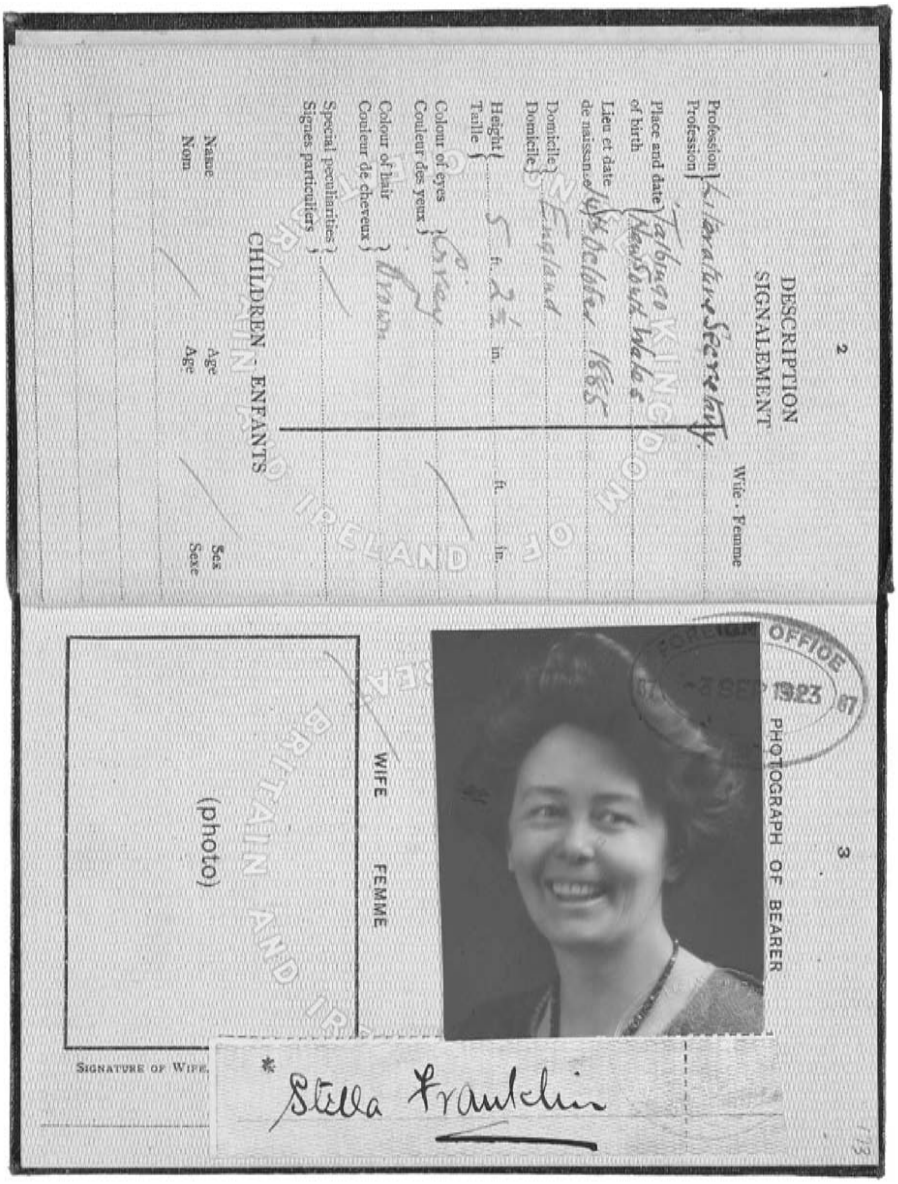
The continued ambivalence of many countries to the concept of an international passport resulted in little progress being made towards a standardised version, despite the guidelines of the October 1920 resolution on a proposed design. It was to assess the progress that had been made that a conference was convened in 1926. In 1921, the United Kingdom had, in accordance with the resolution, produced a passport that complied with the guidelines and this document was well received. The conference now recommended that countries yet to produce an international passport adopt the British model. A few countries disagreed with some of the design techniques of the new British passport, but after this 1926 conference, it was increasingly evident that a standardised international passport was here to stay. The influence of the passport conferences also extended beyond members of the League: in 1926 the United States, which had declined to join the League of Nations, introduced its Type III passport, basely largely on the 1920 conference's specification. By 1929, passports worldwide had been standardised, in some cases, replacing formats that had been in use for up to 70 years.[54]

Torpey sees the rise of a securitised and bureaucratised regime of population movement in the form of the passport system as a key symptom of the postwar reconfiguration of international politics that featured a proliferation of nation-states. In his view, the regulation of wages and labour markets along with the development of social policy within a welfare-state tightened the state's connection with individuals. This then led to an intensified preoccupation with determining who was 'in' and who was 'out' when it came to enjoying the benefits – both political and economic – of membership of those states. But the nation-state not only demanded the right to monitor the movements of its own people, it insisted on the need to install a system of 'documentary substantiation of identity used to register and keep watch over aliens'.[55] Torpey's arguments incorporate the conclusions of the social theorist,

53 Salter, *Rights of Passage*, pp. 79–80.

54 Lloyd, *The Passport*, pp. 128–30. For a description of the 1921 British passport, see ibid., p. 128.

55 John Torpey, 'World War One and the Birth of the Passport System', in Jane Caplan and John Torpey (eds), *Documenting Individual Identity: The Development of State Practices in the Modern World*, Princeton University Press, Princeton, New Jersey, 2001, pp. 269–70.



1923 Passport of Miles Franklin, Australian author and feminist
(*Mitchell Library, State Library of New South Wales*)

Gerard Noirel, who earlier wrote of a *revolution identificatoire* that vastly enhanced the ability of governments to identify their citizens, to distinguish them from non-citizens, and thus to construct themselves as 'nation-states'.[56]

The standardised international passport system provided nation-states with the means through which they could monitor the movement of their own citizens out of the country and of aliens coming into the country. Salter sees what was happening as a conflict between Wilsonian idealism, in the form of the League's 'host ethic' principle, and the internal priorities of protectionist states. Individual states would always place national security, internal as much as external, ahead of global integration:

> the passport regime was a necessary inconvenience to control the marginal and dangerous elements of society: criminals, prostitutes, colonial subjects, working women and spies … during the interwar period, we see a great deal of anxiety about the internal other … a necessary part of the construction of a national identity.[57]

The question remained, however, of how to manage stateless persons. In 1922, the League's Office of the High Commissioner for Refugees, sought to create an identification and travel document for Russian refugees, that became known as the Nansen Passport (named after the first Commissioner of the Office).[58] Torpey describes the Nansen Passport as a milestone in the history of the regulation of human movement, a step towards resolving at an international organisational level the anomalies that arise with an international system of movement control that is based on national membership.[59]

At the time of the *Passports Act 1920*, Australia's international status was that of a British dominion. The Commonwealth's Nationality Act of the same year also brought Australia into line with Britain's 1914 naturalisation laws that deemed British subjecthood to be the right of 'a person born within a British dominion, or had a father who was a British subject if born elsewhere, or was born on board a British ship even if the ship were in foreign territorial waters'.[60] Australians were British subjects. While 'citizen' surfaced occasionally in public discourse there was no mention of

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56 See ibid., p. 7.
57 Salter, *Rights of Passage*, pp. 80–1.
58 Brian Galligan and Winsome Roberts, *Australian Citizenship*, Melbourne University Press, Melbourne, 2004, p. 52.
59 John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State*, Cambridge University Press, Cambridge, 2000, p. 129.
60 Galligan and Roberts, *Australian Citizenship*, p. 31.

citizenship or citizens' rights in the Australian Constitution.[61] When Hughes asked the 1921 Imperial Conference, 'What could the Dominions do as independent nations that they cannot do now', the question was rhetorical.[62] As Nicholas Mansergh points out in his study of Commonwealth affairs in the 1930s, Australians regarded British foreign and defence policy as their own, criticising a decision made in London 'as though it were a domestic issue'.[63] In 1926, Lord Balfour described the relationship between Britain and the Dominions as 'equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown'.[64] Australia accepted that there must be one British Empire foreign policy and continued to formulate policies that were primarily related to internal self-government. The *Passports Act 1920* was a vital step in the long-term evolution from dominion to nation-state. In converting the wartime passport Regulations to statutory form, Australia normalised a securitised documentary regime that controlled the movement of its own people and that of foreign nationals hoping for admission.

Not that all Australians saw it that way. The War Precautions Act (WPA) and its Regulations were tolerated at the time as one of the war's more onerous burdens, and there was a public outcry when the government announced that the passport Regulations would become enacted. Declaring that the system should have been abandoned 'the moment the armistice was signed', Sydney's *Daily Telegraph* reminded its readers that there had not been a demand for passports, or any need for them 'until the system was introduced as a possible annex to conscription'. Keeping the passport system reflected bureaucratic addiction to 'regulation and interference', a craving for power that began with the war and could not be resisted:

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61 Mike Salvaris, 'Political Citizenship', in Wayne Hudson and John Kane (eds), *Rethinking Australian Citizenship*, Cambridge University Press, Melbourne, 2000, pp. 79–80. The one mention of 'citizen' in the Constitution is in s. 44 which states that a 'citizen of a foreign power' cannot become a member of the Commonwealth Parliament. An Australian is termed a 'subject of the Queen', and more generally 'people of the States' and 'people of the Commonwealth', instead of 'citizen/s'.

62 Hughes, quoted in Macintyre, *Oxford History of Australia, Volume 4*, p. 206.

63 Nicholas Mansergh, *A Survey of British Commonwealth Affairs: Problems of External Policy 1931–1939*, Oxford University Press, London, 1952, p. 138.

64 Lord Balfour, quoted in ibid., p. 12. At the time, the former British Prime Minister, First Lord of the Admiralty and Foreign Secretary, was an elder statesman in the British parliament, serving as Lord President of the Council (1925–1929) in Stanley Baldwin's second government.

> If this bill is accepted Australia will have taken a step towards a reign of officialism characteristic of Turkey or Russia in the days of autocracy. It will be defended on the ground that passports facilitate the detection of crime. But criminals may be kept out of Australia by the Immigration Restriction Acts. It is not necessary that every traveller should be harassed and delayed in order that the police may be helped to track one criminal by means which they have dispensed with quite easily in the past. In European countries the passport system has invariably put the police to sleep. Crime is most prevalent in those countries in which it is most strictly enforced. Its adoption in Australia should be resisted, however strongly the Government may demand it, for it is an instrument of tyranny whether in the hands of petty officials or of Ministers and departmental heads.[65]

The newspaper now took a lead in the anti-passport protests that followed, publishing numerous editorials and articles encouraging readers to write anti-passport letters to federal politicians. These letters reveal that many Australians understood that the normalisation of the passport system signified not only a historic change in the relationship between Australians and their own government and bureaucracy, but a shift towards a permanently altered world. The mandatory passport symbolised the new way in which Australians were expected to negotiate that world. A sample of the correspondence to parliamentarians puts the perceived change starkly: Australia should be 'a free country and not on the principle of free to do as we are told'.[66] Furthermore, the passport system proved the government's seduction by foreign ideas. There was uncertainty about whether the United States or Europe was responsible for this violation, but there was conviction that the passport system was not British; and that meant it was antithetical to the Australian way of life:

> In this country we are only five million population; we are not a mixed race of every kind like America, and we are not attached to any foreign land, being an Island Continent … we ought to be very careful in introducing American methods or Continental methods into Australia because the cure might be worse than the disease …
>
> if it is that the passport and permit system is to help the police system, well I think the sooner we get away from the old

65 Sydney *Daily Telegraph*, 28 April 1920.

66 Letter, John Fuller, Theatre Proprietor, Melbourne, to Senator E.J. Russell, Victoria, 28 April 1920, NAA: A2, 1920/1046 part 2.

> Russian system, the better, and more contented and happy will the people of Australia be, let alone those people who are at the head of the Government and this excessive detail only makes for waste, and keeping a few Government officials in unnecessary jobs.[67]

Six years later, Australians were still not reconciled to the changes, a common grievance being the passport's role in the breakdown of 'British traditions of freedom'.[68] One letter to the editor of the *Daily Telegraph* declared:

> Before the Great War it was the proud boast of Britishers that they could travel anywhere in the British Empire and in many other parts of the world without a passport. British travellers were frequently heard to sneer at people of other countries because they were obliged to suffer the indignity of asking permission of their Government whether they might travel hither and thither. As a 'war precaution' it is possible that the passport system was essential for the safety of the country, but whoever dreamt that we would have to put up with this indignity for more than seven years after the war terminated?[69]

For others, bureaucrats, with their lust for 'regulation and interference', were to blame for this 'remnant of the Hughes regime'.[70] Some accused the Department of Taxation of encouraging the system for the purposes of revenue raising, given the obligation to provide a clearance certificate from that department when applying for a passport.[71] The Brisbane *Courier-Mail* charged that passports owed their survival to bureaucratic inertia: 'the official mind shrinks from any change in the existing order, and is prone to believe that the welfare of the State depends on the precise observance of forms'.[72] Several years earlier, the paper had claimed that the passport was a medieval artefact, irrelevant to modern travel and useless in keeping out international criminals. 'For the really keen anarchist, criminal or Bolshevik emissary the passport system presents no difficulty.

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67 Ibid.

68 See for example, 'Abolition of Passports – Proposals', V.H. Neville, General Secretary, Australian Natives' Association, Western Australian Board of Directors, to Bruce, 5 November 1927, NAA: A1, 1928/8383.

69 Letter to the Editor, Sydney *Daily Telegraph*, 10 April 1926.

70 Letter, J.J.J. Moloney, Secretary, Australasian Society of Patriots, to Bruce, 9 August 1928, NAA: A1, 1928/8383.

71 For example, letter, Robert Southouse to Colonel Ryrie MP, 15 March 1927, ibid; memorandum, HTD, 18 January 1923, NAA: A981, PAS 33; and Sydney *Daily Telegraph*, 7 April 1926.

72 Brisbane *Courier-Mail*, clipping, n.d. [c. 1927–1928], NAA: A1, 1928/8383.

He merely resorts to forgery, and replies with a ready wit to the vulgar impertinence of the passport clerks'.[73]

Others claimed that the system only served a useful purpose in several isolated instances and objected to the manner in which the process was implemented. One such example was the personal reaction to an instance of perceived 'vulgar impertinence' that later became the basis for a serious questioning of the passport system and its application process by the federal Member for Barton, Thomas J. Ley. The incident that triggered this stance appears to have begun in December 1924, when Ley's mistress, Mrs Maggie Brook, applied for a passport to travel to America with him. Ley, who was the New South Wales Minister for Justice at the time, took umbrage at the direction of questioning that was taken at Mrs Brook's application interview. There was an exchange of letters between Ley and the collector of customs in Sydney which seemed to have settled the situation.[74] The matter became more of an issue for Ley after Mrs Brook again applied for a passport in early 1927. Although the processing of the application was difficult because of subsequent alterations to the sailing date and point of departure requested by the applicant, passport officials recalled that she made no complaint and 'appeared to be fully satisfied with the arrangements made'. These arrangements included allowing Mrs Brook to collect her passport at the port of departure.[75]

Coincidently, Ley now decided to make a close study of the Act, subsequent Statutory Rules and the passport application forms, purportedly in response to 'various complaints I have received'. He advised the head of the passports branch of the Home and Territories Department, F.J. Quinlan, that he accepted that 'for limited purposes the passport system is quite a useful one' but still thought it 'desirable for some steps to be taken to eliminate many of the causes of complaint':

> Is there any necessity to interrogate an applicant who has properly filled in his application and complied with the terms thereof? For

73 Brisbane *Courier-Mail*, 22 September 1924.

74 Ley was NSW Minister for Justice 1922–1925; and federal Member for Barton 1925–1928. For brief accounts of this politician, businessman and convicted murderer (an outcome of his liaison with Maggie Brook), see Barry York, 'Thomas John Ley: Politician and Murderer', *National Library of Australia News*, vol. XI, no. 10, July, 2001, at <www.nla.gov.au/pub/nlanews/2001/jul01/johnley.html>; and Bede Nairn and Geoffrey Serle (eds), *Australian Dictionary of Biography* (*ADB*), *Volume 10*, Melbourne University Press, Melbourne, 1996, pp. 97–8.

75 Memorandum, C. Fleming, Passports Section, to W.H. Barkley, Collector of Customs, Sydney, 27 April 1927, NAA: A1, 1928/8383.

> instance, cases have been brought under my notice where such questions as 'why are you going to such and such a country, what are you going to do there'. In one case where the answer was given 'on business and pleasure', the enquiry proceeded along such lines as what kind of business, and what is the nature of the pleasure, etc. etc?[76]

Ley questioned whether a passport could not be issued in cases where all the requirements of the application had been met, without the need for the 'present method of interrogation often [undertaken] by very young and inexperienced men who may be moved by zeal or sometimes by undue curiosity'.[77]

Although conceding that applying for a passport was a 'somewhat difficult business', Quinlan told Ley that he believed that a little inconvenience for travellers before departure was better than 'far greater inconvenience' while they were abroad. The former sceptic about the system now appears committed to its continuance:

> It would be useless for Australia to abolish the system whilst practically every other country maintained it. If Australians were permitted to leave here without passports, they would suffer serious inconvenience abroad, especially if travelling in foreign countries. The passport also furnishes the holder with an authoritative means of identification which frequently proves most useful for banking purposes, etc.
>
> So far as immigration into Australia is concerned, the passport system is most useful, as it provides a means by which an excess of alien immigration can be checked, and has also in numerous instances proved effective in preventing undesirable persons, such as criminals, Russian Communists, etcetera, from migrating to this country.[78]

Duly satisfied that customs officials conducted the application interviews with 'courtesy, discretion and tact' and that, apart from the occasional 'facetious remark respecting passports', no applicants had complained about the interviews (except for Ley's earlier letter), Quinlan was unapologetic about the requirement. Experience had taught that it was sometimes 'necessary and desirable to interrogate applicants',

76 Letter, Ley to Quinlan, 31 March 1927, ibid.
77 Ibid.
78 Letter, Quinlan to Ley, 13 April 1927, ibid.

otherwise the system risked abuse. Furthermore, it was sometimes in applicants' interest that they be questioned about the real purpose of their visits abroad:

> For example, it has been found necessary on many occasions to warn applicants who propose to go to Canada allegedly for business or pleasure, but whose real object was seek a means of entering the United States …
>
> In regard also to persons whose applications show that they have only been in the country a comparatively short time, it is necessary to question them with a view to ascertaining under what circumstances they came to Australia, as there is an obligation on the part of persons who were granted assisted passages by the Commonwealth Government to remain here at least two years, or to refund the contribution of the Government towards their passages if they wish to leave the Commonwealth prior to the expiration of that period. This course is necessary to protect the Commonwealth revenue and to prevent persons from making use of the Assisted Passage Scheme merely to obtain a cheap passage to Australia and without any intention of settling here.[79]

The government had, however, attempted to minimise some of the inconveniences facing Australians wanting to travel overseas. Provided all documentation was in order, passports did not have to be collected from the department in Melbourne but would be posted on request to the collector of customs at the port of embarkation for collection. Arrangements were also made so that travel between Australia and New Zealand did not require a passport and Australians travelling to France, Italy, Switzerland, Belgium, Norway, Sweden, Spain and Portugal did not have to obtain a visa.[80]

Nevertheless, in the run-up to the 1928 federal elections, it seemed that continuing the passport system would become an election issue. In August 1928, both the Melbourne *Age* and the Perth *Daily News* reported that this would be the case unless the government abolished the passport regime – a system reminiscent of 'the ticket of leave days'. The papers claimed that there was a 'strong undercurrent of feeling' that meant the issue was now 'as lively and as sweeping as the conscription issue during the war':

79 Ibid.
80 Ibid.

> It may seem strange, but it is nevertheless a fact, there are some people who have refrained from travelling on account of the irritating and inquisitorial methods which the passport system entails, and they see no reason why the old times of picking up their old kit bag and starting up the gangway of the ship should not return.[81]

The newspapers did in fact reflect the mood of some Australians as seen in a letter from J.J.J. Moloney, General Secretary of the Australasian Society of Patriots to Prime Minister Bruce. Reminding Bruce of the original meaning of passports in Australia, Moloney described the system as a revival of the 'ticket-of-leave' system that 'should not be allowed to disgrace the Statute book a moment longer'. He warned that, once the agitation for repeal was launched, Australia would 'treat the question in precisely the same manner as they did the Conscription issue'. He dismissed the argument that passports were retained because of other countries' policies as irrelevant and declared that Australia should take the lead in establishing prewar conditions:

> The question of banking facilities abroad or the entry of Russian Communists to the Commonwealth are matters of small moment when compared to the liberty of the Australian people. Australians travelling will readily overcome all questions of finance, and Australian police can be safely entrusted to handle the Russian or other Communists.[82]

The anti-passport protests, however, disappeared beneath the larger problems facing the re-elected government of S.M. Bruce in late 1928. Australia had been troubled by industrial strife from 1925. Beginning on the waterfront, the disputes spread to timber-workers, who put down their tools in 1929 in response to reduced wages and increased hours. The timber-workers were followed by coalminers who struck when faced with similar proposals by the New South Wales Government. Deteriorating economic conditions pushed employers to cut expenditure through wage reductions, with Bruce 'embittering the industrial climate even more by introducing increasingly harsh industrial laws' that included a plan to return arbitration powers to the States but retain power over the waterfront.[83] Bruce was forced to another election in October 1929, only 11 months into this, his third

81 Melbourne *Age*, 11 August 1928; and Perth *Daily News*, 28 August 1928.
82 Letter, Moloney to Bruce, 9 August 1928, NAA: A1, 1928/8383.
83 David Day, *Chifley: A Life*, Harper Perennial, Sydney, 2007, pp. 257–9.

term as prime minister. His government was defeated and, after 13 years in Opposition, a Labor government led by James Scullin took office.

Within weeks of Labor's victory, Arthur Blakeley, the incoming Minister for Home Affairs, issued a press statement announcing that the passport system would not be abolished. It was time to accept that the world had changed. Most countries demanded that immigrants and visitors carry passports, while at home the system shielded against an 'excess of foreign migration', and helped prevent the entry of 'undesirables'.[84] Blakeley accentuated the positive aspects of the system, including protection of the vulnerable and ease of identification. After 10 years of agitation over the system's retention, the news was received quietly as there were more pressing problems with which to contend.

84 Press Statement, Blakeley, November 1929, NAA: A1, 1928/8383.

4

'Who is Inside and Who is Out': the Australian Passport System in the 1930s

The Labor government under James Scullin, which took office in 1929, had a majority in the House of Representatives but held less than 20 per cent of seats in the Senate, which represented the States.[1] To add to the domestic political difficulties that lay ahead for the new government, the New York Stock Exchange collapsed in its first week in office. The Wall Street crash precipitated a dramatic lowering in world commodity prices. The ensuing global economic crisis placed Australia in a difficult position. Furthermore, the inability of the government to continue borrowing funds from the London capital market pushed Australia into depression. Conservative economic wisdom dictated that a balanced budget depended on reduced expenditure, increased exports and restricted imports. These measures, however, meant reducing welfare at a time when Labor's working-class constituency was in dire need, the more so because 'boosting exports required them to be cheaper through reducing the wages of the workers who produced them'.[2] There was also the matter of Australia's outstanding loan repayments to Britain and how they should be repaid.[3] While Scullin's Minister for Health and Repatriation, Frank Anstey, and others, including the divisive New South Wales Labor premier, J.T. Lang, favoured repudiation of the debts,[4] a young Victorian parliamentarian,

1 Labor's majority in the House of Representatives was 46 of the 75 seats but the government was outnumbered in the upper house with only seven of the 36 Senate seats.
2 David Day, *Chifley: A Life*, Harper Perennial, Sydney, 2007, pp. 264–5.
3 Stuart Macintyre, *Oxford History of Australia Volume 4: 1901–1942: The Succeeding Age*, Oxford University Press, Melbourne, 1986, p. 258.
4 Ibid., p. 264.

Robert G. Menzies, declared that he would rather see Australians 'die of starvation' than not meet their debt to Britain.[5] As economic conditions worsened so too did the position of the government. Following the passing of a 'no confidence' motion against it on 25 November 1931, the government fell. As the decade progressed, a new United Australia Party (UAP), led by the former Labor minister, Joseph Lyons, won a landslide election at the end of 1931. The UAP dedicated itself to classical economic policy and loyalty to Britain and governed either on its own or in coalition with the Country Party throughout the period from 1931 to 1941. Unemployment, which peaked at nearly 30 per cent in 1932, steadily declined, as the economy recovered, to around 10 per cent on the eve of World War II.

The financial crisis facing the Scullin government resulted in a 10 per cent across the board wage cut in early 1931.[6] Many industries increased working hours, conditions eroded and by the second quarter of 1932 unemployment among trade unionists peaked at 30 per cent. As many as one million people, in a workforce of over two million, lacked fulltime employment. The effect on the middle class was less easy to measure: in the 1933 census, 'self-employed' was a common euphemism for 'out of work'. The State Food Relief program alleviated starvation but had little impact on the general climate of fear and despair. The relief took the form of ration vouchers that were worth a fraction of the basic wage and was only available to people who had sold every asset except their homes. As Stuart Macintyre points out, the human dimension of the Great Depression defies precise statistical measurement. Shame and desperation cannot be quantified but some statistics reveal the effects on Australian lives. Across the nation desertions increased, couples postponed marriages and by 1934 the national birth rate dropped to an unprecedented level.[7] Significantly, between 1929 and 1930 more people departed Australia than arrived.[8]

The majority of those leaving Australia were former British assisted migrants, predominantly males, who arrived during the heyday of the 'Men, Money, Markets' years. Now, with few prospects or ties, they were desperate to return to family, friends, a familiar community and, hopefully, a better future than to be found in Australia. Nothing was done to staunch

5 Menzies quoted in Day, *Chifley*, p. 278.

6 This stringent measure, along with a currency devaluation, was advised by Sir Otto Niemeyer of the Bank of England, whose assistance was requested by the Scullin government. See Frank Cain, *Jack Lang and the Great Depression*, Australian Scholarly Publishing, Melbourne, 2005.

7 Macintyre, *Oxford History of Australia, Volume 4*, pp. 266–79.

8 Day, *Chifley*, p. 270

the outflow. Applicants requesting a passport for a one-way trip back to Britain were never refused, as each represented 'so much less in expenditure of State Relief'. Most of these men were destitute but managed to raise the passport fee until it was doubled, in October 1932, from 10/- to £1. Customs officials were left facing the distress caused by the increase. Warning Canberra that more such cases would follow, the Collector of Customs in Sydney reported one particularly 'distressing' situation, seeking guidance as to how the matter should be handled. The case involved a former British immigrant, Ernest Chesworth, who wanted to return to Britain with his 18-year-old son. Chesworth was 47 years of age, unemployed since July 1930, and in continuous receipt of State Food Relief since October 1930. His wife had died 13 months earlier and a small child also, five months before her death. Chesworth's mother in Britain had paid a one-way passage for the two but was unable to provide any further funds. Chesworth had managed to obtain a loan of £1 for the two passport application fees but with one loan outstanding he was unable to secure the additional £1 required. The collector advised that Chesworth was most anxious to pay the money he had raised, but with fees having doubled in the meantime, Customs 'did not know to which passport we should apply the fee and what action we should take re the remaining applicant'.[9]

Officials in Canberra were both sympathetic and pragmatic, suggesting to the Minister for the Interior:

> that the Ministerial authority be obtained for the waiving of the fees in the case of destitute persons – (a) whose passages have been arranged by friends or relatives abroad, or (b) who wish to leave Australia as members of a ship's crew. If approved, no loss to the revenue should be caused, but on the other hand, savings should be affected by way of State Food Relief and other assistance rendered to indigent and unemployed persons.[10]

Ministerial approval was given for single journey passports to be issued free to for the Chesworths, together with payment for the £1 loan.[11] It was also given for the waiving of passport fees for all destitute migrants wishing to return to their 'native country' whose passage had been paid by 'relatives

9 Memorandum, 'Passports for Destitute Persons', Sydney Collector of Customs to Department of Interior (hereafter, Interior), Canberra, 7 October 1932; and Statutory Declaration, Ernest Chesworth, Labourer, 142 Glenmore Road, Paddington, 6 October 1932, NAA: A659, 1949/1/839.

10 Submission, Interior to Minister, 11 October 1932, ibid.

11 Letter, Secretary Interior to Collector of Customs, Sydney, 21 October 1932, ibid.

or friends abroad' or who intended to leave as members of a ship's crew. Destitute British subjects departing Australia were to be:

> granted passports valid for a single journey only, but those leaving as members of a ship's crew may travel either on their Australia House Certificates of Identity (if the person arrived in Australia as an assisted migrant and certificate is available) or on a Permit to leave Australia … Where a person holds an Australia House Certificate of Identity which it has been decided to recognize in lieu of a passport for return to the United Kingdom, the document should be endorsed to the effect that the holder is returning to the United Kingdom.[12]

A subsequent ruling the following year required these passports to be endorsed 'Gratis' and also 'To be surrendered on arrival in England'.[13]

The response of many in middle Australia to the 'small armies of unemployed men' was not compassion, but suspicion and hostility. In 1930–1931, Victoria witnessed the reactivation of the right-wing paramilitary organisation, the White Army.[14] In New South Wales, the counterpart organisation, the 'Old Guard', yielded to the interventionist, 'noisy and unsubtle' New Guard. Members of this group saw themselves as not only protecting conservative values but also physically protecting the nation against radical and communist elements.[15] Within nine months of announcing its determination to suppress 'disloyal and immoral elements', the New Guard boasted a membership of over 50,000 and its leader, Eric Campbell, was predicting the demise of democracy. Campbell eventually moved towards fascism and become increasingly authoritarian and militant, but in the early 1930s his ideas were not regarded as extreme. Many on both sides of politics thought that the Depression had proved democracy's failure.[16]

By autumn and winter of 1931, anti-democratic discourse had penetrated mainstream political debate. The Melbourne-based magazine *Table Talk* ('A Journal for Men and Women') questioned: 'Who can honestly

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12 Departmental circular, 'Issue of Travel Documents to Destitute Persons', to all State Collectors of Customs, 20 October 1932, ibid.

13 Departmental circular to all State Collectors of Customs, 1 May 1933, ibid.

14 For a comprehensive discussion of the White Army, see Michael Cathcart, *Defending the National Tuckshop: Australia's Secret Army Intrigue of 1931*, McPhee Gribble, Melbourne, 1988.

15 Leonie Foster, *High Hopes: the Men and Motives of the Round Table*, Melbourne University Press in association with the Australian Institute of International Affairs, Melbourne, 1986, p. 61.

16 See Macintyre, *Oxford History of Australia, Volume 4*, p. 266; and Keith Amos, *The New Guard Movement 1931–1935,* Melbourne University Press, Melbourne, 1976.

assert that government in Australia represents the mass of people?' The solution was palpable: 'dictatorships, government by committees of experts and the withdrawal of government from public enterprise'.[17] By 1931, the Communist Party of Australia (CPA) claimed 1500 members and, while 30,000 joined its Unemployed Workers Movement, Macintyre contends that 'the unions were powerless, the ALP routed and a large proportion of the population reduced to hopeless indigence'.[18] The defeat of the Scullin government at the 1931 December general election, following the vote of no confidence the previous month, and the election of Lyons's conservative UAP government, saw the activities of the extra-parliamentary organisations decline under what was perceived as an 'eminently conventional government'.[19] Australia narrowly escaped bankruptcy and the slow, hard path to recovery began, assisted by currency devaluation, cheaper exports and high tariffs.

But recovery came at a price. According to the historian Richard White, 'if anything, the Depression intensified the paranoia and isolationism of the 1920s'.[20] Dissent was not tolerated: troublemakers were 'commos', and the Lyons government pledged to defeat the communist 'menace', despite its negligible threat. The Crimes Act was amended, employers were pressured to sack communist employees and policy-makers sought to define 'who was inside and who out', proposing amendments to a fresh Immigration Bill that sought to exclude persons 'likely to prove … undesirable as an inhabitant or visitor to the Commonwealth'.[21] These included aliens with Soviet sympathies, 'imported agitators' guilty of 'red-anting' the trade unions, the 'un-British, the non-British, the disloyal, the subversive and seditious' as well as the criminal. Judith Brett argues that Australian anti-communism may have lacked the 'Manichean tone' of its American counterpart, but its 'preoccupation with the maintenance of borders and foreign influences' verged on the obsessive.[22] This attitude was dramatically illustrated in the case of the Czechoslovakian anti-fascist, Egon Kisch, when the government controversially used the dictation test of the Immigration Act to prevent him from visiting Australia in 1934.[23] Other, less overt, forms of undermining

17 Cathcart, *Defending the National Tuckshop*, pp. 153–4.
18 Ibid., p. 274.
19 Ibid.
20 Richard White, *Inventing Australia*: *Image and Identity, 1688–1980*, Allen & Unwin, Sydney, 1981, p. 146.
21 Judith Brett, *Robert Menzies' Forgotten People*, Pan Macmillan, Sydney, 1992, pp. 90–1; and departmental memorandum, for Secretary Interior, 28 May 1937, NAA: A6980, S250720.
22 Brett, *Robert Menzies' Forgotten People*, pp. 97–8.
23 See Heidi Zogbaum, *Kisch in Australia: the Untold Story*, Scribe Publications, Melbourne, 2004.

the 'Australian Way of Life' also caused great concern. As the spectre of an unemployed uprising receded, it was replaced by two 'equally urgent fears': disloyalty and immorality.[24] Anxiety over the latter was particularly evident in the passport system where officials attempted to regulate the travel of single Australian women.

Australian women gained the suffrage in 1903, nevertheless, the central object of social policy apropos women in Australia was to 'reinforce their domestic responsibilities'.[25] The Depression brought enormous hardship to families, much of the pain for unemployed men was derived from watching their wives take menial jobs for which they were paid half the male rate, yet criticised for taking work away from men. In the early 1930s, many women were the family breadwinners in Australia and their participation in the labour workforce continued to grow throughout the decade. Yet the traditional societal view that a woman should be supported by the man continued to be upheld.[26] For Australian women, this sent conflicting messages. Reluctance to accept the notion of female independence was reflected not only in welfare and industrial relations but also in border control and passport policies.

An example of an attempt to control the entry of women thought undesirable on moral grounds can be found in the case of a 26-year-old divorcee named Mabel Freer. Mrs Freer was a white British subject, born in India, in possession of a British passport and thus eligible for entry to Australia. (According to the Commonwealth's classification of desirable immigrants, being white, British, upper class, and, as the government would later discover, articulate, Mrs Freer ranked as ideal.) On her arrival in Fremantle from India on 20 October 1936, however, she was required to take, and failed, a dictation test in Italian. Declared a prohibited immigrant she sailed to Auckland and entered New Zealand without difficulty. While this case falls primarily under the Immigration Act, it was significant for Australians, who too carried passports as British subjects, because it threw into doubt long-held assumptions about the privileges of British subjecthood.[27]

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24 Macintyre, *Oxford History of Australia, Volume 4*, p. 308.

25 Ibid., p. 321.

26 Marion Aveling and Joy Damousi, *Stepping Out of History: Documents of Women at Work in Australia*, Allen & Unwin, Sydney, 1991, pp. 110–34.

27 For a full account of the Mabel Freer case, see Kel Robertson, Jessie Hohmann and Iain Stewart, 'Dictating to One of "Us": the Migration of Mrs Freer', *Macquarie Law Journal*, vol. 5, 2005, pp. 241–75. Mrs Freer was the niece of Countess Cave, widow of the prominent British politician George, Viscount Cave, former Home Secretary, Lord Chancellor and legal advisor to the Prince of Wales.

Mrs Freer arrives in Sydney on MV *Wanganella*, 12 July 1937
(*Hood Collection, State Library of New South Wales*)

Clearly the Lyons government knew of Mrs Freer's impending arrival and, in Sydney en route to Auckland, she told the press that she had been warned before leaving India that Australia's immigration laws would be used to prevent her entry. The reason given was that she intended to marry her travelling companion, an Australian officer seconded to the Indian Army, Lieutenant R.E. Dewar, who was married, but seeking a divorce from

his Australian wife.[28] The Minister for the Interior, Thomas Paterson, appeared to confirm Mrs Freer's reading of the matter in claiming that the dictation test was administered because Mrs Freer was of undesirable character: an 'adventuress' with a total absence of 'compassion for a wife and child whose domestic world is tumbling about their ears'. However, he was evasive about his sources, despite criticism of his assassination of Mrs Freer's character under parliamentary privilege.[29]

Evidence shows that as pressure mounted on Paterson, Interior officials cabled London and India to verify allegations that Mabel Freer was in fact a half-Sinhalese woman named Vera Freer, who claimed to be 'pure English', lived by her wits and was 'little better, if at all, than a common prostitute'.[30] This information was conveyed neither to parliament nor to Mrs Freer, whose repeated requests to Paterson to disclose the allegations against her were ignored. Recent research by Kel Roberston, Jessie Hohmann and Iain Stewart, however, reveals that Paterson possessed additional information that he was unwilling, or perhaps unable to use, because of the wider implications of collateral damage elsewhere.[31]

The information in question related to correspondence between a regimental officer in India and Dewar's father in Australia, as well as with the Australian Department of External Affairs. The suggestion was that the interests of the army and of Dewar 'would be best served' by Mabel Freer's exclusion, as the matter would not only reflect badly on the service but could also place him under threat from Indian law. Earlier, Mrs Freer's husband had cited Dewar in his divorce proceedings and, under the Indian Penal Code, enticement and adultery were crimes. Dewar, therefore, possibly faced five years imprisonment, a fine, or both. The gist of the issue, as far as the Indian army was concerned, was that Mrs Freer should be excluded to avoid a 'scandal' arising that would finish Dewar's career and prove 'detrimental to the interests of the staff … [and] … the services generally'. Assessing the matter as not falling under its portfolio, the Department of External Affairs passed it to the Department of Interior, where it was incorrectly interpreted as a formal request. Robertson, Hohmann and Stewart therefore argue that the real basis of Paterson's decision to prohibit Mabel Freer's entry into Australia was not on the grounds of her being an undesirable character but rather to prevent exposure of adulterous

28 Dewar also spoke to the press, questioning the reliability of information on which the government based its decision and revealing that it was his own family that threatened the ban. Ibid., pp. 246–8.

29 Ibid.

30 Departmental paper, Interior, n.d. [c. late November 1936], quoted in ibid., p. 249.

31 Ibid., pp. 249–50, 255.

behaviour of British Indian army officers and the possible legal consequences to Dewar.[32]

In time, other Cabinet members gained access to the case papers and seriously questioned Paterson's actions over, and motives for, Mrs Freer's exclusion and brought the case to public attention. On 3 December, for instance, the Sydney *Daily Telegraph* reported that Cabinet members accused Paterson of acting without studying the documents; and while he told parliament he was protecting Mrs Freer, 'actually he was protecting Departmental officers'.[33] Nonetheless, an ensuing Cabinet meeting upheld the prohibition and a second attempt by Mrs Freer to enter Australia through Sydney, allegedly funded by the *Telegraph*, saw her again face, and fail, a dictation test in Italian. Despite a High Court application for a writ of *habeas corpus*, Justice H.V. Evatt of the High Court ruled that Mrs Freer was a prohibited immigrant and she returned to New Zealand to continue her fight to enter Australia. The situation remained unchanged until June 1937, when Cabinet reversed its decision. Robertson, Hohmann and Stewart contend that Cabinet's motives for the reversal were purely political: in the previous months, the Freer case became an oft-touted example of the Lyons government's shortcomings and seemingly a contributing factor in Labor's victory in the Gwydir by-election and the failed constitutional referenda. It was also helpful that the Freer–Dewar relationship had been ended. Arriving to a rapturous welcome in Sydney on 12 July, Mabel Freer graciously told the press of her pride that 'a mere woman' had faced down the Australian Government. As for Paterson, she felt 'sorry for him'.[34]

Mabel Freer was not the first British passport holder turned away from an Australian port, nor was it the first time that the dictation test was applied to a British subject, but this case caused deep unease among many Australians.[35] When she declared, 'I have a British passport, which enables me to land in any British Dominion', Mabel Freer was expressing a belief

32 Ibid., pp. 256–8.

33 Sydney *Daily Telegraph*, 3 December 1936.

34 Ibid., p. 252. Paterson's handling of the case destroyed his political career.

35 The first British subject to be excluded by the dictation test was an Irish woman, excluded in 1914 after failing a test in Swedish. Robertson, *et al*, 'Dictating to One of "Us"', p. 268 note that the reasons 'for exclusion of British nationality in the years until 1935 … cover the prescribed spectrum, with the possession of criminal records and the harbouring of disease being of roughly equal importance as excluding factors'. Numbers of other British subjects, with unspecified racial origins, listed as having been excluded by the dictation test are: three in 1923, four in 1926, two in 1930, two in 1933 and two in 1934. The last time an applicant passed the Dictation Test was in 1909. See Gwenda Tavan, *The Long Slow Death of White Australia*, Scribe Publications, Melbourne, 2005, p. 24.

held by the Australian public, who thus found it inexplicable that she could be excluded from Australia. J.W. Spender KC, who went on to represent the Commonwealth when the Freer case reached the High Court, told the press that applying the dictation test against a white British subject was 'a gross misuse of the powers' of the Immigration Act. Its application implied that, if Mrs Freer were allowed into Australia, she might be subjected to further tests whenever she left and returned: 'a prospect to frighten every immigrant'. There was further public apprehension when a statement on behalf of the government noted that the possession of a British passport did not exempt the holder from compliance with local Regulations.[36] Mabel Freer's case not only cast doubt for Australians on one of the advantages of British subjecthood – that (white) British subjects enjoyed unimpeded movement throughout the Empire – but it also caused concern that they too could be subjected to the dictation test on their return from overseas travel. The only feature that visibly distinguished an Australian passport from its British counterpart was the preamble, which was signed by the Governor-General of the Commonwealth.

The government also tried to control the issue of Australian passports to women on perceived moral grounds. In 1929, acting on information that an underage Australian girl, having obtained a passport, had subsequently been lured overseas, the Home and Territories Department instructed its staff to withhold passports for single women 'until after the fullest investigation'.[37] Some officials were, in fact, motivated by sincere, if paternalistic, intentions, as the interwar period witnessed the rise of the globalised trafficking of sex workers, a practice known as the 'white slave trade'. By 1928 the problem had reached crisis point internationally. A large proportion of these women brought to Australia were from France, lured by promises of lucrative overseas employment. The casualty rate of the war had devastated French family life. For women, marriage prospects hinged on the dowry offered by their families and with a large number of male providers and family savings lost during the war, many women had to seek employment, often drifting into prostitution.[38] The

36 Robertson, *et al*, 'Dictating to One of 'Us', pp. 247–48, 268–71.

37 Memorandum, Quinlan to all State Collectors of Customs, 28 March 1929, NAA: A1, 1929/3913.

38 Melbourne *Herald*, 'White Slavery: Facts in Suppressed Report Revealed', 26 January 1928. See also NAA: B741/3, V/3972. The French casualty figures from World War I included: 1,385,000 men killed and 361,000 missing (leaving 680,000 widows and 760,000 orphans); and 4,200,000 were wounded of which 1,500,000 were assessed as permanently maimed. Ten per cent of the active population, representing 3.5 per cent of total population, perished.

international passport system, supported by ever-improving telegraphic and telephonic technologies, was an effective way to intercept procurers. As an example, in 1929, cooperation based on the exchange of passport information by Australian and French police led to the arrest of the 'white slave agent' Jean Georges Vigneron, a deportee from Australia, whose network spread from France and North Africa to brothels in Perth, Adelaide and Melbourne.[39]

While anecdotal evidence suggests that some Australian actresses and dancers were tricked by procurers into working in the 'sex trade' overseas, to date there is no information to support the case that Australian women intentionally sought to be involved. Nonetheless, it is quite possible that the government's intervention in some cases did save vulnerable women from predators, but this is difficult to establish.[40] Discretion was summary, making it problematic to determine whether the Australian women were at risk and if discretionary intervention had prevented their entrapment. There was nothing in the passport application that would indicate whether the application involved was the result of coercion or enticement or whether it was based solely on a woman's independent decision; nor did the 'fullest investigation' include the applicant's account of her motives for travelling overseas.[41] Furthermore, officials often sought to deny a single woman a passport in cases where she might choose to travel alone with a man, dance professionally in Buenos Aires or Manila, or simply leave Australia without her parent's permission. A letter from the woman's parents was usually enough to guarantee ministerial intervention.[42]

Generally, women barred from solo travel accepted the decision without demur. But from the mid-1930s, women began to challenge the government's adherence, without accountability, to an Act that, to all intents and purposes, policed women's lives. One such case began in

39 Circular, 'Vigneron, Jean-George – White Slave Agent', HTD to all State Collectors of Customs, NAA: D1915, SA1711. See also NAA: B741/3, V/3972 and V/6379.

40 See for example, Melbourne *Age*, 'White Slave Traffic', 11 April 1928; and NAA: B741/3, V/3972.

41 Memorandum, Quinlan to State Collectors of Customs, 28 March 1929, NAA: A1, 1929/3913. In files relating to passports for single Australian women, there are no statements/transcripts of interview by Australian women denied a passport. Files related to the international sex trade contain statements by French prostitutes included in contemporary newspaper stories and in Commonwealth Investigation Branch and police reports. For examples, see NAA: B741/3, V/3972.

42 These facts are set out in Opinion no. 142 of 1934, Knowles, 13 September 1934, NAA: A461, A349/4/1 part 1.

Nurses for Spain: Misses U. Wilson, E.M. MacFarlane and W.M. Lowson preparing to embark for Spain aboard the *Oronsay*, c. 1936
(*Melbourne Argus Newspaper Collection of Photographs, State Library of Victoria*)

October 1936, when four Australian nurses – Wilhemina Lowson, Una Wilson, Ethel Macfarlane and Agnes Hodgson – applied for passports to travel to Spain to provide nursing support to the anti-fascist cause in the Spanish Civil War. The four nurses expected to be attached to English nursing units sent to Spain under the auspices of the British Trade Union Movement.[43] Rumours that they would be met in Europe by Egon Kisch

43 See NAA: A1, 1936/11988. The Spanish Civil War (1936–1939) followed an attempted coup by elements of the Spanish army against the government of the Second Spanish Republic. See for example, Antony Beevor, *The Spanish Civil War*, Penguin, London, 2001.

fuelled government suspicion, Billy Hughes remarking in the House of Representatives: 'I have my own opinion of these nurses, whom happily I do not know'.[44] Commonwealth Investigation Branch enquiries revealed that, while the nurses' funding was provided by the CPA-sponsored Spanish Relief Committee, they themselves were not party members.[45] The Department of the Interior (the successor of the Home and Territories Department) sought to invoke the 1870 British Foreign Enlistment Act, which prohibited British subjects from joining the forces of a foreign state at war with a state that was at peace with Britain. But, as the nurses were non-combatants, the statute could not be applied. Undeterred, the Department of the Interior sought to refuse the applications on the grounds of concern for the nurses' welfare: their sponsors had only paid for a one-way passage and they could find themselves possibly facing the 'grave' danger of being stranded abroad.[46] Two days out from the due departure date, the nurses were ordered to produce documentary evidence of financial guarantees for their return to Australia.[47] The resourceful nurses and their supporters were able to submit the required statuary declarations within 24 hours. Left with no choice, the government approved and issued the passports and the women departed in a fanfare of publicity.

Since the introduction of the WPA Passport Regulations 1916, superseded by the *Passports Act 1920*, Australians believed that the Minister for the Interior possessed full discretionary powers to withhold or issue passports. Paragraph 8 of the notes printed on the back of the passport application form read:

> The issue of a Passport is a matter within the discretion of the Minister for the Interior, who may require applicants to furnish evidence on any subject regarding which he deems it necessary to be informed, and may require such evidence to be furnished in the form of a Statutory Declaration or otherwise; and may authorize or withhold the issue of a Passport without assigning any reason therefore.[48]

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44 *Commonwealth Parliamentary Debates* (*CPD*), *House of Representatives* (HR), vol. 152, 23 October 1936, p. 1245.

45 Memorandum, Passports Section to Sydney Collector of Customs, 21 October 1936, NAA: A1, 1936/11988.

46 Departmental memorandum, Interior, 22 October 1936, ibid.

47 Sydney *Sun*, 'Nurses for Spain', 22 October 1936.

48 For an example of the application, see NAA: A659, 1949/1/839.

Clarifying the validity of this note became necessary in 1934, when two Western Australian passport applicants threatened legal proceedings to test the minister's authority to withhold the issue of a passport.[49] On being advised of the situation, Department of the Interior officials reviewed the Act and discovered that while the minister had the power to cancel an existing passport, there did not appear to be any provision in the Act for him to withhold the issue of a passport.[50] The matter was referred to the Solicitor-General, George Knowles, who confirmed that the legislation did not specifically confer power on any authority to issue or withhold passports. At the heart of the considerations was 'that the purpose of the Act [was] not to prohibit intercourse with countries overseas, but to insist on, as a prerequisite to embarkation, the possession of a passport'. As the Act penalised persons travelling outside the Commonwealth without a passport 'or other document authorising the departure', the Act, therefore, 'contemplates a duty' in the issuing authority to grant the passport or permit. Knowles advised that it was a 'discretionary duty' but it was one that:

> should only be exercised adversely to the applicant in accordance with some principles determinable from the very nature of the passport itself. Thus, it would be in order for the issuing authority to refuse to issue a passport in those cases in which the issue thereof to the particular person concerned would be inconsistent with the request to another Government to afford him every assistance, etc. (as in the terms of the passport) e.g. where the applicant was a known criminal.[51]

The difficulty, in Knowles's view, was that there were no specifications in the Act of the grounds that existed for 'declining to ask the assistance of another Government in connection with the journey contemplated' which meant that it was impossible to state grounds held to be sufficient by a Court:

> It is only possible to say that, in my opinion, they must consist in matters of fact relating to the character of person who seeks the support of the Commonwealth Government in order to obtain assistance and protection abroad, or relating to the object of the journey or possibly relating to the countries which it is proposed to visit. It is conceivable that the Government might not be prepared

49 Memorandum, H.St.G. Bird, Collector of Customs, Perth, to Secretary Interior, 23 June 1934, NAA: A6980, S250720.

50 Memorandum, Interior to A-G's, 19 July 1934, ibid.

51 Opinion no. 142 of 1934, Knowles, 13 September 1934, ibid. Emphasis in original.

> to invite the assistance of a certain other Government – but this question does not normally arise in time of peace…[52]

With regard to the wording of Note Eight on the back of the passport application form that stated the minister could authorise or withhold a passport without assigning any reason, Knowles believed clarification was required. If the words were intended to convey that the minister had unfettered discretion to issue or withhold a passport 'just as he pleases', then some variation needed to be made 'of the terms of such paragraph'. Without that amendment, the words, as they stood, were '*capable of the inference* that the Minister's discretion is unfettered'. Knowles's opinion, therefore, was that it was preferable to omit altogether the words, 'may authorise or withhold the issue of a passport without assigning any reason', from the note.[53]

Nonetheless, despite the obvious need to review the legislation, Paterson did not present a submission recommending new legislation to Cabinet until July 1936. The submission pointed out to ministers that the difficulty with the 1920 Act arose because its basis lay with emergency wartime passport Regulations that gave the minister 'full discretion in regard to the issue of passports, and that by not approving the grant of a passport to any individual applicant, or other document authorising his departure, such person could be prevented from leaving'. The Knowles/Attorney-General's Department's opinion was that the mandatory nature of the passports implied a duty to issue. Thus, if the government believed it needed statutory power to prevent people from departing Australia, then the legislation would, at the least, require amendment.[54]

Paterson advised Cabinet that most of the reasons put forward at the time of the Act to justify mandatory passports were obsolete. Compulsion had served a purpose when applicants were required to obtain an income tax clearance before they obtained an Australian passport but the Income Tax law had now been amended to require the clearance certificate to be obtained 'in every case before a passage ticket is issued'. As for the argument that compulsion should be retained as a means of checking criminals, Paterson countered that 'few such cases came under notice'. Nor was the legislation in its present form suitable for extension to the Australian territories of Norfolk Island and Papua, and the mandated territory of New Guinea. It was particularly desirable that 'the issue of passports in that territory should be put on a proper footing', given

52 Ibid.
53 Ibid. Emphasis added.
54 Cabinet submission, Paterson, 9 July 1936, ibid.

'developments in New Guinea and the fact that there is now direct shipping service between Rabaul and the East'. The simplest option was to extend the legislation to the territories and to use a Commonwealth passport instead of a separate document for each territory.[55]

There were also political considerations for amending the legislation. Australia was the only Dominion that compelled a person leaving the country to hold a passport. Most Australians now accepted that it was necessary 'for practically all travellers to obtain passports before proceeding abroad'. The principal concern, however, was the scope of discretionary power. Paterson argued that if compulsion were repealed, there must be 'no doubt as to the power of the Minister or an authorised officer to refuse the grant of passport facilities in cases where such action is warranted in the interests of the Commonwealth, the States or British countries abroad'. He recommended that the Act be repealed and new legislation substituted containing provisions:

> (a) for the issue and renewal of passports … ;
>
> (b) for the grant of visas and for endorsements;
>
> (c) for prescribing … fees;
>
> (d) empowering officers to withhold the grant of passports, visas or endorsements in accordance with any special or general direction of the Minister;
>
> (e) empowering the Minister or authorised officers to cancel any passport issue by or under the authority of the Commonwealth Government; and to cancel the visa or endorsement on any passport; and also empowering officers to collect passports which have been so cancelled;
>
> (f) empowering officers, in accordance with special or general directions off the Minister to collect and detain passports held by persons about to enter or who have entered the Commonwealth;
>
> (g) prescribing penalties, not exceeding £50 or imprisonment for three months, for making false or misleading statements for the purpose of obtaining or assisting any person to obtain a passport, or visa, or endorsement of a passport;
>
> (h) extending the Act to the Territories of Papua and Norfolk Island and the Mandated Territory of New Guinea.[56]

55 Ibid.
56 Ibid.

H.V. Evatt, c. 1940. In 1940 Evatt resigned from the High Court and was elected federal MP for the Sydney seat of Barton. In 1941, he became Attorney-General and Minister for External Affairs in the John Curtin Labor government (*National Library of Australia*)

On 14 October, Cabinet approved that a Bill be drafted and submitted to the Attorney-General before tabling.[57] Distracted and eventually overwhelmed by the Freer case, Paterson failed to bring the legislation to parliament. It was a further two years before the draft Bill was submitted to Cabinet by his successor as minister for the interior, John McEwen.[58] In the meantime, a case appeared before the High Court that strengthened the legal basis of the ministerial discretionary power.

During the 1920s, the discretionary power to withhold issue of a passport came to be applied against spouses, usually the husband for reasons of maintenance and alimony. The case in question here, however, applied against the estranged wife of the applicant. In January 1937, a Mr C.W. Purves applied for a writ of *mandamus* against Paterson to restrain him from issuing a passport to Mrs Purves.[59] Justice Evatt ruled that the minister possessed discretionary power to refuse to issue a passport, or 'at least a discretionary power to cancel any passport which has been issued', a view supported 'by the general tenor of the enactment which derives from wartime conditions'.[60] This was not an absolute power. It was subject to review by the High Court, limited to grounds relevant to the nature of a passport and should conform to 'the

57 Handwritten note on submission, ibid.
58 Cabinet submission, J. McEwen, 23 February 1938, ibid.
59 Evatt J., in *The King v. Paterson, Ex parte Purves* [1937] Argus L.R. 144 at 146.
60 Ibid. See also Robert S. Lancy, 'The Evolution of Australian Passport Law', *Melbourne University Law Review*, vol. 13, June 1982, p. 443.

general objects' of the Act.[61] Purves's application was refused, Evatt ruling that the minister 'might very properly consider that his great statutory power would be abused if he interfered with Mrs Purves's liberty of movement solely because she had been living apart from her husband'.[62] Evatt concluded that the matter was one 'which the Statute has referred to his discretion, and, so long as the Minister carries out his duties honestly, no Court may interfere with him'.[63]

Evatt's ruling foreshadowed the latitude that courts would accord the government in exercising its discretion to withhold passports.[64] Nevertheless, the minister's discretionary power in the issuing of passports remained compromised as long as the law required Australians to carry passports when travelling outside the Commonwealth. Events in Europe at the time were also providing an additional spur to the imperative to review the Act.

By March 1938, Hitler's troops were in Austria and it was widely believed that they would soon move into Czechoslovakia. In April, an Interior submission advised McEwen that an additional reason had arisen to necessitate new passport legislation: statutory authority was required to issue certificates of identity to persons unable 'for any reason' to obtain national passports. 'German and Austrian Jews who have been and may be admitted to the Commonwealth will find themselves unable to obtain national passports if they wish to travel abroad'. The Nansen Passport was not discussed as an alternative, rather the paper recommended a document based on Britain's 'useful' certificate of identity.[65] The Jewish refugee problem, therefore, was an impetus for McEwen to resubmit Paterson's recommendations for new legislation to replace the *Passports Act 1920*.[66]

In steering the draft Bill through parliament in June 1938, McEwen declared that such provisions as the definition (or nature) of a passport, the failure to provide sufficient statutory power to make Regulations and the compulsion clause were 'no longer necessary'.[67] The subsequent parliamentary

61 *The King v. Paterson, Ex parte Purves* [1937] Argus L.R. 144 at 146.
62 Evatt J., quoted in ibid., p. 443.
63 Ibid., n. 146.
64 See Lancy, 'Evolution of Australian Passport Law', p. 443.
65 Ministerial submission, A.R. Peters, Immigration, Passports and Naturalization Section, to McEwen, 27 April 1938, NAA: A6980, S250720.
66 The Lyons government were keen to finalise policy and administration in relation to refugees from Europe. After an international conference in Evian, France, in 1938, Australia agreed to accept 14,000 refugees from Germany and the Sudentenland. Beverley Joan Hooper, 'Australian reactions to German persecution of the Jews and refugee immigration: 1939–47', PhD thesis, Australian National University, 1972, p. 86.
67 Second Reading Speech, Passports Bill 1938, *CPD*, HR, vol. 156, 21 June 1938, p. 2321.

Jewish Migrants arriving in Australia, 1939
(*National Library of Australia*)

debate centred on the proposed broadening of the minister's discretionary power and the non-reviewability of a ministerial decision. McEwen defended the ministerial right to conceal reasons for cancellation or refusal of issue by arguing that passports were government 'testimonials' to facilitate travel, issued with the minister's 'seal of approval'. The minister should not be required to explain the exact reasons that had influenced any refusal:

> In our private lives, there are many occasions when, for reasons which are quite adequate, we feel justified in declining to give a testimonial to some person, but we should not like to be called upon to disclose our reasons, or be compelled to justify our action. In regard to the issue or refusal of passports, a Minister of the Crown is in a comparable situation.[68]

68 Ibid., p. 2422.

It was a weak analogy and the Opposition argued strongly against a passport being refused, cancelled or recalled 'unless and until reasons subscribed by the Minister have been conveyed to the applicant or holder'.[69] There was also an unsuccessful attempt to move an amendment that reflected 'that if improper reasons did actuate a refusal the matter could be properly ventilated in the courts'.[70] Despite the resistance on the discretionary issue, the Bill passed through parliament and was enacted on 5 July 1938. The new Act confirmed the minister's statutory discretionary power that had been under question. Lancy argues, however, that the open-ended nature of discretionary power and its potential for misuse was not 'adequately or finally resolved'[71] During the debates on the draft Bill, there was little attention given to the abolition of the compulsion to carry a passport. A possible reason for this may be that, by this time, most Australians appreciated that, unless they carried a passport, they would probably be refused entry into their country of destination. The 1938 legislation did not positively compel Australians travellers to carry a passport, practical necessity did.

The 1938 Act was a turning-point in relation to other passport issues other than those related to discretionary power. The legislation distinguished between Australian and British passports: Australian passports were issued under the legislation, as against British passports, 'issued by or on behalf of the Government of any part of His Majesty's Dominions and includes an Australian passport'. Both, or either, could be issued to 'British subjects', who included Australians, 'entitled to all political and other rights, powers and privileges to which natural born British subjects were entitled'. The category also included 'an aboriginal native of any country under the protection of His Majesty'.[72] The new legislation also provided for fraud: a passport must be surrendered if it was believed that it had been obtained by false or misleading statements. Proceedings for an offence against the Act could be instituted, 'either in the state or territory where the offence was committed, or in the state or territory in which the defendant was found'. Finally, regulation-making powers were inserted that included the issue of 'certificates of identity or other documents of identity for travel purposes' to persons unable to obtain national passports in Australia.[73] The last provision applied also to 'stateless persons and others'.[74]

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69 For example, F. Brennan, ibid., p. 2419. Brennan, Member for Batman, Victoria, was Attorney-General in the Scullin government in 1929.

70 P.C. Spender, ibid., p. 2421.

71 Lancy, 'Evolution of Australian Passport Law', p. 441.

72 *Passports Act 1938* (Cth), s. 5.

73 Ibid., ss 9(1), 11 and 12(a).

74 Second Reading Speech, Passports Bill 1938, *CPD*, HR, vol. 156, 21 June 1938, p. 2323.

When war was declared on 3 September 1939, the conservative government under Robert Menzies immediately put Australia on a war footing. A National Security Act had already passed through parliament and was enacted on 9 September. By this time, passport Regulations directed towards wartime conditions had been in place for almost two months. In contrast to the difficulties surrounding the introduction of such Regulations in World War I, their re-establishment in 1939 was almost seamless. This situation was due, in the main, to the installation of highly protectionist immigration and passport controls in the interim period that had delivered a tight administrative and policy framework that converted easily to the demands of global warfare. The introduction of conscription in October 1939 – all men aged 21 were called up for three months militia training – meant that the passport system's primary purpose in World War II was not to monitor the travel of men of military age but to scrutinise incoming alien traffic. Throughout the war, the Menzies government, and the subsequent Labor governments led by John Curtin and J.B. Chifley, remained concerned about the ability of pro-Axis agents to exploit the Australian passport system. The loss of a passport, particularly if the holder had misplaced it inflight from the enemy, was regarded gravely. To reduce the possible effects of the lost passports falling into the wrong hands, the United Kingdom and the dominions shared a meticulously updated lost passports register.[75] Throughout the war, Australian authorities were suspicious of all non-military passport holders, particularly those carrying US, Dutch or Spanish documents.[76]

While there were relatively few amendments to the National Security (Passport) Regulations during the war, insertions were added as unforeseen problems arose. For example, many Australian women and families wanted to follow their service relatives overseas. In May 1940, the Army Council issued instructions that passports were 'not to be issued to wives, families and fiancées of the AIF to enable them to proceed to Egypt and Palestine'. Consideration was also to be given to the repatriation of those wives, families and fiancées already in Egypt and Palestine.[77] In

75 See 'Loss of Passports' NAA: D1976, SB1942/225; and 'National Security Regulations: Loss of Blank British Passports', NAA: A659, 1946/1/1714.

76 See for example, paper, 'Passport Control', Department of Army, 20 June 1941; and handwritten notes, G. Roberts, 1B Army Headquarters, 27 February 1942, NAA: A373, 1680; and memorandum, 'Spanish Pro-Axis Agents', W.J. Mackay, Director-General of Security, to Deputy-Director of Security, Adelaide, 1 July 1942, NAA: D1919, SS969.

77 Memorandum, Headquarters, Southern Command, Melbourne to 4th and 6th Military Districts, 14 May 1940, NAA: P617, 509/1/7.

July, the restriction was broadened to include women or children wanting to travel to Britain 'except where it can be shown that the journey was required to be undertaken for urgent business or personal reasons'.[78] When the Pacific theatre opened at the end of 1941 the decisions were extended to women wanting to proceed to 'Singapore or elsewhere where their relatives might be stationed'.[79] Passports would be issued only in extenuating circumstances, applicants needing to prove that travel would not compromise the national interest. These provisions were accepted, initially, without complaint.

On 12 December 1940, the War Cabinet approved, as a 'special case', a passport for Lady Blamey, the wife of Lieutenant General Sir Thomas Blamey, Commander of the 2nd AIF, to enable her to join him in the Middle East.[80] At the height of the ensuing public indignation, the Melbourne tabloid, the *Truth*, raged that Lady Blamey's 'special' passport symbolised 'a distinction between the tall poppies and the rank and file that is sharply contrary to the Australian spirit'. If it was good enough 'for the wife of the General Officer Commanding to visit her husband at the front, or at some place behind the front, it is good enough for the wife of any soldier who is able to afford the journey… or for any mother to be allowed to go and see how her son is getting along'.[81] The story that Lady Blamey was joining her husband to establish a Voluntary Aid Detachment Unit failed to soften public anger.[82] Given that it was now inevitable that the Passports Office 'will be pestered with queries and travel applications of a similar nature and possibly on the same ground', Defence demanded 'stricter press censorship'.[83] On 17 January 1941, the full Cabinet decided that Lady Blamey be asked to return to Australia. The following month, Blamey cabled Canberra that owing to Lady Blamey's 'firm attitude' he found himself on the horns of a 'most embarrassing dilemma'. Lady Blamey had sought legal advice and was:

> determined to take the whole matter out of my hands. She wrote to me to represent that her passport was properly obtained and is

78 Memorandum, Military Board, 1 July 1940, NAA: MP70/3, 1940/142.
79 Background provided, when matter raised again in 1944, in memorandum, Defence, 6 January 1944, NAA: MP742/1, 244/1/285.
80 See 'Return of Lady Blamey to Australia', NAA: MP729/7, 67/421/6.
81 Melbourne *Truth*, 'That Lady Blamey Affair', 18 January 1941.
82 On 7 January 1941, Blamey wrote to the Minister for the Army, suggesting that Lady Blamey supervise a VAD Unit for AIF members. See letter, Blamey to Spender, 7 January 1941, NAA: MP729/7, 67/421/6.
83 Minute, Defence, 15 January 1941, NAA: MP70/3, 1940/142.

> in order … and … that she objects to the humiliation of returning under orders. Acting on legal advice, she intends to maintain her rights as a free subject. In the circumstances I propose to withdraw entirely from the matter until legal position determined.[84]

The matter was settled by Menzies, in London for discussions with the UK Government on the empire war effort.[85] Two weeks later, Blamey was informed that, while 'regretting' Lady Blamey's 'attitude', the government had decided that it would take no further action to press for her return.[86]

The 'Lady Blamey affair', as it was popularly known, demonstrated that Australians understood their 'right' to hold a passport 'properly obtained'. While they could accept that wartime Regulations might temporarily withhold that right, they could not accept that this restriction was not equally applied.[87] Menzies' action in 1941 was a glimpse of the discretionary interventions of the 1950s Cold War, when Australians discovered that no-one enjoyed a 'right' to an Australian passport'.

84 See War Cabinet agendum no. 45/1941, 3 February 1941, and supplement no. 1, 26 February 1941; and Cablegram I.2741, Blamey to Acting Prime Minister, 23 February 1941, NAA: MP729/7, 67/421/6.

85 Telegram no. 41, Menzies to Canberra, 26 February 1941, ibid. Menzies stated that Blamey's expertise was of paramount importance and Lady Blamey's presence would 'do much to keep him fit and well'.

86 Cablegram 3248, Secretary, Department of Army, to Blamey, 14 March 1941, ibid.

87 See for example, 'Soldiers Wives', letter to Editor, Melbourne *Argus*, Grace Smith, Toorak, NAA: MP70/3, 1940/142.

5

‘A Precedent for Similar Action’: Discretionary Power, the Cold War and Passports

The postwar aims of the Chifley Labor government (1945–1949) were reconstruction and development underpinned by large-scale immigration. Its foreign policy emphasised multilateral engagement with organisations such as the United Nations. Its domestic policies were increasingly challenged with the onset of the Cold War. The Opposition criticised Labor’s Minister for External Affairs, Dr H.V. Evatt, for his ‘unrealistic’ liberal-internationalism and viewed both him and the government as ‘soft’ on communism. In December 1949, the Chifley government was defeated in general elections by the Liberal–Country Party coalition led by R.G. Menzies. In an international atmosphere of acute crisis, communists and communism were never far from the front pages of Australian newspapers.[1] Menzies saw the containment of domestic communism as equally important as fighting the ‘global conspiracy’ and his election pledge to confront and defeat it was a central theme throughout the ensuing decade. Australia’s passport policy played a critical role in the coalition’s anti-communist strategy: as soon as the government took office the question of policy ‘to be followed in relation to the security aspects of passport issue’ was investigated.[2]

The 1949 election was conducted against the backdrop of the fall of China to Mao-Zedong’s communists. For many Australians, the anxiety and

1 Peter Edwards with Gregory Pemberton, *Crises and Commitments*: *The Politics and Diplomacy of Australia’s Involvement in Southeast Asian Conflicts 1948–1965*, Allen & Unwin, Sydney, 1992, p. 63.

2 Background paper, Immigration n.d. [c. post-1963], ‘Outline of Government Policy on Issue of Passports to Communists from 1949 until 1964’, NAA: A6980, S250159.

fear once projected onto Japan was replaced by fear of an expansionist communism involving an 'enemy within'. Menzies and most of his coalition colleagues articulated the struggle in global terms, fusing the three elements – fear of Asia, fear of communism and fear of a fifth column.[3] The Country Party leader, Arthur Fadden, declared that from 'the battlefronts of China', communist forces were thrusting their 'Red spearpoints towards Australia' as a 'fifth column' operated internally 'as part of a conspiracy for world conquest, sabotage of our industries and defence activities'.[4] This pronouncement became a coalition article of faith: that an internal communist enemy was operating with the object of sabotaging the prosperity won by Australian hard work and sacrifice. On coming to power, the coalition government initiated a two-pronged anti-communist strategy. The first was that Labor's foreign policy priorities were reversed by emphasising cooperation with the Commonwealth and the United States at the expense of liberal internationalism and cooperation with the United Nations.[5] The second was containment of domestic communism. Communist candidates attracted only 87,958 votes in the election but Menzies characterised them as a treacherous minority with the power and will to 'red-ant' the Australian way of life.

The new government was eager to explore the role of passport legislation and policy in its fight against communism. Colonel Spry, Director-General of the Australian Security Intelligence Organisation (ASIO), the domestic counter-intelligence and security agency established in 1949, also played a key role. Spry's major concern was the potential of immigrants to bring communist thinking with them. Spry believed that the 'political persuasion of the state issuing a passport bore a direct relationship to the political allegiance of its holder. A passport issued by a communist regime rendered its holder a potential enemy of Australia' and its possession 'indicated an increased likelihood that the holder shared the views of the state which issued it'.[6] In 1950, Spry assumed total responsibility for screening passport applications (a function previously held by the Commonwealth Investigation Branch), ordering the creation of a list of potential enemy aliens, particularly those who possessed a Soviet

3 Rawdon Dalrymple, *Continental Drift*: *Australia's Search for a Regional Identity*, Ashgate Publishing, Aldershot, 2003, p. 23.

4 Arthur Fadden quoted in ibid.

5 David Lee, *Australia and the World in the Twentieth Century*, Circa, Melbourne, 2006, p. 93. See also Percy Spender, *CPD*, HR, vol. 206, 9 March 1950, pp. 621–36.

6 David Dutton, *One of Us: A Century of Australian Citizenship,* University of New South Wales Press, Sydney, 2002, pp. 102–3; and memorandum, Spry to T.H. Heyes, Secretary Immigration, 10 October 1951, NAA: A6122, 1282.

bloc passport issued or renewed after 1 January 1948.[7] The Cold War normalised the paradigm that had evolved through the 1920s and 1930s, dichotomising the communist 'other' as aggressively expansionist and monolithic, while challenging the postwar ideal that an immigrant's national allegiance was mutable.[8] And it reinforced the notion that conservative Australian governments had held since 1917: that the most lethal and insidious form of subversion came from within. Between 1950 and 1956, therefore, the most aggressive and public use of passport policy as a national security tool was against Australian citizens.

Under the Chifley government before December 1949, the view prevailed that, as long as the CPA remained a legal organisation, its members could not be refused passports.[9] The Minister for Immigration, Arthur Calwell, argued that communists possessed 'the same rights, including passports and travel facilities, as other citizens receive'.[10] Chifley himself wrote that passports were usually issued except 'in very exceptional circumstances', such as when an individual was 'seeking to evade criminal prosecution, or where it was within the knowledge of the Minister that the grant of such facilities would definitely be opposed to the well being of the applicant':

> It is not the practice to refuse to grant passport facilities solely on account of the political beliefs of a person and it is considered that it would be undesirable to adopt a rule which could be used to deny the grant of such facilities on the ground that an applicant had communistic tendencies and which could conceivably serve as a precedent for similar action in the case of persons holding other political views.[11]

Nonetheless, the government was pressured to account for travel by Australian communists, 'fellow travellers' and Australians to communist-sponsored events.[12] In February 1948, the Independent member, J.T. Lang,

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7 Memorandum, Immigration, 13 November 1951, NAA: SP1655, 55/25/75515. It was later decided that dates should be used that signaled at which time certain communist regimes came to power: China: 1 October 1949; North Korea: 1 July 1950; and Albania, Bulgaria, Romania, Poland and Czechoslovakia: 26 February 1948.

8 Dutton, *One of Us*, pp. 102–3.

9 Background paper, Immigration, n.d. [c. post-1963], 'Outline of Government Policy on Issue of Passports to Communists from 1949 until 1964', NAA: A6980, S250159.

10 Arthur Calwell, Minister for Immigration, quoted in Phillip Deery and Craig McLean, 'Behind Enemy Lines: Menzies, Evatt and Passports for Peking', *The Round Table*, vol. 92, no. 1, July 2003, p. 411.

11 Letter, Chifley to J.C. Neagle, General Secretary, Returned Soldiers and Airmens Imperial League of Australia, 8 December 1948, NAA: A461, A349/1/1 part 1.

12 Prime Minister's response, 15 August 1949, to Question Without Notice, 21 June 1949, ibid.

attacked Calwell for permitting the issue of passports to 50 members of the Eureka Youth Movement, described by Lang as a communist auxiliary: 'Was not the Minister aware that these youths proposed to enlist in a communist international army? Is there any reason of government policy that makes it possible for Australians to serve in a communist foreign army?'[13]

For the Opposition coalition parties, the need to ask such questions confirmed their view that Labor was 'soft on communism'. The government, however, was not averse to using the power at its disposal to contain communists and leftists. In November 1947, left-wing activist Jessie Street's credentials were withdrawn, effectively banning her from representing Australia at the signing of the UN Declaration of Human Rights in 1948. Street described herself as a socialist, not a communist, but she was considered sufficiently suspect for Chifley to authorise continuation of covert surveillance of her activities that had begun before the war.[14] The government also obtained prosecutions under the Crimes Act to secure the detention of CPA leaders and passed legislation to defeat the 1949 coal strike, that allowed union officials to be gaoled and the troops deployed to unload ships and work in the mines.[15]

If the Chifley government was prepared only to act against the CPA when their activities breached Australian industrial laws, the successor Menzies government saw the party, its members and its activities entirely as a fifth column intent on subversion. As part of its electoral pledge to defeat communism, the coalition promised to outlaw the CPA and in April 1950 Menzies tabled the Communist Party (CPA) Dissolution Bill in parliament. The Bill's preamble described the CPA's objectives as seeking to accelerate the coming of a revolution in which it would seize power and establish a 'dictatorship of the proletariat'. Communists were prepared to attain political, economic and industrial ends by force, violence and fraud.[16] Australia, declared Menzies, was 'not at peace … except in a technical sense'.[17] The Bill sought power to outlaw the CPA and bar its members and 'fellow travellers' from the public service and registered trade unions.

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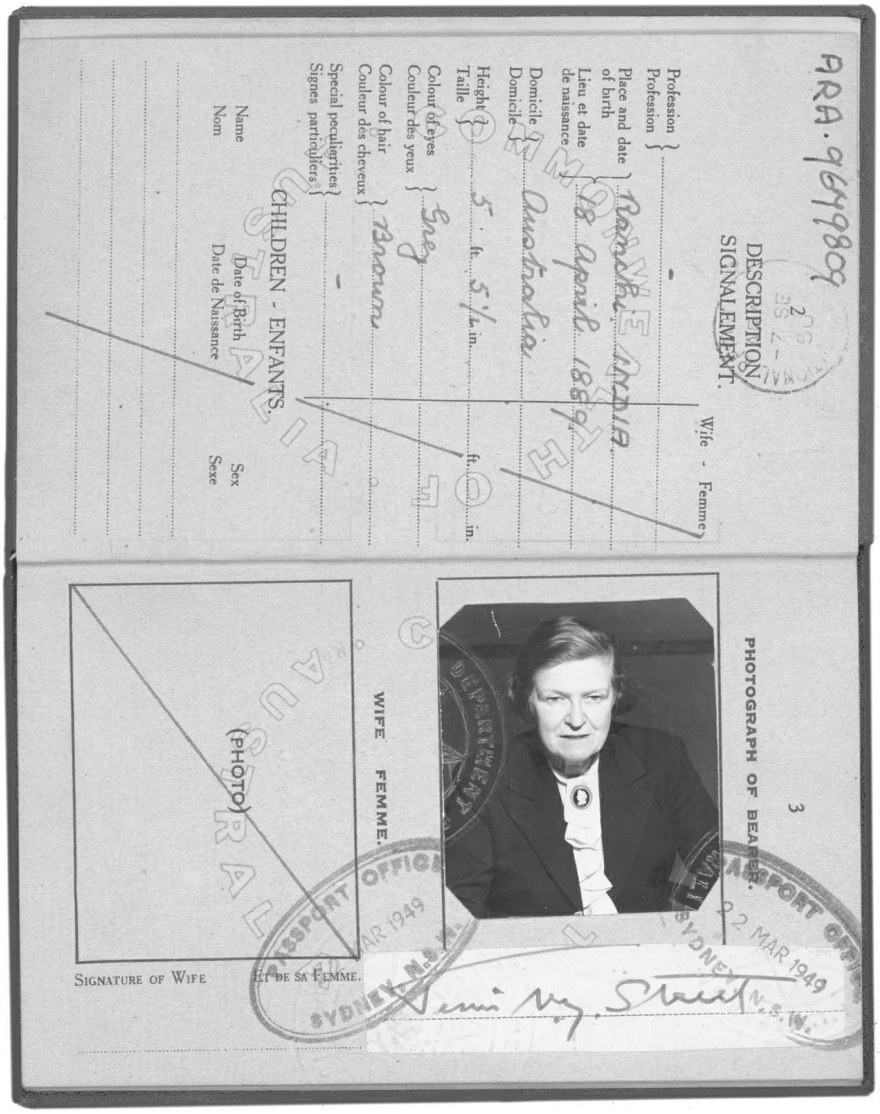
13 Hansard, HR, clipping, 'Communism: Issue of Passports', ibid.

14 On Jessie Street, see Lenore Coltheart (ed.), *Jessie Street: a Revised Autobiography*, Federation Press, Sydney, 2004.

15 Les Louis, '"Operation Alien" and the Cold War in Australia, 1950–52', *Labour History*, vol. 62, no. 1, May 1992, p. 3. The *National Emergency (Coal Strike) Act 1949* (Cth) was enacted 30 June 1949.

16 Tony Griffiths, *Beautiful Lies, Australia from Menzies to Howard,* Wakefield Press, South Australia, 2005, p. 42.

17 *CPD*, HR, vol. 207, 27 April 1950, p. 1995. See also Louis, '"Operation Alien"', p. 2.



Jessie Street's Passport
(*National Archives of Australia*)

Three weeks after the Bill was introduced, the new Minister for Immigration, Harold Holt, looked to re-evaluate passport policy in relation to Australian communists. He particularly wanted to address situations where it was considered 'undesirable on security grounds that such members should travel abroad' and he wanted to know if he had the power 'under

the Passports Act and Regulations, to refuse to grant to a Communist any kind of travel document'.[18] The Solicitor-General K.H. Bailey's response echoed earlier interpretations of a passport's purpose put forward by Atlee Hunt and George Knowles. Functioning as a conduit between the Commonwealth and foreign governments, an Australian passport was intimately connected with the conduct of Australia's external relations, and its possession by someone whose conduct was 'objectionable to a foreign government' therefore involved the following possibilities:

(a) The Australian representatives in the foreign country may be embarrassed in their relations with the local government since the Australian representatives must afford some protection and assistance to the holder of an Australian passport.
(b) The foreign government may be embarrassed in its relations with the Australian Government and our local representatives insofar as it refrains from affording protection in case its refraining may be construed by the Australian Government as an unfriendly act.
(c) If the foreign government fails or refuses to afford protection, the Australian Government is placed in a dilemma as to whether it should protest at the failure to comply with its request for protection or whether it should accept the failure or refusal without demur.[19]

For these reasons, s. 8 of the *Passports Act 1938* permitted the minister to intervene but, Bailey noted, the discretionary power should only be exercised 'upon grounds conformable with the general objects of the Passports Act, that is, upon considerations relevant to the nature of a passport and its intimate relations with the conduct of external affairs'. In particular, discretionary power should not be applied 'for the purpose of satisfying a personal animosity'. Bailey was hesitant, however to express an opinion on whether CPA membership justified refusal or cancellation of a passport. In this situation, he believed the question raised 'matters of policy quite distinct from questions of law' and thought Holt could consider:

> the matters set forth in the preamble to the *Communist Party Dissolution Bill* in considering whether the activities of Australian communists abroad are likely to have an adverse affect on Australia's

18 Memorandum, Heyes to K.H. Bailey, Solicitor-General, 19 May 1950, NAA: A432, 1950/1115.
19 Opinion no. 8 of 1950, Bailey, Solicitor-General, 28 July 1950, ibid.

> relations with other countries which would of course be clearly a relevant consideration in deciding whether a passport should be issued to a person who is member of that party.[20]

On 25 June 1950, Communist North Korea's Kim Il-Sung, following consultation with the leaders of the Soviet Union and People's Republic of China, Joseph Stalin and Mao-Zedong, launched a surprise attack against South Korea. For the next three years a coalition of 16 nations, including Australia, with the authority of the UN and led by the United States, intervened militarily in the defence of South Korea. In November 1950, the Chinese intervened on behalf of the North Koreans and the conflict deteriorated into a bitter and protracted operation.[21] For Menzies, the Korean War came to underline the importance of his campaign against communism.[22] His government's approach to defence and international communism also appeared to have the support of the majority of the Australian public:

> Gallup polls indicated that communism was regarded as the Government's most important problem and the fear of another world war was the public's greatest worry.[23]

This support was not unanimous. Soon after the establishment of the then Soviet-backed World Peace Council (WPC) in 1949–1950, a small but lively branch was established in Australia.[24] The members included communists, left-wing intellectuals, unionists, civil libertarians and non-conformist clergymen. As the historian Tom Heenan notes, while the Australian Peace Council (APC) was dismissed by the government as a communist-front organisation, eight of its 24 council members were either ministers of religion or associated with Christian bodies.[25] All were concerned about the erosion of civil liberties in Australia and, by mid-1950, the APC joined with the communist-backed Democratic Rights Council (DRC) to campaign against the Communist Party Dissolution

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20 Ibid.

21 Peter Edwards, *Arthur Tange: Last of the Mandarins*, Allen & Unwin, Sydney, 2006, pp. 56–7.

22 Griffiths, *Beautiful Lies*, p. 48.

23 Edwards and Pemberton, *Crises and Commitments*, p. 64.

24 Phillip Deery, 'The Dove Flies East: Whitehall, Warsaw and the 1950 World Peace Congress', *Australian Journal of Politics and History*, vol. 48, no. 4, December 2002, pp. 449–68. The World Peace Council – an international organisation formed to promote peaceful coexistence and nuclear disarmament.

25 Tom Heenan, *From Traveller to Traitor: the Life of Wilfred Burchett*, Melbourne University Press, Melbourne, 2006, p. 93.

Bill. The government was cynical about the APC's motives and took a hostile stance against the movement, particularly when the principal guest at the inaugural APC congress in Melbourne in April 1950, Dr Hewlett Johnson, the so-called 'Red Dean' of Canterbury, described communism as a Christian movement. The statement outraged both the coalition and the Catholic right-wing elements in the Labor Party.[26] Holt declared that the international peace movement was funded by the Soviet Union and denounced the conference and the APC as a communist front. Johnson, for his part, had to return directly to the United Kingdom, having been refused a visa to return via the United States.[27] From this point the government and the peace movement were at loggerheads. The peace movement, said Menzies, was as 'authentic and deadly' as the communist's campaign in Korea; its enticement of Christians was 'blasphemy'.[28]

Australian life became permeated by the Cold War during the 1950s. In September 1950 Menzies returned from London and Washington to issue a 'Defence Call to the Nation': a series of radio broadcasts in which Australian defence policy was declared part of a global defence strategy.[29] The armed forces were expanded, compulsory military training introduced and a three-year rearmament program began. Weapons were stockpiled, the National Security Resources Board and a Department of Defence Production were established, and preparation of the War Book, which embodied plans for mobilisation, was accelerated. Expecting that the removal of communist trade union officials from office under the Communist Party Dissolution Act would trigger industrial turmoil, the government 'established a top-secret planning operation, code-named "Alien", to ensure the maintenance of essential services and industries'.[30] Through November and December 1950, until the High Court ruled the Dissolution Act unconstitutional in March 1951, 'Alien' received top priority in government planning.

Meanwhile, the WPC congress in Sheffield to take place in November had to be relocated to Warsaw after the British Government refused entry visas to 50 delegates (mainly from the Soviet Union).[31] Initially, the Menzies government was unconcerned about Australian attendance at the Sheffield conference, but when it was relocated to Poland, Holt threatened to 'deal

26 Edwards and Pemberton, *Crises and Commitments*, p. 64.
27 *SMH*, 23 April 1950.
28 Heenan, *From Traveller to Traitor*, pp. 93–4.
29 Edwards and Pemberton, *Crises and Commitments*, p. 64.
30 Louis, '"Operation Alien", pp. 3–4. Plans included arranging for troops and sailors to act as strike breakers.
31 See Deery, 'The Dove Flies East', p. 454.

severely' with anyone who attended. This caused some difficulty for the government as, from 1 September 1950, on ASIO's recommendation, Australian passports carried endorsements prohibiting travel to communist-bloc countries.[32] Those wishing to travel to any of these countries were required to provide a statement of reasons to ASIO. Cases in which a security risk existed – for example applications by political activists, dissidents, trade union leaders, fellow-travellers and rank and file communists – would be 'considered personally by the Minister'.[33]

When the congress venue was changed there were already 19 Australian delegates in the United Kingdom. The Department of Immigration cabled the Australian High Commission (Australia House) in London instructing that all delegates be warned that if they proceeded to Poland or any other communist country, their passports would be cancelled. Two of the delegates, Jessie Street and Dr T. Kaiser, in fact, had been issued with their passport before the endorsement provisions had come into effect. The passports, therefore, were unrestricted issues and valid for all countries. The minister's special instruction here was that Street and Kaiser surrender their passports to be endorsed 'in accordance with general instructions issued 1st September'.[34] Neither Street nor Kaiser complied and with the other Australian delegates defied the instruction not to go to Poland and flew to Warsaw by chartered plane the following day.

The delegates may have left for Poland with a certain amount of bravado but there must also have been a sense of uneasiness. They knew that Australia House officials had been instructed to cancel their passports and they also knew that there was some uncertainty about their return to Australia, given that shipping companies would not issue a ticket/berth without valid travel documents.

Most of the delegates returned to London by mid-December. There they found that the shipping companies would not issue them tickets/berths because they had to have 'valid documents which they cannot possess because their passports were cancelled by Minister Holt'.[35] As a matter of course, Australia House had notified the companies of the passport

32 Letter, Heyes to A.S. Brown, Secretary, PMD, 18 December 1950, NAA: A659, 1950/1/2629. On passport endorsements, refer chap. 3, p. 87.

33 Background paper, Immigration, n.d. [c. post-1963], 'Outline of Government Policy on Issue of Passports to Communists from 1949 until 1964', NAA: A6980, S250159.

34 Cablegram 5678, Immigration to Lamidey, London, 15 November 1950, NAA: A1838, 69/1/1/16/1 part 2. A subsequent unnumbered cablegram from Immigration to Posts, 21 November 1950, listed four other delegates who were carrying unrestricted passports: 'Mcinnes, Gollan, Coldcott, E.M. Smith'. Ibid.

35 Cablegram 6389, London, to Menzies, 17 December 1950, NAA: A432, 1951/2001.

cancellations as soon as it was confirmed that the delegates were in Poland.[36] A number subsequently called on Australia House for permission to return to Australia. The Chief Migration Officer, Noel Lamidey, informed them that as there was 'no [legal] impediment to them proceeding to Australia': 'we do *not* interfere with … return to Australia as it is not within our power to direct transport companies to withhold passages … it is a matter for the companies concerned to determine whether they will provide passages'. All were permitted to retain their passports, even those without the endorsements who, again, refused to submit the documents so that the endorsements could be inserted. For his efforts, Lamidey was informed that a group of the delegates were proceeding to secure a writ and injunction against him. He also had to face Australian author and member of the Council of Civil Liberties Dymphna Cusack's charge that that some of the delegates were 'without resources and accommodation' and that they were 'seriously' considering 'taking up quarters at Australia House until the matter is adjusted'.[37]

Given that shipping companies were liable to penalties should they carry passengers without official authorisation to travel, Lamidey had, in fact, seen this situation as inevitable. He had even foreseen that some would face a shortage of funds. While the delegates were in Poland he tried to forestall the position he was now in by 'ventur[ing] to suggest a practical solution left would be to offer to exchange a direct transit visa to Australia for their cancelled passport'.[38] He was informed that 'other than the positive action required under previous instructions your present role should be a passive one'. Furthermore:

> The Minister's instructions explained in our previous cablegrams are firm and should have been quite clear to you. The passports of the individuals concerned are cancelled. What attitude either the transportation companies or the persons involved may adopt is not your responsibility.[39]

On 17 December, notice was served on Lamidey initiating proceedings against him for 'inciting' the shipping companies to refuse passage, and against the shipping companies for re-letting their reserved berths. The London law

36 Cablegram 5968, Lamidey to Immigration, 24 November 1950, NAA: A1838, 69/1/1/16/1 part 2.

37 Cablegram 6389, London, to Menzies, 17 December 1950, NAA: A432, 1951/2001. Emphasis in original.

38 Cablegram 5968, Lamidey to Immigration, 24 November 1950, NAA: A1838, 69/1/1/16/1 part 2.

39 Cablegram 5981, Immigration to Lamidey, 27 November 1950, ibid.

firm was acting on behalf of delegates, Thomas Robertson, Thelma Prior and Margaret Barrass.[40] Canberra was unmoved. In answer to an urgent request on how to handle the matter,[41] London was told that government's position was unchanged:

> Desire you to stand firm in our attitude that it is a matter between individuals concerned and Shipping companies whether the latter book them for passages to Australia.

There was also scepticism about the claim that the delegates had no financial resources: 'bearing in mind that special planes were chartered to take them between London and Poland and that they are about to enter into litigation against the Commonwealth … either they have funds or are being supplied with them and are therefore not truly stranded'. Nonetheless, London was cautioned to 'take necessary action should they endeavour [to] take up quarters at Australia House'.[42]

On 19 December, however, Robertson's solicitor advised that 'the shipping companies will allow Robertson, Prior and Barrass to sail in accordance with arrangements made' and that 'notice of discontinuance of the actions' would be served the following day.[43] The Department of Immigration immediately instructed Lamidey to provide details of all departures. A further instruction also went out to the boarding officers at all Australian ports to collect the delegates' passports on their return.[44] The minister's initial instructions remained in place: endorsed passports were cancelled and the pre-1 September passports, valid for all countries, were to be collected to have the restriction inserted and returned to holder.

A similar situation arose in early January 1951, when the British Overseas Airways Corporation (BOAC) refused air passage to another delegate, R.C. Bowman.[45] Bowman, a member of the Townsville branch of the Waterside Workers Federation, also refused to surrender his passport and threatened legal proceedings. As in the first case, the matter seemed to resolve itself quickly and Bowman departed on 8 January.[46] Over the next

40 Cablegram 6421, Coward Chance (Australian Government Crown Agents in London) to Crown Solicitor, 18 December 1950, ibid.
41 Cablegram 6389, London, to Menzies, 17 December 1950, ibid.
42 Cablegram 6342, Canberra to London, 19 December 1950, ibid.
43 Cablegram 6439, Coward Chance to Crown Solicitor, 19 December 1950, ibid. Documents do not reveal reason why shipping companies reversed their decision to carry the delegates.
44 Cablegram 6418, Heyes to Lamidey, 21 December 1950, ibid.
45 Cablegram 69, Lamidey to Heyes, 5 January 1951, ibid.
46 Cablegram 98, Lamidey to Heyes, 6 January 1951, ibid.

couple of months there were no further instances of carriers refusing passage to any of the remaining delegates but Lamidey was kept busy ensuring he was in a position to advise Canberra of the details of their respective departures as instructed.

Jessie Street remained and spent much of 1951 in Europe. Having circumvented the endorsement Regulation by obtaining a British passport (unbeknown to the Australian Government) before the Warsaw congress, she attended a meeting of the International Federation of Women in East Berlin in late February.[47] For the remainder of the year she worked for the WPC, visiting East Germany, the Soviet Union, Czechoslovakia, Austria and Ireland.[48] Subsequent accusations of obtaining her British passport by deceit by Holt, under parliamentary privilege, and increased government criticism, saw Jessie Street remain in virtual political exile in London for the next six years, under ASIO surveillance and persistent attacks by the Australian press.[49]

Australia's system of passport endorsements was tested again in August 1951 but, in the meantime, a critical event in Menzies' anti-communism crusade was taking place as the CPA and a number of trade unions challenged the constitutionality of the Communist Party Dissolution Act in the High Court. On 9 March 1951, the High Court ruled the Act invalid. The government immediately organised a double dissolution on the Banking legislation. However, communism was the principal theme of the ensuing coalition campaign for the general election called for 28 April. The government retained power and gained a majority in the Senate and five months later held a referendum to amend the constitution that would enable the Commonwealth to ban the Communist Party. On 22 September 1951, the referendum was narrowly defeated.

The month before the referendum more than 90 Australian delegates had departed for the Third World Festival of Youth and Students in East Berlin.[50] Two Aboriginal dancers, Faith Bandler and Ray Peckham, were in the group. There appears to have been no difficulty with Bandler's passport application but, for reasons not yet ascertained, Peckham's was initially rejected. It was approved after Jim Healy, the leader of the militant Waterside Workers' Federation, threatened to prevent the

47 Cablegram 74, Australian Military Mission, Berlin, to DEA and PMD, 22 February 1951, NAA: A432, 1951/2001.

48 Marilyn Lake, *Faith Bandler: Gentle Activist*, Allen & Unwin, Sydney, 2002, p. 46.

49 Ibid.

50 Held 5–19 August 1951, the festival was organised to promote 'Peace and Friendship' between the communist and non-communist worlds.

Ray Peckham (centre) being farewelled in Sydney as he leaves as an Aboriginal delegate to the Berlin World Youth Festival in 1951. Ray Peckham and Pearl Gibbs (seen on Ray's left) later became prominent members of the Aboriginal–Australian Fellowship (*from the publication 'The Time was Ripe: a History of the Aboriginal–Australian Fellowship (1956–69)', edited by Faith Bandler and Len Fox, Alternative Publishing Cooperative, 1983*)

delegates' ship departing if the passport was not issued.[51] The festival was a triumph for the Australian dancers, whose performances were very well received but, on their return to Australia, their passports along with those of the other delegates were confiscated as had been the case for the Warsaw contingent. On this occasion, Harold Rich, Secretary of the DRC, wrote to Holt, insisting that the government's action was a breach of the 1948 UN Declaration of Human Rights: the possession of a passport was 'one of the rights of a citizen in a democratic society … any interference with this right reflects very gravely on the Government responsible'.[52] A draft letter was prepared for Howard Beale, Acting Minister for Immigration at the time,

51 Lake, *Faith Bandler*, pp. 40-1. Peckham later joined the CPA and was the subject of ASIO surveillance until the early seventies. See NAA: A6119, 2950; NAA: A6119, 2949; NAA: A6119, 2948.

52 Letter, Harold Rich, Secretary of NSW DRC, to Holt, 17 December 1951, NAA: A440, 1952/12/4899.

explaining that the government had no alternative because the individuals had travelled to Berlin without permission, going there 'despite the fact that their passports were not valid for such travel':

> In view of their defiance of the Government's wishes it is considered they should not be in a position to again proceed to travel abroad without approval.
>
> As you are no doubt aware, Australian passports are now made available for travel to all countries provided persons wishing to visit 'excluded' countries furnish a statement setting out the objects of their visit.[53]

This explanation was not provided in the letter sent to the delegates which stated only that the government's action was 'in the public interest'.[54] Faith Bandler, who stayed on in Europe and went on to meet Jessie Street in London, had her passport impounded at Fremantle on her return. Later police in Sydney confiscated a number of her personal possessions, including her collection of recordings by Paul Robeson, the internationally renowned black American singer and civil rights activist. Following the Warsaw congress in 1950, the US State Department had denied a passport to Robeson on the grounds that he should not be airing complaints about the treatment of America's blacks in foreign countries. Robeson waited eight years for the reinstatement of his passport. Bandler, along with Shirley Andrews, another dancer in the Berlin group, would wait ten.[55]

But the coalition government's attempt to use endorsements to contain Australians travelling to a communist-sponsored event was futile. With determination, courage and goodwill, including financial support the Soviet Union and the other restricted countries for the Warsaw delegates, both groups proved that the government's travel rules could be flouted. All who chose to return to Australia could do so. Passports were confiscated, but no one was fined, charged or detained. The government learned that, while in theory endorsements were a potent weapon, it was difficult to wield:

> The net result was that the procedure did nothing to prevent the free travel of those whom it was meant to control, but caused delay and irritation to other Australians wishing to go to Communist countries on legitimate business.

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53 Draft letter, Harold Beale, Acting Minister for Immigration, to Rich, January 1952, NAA: A440, 1952/12/4899.

54 Ibid.

55 Lake, *Faith Bandler*, p. 47.

> A.S.I.O's view … was that no attempt be made to prevent the travel of Australians to Communist countries, as while these countries are willing to accept persons with or without passports, no similar scheme would be effective.[56]

In November 1951, the government decided that passports could be validated for the previously excluded countries provided each applicant submitted a statement of the purpose of the journey for ASIO's information.[57] While this decision might have signalled a relaxation in the official approach to Australians attending communist-sponsored events, events over the next 12 months showed that this was not the case: only the tactics employed to implement the restrictions changed. The government now chose to rely on s. 8 of the Passports Act, which sanctioned the minister's right to approve, reject, withdraw and cancel applications and current passports, as its principal preventative measure.

The first test to the s. 8 strategy was not its application but rather its failure to be applied. In May 1952, Australian peace activists accepted an invitation from the Chinese Peace Committee to attend a June meeting in Peking to help organise the Peace Conference for Asia and the Pacific Regions to take place in September. The timing and location were critical. Australia, albeit unofficially, was at war with North Korea and its ally the Peoples Republic of China. When the government failed to take action regarding the activists' passports, Evatt, now leader of the Opposition, and Arthur Calwell, the deputy leader demanded an explanation. Holt's reply was that Australian citizens were issued passports as 'a matter of right' and that the government lacked the legal power to contain their movements. Holt, of course, was being disingenuous. There was another reason for parliamentary outrage (both Opposition and backbencher) at the government's decision that had nothing to do with the legalities of the matter: the delegates were to share a plane with Australian soldiers going to Korea. In the face of demands for assurances that the delegates' passports would be cancelled, Holt remained firm, declaring that he had no power over Australians who left 'for a temporary sojourn abroad'.[58]

Deery and McLean contend that the reason for the government's inertia lies in the 1952 cabinet notebooks which reveal a strategy to gain political leverage over the Opposition by exploiting the fact that Evatt's protégé, John Burton, a former secretary of the Department of External

56 Background paper, Immigration, n.d. [c. post-1963], 'Outline of Government Policy on Issue of Passports to Communists from 1949 until 1964', NAA: A6980, S250159.

57 Ibid.

58 Deery and McLean, 'Behind Enemy Lines', p. 409.

Affairs, was to lead the Australian delegation to the proposed Peking conference. Burton's position created an ideal opportunity for the government to use guilt-by-association to tar Evatt, the ALP and Burton 'with the broad brush of complicity'.[59]

Evatt denied all contact with Burton and asserted that the Labor Party had not authorised Burton to attend the conference. Moreover, an Evatt Labor government would bar delegates from attending. Evatt argued that not only did the government have the statutory power to deny or cancel passports, it could also invoke s. 8 on defence grounds because the security of Australian troops in Korea was compromised by Australian involvement at the conference. The government countered:

> In this Parliament and in this country, the Leader of the Opposition has set himself up as champion of freedom and liberal principles. When the government parties asked the Australian people to extend the powers of the Commonwealth to combat the Communist menace, it was he who led the attack upon us, on the ground that he was trying to preserve the freedom of Australian citizens. But now … he finds himself embarrassed by a protégé whom he so readily disowned, he has turned his back upon the principles that he preached to this country.[60]

Paul Hasluck, Minister for Territories and later to become Minister for External Affairs, described the confrontation as 'a contest between Labour [sic] party & ourselves as to whether we can outdo Evatt by hammering the fact that an endorsed Labour man has gone to Peking'.[61] In June, the Foreign Affairs Committee of Cabinet (FAC) considered arguments for and against Australian attendance. On the one hand, there were 'weighty objections' to the delegation's visit, 'so long as Chinese "volunteers" are fighting United Nations troops in Korea'. On the other hand, to ignore the conference was to 'play the Soviet game' and prove that only the communists were 'working for peace'.[62]

The discussion reflected Cabinet's ambivalence towards the People's Republic. For until China's intervention in Korea, Australia's attitude towards recognition was based more on fear of what the Chinese might do than concern for what they had done. Now China had justified those fears:

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59 Ibid., pp. 409–11.
60 Ibid., n. 24.
61 Ibid., n. 19, quoting Cabinet Notebook, 4 June 1952. Burton had been a Labor candidate at the April 1951 elections.
62 Ibid., p. 412, n. 40.

> It had become an enemy in war; it killed, imprisoned, 'brainwashed' and treated inhumanely Australian servicemen'; it engaged in a campaign of abuse of the Australian government. What it had done in Korea, it was presumably ready to do elsewhere.[63]

In August, a new element was introduced into the decision-making process. The Acting British High Commissioner in Canberra, Ben Cockram, informed the Prime Minister's Department that the British Government believed the Peking conference to be 'not only directed against the Western Powers but against the independence of all non-Communist governments in Asia and the Pacific':

> Its objects are to create and extend support for Communist policies, and it is to be expected that it will be followed by intensification of pro-Communist activities in the countries sending delegations. Since the Conference must be regarded as a cold war operation against all non-Communist governments in Asia, the desirability of these Governments taking concerted counter-action deserves consideration.[64]

Cockram conceded that the Berlin festival had shown that, while concerted action by the non-communist governments provoked some criticism, it nevertheless highlighted the perceived dangers of communist-organised conferences under the 'spurious slogan of "peace"'. In this way, a combined approach contributed to public acceptance of firm action. Britain was anxious to know if Australia, along with other Asian governments, would be prepared to refuse exit facilities to its nationals and deny transit to other delegates going to Peking.[65] On 19 August, Cabinet 'accepted the principle that facilities should be withdrawn from persons wishing to attend [the] conference and … invited the Prime Minister to consult with the Attorney-General's Department on the method to be employed'.[66]

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63 T.B. Millar, *Australia in Peace and War: External Relations since 1788*, 2nd edn, Australian National University Press, Canberra, p. 245.

64 Letter, Ben Cockram, Acting High Commissioner, British High Commission, Canberra, to A.S. Brown, Secretary, PMD, 15 August 1952, NAA: A432, 1952/2178.

65 Ibid. Reasoning that reduced representation would hinder communist efforts against the West, Cockram also considered that preventing delegates going to Peking would help educate Asians on the 'nature and extent of the communist conspiracy against the free world' and establish a precedent of cooperation by Asian governments against a common danger.

66 Cabinet decision no. 517, 19 August 1952, A432, 1952/2178. The Cabinet notebooks show that W. McMahon, then Minister for Navy, dissented, arguing that Australia was not at war with China and that, as the CPA was not unlawful under the Crimes Act, such action would be an 'arbitrary act of government'. See Deery and McLean, 'Behind Enemy Lines', p. 412.

The solicitor-general's advice was that, while no statutory amendments were required to execute s. 8 of the Passports Act and s. 10 provided a penalty for false and misleading statements in applications, there were still practical difficulties in denying travel facilities to the delegates. A large number of passports had already been issued enabling the holders to travel to any British country, including Hong Kong, without further endorsement. Furthermore, delegates could not be prevented from departing unless their identities were known. A list of names was required if passport officers were to cancel relevant passports or ensure that none were issued. In the latter instance, attempts to identify delegates from passport applications were 'not likely to be successful, in view of the probability of delegates resorting to subterfuge':

> A person indicating an intention to proceed to, e.g., China, could of course, be subjected to close scrutiny; but if an intending (but announced) delegate simply states an intention to proceed, e.g., to the United Kingdom, he would almost certainly be able to secure a passport without arousing suspicion. Even though the passport would not be valid for any Communist country, this would not prevent his entering such a country.[67]

The 'basic necessity', therefore, was an effective means of identifying delegates. If the activists did not publish a delegate list, it would be up to ASIO to obtain the names.[68] The solicitor-general's final advice was that it was critical the government conceal its intentions until the Cabinet decision was announced.

Over the next three weeks a list of prospective delegates was drawn up by ASIO and submitted to the Department of Immigration. Passports officers prepared documentation to assist identification of the delegates from among passport applications for passing to the minister. They also identified those from the ASIO list who were existing passport holders. These passports were cancelled and the bearer notified. Shipping and aircraft companies were also confidentially advised of the cancellation. Finally, all Australian overseas posts were provided with the list of prospective delegates and a copy of Menzies' planned announcement.[69] Before the announcement, however, Menzies was informed that Winston Churchill, the

67 Annex A, Minute, Bailey to Menzies, 27 August 1952, NAA: A432, 1952/2178.

68 Minute, Bailey to Menzies, 27 August 1952, ibid.

69 Briefing paper, 'Peking Peace Conference: Administrative Procedures Contemplated to Withhold and Withdraw Passports from Delegates', H. McGinness, Nationality, Citizenship and Passport Sub-Division, 25 August 1952, ibid.

British prime minister, had decided not to 'prevent United Kingdom subjects from leaving the country for the purpose of attending the Peking Conference'.[70] Britain's earlier request for 'concerted action' might have had considerable influence on Cabinet's 19 August decision 'to withdraw facilities' from those planning to attend the conference but, after considering the British about face on 2 September, Cabinet decided to maintain this stance.[71]

On 10 September Menzies announced that the government had considered granting facilities to Australian delegates travelling to Peking, but 'certain peculiar features' could not be overlooked:

> at this very moment Australian servicemen are participating in an armed conflict in Korea in which United Nations forces are fighting against forces the major part of which are under the control of Chinese authorities at Peking. Yet apparently certain people wish to participate in a Conference, purporting to be held to promote 'peace', in the territory of authorities which are opposed to us in serious hostilities, and with the approval of those authorities.
>
> It seems incongruous, to say the least, that delegates should even request facilities from the Australian Government to enable them to participate in such a conference. Their visit to Peking would undoubtedly be used throughout Asia wholly for propaganda against the United Nations, and to suggest that Australians are not backing the Government's decision to participate in the United Nations campaign in Korea.
>
> Further, the Conference may merely be a device for intensifying Communist propaganda against the Western Powers in the Pacific area. The Government believes that the primary purpose of the Conference is not to promote peace but rather to further Communist policies for undermining the independence of Governments in Asia and the Pacific. [72]

Passport facilities would not be provided to Australians attending the Peking Conference.

In response the activists and their supporters organised protest meetings, distributed pamphlets and planned alternative ways of departure.

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70 Letter, British High Commission, Canberra, to PMD, 29 August 1952, ibid.

71 Cabinet decision no. 528, 'Passports for Peking Conference', 2 September 1952, ibid.

72 Press release, 10 September 1952, ibid. See also *CPD*, HR, vol. 218, 10 September 1952, p. 1187.

A battle of wits now ensued between the delegates and ASIO.[73] On 17 September, the communist newspaper *Tribune* declared that the government's decision was based on instructions from the US State Department, 'operating through FBI secret police agents in Australia' and that the delegates were about to leave by a specially chartered plane.[74] Meanwhile, ASIO, liaising with Qantas managed to thwart an attempt by a number of delegates to depart Australia from Cairns by flying boat. Other delegates tried to book passage from Townsville to Manila on the steamship *Changte*. One such delegate, D.C. Jacob, travelling under the alias of 'Sutton', called at the shipping office to purchase his ticket, but when asked for his passport 'he stated that he would produce it once he got the ticket'. Informed that business would not proceed without a passport, Jacob left the office never to return. To give delegates more time to get to Peking, the conference organisers postponed the opening until 2 October. The postponement allowed four delegates, with the use of decoys in Townsville, to slip out of the country via Cairns.[75]

At the end of the Peking conference in mid-October, Immigration lifted the travel restrictions on delegates. In considering planned peace conferences to be held in Moscow in November and Vienna in December, Cabinet determined that these conferences were different from Peking 'where the conference was, for all practical purposes … behind enemy lines'. Passports to the European conferences would not be refused.[76] Furthermore, at the time, Australia and Russia had established diplomatic relations and each had a representative in the other's country.

The Warsaw, Berlin and Peking delegation episodes showed that only the most intrusive and aggressive intervention would stop Australians from travelling to peace conferences and the government's anti-communist cause may well have suffered in attempting to prevent Australian freedom of movement. In 1954, however, an unforeseen event transformed Australia's ideological landscape and the way many Australians thought about communism. On the eve of the federal elections, Vladimir Petrov, a junior diplomat in the Soviet embassy in Canberra, defected to Australia in return for providing the government with evidence of Soviet espionage in Australia. He did not inform his wife, Evdokia, of his intention to defect whereupon two Soviet officers arrived in Australia to escort her back to Russia. For those Australians sceptical about fifth columns and an 'enemy

73 Deery and McLean, 'Behind Enemy Lines', p. 415.
74 *Tribune*, 'Good Luck to Peace Envoys: May Leave By Special Plane', 17 September 1952.
75 See Deery and McLean, 'Behind Enemy Lines', pp. 415–7.
76 Ibid.

within', the image of Evdokia Petrov being escorted by two Russians across the tarmac of Sydney's Kingsford-Smith airport seared their consciousness. Not only did Australia appear to be under the observation of a Russian spy ring but, as Tony Griffiths argues, Australians had now seen for themselves 'the effects of Russian methods on individuals'.[77] Diplomatic ties between the Soviet Union and Australia were severed and Menzies established a Royal Commission on Espionage to investigate Petrov's evidence. Passport policy returned to the position of June 1950: passports would not be issued to: communists whatever their destination; persons intending to proceed to Communist territory without good and sufficient reason; and, intending delegates to Communist inspired conferences.[78]

This policy was implemented 'with an exercise of discretion in borderline cases' until the conclusion of the Royal Commission in April 1955, when the November 1951 revision was restored: Australian passports were not made valid for communist countries as a matter of course but they could be validated by the bearer submitting a statement to ASIO outlining the journey's purpose.[79]

In 1952, following Menzies' announcement that passport facilities would be denied to anyone travelling to the Peking Peace Conference, delegates had considered initiating a High Court action against the government.[80] The idea was not pursued but, in 1955, when Reverend Neil Glover was denied a passport to attend a WPC conference, he initiated High Court action against Holt and the Department of Immigration.

In the weeks before the hearing, government officials studied the issue of the minister's discretionary power carefully. As noted in Chapter 4, the debate over the *Passports Bill 1938* never resolved the ill-defined nature of discretionary power. A Department of Immigration paper noted that Holt was 'not entirely free to exercise his discretion' as he pleased.[81] While Knowles's 1934 and Bailey's 1950 opinions maintained that the minister could be held by a court to be acting within his powers, if they refused passports to communists, Evatt's 1937 judgement stipulated that a s. 8 decision should be limited to grounds *relevant to the nature of a passport*: only then could the document be refused.[82] There was, nevertheless, concern that Bailey's opinion

77 Griffiths, *Beautiful Lies*, p. 54.
78 Background paper, 'Outline of Government Policy on Issue of Passports to Communists from 1949 until 1964', NAA: A6980, S250159.
79 Ibid.
80 Deery and McLean, 'Behind Enemy Lines', p. 415.
81 Background paper, 'Minister's Powers under the Passports Act, with Particular Reference to Reverend Glover's Case', Immigration, 28 March 1955, NAA: A6980, S250720.
82 For Knowles 1934 and Evatt 1937, see chap. 4, pp. 115–116, 118–119; for Bailey 1950, see p. 130 above. Emphasis added.

did not relate to the *Glover* case because 'Glover was refused a passport because of the purpose of his journey … not because of any adverse security record'. The 'vital question' was 'what grounds are to be stated in Court as having been the reason for the refusal of a Passport to him'.[83]

Counsel for Glover demanded that Holt show cause:

> why he should not be required to authorise and direct an officer, within the meaning of the *Passports Act 1938*, to issue a passport to the applicant, or, alternatively, why the minister should not be required to consider and determine according to law an application for a passport made by him.[84]

The evidence indicated that Glover's application was refused and, therefore, the central question was whether the minister had any discretion to refuse a passport to him and, if so, 'whether in refusing to issue a passport the statutory discretion had been exercised according to the law'. Furthermore, the *Passports Act 1938* did not confer discretion on the minister, and that when an application was submitted it was the 'imperative duty of the officer to whom the application is made to issue a passport'.[85]

Justice Alan Taylor of the High Court ruled that this argument lacked substance: if authority was required for the proposition that the Act conferred discretionary power to the minister, it was found in Evatt's observations in *The King v. Paterson, Ex parte Purves*. And while the Act under consideration at that time was the *Passports Act 1920*, Evatt's remarks applied with at least equal force to the 1938 legislation. Justice Taylor had no doubt there was a discretionary power under the 1938 Act. Rejecting Glover's argument that there was no discretionary power to refuse a passport to a person who is a fit and proper person to bear Australian credentials and to be commended to a foreign government, Taylor pointed to Evatt's recognition that discretionary power should be exercised on grounds that conformed 'with the general objects of the Act'. It was beyond argument that statutory discretion was of an extremely wide nature and within its wide and unspecified limits it was for 'the Minister, or official concerned, to satisfy himself whether or not any particular application should be granted or refused'. Because Glover's passport was refused for reasons related to national security, Taylor argued that such grounds justified the refusal of a passport to an Australian citizen, even those 'shown

83 Background paper, Immigration, 28 March 1955, NAA: A6980, S250720.
84 Copy of Taylor J.'s judgment in *R. v. The Right Honourable Harold Edward Holt and Daniel Raymond Dwyer, Ex parte Neil Reheiri Glover*, ibid.
85 Ibid.

to be a person of good repute'. Moreover, because the minister made his decision in good faith, neither he, nor his officials, nor his department 'were obliged to disclose the reasons for rejecting the application'. Taylor concluded that the 'constitutional powers which support it', meant that it was 'fruitless to embark upon a discussion of the facts of the case'.[86]

The ruling clarified the issue for the government. Discretionary power could no longer be criticised as vague or ill-defined. The High Court had ruled that ministerial authority was 'very wide' and, if the question arose again on security grounds, the government was not obliged to specify reasons for rejecting a passport application.[87]

Over the next few years, the issue of the 'right' to hold an Australian passport arose as government officials sought to meet the challenges of the changing nature of the international community. The question of allegiance was an important one. In 1957, a senior ASIO officer failed to get support for his view that a person's renewal of a passport with an enemy nation was now a crude indicator of allegiance – a hangover 'from our old obsession with passports'.[88] The director-general maintained that anyone who renewed a passport with an enemy nation was explicitly disloyal.[89] Nonetheless, Spry accepted that, in the future, wars would be more 'a conflict between ideas than between states' and that the majority of 'New Australians' posed little threat.[90] As Dutton contends, the amorphous nature of the Cold War challenged and defeated the old assumption that nationality was congruent with ideology. The only reliable predictive instrument was analysis of an individual's behaviour and beliefs. Now, a refugee from Eastern Europe could be a political conservative, while a fourth or fifth generation white Australian might travel 'behind enemy lines', not just because they sympathised with 'enemy' ideals, but because they believed it was their right to do so.[91]

The belief that Australian citizenship conferred a right to a passport was confronted and ostensibly defeated in the passport struggles between the peace delegates and the Menzies government. Possession of a passport was not a constitutional right. Passports were 'intimately connected with the conduct of Australia's external relations'.[92] They were only to be issued

86 Ibid.
87 Memorandum, McGinniss, Assistant Secretary, General Migration, to Heyes, April 1955, NAA: A6980, S250720.
88 Minute, Director, B1 Section, to Spry, February 1957, NAA: A6122, 1283.
89 Memorandum, Spry, 28 February 1957, ibid.
90 Memorandum, Spry to Heyes, 24 December 1956, NAA: A6980, S250194.
91 Dutton, *One of Us*, pp. 102–3.
92 Opinion No. 8 of 1950, K.H. Bailey, 28 July 1950, NAA: A432, 1950/1115.

Customs Chief, F. Marcusson, inspects a passport at Mascot airport, November 1960 (*State Library of New South Wales*)

when the Australian Government could be sure that the holder would not compromise those relations. The April 1955 *Glover* case affirmed the conditional nature of the Australian passport and for the Menzies government this apparent victory was timed well. A month after Neil Glover lost his High Court case, Australia's most notorious 'fellow traveller', journalist Wilfred Burchett, walked into the British Consulate in Hanoi to request a replacement for his missing British passport. Already facing a possible

treason charge, Burchett learned that Australia's 1948 Nationality and Citizenship Act meant that he was no longer eligible for a British passport and must apply for an Australian document. As the next chapter shows, the 17-year battle that followed both exposed and expressed the enduring, unresolved tension between discretionary power and the rights of those Australian citizens ideologically at odds with their government. The ramifications of the Nationality and Citizenship Act and the new concept of Australian citizenship will be discussed in Chapter 7.

6

‘That Precious Document’: Wilfred Burchett’s Battle for an Australian Passport

Born in 1911 and raised in the Gippsland district of Victoria, Wilfred Burchett grew up in a family with strong views on social justice. Deeply influenced by his father George and politicised by the Depression, he left school at the age of 15, leading a peripatetic life until departing, an Australian passport in hand, for Europe in 1936. Initially employed in London by the travel firm Thomas Cook, he was later engaged by the Palestine and Orient Line where his real task was to assist Jewish refugees escaping from Nazi Germany. This gave Burchett his first taste of being at the centre of a dangerous situation spiced with political intrigue. It was an addictive mix: one he craved and pursued for most of his life. The future Burchett can be glimpsed in a letter home:

> I got a new passport today … there is nothing to show now that I have ever been in Germany before, which is very good … When I came back on Monday, I smuggled out a good lot of jewellery for different people … the Gestapo had no suspicions at all. I look like such an innocent Australian tourist.[1]

This new passport was issued by the British Foreign Office, after Burchett told the British authorities that he regarded himself as domiciled in the United Kingdom.[2] But Burchett returned, with his new wife Erna, to

1 Tom Heenan, *From Traveller to Traitor: the Life of Wilfred Burchett*, Melbourne University Press, Melbourne, 2006, p. 2. See also, George Burchett and Nick Shimmin (eds), *Memoirs of a Rebel Journalist: the Autobiography of Wilfred Burchett*, University of New South Wales Press, Sydney, 2005.

2 Memorandum, Heyes to Holt, 28 October 1955, NAA: A6717, A70.

Australia, where his maverick style and left-leaning politics ensured the continued interest of Australian intelligence and his October 1939 application to work as a linguist for Military Intelligence was rejected. Although it was alleged that he had falsely represented himself as a Commonwealth investigation officer,[3] his language skills were so extraordinary that from November 1939 through 1940 he was employed by the Department of Information as a translator and reviewer of Nazi books and pamphlets.[4] Meanwhile, he wrote for most of the Melbourne dailies. Prolific and persistent, in early 1941 he travelled to Noumea to report on the rebellion against the Vichy French-sponsored regime. William Macmahon Ball, the Melbourne-based academic and broadcaster, asked him to report on the reception of shortwave broadcasts and 'to make comments on the manner in which those broadcasts were received by the people of Noumea'.[5]

Burchett's New Caledonia reports were well received, leading to accreditation as a war correspondent for the London *Daily Express*. In war reporting he found his metier. In 1942 he was posted to China, where he befriended Zhou En-lai, one of the leaders of the Chinese Communist Party, and reacquainted himself with a young diplomat at the Australian legation in Chungking called Keith Waller, whom he knew from Melbourne. On an operation with a British guerrilla unit operating against the Japanese in Burma, the Chindits, Burchett was seriously wounded. Here was born the legend of a reporter determined to seek out the story at risk to his life. His severest critic, the Australian journalist Denis Warner, always conceded his courage, tenacity and ability as a newshawk. But Burchett was dogged by accusations of personal dishonesty. The Sydney *Daily Telegraph*'s Ronald Monson alleged that in Burma Burchett profited from the Chinese black market:[6] and a 1944 security report alleged that his 1936–1939 European trip was funded by money stolen from farmers 'who entrusted him with farm produce in the Melbourne market, he Burchett, being a general carrier at the time'.[7]

The Pacific War consolidated Burchett's reputation as a journalist. From Japan, where he was the first Western journalist to report from

3 Memorandum, J.C. McFarlane, Deputy Director Security, to Director-General Security, 20 September 1943, NAA: A6119, 65.

4 Letter, Burchett to Taylor, Department of Information, 18 September 1940, NAA: SP112, 322/3/9.

5 Note on telephone conversation, Principal Information Officer, Department of Information, 3 March 194, ibid.

6 ASIO report, Ronald Monson interview by C.R. Richards, Regional Director, New South Wales, 26 October 1953, NAA: M3787, 55.

7 Intelligence report 65, 15 February 1944, NAA: A6119, 12.

Hiroshima, he travelled to Occupied Germany and Eastern Europe. He later explained that his last Australian passport, issued in 1941 to enable him to travel as a war correspondent, expired in 1946 due to lack of space. He was informed by the Australian Military Mission staff in Berlin that they 'had no power to issue passports and advised me either to go to London – which was inconvenient – or take a British passport from the British authorities in Berlin'. Because of his frequent travels, the passport was replaced again in Berlin, Belgrade and Budapest. His last UK passport was issued in May 1950.[8]

During the late 1940s, Burchett based himself behind the Iron Curtain, meeting and marrying his second wife, Vessalina, a Bulgarian. In September 1950, he returned to Australia for a speaking tour, leaving in early 1951 for the People's Republic of China (PRC). His intention was to gather material for a book and return to Australia, but the French communist newspaper *Ce Soir* made him an irresistible offer: to go to Korea to cover the ceasefire negotiations. On 13 July 1951, he crossed the Yalu River into North Korea. As he later wrote, it was a momentous decision. He was entering a war zone in which Australian troops were engaged on 'the other side'. But he was 'accredited to the delegation of a country with which the United Kingdom – whose passport I held – still maintained diplomatic relations'. Burchett expected to cover the peace talks that commenced in the North Korean town of Kaesong on 8 July 1951 for a period of no more than three weeks.[9] He stayed two and a half years. It remains the most controversial period of his life and in order to understand why the Australian Government denied him a passport until 1972, it is necessary to discuss Burchett's activities in Korea.

Over the following 18 months, Burchett's published articles and activities suggested that he was acting in concert with the North Koreans and Chinese and by January 1952 the Secretary of the Prime Minister's Department, Allen Brown, had asked the Attorney-General's Department to advise what action was available to the government 'now or in the event of Burchett returning to Australia'.[10] Of grave concern to the Australian authorities was his report that the United States was dropping bombs laden with anthrax-contaminated fleas and flies on North Korea.[11] He claimed to have witnessed one such attack at the Yalu River on 6 June 1952. This report, denied by Washington and Canberra, was later cited as evidence, along with his other anti-US and anti-UN stories, that Burchett was an enemy

8 Letter, British Consul, Hanoi, to D.W. McNicol, Australian Legation, Saigon, 17 May 1955, NAA: A6980, S200614.

9 Burchett and Shimmin (eds), *Memoirs*, pp. 365–6.

10 Letter, Brown to Bailey, 24 January 1952, NAA: A1209, 1968/8712 part 7.

11 Melbourne *Guardian*, 6 March 1952.

propagandist. The Australian Government argued that, because Australia was part of the UN force, these stories implicitly condemned Australian troops. The government's case against him did not end with the germ warfare allegations. Burchett claimed that he had witnessed the 6 June raid on his way to interview two captured pilots, US Air Force Lieutenants Kenneth Enoch and John Quinn, who had confessed, with a wealth of detail, that they had been 'dropping the insect bombs'.[12] Burchett went on to interview other American pilots, whom he claimed spoke freely and enthusiastically, in relation to the germ warfare campaign. But, following repatriation, each man retracted his confession, naming Burchett, with the British journalist Alan Winnington, as key interrogation team members who extracted the confessions through coercion. Burchett, they said, softened them with friendly overtures and once they admitted their guilt, he tampered with the confessions, editing, making insertions and sometimes rewriting them.[13]

Burchett did not interview Royal Australian Air Force (RAAF) personnel, nor did any confess to participating in bacteriological warfare. Most Australian prisoners of war (POWs) met Burchett in early 1952, when he and Winnington visited the camps. In later interviews they agreed that he had sought them out, bringing news from home and, in some cases, that he had improved their living conditions and communicated with relatives on their behalf.[14] Yet despite these gestures, the Australian POWs distrusted him. Most of them suspected that his object was to ingratiate himself and steer them towards defection.[15]

Burchett never denied that he had reported the Korean War from North Korean and Chinese perspectives. As far as he was concerned, the US-led UN force was the aggressor on the Korean peninsula. For the rest of his life he stood by his germ warfare story.[16] And while he admitted interviewing the American pilots, he denied influencing them or tampering with their confessions. He insisted that the airmen retracted their confessions because they feared court martial, or worse, after repatriation. However, the United States maintained that Burchett actively participated in the interrogations of its airmen. The Australian Government believed

12 Burchett and Shimmin (eds), *Memoirs*, pp. 407–8.

13 ASIO summary, 11 April 1961, NAA: A6717, A70 part 1. See also transcripts of statements by Enoch, Quinn, O'Neal, Kniss and Mahurin in Gorton Papers, NAA: M3787, 55.

14 ASIO note, n.d. [c. late-1953 – early-1954], NAA: A6119, 314.

15 Statements, Australian servicemen, 24 March 1954; 16 October 1953; 16 December 1953, NAA: M3787, 55.

16 See for example, Burchett's address to National Press Club, Canberra, 2 March 1970, ibid.

that his actions were treasonable and in October 1953 directed ASIO to investigate Burchett with the aim of accumulating evidence to try him for treason.[17]

By December 1953, Colonel Spry, ASIO's Director-General, had collated witnessed statements by repatriated Australian POWs, evidence collected by ASIO officers in Japan and Korea where their enquiries were assisted by US Far East Command Headquarters and a taped copy of Burchett's broadcast interviews with American pilots Enoch and Quinn and film showing him present at each interview. Spry considered enough evidence existed to support a treason charge and submitted his report to the government.[18]

The government knew that this would not be an easy case to prosecute. Australian law did not adequately address treason in a case for which there was no precedent. Because the alleged acts occurred outside the Commonwealth, no charge could be laid under s. 24 of the *Crimes Act 1914*. Passed before the adoption of the Statute of Westminster, the imperial legislation that established legislative equality between the self-governing dominions of the British Empire and the United Kingdom, s. 24 of the Crimes Act did not confer extraterritoriality. In February 1952, the Crown Solicitor, D.D. Bell, examined the possibility of prosecution by use of the English Statute of Treasons: *1351, 25 Edw.III c.2*, which declared that adhering 'to the King's enemies in his realm, giving them aid and comfort in his realm or elsewhere' was a crime. This statute remained extant in Burchett's home State of Victoria, as well as New South Wales and South Australia.[19]

In determining what treason actually was, the Australian authorities looked to *R. v. Casement*, the case involving the UK's execution of the Irish revolutionary, Roger Casement, for treason in 1916. The case had determined that treason was an act that strengthened or tended to strengthen the King's enemies 'during conduct of war'. The definition included 'the giving of aid and comfort' as well as any activity which weakened or tended to weaken 'the power of the King and of the country to resist or to attack the enemies of the King and the country'.[20] In Bell's opinion the creation and dissemination of propaganda was 'one of the weapons by

17 Signal, COS 193, Defence to Commander-in-Chief, Britcom, Japan, 21 October 1953, NAA: A2107, K13.

18 Report, Spry to Attorney-General, 17 December 1953, NAA: A432, 1969/3072 attachment 2.

19 Memorandum, D.D. Bell, Crown Solicitor, to Solicitor-General, 13 February 1952, ibid.

20 [1917] 1 K.B 98 at 33, Lord Reading, C.J.

which an enemy may be weakened'. That begged the question whether the alleged acts, if proved, constituted 'the giving of aid and comfort to the King's enemies'. With their potential to undermine the Australian Government's cause, there was a case that Burchett's articles, books and broadcasts aided and comforted the enemy. The more difficult question remained about whether North Korea and the People's Republic of China were the 'King's enemies'. On that point, within the meaning of the Statute of Treasons:

> the subjects of all States against which His Majesty may have proclaimed or declared war are his enemies; so are the subjects of States in actual hostility with us, whether war has been solemnly proclaimed or not. It is considered that Australia, by sending forces to assist the United Nations to fight the North Koreans is, in actual hostility with them.[21]

The Crown Solicitor concluded that, if he returned to a state in which the Statute of Treasons applied, Burchett could be tried.[22]

In the period from 1951 to 1953, however, the coalition's popularity had waned. Many were confident that a Labor victory was possible in the general election due in the first half of 1954.[23] In these circumstances, the government considered it would be better, perhaps, if Burchett did not return at all. In December 1953, Spry suggested to the Attorney-General, John Spicer, that it would be to the government's advantage 'if a public pronouncement were made to the effect that criminal proceedings will be instituted against Burchett if he could come within the jurisdiction'. And while there was 'considerable speculation amongst those who have had recent dealings with him as to whether or not he desires to get away from the Communists', it was only 'speculation':

> It may well be that an announcement that he will be prosecuted if he returns to Australia, backed up, perhaps, by the issue of a warrant for his arrest, would effectively deter him from returning. Furthermore, such an announcement would assure the world of the disapprobation with which the Australian Government views him and his activities.[24]

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21 Memorandum, Bell to Solicitor-General, 13 February 1952, NAA: A432, 1969/3072 attachment 2.

22 Ibid.

23 Peter Edwards, *Arthur Tange: Last of the Mandarins*, Allen & Unwin, Sydney, 2006, p. 64.

24 Report, Spry to Attorney-General, 17 December 1953, NAA: A432, 1969/3072 attachment 2.

Burchett's desire to 'get away from the communists' was a reference to the events of September 1953. US General Mark W. Clark[25] had approached Dr E. Ronald Walker, Australia's Ambassador to Japan, informing him that Burchett was in contact with an American correspondent, later revealed as International News Service reporter Ed Hymoff,[26] and had indicated his desire to return to Australia. Walker reported that the Americans were 'most anxious to have the opportunity for two or three days interrogation of Burchett', but wanted Australian approval. If the Australian Government gave its consent, Burchett would be evacuated through the demilitarised zone and given every 'necessary assistance with his repatriation', including financial compensation. Before leaving North Korea, however, Burchett wanted assurance that he would not be prosecuted 'or suffer any penalty for his association with the Communists and past activities'. Clark wanted the matter treated with 'considerable urgency' since any delay would reduce the prospect of bringing Burchett out, particularly 'any leakage to the Communists of Burchett's desire to leave North Korea could prejudice the whole operation'. In relation to his wife and child in Peking, Walker reported that as far was known, Burchett had not raised the question of his family 'and may not do so'.[27]

The Secretary of the Department of External Affairs, Alan Watt, immediately sent a memorandum to Menzies, then also Acting Minister for External Affairs. Stressing the urgency of the situation – there was a risk to Burchett's life if it were known to the Chinese that he was 'trying to cut loose' – Watt warned of the need for caution. He believed that the proposal could not be 'lightly ignored', given that Burchett might possess 'valuable information for the Americans and us'.[28] Two days later Watt cabled Walker to inform Clark personally that the matter had been 'considered at the highest level' and that, under no circumstances, was Burchett to be given 'any assurance' that he could evade prosecution in Australia.[29]

Burchett's most recent biographer, Tom Heenan, suggests two possible reasons why Menzies (presumably the 'highest level') rejected Clark's proposal to repatriate Burchett. One was the influence of Spry. The other was a coincidental attack by Labor's Catholic Right which portrayed Menzies as being 'soft on communism'.[30] Neither of these considerations

25 Commander UN forces from April 1952.
26 See Heenan, *From Traveller to Traitor*, p. 132.
27 Cablegram 443, Walker to Canberra, 7 September 1953, NAA: A1838, 131/6.
28 Memorandum, Watt to Menzies, 8 September 1953, ibid. Menzies acted as Minister for External Affairs, September–November 1953.
29 Cablegram 364, Watt to Walker, 10 September 1953, ibid.
30 Heenan, *From Traveller to Traitor*, p. 133.

were likely to have influenced Menzies. His anti-communist credentials stretched back 20 years to his stance against Egon Kisch. Moreover, as noted above, the government had begun exploring the possibility of treason charges against Burchett as early as January–February 1952.[31] Menzies acknowledged the importance of Clark's position, and his rejection of the general's proposal was a considered decision. For Menzies, the Burchett issue was non-negotiable. Even at a time when cultivating closer relations with the United States was emerging as one of Australia's highest foreign policy priorities, Menzies would not compromise, not even with the Americans. Burchett had crossed a line. He could not simply return to Australia because he had changed his mind. It was a position from which Menzies and his coalition successors as Prime Minister would never waver. Burchett later alleged that it was the Americans who tried, and persisted, to entice him home, a claim that has not been verified.[32]

Burchett left Korea in March 1954, travelling to North Vietnam before proceeding to report on the Geneva Conference that ended hostilities in French Indochina and Korea. The following year he covered the Afro-Asian Non-Aligned Conference in Bandung, Indonesia. During this period he was placed on an Australian passport warning list, and all Australian diplomatic posts were instructed to report any communication with him and to refuse any application for travel facilities. By early 1955 cables between the Department of External Affairs and diplomatic posts indicate that Canberra knew that Burchett's British passport was due to expire in May and that he would require a replacement.[33] Around this time, Burchett was on his way to Hanoi from Indonesia and lost his passport. He later claimed that it was stolen by agents.[34] Soon after he arrived in Hanoi he contacted the British consulate to report the loss and request a new passport. The consulate informed him that since the passing of the Australian *Nationality and Citizenship Act 1948*, Australian-born British subjects were no longer eligible for British passports[35] and that he would need to apply for an Australian document. This legislation is discussed in detail in Chapter 7.

When Menzies was informed of the developments regarding Burchett on 19 May 1955, he instructed that 'no documents which would in any way

31 Memorandum, Bell to Solicitor-General, 13 February 1952, NAA: A432, 1969/3072.
32 Heenan, *From Traveller to Traitor*, p. 134.
33 Memorandum, Heyes to Holt, 20 April 1955 , NAA: A6980, S200614.
34 Wilfred Burchett, *Passport – An Autobiography*, Thomas Nelson & Sons, Melbourne, 1969, p. 281.
35 Cablegram, London to Canberra, 10 May 1955, NAA: A432, 1952/1677.

ease his return to Australia should be given to Burchett'.[36] The Australian legation in Saigon was advised of these instructions but Burchett did not approach them.[37] Instead, he travelled to Cambodia with a temporary *laissez-passer* issued by Prince Norodom Sihanouk, the Cambodian Prime Minister. A *laissez-passer* is a travel document issued by a national government or an international treaty organisation. It is commonly used for various officials, diplomatic agents, representatives or citizens of third countries. According to Burchett, Robert McClintock, the US Ambassador in Cambodia, was convinced that he was travelling on forged papers and had tried to have him deported.[38]

In Australia there were some in the government who were concerned that Burchett would try to register his children, Anna, Peter and George, as Australian citizens.[39] The problem of the children's citizenship is outside the scope of this study, but it should be noted that once again Menzies made the ultimate decision, instructing that any attempts to register the Burchett children was to be rejected. Until 1970, the view lingered that registering the births would be:

> strongly to Burchett's advantage and jeopardise maintenance of the Government's decision not to grant Burchett himself a passport or facilitate his travel … To register the births as a discretionary act and then withhold passports … for entry to Australia would seem contradictory. If registration is followed by grant of passports and/or entry facilities for the children, it will be very much more difficult … to withhold them from the father.[40]

However, Menzies' decision worried some officials. Bailey feared that it could be reversed by a court.[41] Heyes also had misgivings, confiding to Allen Brown that:

> to refuse registration in this case will not serve any good purpose, since clearly the children will not come here for some years at least, if the parents are unable to do so. It could be said that refusal of registration amounts to penalising the children for the actions of their father, since they are themselves of European descent and not ineligible for entry and/or citizenship under immigration policy.[42]

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36 Memorandum, Brown to Heyes, 19 May 1955, NAA: A6980, S200614.
37 Cablegrams 86, 88, Immigration to Saigon, 19 May 1955, ibid.
38 Burchett and Shimmin (eds), *Memoirs*, pp. 458–9.
39 Memorandum, Heyes to Bailey, 11 July 1955, NAA: A6980, S200614.
40 Draft Cabinet submission, 'WG Burchett – Registration of Births of Children under Citizenship Act', March 1970, NAA: A432, 1969/3072 part 3.
41 Memorandum, McGinness to Heyes, 8 August 1955, NAA: A6980, S200614.
42 Memorandum, Heyes to Brown, 18 May 1955, ibid.

Heyes was correct. As time passed, perceptions of government motives for withholding Burchett's passport would be influenced by this denial of the children's rights.

On his return from Cambodia to Hanoi, Burchett appeared to have been contained in Southeast Asia. During this period, he developed warm friendships with senior North Vietnamese leaders, Ho Chi Minh, Truong Chinh and Vo Nguyen Giap.[43] As a result, when he was invited to a conference in Helsinki in June 1956, the North Vietnamese Government provided him with a *laissez-passer* with a return visa. It was on renewals and variants of this document that he would travel for the next 16 years.[44] Professionally, however, he was frustrated and, in 1957, he and his family moved to Moscow, where they stayed for eight years. Continuing his peripatetic career, he reported from the People's Republic of China, India and Southeast Asia. In April 1957, he re-applied for a British passport in Hanoi. Again he was informed that the position remained as in May 1955. He had no claim to citizenship of the United Kingdom and was ineligible for a UK passport.[45] No further applications were made until after the Australian Embassy re-opened in Moscow in 1959, following the interlude after the Petrov affair during which diplomatic relations between Australia and the USSR were disrupted.[46] In November 1960, Burchett sent a detailed, documented application for an Australian passport to Keith Waller, now the Australian ambassador in Moscow.[47]

To support his application Burchett wrote to the Department of Immigration. He knew that he had been accused of 'conduct during the Korean War which had militated against my request for a passport' and he requested 'an opportunity to answer these charges'. As for his 'present position', it was 'highly anomalous':

> I am an Australian citizen by birth … obliged to travel on a Document of Identity issued by the Government of North Vietnam which Australia does not recognise … Nor can I properly carry out my business as a working journalist unless I have an adequate travel

43 Ho Chi Minh was President of the Republic of Vietnam from 1955; Vo Nguyen Giap was Commander-in-Chief of the People's Army of Vietnam in the 1940s and 1950s and subsequently Interior Minister in Ho Chi Minh's government; Truong Chinh was first Secretary of the Vietnamese Communist Party from 1941 to 1956.

44 Burchett and Shimmin (eds), *Memoirs*, p. 465.

45 Letter, British consul, Hanoi, to Australian head of mission, Saigon, 10 April 1957, NAA: 6980, S200619.

46 Letter, Moscow, to Secretary, DEA, 3 August 1959, NAA: A1838, 1542/616 part 3.

47 Memorandum, Waller, Ambassador Moscow, to Secretary DEA, 23 November 1960, NAA: A432, 1969/3072 part 2.

> document – namely an Australian passport to which I believe, as an Australian citizen by birth, I have a legitimate claim.[48]

Burchett's application for a passport in Moscow prompted an interdepartmental meeting in Canberra on 21 February 1961 between officials from ASIO, the Attorney-General's Department, the Immigration and External Affairs departments and the Prime Minister's Department. The key point was whether, as an Australian citizen, Burchett had any legal entitlement to limited travel documentation that would assist him in returning (the documentation would be restricted to travel to Australia). The meeting also examined the merits of facilitating his return, agreeing that, 'at the very most', the policy departments would recommend a one-way ticket limited to him and the children – and then 'only if the legal consideration left no other course open'. Mrs Burchett, as a Bulgarian and 'well-known Communist', would not be admitted.[49] However, the Prime Minister's Department was 'dead against' any change in policy towards Burchett, and on 11 July the application was rejected.[50]

In early 1965, Cabinet decided to send a battalion of troops to join with US forces in assisting the South Vietnamese Government against the insurgent National Front for the Liberation of South Vietnam (NLF), the Viet Cong. The NLF was ostensibly independent of North Vietnamese forces and increasingly participated in the conflict in the south as the war progressed. With Australian forces now in South Vietnam, on 20 January 1966, Menzies retired and Harold Holt became Prime Minister. Meanwhile, Sir James Plimsoll had replaced Sir Arthur Tange as Secretary of the Department of External Affairs and Peter Heydon had transferred from External Affairs to become Secretary of the Department of Immigration. Between March and November 1965, Plimsoll, Heydon and various officials from each department had corresponded on the Burchett matter, agreeing that it 'would be desirable for Mr. Burchett to be issued with an Australian travel document of some kind, even if valid for a single journey only, when he next expressed a wish to return to Australia'.[51] But ASIO and the Prime Minister's Department kept to the 1955 position: no passport or any kind of travel documentation would be issued to Burchett. But Plimsoll continued to attempt to steer the Minister for External Affairs, Paul Hasluck, to a modified position, advising him that no material 'available to this Department

48 Letter, Burchett, Moscow, to Immigration, Canberra, 31 October 1960, NAA: A432, 1952/1677.
49 Ibid.
50 Ibid.; and A-G's summary paper, 'Burchett', 21 February 1961, ibid.
51 Letter, DEA to Immigration, 31 March 1965, NAA: A1838/393, 1542/616 part 1.

seems to us to contribute sufficient justification to deprive Mr Burchett of passport facilities':

> If Mr Burchett should be granted a passport, he will then decide whether or not to return to Australia. If he does so, the law enforcement authorities would then have to decide whether to prefer charges against him. If there is no charge, Burchett would then appear to be entitled to earn his living in Australia.[52]

Nonetheless, the government declined to modify its original decision. For once again, Burchett's 'conduct' was attracting attention. The commitment of Australian ground troops to South Vietnam was again placing Burchett at odds with the Australian Government. A 1968 Cabinet paper observed that from 1963 Burchett enjoyed a 'sympathetic relationship' with the National Liberation Front (NLF), making two films of his travels with the guerrilla fighters, and giving a further account in his book, *Vietnam, Inside Story of the Guerilla War*. The submission concluded that his writing and film-making constituted 'propaganda for the cause against which Australian troops are fighting in Vietnam'.[53]

By 1967, Burchett and his family were living in Cambodia. When Harold Holt visited the country as Prime Minister in March 1967, Burchett asked to see him personally to draw his attention to 'a violation of democratic right, of my own rights … namely the fact that for eleven years I have been denied the right to my Australian passport'.[54] Holt passed the letter to Sir Laurence McIntyre, Deputy Secretary of the Department of External Affairs, who later recorded that Holt made an 'off-the-cuff comment to the effect that he thought Burchett had something of a case and that it ought perhaps to be looked at again'.[55] But Holt died at the end of the year to be replaced by John Gorton who was totally unsympathetic towards Burchett.

Through 1967 and 1968, officials of the Departments of External Affairs and Immigration became increasingly uneasy, with Immigration concerned that the ongoing saga of 'a situation whereby Burchett … receives no decision at all may be difficult to defend'.[56] Both Hasluck and Billy Snedden, the new Minister for Immigration, received requests from their respective secretaries for a case review, including a proposal to issue a

52 Memorandum, Plimsoll to Hasluck, n.d. [c. April 1965], ibid.
53 Cabinet submission 345, 8 October 1968, NAA: A6717, A70 part 1.
54 Letter, Burchett to Holt, 31 March 1967, NAA: A7452, A354 part 1.
55 Letter, McIntyre to McGinniss, 12 March 1968, NAA: A6717, A70 part 1.
56 Memorandum, Heydon to Minister, 18 March 1968, NAA: A6980, S200615.

single-journey document. McIntyre argued that it was doubtful whether Burchett would accept such an offer but, by making it, the government would not be vulnerable to charges of a denial of justice.[57] In March 1968, it was agreed that the interdepartmental committee would reconvene on 30 May to review the matter. Before the meeting could take place, on 5 April, Burchett entered Laos with a Cuban passport and declared himself as a Cuban national.[58] Australian officials now pursued a new question: whether Burchett had abandoned his Australian citizenship. Efforts were made to find out about Cuban nationality law, but details were sketchy.[59] The 30 May meeting was dominated by the issue of the Cuban passport and over the following months Gorton became convinced that if it could be 'proved' that Burchett had forfeited his Australian citizenship, the matter could be resolved. Burchett, however, was not waiting on the Gorton government to make a decision. In early June, he re-applied for a UK passport in Phnom Penh and then went to Paris as an unofficial advisor to the North Vietnamese delegation at talks held between representatives of the North Vietnamese and US governments on the Vietnam War. There, he liaised with US officials, including Averell Harriman, the US chief negotiator.[60]

While Burchett was in Paris, his application for a British passport was refused but the Foreign Office approved his entry into Britain to visit relatives. His arrival at Heathrow airport on 25 June caused a sensation and in a press conference he announced that he had come to settle the issue of his Australian passport.[61] Two days later he told the chief migration officer at Australia House, George Kiddle, that he wanted to resolve the matter of his passport and that, if the decision was negative, he would again apply for a UK passport. Kiddle's report to Canberra expressed the hope 'that some decision is reached fairly soon and that it will be positive. I do not feel we are doing ourselves any good by continuing to refuse a document of some sort to him'. Kiddle believed that further delay would not enhance Australia's image, given the amount of press coverage Burchett was receiving in Britain.[62]

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57 Letter, McIntyre to McGinniss, 12 March 1968, NAA: A6717, A70 part 1.

58 Certified copy of *Fiche du Voyageur*, Service de la Police d'Immigration, Vientiane, Laos, completed and signed by Wilfred Burchett, 5 April 1968, NAA: A432, 1969/3072.

59 Minutes, interdepartmental meeting, 30 May 1968, NAA: A6717, A70 part 1.

60 Memorandum, McIntyre to Gorton, Acting Minister, n.d. [c. 14–21 June 1968], NAA: A6980, S200615.

61 Cable 10704, London to DEA, 25 June 1968, ibid.

62 Letter, Kiddle to Immigration, 1 July 1968, ibid. Kiddle also examined Burchett's North Vietnamese *laissez-passer* and reported that 'half of it was filled with visas issued by every conceivable communist country which obviously he had visited at one time or another'.

In Canberra, the matter of Burchett's April entry into Laos on a Cuban passport was the main focus at the time. On 2 July, McIntyre submitted a brief to Hasluck setting out that no verification of his reported entry with a Cuban passport was available, but if it was correct, 'Burchett's application [for an Australian passport] could not be accepted'.[63] Subsequent discussions between Hasluck, Gorton and McEwen, now Deputy Prime Minister, decided that Burchett's application was to be refused. 'Other questions … therefore, do not arise'.[64] The UK Government's view was that Burchett's Cuban passport was probably a gift, in which case his Australian citizenship would be unaffected.[65] On 19 July, the Attorney-General's Department submitted a revised opinion on whether they could lawfully treat Burchett as a person to whom entry could be denied because there was insufficient evidence that Burchett had acquired Cuban nationality.[66]

The question still remained as to whether Burchett could be charged with treason, if he were to arrive back in Australia. Some officials were confident that Burchett's activities in Vietnam strengthened the government's legal case against him.

A June 1968 Attorney-General briefing paper advised that the government would be subject to a great deal of criticism if it brought proceedings under a 14th century statute, 'without having brought into force by proclamation the relevant part of the *Crimes Act*'.[67] In 1960, the Crimes Act had been amended with a treachery section inserted to provide for extraterritoriality. The new section was meant to protect Australian troops on active service overseas during *de jure* operations.[68] The question of a proclamation under this amendment of the Crimes Act would be considered from time to time but no action would be taken.[69]

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63 Memorandum, McIntyre to Hasluck, 2 July 1968, ibid.

64 See memorandum, Heydon to Snedden, n.d. [c. July, 1968]; and memorandum, Heydon to McGinniss, 1 July 1968, ibid.

65 Cable 11424, Kiddle to Immigration, 5 July 1968, ibid. For Burchett's account of his Cuban passport, see Burchett, *Passport*, pp. 292–3; and his *Fiche du Voyageur*, 5 April 1968, NAA: A432, 1969/3072.

66 Memorandum, E.J. Hook, Secretary A-G's, to Heydon, 11 July 1968, NAA: A6980, S200615. See also, letter, Hook to C.L. Hewitt, Secretary, PMD, 19 July 1968, NAA: A6717, A70 part 1.

67 Departmental submission, for Attorney-General, 20 June 1968, NAA: A432, 1969/3072 part 4.

68 That is, when they were engaged in 'belligerent operations in association with other nationals in a United Nations' force, without the declaration of war' (as in Korea) and when serving abroad 'in a war-like situation and in connection with war-like operations without declaration of war [as in Vietnam]'. Departmental background paper, A-G's, December 1969, NAA: A432, 1969/3072 part 3.

69 A-G's background paper, 'WG Burchett: Possible Parliamentary Question Relating to Prosecution for Treason', c. February 1970, ibid.

While the government decided not to proceed against Burchett under the Crimes Act, it remained uncompromising about issuing him the travel document he had applied for in London in June. Gorton sought to rely on the Cuban passport proving that Burchett had abrogated his Australian citizenship rights but his department was doubtful. The *Fiche du Voyageur*, or travel particulars provided by Burchett to Lao authorities, when he used a Cuban passport, was not a sworn statement and was not admissible in law.[70] On 20 September, Burchett saw Kiddle again about his passport application because he had now been invited to speak at a peace conference in Sydney in October. He asked whether he could be issued with an entry certificate similar to that issued by the British for his June visit to the United Kingdom, if the application had not yet been approved.[71]

Burchett's request was refused but the difference in the departmental views on the issue continued. At the September interdepartmental committee, Immigration and External Affairs offered alternatives, including 'an ad hoc document carrying no connotations of citizenship which was sometimes issued to stateless people', but the Prime Minister's Department, in concert with ASIO, countered that it was 'unthinkable' for Burchett to be 'addressing a propaganda rally in Australia one week and … in North Vietnam the next'.[72] The latter view prevailed. No travel document of any kind would be issued to Burchett.[73] Between March and October 1968, the Gorton government re-affirmed the position taken by the Menzies government in 1955 and 1956. As little as possible would be said about the Burchett case and no ground would be conceded. Gorton, like Menzies, was the key decision-maker.

But by 1968 the political and social environments were changing, along with public perceptions and attitudes. The anti-communism espoused so successfully in the 1950s and early 1960s was increasingly perceived as strident and anachronistic by the late 1960s. With the increasing respectability of the anti-war movement, Burchett's image:

> as an ally of communist apparatchiks was supplanted by that of the courageous Western journalist on a rickety bicycle, wide straw hat atop his head, sharing the danger of his friends among the Vietnamese revolutionaries. As the Western cause bogged down in Vietnam and protest against the war grew, anti-communists found

70 Memorandum, F.L. Bett, PMD, to Hewitt, 12 August 1968, NAA: A6717, A70 part 2.
71 Appendix, submission 345, 8 October 1968, NAA: A5868, vol. 15.
72 Briefing paper, A.T. Griffith, PMD, to Hewitt, 24 September 1968, p. 1, NAA: A6717, A70 part 2.
73 Minute, Griffith to Hewitt, 3 October 1968, ibid.

> it harder to denounce Burchett as an unacceptable spokesman for an alien ideology. The Korean War was widely forgotten, and to critics of the Vietnam War Burchett seemed a man of principle …[74]

Burchett's approach to regaining his passport became increasingly confrontational, buoyed by the support of prominent Australians such as Labor MP Jim Cairns and his counsel, Frank Galbally QC. Playing on the growing public sympathy for Burchett, Galbally and Cairns used the media extensively, depicting Australian passport policy as a denial of Burchett's human and constitutional rights. As international criticism increased, the press lobbied the government to change its position.[75] Galbally knew that no Australian had a 'right' to a passport under Australian law but, when presenting Burchett's case publicly, he used the passport as a symbol of his client's political struggle and the word 'right' had broader connotations. The Gorton government remained resolute. For Gorton, this was a symbolic conflict in which 'honourable defeat' held great appeal. He regarded Burchett's conduct in Korea as unforgivable. He preferred to accept the political repercussions of a court ruling than give in to a man whom he regarded as contemptible.[76]

Burchett's international celebrity status increased through his activity at the Paris Peace talks on Vietnam in November 1968. There was intense speculation that he was acting as an intermediary between North Vietnam and the United States, which heightened when the US Government issued him a C-2 visa, a transit visa enabling foreign nationals to travel to the United Nations in New York, so that he could cover the UN General Assembly.[77] Within six months, Australia's two main allies had now endorsed Burchett's entry into their territory. The Australian Government continued to avoid publicity about the Burchett case but, by early December 1968, it was clear that that there was to be no diminution of Burchett's campaign, which would now include family and supporters.[78] The news began with a *Sydney Morning Herald* interview with Burchett's 96-year-old-father, George Burchett. Wilfred

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74 See Peter Edwards, *Nation at War, Australian Politics, Society and Diplomacy during the Vietnam War 1965–1975*, Allen & Unwin, Sydney, 1997, p. 231.

75 International criticism included, for example, support from American playwright, Arthur Miller, French philosopher, Jean Paul Sartre, and American novelist and critic, Mary McCarthy.

76 See Ian Hancock, *He Did It His Way*, Hodder Books, Sydney, 2002; and Gorton papers, NAA: M3787, 55.

77 See for example, cablegrams 6932, Paris to Canberra, 18 November 1968, NAA: A6717, A70; 6155, Washington to Scorpion, Melbourne and Canberra, 3 December 1968; and UN2604, New York to Canberra, 5 December, NAA: A1838, 1542/616 part 2.

78 Note on 'Wilfred Burchett', Tony Eggleton, 2 December 1968, NAA: A6717, A70 part 3.

was just a 'scallywag', said Burchett Snr. 'I don't say anyone has to accept his politics. I've been arguing with him since he was a boy. But at least he's open and honest about them, and I can't see why they should bar him from the land of his birth'. But if his son were to be granted a passport, 'it had better not be too long. We Burchetts are a long-lived clan, but a fair thing is a fair thing'.[79] Father and son did not see each other again. George Burchett died nine months later.

On 4 February 1969, Denis Warner, now a journalist specialising in East Asian affairs for Australian and American newspapers, published an article in the Melbourne *Herald*. Touted as the story that should not be told, the article's foundation was Burchett's alleged manipulation of US pilots and their confessions in Korea. Warner appeared to be privy to details of the repatriated POWs' statements, revealing Burchett's failed attempt to make a deal with the Menzies government in September 1953.[80] Burchett decided to sue both Warner and the *Herald* for libel and, on 4 March, Galbally wrote to Gorton, setting out that, since Burchett had instituted legal proceedings against Warner, his client's presence was necessary 'to pursue his action at law'.[81]

On 23 April 1969, Snedden took an Immigration submission on the case to Cabinet. He argued that the objective of Burchett's return had altered 'from that considered' in the previous October and that the new request could not be answered by reference to Cabinet's previous decision. Continued refusal of a passport would be 'represented as a denial of facilities for re-entry to pursue his legal action'. Snedden stressed that he did not advocate the grant of a passport, but he believed that the government should not deny Burchett the right to pursue his legal action. He recommended that Burchett 'be permitted entry; the authority being in the form of a visa valid for one journey placed on either an affidavit by him as to his identity on his Cuban passport or a valid passport issued by another country recognised by Australia'. If one of these alternatives was approved and Burchett did not return to Australia, he would not be in a position to claim that the government denied 'his right to pursue his legal action (or to see his aged father, or to exercise other human rights contemplated by the U.N. Declaration)'.[82] Cabinet rejected Snedden's proposals on 30 April. And he was directed to reply to Galbally, stating that the government would not grant any travel document to Burchett, nor in any way facilitate his return.[83]

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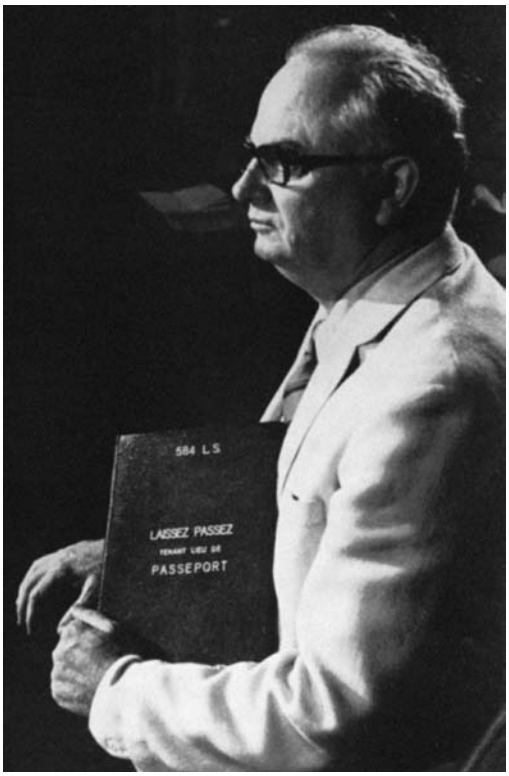
79 *SMH*, 'Father Pleads for 'Scallywag'', 1 January 1969.
80 Denis Warner, 'The Time for Confession', Melbourne *Herald*, 4 February 1969.
81 Letter, Galbally to Gorton, 4 March 1969, NAA: A6717, A70 part 3.
82 Cabinet submission 548, 23 April 1969, NAA: A432 1969/3072 part 2.
83 Cabinet decision 978, 30 April 1969, ibid.

Towards the end of the year, reports came in that Burchett was intending to return to Australia, possibly hoping that 'an announcement of his arrival would force the Australian Government to issue a passport'.[84] On 17 February 1970, he arrived in Noumea with Galbally who then informed Gorton that his client planned to enter the country.[85] Given his personal animosity towards Burchett and all he stood for, this was a difficult time for Gorton to make an 'unemotional' response as was being suggested to him.[86] Fervently nationalistic and anti-communist, while he accepted that a treason charge could not be sustained, he continued to believe that Burchett acted treacherously 'against Australia and Australians, indeed even treasonably, but this is very different to proving treason'. To negotiate with him was anathema: 'I think he is a bastard and that we were and are right in not facilitating his travel or issuing him with a passport'. But for Gorton political considerations were also important. 'If this thing is handled in the correct way … it will be a big political plus for us'.[87] In the end the government did nothing.



Wilfred Burchett at Heathrow Airport, London, in June 1968, with his *laissez-passer* – so large, Burchett bound it in black Moroccan leather
(*from the publication 'Passport – An Autobiography', by Wilfred Burchett, Thomas Nelson & Sons, 1969. Copyright permission kindly granted by George Burchett*)

84 Letter, Spry to J.Q. Ewens, A-G's, 7 November 1969, ibid.
85 Letter, Galbally to Gorton, 19 February 1970, NAA: M3787, 55.
86 Memorandum, Ainslie Gotto to Gorton, 25 February 1970, ibid. Gotto, Gorton's personal assistant, suggested *inter alia* that he might make a 'reasoned, middle-of-the-road, *unemotional* statement on the basis that we feel the Australian people ought to know why the Government has taken the action it has'. Emphasis in original.
87 Gorton papers, NAA: M3787, 55.

Burchett flew into Brisbane on 28 February 1970. (As noted previously, Queensland was outside the jurisdiction of the Statute of Treasons).[88] Police who attended Burchett's press conference did not produce a warrant and he flew on to Melbourne to a quiet reception.[89] The *Sydney Morning Herald* described the view of the Australian public as to whether Burchett should be granted a passport as 'almost evenly divided' on the issue.[90] So too, was the media's view of the 'protagonists': Burchett's address to the National Press Club was met with a large degree of scepticism while, at the same time, there was little support for the government's stance. Two weeks after his arrival, Burchett left through Sydney Airport. Apart from his birth certificate, he produced no other document – a seemingly impossible procedure. On 4 March, Gorton told parliament that Burchett submitted a passport application during his visit, and that he had been informed in writing that his application was not approved. Later in the month, however, Australian posts overseas were informed that Burchett's children should now be registered as Australian citizens 'upon further application being made by Burchett'.[91]

Over the next two years, Burchett continued to make headlines and polarise opinion in Australia and overseas. In 1971 Henry Kissinger, President Nixon's National Security Adviser, received him at the White House. Burchett told the story as evidence of his credibility as an analyst of international affairs, but Kissinger informed Plimsoll (by then, Australian ambassador to the United States) that the meeting was arranged by an 'intermediary', and, when he realised that Burchett had nothing of value to convey, 'cut him short' and ended the meeting.[92] Whether Kissinger's version is correct or not, the story made headlines in Australia, high-lighting Burchett's prestige and embarrassing the Australian Government. In May 1972, Burchett claims that he received a note from Opposition leader Gough Whitlam: 'apply for your passport immediately after the elections'.[93]

In the days following Whitlam's victory at the 2 December general election, Burchett recorded that he mused 'whether or not to write or cable him directly to remind him about my passport, or just to make a regular

88 Memorandum, Bell to Solicitor-General, 13 February 1952, NAA: A432, 1969/3072 attachment 2.

89 Burchett and Shimmin (eds), *Memoirs*, p. 653.

90 *SMH*, 'Public's Views on Burchett Passport', 12 May 1960.

91 Cablegram 1528/Savingram AP.20, Canberra to Paris and All Posts, 20 March 1970, NAA: A5882, CO288.

92 Possible parliamentary question, 'Kissinger-Burchett Meeting', n.d. [c. November 1971], NAA: A6717, A70 part 8.

93 Burchett and Shimmin (eds), *Memoirs*, p. 710.

application at the Australian Consulate [sic] in Paris'.[94] There was no need to do so. On 6 December, the Australian ambassador in Paris advised him that he had instructions to issue him with a passport.[95] After 17 years and seven months, 'that precious document' was issued the next day.[96]

94 Ibid.

95 Cablegram 5945, Waller, Secretary DEA, to A. Renouf, 6 December 1972, NAA: A1838, 1542/616 part 6. Ambassador Renouf telephoned Burchett in Paris with the news.

96 Cablegram 5652, Renouf to Waller, 7 December 1972, ibid.; and Burchett and Shimmin (eds), *Memoir*s, pp. 710–11. Ironically, Burchett's first use of the passport was to travel to Hanoi, even though the passport was stamped 'Not Valid for North Vietnam'. Burchett claims that the embassy's passport officer handed the passport to him with the words: 'It's not special for you – it's on all passports. I suppose it will be changed now'.

7

Citizenship, Immigration and Globalisation

By World War II, the passport performed three functions. It was a document of identity; it was a request to a foreign government to grant the bearer safe passage within its territory; and it was *prima facie* evidence of the nationality or citizenship of the bearer. From the point of view of international law, its cardinal purpose was to give states a *prima facie* guarantee that some other state would accept aliens whom admitting states chose either not to admit or to deport.[1] After Australia passed its first citizenship legislation in 1948, the Australian passport became a document that identified bearers as citizens. Previously, they had been issued to British nationals, whether domiciled in Australia or the United Kingdom, or in other Empire or Commonwealth countries. This new citizenship legislation and the immigration that transformed Australia in the half-century following World War II changed the passport from a badge of 'British' nationality to a document that affirmed the bearer's membership of a multicultural Australian state. The multicultural Australia after World War II was more concerned than the prewar Anglo–Celtic Australia with the issue of 'rights' and in particular the 'right' to a passport. Responding to these broad social changes the Australian Government decided to establish in the 1970s a 'proper legislative basis for the passport policy as well as a clear legislative framework for the exercise of ministerial discretion'.[2] The period from the late 1960s to the late 1980s can be seen as one of increasing globalisation. The term describes inter alia the increasing movement of peoples across

1 John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State*, Cambridge University Press, Cambridge, 2000, p. 163.

2 Robert S. Lancy, 'The Evolution of Australian Passport Law', *Melbourne University Law Review*, vol. 13, June 1982, p. 443.

state boundaries. States felt compelled to regulate this movement in part through the passport system. As improvements in civil aviation made travel by Australians cheaper and easier, the demand for passports increased dramatically. The Australian authorities met this increased demand for passports at the same time as a new international organisation, the International Civil Aviation Organisation (ICAO), succeeded the League of Nations as the leading forum for promulgating international standards for passports. One of the ICAO's major achievements – in which Australia was intimately involved – was establishing a framework for machine readable passports in the 1980s.

After Federation in 1901, the Commonwealth and the States, and later the Commonwealth exclusively, issued passports to British subjects. Until World War II, Australia was an Anglo-Celtic, predominantly British, country. There were no Australian citizens, only British subjects, who might be so by birth, descent, or, more rarely, 'naturalisation'. Aliens applying for naturalisation as British subjects had to fill in a form stating their nationality, advertise their intention in the newspapers, and take an oath of allegiance renouncing their former nationality.[3] Until 1949 passports in Australia were granted on the basis of 'nationality', not 'citizenship'. In many modern nation-states 'nationality' and 'citizenship' amounted to the same thing. But in other cases they differed. For example, persons born in Latvia might have been Latvian nationals and citizens of the Soviet Union.

The impetus for Australia establishing its own citizenry came in 1945 when the Canadians introduced a bill that made Canadian citizenship paramount and defined Canadian citizens in terms that differentiated them from other subjects of the British Crown.[4] The Canadian initiative prompted the British Government to convene in 1947 a (British) Commonwealth conference of technical experts to examine the issue of citizenship across the British world.[5] The conference saw advantages in each country establishing its own citizenship laws. First, separate identities would be separately recognised. Secondly, each country could determine precisely who its citizens were and who would be entitled to diplomatic and consular protection.

3 Cabinet submission, Hughes, 7 April 1938, in R.G. Neale (ed.), *Documents on Australian Foreign Policy, Volume 1, 1937–1938* Australian Government Publishing Service (AGPS), Canberra, 1975, p. 323; and John Chesterman, 'Natural-Born Subjects? Race and British Subjecthood in Australia', *Australian Journal of Politics and History,* vol. 51, no. 1, 2005, pp. 30–9.

4 Christopher Rudolph, *National Security and Immigration: Policy Development in the United States and Western Europe since 1945*, Stanford University Press, Stanford, 2006, p. 173.

5 For the British Commonwealth Conference on Nationality and Citizenship of 1947, see generally, NAA: A467, SF 40/17.

Thirdly, each would have a clearer idea of the persons on whose behalf they were negotiating when making treaties with other countries. The conference accepted the logical consequence that each Commonwealth country would issue passports only to its own citizens.[6]

In 1948 the British Parliament passed the British Nationality Act allowing Commonwealth States to define their own citizenship with reference to the United Kingdom. The Act established two main categories of citizens: Citizens of the United Kingdom and Colonies and Citizens of Independent Commonwealth countries. The legislation afforded Commonwealth citizens the right to enter the United Kingdom and was intended to reaffirm British identity and nationhood.[7] It did so by allowing each Commonwealth country that established its own citizenship to enjoy a shared status of British subjecthood (also known as Commonwealth citizenship). In accord with this strategy, the Chifley government gained parliamentary approval for an Australian Nationality and Citizenship Act. The legislation established Australian citizenship, although Australian citizens would continue to be British subjects. Section 7 of the Act stated that Australian citizens were British subjects by virtue of that citizenship. Part III articulated the ways in which someone could become an Australian citizen: by being born on Australian soil (the *ius soli*), through descent, or through naturalisation. Between 26 January 1949 and 19 June 1986, any person born in Australia acquired citizenship automatically.[8] British subjects born outside Australia before 26 January 1949 with an Australian father became Australian citizens automatically on entering Australia with a permanent visa.[9] Those born outside Australia with an Australian parent could be registered as Australian citizens between 26 January 1949 and 15 January 1974 provided their Australian parent retained Australian citizenship up to the point of application, or was an Australian citizen at death. Any person aged below 25 could be registered as a citizen provided that they had an Australian parent at birth, and that that person had lived legally in Australia for a total of two years.

After establishing an Australian citizenship, the Minister for Immigration, Arthur Calwell, recommended to Cabinet on 22 October 1948 the consequent amendment of the passports legislation. Calwell accepted

6 Torpey, *Invention of the Passport*, p. 149.
7 Rudolph, *National Security and Immigration*, pp. 174–5.
8 Thereafter, however, the *ius soli* was modified to the extent that persons born in Australia only acquired citizenship by birth if at least one parent was an Australian citizen or permanent resident.
9 This was until 30 April 1987.

that the government would only issue passports to its own citizens, but he persuaded his colleagues that this should not happen in Australia until all other Commonwealth countries had enacted their own citizenship laws and arranged for their own representatives to issue passports to their citizens.[10] The consequence of this loophole was that Australian passports for three decades were issued mainly, but not exclusively, to Australian citizens. The Australian authorities continued to issue passports to British subjects who were not Australian citizens until 1984. The practice was eventually discontinued not primarily for reasons of nationalism but to deter drug trafficking. Cabinet authorised Calwell to amend the Passports Act to discontinue the 'A' series passport, the passport series established after the enactment of the *Passports Act 1920*. From 26 January 1949 until 30 June 1950 two passports were issued concurrently. The 'B' series was issued in Australia only to British subjects who were not Australian citizens. Their serial numbers were prefixed by the letter 'B', but otherwise they were identical with 'A' series passports on whose cover was printed the words 'British Passport Commonwealth of Australia'. The national status of the bearer was described as before 1949, that is without reference to citizenship. But applicants for such passports had to produce evidence of their claims to British nationality. 'C' series passports were issued only to Australian citizens, both within Australia and by Australian representatives overseas. The covers bore the Commonwealth coat of arms and the words 'Australian Passport'. In the space for 'national status', the bearer was described as 'Australian citizen … and a British Subject'. The word 'birth' or 'naturalisation' was inserted as appropriate. The 'C' series passport was short-lived. Members of the Opposition Liberal and Country Parties opposed the omission of 'British' on three grounds. One was that Australia's 'British' passport gave the holder the benefits of visa arrangements negotiated between the United Kingdom and continental countries. Another was that in 1949 there were many parts of the world where the United Kingdom had diplomatic representatives to help holders of 'British' passports and Australia was not represented. A third was an attachment to 'Britishness', particularly by non-Labor parties, that persisted to the 1960s.[11] The Liberal and Country Party government, led by the anglophile R.G. Menzies, introduced the 'E' series passport in July 1950. 'British' was restored and remained until the 1960s.

10 Cabinet submission, Calwell, 22 October 1948, NAA: A2700, Agendum 1180A.

11 Second reading debate on passports legislation, 2 December 1948, NAA: A659, 1948/1/2012.

Australia's citizenship legislation, the determinant of eligibility for a passport, was amended in 1955, 1969, 1973, 1984, 1986 and 2002. In 1969 the Act was amended to read that an Australian citizen would have the 'status' of a British subject.[12] In 1973 the measure was renamed the Australian Citizenship Act with the term 'nationality' removed from the lexicon of Australian legislation. In practical terms Australian nationality and citizenship became synonymous.[13] At the same time, the rules were changed so that Britons and non-Britons alike were required to reside in Australia and take the oath or affirm their allegiance to become Australian citizens. It was not, however, until the *Passports Amendment Act 1984* and the issue of the 'T' series passport that the law required that Australian passports only be issued to Australian citizens. This was one consequence of the Stewart Royal Commission's recommendations. This subject will be discussed in Chapter 8. The removal of references to British subjects placed all persons who were not Australian citizens on an equal footing.[14] It was from then that the issue of a passport confirmed definitively that the bearer was an Australian citizen who was eligible for assistance at Australian missions overseas. From 1984, moreover, Australian citizens were no longer British subjects.[15]

In March 1964, the Minister for Immigration, Hubert Opperman, asked Cabinet's approval to remove 'British' from the passport. This was not long after the British Government had legislated for the *de jure* restriction of movement within the Commonwealth, something previously incompatible with the notion of maintaining a British national identity in the British diaspora. The UK's 1962 Commonwealth Immigrants Act introduced immigration control for Commonwealth citizens whose passports originated outside the United Kingdom (including Australian passport-holders) and a three-tiered system of entry vouchers. The measure was primarily designed to limit immigration from the West Indies and the subcontinent, but it curbed the traditional rights of Australian passport-holders to unrestricted entry. Later British legislation in 1971 merged the categories of 'aliens' with 'Commonwealth citizens' and removed most of the privileges previously accorded Commonwealth citizens. The Act gave the British Government complete control over immigration, except for

12 Alastair Davidson, *From Subject to Citizen: Australian Citizenship in the Twentieth Century*, Cambridge University Press, Melbourne, 1997, p. 88.

13 *Australian Citizenship Act 1948–1973* (Cth).

14 Passports Amendment Bill 1984 (Cth).

15 Davidson, *From Subject to Citizen*, p. 88; and Anne-Marie Jordens, *Redefining Australians: Immigration, Citizenship and National Identity*, Hale & Iremonger, Sydney, 1995, pp. 152–5.

'patrials' (defined as those tied to the United Kingdom through family or settlement). Only patrials would remain free of immigration control. Non-patrial Australian passport-holders had to obtain a work permit for a specific job, with a specific employer, for a specific period. They became in effect guest-workers.[16] The UK Immigration Act came into force at the beginning of 1973, when Britain also implemented its Treaty of Accession to the European Economic Community (EEC). Under this treaty, Britain accepted the free movement for EEC member citizens, while Australian passport-holders were treated as aliens. Australians only reluctantly accepted this break-up of the British world. Opperman's 1964 proposal was defeated and the words 'British Passport' were retained in small letters below the Australian coat of arms on 'G' series passport.[17] In 1967, Billy Snedden, Opperman's successor in the Immigration portfolio, tried again. By this time, Australia was the only country, other than the United Kingdom, that retained 'British' on the cover of its passport. Snedden contended that the word was anachronistic. For one thing, the United Kingdom had taken a decision in the 1960s to use the word 'British' to describe all things pertaining to the United Kingdom. For example, the former 'United Kingdom High Commission' in Canberra had been changed to 'British High Commission'. For another thing, the Australian passport in practice was being issued to Australian citizens in the 1960s.[18] By 1967, the passport no longer conferred a right of entry into the United Kingdom. Moreover, as Calwell envisaged in 1948, citizens of other Commonwealth countries in 1967 could obtain a passport from their own high commissions. Cabinet agreed with Snedden's submission and 'British' was removed.

Around the time that the Department of Immigration took over the passport function at the end of the war, Australia had a solidly British population. The census of 1933 had found that 99.1 per cent of the population of 6.5 million were British subjects. The number of people from outside the British Commonwealth at the time numbered a mere 113,557. The largest nationalities of the small foreign-born minority were Italians, Greeks, Yugoslavs and Poles.[19] This homogeneity meant that there was a high level of agreement on values in pre-World War II Australia. There was also a confidence that the constitution and the common law would safeguard the rights of British subjects.

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16 Rudolph, *National Security and Immigration*, pp. 181–4.

17 Cabinet submission 433, Snedden, n.d. 1967, NAA: A4940, C3937.

18 Press statement, Snedden, n.d. 1967, ibid.

19 ABS, *Official Year Book of the Commonwealth of Australia*, no. 36, 1944 and 1945, Commonwealth Government Printer (CGP), Canberra, 1947, p. 486. Immigration managed passports 1945–1975.

However, from the late 1940s, mass immigration transformed Australia into the most multi-ethnic and multicultural country after Israel. Between 1945 and 1982, 5.5 million migrants arrived. Partly due to immigration and partly due to natural increase, Australia's population reached 10 million in 1959 and 15 million during 1981. Of these 15 million, about one-fifth had been born overseas and another one-fifth had one parent born overseas. Only half of this combined two-fifths of the population were Britons; the balance made up of nearly 100 nationalities. Roughly half of the immigrants coming to Australia from 1945 to 1985 could be described as 'refugees' from Nazi Germany or the Soviet Union. At the end of World War II the number of displaced Europeans was estimated at 30 million, of whom about one-third were outside their country of origin. Immigrants to Australia came particularly from Czechoslovakia, Hungary, Poland, Yugoslavia, Estonia, Latvia, Lithuania, Italy and Greece. The remainder came as labour migrants who aspired to a higher standard of living. Australia, nonetheless, had a higher rate of immigrants who returned home after short periods than some European countries, especially in the early years of postwar immigration. Indeed, Alastair Davidson points out that Australia's authorities routinely instructed assisted migrants to surrender their foreign passports in order to guarantee that they would remain for at least two years.[20] Not until the dismantling of the White Australia policy in the 1970s would many more migrants come from Asia-Pacific countries, including large numbers of refugees from Indochina, after the US military defeat in South Vietnam and the reunification of Vietnam in 1976.

During the period of mass immigration, the Department of Immigration was responsible for citizenship matters, reflecting the connection between immigration and nationality and thus of eligibility to hold Australian passports. One of the department's key tasks was to administer the White Australia Policy, the bipartisan policy instituted shortly after Federation to exclude immigrants from Asia and the Pacific.[21] This policy was only completely dismantled by the Whitlam Labor government in the early 1970s. Section 11(c) of the legislation that gave effect to the White Australia Policy, the *Migration Act 1958*, prohibited a carrier from bringing to Australia persons who did not have a visa, unless they had an exemption. Moreover, it was assumed in s. 11A(3) that the visa would be noted in the

20 Davidson, *From Subject to Citizen*, p. 85.

21 The *Immigration Restriction Act 1901* (Cth), renamed the Immigration Act in 1912, and all later migration statutes were wholly repealed by the *Migration Act 1958* (Cth). This Act relates to the entry into, and presence in Australia of aliens, and the deportation or departure from Australia of aliens and certain other persons.

passport or other document of identity held by the entrant. The department also administered the *Aliens Act 1947*. This measure reflected pervasive suspicion of the foreign 'other' that persisted in Australia until the 1970s.[22] Non-British migrants were required to register on arrival and notify the department of any change of address or employment.[23] Registration began overseas at the time an alien applicant was interviewed and the information was verified from original documents which they had available. Aliens already in Australia had to go through a similar process on reaching registration age or being granted resident status. Moreover, the 170,700 refugees who arrived between 1947 and 1954 were not permitted to change their jobs without the approval of the authorities.[24] The Aliens Act conflicted with many principles later enshrined in international agreements that Australia signed: the UN Declaration of Human Rights (1948), the Geneva Convention on Refugees (1951) and the International Covenant on Civil and Political Rights (1966). By this Act and the Migration Act, the department controlled both the entry of immigrants and their absorption into the community.

The Minister for Immigration could grant a naturalisation certificate to 'aliens' who had resided in Australia or New Guinea for five years, were of good character and had an adequate knowledge of English. The position of non-British immigrants contrasted with British subjects who could apply for registration as an Australian citizen after only one year's residence. When aliens were stateless, or unable to obtain their national passport, but nonetheless wished to leave Australia, they still required travel documentation. Some other countries gave passports to non-citizen nationals – for example, 'denizens' such as resident aliens, refugees and asylum seekers – as well as to citizens.[25] For Australia, however, nationality, then citizenship, was the foundational claim to a passport for travel. Aliens would not be entitled to them. Australia adopted a different category of travel document for non-citizens. In lieu of a passport, the department granted such aliens 'certificates of identity'. These documents contained room for visas. Unlike the passport, the document of identity, which described the bearer's national status, did not require other countries to provide free passage,

22 Davidson, *From Subject to Citizen*, p. 161; and Anne-Marie Jordens, 'Redefining "Australian Citizen" 1945–75', Working Paper 8, Administration, Compliance and Governability Programme, Australian National University, Canberra, 1993, p. 4.

23 The definition of an 'alien' under the *Nationality and Citizenship Act 1948* (Cth) was a person who was not a British subject, Irish citizen or protected person.

24 Davidson, *From Subject to Citizen*, p. 93.

25 Torpey, *Invention of the Passport*, p. 161.

protection and assistance, or exempt the bearer from the need to obtain a visa for countries with which Australia had visa agreements. As a rule, the Department of Immigration did not regard itself as under any obligation to grant travel facilities back into Australia for aliens overseas holding documents of identity, unless aliens had lodged a declaration of intention to return within a year of departure and maintained interests in Australia.

The incentives to progress from alien to citizen appear to have been strong. On becoming a citizen, a person would no longer need to comply with the discriminatory requirements of the Aliens Act. They would be entitled to apply for a passport and to seek consular protection overseas. They would be entitled to immunity from deportation; entitled to vote; and, except for dual nationals, stand for public office; to leave Australia and return at any time without a resident return visa; to register overseas-born children as Australian citizens by descent; and to seek employment from the Commonwealth Government where citizenship was a requirement.[26] But from 1947 to 1952, the rate of applications for citizenship remained low and this affected the eligibility of many denizens for a passport. Before 1952, less than half of all migrants had registered an intention to naturalise, and nearly 80 per cent had not done so.[27] The reasons for delay were various. Some found it difficult to find an Australian citizen to supply the necessary reference to their good character. Others had difficulty with English and mastering official documents. Others again found it objectionable to renounce their former allegiances, by swearing an oath at a public ceremony:

> I [AB] swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors according to law, and I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen.[28]

The authorities therefore strove to simplify procedures with considerable success. By 1971, more than half of Britons and 73 per cent of all migrants had naturalised. In the 1970s and 1980s, too, governments of all persuasions fostered a policy of 'multiculturalism': a policy that aimed at encouraging cultural diversity among the 100 nationalities that made up the Australian population.[29] It had become easy to acquire citizenship by 1983.

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26 Davidson, *From Subject to Citizen*, pp. 92–3.
27 Ibid.
28 C. Parry, *Nationality and Citizenship Laws of the Commonwealth and the Republic of Ireland*, Steven and Sons, London, 1957, p. 603.
29 Davidson, *From Subject to Citizen*, p. 93.

An alien was then required to have only two years residence and a basic knowledge of English. By 1986 the Oath of Allegiance was altered:

> From this time forward [under God – optional] I pledge my loyalty to Australia and its peoples, whose democratic beliefs I share, whose rights and liberties I respect, and whose laws I will uphold and obey.[30]

Thereafter new citizens were not required publicly to renounce all other allegiances. The changing composition of the population had the effect that the issue of *rights*, which had rarely been an issue in Anglo-Celtic Australia, shifted increasingly into the public arena from the late 1970s. This had implications for amendments of legislation on the issue of the 'right' to a passport in 1979. The issue is addressed below. By the time of the Hawke Labor government, elected in 1983, the Aliens Act was regarded as discriminatory in favour of British subjects. It had survived so long essentially to satisfy national security interests. Previous attempts to repeal it had failed because there was no obviously suitable alternative means of providing information on all non-citizens. The legislation was finally repealed in 1984.

The mass immigration had another consequence for passports, namely to increase the number of 'dual citizens' and therefore of Australians who held other countries' passports in addition to Australian ones. The Australian rules on dual citizenship were ambiguous. Section 17 of the *Nationality and Citizenship Act 1948* provided that any Australian citizen of 18 years of age or over, who does 'any act or thing' (apart from marriage), 'the sole or dominant purpose of which, and the effect of which, is to acquire the citizenship of another country', on that acquisition ceased to be an Australian citizen. The act of making the application would lead to the loss of Australian citizenship, once it was approved. The most celebrated instance was when Rupert Murdoch obtained citizenship of the United States in 1985 to protect his investments in that country. In doing so, he lost his Australian citizenship and his Australian passport. The position of people like Murdoch contrasted with that of other categories of people who were allowed dual citizenship. Until 2002, that included those born in Australia who automatically acquired another citizenship at birth; migrants naturalising in Australia, provided that their former country did not revoke their citizenship; and children born overseas to Australian parents who automatically acquired the citizenship of their country of birth as well as Australian citizenship by descent. Between 1949 and 1986, Australian

30 Ibid., p. 119.

governments were unable to enforce the renunciation of former allegiances sworn in public ceremonies of naturalisation. But after 1986, governments not only tolerated, but encouraged, dual citizenships.[31] The Department of Immigration and Multicultural Affairs considered that there might be four or five million Australians with dual citizenship at the end of the 20th century.[32] The Australian Citizenship Council put the number at 4.4 million.[33] With up to a quarter of the Australian population dual citizens, or eligible for dual citizenship, dual citizenship was a *fait accompli* and s. 17 an obvious anomaly. After 4 April 2002, s. 17 was repealed, and no restrictions under Australian law were placed on Australians holding the citizenship of another country.

The Hague *Convention on Certain Questions Relating to the Conflict of Nationality Laws* was drafted in 1930 when the ideal was that a person possess only one citizenship. While contending that dual citizenship was undesirable, the convention nonetheless set out principles about dual nationality. One was that:

> Within a third State, a person having more than one nationality shall be treated as if he or she had only one, either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.

A second was that:

> A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.[34]

Despite Australia's accession to the Hague Convention, governments instructed their consuls to extend the same level of assistance to dual nationals as other Australian citizens received. Possession of an Australian passport indicated the bearer's Australian citizenship (in addition to the other nationality) and identity. While tolerating dual citizenship, the Australian authorities encouraged dual citizens to leave and return on their Australian passports because, when returning, all Australians, including dual citizens, had to prove they were Australian citizens. Under international

31 Adrienne Millbank, *Dual Citizenship in Australia, Current Issues Brief No 5*, Parliamentary Library, Parliament of Australia, Canberra, 2000–2001, p. 7.

32 Ibid.

33 Australian Citizenship Council, *Australian Citizenship for a New Century*, Canberra, 2000.

34 *Australian Treaty Series 1938*, No. 4, Convention on Certain Questions Relating to the Conflict of Nationality Laws, Hague, 12 April 1930, Articles 3 and 4.

law all states are required to admit their citizens and the passport constituted *prima facie* evidence of a claim to return.[35] An Australian passport was conclusive evidence of identity and citizenship and provided the holder with unfettered right of entry. If an Australian entered Australia without an Australian passport, however, immigration officers would have to confirm this through their databases, a process that often involved lengthy delay.

Dual citizenship was sometimes problematic for Australian consular officials. Possession of an Australian passport vouchsafed a promise of aid and succour to its bearer while in the jurisdiction of another state.[36] But in some cases Australia was unable to fulfil this guarantee. The debate on the passports law in the 1970s aired how, in one case, the Yugoslav Government had denied Australian consular officers access to Australian citizens held in detention. In another, it executed an Australian citizen of Yugoslav nationality without informing the Australian Government. One naturalised citizen, born in Greece, had faced court-martial proceedings there without the knowledge of Australian officials. The Joint Committee on Foreign Affairs and Defence recommended in 1976 removing 'place of birth' from passports.[37] As a consequence passports would later record, not country of birth, but town and city.

Because passports were generally required for entry into another country, a passport was virtually synonymous with the right of Australians to travel abroad. But subjects of most states could never assume such a right. This was the case in Australia. As discussed in previous chapters, the *Passports Act 1938* conferred on the responsible minister power to refuse a passport to a person without giving reasons. Between 1938 and 1979, the discretionary power was exercised without guidelines set out in legislation, other than that of citizenship. Decisions were based on administrative policy developed over the years. Persons denied a passport, moreover, had no opportunity to state their case before the minister. The legislation also required a person to hand over his or her passport where it was known, or there was reason to believe, that it had been obtained by false or misleading statements.[38]

From the 1950s to the 1970s there were a number of grounds on which passports were refused besides the Cold War-related instances that were

35 Torpey, *Invention of the Passport*, p. 164.
36 Ibid., p. 160.
37 Lancy, 'Evolution of Australian Passport Law', p. 446.
38 *Passports Act 1938* (Cth), s. 9(1).

detailed in Chapters 5 and 6. One was where a person was attempting to flee from justice. Second was when the minister considered it undesirable to allow free passage of particular individuals in other countries. Third was when a person was of unsound mind. Fourth was when a court order restrained the departure of an applicant. Fifth, was when a person could not produce evidence of clearance from national service obligations. Sixth was when a person under 17 was unable to produce parental consent or was the subject of a custody or access battle and the consent of both parents was not produced.[39] Applications for passports were checked against a 'Passport Warning List'. In the 1970s several databases were compiled on microfiche. They included a Passport Issue List, a list of bearers' names in alphabetical order, checked to see if the applicant had already been issued with a passport in the past five years. A Passport Control List was compiled from passport inquiry applications mainly relating to requests about spouses or possible abduction of children and also including corporate affairs requests. Next was a Lost Passport List against which applications were checked. An informal Passports Working Group met as necessary to consider persons of extremist leanings who might seek travel documents. ASIO and the Commonwealth Police provided the working group with assessments and the Attorney-General's Department advised whether a legal basis existed to deny a passport.[40]

In the 1950s and 1960s and early 1970s, governments sought to use the passport system to ensure that youths could not evade national service by leaving the country. This policy aim recalled the motivation for the national passport system in World War I that is, monitoring its male population. In 1951 the government passed the National Service Act. This legislation provided for the compulsory call-up of males turning 18. It applied to all British subjects ordinarily resident in Australia, and not just Australian citizens. National servicemen were required to remain on the Reserve of the Citizen Military Forces (CMF) for five years from initial call-up. Between 1951 and 1957 reservists could nominate in all three services, but from 1957 for the Army only. Until its termination in 1959, over 500,000 men registered, 52 intakes were organised and 227,000 men were trained. In 1951 the Defence Committee (the Secretary of the Department of Defence and the Chiefs of the Services) requested the Department of Immigration not to grant passports to eligible youths unless they produced a form of consent

39 Press inquiry. Answer approved by the Minister for Immigration, 27 January 1972, NAA: A6980, S250720.

40 Background paper, Department of Foreign Affairs (DFA), Passports – Vetting and Criteria, n.d. 1979, NAA: A1838, 1622/1/2 part 5.

under s. 56 of the National Service Act.[41] The department obliged. In the context of Indonesia's 'confrontation' of Malaysia between 1963 and 1966 and the communist-led insurgency against the US-backed government in South Vietnam, the Menzies government reintroduced national service in 1964. The difference was that national servicemen on full-time duty were liable for 'special overseas service', including combat in South Vietnam. The scheme required 20-year-old British subjects (not just Australian citizens) to register with the Department of Labour and National Service. Men not required to register were Aborigines as defined by the National Service Act, members and former members of the permanent Armed Forces, official personnel from foreign governments living in Australia, and, until January 1967, people who were not British subjects. After 1967, the obligation was extended to aliens.[42] Between 1964 and 1972, more than 800,000 20 year olds registered, and nearly 64,000 national servicemen served in the Army.[43]At the close of each registration period a ballot was conducted that selected a proportion of those registered.[44] The Department of Immigration, at the behest of the Department of Labour and National Service, revived the rules in the first national service scheme that related to youths wishing to go abroad. British male subjects between 20 and 26 after 1 January 1965 had to produce evidence before being given a passport. They had to produce a document issued by the Services that they had commenced their national service. In addition, unless they could produce evidence of exemption on grounds of conscientious objection, they had to produce a written consent to leave Australia under s. 56 of the National Service Act signed by a delegate of the Department of Labour and National Service.[45] This department gave permission to leave the country to a limited number of students embarking on a course of study overseas. However, liability for call-up continued until the age of 26, or 30 for those undertaking more lengthy university courses. To ensure that such students were not able to evade their obligations altogether, the Department of Labour and National Service persuaded the

41 Report by the Principal Administrative Officers Committee (Personnel), 8 November 1951, NAA: A5954, 1885/4.

42 Passport Circular 66/4, Secretary Immigration, to Commonwealth Directors of Migration, all States and Territories, 15 July 1966, NAA: A446, 1970/95274. Sue Langford, 'Appendix: The national service scheme, 1964–72, in Peter Edwards, *Nation at War: Australian Politics, Society and Diplomacy during the Vietnam War*, Allen & Unwin, Sydney, 1997, pp. 366–7.

43 Ibid., p. 369.

44 Summary of the provisions of the National Service Act, NAA: A446, 1970/95274.

45 Memorandum, Immigration, 'National Service – Issue of Passports to those liable to render service', 29 December 1964, ibid.

Department of Immigration to issue some passports with time limitations, rather than the standard five years.[46] 610 men were granted permission to leave Australia and 3890 were investigated for suspected breaches of the National Service Act.[47]

In 1965 Rhodesia, governed by a white minority government, unilaterally declared independence from Britain. At that time, the United Kingdom was refusing to grant self-government in advance of majority rule. This unilateral Rhodesian declaration of independence was widely condemned and, at the request of the British Government, the UN Security Council imposed sanctions on Rhodesia that lasted until the restoration of British rule in 1979. In the early 1970s, some Australians were serving in the Rhodesian Government: Air Vice-Marshal H. Hawkins, Lieutenant Colonel W. Knox and S.D. O'Donnell. In July 1972, the Minister for Immigration, A.J. Forbes, decided that none of them should be afforded further passport facilities when their current passports expired. Then, when the Whitlam Labor government was elected at the end of 1972, one of its first decisions was to issue a passport to Wilfred Burchett and cancel that of Air Vice-Marshal Hawkins. The decision irritated the Returned Services League (RSL) which passed a resolution calling on the government to:

> [f]ormulate and promulgate a consistent policy in the matter of cancellation of passports held by Australian citizens and to ensure that the right of citizens to return to their homeland is not revoked for arbitrary political motives.[48]

Responding to such criticism of passports policy, Whitlam's Minister for Immigration, Al Grassby, announced the decision to create a mechanism for the review of administrative decisions.[49] Grassby's announcement laid the basis for the regime that afforded individuals the opportunity to ask for a review of decisions in the Administrative Appeals Tribunal (AAT).

The higher proportion of non-Britons by the 1970s helps to explain why Australians gained more concern with 'rights' than they had in the early 20th century. The Universal Declaration of Human Rights, which Australia had helped to draft and which was proclaimed by the UN General Assembly on 10 December 1948, defined a common standard of achievement for all peoples and all nations. This document was followed in 1966 by the International Covenant on Economic, Social and Cultural Rights

46 Minute, Heydon to Snedden, 10 April 1970, ibid.
47 Langford, Appendix in Edwards, *Nation at War*, p. 370.
48 Minute, Secretary Immigration to Grassby, 5 April 1974, NAA: A446, 1970/95274.
49 Attachment, news release, Grassby, 5 May 1974, NAA: A6980, S250720.

and the International Covenant on Civil and Political Rights. Australia signed both, and the latter came into force in Australia in 1976. Among the rights asserted in these agreements was the right of individuals to travel freely, subject to restrictions provided by law, and the right of an individual charged with a criminal offence to be presumed innocent until proven guilty according to law. These articles were leading some countries to the opinion that a passport was an inalienable right. Belgium, for example, revised its legislation in 1974 so that ministerial discretion to withhold a passport could only be exercised if an applicant had been sentenced to prison. The Irish, too, were concerned to obviate public criticism of ministerial decisions to refuse to issue passports. So the Department of Foreign Affairs, which had acquired responsibility for the Australian passport in 1975, conducted a wide review of passports policy in 1976 and 1977. The review surveyed the policies of twelve other countries and found that nine out of ten, aside from Belgium and Ireland, legislated against the issue of passports in certain circumstances. The 10th country, New Zealand, withheld passports at ministerial discretion like Australia. The central recommendation of the review was that 'the reasons for which the issue of an Australian passport may be denied should be embodied in the [Passports] Act'.[50]

It had been the custom since 1934 for officers of the responsible department to defer the issue of a passport for up to three weeks when the applicant was married or divorced and had not presented the written consent of the spouse to the issuing of a passport. If the spouse had any concerns about her partner evading property orders in her favour, or of children from the marriage, she could seek a court order restraining the applicant from leaving the country. Where written consent was not presented, the authorities notified the other party to the marriage. At the end of the period of deferral, a passport was issued unless a court order had been issued that restrained the applicant from leaving Australia. The Passports Policy Review of 1977 therefore recommended that, once Australia became party to the International Convention in Recovery Abroad of Maintenance, an injured party would be able to withstand her partner's departure overseas with the aid of social security and legal aid. When they could not, the Department of Foreign Affairs recommended that courts should restrain the spouse from leaving. The government accepted the recommendation and the permission of a spouse was no longer required after 13 January 1983.[51]

50 APO, 'Passports Policy Review 1977', internal departmental paper, Canberra, 1977, DFAT.
51 APO, 'Australian Passport Chronology', internal departmental paper, Canberra, n.d. [c. 1977], DFAT.

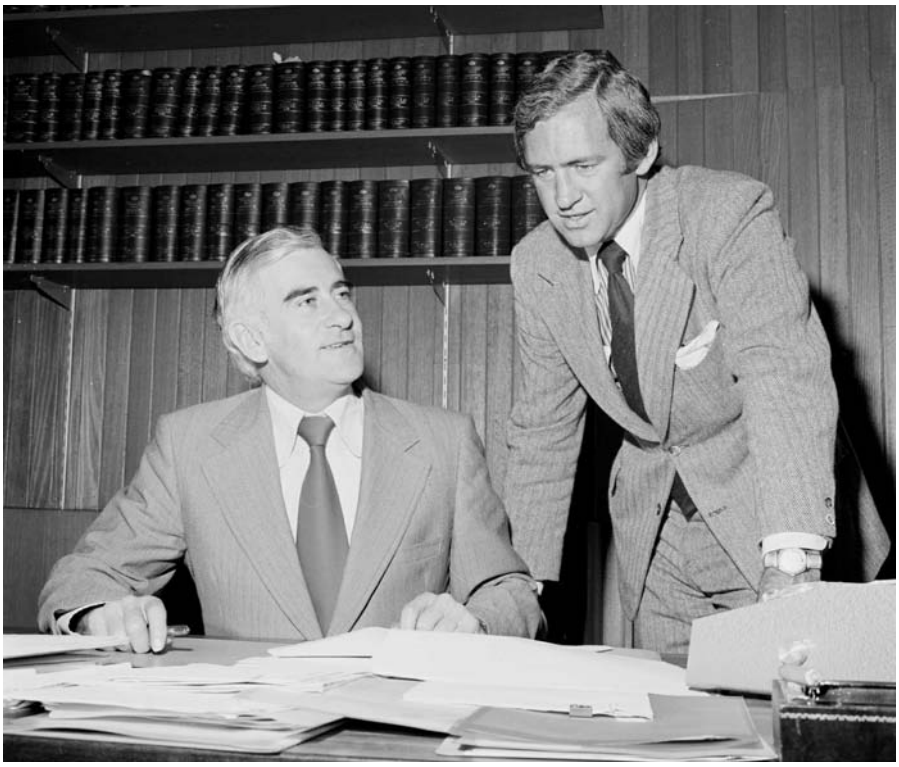
While conceding that it was sometimes difficult for one party in a marriage to obtain the consent of the other to a child's travel, the 1977 Review concluded that:

> the Department of Foreign Affairs is not, nor should be seen as, an extension of this country's judicial system. In consequence of this view the issue of passport facilities in respect of a child should not occur without taking into account the wishes of all persons entitled to custody or guardianship of, or access to, any child concerned. Any conflict of interest in such a matter, or any deviation from this requirement should remain a matter for consideration by the relevant court and should not be a matter of Departmental or Ministerial discretion.[52]

The Department of Foreign Affairs recommended leaving the Minister for Foreign Affairs with the discretion in emergencies to grant passport facilities to children without the consent of both parents. Another reform suggested by the 1977 Review was in regard to individuals suspected of business malpractice and whose use of a passport might deny innocent victims retribution. In several cases state authorities had requested the responsible department to refuse a passport to a person where there was insufficient evidence to persuade a court to issue an order restraining the person from obtaining one. The review argued that the minister, in withholding a passport to such a person, was 'in fact imposing more restraint than a conventional court would be prepared to impose'. It further contended that this 'quasi-judicial practice could reasonably be regarded as being at variance with the International Covenant on Civil and Political Rights'.[53]

On the basis of the Passports Policy Review of 1977, the Fraser government decided in 1978 that the issuing of passports should continue to be matters of ministerial discretion but that the discretion should be restricted in legislation in certain circumstances. However, after discussion with the Parliamentary Counsel, the Department of Foreign Affairs advised Andrew Peacock, the minister, that 'it seems impossible to restrict your discretion in such circumstances without entirely eliminating it'.[54] Accordingly, the *Passports Amendment Act 1979* left the minister with unfettered discretion by retaining in Section 7 the words that the 'Minister … may issue Australian passports to Australian citizens and the British

52 APO, 'Passports Policy Review 1977', internal departmental paper, 1977.
53 Ibid.
54 Ministerial submission, A.D. Campbell, International Organisations and Consular Division, to Peacock, n.d. 1979, NAA: A1838, 1622/1/2 part 5.



Andrew Peacock with Billy Snedden, 1973
(*National Archives of Australia*)

subjects who are not Australian citizens'.[55] But s. 8 gave clearer expression to precedents by articulating the grounds on which authorised officers might, unless directed by the minister, refuse passports. They were listed as follows. First there were persons who were not married, and who had not reached the age of 18, unless the consent of persons having custodial rights had been furnished, or if the authorised officer was satisfied by the circumstances of the applicant. Secondly were persons about whom the authorities had reason to believe that there was a warrant for arrest issued in Australia. Thirdly were persons whom the authorised officer had reason to believe were required to stay in Australia under a court order. Fourthly were persons believed to possess an Australian passport. Fifthly were persons in respect of whom the minister had decided that issue of a passport

55 Lancey, 'Evolution of Australian Passport Law', p. 445.

would threaten security or welfare in another country.[56] One consequence of the 1979 amendments was to remove the discretion to issuing officers to refuse a passport when there were only grounds to suspect that the applicant had committed a corporate offence.[57] The change in policy drew a strong rejoinder from the Queensland Premier, Joh Bjelke-Petersen, who argued that the Bill would assist criminal activities, including drug trafficking, and lead to increased corporate crime.[58] At this time the case of the businessmen, Thomas and Alexander Barton, was being aired. Having departed on Australian passports, their extradition proceedings for business malpractice disclosed costs in the vicinity of one million dollars.[59] With such cases in mind, the Queensland Premier argued that the Fraser government's view of human rights 'would seem to ignore completely the rights that the victim of a criminal offender might have and the rights of society as a whole to ensure that criminal offenders are detected and punished and not encouraged to escape such punishment'.[60]

In the debates on the 1979 legislation, the Labor Opposition proposed that decisions to cancel or not to issue passports be reviewable by the AAT. However, the Fraser government decided that the new legislation should be allowed a period of 'bedding down' before this happened. It was the Hawke Labor government, which succeeded Fraser's in 1983, that amended the legislation in 1984 to make decisions under the Passports Act reviewable by the AAT. A new section was inserted into the legislation allowing for the review of decisions or directions by the Minister for Foreign Affairs or authorised officers. A person affected by, and dissatisfied with, a reviewable decision could request reconsideration by the minister or by an officer authorised by him. If the person remained dissatisfied, he or she might apply to the AAT for it to be reviewed.[61] The role of the AAT was to provide independent reviews of administrative decisions. On the facts before it, the AAT decided whether the correct, or in a discretionary area the preferable, decision had been made. The 1984 amendments to the passport legislation further clarified ministerial discretion by stipulating that the minister was not entitled to refuse to issue a passport except in circumstances provided for

56 Submission, Campbell to Peacock, 1979, NAA: A1838, 1622/1/2 part 5.

57 Letter, Fraser to Neville Wran, Premier NSW, 9 March 1979, NAA: A1838/381, 1622/1/20 part 1.

58 Letter, Bjelke-Peterson to Fraser, 30 March 1979, ibid.

59 Lancey, 'Evolution of Australian Passport Law', p. 447.

60 Ibid.

61 *Passports Act 1938*, as amended in 1984, s. 11. Where the Minister for Foreign Affairs had certified at the time of his making a decision under the Act that considerations of international relations were determining, the AAT could only either affirm the decision or remit it to the Minister 'for his consideration in accordance with recommendations of the Tribunal'.

under ss 7A, 7B, 7C, 7D or 7E.[62] Ministerial discretion to cancel existing passports remained unfettered. The new Act also conferred extraterritorial operation to the Act, applying its provisions to acts outside Australia. It changed penalties in ss 8, 9 and 10 which had been unaltered for nearly 60 years and revised the provisions of those sections. And for the first time, it required that offences be prosecuted on indictment.

Australia's population grew rapidly after World War II. It took the government until 1954 to issue more than 30,000 passports to a population of about nine million people. By 1965, yearly passport issues had more than doubled as compared with 1954, while the population had increased by 2.5 million. Between 1965 and 1972, passport issues doubled again to 223,777 with the addition of another 1.5 million Australians. By 1978, the government was issuing 400,000 passports yearly and by 1984, more than half a million (see Table 1).

Table 1: Estimated Population and Passport Issues

Year	Estimated Australian Population	Passport Issues
1951	8,421,775	25,959*
1965	11,478,703	88,186
1971	13,067,265	177,912
1972	13,091,297	223,777
1973	13,303,700	287,725
1974	13,722,600	287,725
1975	13,968,900	326,087
1976	14,033,083	381,222
1977	14,281,500	367,296
1978	14,430,800	405,932
1979	14,602,000	453,165
1980	14,807,000	464,394
1981	14,923,260	530,151
1982	15,276,800	575,505
1983	15,451,900	544,562
1984	15,579,000	669,119

**Passports issued in Australia. The other statistics represent total passport issues. Estimated population obtained from Australian Year Books.*

62 *Passports Act 1938*, as amended in 1984, ss 7A–7E. These provisions related to minors, the subjects of warrants or court orders, debtors to the Commonwealth, applicants who already had concurrent passports, and persons whom the minister considered would prejudice the security of other countries.

The exponential increase in passport issues reflected both population growth and globalisation.[63] Globalisation entailed the increasing mobility of people in the second half of the 20th century. A major explanation for this increasing mobility was the development of international civil aviation.[64] Until the 1960s, travel by sea to Europe was the norm. Air services operated from the 1930s. But in 1938, for example, the air service from Sydney to Southampton using Shorts S.23 Empire Flying Boats took nine days with passengers staying in hotels overnight. Air travel in the 1930s, 1940s and 1950s was more expensive and aeroplanes much smaller than in the jet age. The large passenger liners were phased out in the 1970s. In 1947 Qantas became wholly owned by the government and extended its services to London. Qantas began their first services outside the British Empire and, in 1958, became one of the select around-the-world airlines, operating services from Australia to London via Asia and the Middle East (Kangaroo Route) and the Southern Cross route with Super Constellations. In 1956, the airline became the first outside the United States to order the Boeing 707. In 1967 Qantas placed orders for the Boeing 747 which, because it could seat 350 people, revolutionised air transport.[65] By 1969, 14 airlines were operating scheduled services to Australia and, by 1984, Australia had air service agreements with 28 countries. Under these agreements, Australia was granted rights to operate services between Australia and the countries in question.

In 1975, Qantas carried 1,415,850 passengers: about 30 per cent were on their first international flight. These figures refer to the market at large and not only to Australians, but they give a good indication of the degree to which Australians were flying in the 1970s. In contrast, in 1984, Qantas carried 2,115,212 passengers: only 17.2 per cent were on their first flight. This was at a time when there were about three million Australian passports on issue.[66]

As aviation became the dominant mode of travel, the ICAO, founded in 1946 as an agency of the United Nations, succeeded the League of Nations as the organisation recognised as the authoritative standard setter for national passports. The major achievement of the ICAO in the 1960s, 1970s and 1980s

63 John Baylis and Steve Smith (eds), *The Globalization of World Politics: An Introduction to International Relations*, 3rd edn, Oxford University Press, Oxford, 2006.

64 David Edgerton, *England and the Aeroplane: an Essay on a Militant and Technological Nation*, Macmillan, Basingstoke, 1991; John McCarthy, *Australia and Imperial Defence: A Study in Air and Sea Power*, University of Queensland Press, Brisbane, 1976; and John Gunn, *The Defeat of Distance: QANTAS 1919–1939*, University of Queensland Press, Brisbane, 1985.

65 ABS, *Year Book of the Commonwealth of Australia 1951*, CGP, Canberra, 1951, pp. 199–200.

66 APO, 'Review of Passport Procedures', internal departmental paper, Report of the Sub-Committee of the Passports Committee, Canberra, 1985, DFAT.

Table 2: Civil Aviation: International Airline Traffic to and from Australia, 1968–1969[67]

TYPE OF TRAFFIC	AIRCRAFT MOVEMENTS	PASSENGERS
Traffic to Australia		
Qantas Airways	2680	204,801
Other airlines	3549	247,913
All airlines	*6229*	*452,714*
Traffic from Australia		
Qantas Airways	2765	189,563
Other airlines	3541	211,730
All airlines	*6306*	*401,293*

International Airline Traffic to and from Australia, 1983–1984[68]

TYPE OF TRAFFIC	AIRCRAFT MOVEMENTS	PASSENGERS
Traffic to Australia		
Qantas Airways	4477	975,480
Other airlines	6124	1,322,981
All airlines	*10,601*	*2,298,461*
Traffic from Australia		
Qantas Airways	4371	957,800
Other airlines	6076	1,191,563
All airlines	*10,447*	*2,149,363*

was to devise and promulgate international standards for the machine readable passport (MRP), an innovation that facilitated the huge increase in passengers crossing international borders. The idea for a machine readable passport had its origins in the ICAO's suggestion that a non-immigrant 'tourist card' might one day replace the passport. From its inception in 1946, the ICAO encouraged states to conclude reciprocal agreements that waived the requirement for passports. It also suggested that states use a 'non-immigrant tourist card' for travel between countries that had abolished the

67 ABS, *Year Book of the Commonwealth of Australia 1970,* CGP, Canberra, 1970, p. 375.
68 ABS, *Official Year Book of the Commonwealth of Australia 1985*, CGP, Canberra, 1985, p. 455.

requirement for passports and visas. If successful, this would mark a return to the pre-World War I period where passports were not compulsory.

In 1947, the UN Conference on Passports and Frontier Formalities in Geneva considered the issue. The idea of the 'tourist card' was that it would contain a description of the bearer and his or her photograph and would be recognised by subscribing countries. However, the proposal did not find favour with delegates.[69] They agreed to maintain the passport design endorsed by the League of Nations in the 1920s. The most decisive argument against the card-type document was the visa requirements of the countries represented. The tourist card was impracticable because there was no place on it to stamp visas.

By the late 1960s, a much greater increase was on the horizon as high capacity aircraft came into use. In this context, the seventh session of the ICAO Facilitation Division reconsidered proposals for a machine readable passport. The idea was that such a document would accelerate the progress of passengers through passport controls and possibly eliminate or automate embarkation and disembarkation cards. The Air Transport Council of the ICAO established a Panel on Passport Cards in 1968 to examine options. The Panel consisted of eight of the contracting parties to the ICAO: Australia, Canada, France, West Germany, India, Kenya, Sweden, and the United States. Two other parties, the United Kingdom and the Soviet Union, later joined.[70] The Panel held five meetings between 1969 and 1978. It considered options, ranging from an embossed zone on the passport, to a perforated magnetic tape, before resolving on optical character recognition (OCR). OCR entailed the mechanical or electronic translation of handwritten or typewritten text, usually by a scanner, into machine-readable form. This technology was adopted unanimously at the Panel's fifth meeting in 1978.[71] As a consequence, the ICAO promulgated an international standard in ICAO Doc. 9303, 'A Passport with Machine Readable Capabilities', for use by contracting parties.[72] The document mandated that each national passport should have a 'Machine Readable Passport Zone', usually at the end of the passport. The zone provided space for the bearer's name, passport number, two check digits, nationality, date of birth, sex, passport expiration date and personal identity number. Australia and Canada introduced the machine readable passport in 1983, following the

69 See generally, NAA: A1838/1, 889/552.

70 Departmental paper, 'Machine Readable Passports', n.d. [c. 1985] NAA: A1838, 1622/8/6 part 3.

71 Recommendations formulated by the panel on passport cards, n.d. [c. 1985–6].

72 International Civil Aviation Organisation (ICAO), Doc. 9303: A Passport with Machine Readable Capability, 1980, ibid.

United States in 1981. Moreover, the United States progressively introduced regulations that made MRPs mandatory for those entering on its visa waiver scheme. There were two clear advantages of the MRP. First it should speed up the processing of arriving passengers; and second, it had more secure data than handwritten passports, since the data read by the machine would always be the same as the data in the database.[73]

However, as Martin Lloyd has argued, the extent to which the MRP has speeded up frontier controls is difficult to assess. For one thing, the introduction of the MRP coincided with the relaxation of control procedures. For another, using an MRP did not result in anything like a machine reading a passport and a gate automatically opening. Passport-control officers still operated checkpoints and the passenger-reading system. The MRP did help governments to better monitor the ingress and egress of people. The machine readable zone (MRZ) presents the border official with the limited details on the visual zone, and this data is used to populate arrival records. In Australia's case, however, the read of the MRZ produced a fuller version of the passport records from the database that could be passed every day to the immigration authorities. In this way, Australian border officials could detect if a passport was valid or if there was an alert. Australia was in the vanguard of connecting national passport databases with border controls.[74] Under the Regional Movement Alert System (RMAS), an initiative later developed by the regional Asia Pacific Economic Cooperation (APEC) organisation, airline counters can read an MRP, transmit the details back to the participating country which checks the passport database and send the airline back a message 'board' or 'not board', depending on whether the passport was lost, stolen, subject to an alert and so on. The arrangement at the time of writing is being trialled between Australia, New Zealand and the United States.[75]

From 1948 to the 1980s Australian citizenship became the pre-requisite for holding a passport. But it was not until the 1960s that the government removed the word 'British' from its passport. And it was not until the 1980s that the government legislated for passports to be issued only to Australian citizens. This period of large-scale immigration transformed a homogeneous Anglo-Celtic country into a multicultural country of nearly 100 nationalities. The Department of Immigration was responsible for the Australian passport between 1945 and 1975. This was largely because of the close connection

73 ICAO news release, PIO 9/80, NAA: A1838, 1622/8/6 part 2.

74 Martin Lloyd, *The Passport: the History of Man's Most Travelled Document*, Sutton Publishing, Gloucestershire, 2003, p. 160.

75 Information from APO, DFAT.

between matters of citizenship and immigration. At first, immigrants were slow to naturalise and therefore to be eligible for passports. But in time, more acquired citizenship, often in addition to another citizenship. This gave rise to a large class of dual citizens and dual passport holders. The Anglo-Celtic Australia of the early 20th century had largely been unconcerned about the issue of rights. But as increasing numbers of non-Britons joined the population, 'rights' became increasingly a public issue. In the context of international declarations on human rights, the Fraser government legislated in 1979 to define for the first time in Australian law the grounds on which a passport might be refused. This legislation, as well as the decision to grant a review of administrative decisions on passports in the Administrative Appeals Tribunal, went some way to meeting a public perception of Australians having a 'right' to a passport. Half a century earlier, ironically, Australians had regarded having to have a passport at all as an infringement of British liberties.

The period from 1948 to the 1980s was one of globalisation and increasing movement of people across borders. This movement was largely the consequence of developments in civil aviation, especially in the jet age that was inaugurated in the 1960s. Australian passport issues increased exponentially, and in 1975 responsibility was transferred from the Department of Immigration to the Department of Foreign Affairs. It was no accident that the ICAO succeeded the League of Nations as the setter of international standards for national passports. The organisation achieved its first success in 1978 in setting standards for a machine readable passport, and Australia was in the forefront of helping to develop these standards and implement a machine readable passport.

8

Problems of Identity: the Stewart Royal Commission, the Biometric Passport and the *Australian Passports Act 2005*

From the 1980s, there were a number of problems for the government in ensuring that the increasing numbers of passport-holders were who they claimed to be. The 1982 Stewart Royal Commission into Drug Trafficking highlighted this problem as did terrorist attacks perpetrated by foreign-born Islamic militants in the United States on 11 September 2001. From the 1990s, the Australian Government anticipated the need to adopt passports that validated people's identity by reference to unique biometric characteristics. The attacks of 2001 gave added impetus to Australia's developing an internationally recognised biometric technology and overhauling Australian passport legislation to reflect the changes. In 2005, the government introduced the Australia's 'ePassport' and enacted the *Australian Passports Act 2005*.

In 1980 Prime Minister Malcolm Fraser pointed out the dangers of large-scale drug trafficking.[1] The Royal Commission of Inquiry into Drugs had estimated in 1978 that there were between 14,000 and 20,000 heroin addicts in Australia.[2] Most of the heroin consumed in Australia was produced in the Golden Triangle (on the borderlands of Thailand, Burma and Laos), in the Golden Crescent (Afghanistan, Pakistan and Iran), and the Bekaa Valley in Lebanon. The authorities considered that most importations

1 Don Stewart, *Recollections of an Unreasonable Man: From the Beat to the Bench*, ABC Books, Sydney, 2007.

2 Australian Royal Commission of Inquiry into Drugs (ARCID), *Report, Book D*, Commonwealth Government Printer, Canberra, 1980.

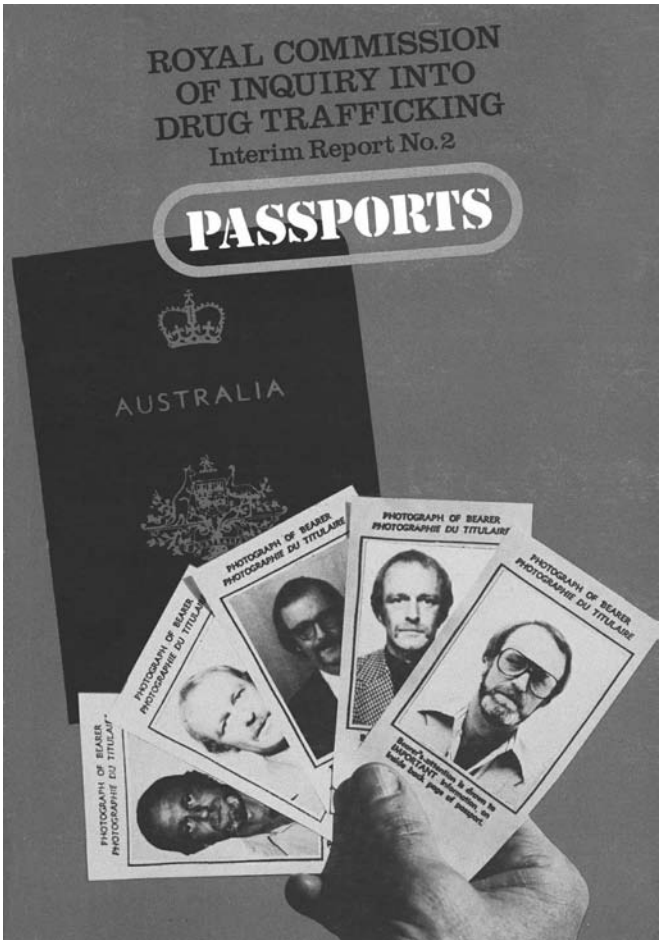
arrived by courier (each carrying one or more kilograms) on commercial flights. To help to suppress the trade, Fraser announced his intention to establish a special judicial inquiry armed with the powers of a royal commission. In June 1981 the Commonwealth joined the governments of Queensland, New South Wales and Victoria in issuing a media statement announcing their establishment of a royal commission headed by the New South Wales Supreme Court Judge, Donald Stewart. Justice Stewart was empowered to inquire into the possible drug trafficking and related activities of Terrence John Clark and his associates. The Stewart Royal Commission would spend much of its time examining how criminals were abusing the passport system and in making recommendations on how to remedy its defects.

Born in New Zealand in 1944, Clark graduated from burglaries to the more lucrative trafficking in cannabis and heroin. In the 1970s he was organising a syndicate to move heroin and cannabis into Australia by air and sea. Stewart heard evidence that Clark had murdered one of his associates before being arrested in Brisbane in 1978 on comparatively minor charges. The New Zealand Government then extradited him to stand trial on a 1975 heroin smuggling charge. Acquitted of the charges in New Zealand, Clark returned to Australia where he was suspected of causing the deaths of two drug couriers in Victoria. He then left Australia using a passport in the name of Robert Andrew Gorrie. The Federal Bureau of Narcotics placed him on a computerised alert list at airports. But he was able to evade capture through the use of alias names and false passports. He also changed his name by Deed Poll to Terence Andrew Sinclaire in 1979.[3] Clark's syndicate made millions from the sales of drugs in most Australian capital cities. He left Australia for the last time in 1979. Arriving in London, he was convicted of the murder of Christopher Martin Johnstone, the so called 'Mr Asia' of the drug-trafficking syndicate, and sentenced to life imprisonment. At the time of his arrest, Clark had five Australian passports available to him. They were all valid, with accurate photographs of Clark, but they had been issued in alias names.[4]

Justice Stewart assessed in detail the scale of the abuse of the passport system in *Interim Report No. 2*, the only public report. It was presented on 17 May 1982 to the Governor-General and the governors of New South Wales, Victoria, and Queensland. For three decades following the passage of the

3 *Royal Commission of Inquiry into Drug Trafficking, Interim Report no. 2* (hereafter *Interim Report no. 2)*, AGPS, Canberra, 1982, pp. 24–6.

4 Ibid., p. 25.



Cover page of the Royal Commission of Inquiry into Drug Trafficking (Australia)
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Nationality and Citizenship Act 1948, Australians could obtain a passport on proof of citizenship and identity. They could provide proof of citizenship by showing a birth certificate or a certificate of naturalisation. They could prove their identity with a certificate, signed by a member of one of several professions, that two photographs were those of the applicant.[5] The Department of Foreign Affairs admitted in 1980 that 'it is believed by some

5 Categories included: magistrate, justice of the peace, solicitor, accountant, medical practitioner, dentist, chartered engineer, member of parliament, union official, bank manager, member of the teaching profession, person holding managerial status.

parties (including members of the Australian Federal Police Force) that the Certification Regarding Applicant (CRA) is regarded as a joke by some applicants and travel agencies'.[6] Before the Stewart Royal Commission, the passport issuing authorities generally made no independent check of information supplied by applicants or the certifiers of identity.

Nonetheless, passport issuing processes had improved in several ways in the 1970s. In 1976, passport records previously held in state offices were centralised. In 1978, records held on index cards were computerised. And by 1980, all passport-issuing offices in Australia had on-line access to the central computer to prevent the issue of a concurrent passport to a person of the same name and date of birth. However, before the reforms that followed the Stewart Commission were implemented in the early 1980s, only about one third of applicants attended a Passports Office in person. Two-thirds of applications were made by travel agents or other persons acting on behalf of applicants, or by mail. Stewart would later write in his autobiography:

> It is bitterly ironic that the Australian taxpayer was supporting at great expense systems designed to prevent breaches of Australian law, while also paying for a system of passport issue under which it was extremely simple for a lawbreaker to obtain a valid Australian passport with false particulars, enabling him to break the law with impunity. What we discovered without doubt was that criminals were regularly obtaining valid Australian passports, and that the cases we looked at represented the tip of a very large iceberg.[7]

The Stewart Royal Commission was satisfied that Clark and his syndicate, and others like him, used three methods to obtain valid passports. The first, detailed in Frederick Forsyth's *The Day of the Jackal*, was by producing a birth certificate of a dead person.[8] In Forsyth's novel, an assassin visits a graveyard to discover the name and date of birth of a deceased person who, had he lived, would have been about the same age as the assassin. He applies for a copy of the dead person's birth certificate and makes application for a passport in that name, supplying the birth certificate of the dead person and photographs of himself. This method had been employed by Errol John Hincksman, one of Clark's associates. Hincksman obtained a

6 Ministerial submission, I.G. Bowden, First Assistant Secretary, Consular, Information and Cultural Division, to Street, October 1980, NAA: A1838, 1622/12/7 part 5.
7 Stewart, *Recollections*, pp. 157–8.
8 Frederick Forsyth, *The Day of the Jackal*, Hutchinson, London, 1971.

passport on 25 May 1979 in the name of 'Brian Patrick McGuire', whom the Commission discovered had been born on 1 October 1949 but died in infancy in Sydney. Hincksman had supplied a birth certificate supporting his statement that he was over 18 and unmarried – therefore not requiring his spouse's consent on the passport application form for departure from Australia – together with a falsified attestation by an associate that he had known the applicant for three years as Brian McGuire.[9] Hincksman had received the help of 'Bob' whom the Commission identified as Robert Trimbole, a man suspected of being involved in the marijuana industry in Griffith in New South Wales.

The second method involved producing a genuine birth certificate of a living person, with or without the knowledge of that person. Criminals would need to know the person well enough to know their place and date of birth in order to apply for a birth certificate. They would also need to be confident that the person whose birth certificate was being used did not hold a passport and would not apply for one. Criminals would copy the particulars onto the passport application, fill out their personal description accurately, and make up the next-of-kin and the person who certifies the applicant's identity. They could obtain the birth certificates by obtaining the consent of someone else to use his or her birth certificate, by buying the right to do so, or by stealing.[10] Trimbole had stolen, borrowed or hired the birth certificate of Royden Lee Blackburn. He was able to alter this man's birth certificate sufficiently to obtain a passport for a female drug courier. The third method was by supplying completely fictitious details. The Stewart Royal Commission ascertained that Trimbole had perfected a system that required no paperwork, through the collusion of an officer in the Passports Office. The practice at the Passports Office was to retain documentation concerning each application and issue: the application form; the check sheet; and the second of two photographs supplied by the applicant; as well as a register that recorded the number of the passport; the name of the person to whom it was issued; and other short particulars. If this documentation, or 'dossier', were removed from departmental files, 'there would be a current valid passport but no record whatsoever of how it came into existence'.[11] Thus, if anyone challenged the issue of a passport whose 'dossier' had been removed, the Office could do more than confirm whether it had issued the passport.

9 *Interim Report no. 2,* p. 32.
10 Ibid., pp. 33–4.
11 Ibid., p. 35.

The Australian Royal Commission of Inquiry into Drugs, headed by Sir Edward Williams in the 1970s, and known by the acronym 'ARCID', had recommended that applicants for passports, as a rule, should present themselves in person at an office of the Department of Foreign Affairs. The department, however, had deemed the ARCID recommendation to be impracticable[12] as two-thirds of applications were lodged by mail and by travel agencies. Based on 1979 passport issues, this would involve the department's handling 274,000 applicants in addition to the 148,000 who were already attending in person. The department argued that:

> attendance in person would accomplish little, if anything, towards a positive means of identification. The sheer volume of applicants involved would permit only the most casual scrutiny of supporting documentation of identity, most of which is easily obtainable with very little control over issue e.g. driver's license, bank card etc. A person who wished to establish false identity for passport issue would have little trouble obtaining documentation sufficiently authentic to withstand casual scrutiny.[13]

The Stewart Royal Commission doubted whether the department appreciated the scale of the abuse of the system that was taking place. The Commission confirmed that a 'false passport [was] an essential prerequisite to a career in drug smuggling'.[14] To combat drug trafficking, the authorities had erected an elaborate and expensive customs screen, related not only to the movement of goods, but also of persons. Customs officers were provided with a list of people to watch. Even if they were not on the list, they would be suspicious of persons whose passports indicated travel in drug-producing areas. The screen was valuable not only in interdicting drug traffickers but also in combating other criminal activities such as terrorism, illegal immigration, and the evasion of health and quarantine Regulations. Australian criminals, however, could easily circumvent this screen by obtaining through fraudulent means valid passports. They did not, Justice Stewart submitted, even have to go to the trouble of forging. False passports were generally discovered only when the bearer was arrested on a serious charge: it was exceptional that criminals were charged with passport offences along with the more serious charges. State and federal police forces, moreover, did not keep records of passports fraudulently obtained. When questioned, Foreign Affairs advised the Stewart Commission that:

12 Ministerial submission, Bowden to Street, October 1980, NAA: A1838, 1622/12/7 part 5.
13 Ibid.
14 *Interim Report no. 2,* p. 41.

> the Department's primary responsibility in this matter is the issuing of genuine passports. We have not been involved in the investigation of fraudulent passports and … we have no information on the numbers of fraudulently altered passports or of the nature of the fraudulent alterations nor of the number of fraudulent passports detected.[15]

The Department of Immigration and Ethnic Affairs, which had previously administered the passport, was similarly unable to assist the Stewart Commission on measures it had adopted to combat fraud.

The Stewart Royal Commission made 40 recommendations on the reform of the passport system.[16] The principal ones were that applicants, unless exempted, should attend at a Passport office; that passports no longer be issued to British subjects who were not Australian citizens; that under no circumstances should production of a birth certificate be accepted as 'sufficient proof of the identity of the applicant for a passport'; that passports should cease to be issued to travel agents or other agents; that the Commonwealth should establish a 'Passports Committee as a standing committee to supervise the security of Australian passports and visas and of other passports and documentation used to gain entry to Australia; that legislation should be introduced in the States to provide that any persons who changed their name, whether by choice, marriage or adoption, should register the change with the Registrar of births, deaths and marriages; and that the classification of staff in the Passport office and their accommodation be upgraded.[17]

In response to the Stewart Royal Commission, the Department of Foreign Affairs established an internal working party to 'assess all the alternatives available to the Government to process passport applications and issue travel documents'.[18] It also established a Passports Committee to advise the minister. The Passports Committee comprised representatives of the Department of Foreign Affairs, which chaired the Committee, the Customs Service, the Australian Federal Police, the Attorney-General's Department, the Postal Commission, the Australian Government Publishing Service, the Australian Bureau of Criminal Intelligence, the

15 Ibid., p. 43.

16 Ibid., pp. 89–94.

17 Stewart considered that approximately 100 additional officers 'would be required to handle the increased workload which would result, in the main, from such revised procedures'.

18 Minute, Bowden, 13 August 1982, NAA: A1838, 1622/12/8/44 part 1; also Administrative Circular 38/82, 'Passports: Stewart Royal Commission', 16 June 1982, 'Stewart Royal Commission' file, Newcastle Passports Office, DFAT.

Department of Immigration and Ethnic Affairs and the Department of Prime Minister and Cabinet.

However, not all officers of the Department of Foreign Affairs were convinced of the merits of Stewart's recommendations. J.R. Kelso, a former Director of Passports Operations, for example, was concerned that the recommendations came from an inquiry into drug trafficking, not passports. He explained:

> Its observations on passports were those undertaken from what might broadly be described as a control and enforcement perspective. But there are other important factors to be taken into account in any examination of the passports function. These include, for example, the rights of citizens to travel and hence to obtain passports, the extent to which it is appropriate to permit increased intrusions into privacy and to create inconvenience for individuals, the staffing and costing implications, etc.[19]

I.G. Bowden, First Assistant Secretary of the Consular, Information and Cultural Division, agreed with Kelso that 'the passport function can never be used as a mechanism for enforcement and control, but rather as a beneficiary of other control procedures'.[20] Similarly, J.A. Benson, Assistant Secretary of the Executive Secretariat of the department, criticised Stewart's proposal to establish a network of passport issuing agents outside major cities:

> It must be seriously questioned whether the means justify the rather doubtful ends. The recommendations make no reference to a balancing of the cost to society of these extra facilities against the expected social gain from what is likely to be no more than reduced ease of travel for drug traffickers.[21]

The department therefore advised the government that the only way of achieving a fool-proof passport system was through a *national identity system*. But as the antecedents of most Australians in the 1980s were not in Australia, and there was no common system across the States and Territories for registering births, deaths and marriages, the 'ID system would have to be based on physiological characteristics such as finger printing, cell testing, blood typing, voice recognition combined with registration of the

19 Minute, Kelso to Bowden, 5 July 1982, NAA: A1838, 1622/12/8/44 part 1.
20 Minute, Bowden, 13 August 1982, ibid.
21 Minute, Benson to T.B. McCarthy, Assistant Secretary, Consular Policy Branch, 28 June 1982, NAA: A1838, 1622/12/8/3 part 1.

residence of all those who reside in Australia'.[22] Such a system, the department submitted, would be expensive, difficult to administer, and might provoke political opposition. If, however, the government rejected a national identity system:

> then it must accept that organisations which depend on securing the identity of people can never be sure that people cannot obtain benefits from government fraudulently and that determined people will be able to abuse the system. The Government in this case should accept that the passport system can never be perfect and should say so.[23]

The Fraser government accepted these recommendations while agreeing to remedy several of Stewart's major criticisms. On 8 December 1982, the Minister for Foreign Affairs, A.A. Street, outlined the government's response to the Stewart Royal Commission to the House of Representatives.[24] Street admitted that the most effective method of establishing identity would be a national system based on fingerprinting. The government had considered the option, but was 'not prepared to institute such a system in relation to passports because of the implications that this would have on our traditional way of life'.[25] Australia would wait two more decades for a system of passports that validated the bearer's identity by reference to a biometric characteristic such as fingerprints or facial geometry.

The government nonetheless accepted several of Stewart's recommendations to tighten checks of identity.[26] The most significant was to require applicants to appear personally before a passport officer who was trained to check identities. However, rather than create more regional passport offices and passport commissioners, as Stewart had recommended, the government decided to use Post Offices as agencies for passport offices.[27] The advantages were that applicants could more conveniently lodge applications at local Post Offices than Passport Offices; that they could be interviewed by the postmaster or senior postal clerk, both of

22 Note, 'Suggested Approach to Ministers to SRC Report on Passports', n.d. 1982, ibid.
23 Ibid.
24 Appendix B, ministerial statement, Commonwealth Government response to the Commission's interim report on passports, 8 December 1982, *Royal Commission of Inquiry into Drug Trafficking, Report*, AGPS, Canberra, 1980, pp. 860–73.
25 Ibid., p. 861.
26 Ibid., pp. 860–73.
27 'Establishment and Ongoing Costs for Proposals to Increase Passport Offices & Establish Commissioners for Passports', n.d; and 'Outline of Proposal for Lodgement of Passport Applications at Australian Post Offices, NAA: A1838, 1622/12/8/3 part 1.

whom had expertise in interviewing and providing other services on an agency basis; and that Post Offices could check residential addresses. Moreover, the cost was much less than establishing regional passport offices.[28] From 1 October 1984, the law required applications to be lodged personally at an official Post Office or Passport Office. Personal lodgement of applications enabled officials to assess whether the photographs proffered were a good likeness. Officers who handled the personal mail of passport applicants at local post offices were, moreover, readily able to establish their bona fides. In addition, Passport Offices could cross-check passport applications and certificates regarding applicants (CRAs) with electoral rolls, telephone directories, and other professional registers. On 5 January 1982, Street announced the government's introduction of additional checking procedures to verify the identity of applicants, such as checking the identity against electoral rolls and other records, and having direct contact either by mail or telephone with applicants and those certifying the identity of applicants.[29]

The second major reform was to restrict the categories of persons eligible to certify the identity of applicants.[30] The government decided that the group permitted to perform this function should be wide enough for each applicant to know at least one person in one of the categories; include people whose bona fides the Passport Offices could readily check; and be 'limited to people whose careers would be affected if they were found to be involved in fraudulent practices'.[31] A third reform was to require that all applicants provide a full birth certificate showing the name of the person at birth and the full names of the mother and father. Photocopies of primary documentation were no longer acceptable. In a number of States, a person was able to change his or her name, for example by Deed Poll, and subsequently to be issued with an Extract of Birth showing the new name. This was one means whereby Terrence Clark had obtained multiple passports. These reforms enabled a 'base name' established at the time of

28 Ibid.

29 Media statement, Street, 5 January 1982, in cablegram CH680, DFA to Posts, 5 January 1983, ibid.

30 These were limited to: members of parliament; aldermen and councillors of municipal and shire councils; town clerks and secretaries; medical practitioners and dentists; judges, magistrates, clerks of petty sessions and clerks of court; school teachers of five years' service; postmasters; police officers of the rank of sergeant and above and officers in charge of stations; officers of the armed services; ministers of religion designated as marriage celebrants; and federal and State public servants of at least 10 years permanent service.

31 APO, 'Review of Passport Procedures', internal departmental paper, Report of the Sub-Committee of the Passports Committee, Canberra, 1985, DFAT.

acquiring Australian citizenship, to be held in computerised records. Subsequent changes of name could in future be cross-referenced against the 'base name', ensuring that multiple identities were linked.

The government also increased the resources devoted to passport functions. In May 1982, 192 officers of the Department of Foreign Affairs were involved in the issuing of passports. By June 1985, 263 staff were devoted to passport functions, including 51 positions for document and identity investigation. Admittedly, 60 per cent of passport applications were being lodged at post offices, but much of that work had been performed by travel agents before 1982. The increased Foreign Affairs staff had to cope with an annual increase of passport issues of nearly 30 per cent in the two years up to 30 June 1985 plus checking, reporting, and the accountability that accompanied the Stewart reforms.[32] After the Stewart Royal Commission, the Department of Foreign Affairs adopted the policy that the identity of all applicants should be thoroughly checked to the greatest extent possible.

The Australian Federal Police reported in 1985 a marked decrease in the detention of criminals with fraudulent passports, in particular among those arrested and charged with drug offences. Similarly, the Sub-Committee of the Passports Committee examined 140 cases of Australians jailed for various offences overseas in 1985. 80 per cent of them were for drug offences, and many had a history of incidents involving passports, such as having lost more than one. In each of the cases examined, the department was able to contact the next of kin and confirm identities. The survey discovered only one case in which a person had applied for a passport under the post-Stewart procedures and achieved a false identity: this was a person with a history of psychiatric disturbance who had succeeded in creating a second identity over a period of two years. The Australian High Commission at Wellington, moreover, reported three cases where the new passport issuing procedures had thwarted efforts to obtain an Australian passport in a false identity. At Buenos Aires, one attempt was briefly successful. There a person reported a lost passport and was issued with a replacement of 20 days' validity. The passport was quickly recovered when the application was discovered to be false, and the applicant was arrested in Australia with three passports in his name.[33]

One key recommendation of the Stewart Royal Commission was not accepted. That was to retrocede the responsibility for passport issuing to the

32 Passport issues were: 1982/83 – 520, 884; 1983/84 – 543, 748; and 1984/85 – 673, 748.
33 APO, 'Review of Passport Procedures', internal departmental paper, 1985.

Department of Immigration and Ethnic Affairs. In 1982 Bowden had justified the administration of the passport by the Department of Foreign Affairs on the grounds that:

> Passport issue is not related to the conferring of citizenship, to the immigration and settlement of foreigners and their integration in the Australian community or to the other responsibilities of the Department of Immigration and Ethnic Affairs. It concerns Australians travelling overseas and is closely linked to the provision of consular services to Australians overseas. In these regards, it directly impinges on relations with foreign governments which are the responsibility of the Minister for Foreign Affairs.

The Stewart Commission did not accept that the provision of consular services overseas required the Department of Foreign Affairs to issue passports. In its view, because the essential qualification for the passport was Australian citizenship, the passport should be issued by the Department of Immigration and Ethnic Affairs. There was support in some parts of the Department of Foreign Affairs in the 1980s for divesting itself of the passport function. But the department's Consular and Passports Branch argued persuasively that Passport Offices, for a large part of the Australian population, were the 'public face of the Department of Foreign Affairs and the only contact which it had with the department. The passports operation provides the Minister [for Foreign Affairs] and the department with its single best opportunity to maintain a sympathetic constituency in Australia amongst Australians'.[34]

The Minister for Foreign Affairs revisited the idea of divesting itself of the passports function again between 1985 and 1987. During that period, the Hawke government was proposing to establish a national identity card for citizens and resident foreigners to be known as the 'Australia Card'. Had this scheme been implemented it is possible that passport issuing may have been incorporated in a new Department of National Identity. The idea was that the card would amalgamate other government identification systems as a way of militating against tax, health and welfare fraud. The Australia card never came to fruition, and the Department of Foreign Affairs successfully defended its retention of passport issuing:

34 Minute, R.F. Osborn (consultant), to J.H. Brook, First Assistant Secretary, Legal and Consular Division, 16 July 1985, NAA: A1838, 1622/11/44 part 1.

A selection of Australian Passports used through the years, taken in 1994
(*National Archives of Australia*)

> The dilemma is that presently the passports organisation is more efficient than it has ever been and in large part we ascribe this to the intra-departmental relationships of passports, legal, consular and communications computers. Issue of passports is essentially part of our overseas consular function … The passports database is now substantially improved, the incidence of disclosed malpractice is very low and we believe it is the government's most accurate personal database.[35]

The year 2001 was as significant for the future of the Australian passport as 1982, when Justice Stewart delivered his interim report. While Stewart had been concerned with drug traffickers using false identities to obtain passports, 2001 brought to the fore the issue of state control and surveillance of foreign-born terrorists, and encouraged the development of biometric passports. On 11 September 2001, a group of Islamic terrorists affiliated to the secretive organisation, *al-Qaeda*, hijacked four commercial airliners in the United States, crashed two into the World Trade Center in New York City, a third into the Pentagon building, and a fourth into rural Pennsylvania not far short of the White House. The World Trade Center collapsed. 2973 fatalities resulted from the attacks. As Christopher Rudolph has argued, '9/11' recast the way many countries thought about national security. They tended to think less of national armies on lines of defence. Rather, global terrorism made it 'more difficult to separate "external" from "internal" security dimensions'.[36] The 9/11 terrorists had been able to exploit US immigration and border control measures to operate within the United States. Specifically, the US authorities ascertained that, of the 48 foreign-born terrorists involved in plots between 1993 and 2001, 36 per cent were naturalised US citizens or legal permanent residents, 33 per cent used temporary visas, six per cent employed asylum applications, and 25 per cent crossed the border illegally. Rudolph concluded:

> In contrast to the 1990s, where 'out of sight, out of mind' was the rule of the day in terms of addressing societal insecurities, what is threatening about the clandestine entry of alien terrorists and the presence of sleeper cells in the homeland is essentially their *invisibility*. They are a spectre lurking in the shadows. Thus, security would seem to require policies that *increase* visibility rather than

35 Minute, A.D. Campbell, Acting Secretary, to Bill Hayden, Minister for Foreign Affairs, n.d. 1986, NAA: A1838, 1622/1/120 part 1.

36 Rudolph, *National Security and Immigration*, p. 78.

> *decrease* it so that entry of potentially dangerous individuals can be prevented.[37]

The terrorist attacks were, as US Secretary of State Colin Powell described them, the 'dark side of globalization'. They involved air traffic, foreign nationals and networked messages. Necessarily, airline passenger data, immigration records and passports, and telephone and e-mail logs, became the focus of surveillance of terrorist networks.[38] The US Government responded in a number of ways. In October 2001, Congress passed the USA Patriot Act. The Act enhanced the power of the authorities to deal with the surveillance and detention of suspected terrorists and gave them more grounds for refusing entry to those suspected of involvement, by expanding the legal definition of terrorist activities to include material support for terrorists or terrorist organisations. The legislation also required the President within two years to certify a *biometric* technology standard to identify aliens seeking admission into the United States. In the following year, Congress passed the Enhanced Border Security and Visa Entry Reform Act (EBSVERA). Part of this second law sought international cooperation with this standard. The incentive was clarified by the ultimatum:

> By October 26, 2004, in order for a country to remain eligible for participation in the visa waiver program its government must certify that it has a program to issue to its nationals machine-readable passports that are tamper-resistant and which incorporate biometric and authentication identifiers that satisfy the standards of the International Civil Aviation Organisation.[39]

In other words, those countries which wished to maintain eligibility for visa-free entry into the US were required to develop biometric passports. EBSVERA mandated an increase of 3000 immigration inspectors and investigators, and instigated the increased scrutiny of visa applications originating in countries suspected of supporting terrorism. Exactly one year after the 9/11 attacks a new National Security Entry-Exit Registration System (NSEERS) was implemented under EBSVERA. It required male foreign visitors from 'politically sensitive' areas to register with the authorities. The United States Visitor and Immigrant Status Indicator Technology program (US–VISIT) superseded the NSEERS. Non-immigrant visa-holders are required to provide a digitally scanned fingerprint and a digital photograph.

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37 Ibid., p. 79.
38 David Lyon, *Surveillance after September 11*, Polity Press, Cambridge, 2003, p. 109.
39 Enhanced Border Security and Visa Entry Reform Act 2002 (USA).

The authorities cross-check name and fingerprints with security databases before the visitor can proceed.[40] The increasing desire of the US and other western governments for enhanced border measures and increased capability of surveillance had major implications for the passport. The US Government set conditions for eligibility for the Visa Waiver Program. First, passports issued or renewed before 26 October 2005 were required to be machine readable. Second, passports issued or renewed after 26 October 2005 must be machine readable and contain a digitised photograph, or be biometric passports. Third, passports issued or renewed after 26 October 2006 must be *biometric*.

Biometric methods of validating identity resulted from rapid advances in networking, communication and mobility in the age of modern globalisation. Before the biometric age, verification of identity was mainly performed in two ways. One was through possession of a document such as a passport, driver's licence, or credit card. However, as the Stewart Royal Commission illustrated, such documents could be fraudulently obtained, or lost and stolen, and used to create a false identity. The second was knowledge-based, for example through possession of a password. But if the password were too short, it would be easy to crack, and if it were too long, it might be too complicated to remember. The weaknesses of these methods could be obviated if one's own body became the key to validating identity. Bodily characteristics are difficult to forge. Fingerprints, face recognition, hand geometry and iris recognition could all be used in biometric systems.

The laws passed in the United States after 11 September 2001 added momentum to the deliberations of the ICAO about biometric standards. The ICAO had been researching biometric passports since 1995. A technical working group of the ICAO, assessing the technologies, included Australia, Canada, the Czech Republic, France, Germany, India, Japan, New Zealand, the Netherlands, the Russian Federation, Sweden, the United Kingdom and the US. According to the ICAO, the main purposes of biometric passports were to allow verification ('confirming identity by comparing identity details of the person claiming to be a specific individual against details previously recorded on that individual'); and identification ('determining possible identity by comparing identity details of the presenting person against details previously recorded on a number of living individuals').[41] The ICAO assessed the available technologies according to seven criteria: compatibility with enrolment requirements, compatibility with Machine Readable Travel

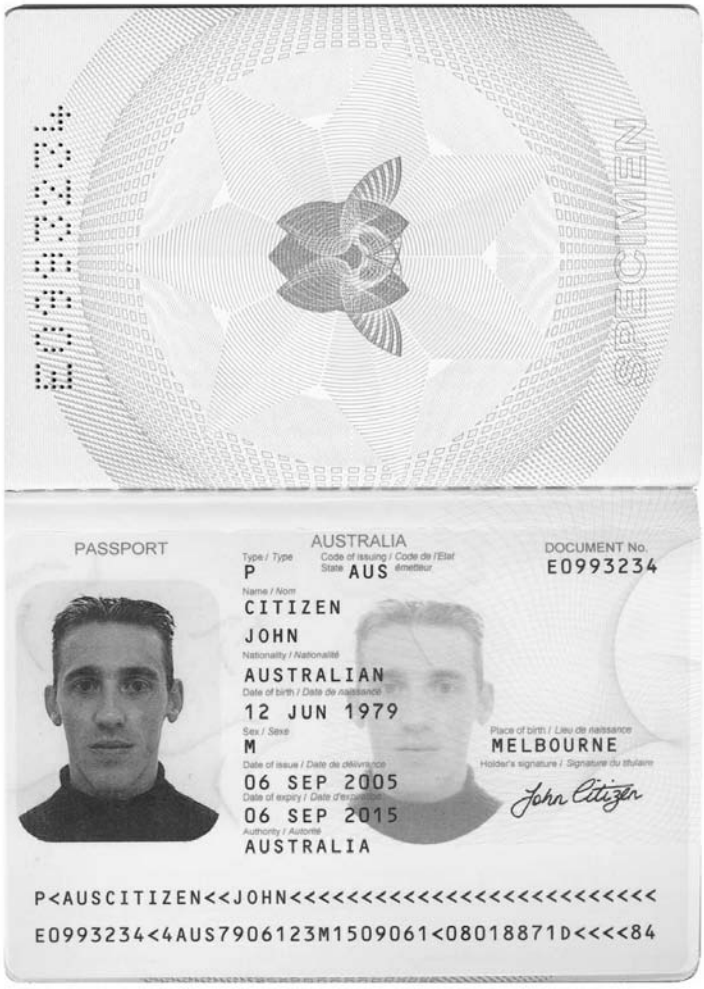
40 Rudolph, Christopher, *National Security and Immigration: Policy Development in the United States and Western Europe since 1945*, Stanford University Press, Stanford, 2006, p. 80.

41 Privacy International, 'Background on Biometric Passports', 30 March 2004.

Documents (MRTD) renewal requirements, compatibility with MRTD machine-assisted identity verification requirements, redundancy, global public perception, storage requirements and performance. The ICAO then grouped available biometric technologies into three categories and assessed them on their ability to meet the total requirements. Facial recognition achieved the highest compatibility rating (greater than 85 per cent); fingers and eyes had a compatibility rating near 65 per cent; and signature, hand and voice emerged with less than 50 per cent. In May 2003 the ICAO's Air Transport Committee developed a 'blueprint' for the globally interoperable deployment of biometric technology in passports and other travel documents. The ICAO hoped thereby to achieve a balance between expedited traveller flow and security needs. The ICAO's Technical Advisory Group on Machine Readable Travel Documents recommended facial recognition as the globally interoperable biometric for machine-assisted identity confirmation. However, the report acknowledged that states might use fingerprint and iris recognition to supplement facial recognition.[42]

Australia was an active participant in the framing of international standards for biometric passports. Its Department of Foreign Affairs spent 2001 to 2005 developing a biometric passport. In order to ensure that cardinal documents of identity (birth certificates and citizenship certificates) were immutably connected with the rightful owner, the department had begun researching the possibility of including a facial biometric identifier in the Australian passport in 2001. Use of a biometric identifier, the authorities hoped, would permanently tie the face of an applicant for a passport to a name on a cardinal document and alert the authorities to an attempt to apply for a passport using false papers. Several years of research and development and planning followed. From 24 October 2005, the department issued a new type of passport to citizens. What the government called the 'ePassport' used just one physical trait: the face. To manufacture an ePassport, the department digitised photographs supplied with passport applications and stored them in a passports database and a computer chip in the ePassport. The digitised photograph was embedded in an Integrated Circuit Chip in the middle of the biometric passport along with the bearer's name, sex, date of birth, nationality, passport number and passport expiry date. The computer chip was 'contactless', allowing information to be read without connecting wires. Only authorised officers in the Australian Passport Office could write personal information on the chip in the ePassport. And the ePassport incorporated security features

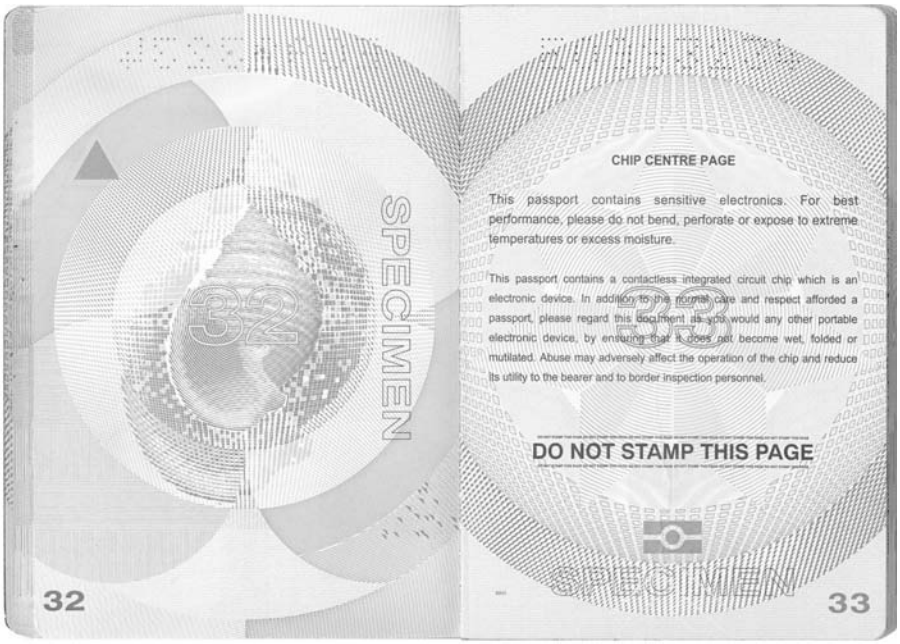
42 Ibid.



M Series Passport Data Page
(*Australian Passport Office*)

preventing anyone from changing or accessing information stored on the chip.[43] Customs and immigration officers at Australian airports could then compare the image in the passport photograph with the facial image of the passport holder to determine whether the two images were of the same person. The advantages of the Australian biometric passport were that it afforded greater protection against identity fraud when the passport was

43 <www.dfat.gov.au/dept/passports/> The Australian ePassport.



Centre Chip Page – ePassport
(*Australian Passport Office*)

used and when it was issued. When the authorities processed applications, the photographs proffered were matched with images of any Australian travel document they had previously held. The applicant's passport, moreover, could be matched against images in the passport database to ensure that the person had not illegitimately applied in another name.[44] The biometric passport also validated identity at international border control points.

As certain countries prepared to introduce biometric passports, some public criticisms were aired. For example, the Civil Liberties Group Privacy International and the American Civil Liberties Union argued: 'We are increasingly concerned that the biometric travel document initiative is part and parcel of a larger surveillance infrastructure monitoring the movements of individuals globally'. Gus Hosein, from Privacy International, added:

44 It is legitimate in some cases for travellers to use a travel document in a different name, for example, a maiden name.

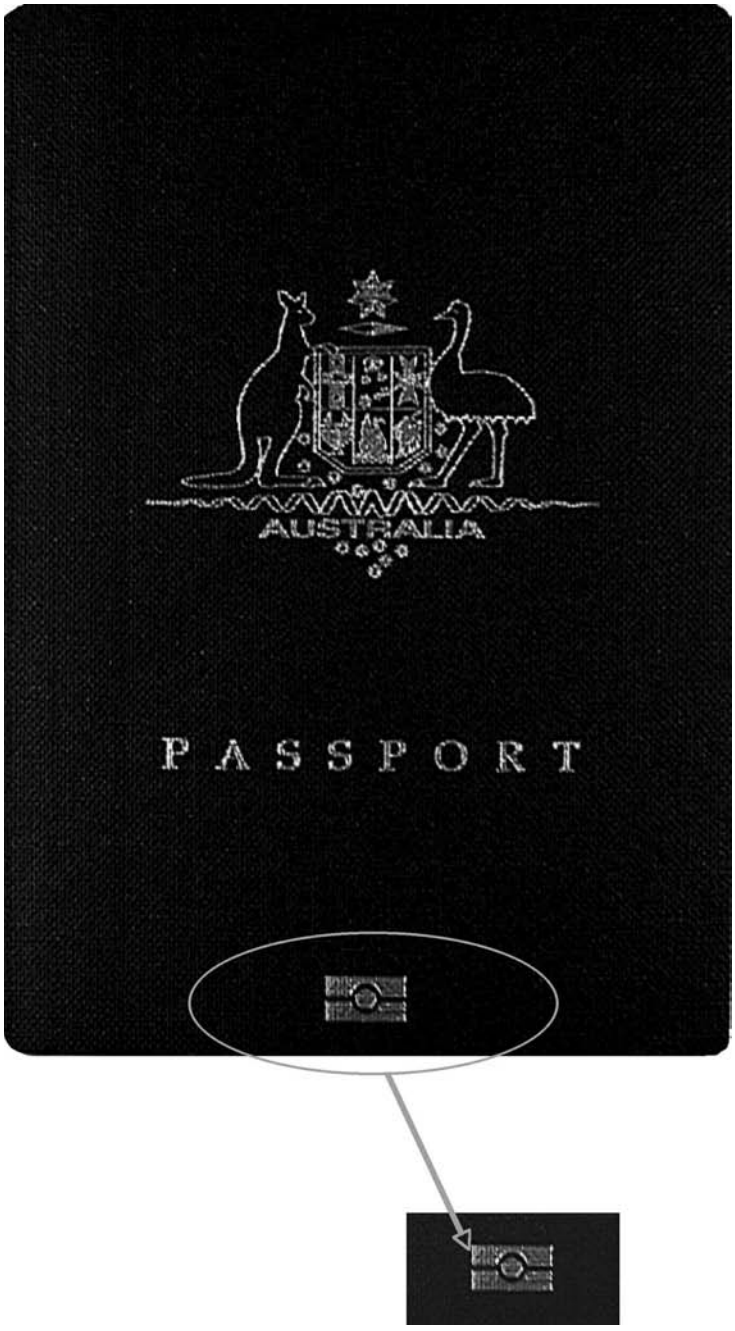
> With the biometric passport, every country may have its own surveillance system, accumulating fingerprints and face scans but we will soon see nations with appalling human rights records generating massive databases and then requiring our own fingerprints and face-scans as we travel.[45]

The birth of the biometric passport coincided with practices such as the coordination of international police activities and the sending of passenger data ahead of the plane to destination airports. As David Lyon has pointed out, personal data were crossing borders at a rapid rate:

> It also means that borders themselves become 'delocalised' as efforts are made to check travellers before they reach physical borders or ports of entry. Images and information circulate through different departments, looping back and forth in commercial, policing and government networks. Surveillance records, once kept in fixed filing cabinets and dealing in data focused on persons in specific places, are now fluid, flowing and global. These consequences are properly 'globalized' in the sense that they signal new patterns of global activity and novel social arrangements, which are less constrained by geography. The 'delocalized border' is a prime example of globalized surveillance.[46]

Anticipating criticism that biometric details in ePassports could be misappropriated by government authorities or 'hacked' by criminals, the Australian Government countered that the *Privacy Act 1988* prohibited government officers from collecting, using, or disclosing personal information on Australian citizens except in the performance of their duties. Similarly, the passport issuing authorities allayed fears that a person's identity could be stolen from the new biometric details and cloned: these fears were based on confusion about biometric passports. The traditional passport carried simple recognition details in the form of a photograph. But because border officials were not good at comparing multiple pairs of similar-looking people with photographs in passports, nations had developed the technology for machines to perfect a task on which humans were fallible. They had therefore added to the traditional passport a computer file with commonly known personal attributes (name, date of birth, sex and so on) and biometric data to enable machines to verify the identity of the passport holder. If criminals were able to extract the data from a biometric passport, they would not be able to impersonate the holder without the holder's unique biometric data. However,

45 BBC News Article, 'Concern over Biometric Passports', 30 March 2004.
46 Lyon, *Surveillance after September 11*, p. 110.



Australian ePassport, 2008
(*Australian Passport Office*)

the information might be useful for other kinds of identity fraud such as in bank fraud.

Following the reforms of the Stewart Royal Commission and the moves to introduce the biometric passport, the government overhauled Australia's passport legislation in 2005. By 2003, the Passports Branch of the Department of Foreign Affairs and Trade considered that the *Passports Act 1938* (last amended on 22 November 1984) was 'cumbersome and acts to disadvantage certain categories of applicants'. Moreover:

> The Act, as it now stands, also does not adequately support the activities of the Passports Branch in the fight against identity fraud and misuse of Australian travel documents. Penalties imposed by the Act are not a sufficient deterrent and need to be increased to at least bring them into line with those contained in the Migration and Crimes Acts.[47]

The new legislation sought to balance the citizen's sense of entitlement to a passport with the duty of the government to protect Australia and other countries by being empowered to refuse or cancel passports to children without proper parental or court sanction, criminals, terrorists, or people using false identities. It also provided a legislative basis for the use of a personal biometric identifier in the passport system.

Section 7(1) of the *Australian Passports Act 2005* states that an 'Australian citizen is entitled, on application to the Minister, to be issued with an Australian passport by the Minister'.[48] This was the first time that such an 'entitlement' had been expressed in Australian law. Section 8 of the Act goes on to state that the minister must be satisfied of the identity and citizenship of the applicant.[49] The new legislation also strengthened the legal basis for the department to request other Commonwealth or state agencies to provide information to confirm an applicant's identity.[50]

Division 2 of the Act details the reasons why, notwithstanding the entitlement to passports, the Minister for Foreign Affairs (or his representatives) may refuse to issue, or cancel, a passport. In doing so, the 2005 legislation altered the basis on which ministerial discretion operated. The 1979 amendments to the *Passports Act 1938* had set down rules by which delegates of the minister might refuse to issue Australian passports while leaving a discretion with the Minister for Foreign Affairs. Moreover s. 8(1)

47 DFAT, Departmental paper, ' Review of the *Passports Act 1938*', Passports Branch, 2003.
48 *Australian Passports Act 2005* (Cth), s. 7.
49 Ibid., s. 8.
50 Ibid., s. 42.

of the *Passports Act 1938* had left the minister, or his delegates, unfettered power to *cancel* a passport. The new legislation was prescriptive about the conditions under which the minister or his delegates could cancel or refuse to issue passports and made such decisions reviewable under the *Administrative Appeals Tribunal Act 1975*.[51]

The 2005 legislation states that the minister 'must not' issue a passport to a child without the consent of each of those with parental responsibility or a court order to travel. But it left the minister discretion to issue a passport to a child under certain conditions, such as a family crisis, or if the minister considered that a child's welfare would be adversely affected if the child were not able to travel. In refusing to issue a passport to a child, ministers could declare that they were refusing to exercise discretion because the matter should be dealt with by a Court.[52] The new legislation left no discretion with the minister when a 'competent authority' believed on reasonable grounds that an applicant for a passport was the 'subject of an arrest warrant issued in Australia in respect of an indictable offence against the law of the Commonwealth, a State, or a Territory'. Similarly, it left no discretion if an applicant for a passport was prevented from travelling internationally by force of a court order, parole, or order or law of the Commonwealth. If a 'competent authority' made such a request to the minister under s 12(1) of the Act, the 'Minister must not issue an Australian passport to the person'.[53] The new Passports Act left the minister discretion when a competent authority believed on reasonable grounds that a person was the subject of an arrest warrant in *another country* in respect of a serious foreign offence,[54] or if a person was prevented from travelling by order of a court of a foreign country, as a condition of parole, or under the law order of direction of another country. Section 13(1)(c) added that a competent authority may make a request to refuse or cancel a passport where, '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 committed, or is alleged to have committed, would be compromised'. If a competent authority made a request under Section 13(1) of the Act, the Minister for Foreign Affairs had the discretion to cancel or refuse a passport.[55]

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51 Ibid., ss 48, 49, 50.

52 Ibid., s. 11.

53 Ibid., s. 12.

54 The Act defined 'serious foreign offence' inter alia as one 'for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months'. Emphasis added.

55 *Australian Passports Act 2005* (Cth) s. 13.

Section 14(1) of the Act gave the minister discretion to cancel or refuse a passport if a competent authority believed on reasonable grounds that a passport holder would be likely to engage in conduct that might prejudice the security of Australia or another country, endanger the health or physical safety of other persons, interfere with the rights or freedoms of other persons, or constitute an offence against the Passports Act or other law of the Commonwealth.[56] In such circumstances the minister had the discretion not to issue, or cancel, a passport to such a person. Section 16(1) of the Act states that the minister must not issue a passport to a debtor to the Commonwealth. But the minister retains discretion to issue a passport to a debtor if the minister is satisfied that it is in the debtor's welfare to travel, or if the debtor urgently needed to travel because of a family crisis.[57] If a competent authority made a request to the minister under s 16(1), the minister was obliged not to issue a passport to the debtor, but could only refuse to issue a passport to a debtor if a competent authority had first made its recommendation.

Until the 1980s there was a stronger inclination in the Australian passport service to limit its role as a direct agent for law enforcement. However, increasingly since the Stewart Royal Commission, passport authorities found themselves playing a bigger role in detecting identity fraud and associated criminal activities and passing on information to law enforcement authorities. Particularly after 2001, this role expanded as cooperation between regional law enforcement agencies, immigration and passport authorities increased in an effort to counteract international criminal activities such as people smuggling, terrorism and drug trafficking. The Act provided greater opportunities for cooperation between the Department of Foreign Affairs and Trade, which operated the passport system, and Australasian law enforcement agencies. By 2004, the government had in place also a strategy to exchange passport information with other countries with which Australia shared a high volume of travellers. The purposes of this exchange were to detect and prevent the use of lost, stolen, cancelled or otherwise invalid passports; and facilitate the travel of Australians by allowing Advance Passenger Processing for citizens of one country to enter another. Such information would be provided in two steps. When a passport was presented to an airline, the airline would send the information on the data page to the Australian passports database. If the passport was identified as lost, stolen or otherwise invalid, the airline received a message to contact the immigration authority. The immigration

56 Ibid., s. 14.
57 Ibid., s. 16.

authority contacted the Australian Passports Watch Office and the Watch Office exchanged further information to verify that the identification did not occur as a result of data errors; ensuring that genuine travellers were not hampered; and preventing the travel of those engaged in terrorism, illegal immigration and other international crime. The new legislation increased the penalties for serious breaches of the Act.[58]

The generalised use of passports, as a signifier of nationality and identity, coincided with the consolidation of nation-states and the globalisation of the nation-state after the 1940s. The new Australian nation-state began issuing passports to facilitate travel beyond the British Empire. During World War I, the Commonwealth monopolised passport issues as a security measure, and the Commonwealth's British Passport became part of a passport system that was internationalised through the League of Nations, and later, the ICAO. The Commonwealth of Australia's passport from the 1920s became indispensable for travel anywhere in the world. Some hoped after World War II that passports might be phased out and replaced by a single document of identity. But the continued use by many countries of visas required the preservation of a booklet, in the League of Nations-approved format, on which those visas could be imprinted. The Stewart Royal Commission brought to public attention the degree to which the passport system was being abused by criminals. This led to far-reaching reforms, the most significant of which were the requirement of applicants for passports to attend an interview and the more rigorous checking of applications. While these reforms went a long way to minimising the abuse of the system, identity fraud remained a problem.

After 11 September 2001, there emerged a consensus internationally that all countries should develop machine-assisted technologies for validating a person's identity by reference to unique biometric characteristics. Australia was at the forefront of efforts to develop this technology and implement its ePassport. Australia also overhauled its passport legislation in that year in part to incorporate reference to the new technology and to reflect community standards on the need to address the trend of identity theft and the fraudulent use of travel documents. As more and more Australians use passports for travel or to facilitate business by confirming identity, there are no signs of the document becoming redundant. Theoretically, if a person could be uniquely identified as a citizen of the world, rather than of a nation-state, we might reach a point where there is no need for Australians to continue to carry a passport. This, however,

58 Ibid., ss 29–41.

would require a single standard biometric attribute on which identification would be based that would be known to every authority that required proof of identity. One way of doing so would be to place every person's biometric data or genetic code on a universal database. But the logistic, technological and cultural barriers in the way of this scenario seem insuperable in 2007. For the foreseeable future, Australian citizens will need to carry a passport that transports unique information that can be verified by each other country's database.

Biographical Guide

Bailey, K.H.	Solicitor-General, 1946–1964
Barton, E.	Prime Minister and Minister for External Affairs, 1901–1903
Bell, D.D.	Crown Solicitor, 1951–1955
Benson, J.A.	Assistant Secretary of the Executive Secretariat, Department of Foreign Affairs, 1981–1983
Bjelke-Petersen, J.	Premier of Queensland, 1968–1987
Blakeley, A.	Minister for Home Affairs, 1929–1932
Bowden, I.G.	First Assistant Secretary, Consular, Information and Cultural Division, Department of Foreign Affairs, 1978–1983
Brown, A.S.	Secretary, Prime Minister's Department, 1949–1959
Bruce, S.M.	Prime Minister, 1923–1929
Cairns, Dr J.	Deputy Prime Minister and Treasurer, 1974–1975
Calwell, A.	Minister for Immigration, 1945–1949; Leader of the Opposition, 1960–1967
Campbell, A.D.	First Assistant Secretary, International Organisations and Consular Division, Department of Foreign Affairs, 1976–1979; also Acting Secretary to Bill Hayden
Chamberlain, J.	UK Secretary of State for the Colonies, 1895–1906
Chifley, J.B.	Treasurer, 1941–1945; Prime Minister, 1945–1949; Leader of the Opposition, 1949–1951
Cook, J.	Prime Minister, 1913–1914; Leader of the Opposition, 1914–1917; Treasurer from July 1920 and Acting Prime Minister, April–September 1921

Curtin, J.	Leader of the Opposition, 1935–1941; Prime Minister, 1941–1945
Deakin, A.	Prime Minister and Minister for External Affairs, 1903–1904; 1905–1908; and 1909–1910
Denham, D.	Premier of Queensland, 1911–1915
Evatt K.C., Dr H.V.	High Court Justice, 1930–1940; Minister for External Affairs and Attorney-General, 1941–1949; Deputy Leader of the Opposition, 1950–1951; Leader of the Opposition, 1951–1960
Fadden, A.	Prime Minister, 29 August – 7 October 1941; Treasurer, 1949–1958
Fisher, A.	Prime Minister, 1908–1909; 1910–1913; and 1914–1915; High Commissioner in London, 1916–1921
Fraser, J.M.	Prime Minister, 1975–1983
Garran, R.	Secretary, Attorney-General's Department, 1901–1932; Solicitor-General, 1916–1932
Glynn, P.	Attorney-General, 1909–1910; Minister for External Affairs, June 1913 – September 1914; Minister for Home and Territories, 1917–1920
Gorton, J.	Minister Assisting the Minister for External Affairs, 1960–1963; Prime Minister, 1968–1971
Grassby, A.	Minister for Immigration and Multicultural Affairs, 1972–1974
Hasluck, P.M.C.	Minister for Territories, 1951–1963; Minister for Defence, 1963–1964; Minister for External Affairs, 1964–1969
Hawke, R.J.L.	Prime Minister, 1983–1991
Hewitt, C.L.	Secretary, Prime Minister's Department, 1968–1971
Heydon, P.R.	Secretary, Department of Immigration, 1961–1970
Heyes, T.H.E.	Secretary, Department of Immigration, 1946–1961
Holman, W.A.	Premier of New South Wales, 1913–1920
Holt, H.E.	Minister for Labour and National Service, 1949–1958; Minister for Immigration, 1949–1956; Prime Minister, 1966–1967
Hook, E.J.	Secretary, Attorney-General's Department, 1964–1970

Hughes, W.M.	Minister for External Affairs 1904; Attorney-General, 1908–1909; 1909–1913; Prime Minister, 1915–1923; Minister for External Affairs, 1919–1923; 1937–1949; Attorney-General, 1938–1941
Hunt, Atlee	Secretary, Department of External Affairs, 1901–1921
Kayser, J.A.S.	Class 5 officer, Department of External Affairs, 1915–1918
Kelso, J.R.	Assistant Secretary Consular and Immigration, Department of Foreign Affairs, 1978
Kiddle, G.	Chief Migration Officer, London, 1966–1969
Knowles, G.S.	Solicitor-General, 1932–1946
Lamidey, N.	Chief Migration Officer, London, 1951–1955
Ley, T.J.	NSW Minister for Justice, 1922–1925; Federal Member for Barton, 1925–1928
Lyne, Sir William	Minister for Home Affairs, 1901–903
Lyons, J.A.	Minister for Works and Railways, 1929–1931; Acting Treasurer, 25 August 1930 – 10 January 1931; Prime Minister, 1931–1939
Mahon, H.	Assistant Minister for External Affairs, September – December 1914; Minister for External Affairs, 1914–1916; Acting Attorney-General, January – August 1916
Massey, W.F.	Prime Minister of New Zealand, 1912–1925
McEwen, J.	Minister for the Interior, 1937–1939; Deputy Prime Minister, 1958–1971
McGinness, H.	Head, Nationality, Citizenship and Passport Sub-Division, 1947–1954; Assistant Secretary, General Migration, Department of Immigration, 1954–1961
McIntyre, Sir Laurence	Deputy Secretary, Department of External Affairs, 1970–1974
McLaren, J.G.	Secretary, Home and Territories Department, 1921–1928
McMahon, W.	Minister for Navy and Air, 1951–1954
Menzies, R.G.	Attorney-General, 1934–1939; Prime Minister, 1939–1941; Leader of the Opposition, 1943–1949; Prime Minister, 1949–1966; Minister for External Affairs, 1960–1961

Munro-Ferguson, Sir Ronald	Governor-General, 1914–1920
North, F.D.	Under Secretary, Department of the Colonial Secretary in Western Australia, 1902–1911
Operman, H.	Minister for Immigration, 1963–1966
Osborn, R.F.	Former High Commissioner Suva, Minister Tokyo, and High Commissioner Ottawa, engaged as consultant on redevelopment and operation of Passport Office, 1985
Paterson, T.	Minister for the Interior, 1934–1937
Peacock, A.	Minister for Foreign Affairs, 1975–1980
Pearce, G.F.	Minister for Defence, 1908–1909; 1910–1913; and 1914–1921; Acting Prime Minister, 1916; Minister for Home and Territories, 1921–1926
Piesse, E.L.	Director of Military Intelligence, 1919–1923
Plimsoll, Sir James	Secretary, Department of External Affairs, 1965–1970
Quinlan, F.J.	Head, Passport Section, Home and Territories Department, 1916–1927+
Renouf, A.R.	Ambassador to France, 1969–1973
Scaddan, J.	Premier of Western Australia, 1910–1916
Scullin, J.	Prime Minister, 1929–1931; Leader of the Opposition, 1931–1935
Snedden, Billy	Minister for Immigration, 1966–1969
Spender, P.C.	Minister for Army, 1940–1941; Minister for External Affairs, 1949–1951; Ambassador to the United States, 1950–1958
Spry, Col./ Brig. C.C.F.	Director-General ASIO, 1950–1969
Starling, J.H.	Official Secretary to Governor General, 1919–1927; Secretary of Federal Executive Council, 1919–1933; Secretary, Prime Minister's Department, 1933–1935
Stewart, D.	NSW Chief Justice and Head, Royal Commission of Inquiry into Drugs, 1980–1983
Street, A.A.	Minister for Foreign Affairs, 1980–1983

Strickland, Sir Gerald	Governor of New South Wales, 1915–1917
Thomas, J.	Minister for External Affairs, 1911–1913
Walker, Dr E.R.	Ambassador to Japan, 1952–1956
Waller, J.K.	Second Secretary, Australian Legation, Chunking, 1941–1945; Ambassador to the United States, 1964–1970; Secretary, Department of External Affairs/ Foreign Affairs, 1970–1974
Watt, A.S.	Secretary, Department of External Affairs, 1950–1954
Watt, W.	Treasurer, 1918–1920; Acting Prime Minister, April 1918 – August 1919
Whitlam, E.G.	Leader of the Opposition, 1967–1972; Prime Minister, 1972–1975

Timeline

1215	In Britain, Magna Carta guarantees freedom of movement for all the King's subjects.
1381	All but peers, soldiers and notable merchants are forbidden to exit the realm 'lest the King be deprived of the subjects' military or other feudal services'.
1414	Act of Parliament during the reign of King Henry V refers to 'safe conduct' documents – the earliest form of passports.
1788	Captain Arthur Phillip sails into Sydney Cove and establishes a British penal colony in New South Wales.
1794	Britain introduces passport requirements to monitor the movement of 'aliens' (non-British subjects).
1826	Britain abolishes passports for travel by British subjects within the British Empire.
1836	Britain introduces compulsory passports for 'aliens'.
1837	Governor of New South Wales, Sir George Gipps, rejects proposal to introduce a passport system in New South Wales.
April 1901	First Commonwealth of Australia passports issued to John Edward Briscoe and his sister Helen Briscoe for travel to Britain via Russia.
1901	Immigration Restriction Act passed to limit the entry of non-Europeans into Australia.
1903	Signing of the Japan–Australia Passport Agreement: Australia's first foreign agreement. The arrangement allowed Japanese businessmen, students, tourists with endorsed/visaed passports to enter Australia for one year and be

	exempted from the Dictation Test. The Agreement was similarly extended to Indians and was known in India as the 'Australian Passport'.
1912	Signing of the China–Australia Passport Agreement. Terms and conditions almost identical to the Japanese/Indian arrangement, but the Chinese agreement stipulated that the passport bear a photographic image of the holder.
June 1912	Non-compulsory Australian passport introduced.
12 September 1912	*Commonwealth Gazette* announces the first set of national passport Regulations, covering eligibility, validity and cost. Fee of 2/6 introduced.
October 1914	War Precautions Act (Cth) passed.
November 1914	State Premiers agree to transfer passport issuing rights to the Commonwealth.
27 February 1915	Under the War Precautions Act, Australia's first war-related passport Regulations were announced. Non-combatant travellers to France and Belgium required a passport to be visaed by a 'French or Belgian Consular Officer respectively' and all applicants were to submit 'two unmounted photographs, one to be attached to the passport and the other to be retained at the Department of External Affairs'.
June 1915	Single sheet passport changed to folding booklet format.
June 1915	Britain announces that all visitors, regardless of sex and including British subjects, must present a passport on entering or exiting the realm.
October to November 1915	1000 passports issued, 64 applications rejected.
November 1915	Passports become mandatory for men of military age (18–44 years) wishing to leave Australia.
November 1915	Ministerial Discretion in relation to issuance of passports announced.
June 1916	War Precautions (Passports) Regulations announced. No Australian/British subject, male or female, over the age of

	15 permitted to enter or exit the Commonwealth without a passport.
27 October 1917	Middleweight boxing champion, Les Darcy, flees Australia for the United States without a passport.
1917	X-series passport introduced.
February 1919	Prime Minister Billy Hughes waives passports for soldiers, munition workers and dependents returning to Australia from Britain and Europe.
1920	*Passports Act 1920* passed. Based on the War Precautions (Passports) Regulations 1916, it remains mandatory for all Australians leaving the Commonwealth to carry a passport. **A Series** passports introduced – the bearer described simply as a British subject by birth or naturalisation, without reference to citizenship. 'Commonwealth of Australia' was embossed on cover of passport.
1920	International passport format standardised. League of Nations Conference on passports and related issues, Paris.
1929	Minister for Home Affairs, Arthur Blakeley, announces that the Australian passport system is permanent.
1932	Lyons government agrees to issue free passports for indigent former assisted migrants wishing to return to Britain.
1937	*The King v. Paterson, Ex parte Purves* (1937). Discretionary power is recognised in Australian case law.
1938	*Passport Act 1938*. Compulsion for travellers to carry a passport is rescinded, but non-reviewable discretionary power is written into the legislation, and passport rights are extended to all British subjects including Aborigines.
1948	Nationality and Citizenship Act establishes Australian citizenship for the first time.
26 January 1949 to 30 June 1950	Two types of passports issued concurrently: **B Series** issued within Australia only to British subjects who were not Australian citizens. Serial numbers prefixed by the letter 'B' but otherwise identical to A Series passports. **C Series** issued to Australian citizens, both within Australia and by Australian representatives overseas.

1950	Territorial restrictions ('endorsements') to Communist countries inserted into Australian passports.
April 1955	*R. v. The Right Honourable Harold Edward Holt and Daniel Raymond Dwyer, Ex parte Neil Reheiri Glover* establishes that the Australian Government is not obliged to disclose the reason for refusal to issue or for withdrawal of a passport.
May 1955	Wilfred Burchett misplaces his British passport.
November 1959/60	Wilfred Burchett's application for Australian passport refused.
1967	'British' removed from passport.
December 1972	Whitlam government issues an Australian passport to Wilfred Burchett.
1979	Passports Act amended to guide delegates of Minister for Foreign Affairs in refusing/cancelling passports.
1982	Release of report of Stewart Royal Commission into Drug Trafficking.
1983	Applicants required to provide full/original documentation; agency agreement with Australian Passport Offices to interview applicants.
1984	First ICAO Standard Passport. Machine readable lines included.
1984	British subjects not Australian citizens ineligible to receive Australian passports; right of appeal to Administrative Appeals Tribunal introduced.
2005	Australian *Passports Act 2005* introduced; biometric passport introduced.

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D569 Correspondence files, annual single number series, 1871–1962

D1976 Correspondence files, annual single number series with 'SB' (Shipping Board) prefix, 1928–1951

Australian Federal Police

B741 Correspondence files, single number series with 'V' (Victoria) prefix, 1914–1964

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Australian Security Intelligence Organisation

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Department of Defence

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Department of Immigration

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Department of Information

A1200	Photographic negatives and prints, single number series with 'L' [Library] prefix, 1911–1971
SP112	General correspondence files, 1939–1946

Department of Parliamentary Services

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Governor-General

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A6	Correspondence files, annual single number series, 1901–1902
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A462	Correspondence files, multiple number series, fourth system, 1951–1956
A463	Correspondence files, annual number series (unclassified), 1956–
A1209	Correspondence files, annual single number series, 1957–
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A4940	Menzies and Holt Ministries – Cabinet files 'C', single number series 1949–1972
A5868	Folders of Cabinet Submissions, Second Gorton Ministry, 1968–1969
A5882	Gorton and McMahon Ministries – Cabinet Files 'CO' single number series, 1968–1972
A6717	Correspondence files, single number series with 'A' prefix. (Known first as 'First "A" File Series'), 1954–1958
A7452	Correspondence files, single number series with 'A' prefix. (Known as 'Third "A" File series'), 1949–

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Melbourne *Truth*

Perth *Daily News*

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