

BOOK REVIEW: EVERY ASSISTANCE & PROTECTION: A HISTORY OF THE AUSTRALIAN PASSPORT

*Dr Genevieve Ebbeck**

Every Assistance & Protection: A history of the Australian Passport

By Jane Doulman and David Lee, The Federation Press

Every Assistance & Protection is a comprehensive history of the Australian passport, a work commissioned by the Department of Foreign Affairs and Trade. It starts with the origins of the modern passport, which is sourced in documents such as the *sauf conduit* (safe-conduct) and the King's Licence and traces the emergence of the Australian passport to the present-day biometric passport.

Fundamentally, it is an historical examination of the Australian passport, rather than a legal text upon passport law. It does not, for example, examine legal issues such as ownership of a passport in the case of dispute between governments, or between a citizen and his/her government. Nevertheless it assists in understanding the current legal position regarding challenges that may be brought to decisions made under the *Australian Passports Act 2005* (Cth) and the scope of administrative review available in respect of decisions refusing to issue, or cancelling, passports.

The book is written in a style that engages the reader and it proves to be interesting reading despite what might appear to many readers to be a very narrow topic. Indeed, one of the strengths of the book is the way it links its topic to broader social issues relevant in Australia over the course of last century.

Overall, it is a work that brings significant new knowledge to the field of Australian history, including Australian legal history. It is likely to prove worthwhile reading for those people interested in such history, as well as be a valuable resource to lawyers needing to research particular issues about Australian passports.

Early chapters of the book are flavoured with rivalry between the newly-formed Commonwealth Government and the Australian State governments. The holder of the first Australian Commonwealth-issued passport is identified as a Melbourne businessman, John Edward Briscoe, who applied for passports for himself and his sister in April 1901 in order to travel to Europe. No record can be found of another Commonwealth-issued passport until 1908. The States continued their practice of issuing travel documents, also known as passports.

It was not until the outbreak of World War 1 that the Commonwealth gave serious attention to regulating the movement of persons by way of passport control. The Commonwealth pressed for a centralised passport system, which necessitated the States agreeing to refrain from issuing passports. The States resisted strongly, arguing that the Commonwealth lacked

* Senior General Counsel, Office of General Counsel, Australian Government Solicitor

the transport and communication infrastructure to support a centralised passport system, and also that they as State governments were better able to judge which applicants for passports from their jurisdictions should be granted them. Finally persuaded that the issue was one of national security, the States capitulated, but on the understanding that it would be a temporary emergency measure for the duration of the war. In fact, of course, the Commonwealth retained centralised control from that point on.

The passport was used by the Commonwealth Government as a means of controlling and monitoring the most valuable wartime asset, namely manpower. In November 1915, passports became compulsory for all males of military age. It appeared to be assumed that civilian males applying for passports were attempting to evade military service, and the onus was put on them to prove otherwise. The authors go so far as to state that the passport interview became 'tantamount to an interrogation ... [and] the application process intensified pressure on men to enlist'. The compulsory passport requirement was in due course extended to women and then the application fee was increased significantly as a practical deterrent to persons wanting to leave Australia.

There was significant public opposition to the need to obtain a passport. A compulsory passport had previously been associated only with 'perceived police-states' and was seen to be an affront to the freedom of British subjects to move within the Empire at will. Nevertheless, the Australian passport was to become 'one of the war's most visible legacies', assisting emerging modern nation-states to determine 'who was 'in' and who was 'out'.

In the years following World War 1, the passport was to be used as a tool to try to curb social, economic and political unrest. By 1919, for example, Russians of any class or persuasion were banned from entering Australia in order to try to curb the spread of international communism. The authors write that the decision of the Hughes government to pass Australia's first distinct passport legislation in 1920 owed much to the perception that foreigners were the root cause of industrial unrest, high unemployment and emerging anti-imperial sentiment.' Chapter 3 of the book examines the linkages between passport regulation and immigration controls.

Also of interest throughout the book is the discussion of how the Australian passport was used to shore up various social or moral standards. By the mid-1930s, for example, passports could be and were refused to a single girl wanting to accompany a man on a trip abroad, or a single girl desiring to go abroad for the purpose of getting married against the wishes of her parents. Women began to challenge the use of the passport regime to police women's lives.

Interestingly, from an administrative law perspective, is the discussion of the challenge made in 1934 to the Minister's authority to withhold the issue of a passport. The opinion of the then Solicitor-General, George Knowles, was sought and he confirmed that the legislation did not specifically confer power on any authority to issue or withhold passports. He and the Attorney-General's Department took the view that there was an implied duty to issue a passport given its mandatory nature, and legislative amendment was needed to clarify the grounds for refusing to issue a passport. The extent of any discretionary power to withhold the issue of a passport was examined by the High Court in *The King v Paterson; Ex parte Purves* [1937] Argus LR 144, and this case is discussed in Chapter 4. New legislation in 1938 finally dealt with the discretionary issue, amongst other issues such as the surrender of a passport obtained by false or misleading statements.

A contentious issue during World War 2 was whether passports should be issued to the wives, fiancées and families of AIF men posted overseas in countries such as Egypt and Palestine. After a somewhat briefer discussion of the role of the passport during World War 2

as compared with World War 1, the book turns to focus on what occurred during the Cold War. This discussion is also of particular interest from an administrative law perspective.

The holders of passports issued by Communist countries were viewed with suspicion by government agencies such as ASIO, as potential enemies of Australia. There was also a keen desire to identify subversives within Australian society, and 'between 1950 and 1956, therefore, the most aggressive and public use of passport policy as a national security tool was against Australian citizens'. The crucial legal issue was whether Australian citizens were to be issued with passports as 'a matter of right', ie a right possessed by all Australian citizens, or whether the Government could curtail their movements by, for example, refusing to grant passports to known Communists or to persons intending to proceed to Communist territory without good and sufficient reason. In April 1955, Taylor J of the High Court ruled in favour of the Government, upholding the conditional nature of the passport in the matter of *R v Holt and Dwyer; ex parte Glover* (unreported) and there is discussion of the case in Chapter 5. Then, Chapter 6 concentrates on the 17 year struggle of the journalist Wilfred Burchett to have an Australian passport issued to him.

Chapter 7 examines the Australian passport in the context of the creation of a statutory Australian citizenship in 1948, and related issues such as dual citizenship. It also continues to examine the use of the passport as a tool for enforcing broader government policies such as compliance with national service obligations. During the 1970s, there was increasing public attention on international human rights as set out in the UHDR, ICCPR and ICESCR. Both the ICCPR and the ICESCR asserted the right of individuals to travel freely, subject to restrictions provided by law, which led some to argue that a passport was an inalienable right. There was renewed interest in ensuring that the reasons for which the issue of an Australian passport may be denied be expressly embodied in the *Passports Act*. The *Passports Amendment Act 1979* (Cth) articulated the ground on which authorised officers might, unless directed by the Minister, refuse passports. It was not until 1984 that legislative amendment made decisions under the *Passports Act* reviewable by the AAT and further clarified the ministerial discretion to refuse to issue a passport.

The final chapter in the book discusses the development of internationally recognized biometric technology and the 2005 introduction of Australia's ePassport and enactment of the *Australian Passports Act 2005* (Cth). Biometric technology was developed in order to combat international crimes such as drug trafficking and terrorism. Biometric methods of validating identity include fingerprints, face recognition, hand geometry and iris recognition. The authors note that Australia has been an active participant in the framing of international standards for biometric passport. From 24 October 2005, the Commonwealth has issued the ePassport, which embeds a digitised photograph stored in a computer chip. The ePassport also incorporates security features to prevent anyone from changing or accessing the computer chip forming part of the passport.

Subsection 7(1) of the *Australian Passports Act 2005* provides that an Australian citizen is *entitled*, on application to the Minister, to be issued with an Australian passport by the Minister. Understood against the history of the previous century, and the struggle between discretion and entitlement, this is a milestone in the development of the Australian passport. This new Act clearly sets out the bases upon which the Minister may refuse to issue, or cancel, a passport, and such decisions are reviewable under the *Administrative Appeals Tribunal Act 1975* (Cth).

As its title indicates, the book is an historical examination of the development of the Australian passport, rather than passports generally and particular types of passports. For example, there is only brief mention made in the book of the development of the international passport, via League of Nations conferences, and of the Nansen Passport for stateless persons. (The Nansen Passport was the first refugee travel document issued, and it

developed after the Russian Revolution for Russian refugees.) These issues are not examined in any detail in this work. Furthermore, as noted at the outset of this review, it is primarily an historical examination of the passport rather than a legal analysis of passport law and the Australian passport in particular. It is a well written, interesting and comprehensive analysis that clearly meets its goal of being a history of the Australian passport.