151. G Finlayson

“Acknowledging that submissions have closed some time ago on this and the ability of the Commission to  incorporate them  is therefore understandably limited, my submissions are short. References are to paragraphs in the interim report. My suggested alteration are italicised.

1. 6.99 “Under the Australian Passports Act 2005 (Cth) an Australian passport may be *determined to be invalid,* refused or cancelled, interfering with a citizen’s ability to leave or re-enter Australia, or other countries
2. 6.101 “A passport or other travel document may also be cancelled by the Minister *in what has been held to be an unfettered discretion with a presumption in favour of cancellation1* for a range of prescribed reasons” see: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/AATA/2007/1272.html>
3. While s48 of the Australian Passports Act 2005 defines a decision to demand surrender of an Australian Passport a “reviewable decision”, that section does not provide for any merits review. Merits review of decisions is limited to decisions of a delegate of the Minister or the Minister, whereas a decision to demand the surrender of an Australian passport is made by an “officer” in their status as an officer, not as delegate of the Minister. The purported review mechanism is illusory.
4. S18 of The Australian Passports Determination 2015 has proceeded on the basis that the circumstances which give rise to invalidity of an Australian passport ( a requirement of s20 of the Act) include the state of satisfaction of the Minister or their delegate about a circumstance. There is no merits review of that process which in turn gives rise to a right of an officer to demand surrender of the passport. This thwarts the policy of there being a merits review pathway when a person is deprived of their Australian passport and grants the power to do so without review to a very broad range of people including all police officers state and federal (s6 of the Australian Passports Act). To be clear, in Australia the surrender of a citizen’s passport can be done by any police officer without merits review, only judicial review.
   1. Murphy and Minister for Foreign Affairs and Trade [2007] AATA 1272”

Regards,

[**Greg Finlayson DipLaw GDLP(Merit)**](http://finlayson.id.au/index.php/en/?Provider=LinkedIn)

**Australian Lawyer**