

Identity (Citizenship and Travel Documents) Bill

Government Bill

Explanatory note

General policy statement

The recent increase in international terrorism and people smuggling has necessitated a review of New Zealand's citizenship and passport legislation to ensure there are no preventable risks to national security.

This Identity (Citizenship and Travel Documents) Bill accordingly amends the Citizenship Act 1977 and the Passports Act 1992.

Amendments to the Citizenship Act

The Citizenship Act provides for the acquisition and loss of New Zealand citizenship. Under the Act, migrants can acquire a grant of citizenship after settling permanently in New Zealand and satisfying the Minister of Internal Affairs that they meet a number of specified requirements.

The Bill increases the standard period of residence in New Zealand that grant applicants must meet from three years to a minimum of 1 350 days during the five years immediately preceding application (approximately 75% of the period), including a minimum of 240 days in New Zealand (approximately eight months) in each of the five years. This will provide a sufficient basis for assessments of applicants' suitability for citizenship. In addition, to ensure consistency with New Zealand's immigration policy, time spent in the country on temporary permits (such as work or visitor permits) will no longer count as a period of residence for citizenship purposes, and any requirements imposed under the Immigration Act 1987 on

an applicant's entitlement to reside in New Zealand must have been met at the time of application.

A standard requirement for the grant of citizenship is that the Minister must be satisfied that the applicant is of good character. However, the Act does not specify what factors the Minister may take into account when considering the applicant's character. The Bill introduces a provision that applicants with serious criminal convictions cannot generally receive a grant, and applicants with less serious convictions cannot generally receive a grant within specified periods from conviction.

To facilitate the administration of the grant process, the Bill amends the Act to—

- provide for the citizenship office to have restricted access to immigration information for the purpose of conducting citizenship investigations and assessing whether applicants meet the grant requirements;
- clarify that the Minister may, up until the time the applicant becomes a citizen, rescind the approval of the application if no longer satisfied that the applicant meets the requirements;
- specify that applicants must generally take the oath or affirmation of allegiance at a public citizenship ceremony.

To cover all aspects of citizenship fraud, the Bill creates new indictable offences of unlawfully issuing or removing a citizenship document and unlawfully altering citizenship records, each with maximum penalties of a term of imprisonment of 10 years and/or a fine of \$50,000. The maximum penalties for current citizenship offences are being increased from 3 months imprisonment or a fine of \$3,000 to a term of imprisonment of 5 years and/or a fine of \$15,000. This will bring the Act's penalties in line with those for similar offences under the Passports Act.

The Bill also removes distinctions on the basis of age and marital status that are inconsistent with the Human Rights Act, and amends the citizenship by descent and deprivation of citizenship provisions to prevent people becoming stateless, which will enable New Zealand to accede to the United Nations 1961 Convention on the Reduction of Statelessness.

In addition, the Bill amends the citizenship by birth provisions to ensure that people who would have been born in Tokelau (which the Citizenship Act defines as part of New Zealand), but who are born in

Samoa for reasons of medical necessity, are New Zealand citizens by birth.

Amendments to Passports Act

The Passports Office of the Department of Internal Affairs issues approximately 320 000 travel documents each year. The fact that New Zealand passports provide for visa-free access to approximately 50 countries increases the likelihood that they will be targeted by criminal organisations. To prevent the successful misuse and forgery of New Zealand travel documents and improve border security, the Bill amends the Passports Act to—

- provide for the disclosure of New Zealand travel document information for the purpose of aiding border security, facilitating the processing of passengers, or verifying the identity of a travel document holder. This will enable the disclosure of information for Advance Passenger Processing (APP), which identifies unauthorised passengers before they can depart for New Zealand;
- reduce the maximum validity of new passports from 10 years to 5 years (although passports issued before the commencement date of the Bill will continue to be valid for the period for which they were issued);
- provide for the Minister of Internal Affairs to refuse to issue, or cancel, a New Zealand travel document on grounds of national security, and provide for the Court, when sentencing a person for a terrorism-related offence, to make an order forbidding the issue of a passport.

To formalise current practice and ensure New Zealand meets its obligations under the United Nations 1951 Convention and 1967 Protocol relating to the Status of Refugees, the Bill amends the Passports Act to provide for the issue, renewal, and cancellation of refugee travel documents.

Clause by clause analysis

Clause 1 is the Title clause. It is envisaged that, at the committee of the whole House stage, the Bill will be split into 2 separate Bills amending the Citizenship Act 1977 and the Passports Act 1992.

Clause 2 provides for the Bill to come into force on the day after the date it receives the Royal assent, except for *clauses 4 and 8*, which

deal with new criteria for grants of citizenship and come into force on 1 January 2005.

Part 1

Amendments to Citizenship Act 1977

Clause 4 repeals the definition of **ordinarily resident** as no longer necessary in light of the amendments to the residence requirements in section 8 of the Act (see *clause 8* of the Bill).

Clause 5 amends section 3 of the Act, which relates to parentage, to provide that a person will be presumed to be the father of another person if, at any time between the other person's conception and birth, he was in a de facto relationship with the mother of the person.

Clause 6 amends section 6 of the Act in relation to those people from Tokelau who, for reasons of medical necessity, are born in Samoa rather than in Tokelau. The amendment ensures that they will be New Zealand citizens by birth.

Clause 7 amends section 7 of the Act to allow a person born outside New Zealand to be a citizen by descent if the person's mother or father was a New Zealand citizen by descent at the time of the person's birth and the person would otherwise be stateless.

Clause 8 substitutes *new sections 8 to 9B* into the Act in relation to citizenship by grant. The effect of the amendments is to—

- change the minimum age for a grant of citizenship under section 8 of the Act from 18 to 16 years:
- change the present requirement that a person be “ordinarily resident” in New Zealand for the 3 years preceding application to a more specific requirement for a person's minimum presence in New Zealand during the 5 years preceding the application for citizenship:
- require a person upon whom conditions have been imposed under the Immigration Act 1987 to have met those conditions in full at the time of application for citizenship:
- require the intention to reside in New Zealand to be continuous up until the actual grant of citizenship:
- prevent a grant of citizenship to certain persons who have convictions, except in exceptional circumstances:
- allow the Minister to rescind a decision to grant citizenship at any time before the date the person becomes a citizen, if no

longer satisfied that the person meets the relevant requirements:

- repeal the existing section 8A of the Act, which gives preferential treatment to spouses of New Zealand citizens. Persons married to New Zealand citizens will have to meet the same requirements for the grant of citizenship as other persons.

Clause 9 substitutes a *new section 11* that provides that the oath or affirmation of allegiance must be made at a public citizenship ceremony, unless the Minister agrees otherwise.

Clause 10 removes the reference to “ordinarily resident” from section 15 of the Act.

Clause 11 amends section 16 of the Act, which authorises the Minister in certain circumstances to deprive a person of citizenship if the person has acted contrary to the interests of New Zealand. One of the conditions for deprivation is that the person must have acquired the citizenship of another country by a formal act “other than marriage”. The clause removes the latter restriction.

Clause 12(1) amends section 17 of the Act, which relates to deprivation of New Zealand citizenship in cases of fraud, to ensure that a person can be deprived of citizenship where the fraud relates to a requirement for a grant of citizenship.

Subclause (2) adds a new provision to prevent a person being deprived of New Zealand citizenship acquired by mistake if the deprivation of citizenship would leave the person stateless.

Clause 13 amends section 26A of the Act to allow notification of citizenship information relating to a change of identity (such as a change of name or gender) to the agencies specified in Schedule 4 of the Act.

Clause 14 inserts a *new section 26B* into the Act to allow immigration information that is needed for citizenship investigations and the accurate assessment of applications for citizenship to be accessed by the Secretary for Internal Affairs under an agreement between the Secretary and the chief executive of the Department of Labour. Any agreement under the section is subject to consultation with the Privacy Commissioner.

Clause 15 repeals and replaces section 27 of the Act, which deals with offences and penalties, to—

- increase the maximum penalties under the Act; and

- include further offences to cover all aspects of citizenship fraud (see *new section 27(1)(b) and (2)*).

Clause 16 amends the Summary Proceedings Act 1957 to allow the indictable offences under the *new section 27* to be triable summarily.

Clause 17 is a transitional provision in relation to applications for a grant of citizenship made before 1 January 2005. Such applications are to be dealt with as if the Bill had not been passed.

Part 2

Amendments to Passports Act 1992

Clause 19 amends the Title of the Passports Act 1992 to refer to refugee travel documents.

Clause 20 amends various definitions in section 2 of the Act to reflect the new refugee travel document provisions.

Clause 21 similarly amends the heading of Part 1 of the Act.

Clause 22 inserts into section 4 of the Act cross-references to the *new sections 4A and 32A(2)*, and substitutes a reference to New Zealand travel documents for the existing reference to certificates of identity.

Clause 23 inserts a *new section 4A* into the Act that allows the Minister to refuse to issue a New Zealand passport to a person on grounds of national security.

The detailed grounds are set out in *subsection (1)*.

Subsection (2) provides that, following a refusal by the Minister to issue a passport, the person is not entitled to obtain a New Zealand passport during the next 12 months.

Under *subsection (3)*, the Minister can apply to a High Court Judge to extend that 12-month period by up to another 12 months.

Clause 24 amends section 5 of the Act to reduce from 10 years to 5 years the maximum life of a New Zealand passport. Passports issued before the Bill comes into force will nevertheless continue to be valid for the period for which they were issued, and applications for passports made before that date will continue to be governed by the current section 5 of the Act.

Clause 25 amends section 6 of the Act, which deals with renewals of passports, to reflect the new 5-year life of passports.

Clause 26 repeals section 7 of the Act, which deals with endorsements of passports, because it is not appropriate to endorse machine-readable passports.

Clause 27 inserts a *new section 8A* into the Act that allows the Minister to cancel a passport on national security grounds. The section is almost identical to the *new section 4A*, which relates to a refusal to issue a passport on such grounds.

Clause 28 amends section 9 of the Act to remove a reference to endorsements of passports, as a consequence of the repeal of section 7.

Clause 29 amends section 9A of the Act to include a cross-reference to the *new section 32A(2)*.

Clause 30 repeals section 19 of the Act, which relates to endorsements of certificates of identity.

Clause 31 inserts a *new section 20A* into the Act that allows the Minister to cancel a certificate of identity on grounds of national security. The section mirrors the wording of the *new section 8A* in relation to the cancellation of passports on that ground.

Clause 32 amends section 22 of the Act to insert an appropriate reference to the *new section 20A*.

Clause 33 amends section 23 of the Act to provide for the issue of an emergency travel document where a person does not hold a valid travel document. It also provides in the *new subsection (3)* for the issue of a journey-specific emergency travel document to enable a person to come or return to New Zealand in circumstances where they have been refused a passport, or had their passport or emergency travel document cancelled, on grounds of national security.

Clause 34 substitutes a *new section 24* in the Act that gives the Minister more discretion to determine the period for which an emergency travel document will be issued.

Clause 35 inserts a *new section 25A* providing, along similar lines to *new sections 8A and 20A*, for the cancellation of emergency travel documents on the grounds of national security.

Clause 36 amends section 27 of the Act to insert an appropriate reference to the *new section 25A*.

Clause 37 inserts *new sections 27A to 27G* into the Act to provide a statutory basis for the issue of refugee travel documents. The new

sections deal with the issue, life, renewal, cancellation, and recall of the documents.

As with passports, provision is made to allow the Minister to refuse to issue a refugee travel document on grounds of national security, or to cancel such a document once issued.

Clause 38 amends section 28 of the Act, which deals with appeals to the High Court, as a consequence of the new refugee travel document provisions and to include a reference to the *new sections 29AA to 29AC*.

Clause 39 amends section 29 of the Act, which deals with appeals to the Court of Appeal, to—

- include reference to appeals against any order made by a High Court Judge extending the period for which a person is not entitled to obtain a particular travel document under the new national security provisions; and
- cross-refer to the *new sections 29AA to 29AC*.

Clause 40 inserts *new sections 29AA to 29AC* into the Act. These sections make special provision for proceedings where national security is involved, and in particular set out procedures for the case where classified security information is presented or proposed to be presented by the Crown.

Clause 41 amends section 29A of the Act to update a section cross-reference to the definition of **forgery** in the Crimes Act 1961.

Clause 42 amends section 31 of the Act, which deals with offences, so that the offences apply in relation to refugee travel documents as well as other New Zealand travel documents.

Clause 43 amends section 32A of the Act, which currently gives courts sentencing a person a power to forbid the issue of a passport to the person for up to 10 years.

The *new subsection (2)* confers a power to forbid the issue of a passport for up to 15 years in the case of terrorism-related offences.

Clause 44 amends section 33 of the Act to include a general reference to New Zealand travel documents.

Clause 45 repeals sections 35 and 36 of the Act, which specifically relate to disclosure of information by the Secretary for Internal Affairs to the New Zealand Customs Service and to an Australian government department, and replaces these sections with a more general *section 36*. Under the new section a disclosure agreement

can be made with any appropriate agency, body, or person for the purpose of aiding border security, facilitating the processing of passengers, or verifying the identity of the holder of a travel document. A disclosure agreement would be subject to consultation with the Privacy Commissioner.

Clause 46 consequentially amends section 37 of the Act, which sets out the type of information that may be disclosed under a disclosure agreement, and also adds a further general description of the type of information that may be disclosed by reference to the purpose for which it may be used.

Clause 47 amends the regulation-making power in section 40 of the Act as a consequence of the new refugee travel document provisions and the repeal of the endorsement provisions of the Act.

Regulatory impact and cost compliance statement

A regulatory impact statement is not required for this Bill because the amendments are of a machinery nature and do not substantially alter existing arrangements.

Hon George Hawkins

Identity (Citizenship and Travel Documents) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Identity (Citizenship and Travel Documents) Act **2004**.

2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent, except for **sections 4 and 8**. 5
- (2) **Sections 4 and 8** come into force on **1 January 2005**.

Part 1

Amendments to Citizenship Act 1977

- 3 **Citizenship Act 1977 called principal Act in this Part** 10
- In this Part, the Citizenship Act 1977¹ is called “the principal Act”.

¹ 1977 No 61

4 Interpretation

Section 2(1) of the principal Act is amended by repealing the definition of **ordinarily resident**.

5 Special provisions relating to parentage

(1) Section 3(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph: 5

“(a) he is or was married to, or in a de facto relationship with, that other person’s mother at any time during the period commencing with that other person’s conception and ending with that other person’s birth; or” 10

(2) Section 3 of the principal Act is amended by inserting, after subsection 5, the following subsection:

“(5A) In subsection 3(1)(a), **de facto relationship** has the same meaning as in section 2D of the Property (Relationships) Act 1976, except that— 15

“(a) the reference to 18 years in subsection (1)(a) of that section is to be read as a reference to 16 years; and

“(b) a person who has attained the age of 16 years but who is younger than 18 years may be treated as having a de facto relationship with another person only if— 20

“(i) the person is under the guardianship of a court, and the court has on an application for the purpose consented to the relationship; or

“(ii) in the case of a person not under the guardianship of a court, the person’s parents and guardians have consented to the relationship.” 25

6 Citizenship by birth

Section 6 of the principal Act is amended by adding the following subsection:

“(5) Despite section 7, a person is a New Zealand citizen by birth if— 30

“(a) the person is born in the Independent State of Samoa; and

“(b) but for reasons of medical necessity requiring the mother to travel from Tokelau to the Independent State of Samoa to give birth to the person, the person would have been born in Tokelau.” 35

7 Citizenship by descent

Section 7 of the principal Act is amended by repealing subsection (1) and substituting the following subsection:

- “(1) Every person born outside New Zealand on or after 1 January 1978 is a New Zealand citizen by descent if, at the time of the person’s birth,— 5
- “(a) his or her mother or father was a New Zealand citizen otherwise than by descent; or
- “(b) his or her mother or father was a New Zealand citizen by descent, and the person would otherwise be stateless.” 10

8 New sections substituted

The principal Act is amended by repealing sections 8, 8A, and 9, and substituting the following sections:

- “8 **Citizenship by grant** 15
- “(1) The Minister may authorise the grant of New Zealand citizenship to any person, including a person who may be a New Zealand citizen by descent, who—
- “(a) has attained the age of 16 years; and
- “(b) is of full capacity; and 20
- “(c) applies for citizenship in the prescribed manner; and
- “(d) satisfies the Minister that he or she meets each of the requirements specified in **subsection (2)**.
- “(2) The requirements referred to in **subsection (1)(d)** are as follows:
- “(a) that the applicant is entitled in terms of the Immigration Act 1987 to be in New Zealand indefinitely: 25
- “(b) that the applicant was present in New Zealand—
- “(i) for a minimum of 1 350 days during the 5 years immediately preceding the date of the application; and 30
- “(ii) for at least 240 days in each of those 5 years,— being days during which the applicant was entitled in terms of the Immigration Act 1987 to be in New Zealand indefinitely:
- “(c) that the applicant is of good character: 35
- “(d) that the applicant has sufficient knowledge of the responsibilities and privileges attaching to New Zealand citizenship:

- “(e) that the applicant has sufficient knowledge of the English language:
- “(f) that the applicant intends, if granted New Zealand citizenship, either—
- “(i) to continue to reside in New Zealand; or 5
- “(ii) to enter into or continue in Crown service under the New Zealand Government, or service under an international organisation of which the New Zealand Government is a member, or service in the employment of a person, company, society, or other body of persons resident or established in New Zealand. 10
- “(3) For the purposes of **subsection (2)(a)**, a person will not be treated as entitled to be in New Zealand indefinitely if—
- “(a) requirements have been imposed under the Immigration Act 1987 on the person’s entitlement to reside in New Zealand indefinitely; and 15
- “(b) those requirements have not been met in full or cancelled at the time of the person’s application for citizenship. 20
- “(4) The Minister may, after consultation with the Minister of Immigration,—
- “(a) waive the requirement in **subsection (2)(a)** if satisfied that an applicant is entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau: 25
- “(b) waive the requirement in **subsection (2)(b)** if satisfied that an applicant was present in the Cook Islands, Niue, or Tokelau—
- “(i) for a minimum of 1 350 days during the 5 years immediately preceding the date of the application; and 30
- “(ii) for at least 240 days in each of those 5 years,— being days during which the applicant was entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau. 35
- “(5) For the purposes of **subsection (2)(b)**, the Minister may treat the applicant as having been present in New Zealand during any period of Crown service under the New Zealand Government served by the applicant within the period of 5 years immediately preceding the date of the application for citizenship. 40

- “(6) For the purposes of **subsection (4)(b)**, the Minister may treat the applicant as having been present in the Cook Islands, Niue, or Tokelau during any period of public service for the Government of the Cook Islands, Niue, or Tokelau served by the applicant within the period of 5 years immediately preceding the date of the application for citizenship. 5
- “(7) If the Minister is satisfied in a particular case that there are exceptional circumstances particular to the applicant that would justify such a course, the Minister may accept the presence by the applicant for a lesser number of days as being sufficient compliance with— 10
- “(a) the requirements of **subsection (2)(b)**, so long as the applicant—
- “(i) was physically present in New Zealand for not less than 450 days during the 20-month period immediately preceding the date of the application for citizenship; and 15
- “(ii) was entitled in terms of the Immigration Act 1987 to be in New Zealand indefinitely during each of those 450 days: 20
- “(b) the requirements of **subsection (4)(b)**, so long as the applicant—
- “(i) was physically present in the Cook Islands, Niue, or Tokelau for not less than 450 days during the 20-month period immediately preceding the date of the application for citizenship; and 25
- “(ii) was entitled to be in the Cook Islands, Niue, or Tokelau indefinitely during each of those 450 days.
- “(8) The Minister may waive the requirement in **subsection (2)(e)** if satisfied in a particular case that, because of the applicant’s age or standard of education, or for any other reason personal to the applicant, the applicant would suffer undue hardship if compliance with the requirement of that provision were insisted upon. 30 35
- “(9) The intention referred to in **subsection (2)(f)(i)** must be a continuing intention throughout the period from the date of application for citizenship until the date that the applicant becomes a citizen under section 12.

- “9 **Grant of citizenship in special cases**
- “(1) Without limiting anything in **section 8**, the Minister may, upon application in the prescribed manner, authorise the grant of New Zealand citizenship to any person, including a person who may be a New Zealand citizen by descent,— 5
- “(a) who has not yet attained the age of 16 years; or
- “(b) whose father or mother was, at the time of that person’s birth, a New Zealand citizen by descent; or
- “(c) if the Minister is satisfied that granting a certificate of New Zealand citizenship to the applicant would be in the public interest because of exceptional circumstances of a humanitarian or other nature relating to the applicant; or 10
- “(d) if the person would otherwise be stateless.
- “(2) In considering whether to authorise the grant of New Zealand citizenship to any person under **subsection (1)**— 15
- “(a) the Minister may have regard to such of the requirements of **section 8(2)** (as subject to **section 8(3) to (9)**) as the Minister thinks fit; and
- “(b) must have regard to the requirements of **section 9A(1)** (but subject to the Minister’s discretion under **section 9A(2) and (3)**). 20
- “9A **Disqualifying convictions**
- “(1) Except as provided in **subsection (2)**, the Minister must not authorise a grant of citizenship under **section 8 or section 9** to a person who has been convicted of an offence if— 25
- “(a) the person was sentenced on conviction to—
- “(i) a term of imprisonment of 5 years or more; or
- “(ii) an indefinite term of imprisonment capable of running for 5 years or more; or 30
- “(b) within the preceding 7 years the person was subject to a sentence of imprisonment of less than 5 years or was subject to release under subpart 2 of Part 1 of the Parole Act 2002; or
- “(c) within the preceding 3 years the person was convicted of an offence but did not receive a sentence of imprisonment. 35
- “(2) The Minister may however authorise a grant of citizenship to a person to whom **subsection (1)** applies and who otherwise meets the requirements of **section 8 or section 9** if satisfied that 40

- there are exceptional circumstances relating to the conviction such that a grant of citizenship should not be precluded.
- “(3) Nothing in this section limits the Minister’s discretion to refuse a grant of citizenship if the Minister is not satisfied that the applicant is of good character. 5
- “9B **Minister may rescind approval at any time up until applicant becomes citizen**
Notwithstanding that the Minister may have authorised a grant of citizenship under **section 8 or section 9**, the Minister may rescind that authorisation at any time before the date that the person becomes a citizen under section 12, if no longer satisfied that the person meets the requirements for a grant of citizenship.” 10
- 9 New section substituted**
The principal Act is amended by repealing section 11, and substituting the following section: 15
- “11 **Minister may require oath or affirmation of allegiance to be taken**
- “(1) The Minister may, in such case or class of cases as the Minister thinks fit, make the grant of New Zealand citizenship conditional upon the applicant taking an oath of allegiance in the form specified in the First Schedule, or making an affirmation to similar effect. 20
- “(2) Unless the Minister agrees otherwise, the oath or affirmation must be taken or made at a public citizenship ceremony.” 25
- 10 Renunciation of citizenship**
Section 15(3)(a) of the principal Act is amended by omitting the word “ordinarily”.
- 11 Deprivation of New Zealand citizenship on acquisition of other citizenship, etc** 30
Section 16(a) of the principal Act is amended by omitting the words “other than marriage,”.

- 12 Deprivation of New Zealand citizenship in case of fraud, etc**
- (1) Section 17(2) of the principal Act is amended by omitting the words “or grant”, and substituting the words “grant, or any grant requirement”. 5
- (2) Section 17 of the principal Act is amended by adding the following subsection:
- “(3) The Minister may not deprive a person of New Zealand citizenship under subsection (2) if—
- “(a) the citizenship was acquired by mistake; and 10
- “(b) to deprive the person of that citizenship would leave the person stateless.”
- 13 Disclosure of citizenship information to certain specified agencies for certain purposes**
- Section 26A(6) of the principal Act is amended by adding to the definition of **citizenship information** the words “; and includes information as to any change of identity or gender”. 15
- 14 New section inserted**
- The principal Act is amended by inserting, after section 26A, the following section: 20
- “26B **Access to information for citizenship purposes**
- “(1) The Secretary and the chief executive of the Department of Labour (the **chief executive**) may enter into an agreement for access by the Secretary, or officers of the Department of Internal Affairs designated by the Secretary for the purpose, to information held by the chief executive pursuant to his or her functions and powers under the Immigration Act 1987 that is needed for or relevant to citizenship investigations and the accurate assessment of applications for a grant of citizenship. 25
- “(2) An agreement entered into under **subsection (1)** may be varied by the Secretary and the chief executive. 30
- “(3) Before entering into an agreement under **subsection (1)**, or varying an agreement under **subsection (2)**, the Secretary and the chief executive must consult with the Privacy Commissioner on the terms of the agreement or variation. 35
- “(4) The Privacy Commissioner may require the Secretary and the chief executive to review an agreement under this section, and

report on the result of the review to the Privacy Commissioner, at intervals not shorter than 12 months.

- “(5) For citizenship purposes, the Secretary or designated officers of the Department of Internal Affairs may access information held by the chief executive only in accordance with an agreement entered into under this section.” 5

15 New section substituted

The principal Act is amended by repealing section 27, and substituting the following section:

“27 Offences and penalties” 10

- “(1) Every person commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years or a fine not exceeding \$15,000, or both, who—

“(a) for the purpose of procuring anything to be done or not to be done under this Act,— 15

“(i) makes any statement that he or she knows to be false in a material particular; or

“(ii) recklessly makes any statement that is false in a material particular; or

“(b) knowingly or recklessly submits false or forged documents to support a citizenship application; or 20

“(c) in contravention of section 24, knowingly—

“(i) alters or defaces a document; or

“(ii) fails to deliver a document; or

“(d) knowingly or recklessly lends or parts with a document (as defined in section 24(1)) for unlawful purposes; or 25

“(e) knowingly resists, obstructs, or deceives any person who is exercising or attempting to exercise any function or power imposed or conferred under this Act.

- “(2) Every person commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine not exceeding \$50,000, or both, who, knowingly and without reasonable excuse,— 30

“(a) records, deletes, or alters any entry in a citizenship register or database; or 35

“(b) takes a citizenship document (including any blank certificate) from where it is officially kept; or

“(c) issues a citizenship document to a person who has no lawful entitlement to the document.”

| | | | |
|-----------|---|--|----|
| 16 | Summary Proceedings Act 1957 amended | | |
| | Part II of the First Schedule of the Summary Proceedings Act 1957 is amended by inserting, in the appropriate columns and the appropriate alphabetical order, the following item: | | |
| | The Citizen-ship Act 1977 | 27(1), (2) | 5 |
| | | Offences as to citizenship matters and documents | 10 |
| | <i>Transitional provision</i> | | |
| 17 | Applications for grant of citizenship made before 1 January 2005 | | |
| | Nothing in sections 8, 9, 9A, and 9B of the principal Act (as substituted by section 8 of this Act) applies to any application for a grant of citizenship made before 1 January 2005 , and any such application must be determined in accordance with sections 8, 8A, and 9 of the principal Act as in force before that date. | | 15 |
| | Part 2 | | |
| | Amendments to Passports Act 1992 | | |
| 18 | Passports Act 1992 called principal Act in this Part | | |
| | In this Part, the Passports Act 1992 ² is called “the principal Act”. | | 25 |
| | ² 1992 No 92 | | |
| 19 | Title amended | | |
| | The Title of the principal Act is amended by omitting the words “ and emergency travel documents ”, and substituting the words “ emergency travel documents, and refugee travel documents ”. | | |
| 20 | Interpretation | | 30 |
| (1) | Section 2 of the principal Act is amended by repealing the definition of applicant , and substituting the following definition: | | |
| | “ applicant , in relation to an application for a New Zealand travel document, means the person who will be the holder of the document if the application is granted”. | | 35 |

- (2) Section 2 of the principal Act is amended—
- (a) by inserting in the definition of **certificate of identity**, after the words “emergency travel document”, the words “or a refugee travel document”;
 - (b) by inserting in the definition of **emergency travel document**, after the words “certificate of identity”, the words “or a refugee travel document”. 5
- (3) Section 2 of the principal Act is amended by repealing the definition of **holder**, and substituting the following definition: 10
“holder, in relation to a New Zealand travel document, means the person in whose name the document has been issued”.
- (4) Section 2 of the principal Act is amended by inserting, after the definition of **New Zealand passport**, the following definition: 15
“New Zealand refugee travel document means a document (other than a passport, certificate of identity, or emergency travel document) issued by or on behalf of the Government of New Zealand to a refugee to facilitate international travel”.
- (5) Section 2 of the principal Act is amended by omitting from the definition of **New Zealand travel document** the words “or an emergency”, and substituting the words “an emergency travel document, or a New Zealand refugee”. 20
- (6) Section 2 of the principal Act is amended by inserting, after the definition of **passport**, the following definition: 25
“refugee means a person who—
- “(a) has been— 25
 - “(i) determined by a refugee status officer or the Refugee Status Appeals Authority to be a refugee in accordance with the Refugee Convention (as defined in section 2(1) of the Immigration Act 1987); or 30
 - “(ii) granted a permit by the Minister of Immigration or an immigration officer under the Immigration Act 1987 on the basis that he or she was mandated as a refugee by the United Nations High Commissioner for Refugees; or 35
 - “(iii) recognised, before 1 January 1991, as a refugee by the Interdepartmental Committee on Refugees; and

“(b) continues to be recognised as a refugee in New Zealand”.

21 Part I heading amended

The heading of Part I of the principal Act is amended by omitting the words “PASSPORTS, CERTIFICATES OF IDENTITY, AND EMERGENCY TRAVEL DOCUMENTS”, and substituting the words “**New Zealand travel documents**”. 5

22 Issue of passport

(1) Section 4(1) of the principal Act is amended by omitting the words “subsections (3) and (4)”, and substituting the words “this section and **section 4A**”. 10

(2) Section 4(3)(d) of the principal Act is amended—
(a) by omitting the words “certificate of identity”, and substituting the words “travel document”: 15
(b) by omitting the words “section 20 or section 21”, and substituting the words “this Act”.

(3) Section 4(4) of the principal Act is amended by omitting the expression “section 32A(1)”, and substituting the expression “**section 32A**”. 20

23 New section inserted

The principal Act is amended by inserting, after section 4, the following section:

“4A Refusal to issue passport on grounds of national security

“(1) The Minister may refuse to issue a New Zealand passport to a person if the Minister believes on reasonable grounds that— 25

“(a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
“(i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or 30

“(ii) the proliferation of weapons of mass destruction; or

“(iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and 35

- “(b) the danger to the security of New Zealand cannot be effectively averted by other means; and
- “(c) the refusal to issue a passport will prevent or effectively impede the ability of the person to carry out the intended action. 5
- “(2) If the Minister refuses to issue a passport under this section—
- “(a) the Minister must notify the person in writing; and
- “(b) the person is not entitled to obtain a New Zealand passport during the 12-month period starting with the date of the notice, unless the Minister’s decision under this section is revoked by the Minister or by a court. 10
- “(3) The Minister may, at any time before the expiry of the 12-month period referred to in **subsection (2)(b)**, apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain a New Zealand passport. 15
- “(4) The Judge must make the order applied for if satisfied that—
- “(a) the information presented in support of the application is credible, having regard to its source or sources; and
- “(b) the information reasonably supports a finding that **paragraphs (a), (b), and (c) of subsection (1)** still apply in relation to the person concerned.” 20
- 24 Life of passport**
- Section 5 of the principal Act is amended by repealing subsection (1), and substituting the following subsections: 25
- “(1) Subject to **subsections (1A) and (2)**, every New Zealand passport is valid for 5 years from the date of issue, unless sooner cancelled under this Act.
- “(1A) Despite **subsection (1)**,—
- “(a) a New Zealand passport issued before the date of commencement of this section continues to be valid for the period for which it was issued, unless sooner cancelled under this Act: 30
- “(b) a New Zealand passport applied for before that commencement date must be issued in accordance with section 5(1) and (2) of the principal Act as in force before that date, and continues to be valid for the period for which it was issued unless sooner cancelled under this Act.” 35

- 25 Renewal of passport**
Section 6 of the principal Act is amended—
- (a) by omitting from subsection (1) the expression “10 years”, and substituting the words “5 years or more”;
 - (b) by omitting from subsection (2) the expression “10 years” at both places where it occurs, and substituting in each case the expression “5 years”.
- 26 Endorsement of passport**
Section 7 of the principal Act is repealed.
- 27 New section inserted**
- The principal Act is amended by inserting, after section 8, the following section:
- “8A Cancellation of passport on grounds of national security**
- “(1) The Minister may, by notice in writing, recall any New Zealand passport, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that—
- “(a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
 - “(i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
 - “(ii) the proliferation of weapons of mass destruction; or
 - “(iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and
 - “(b) the danger to the security of New Zealand cannot be effectively averted by other means; and
 - “(c) the cancellation of the passport, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.
- “(2) If the Minister cancels or retains possession of a passport under this section—
- “(a) the Minister must notify the person in writing; and
 - “(b) the person is not entitled to obtain that passport or another New Zealand passport during the 12-month period starting with the date of the notice, unless the

- Minister’s decision under this section is revoked by the Minister or by a court.
- “(3) The Minister may, at any time before the expiry of the 12-month period referred to in **subsection (2)(b)**, apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain the passport or another New Zealand passport. 5
- “(4) The Judge must make the order applied for if satisfied that—
 “(a) the information presented in support of the application is credible, having regard to its source or sources; and 10
 “(b) the information reasonably supports a finding that **paragraphs (a), (b), and (c) of subsection (1)** still apply in relation to the person concerned.”
- 28 Cancellation of passport on other grounds 15**
 Section 9(1)(d) of the principal Act is amended by omitting the words “and, in the opinion of the Minister, it would not be appropriate to correct them by way of endorsement in accordance with section 7 of this Act”.
- 29 Cancellation of passport pursuant to court order 20**
 Section 9A of the principal Act is amended by omitting the expression “32A(1)”, and substituting the expression “**32A**”.
- 30 Endorsement of certificate of identity**
 Section 19 of the principal Act is repealed.
- 31 New section inserted 25**
 The principal Act is amended by inserting, after section 20, the following section:
- “**20A Cancellation of certificate of identity on grounds of national security**
 “(1) The Minister may, by notice in writing, recall any certificate of identity issued to any person by or on behalf of the New Zealand Government, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that— 30
 “(a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,— 35

- “(i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
- “(ii) the proliferation of weapons of mass destruction; or
- “(iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and 5
- “(b) the danger to the security of New Zealand cannot be effectively averted by other means; and 10
- “(c) the cancellation of the certificate of identity, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.
- “(2) If the Minister cancels or retains possession of a certificate of identity under this section— 15
- “(a) the Minister must notify the person in writing; and
- “(b) the person is not entitled to obtain that certificate of identity or another New Zealand travel document during the 12-month period starting with the date of the notice, unless the Minister’s decision under this section is revoked by the Minister or by a court. 20
- “(3) The Minister may, at any time before the expiry of the 12-month period referred to in **subsection (2)(b)**, apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain the certificate of identity or another New Zealand travel document. 25
- “(4) The Judge must make the order applied for if satisfied that—
- “(a) the information presented in support of the application is credible, having regard to its source or sources; and 30
- “(b) the information reasonably supports a finding that **paragraphs (a), (b), and (c) of subsection (1)** still apply in relation to the person concerned.”
- 32 Delivery of recalled certificate of identity**
- Section 22(1) of the principal Act is amended by inserting, after the expression “section 20”, the words “or **section 20A**”. 35

- 33 Issue of emergency travel document**
- (1) Section 23(1)(b) of the principal Act is amended by inserting, after subparagraph (i), the following subparagraph:
- “(ia) the person does not hold a valid travel document; or”.
- 5
- (2) Section 23 of the principal Act is amended by adding the following subsection:
- “(3) The Minister must issue a journey-specific emergency travel document to a person outside New Zealand if—
- “(a) the person has been refused a passport under **section 4A**, or has had his or her passport or emergency travel document cancelled under **section 8A or section 25A**; and 10
- “(b) the journey-specific emergency travel document is necessary to enable the person to return or come to New Zealand; and 15
- “(c) the person applies in that behalf to the Minister in the form proved by the Secretary.”
- 34 New section substituted**
- The principal Act is amended by repealing section 24, and substituting the following section: 20
- “24 **Life of emergency travel document**
- An emergency travel document is valid for—
- “(a) such time as, in the opinion of the Minister, will be sufficient to enable the person to leave and return to New Zealand, or to return to New Zealand, or to complete a specified journey, as the case may require; or 25
- “(b) such other period as the Minister from time to time determines.”
- 35 New section inserted**
- The principal Act is amended by inserting, after section 25, the following section: 30
- “25A **Cancellation of emergency travel document on grounds of national security**
- “(1) The Minister may, by notice in writing, recall any emergency travel document (other than a journey-specific emergency travel document issued under **section 23(3)**), and cancel it or retain possession of it, if the Minister believes on reasonable grounds that— 35

- “(a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
- “(i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
- “(ii) the proliferation of weapons of mass destruction; 5
or
- “(iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and 10
- “(b) the danger to the security of New Zealand cannot be effectively averted by other means; and
- “(c) the cancellation of the emergency travel document, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action. 15
- “(2) If the Minister cancels or retains possession of an emergency travel document under this section—
- “(a) the Minister must notify the person in writing; and
- “(b) the person is not entitled to obtain that emergency travel 20
document or another New Zealand travel document (other than a journey-specific emergency travel document issued under **section 23(3)**) during the 12-month period starting with the date of the notice, unless the Minister’s decision under this section is revoked by the 25
Minister or by a court.
- “(3) The Minister may, at any time before the expiry of the 12-month period referred to in **subsection (2)(b)**, apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is 30
not entitled to obtain the emergency travel document or another New Zealand travel document.
- “(4) The Judge must make the order applied for if satisfied that—
- “(a) the information presented in support of the application is credible, having regard to its source or sources; and 35
- “(b) the information reasonably supports a finding that **paragraphs (a), (b), and (c) of subsection (1)** still apply in relation to the person concerned.”

- 36 Delivery of recalled emergency travel document**
Section 27(1) of the principal Act is amended by inserting, after the expression “section 25”, the words “or **section 25A**”.
- 37 New heading and sections inserted**
The principal Act is amended by inserting, after section 27, the following heading and sections: 5
- “Issue, life, and cancellation of refugee travel documents*
- “27A Issue of refugee travel document**
- “(1) Subject to this section and **section 27B**, the Minister must issue a New Zealand refugee travel document to a refugee living in New Zealand who applies in that behalf in the form provided by the Secretary. 10
- “(2) The Minister may refuse to issue a New Zealand refugee travel document to an applicant if—
- “(a) the applicant is a New Zealand citizen; or 15
- “(b) the applicant already has a valid New Zealand refugee travel document; or
- “(c) there is in force a warrant issued in New Zealand for the applicant’s arrest; or
- “(d) the applicant is— 20
- “(i) on bail; or
- “(ii) subject to a community-based sentence under the Sentencing Act 2002; or
- “(iii) released under subpart 2 of Part 1 of the Parole Act 2002; or 25
- “(e) the applicant is subject to—
- “(i) an order made by a New Zealand court that requires the applicant to remain in New Zealand, or the effect of which requires the applicant to remain in New Zealand; or 30
- “(ii) a sentence imposed by a New Zealand court, the effect of which requires the applicant to remain in New Zealand.
- “27B Refusal to issue refugee travel document on grounds of national security** 35
- “(1) The Minister may refuse to issue a New Zealand refugee travel document to a person if the Minister believes on reasonable grounds that—

- “(a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
- “(i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
 - “(ii) the proliferation of weapons of mass destruction; or
 - “(iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and
- “(b) the danger to the security of New Zealand cannot be effectively averted by other means; and
- “(c) the refusal to issue a refugee travel document will prevent or effectively impede the ability of the person to carry out the intended action.
- “(2) If the Minister refuses to issue a refugee travel document under this section—
- “(a) the Minister must notify the person in writing; and
 - “(b) the person is not entitled to obtain a New Zealand refugee travel document during the 12-month period starting with the date of the notice, unless the Minister’s decision under this section is revoked by the Minister or by a court.
- “(3) The Minister may, at any time before the expiry of the 12-month period referred to in **subsection (2)(b)**, apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain a New Zealand refugee travel document.
- “(4) The Judge must make the order applied for if satisfied that—
- “(a) the information presented in support of the application is credible, having regard to its source or sources; and
 - “(b) the information reasonably supports a finding that **paragraphs (a), (b) and (c) of subsection (1)** still apply in relation to the person concerned.
- “27C **Life of refugee travel document**
- “(1) A New Zealand refugee travel document is valid for 2 years, unless sooner cancelled under this Act.

“(2) A New Zealand refugee travel document may on application be renewed, once only, for a further period not exceeding 2 years.

“27D **Cancellation of refugee travel document**

- “(1) The Minister may, by notice in writing, recall any New Zealand refugee travel document, and cancel it or retain possession of it, where— 5
- “(a) the Minister issues to the holder another refugee travel document in substitution for the first one; or
 - “(b) the document has expired and is incapable of being renewed; or 10
 - “(c) the document has been so damaged or defaced as to render it, in the opinion of the Minister, unsuitable for use; or
 - “(d) there is reasonable cause to believe that any particulars recorded in it are incorrect; or 15
 - “(e) there is reasonable cause to believe that the document has been obtained by means of a false representation or a statement that is false in a material particular; or
 - “(f) two or more valid New Zealand refugee travel documents are in existence in respect of the holder and there is no longer any sufficient reason why that should continue to be the case; or 20
 - “(g) a New Zealand passport has been issued to the person; or 25
 - “(h) the holder is no longer recognised as being a refugee; or
 - “(i) the document was issued to the holder in the mistaken belief that the holder was, at the time of issue, a refugee.
- “(2) Subject to **section 27A**, where the Minister retains or cancels a refugee travel document under any of **paragraphs (b) to (e) of subsection (1)**, the Minister may, on the application of the document’s holder, issue another refugee travel document to replace that document. 30

“27E **Cancellation of refugee travel document on grounds of national security**

- “(1) The Minister may, by notice in writing, recall any New Zealand refugee travel document, and cancel it or retain possession of it, if the Minister believes on reasonable grounds that— 35

- “(a) the person is a danger to the security of New Zealand because the person intends to engage in, or facilitate,—
- “(i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or
- “(ii) the proliferation of weapons of mass destruction; or
- “(iii) any unlawful activity designed or likely to cause devastating or serious economic damage to New Zealand, carried out for purposes of commercial or economic gain; and
- “(b) the danger to the security of New Zealand cannot be effectively averted by other means; and
- “(c) the cancellation of the refugee travel document, or its retention by the Minister, will prevent or effectively impede the ability of the person to carry out the intended action.
- “(2) If the Minister cancels or retains possession of a refugee travel document under this section—
- “(a) the Minister must notify the person in writing; and
- “(b) the person is not entitled to obtain that refugee travel document or another New Zealand refugee travel document during the 12-month period starting with the date of the notice, unless the Minister’s decision under this section is revoked by the Minister or by a court.
- “(3) The Minister may, at any time before the expiry of the 12-month period referred to in **subsection (2)(b)**, apply to a Judge of the High Court for an order to extend for a further period not exceeding 12 months the period during which the person is not entitled to obtain the refugee travel document or another New Zealand refugee travel document.
- “(4) The Judge must make the order applied for if satisfied that—
- “(a) the information presented in support of the application is credible, having regard to its source or sources; and
- “(b) the information reasonably supports a finding that **paragraphs (a), (b), and (c) of subsection (1)** still apply in relation to the person concerned.
- “(5) Nothing in this section authorises the Minister to cancel a New Zealand refugee travel document at a time when its holder is outside New Zealand.

- “27F Retention of refugee travel document by Minister on other grounds**
- “(1) The Minister may, by notice in writing, recall any New Zealand refugee travel document, and retain possession of it,— 5
- “(a) if there is in force a warrant issued in New Zealand for the arrest of the holder:
- “(b) if there is reasonable cause to believe—
- “(i) that the refugee travel document is in the wrongful possession of any person other than the holder; or 10
- “(ii) that the refugee travel document is in the possession of a person who is not the holder, as security, pledge, or deposit or other encumbrance entered into in contravention of section 33(3). 15
- “(2) Where the Minister has recalled a refugee travel document under **subsection (1)(a)**, the Minister must return that document to the holder as soon as practicable after the warrant is executed or withdrawn.
- “(3) Where the Minister has recalled a refugee travel document under **subsection (1)(b)**, the Minister must, unless the holder has been issued with a new document, forthwith return that document to the holder. 20
- “27G Delivery of recalled refugee travel document**
- “(1) Where the Minister recalls any refugee travel document under **section 27D** or **section 27E** or **section 27F**, the holder or other person who has the document in his or her possession or under his or her control must, on demand by an officer, deliver the document to the officer. 25
- “(2) Every person commits an offence against this Act who knowingly fails without reasonable excuse to comply with **subsection (1)**.” 30
- 38 Appeal to High Court**
- (1) Section 28 of the principal Act is amended by repealing subsection (1), and substituting the following subsection: 35
- “(1) Every person who, being—
- “(a) the applicant for the issue or renewal of a New Zealand travel document; or

“(b) the holder of a New Zealand travel document,—
is dissatisfied with any decision of the Minister made in rela-
tion to the application or document under Part I may appeal to
the High Court against that decision.”

- (2) Section 28(5) of the principal Act is amended by omitting the 5
words “the foregoing provisions of”.
- (3) Section 28 of the principal Act is amended by inserting, after
subsection (5), the following subsection:
- “(5A) This section is subject to **sections 29AA to 29AC** in the case of an 10
appeal against a decision of the Minister to refuse to issue a
New Zealand travel document, or to cancel or retain a New
Zealand travel document, on grounds of national security.”

39 Appeal to Court of Appeal in certain cases

- (1) Section 29 of the principal Act is amended by inserting, after 15
subsection (1), the following subsection:
- “(1A) Any party who is dissatisfied with any decision of the High
Court to issue an order extending the period for which a
person is not entitled to obtain a New Zealand travel docu-
ment under any of **sections 4A(4), 8A(4), 20A(4), 25A(4), 27B(4) and** 20
27E(4) may, with the leave of the Court, or, if the Court refuses
leave, with the leave of the Court of Appeal, appeal to the
Court of Appeal.”
- (2) Section 29(3) of the principal Act is amended by omitting the
words “the foregoing provisions of”.
- (3) Section 29 of the principal Act is amended by inserting, after 25
subsection (3), the following subsection:
- “(3A) This section is subject to **sections 29AA to 29AC** in the case of an
appeal relating to—
- “(a) a decision of the Minister to refuse to issue a New 30
Zealand travel document, or to cancel or retain a New
Zealand travel document, on grounds of national secur-
ity; or
- “(b) a decision of the High Court to issue an order extending
the period for which a person is not entitled to obtain a
New Zealand travel document under any of **sections** 35
4A(4), 8A(4), 20A(4), 25A(4), 27B(4), and 27E(4).”

40 New heading and sections inserted

The principal Act is amended by inserting, after section 29, the following heading and sections:

“Special provision for proceedings where national security involved” 5

“29AA Proceedings where national security involved

“(1) This section applies to the following proceedings:

“(a) any application to the High Court by the Minister under section 4A(3), section 8A(3), section 20A(3), section 25A(3), section 27B(3), or section 27E(3) for an order extending the period during which a person is not entitled to obtain a New Zealand travel document, and any appeal under section 29(1A) against such an order: 10

“(b) any appeal under section 28 or section 29 relating to a decision of the Minister under any of sections 4A, 8A, 20A, 25A, 27B, and 27E to refuse to issue a New Zealand passport or refugee travel document, or to cancel or retain a New Zealand travel document: 15

“(c) any appeal under section 28 or section 29 relating to a decision of the Minister to refuse to issue a certificate of identity under section 16 or an emergency travel document under section 23, where the Minister certifies that the refusal was based on a belief on reasonable grounds that— 20

“(i) the person was a danger to the security of New Zealand because the person intended to engage in or facilitate an action or matter of a kind described in section 4A(1)(a); and 25

“(ii) the danger to the security of New Zealand could not be effectively averted by other means; and 30

“(iii) the refusal to issue the certificate of identity or emergency travel document would prevent or effectively impede the ability of the person to carry out the intended action.

“(2) In hearing an appeal to which this section applies, the Court must determine whether— 35

“(a) the information that led to the decision is credible, having regard to its source or sources; and

“(b) the information reasonably supports a finding that— 40
“(i) the person concerned is a danger to the security of New Zealand because the person intends to

- engage in, or facilitate, an action or matter of a kind referred to in **sections 4A(1)(a), 8A(1)(a), 20A(1)(a), 25A(1)(a), 27B(1)(a), and 27E(1)(a)**; and
- “(ii) the refusal to issue the New Zealand travel document concerned, or to cancel or retain the New Zealand travel document, will prevent or effectively impede the ability of the person to carry out or facilitate the action or matter concerned; and
- “(iii) the danger to the security of New Zealand cannot be effectively averted by other means.
- “(3) Where the appeal relates to a matter within the discretion of the Minister, the Court may substitute its own discretion for that of the Minister.
- “(4) If information presented or proposed to be presented in proceedings to which this section applies includes classified security information, then **section 29AB** applies.
- “(5) In this section and **sections 29AB and 29AC**, **classified security information** means information—
- “(a) relevant to whether there are or may be grounds for believing that—
- “(i) the person concerned is a danger to the security of New Zealand because the person intends to engage in or facilitate, an action or matter of a kind referred to in **sections 4A(1)(a), 8A(1)(a), 20A(1)(a), 25A(1)(a), 27B(1)(a), and 27E(1)(a)**; or
- “(ii) a refusal to issue the New Zealand travel document concerned, or to cancel or retain the New Zealand travel document concerned, will prevent or effectively impede the ability of the person to carry out or facilitate the action or matter concerned; or
- “(iii) the danger to the security of New Zealand cannot be effectively averted by other means; and
- “(b) held by an intelligence and security agency (as defined in section 4(1) of the Terrorism Suppression Act 2002) or by the New Zealand Police; and
- “(c) that the head of the specified agency, or the New Zealand Police, certifies in writing cannot be disclosed except to the extent provided in **section 29AB** because, in the opinion of the head of the specified agency—

- “(i) the information is information of a kind specified in **subsection (6)**; and
- “(ii) disclosure of the information would be disclosure of a kind specified in **subsection (7)**.
- “(6) Information falls within **subsection (5)(c)(i)** if it— 5
- “(a) might lead to the identification of, or provide details of, the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to the agency or Police; or 10
- “(b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of the agency or Police; or
- “(c) has been provided to the agency or Police by the government of another country or by an agency of a government of another country or by an international organisation, and is information that cannot be disclosed by the agency or Police because the government or agency or organisation by which the information has been provided will not consent to the disclosure. 15 20
- “(7) Disclosure of information falls within **subsection (5)(c)(ii)** if the disclosure would be likely—
- “(a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or 25
- “(b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of another country or any agency of such a government, or by any international organisation; or 30
- “(c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
- “(d) to endanger the safety of any person. 35

Compare: 2002 No 34 s 32

“29AB Proceedings involving classified security information

- “(1) If information presented or proposed to be presented by the Crown in any proceedings to which **section 29AA** applies

- includes classified security information, the Court must, on a request for the purpose by the Attorney-General and if satisfied that it is desirable to do so for the protection of (either all or part of) the classified security information, receive or hear (the part or all of) the classified security information in the absence of— 5
- “(a) the person in respect of whom the decision concerned was made; and
 - “(b) all barristers or solicitors (if any) representing that person; and 10
 - “(c) members of the public.
- “(2) Without limiting **subsection (1)**,—
- “(a) the Court must approve a summary of the information of the kind referred to in **section 29AA(5)** that is presented by the Attorney-General except to the extent that a summary of any particular part of the information would itself involve disclosure that would be likely to prejudice the interests referred to in **section 29AA(6) or (7)**; and 15
 - “(b) on being approved by the Court (with or without amendments directed by the Court in accordance with **paragraph (a)**), a copy of the statement must be given to the person concerned. 20
- “(3) The Court—
- “(a) may give any directions and make any orders that the Court thinks appropriate in the circumstances of the case: 25
 - “(b) must determine the application or appeal on the basis of information available to the Court, whether or not that information has been disclosed to or responded to by all parties to the proceedings. 30
- “(4) Nothing in this section limits section 27 of the Crown Proceedings Act 1950 or any rule of law that authorises or requires the withholding of a document or the refusal to answer a question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest. 35
- “(5) This section applies despite any enactment or rule of law to the contrary.

- “29AC Ancillary general practices and procedures to protect classified security information**
- “(1) Any general practices and procedures that may be necessary to implement the procedures specified in **section 29AB** and to ensure that classified security information is protected in all proceedings to which that section relates must be agreed between the Chief Justice and the Attorney-General as soon as practicable after the commencement of this section, and revised from time to time. 5
- “(2) Without limiting the generality of **subsection (1)**, general practices and procedures may be agreed under that subsection on the following matters: 10
- “(a) measures relating to the physical protection of the information during all proceedings to which **section 29AB** relates: 15
- “(b) the manner in which the information may be provided to the Court:
- “(c) measures to preserve the integrity of the information until any appeals are withdrawn or finally determined.”
- 41 Forged and false New Zealand travel documents** 20
- Section 29A(2) of the principal Act is amended by omitting from the definition of **forges** and **forged** the expression “section 264”, and substituting the expression “section 256”.
- 42 Other offences** 25
- Section 31 of the principal Act is amended by omitting from subsections (1)(a), (b), (c), and (d), and (2) the words “passport, certificate of identity, or emergency travel document”, and substituting in each case the words “travel document”.
- 43 Court may forbid issue of passport** 30
- Section 32A of the principal Act is amended by repealing subsection (2), and substituting the following subsections:
- “(2) When sentencing a person in respect of a terrorism-related offence, a court may, in addition to any other sentence or order imposed or made, make an order that—
- “(a) a New Zealand passport must not be issued to the person for a specified period not exceeding 15 years; and 35

- “(b) any New Zealand passport issued to the person must be cancelled.
- “(3) In this section, **terrorism-related offence** means—
- “(a) an offence under any of the following enactments:
- “(i) the Aviation Crimes Act 1972: 5
- “(ii) the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980:
- “(iii) the Maritime Crimes Act 1999:
- “(iv) the Terrorism Suppression Act 2002: 10
- “(b) an offence where terrorism (whether described in similar terms as, or by reference to, the definition of **terrorist act** in section 5 of the Terrorism Suppression Act 2002) is an aggravating factor.
- “(4) An order under **subsection (1) or subsection (2)** expires at the end of the relevant specified period after the date of the person’s conviction of the offence.” 15
- 44 Passports, etc, are property of New Zealand Government**
- Section 33 of the principal Act is amended— 20
- (a) by omitting from subsection (1) the words “passports and certificates of identity and emergency”:
- (b) by omitting from subsection (2) the words “passport or certificate of identity or emergency” where they twice occur, and substituting in each case the words “New Zealand”: 25
- (c) by omitting from subsection (3) the words “passport or certificate of identity or emergency”.
- 45 New section substituted**
- (1) The principal Act is amended by repealing sections 35 and 36, and substituting the following section: 30
- “**36 Disclosure of travel document and related information**
- “(1) The Secretary may, for the purpose of aiding border security, facilitating the processing of passengers, or verifying the identity of a holder of a travel document, disclose New Zealand travel document information of a kind referred to in section 37 to any appropriate agency, body, or person (the **other party**). 35

- “(2) The disclosure of the information must be in accordance with an agreement in writing between the Secretary and the other party that states—
- “(a) the purpose of the agreement; and
 - “(b) the information that can be disclosed; and 5
 - “(c) the method and form of the disclosure; and
 - “(d) the use the other party will make of the information; and
 - “(e) the conditions under which the other party may disclose the information.
- “(3) An agreement entered into under **subsection (2)** may be varied 10
by the Secretary and the other party.
- “(4) Before entering into an agreement under **subsection (2)** or vary-
ing an agreement under **subsection (3)**, the Secretary and the
other party must consult with the Privacy Commissioner on
the terms of the agreement or variation. 15
- “(5) The Privacy Commissioner may require the Secretary and the
other party to review an agreement under this section, and
report on the result of the review to the Privacy Commis-
sioner, at intervals not shorter than 12 months.”
- (2) An agreement entered into under section 35 or section 36 of 20
the principal Act that was in existence immediately before the
commencement of **this Part**—
- (a) is deemed to be an agreement with an appropriate
agency entered into, after consultation with the Privacy
Commissioner, under **section 36** of the principal Act as 25
substituted by this section; and
 - (b) is deemed to apply to information of the kind described
in **section 37(1)(p)**.
- 46 Information that may be disclosed**
- (1) Section 37(1) of the principal Act is amended by omitting the 30
words “section 35 and section 36 of this Act” and substituting
the words “**section 36** in relation to a New Zealand travel
document”.
- (2) Section 37(1) of the principal Act is amended by adding the 35
following paragraph:
- “(p) any other information relating to a New Zealand travel
document that may be used—
 - “(i) to verify the identity of the document’s holder; or
 - “(ii) for the purpose of border security; or

- “(iii) to assist in the processing of passengers.”
- (3) Section 37 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:
- “(2) Every application form for a New Zealand travel document that is printed after the date of commencement of **Part 2 of the Identity (Citizenship and Travel Documents) Act 2004** must include a statement that the information may be so disclosed.” 5
- (4) Section 37(3) of the principal Act is amended by omitting the words “section 35 or”. 10
- 47 Regulations**
- Section 40(a) of the principal Act is amended—
- (a) by omitting from subparagraph (i) the words “and emergency travel documents”, and substituting the words “emergency travel documents, and refugee travel documents”: 15
- (b) by omitting from subparagraph (ii) the words “or endorsement”.