

## Department of Internal Affairs not unreasonable to cancel passport

<b>Legislation</b>	Ombudsmen Act 1975, Citizenship Act 1977
<b>Agency</b>	Department of Internal Affairs
<b>Ombudsman</b>	David McGee
<b>Case number(s)</b>	W59989 (previously unpublished)
<b>Date</b>	2009

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*Department of Internal Affairs—decision to recall and cancel complainant’s NZ passport – position determined by terms of legislation*

The complaint concerned a decision by the Department of Internal Affairs (DIA) to recall and cancel a New Zealand passport. The complainant was born in NZ in 1979 and her father was an Ambassador to New Zealand.

She applied for a NZ passport in London in 2004, which was issued on the basis that the complainant was a NZ citizen by birth. When she applied for citizenship for her son in 2008, DIA identified that she had not been eligible for a NZ passport.

Section 6(2)(a) of Citizenship Act 1977 (Citizenship by birth) states that a person shall not be a NZ citizen by virtue of that section if, at the time of birth:

*[the person’s] father or mother was a person upon whom any immunity from jurisdiction was conferred by or under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971 or in any other way, and neither of [the person’s] parents was a New Zealand citizen.*

This was the complainant’s situation. The Ombudsman advised that it seemed clear that the complainant’s situation was determined by the terms of the legislation set in place by the New Zealand Parliament, which DIA was required to apply. The requirements of section 6(2)(a) were clear and unequivocal and as the requirement was mandatory and does not provide any

person with the authority to waive those requirements, the Ombudsman formed the view that the DIA had not acted unreasonably in this case.

As a final point in this case, the Ombudsman considered that the production of the complainant's birth certificate at time of the passport application should have alerted DIA staff in 2004 to the problem, however the Ombudsman did not consider that this initial error should, or could, override the need for DIA to correct the situation in accordance with legislation, when the error became apparent.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*