



Immigration (Guardianship of Children) Regulations 2001

Statutory Rules 2001 No. 238 as amended

made under the

Immigration (Guardianship of Children) Act 1946

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1 Name of Regulations [see Note 1]

These Regulations are the *Immigration (Guardianship of Children) Regulations 2001*.

2 Commencement

These Regulations commence on 1 November 2001.

3 Definitions

In these Regulations:

Act means the *Immigration (Guardianship of Children) Act 1946*.

Minister includes an officer or authority of the Commonwealth or of any State or Territory that is a delegate of the Minister under subsection 5 (1) of the Act.

registered means registered as a custodian in a Register of Custodians kept under regulation 11.

State includes the Australian Capital Territory and the Northern Territory.

State ward means a child for whose welfare and care a State has assumed responsibility (whether through a department or authority of the State or otherwise), no matter how the child or the assumption of responsibility is described.

welfare and care includes custody, control, maintenance, education, training and employment.

5 Prescribed principles for section 4AA of the Act (Acts 12 (aa))

The following principles must be observed in considering whether or not to give a direction under section 4AA of the Act:

- (a) a direction must not be given unless the relationship between the person and the relative of the person mentioned in the section has broken down irretrievably;

- (b) a direction must not be given unless the direction is necessary to:
 - (i) protect the person from risk of injury or danger of impairment of health; or
 - (ii) protect the person from moral danger; or
 - (iii) enable the person to have the benefit of adequate direction and guidance;
- (c) a direction must not be given for the principal purpose of creating, or improving, eligibility of the person, or the relative of the person mentioned in the section, for financial assistance from the Commonwealth or a State.

6 Prescribed officers for section 4A of the Act

Each officer of the Commonwealth or a State performing functions in relation to the welfare of children and holding a delegation under subsection 5 (1) of the Act is prescribed for section 4A of the Act.

7 Effect of State laws

- (1) The laws of a State under which children may become State wards do not apply in relation to a non-citizen child.
- (2) However, if the Minister has delegated to an officer or authority of a State the Minister's powers and functions under section 5 of the Act in relation to a non-citizen child, a Minister of the State, and an officer or authority of that State, has the rights and powers in relation to the child that the Minister and the authority would have if the child were, under the laws of the State:
 - (a) in the custody and care of any person or authority; or
 - (b) a State ward.

8 Acknowledgment by custodians

If, under the Act, the Minister places a non-citizen child in the custody of a custodian, the custodian must give the Minister an acknowledgment in writing of acceptance of responsibility for the welfare and care of the child.

9 Duties of custodians

- (1) A custodian must provide for the welfare and care of every non-citizen child of whom he or she is the custodian.
- (2) The duties and obligations of a custodian in relation to a non-citizen child of whom he or she is the custodian are, as far as practicable, the same as those of a person in relation to a child who is placed in his or her care, or of whom he or she becomes the guardian or foster parent, under the laws of the State in which the custodian lives.

10 Custodian to retain custody of children

- (1) The custodian of a non-citizen child must not, without the consent of the Minister, place the child in the care of another person.
- (2) A person in whose care a non-citizen child is placed by the custodian of the child must give the Minister, or a person authorised by the Minister, all reasonable help for inspecting the conditions under which the child is living and for finding out whether the duties and obligations of the custodian are being carried out.

11 Register of Custodians

The Minister must keep a Register of Custodians in which he or she must enter the following information:

- (a) the name, address, occupation and religion of every custodian;
- (b) the name of every non-citizen child in the custody of each custodian;
- (c) the age, sex and religion of the child;
- (d) the names, addresses and occupations of the parents or guardians of the child in the child's country of origin;
- (e) the date of arrival of the child in Australia, and the name of the aircraft or ship in which the child arrived;
- (f) such other particulars as the Minister determines.

12 Notification of change of address of custodian

- (1) If a custodian proposes to change his or her place of living within a State, he or she must notify the proposed change to the Minister, if practicable, at least 7 days before the change occurs.
- (2) If it is not practicable to comply with subregulation (1), the custodian must notify the proposed change, or the change, as soon as practicable.

13 Consent to taking child out of State

The custodian must not, without the consent of the Minister, take or send the child out of the State in which the non-citizen child resides, or let the child go or be taken out of that State.

14 Notice to be given of certain events

The custodian must immediately give notice to the Minister, and do anything else in relation to a non-citizen child that the Minister requires, if the child:

- (a) absconds or is taken from the custody of the child's custodian; or
- (b) becomes seriously ill, or meets with a serious accident; or
- (c) dies.

Penalty: 1 penalty unit.

15 Power to apprehend child absent without consent

- (1) This regulation applies if a non-citizen child:
 - (a) has absconded; or
 - (b) has been unlawfully taken from the custody of the child's custodian; or
 - (c) without the consent of the Minister, has been taken from, or has left, the State in which the child resides.

- (2) If the child is found in Australia, a member of the police force or police service of a State, or a person authorised by the Minister, may apprehend the child, hold the child in custody and hand the child over to a person or authority entitled to custody of the child.

16 Notice if child suspected to be leaving the Commonwealth without consent

If the master, owner or agent of an aircraft or ship has reason to suspect that a passenger or intending passenger for a destination outside the Commonwealth is a non-citizen child and is leaving the State in which the child resides, without the consent of the Minister, the master, owner or agent must, before the departure of the aircraft or ship, give notice in writing to the Minister, stating the name of the passenger or intending passenger and the reason for the suspicion.

17 Application of Criminal Code

Chapter 2 of the *Criminal Code* applies to offences against these Regulations.

18 Immigration (Guardianship of Children) Regulations — repeal

The following Statutory Rules are repealed:

- 1946 No. 195
- 1952 No. 70
- 1956 No. 117
- 1963 No. 47
- 1979 No. 288
- 1984 No. 48
- 1986 No. 159
- 1988 No. 94.

Table of Instruments

Notes to the *Immigration (Guardianship of Children) Regulations 2001*

Note 1

The *Immigration (Guardianship of Children) Regulations 2001* (in force under the *Immigration (Guardianship of Children) Act 1946*) as shown in this compilation comprise Statutory Rules 2001 No. 238 amended as indicated in the Tables below.

Table of Instruments

Year and Number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
2001 No. 238	5 Sept 2001	1 Nov 2001	
2012 No. 35	23 Mar 2012 (see F2012L00664)	S. 3 and Schedule 1: 24 Mar 2012	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 3.....	am. 2012 No. 35
R. 4.....	rep. 2012 No. 35
R. 7.....	rs. 2012 No. 35
R. 8.....	rs. 2012 No. 35
R. 9.....	am. 2012 No. 35
R. 10.....	am. 2012 No. 35
R. 11.....	am. 2012 No. 35
R. 12.....	am. 2012 No. 35
R. 13.....	rs. 2012 No. 35
R. 14.....	rs. 2012 No. 35
R. 15.....	rs. 2012 No. 35
R. 16.....	rs. 2012 No. 35
R. 19.....	rep. 2012 No. 35
R. 20.....	rep. 2012 No. 35