

EXPLANATORY STATEMENT

Minister of State for
Immigration and Ethnic Affairs
Statutory Rules 1986 No 159

Subject: Immigration (Guardianship of Children) Act 1946

Immigration (Guardianship of Children)
Regulations (Amendment)

Section 12 of the Immigration (Guardianship of Children) Act 1946 (the Act) provides that the Governor-General may make regulations not inconsistent with the Act prescribing matters required or permitted by the Act. The Act makes provision for the guardianship of certain alien children.

The Statute Law (Miscellaneous Provisions) Act (No. 1) 1985 amends the Act to insert, amongst other things, a new section 4AA and a new sub-section 12(aa). The new section 4AA provides that where a non-Australian citizen under the age of 18 years enters Australia in the charge of, or for the purpose of living in Australia under the care of, a relative not less than 21 years of age who is not a parent and the person intends, or is intended, to become a permanent resident of Australia, the Minister may, if he is satisfied that it is in the interests of the person and the relative agrees, declare the person to be the Minister's ward. The new sub-section 12(aa) of the Act provides that the regulations may prescribe the principles to be observed in deciding whether or not to give a direction under section 4AA.

These amendments to the Act came into operation on 1 July 1986, the day fixed by proclamation pursuant to sub-section 2(24) of the Statute Law (Miscellaneous Provisions) Act (No. 1) 1985.

The new regulations amended the Immigration (Guardianship of Children) Regulations to prescribe the principles to be observed in considering whether or not to give a direction under section 4AA of the Act. In addition, the new regulations made several changes to drafting style in the existing regulations.

Details of the regulations are as follows:

- . Regulation 1 provides that this amendment shall come into operation on 1 July 1986.

- . Regulation 2 is a minor technical amendment which omits "1946-1952" from the definition of the Act and substitutes "1946".
- . Regulation 3 adds a new regulation, regulation 3AA, which prescribes the following principles to be observed in considering whether or not to give a direction under section 4AA of the Act:
 - (a) the relationship between the relative and the person must have broken down irretrievably;
 - (b) the direction must be necessary to:
 - (i) protect the person's health;
 - (ii) protect the person from moral danger; or
 - (iii) enable the person to have adequate direction and guidance;
 - (c) the direction must not be given in order to create or improve the person or their relative's eligibility for governmental financial assistance.
- . Regulation 4 is a minor technical amendment which omits the word "six" from regulation 4 of the Principal Regulations and substitutes "5".
- . Regulation 5 amends regulation 12 of the Principal Regulations by omitting "Twenty pounds" and substituting "\$40".
- . Regulation 6 sets out a Schedule of additional amendments to the Principal Regulations. The Schedule omits the words "an non-citizen" where these occur in the Principal Regulations and substitutes "a non-citizen".

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