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Immigration (Guardianship of Children) Regulations 2001

Statutory Rules 2001 No. 1

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I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Immigration (Guardianship of Children) Act 1946*.

Dated 29 AUG 2001 2001

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

PHILIP RUDDOCK
Minister for Immigration and Multicultural Affairs

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1 Name of Regulations

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*.

authority has the meaning given by regulation 4.

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.

4 Specification of authorities

The Minister may, by notice published in the *Gazette*, specify an office, the holder of which performs functions in relation to the welfare of children in a State, to be the *authority* for the State.

5 Prescribed principles for section 4AA of the Act (Act s 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 if the Minister has delegated his or her powers and functions under section 5 of the Act in relation to the child to the authority of a State.
- (2) However, a Minister of the State, and the authority of the State, have the rights and powers in relation to the child that the Minister and the authority would have if the child were, under those laws:
 - (a) in the custody and care of any person or authority; or
 - (b) a State ward.

8 Acknowledgment by custodians

- (1) 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.

Penalty: 1 penalty unit.

- (2) Strict liability applies to subregulation (1).

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.

Penalty: 1 penalty unit.

- (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 authority of the State in which the custodian lives, place the child in the care of another person.

Penalty: 1 penalty unit.

- (2) A person in whose care a non-citizen child is placed by the custodian of the child must give the authority of the State in which he or she lives, or a person authorised by that authority, 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.

Penalty: 1 penalty unit.

11 Register of Custodians

The authority of a State must keep a Register of Custodians for the State 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 authority of the State in which he or she is registered, if practicable, at least 7 days before the change occurs.

Penalty: 1 penalty unit.

- (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.

Penalty: 1 penalty unit.

13 Consent to taking child out of State

- (1) Except with the consent of the authority of the State in which the custodian of a non-citizen child is registered, the custodian must not take or send the child out of that State, or let the child go or be taken out of that State.

Penalty: 1 penalty unit.

- (2) The authority of the State from which a non-citizen child is taken by consent must immediately note the taking in the Register of Custodians and, if the child is taken to another State, forward to the authority of that other State, for entry in the Register of Custodians kept for that State, particulars of the custodian and the non-citizen child.

14 Notice to be given of certain events

If a non-citizen child:

- (a) absconds or is taken from the custody of his or her custodian; or

- (b) becomes seriously ill, or meets with a serious accident; or
- (c) dies;

the custodian must immediately give notice to the authority of the State in which the custodian lives, and do anything else in relation to the child that the authority requires.

Penalty: 1 penalty unit.

15 Power to apprehend child absent without consent

If a non-citizen child:

- (a) has absconded; or
- (b) has been unlawfully taken from the custody of his or her custodian; or
- (c) without the consent of the authority of the State in which his or her custodian is registered, has been taken from, or has left, that State;

and is found anywhere in Australia, a member of the police force or police service of a State, or a person authorised by an authority to act under this regulation, may apprehend the child, hold the child in custody and hand the child over to a person or authority entitled to custody.

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

The master, owner or agent of an aircraft or ship who has reason to suspect that a passenger or intending passenger for a place outside the Commonwealth is a non-citizen child and is leaving the State in which his or her custodian is registered without the consent of the authority of the State must, before the departure of the aircraft or ship, give notice in writing to that authority stating the name of the passenger or intending passenger and the reason for the suspicion.

Penalty: 1 penalty unit.

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.

19 Preservation of approvals of positions

Despite regulation 18, a notice mentioned in the definition of **authority** in regulation 3 of the Immigration (Guardianship of Children) Regulations that was in force immediately before the commencement of this Regulation continues to have effect after that commencement as if it were a notice made for regulation 4.

20 Old Registers of Custodians

The authority of a State may comply with regulation 11 by continuing to keep a Register of Custodians that was kept under regulation 7 of the Immigration (Guardianship of Children) Regulations as if it had been set up for regulation 11.

Note

1. Notified in the *Commonwealth of Australia Gazette* on *L* 2001. *5 September*