



2001B00374



## Migration Amendment Regulations 2001 (No. 10)<sup>1</sup>

Statutory Rules 2001 No. <sup>2</sup>

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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 *Migration Act 1958*.

Dated 27 SEP 2001 2001

PETER HOLLINGWORTH

Governor-General

By His Excellency's Command

PHILIP RUDDOCK

Minister for Immigration and Multicultural Affairs

**1 Name of Regulations**

These Regulations are the *Migration Amendment Regulations 2001* (No. *✓*).

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**2 Commencement**

These Regulations commence on gazettal.

**3 Amendment of *Migration Regulations 1994***

Schedule 1 amends the *Migration Regulations 1994*.

**Schedule 1 Amendment**

(regulation 3)

**[1] After Division 5.6**

*insert*

**Division 5.6A Powers under an agreement  
or arrangement with a  
foreign country**

**5.35A Definitions**

In this Division:

*place* means any place in or outside Australia.

*weapon* includes any thing capable of being used to inflict bodily injury or to help an individual escape from restraint.

**5.35B Exercise of power to restrain an individual**

- (1) In the exercise of a power under this Division to restrain an individual, the officer:
  - (a) must not use more force, or subject the individual to greater indignity, than is reasonably necessary to exercise the power; and
  - (b) must not do anything likely to cause the individual grievous bodily harm unless the officer believes on reasonable grounds that doing the thing is necessary to protect life or prevent serious injury to the individual or another individual (including the officer).
- (2) In this regulation:  
*officer* includes an individual assisting the officer.

**5.35C Exercise of power to search an individual**

- (1) This regulation applies to a search under this Division of an individual, clothing of an individual or property under the immediate control of an individual.
- (2) The purpose for which an individual, clothing of the individual or any property under the immediate control of the individual may be searched is to find out whether the individual is carrying a weapon, or a weapon is hidden on the individual, in the clothing or in the property.
- (3) This regulation does not authorise an officer, or another individual conducting a search under subregulation (4), to remove any of the individual's clothing, or to require an individual to remove any of his or her clothing, except the individual's outer garments (including but not limited to the individual's overcoat, coat, jacket, gloves, shoes and head covering).
- (4) A search of an individual, and the individual's clothing, must be conducted by:
  - (a) an officer of the same sex as the individual; or

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- (b) if an officer of the same sex as the individual is not available to conduct the search — any other individual who is of the same sex and:
- (i) is requested by an officer; and
  - (ii) agrees;
- to conduct the search.
- (5) An officer or other individual who conducts a search to which this regulation applies must not use more force, or subject the individual to greater indignity, than is reasonably necessary to conduct the search.

**5.35D Protection of persons when acts done in good faith**

- (1) An action or proceeding, whether civil or criminal, does not lie, in respect of anything done in the exercise of a power under this Division to restrain an individual, against the Commonwealth, an officer or an individual assisting an officer if the officer or individual who does the thing acts in good faith and does not contravene regulation 5.35B.
- (2) An action or proceeding, whether civil or criminal, does not lie against an individual who, at the request of an officer under subregulation 5.35C (4), conducts a search under that subregulation if the individual acts in good faith and does not contravene subregulation 5.35C (5).

**5.35E Powers when boarding certain foreign ships (Act s 245F (14))**

For subsection 245F (14) of the Act, the powers that the officer may exercise, consistently with the agreement or arrangement, are the powers to do the following:

- (a) search, without warrant:
- (i) an individual on the ship; or
  - (ii) the clothing of the individual; or

- (iii) any property under the immediate control of the individual;
- (b) take possession of any weapon for as long as the officer thinks necessary for the purposes of this regulation;
- (c) restrain any individual on board the ship for as long as the officer thinks necessary for the purposes of this regulation;
- (d) detain the ship for as long as the officer thinks necessary for the purposes of this regulation;
- (e) bring the ship, or cause it to be brought, to a place that the officer considers appropriate.

**5.35F Powers when boarding certain foreign ships on the high seas (Act s 245G (4))**

- (1) For subsection 245G (4) of the Act, the powers that the officer may exercise, consistently with the agreement or arrangement, are the powers to do the following:
  - (a) search the ship;
  - (b) search, without warrant:
    - (i) an individual on the ship; or
    - (ii) the clothing or the individual; or
    - (iii) any property under the immediate control of the individual;
  - (c) take possession of any weapon for as long as the officer thinks necessary for the purposes of this regulation;
  - (d) restrain any individual on board the ship for as long as the officer thinks necessary for the purposes of this regulation;
  - (e) detain the ship for as long as the officer thinks necessary for the purposes of this regulation;
  - (f) bring the ship, or cause it to be brought, to a port or other place that the officer considers appropriate;

- (g) return to the ship any individual who:
- (i) was on the ship when it was initially detained under paragraph (e); and
  - (ii) later leaves the ship.
- (2) Subject to this Division, an officer may use such force as is necessary and reasonable in the exercise of a power under this regulation.
- (3) In searching the ship, an officer must not damage the ship or any goods on the ship by forcing open a part of the ship or the goods unless:
- (a) the individual (if any) apparently in charge of the ship has been given a reasonable opportunity to open that part or the goods; or
  - (b) it is not reasonably practical to give that individual such an opportunity.
- (4) An individual may be returned to a ship under paragraph (1) (g) only if the officer or individual assisting the officer is satisfied that it is safe to do so.

## Notes

1. These Regulations amend Statutory Rules 1994 No. 268, as amended by 1994 Nos. 280, 322, 376 and 452; 1995 Nos. 3, 38, 117, 134, 268, 302 and 411; 1996 Nos. 12, 75 (regulations 7 and 8 were disallowed by the Senate on 11 September 1996), 76, 108, 121, 135, 198, 211 (regulations 4, 10, 11, 13.3, 14-37, 47-49, 51, 53-55, 74, 77.16, 77.19, 78, 85, 119 and 114 were disallowed by the Senate on 7 November 1996) and 276; 1997 Nos. 17, 64, 91, 92, 109, 137, 184, 185, 216, 263, 279, 288, 301 and 354; 1998 Nos. 36, 37, 104 (regulation 15 was disallowed by the Senate on 2 July 1998), 139, 210, 214, 284, 285 (disallowed by the Senate on 31 March 1999), 304, 305, 306 and 322; 1999 Nos. 8, 58, 64, 68 (as amended by 1999 Nos. 81 and 132), 76 (as amended by 1999 Nos. 81 and 132), 81 (as amended by 1999 No. 132), 82, 132, 155, 198, 220 (as amended by 1999 Nos. 259 and 321), 243, 259 (as amended by 2000 No. 259), 260 (as amended by 1999 No. 321), 321 and 325; 2000 Nos. 52, 62, 108, 192, 259 (as amended by 2000 No. 284) (item [4108] of Schedule 4 was disallowed by the Senate on 1 November 2000), 284 and 335; 2001 Nos. 27, 47, 86, 142, 162, 206, 239~~and 246~~ / , and 283
2. Notified in the *Commonwealth of Australia Gazette* on / 2001. 5 October