



Immigration (Guardianship of Children) Regulations 2018

I, the Honourable Paul de Jersey AC, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 06 December 2018

Paul de Jersey AC
Administrator of the Government of the Commonwealth of Australia

By His Excellency's Command

David Coleman
Minister for Immigration, Citizenship and Multicultural Affairs

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Part 1—Preliminary

1 Name

This instrument is the *Immigration (Guardianship of Children) Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2019.	1 October 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Immigration (Guardianship of Children) Act 1946*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

In this instrument:

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

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.

Section 5

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

Part 2—Orders for guardianship

6 Prescribed principles for directions under section 4AA of the Act

For the purposes of paragraph 12(aa) of the Act, the following principles must be observed in considering whether or not to give a direction under section 4AA of the Act in respect of a person:

- (a) a direction must not be given unless the relationship between the person and the relative mentioned in paragraph 4AA(1)(a) of the Act has broken down irretrievably;
- (b) a direction must not be given unless the direction is necessary:
 - (i) to protect the person from risk of injury or danger of impairment of health; or
 - (ii) to protect the person from moral danger; or
 - (iii) to enable the person to have the benefit of adequate direction and guidance; or
 - (iv) for any other reason that the Minister, or a delegate of the Minister who is giving the direction, considers to be in the interests of the person;
- (c) a direction must not be given for the principal purpose of creating, or improving, eligibility of the person, or the relative mentioned in paragraph 4AA(1)(a) of the Act, for financial assistance from the Commonwealth or a State.

Part 3 Placement and transfer of non-citizen children

Division 1 Purposes of this Part

Section 7

Part 3—Placement and transfer of non-citizen children

Division 1—Purposes of this Part

7 Purposes of this Part

This Part is made for the purposes of paragraphs 12(b), (c) and (f) of the Act.

Division 2—Custodian requirements

8 Acknowledgement by custodians

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

9 Duties and obligations of custodians

- (1) The custodian of a non-citizen child must provide for the welfare and care of the child.
- (2) The duties and obligations of the custodian of a non-citizen child are, as far as practicable, the same as the duties and obligations that, under the laws of the State in which the custodian lives (as in force on the day this instrument commences), a person has in relation to:
 - (a) a child in the person's care; or
 - (b) a child of whom the person is the guardian or foster parent.

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) If the custodian of a non-citizen child places the child in the care of another person, the other person must give the Minister, or a person authorised by the Minister, all reasonable help to:
 - (a) inspect the conditions under which the child is living; and
 - (b) find out if the duties and obligations of the custodian are being carried out.

11 Consent required for non-citizen child to leave State

- (1) This section applies to:
 - (a) the custodian of a non-citizen child; and
 - (b) if the custodian of a non-citizen child places the child in the care of another person—the other person.
- (2) The custodian and the other person must not, without the consent of the Minister:
 - (a) take, or send, the child out of the State in which the child lives; or
 - (b) let the child go, or be taken, out of the State in which the child lives.

12 Notification of change of address or telephone number

- (1) If a custodian proposes to change the custodian's address or telephone number, the custodian must notify the Minister of the proposed change at least 7 days before the change occurs.

Section 13

- (2) However, if it is not practicable to comply with subsection (1), the custodian must notify the Minister of the proposed change, or the change, as soon as practicable.

13 Notification of other events

- (1) The custodian of a non-citizen child commits an offence if:
- (a) a notifiable event occurs in respect of the non-citizen child; and
 - (b) the custodian fails to:
 - (i) immediately notify the Minister of the event; or
 - (ii) do anything else in relation to the non-citizen child that the Minister requires.

Penalty: 1 penalty unit.

- (2) For the purposes of subsection (1), a **notifiable event** occurs in respect of a non-citizen child if the child:
- (a) absconds; or
 - (b) is taken from the custody of the child's custodian; or
 - (c) becomes seriously ill; or
 - (d) is involved in a serious accident; or
 - (e) dies.

Division 3—Register of Custodians

14 Register of Custodians

The Minister must keep a Register of Custodians that contains the following:

- (a) the name, address, telephone number and date of birth of each custodian;
- (b) the name, date of birth and sex of each non-citizen child in the custody of each custodian;
- (c) any other particulars that the Minister considers relevant.

Part 4—Application of child welfare laws

15 Effect of State laws

- (1) This section is made for the purposes of paragraph 12(d) of the Act.
- (2) Subject to subsection (3), the laws of a State under which children may become State wards do not apply in relation to a non-citizen child.
- (3) If, under section 5 of the Act, the Minister has delegated to an officer or authority of a State the Minister's powers and functions under the Act in relation to the non-citizen child, a Minister of the State, and an officer or authority of the State, have the rights and powers in relation to the child that the Minister and the officer or authority would have if the child were, under the laws of the State as in force on the day this instrument commences:
 - (a) in the custody and care of any person or authority; or
 - (b) a State ward.

Part 5—Preventing non-citizen children from leaving Australia

16 Notification by masters, owners and agents of aircraft and ships

- (1) This section is made for the purposes of paragraph 12(db) of the Act and applies to the master, owner or agent of an aircraft or ship if:
 - (a) the aircraft or ship is travelling to a destination outside Australia; and
 - (b) the master, owner or agent has reason to suspect that a passenger, or intending passenger, on the aircraft or ship is a non-citizen child who is leaving the State in which the child lives without the consent of the Minister.
- (2) Before the aircraft or ship departs, the master, owner or agent must notify the Minister, in writing, of:
 - (a) the name of the passenger or intending passenger; and
 - (b) the reason for the suspicion.

Part 6—Miscellaneous

17 Prescribed officers for the purposes of 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 the purposes of section 4A of the Act.

18 Delegation

The Minister may, in writing, delegate all or any of the Minister's powers or functions under this instrument to:

- (a) an APS employee who holds, or is acting in, an Executive Level 1 or higher position in the Department; or
- (b) an officer or employee of a State who:
 - (i) exercises powers or performs functions in relation to the welfare of children; and
 - (ii) holds, or is acting in, a position that is sufficiently senior for the officer or employee to exercise the powers, and perform the functions, delegated.

Schedule 1—Repeals

Immigration (Guardianship of Children) Regulations 2001

1 The whole of the instrument

Repeal the instrument.