

Sensitive: Legal

Australian Government

Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS15-029617

To Minister for Immigration and Border Protection

Subject Legislative Instrument identifying countries of concern for Child and Adoption visas

Timing Please action on or after 10 December **but before** midday 11 December 2015.
Submission was requested by s22(1)(a)(ii) on 2 December 2015.

Recommendations

That you:

1. sign the Legislative Instrument IMMI 15/136 at Attachment B; signed / not signed
and
2. approve the Explanatory Statement IMMI 15/136 at Attachment C. approved / not approved

Minister for Immigration and Border Protection

Signature Peter Dutton

Date: 10 / 12 / 2015

Received

- 7 DEC 2015

Minister for Immigration
and Border Protection**Sensitive: Legal**Released by DIBP under the
Freedom of Information Act 1982

Sensitive: Legal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. On 6 August 2015, you agreed to amend the *Migration Regulations 1994* (the Regulations) so Adoption visa applications will not be valid in circumstances where adoption is unlawful in a particular country and the child cannot be legally removed from that country. A copy of this submission is provided at [Attachment A](#).
2. Should you agree to sign this Legislative Instrument at [Attachment B](#), it will have the effect that an application for a Subclass 102 Adoption visa, or a Subclass 802 Child visa, based on an expatriate adoption, would not be valid for claimed adoptions from Pakistan. It is intended that the Legislative Instrument will come into effect on the same day as Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015.
3. The relevant amendments will go to the Federal Executive Council on 10 December 2015 and come into effect on 14 December 2015, subject to the agreement of the Governor-General. Your approval for the text of the Regulation change was sought separately in Ministerial Submission MS15-029345.

Background

s47C

Sensitive: Legal

 Released by DIBP under the
 Freedom of Information Act 1982

Sensitive: Legal

6. s47C

Consultation – internal/external

7. Internal: Director Family Migration Programme Management Section, Director Skilled and Family Delivery Section, Director Unaccompanied Humanitarian Minors and Guardianship Section, Director Legal Simplification and Deregulation Section and Director Legislative Services and Legend Section.
8. External: the Department of Prime Minister and Cabinet, the Department of Foreign Affairs and Trade, the Attorney-General's Department (as the Commonwealth central authority responsible for intercountry adoptions) and the Department of Social Services.

Consultation – Secretary

9. The Secretary was not consulted on the approach in the submission.

Client service implications

10. The proposed Regulation change is designed to protect both children and parents and supports the Government's assertions that people should be aware of the implications when they seek to adopt a child from overseas. This change is intended to enhance the integrity of the Adoption visa programme in order to better facilitate legal adoptions and mitigate the risk of child trafficking. It also contributes to the streamlining of the Government's adoption processes as announced by the former Prime Minister, the Hon Tony Abbott MP on 19 December 2014.

Sensitivities

11. Timing is critical to enable the Legislative Instrument to commence immediately after the Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015. Please note that this Legislative Instrument cannot be signed before the amending Regulation goes before the meeting of the Federal Executive Council on 10 December 2015. It must be registered by close of business on 11 December 2015 so that it can come into effect on 14 December 2015, at the same time as the amending Regulation.

Financial/systems/legislation/deregulation implications

12. Nil.

Sensitive: Legal

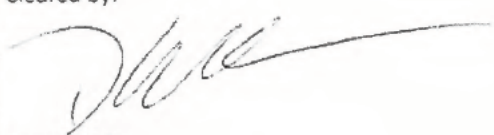
Sensitive: Legal

Attachments

Attachment A MS15-000179 Advice and update to the Prime Minister about overseas adoptions and policy approval sought to amend overseas adoption provisions

Attachment B Legislative Instrument (IMMI 15/136)

Attachment C Explanatory Statement (IMMI 15/136)

<p>Authorising Officer</p> <p>Cleared by:</p>  <p>David Wilden First Assistant Secretary Immigration and Citizenship Policy</p> <p>Date: 4/12/15</p> <p>Ph: s22(1)(a)</p>

Contact Officer: s22(1)(a)(ii), Director, Family Policy Section, Ph: s22(1)(a)

Through AS Humanitarian Family and Citizenship Policy

CC Secretary
Commissioner
Deputy Secretaries
FAS Visa and Citizenship Management
AS Permanent Visa and Citizenship Programme
AS Legislation and Framework
AS Child Protection and Wellbeing

Sensitive: Legal

Released by DIBP under the
Freedom of Information Act 1982

For Official Use Only (FOUO)



Australian Government

Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number

To Minister for Immigration and Border Protection

Subject Advice and update to the Prime Minister about overseas adoptions and policy approval sought to amend overseas adoption provisions

Timing Please action by 7 August 2015 to allow drafting of Regulation amendments to commence.

Recommendations

That you:

1. note the Department's work to strengthen the safeguards governing *expatriate* adoptions; noted / please discuss
2. provide policy approval to amend the *Migration Regulations 1994* so adoption visa applications will not be valid where received from children adopted from countries where adoption is unlawful and the child cannot be legally removed from that country; approved / not approved
3. sign the attached letters regarding this reform to the:
 - Prime Minister (Attachment D); and
 - Attorney-General (Attachment E).signed / not signed
signed / not signed
4. note the Department is working on further integrity measures for *expatriate* adoptions and will brief you in due course. noted / please discuss

Minister for Immigration and Border Protection

Signature.....

Date: 26/8 / 2015

Received

27 JUL 2015

Minister for Immigration
and Border Protection

For Official Use Only

Released by DIBP under the
Freedom of Information Act 1982

For Official Use Only (FOUO)

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. We seek your agreement to amend the *Migration Regulations 1994* (the Regulations) to improve the consistency of safeguards for the protection of children in *expatriate* and *intercountry* adoption visa caseloads.

- Intercountry adoptions are available to people residing in Australia, and are managed by State and Territory Central Agencies (STCAs). The adoptions involve extensive checks and balances to ensure they are conducted in accordance with the principles of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (Hague Convention).
- Expatriate adoptions are intended to assist families who are expatriates, living outside Australia for long periods of time and do not have access to intercountry adoption arrangements. Expatriate adoptions do not require the approval of STCAs and may have occurred outside the Hague Convention framework.

2. The Department's primary responsibility in the adoption process is in regards to migration and citizenship issues. However, without STCA oversight in the expatriate adoption caseload there is a higher risk of practices that are not in the best interests of the child, such as child abduction and trafficking. As a result, the Department and you as Minister, are responsible for ensuring that visas granted for children for entry to Australia have safeguards that mirror or equal the Hague Convention protocols for the protection of children.

3. The checks and safeguards used by the Department for recognising expatriate adoptions include that:

- an adoption is in the best interests of the child;
- adoption from the particular country is lawful; and
- the laws of the child's country allow the child to be removed.

4. s47C

For Official Use Only

For Official Use Only (FOUO)

5. Mr Bernie Geary OAM has raised similar concerns with the Prime Minister the Hon Tony Abbott ([Attachment A](#)) and the Attorney-General ([Attachment B](#)) about the requirements for recognising expatriate adoptions on behalf of all Australian Children's Commissioners and Guardians.

Improving safeguards for expatriate adoptions

6. To strengthen the safeguards for expatriate adoptions, we seek your agreement to draft amendments to the Regulations. The amendments would specify a list of countries of concern for adoption and would prescribe that adoption visa applications will not be valid from children adopted from countries that do not have in place the standards and processes we require for expatriate adoptions.

7. The proposed list of countries of concern would be updated as necessary to reflect any changes in status of countries over time. This includes specifying time periods in which the Department could not accept an adoption visa application from a particular country when adoption in that country was unlawful.

8. The measure would raise the migration standards that apply to expatriate adoptions and would immediately address the concerns raised by the Commissioners. It would also align Australia's adoption processes more closely with the principles of the Hague Convention. Further, it would send a message to prospective adoptive parents that they should not seek to adopt a child by circumventing established procedures in the States and Territories.

9. The Prime Minister sought advice in consultation with the Attorney-General on options for addressing the concerns raised by the Commissioners ([Attachment C](#)). A draft response to the Prime Minister for your signature is at [Attachment D](#).

10. We also seek your signature on a letter to the Attorney-General to request his continued support to explore and develop further options to improve the integrity standards for expatriate adoptions ([Attachment E](#)).

Background

Concerns raised by the Australian Children's Commissioners and Guardians

11. Mr Bernie Geary OAM, in a letter to the Prime Minister the Hon Tony Abbott on behalf of all Australian Children's Commissioners and Guardians ([Attachment A](#)), has expressed concern that Australian requirements for recognising expatriate adoptions are far less rigorous than those that Australia applies to intercountry adoptions through the STCAs.

12. In a further letter to the Attorney-General on 28 April 2015, Mr Bernie Geary OAM noted that Australia's Children's Commissioners and Guardians believe that many of the current issues surrounding the regulation of expatriate adoptions are similar to those relating to international surrogacy, and requested that the Attorney-General include expatriate adoptions in the terms of reference for the inquiry on surrogacy arrangements ([Attachment B](#)). A response is yet to be provided by the Attorney-General.

s47C

For Official Use Only

Released by DIBP under the
Freedom of Information Act 1982

For Official Use Only (FOUO)

14. Since Mr Geary's letter was sent, the Department has been working on options with AGD to address the Commissioners' concerns. There has been ongoing official level engagement of ways to address the integrity concerns of expatriate adoptions. In addition, the Department has implemented recommendations from the IDC on Intercountry Adoption, including the removal of the Child visas from the managed Migration Programme commencing in 2015-16. The Child visa programme will be transitioning to a demand-driven model by 2019-20.

15. The Department has also worked closely with the Department of Social Services (DSS) and AGD regarding the establishment of the new Intercountry Adoption Support Service, which commenced operation on 18 May 2015, and will brief you on this in due course.

Consultation

16. Family Policy section has consulted with relevant departmental areas and AGD about the proposed Regulation change and pending your agreement will ensure the Department is prepared to make the amendments in the second half of this year. The Department will work closely with AGD on establishing the list of countries of concern.

17. Further, the Department will continue to work with AGD to address the broader review of expatriate adoptions where processes fall short of the Hague Convention principles and standards, as raised by the Commissioners and Guardians. s47C

[REDACTED]

[REDACTED]

Client service implications

18. Adoptions from countries that would be impacted by the proposed legislation include s33(a)(iii) countries such as Pakistan where the local laws do not allow the removal of adopted children. It is not possible to predict the number of clients who would be impacted, but although the number is small, the impact of preventing possible child trafficking is significant.

19. Preventing valid applications for adoptions from these countries will save clients the cost of a visa application which is likely to be refused, and save the Department the resource-heavy processing of a refusal decision.

20. Applications that have already been lodged but not determined will not be affected by the proposed Regulation change. These applications would be subjected to an assessment of the legality of the adoption, as currently occurs. Applications lodged after the Regulation change comes into effect will be invalid and returned to the applicant if the child has been adopted from one of the listed countries of concern.

21. Information will be made publicly available so that parents in the process of, or planning to, adopt are adequately aware of any changes. s47C

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

s47C

[REDACTED]

For Official Use Only

Released by DIBP under the
Freedom of Information Act 1982

For Official Use Only (FOUO)

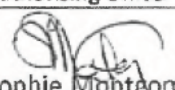
Financial/systems/legislation implications

s47C

26. Costs related to the Regulation change will be absorbed as business as usual.

Attachments

- Attachment A** Letter to the Prime Minister from Mr Bernie Geary OAM
- Attachment B** Letter to the Attorney-General from Mr Bernie Geary OAM
- Attachment C** Letter from the Prime Minister in consultation with the Attorney-General
- Attachment D** Draft response to the Prime Minister addressing the Commissioners' concerns
- Attachment E** Draft letter to the Attorney-General seeking continued support
- Attachment F** Letter to the Prime Minister from Minister Morrison MP

Authorising Officer	
 Sophie Montgomery Assistant Secretary, Planning, Design and Assurance Branch 30/6/2015 Ph: s22(1)(a)(ii)	
Contact Officers s22(1)(a)(ii) , Family Policy Section, Mobility Branch, Ph: (02) s22(1)(a) .	
Through	Richard Johnson, A/g First Assistant Secretary Immigration and Citizenship Policy, Ph: 02 s22(1)(a) Steven Groves, First Assistant Secretary, Chief Financial Officer, Ph: 02 s22(1)(a) Greg Phillipson, Assistant Secretary, Legislation and Framework Branch, Ph: 02 s22(1)(a)
CC	Assistant Minister Secretary Deputy Secretaries First Assistant Secretary Visa and Citizenship Management First Assistant Secretary Children and Community Services Assistant Secretary Citizenship and Humanitarian Branch Assistant Secretary Permanent Visa and Citizenship Programme Branch Assistant Secretary Policy Research and Statistics Branch Assistant Secretary Immigration Policy

For Official Use Only

Australian Children's COMMISSIONERS AND GUARDIANS

CCYPD/14/338

Tuesday, 2 July 2014

The Hon. Tony Abbott, MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

On behalf of Australia's Children's Commissioners and Guardians (ACCG) I am writing to request you ensure the processes for recognising expatriate intercountry adoptions are included as part of the work being undertaken to establish the new national system for intercountry adoption.

The recently released *Report of the Interdepartmental Committee on Intercountry Adoption* highlights that:

Australia and the countries with which we engage in intercountry adoption subscribe to the fundamental principles of international law that seek to ensure that intercountry adoptions take place in the best interests of the child with respect to the child's wellbeing and fundamental rights . (p.v)

Following the release of the report, the Council of Australian Governments announced it had agreed to establish a new national system for intercountry adoption which is to be in operation by early 2015.

While there is much to commend in the report, we note that it did not examine the processes for expatriate intercountry adoption even though a significant number of adoption visas are issued each year for this form of adoption. The annual *Adoption Australia* reports published by the Australian Institute of Health and Welfare show the increase in proportion of expatriate adoptions relative to other intercountry adoptions. For example, in 2012 - 13 there were 93 adoption visas for adoptions arranged by overseas agency/authority (expatriate adoptions) and 72 for adoptions arranged by Australian state/ territory authority.

Australians are able to adopt children internationally outside of standard intercountry adoption processes where the adoptive parents have lived overseas for 12 months or more and have adopted a child through an overseas agency or government. In order to be able to bring the child into Australia, the expatriate adoptive parents need to show that they did not live overseas for the purpose of circumventing the legal requirements for the entry of adopted children into Australia, demonstrate that they have lawfully acquired full parental rights in adopting the child and complete an Australian National Police check.

Australian requirements for recognising expatriate intercountry adoption are far less rigorous than those Australia applies for other intercountry adoptions. This lower level of

scrutiny seems inconsistent with the fundamental principles of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. We are also concerned that children adopted through these processes may find it difficult to access support and information later in life and in some cases there may be a lack of clarity about the legal status of these children.

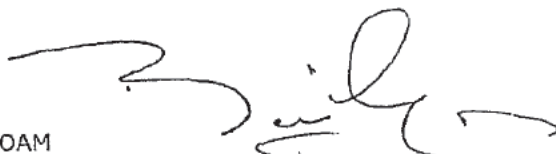
In our view, the new national intercountry adoption scheme should include a principled and consistent approach to the recognition of expatriate intercountry adoption and the development of appropriate supports for children adopted through these processes. For example, Australia would not enter into an intercountry adoption program with a foreign country whose adoption practices fall well short of the principles of the Hague Convention. In such a case, it would seem anomalous to grant adoption visas except where it is clearly established that this is in the best interests of the child/ren involved.

We believe Australia has an obligation to ensure that all intercountry adoptions recognised by the Australian government through the granting of visas or citizenship, have been undertaken in a manner which is consistent with the principles and requirements of the Hague Convention. The new national approach to intercountry adoption should ensure Australia abides by this obligation.

We would be happy to discuss our concerns in more detail and look forward to learning more about the new national approach to intercountry adoption.

In the meantime, if you would like to make contact with me please call 8601 5886 or email: bernie.geary@ccyp.vic.gov.au

Yours sincerely



Bernie Geary OAM
Commissioner for Children and Young People (Vic)
 Convenor - Australian Children's Commissioner and Guardians

Signed on behalf of ACCG members:

- Mr Andrew Jackomos, Commissioner for Aboriginal Children and Young People, Victoria
- Ms Pam Simmons, Guardian for Children and Young People, South Australia
- Dr Howard Bath, Commissioner for Children and Young People, Northern Territory
- Mr Alasdair Roy, Children and Young People Commissioner, Australian Capital Territory
- Mr Steve Armitage, Principal Commissioner, Queensland Family and Child Commission
- Ms Jenni Perkins, Acting Commissioner for Children and Young People, Western Australia
- Ms Kerry Boland, New South Wales Children's Guardian and Acting Commissioner for Children and Young People

(Tasmania does not have a Commissioner appointed at this point in time.)

MC15/06091

Australian Children's COMMISSIONERS AND GUARDIANS

28 April 2015
CCYPD/15/299

The Hon George Brandis QC
Attorney-General and Minister for the Arts
PO Box 6100
Senate
Parliament House
CANBERRA ACT 2600

AG - RECEIVED	
<input type="checkbox"/> Mr. A. Lee	<input type="checkbox"/> Mr. J. Smith
<input type="checkbox"/> Mr. B. Jones	<input type="checkbox"/> Mr. K. Brown
<input type="checkbox"/> Mr. C. White	<input type="checkbox"/> Mr. L. Green
<input type="checkbox"/> Mr. D. Black	<input type="checkbox"/> Mr. M. Taylor
<input checked="" type="checkbox"/> Mr. E. Adams	<input type="checkbox"/> Mr. N. Wilson
<input type="checkbox"/> Mr. F. Hill	<input type="checkbox"/> Mr. O. Evans
<input type="checkbox"/> Mr. G. King	<input type="checkbox"/> Mr. P. Scott
<input type="checkbox"/> Mr. H. Baker	<input type="checkbox"/> Mr. Q. Roberts
05 MAY 2015	
FLB L.C. 6/5/2015	

Dear Attorney-General

On behalf of Australia's Children's Commissioners and Guardians (ACCG) I am writing to support the recommendation of the House of Representatives Standing Committee on Social Policy and Legal Affairs (the Committee) in relation to the conduct of an inquiry on surrogacy arrangements.

The report of the Committee's *Roundtable on surrogacy* identifies a number of issues relating to both domestic and international surrogacy. The Committee recommends that you refer to the Committee an inquiry into the regulatory and legislative aspects of surrogacy arrangements and proposes that the inquiry focus on a number of issues.

The ACCG supports the need for an inquiry and for one to be conducted as soon as possible. The inquiry should be required to ensure any proposals developed are consistent with the principles and spirit of international human rights conventions including the Convention on the Rights of the Child and the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. In particular, the terms of reference for the inquiry should expressly provide that the best interests of children must be the overarching principle which guides the work and any recommendations of the inquiry.

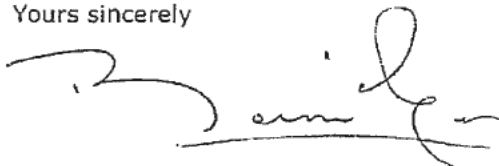
Although not addressed in the roundtable, the ACCG believes that many of the current issues surrounding the regulation of expatriate intercountry adoptions are similar to those relating to international surrogacy. The ACCG wrote to the Prime Minister in mid-2014 expressing concern about expatriate intercountry adoptions. A copy of the ACCG's letter and the response from the Prime Minister are attached. The ACCG requests that you also consider including expatriate intercountry adoptions in the terms of reference for the inquiry.

The ACCG would be happy to contribute to the development of terms of reference for the inquiry or to discussing any of these issues in more detail.

Released by DIBP under the
Freedom of Information Act 1982

In the meantime, if you would like to make contact with me please call 8601 5886 or email: bernie.geary@ccyp.vic.gov.au

Yours sincerely



Bernie Geary OAM
Commissioner for Children and Young People (Vic)
Convenor - Australian Children's Commissioner and Guardians

Signed on behalf of the following ACCG members:

Mr Steve Armitage, Principal Commissioner, Family and Child Commission,
Queensland
Ms Colleen Gwynne, A/Commissioner, Office of the Children's Commission,
Northern Territory
Mr Andrew Jackomos, Commissioner for Aboriginal Children and Young People,
Victoria
Mr Andrew Johnson, Advocate for Children and Young People, New South Wales
Ms Megan Mitchell, National Children's Commissioner
Mr Mark Morrissey, Commissioner for Children, Tasmania
Ms Jenni Perkins, A/Commissioner, Commission for Children and Young People,
Western Australia
Mr Alasdair Roy, Children and Young People Commissioner, Australian Capital
Territory
Ms Pam Simmons, Guardian for Children and Young People, South Australia

Australian Children's COMMISSIONERS AND GUARDIANS

COPY

CCYPD/14/338

Tuesday, 2 July 2014

The Hon. Tony Abbott, MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

On behalf of Australia's Children's Commissioners and Guardians (ACCG) I am writing to request you ensure the processes for recognising expatriate intercountry adoptions are included as part of the work being undertaken to establish the new national system for intercountry adoption.

The recently released *Report of the Interdepartmental Committee on Intercountry Adoption* highlights that:

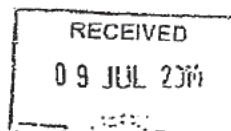
Australia and the countries with which we engage in intercountry adoption subscribe to the fundamental principles of international law that seek to ensure that intercountry adoptions take place in the best interests of the child with respect to the child's wellbeing and fundamental rights . (p.v)

Following the release of the report, the Council of Australian Governments announced it had agreed to establish a new national system for intercountry adoption which is to be in operation by early 2015.

While there is much to commend in the report, we note that it did not examine the processes for expatriate intercountry adoption even though a significant number of adoption visas are issued each year for this form of adoption. The annual *Adoption Australia* reports published by the Australian Institute of Health and Welfare show the increase in proportion of expatriate adoptions relative to other intercountry adoptions. For example, in 2012 - 13 there were 93 adoption visas for adoptions arranged by overseas agency/authority (expatriate adoptions) and 72 for adoptions arranged by Australian state/ territory authority.

Australians are able to adopt children internationally outside of standard intercountry adoption processes where the adoptive parents have lived overseas for 12 months or more and have adopted a child through an overseas agency or government. In order to be able to bring the child into Australia, the expatriate adoptive parents need to show that they did not live overseas for the purpose of circumventing the legal requirements for the entry of adopted children into Australia, demonstrate that they have lawfully acquired full parental rights in adopting the child and complete an Australian National Police check.

Australian requirements for recognising expatriate intercountry adoption are far less rigorous than those Australia applies for other intercountry adoptions. This lower level of



scrutiny seems inconsistent with the fundamental principles of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. We are also concerned that children adopted through these processes may find it difficult to access support and information later in life and in some cases there may be a lack of clarity about the legal status of these children.

In our view, the new national intercountry adoption scheme should include a principled and consistent approach to the recognition of expatriate intercountry adoption and the development of appropriate supports for children adopted through these processes. For example, Australia would not enter into an intercountry adoption program with a foreign country whose adoption practices fall well short of the principles of the Hague Convention. In such a case, it would seem anomalous to grant adoption visas except where it is clearly established that this is in the best interests of the child/ren involved.

We believe Australia has an obligation to ensure that all intercountry adoptions recognised by the Australian government through the granting of visas or citizenship, have been undertaken in a manner which is consistent with the principles and requirements of the Hague Convention. The new national approach to intercountry adoption should ensure Australia abides by this obligation.

We would be happy to discuss our concerns in more detail and look forward to learning more about the new national approach to intercountry adoption.

In the meantime, if you would like to make contact with me please call 8601 5886 or email: bernie.geary@ccyp.vic.gov.au

Yours sincerely



Bernie Geary OAM
Commissioner for Children and Young People (Vic)
Convenor - Australian Children's Commissioner and Guardians

Signed on behalf of ACCG members:

- Mr Andrew Jackomos, Commissioner for Aboriginal Children and Young People, Victoria
- Ms Pam Simmons, Guardian for Children and Young People, South Australia
- Dr Howard Bath, Commissioner for Children and Young People, Northern Territory
- ~~Mr Alasdair Roy, Children and Young People Commissioner, Australian Capital Territory~~
- Mr Steve Armitage, Principal Commissioner, Queensland Family and Child Commission
- Ms Jenni Perkins, Acting Commissioner for Children and Young People, Western Australia
- Ms Kerry Boland, New South Wales Children's Guardian and Acting Commissioner for Children and Young People

(Tasmania does not have a Commissioner appointed at this point in time.)



15 SEP 2014

PRIME MINISTER

10665

Reference: C14/57550

29 AUG 2014

Mr Bernie Geary OAM
 Commissioner for Children and Young People (Victoria)
 Australian Children's Commissioners and Guardians
 Level 20, 570 Bourke Street
 MELBOURNE VIC 3000

Dear Mr Geary

Thank you for your letter dated 2 July 2014 on behalf of all Australian Children's Commissioners and Guardians, regarding the Australian Government's commitment to reform overseas adoption. I note your concerns about the standards that apply to expatriate adoption.

The safety of children is paramount and the Australian Government wants to ensure that children seeking to enter Australia under partner and child visas are protected from being sponsored by people with convictions for child sex offences or other serious offences indicating that they might pose a significant risk to a child in their care.

As with other child visas, a person sponsoring the child must produce the results of an Australian national police check or foreign police check (if they have lived overseas in a country for more than 12 months in the last 10 years). If the check indicates that the sponsor has a conviction or outstanding charge for a registrable offence (such as a child sex offence) the sponsorship must be refused and an exemption can only be granted in extremely limited circumstances.

For all expatriate adoptions, the Department of Immigration and Border Protection will only grant a visa when the adoption laws of the child's home country have been complied with and the adoptive parents have acquired full and permanent parental rights by the adoption.

I have provided a copy of your letter to the Attorney-General, Senator the Hon George Brandis QC and the Minister for Immigration and Border Protection, the Hon Scott Morrison MP, and asked them to advise me on this issue.

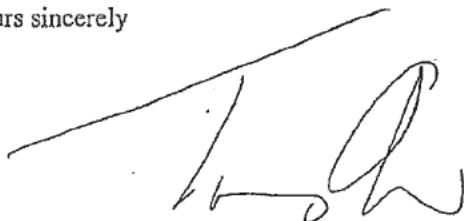
The Government acknowledges the importance of post-adoption support, and is working to improve support for all adopted people in Australia, including those adopted via expatriate adoption processes.

Parliament House CANBERRA ACT 2600
 Telephone (02) 6277 7700
www.pm.gov.au

Released by DIBP under the
 Freedom of Information Act 1982

I appreciate you bringing your concerns on this issue to my attention.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Tony Abbott', written in a cursive style.

TONY ABBOTT

Released by DIBP under the
Freedom of Information Act 1982

received in Department

12 SEP 2014



PRIME MINISTER

Priority	Reference: C14/57550
12 SEP 2014	
MCPD	

29 AUG 2014

The Hon Scott Morrison MP
Minister for Immigration and Border Protection
Parliament House
CANBERRA ACT 2600

Dear Minister

I write to seek your advice in response to a proposal put to me by the Commissioner for Children and Young People (Victoria) Mr Bernie Geary OAM on behalf of all Australian Children's Commissioners and Guardians, relevant to the government's commitment to reform overseas adoption.

Mr Geary wrote to me on 2 July 2014 proposing that the government should apply the requirements of the Hague Convention on Overseas Adoption that apply to Australian residents adopting a child from overseas (overseas adoption), to Australians living overseas and adopting a child from overseas (expatriate adoption) (attached).

The Commissioners express concern that the standards that apply to expatriate adoption are much less rigorous than the standards that apply to overseas adoption.

I seek your advice on options for addressing the issues the Commissioners raise in their proposal, in consultation with the Attorney-General, Senator the Hon George Brandis QC.

Yours sincerely

TONY ABBOTT

*noted
response
from Allen
Pearce*



**THE HON PETER DUTTON MP
MINISTER FOR IMMIGRATION
AND BORDER PROTECTION**

Ref No: MS15-000179

The Hon Tony Abbott MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

I write to update you on the Government's commitment to reform overseas adoption. The Department of Immigration and Border Protection continues to work closely with the Department of Social Services and the Attorney-General's Department on the issue of overseas adoption.

The expatriate adoption provisions are intended to assist Australian citizens, Australian permanent visa holders or eligible New Zealand citizens who are genuine long-term expatriates, and who do not have access to intercountry adoption under either the Hague Convention on Overseas Adoption or bilateral adoption arrangements, to apply for a permanent visa for their adopted child.

Although there are existing strict requirements for visa applications under the expatriate adoption provisions, I share the Commissioners' concern expressed to you that the requirements are less rigorous than those for intercountry adoptions. Adoptions where the state and territory authorities have no involvement in the adoption pose a higher risk of child abduction and trafficking.

As a first step to reduce the risk of child trafficking and address the concerns raised by the Commissioners, I propose to amend the *Migration Regulations 1994* so that applications cannot be made for visas where the adoption has taken place in a country that does not allow adopted children to leave or where adoption is unlawful. In order to implement this proposal, I have written to the Attorney-General to seek assistance and guidance to identify countries where full and permanent parental permission is not granted.

The Department will continue to engage closely with the Attorney-General's Department, the Department of Foreign Affairs and Trade and the Department of Social Services to explore and develop options to further improve the standards that apply to expatriate adoptions. I will continue to work with the Attorney-General and other stakeholders to address these issues.

Yours sincerely



PETER DUTTON 06/08/13



**THE HON PETER DUTTON MP
MINISTER FOR IMMIGRATION
AND BORDER PROTECTION**

Ref No: MS15-000179

Senator the Hon George Brandis QC
Attorney-General
Parliament House
CANBERRA ACT 2600

George,
Dear Attorney-General

I write to you to thank you for the support your Department has given regarding overseas adoption. The Prime Minister, the Hon Tony Abbott MP sought advice on reforming overseas adoption, in particular options for addressing the integrity concerns about expatriate adoptions.

The expatriate adoption provisions are intended to assist genuine long-term expatriate Australians, who do not have access to intercountry adoption under the Hague Adoption Convention or bilateral adoption arrangements, to apply for a permanent visa for their adopted child to enter Australia. For an adoption visa to be granted, it must be in the best interest of the child and the child's adoption must be lawful in the country of adoption.

As a first measure to reduce the risk of child trafficking, I propose to amend the *Migration Regulations 1994* so that applications for adoption visas cannot be made and accepted where the adoption has taken place in a country that does not allow the adopted child to be removed from that country or where intercountry adoptions are unlawful.

In order to implement this proposal, I seek assistance and guidance from you to identify countries where full and permanent parental permission is not granted and seek your continued support as our Departments work together to explore and develop other options to further improve the integrity standards that apply to expatriate adoption.

I will write to you again once our options are refined.

Yours sincerely

Peter Dutton
06/08/15
PETER DUTTON

Sensitive



The Hon Scott Morrison MP
Minister for Immigration and Border Protection

The Hon Tony Abbott MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

Council of Australian Governments (COAG) consideration of overseas adoptions

s47C

The Department of Immigration and Border Protection's role is to assess the visa or citizenship applications of children who are adopted, or in the process of being adopted, from outside Australia by Australian citizens or residents. s47C

s47C

In addition to my department's role in assessing visa and citizenship applications, under the *Immigration (Guardianship of Children) Act 1946* I personally am the legal guardian of certain children who enter Australia on adoption visas. As my department does not have oversight or direct care responsibilities in relation to adopted children, I have delegated most of my guardianship responsibilities to relevant state and territory agencies but retain ultimate legal responsibility for the care and welfare of these children. s4

7C

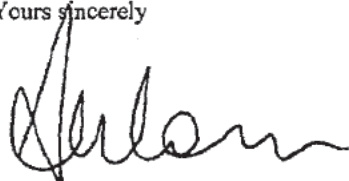
s47C

Sensitive

I would like to nominate either Dr Wendy Southern PSM, Deputy Secretary, Policy and Programme Management Group (wendy.southern@immi.gov.au and s22(1)(a)(ii)) or Mr Garry Fleming, First Assistant Secretary, Migration and Citizenship Policy Division (garry.fleming@immi.gov.au and s22(1)(a)(ii)) of the department to participate in the interdepartmental committee.

I have copied this letter to Senator the Hon Michaelia Cash, Assistant Minister for Immigration and Border Protection. Thank you again for seeking my comments on this matter.

Yours sincerely



The Hon Scott Morrison MP

Minister for Immigration and Border Protection

15/1/2014

IMMI 15/136



Commonwealth of Australia

*Migration Regulations 1994***ARRANGEMENTS FOR CHILD VISA APPLICATIONS 2015***(Subregulation 2.07(5), Items 1108, 1108A and 1211)*

I, **PETER DUTTON**, Minister for Immigration and Border Protection, acting under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations) for items 1108, 1108A and 1211 of Schedule 1 to the Regulations:

1. REVOKE Instrument Number IMMI 15/030, Arrangements for child visa applications 2015, signed on 16 April 2015 (F2015L00547).
2. SPECIFY, under subregulation 2.07(5) of the Regulations and subitems 1108(3) and 1108A(3) of Schedule 1 to the Regulations, in relation to an applicant claiming to have been adopted in an overseas country at a particular time to seek to meet the requirements in either subclauses 102.211(2) or 802.213(5):
 - a. the country listed in Column A of the table in the Schedule to this Instrument for the purposes of subparagraph 1108(3)(c)(ii) and subparagraph 1108A(3)(f)(ii) of Schedule 1 to the Regulations; and
 - b. the period specified in Column B of the table in the Schedule to this Instrument for the purposes of subparagraph 1108(3)(c)(iii) and subparagraph 1108A(3)(f)(iii) of Schedule 1 to the Regulations, in relation to the country listed in Column A.
3. SPECIFY, under subregulation 2.07(5) of the Regulations, for the purposes of subitems 1108(1) and 1108A(1) and for the purposes of paragraphs 1108(3)(a) and 1108A(3)(a) of Schedule 1 to the Regulations, the following approved forms and the place and manner in which an application must be made:

ITEM AND VISA	FORM	PLACE AND MANNER
ITEM 1108 – Child (Migrant) (Class AH) subclass 101 (Child) subclass 102 (Adoption) subclass 117 (Orphan Relative)	47CH	Application must be made outside Australia in accordance with the requirements set out in subregulation 2.10(2) of Part 2 of the Regulations.

IMMI 15/136

ITEM AND VISA	FORM	PLACE AND MANNER
ITEM 1108A – Child (Residence) (Class BT) Subclass 802 (Child) Subclass 837 (Orphan Relative)	47CH	(a) Application must be made in Australia but not in immigration clearance. (b) Application must be made by: (i) posting the application (with correct pre-paid postage) to: Department of Immigration and Border Protection Locked Bag 7 NORTHBRIDGE WA 6865 AUSTRALIA; OR (ii) having the application delivered by courier service to: Department of Immigration and Border Protection Wellington Central 836 Wellington Street WEST PERTH WA 6005 AUSTRALIA.

4. SPECIFY, under subregulation 2.07(5) of the Regulations, for the purposes of subitem 1211(1) and paragraph 1211(3)(a) of Schedule 1 to the Regulations, the following approved forms and place and manner in which an application must be made:

ITEM AND VISA	FORM	PLACE AND MANNER
ITEM 1211 – Extended Eligibility (Temporary) (Class TK) Subclass 445 (Dependent Child)	918	(a) Application by an applicant in Australia must be made by: (i) posting the application (with correct pre-paid postage) to: Department of Immigration and Border Protection Locked Bag 7 NORTHBRIDGE WA 6865 AUSTRALIA; OR (ii) having the application delivered by courier service to: Department of Immigration and Border

Released by DIBP under the
Freedom of Information Act 1982

IMMI 15/136

ITEM AND VISA	FORM	PLACE AND MANNER
		Protection Wellington Central 836 Wellington Street WEST PERTH WA 6005 AUSTRALIA. (b) Application by an applicant outside Australia must be made outside Australia in accordance with the requirements set out in subregulation 2.10(2) of Part 2 of the Regulations

This Instrument, Arrangements for Child Visa Applications 2015, IMMI 15/136 commences immediately after the commencement of *Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015*.

Dated: 10 December 2015



THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

IMMI 15/136

SCHEDULE

COLUMN A	COLUMN B
COUNTRY	SPECIFIED PERIOD
Pakistan	No limitation on time period

Released by DIBP under the
Freedom of Information Act 1982

IMMI 15/136

EXPLANATORY STATEMENT*Migration Regulations 1994***ARRANGEMENTS FOR CHILD VISA APPLICATIONS 2015***(Subregulation 2.07(5), Items 1108, 1108A and 1211)*

1. Instrument IMMI 15/136 is made under subregulation 2.07(5) of the Regulations, for the purposes of Items 1108, 1108A and 1211 of Schedule 1 to the *Migration Regulations 1994* (the Regulations).
2. The Instrument revokes IMMI Number 15/030 (F2015L00547), Application for child visa applications 2015, under subsection 33(3) of the *Acts Interpretation Act 1901*, which states where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. The purpose of the Instrument is to reflect changes that are being made to the items in the *Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015*.
4. The Instrument operates to:
 - a. specify approved forms for making valid applications, address for lodgement and the manner in which applications must be made for the purposes of subitems 1211(1) and paragraph 1211(3)(a) and subitems 1108(1) and 1108A(1) and paragraphs 1108(3)(a) and 1108A(3)(a) of Schedule 1 to the Regulations; and
 - b. address the validity of an application for an applicant seeking to meet the requirements of either subclause 102.211(2) and 802.213(5) of Schedule 2 to the Regulations:
 - i. for subitems 1108(3) and 1108A(3) of Schedule 1 to the Regulations, an application is not a valid application if the applicant is claiming to have been adopted:
 - A. in an overseas country specified in the instrument; and
 - B. in a period specified in the Instrument in relation to the specified overseas country.

Released by DIBP under the
Freedom of Information Act 1982

IMMI 15/136

5. Consultation was undertaken with the Department of Foreign Affairs and Trade (DFAT) and the Attorney-General's Department (AGD) before the Instrument was made.
6. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 18945).
7. Under section 44 of the *Legislative Instruments Act 2003*, the Instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
8. The Instrument commences immediately after the commencement of *Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015*.

Released by DIBP under the
Freedom of Information Act 1982

Released by DIBP under the
Freedom of Information Act 1982

Sensitive: Legal

Australian Government

Department of Immigration and Border Protection

Submission

For information / For decision

PDMS Ref. Number MS16-002821

To Assistant Minister for Immigration and Border Protection

Subject Legislative Instrument update: specifying subclasses of visas that a person must hold for their dependent child to make a valid Dependent Child (subclass 445) visa application

Timing Please action by 9 September.

**Recommendations**

That you:

1. sign the Legislative Instrument IMMI 16/051 at Attachment A; signed / not signed
- and
2. approve the Explanatory Statement IMMI 16/051 at Attachment B. approved / not approved

Assistant Minister for Immigration and Border Protection

Signature.....

Date: 1/9/2016

 Released by DIBP under the
Freedom of Information Act 1982
Sensitive: Legal

Sensitive: Legal

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. The key issue is that an existing Legislative Instrument IMMI 15/136 does not invalidate applications for a Dependent Child (subclass 445) visa where the child is not the dependent child of a parent who is the holder of a certain visa (known as a 'visa holding parent').
2. This was previously provided for in the *Migration Regulations 1994* (the Regulations) but was not carried through to the later Legislative Instrument drafting process.
3. Should you agree to sign the Legislative Instrument at Attachment A, it will have the effect of reinstating the list of visas that a parent must hold in order for a dependent child to make a valid application for a Dependent Child visa. The associated Explanatory Statement for Legislative Instrument IMMI 16/051 is at Attachment B.

Background

4. A Dependent Child visa (subclass 445) is a temporary visa for the dependent child of a parent who holds a certain subclass of temporary Partner visa where the child does not already hold the same temporary Partner visa. If the Dependent Child visa is granted, the child is required to make an application for the same class of permanent Partner visa as their visa holding parent before a decision is made on that parent's permanent Partner visa application.
5. The subclasses of Partner visas that must be held by the visa holding parent was specified in Schedule 1 of the Regulations prior to the commencement of Legislative Instrument IMMI 15/030 on 18 April 2015. This allowed the Department to invalidate an application for a Dependent Child visa if the applicant's parent did not hold a specified temporary Partner visa. The visa application charge (VAC) could be refunded, and the child would instead be able to lodge an application for another type of visa, such as a Child visa.
6. During the drafting of Legislative Instrument IMMI 15/030, the list of specified Partner visa subclasses was erroneously omitted. As a result, an application for a Dependent Child visa if the applicant's parent does not hold a specified Partner visa is not invalid.

 Released by DIBP under the
 Freedom of Information Act 1982

Sensitive: Legal

7. Such applications must be processed, and then refused, under Schedule 2 of the Regulations, with no refund of the VAC. The child must then lodge an application for another type of visa, such as a Child visa, and pay the associated VAC – effectively paying two VACs.
8. In December 2015, IMMI 15/030 was revoked by the introduction of the Legislative Instrument (IMMI 15/136) which lists Pakistan as a country from which claimed adoptions cannot be recognised for the purposes of permanent migration to Australia. However, the issue of the missing subclasses was not addressed at this time.

Consultation – internal/external

9. Internal: Director Family Migration Programme Management Section and Director Legislative Services and Legend Section.
10. External: No external consultation as this update is intended to fix an administrative error.

Consultation – Secretary

11. The Secretary was not consulted on the approach in the submission.

Client service implications

s47C

Sensitivities

13. N/A

Financial

14. Nil.

Attachments

Attachment A Legislative Instrument (IMMI 16/051)

Attachment B Explanatory Statement (IMMI 16/051)

Authorising Officer	
Cleared by:	
Greg Phillipson Assistant Secretary Legislation & Framework	
Date: 25/08/2016	
Ph: s22(1)(a)(ii)	
Contact Officer , s22(1)(a)(ii)	Legislative Services and LEGEND, Legislation and Framework Branch, Ph: s22(1)(a)(ii)

Released by DIBP under the
Freedom of Information Act 1982

Sensitive: Legal

CC

Minister for Immigration and Border Protection
Secretary
Deputy Secretaries
FAS Visa and Citizenship Management
AS Humanitarian Family and Citizenship Policy
AS Permanent Visa and Citizenship Programme
AS Child Protection and Wellbeing

Released by DIBP under the
Freedom of Information Act 1982

Sensitive: Legal



Commonwealth of Australia

Migration Regulations 1994

ARRANGEMENTS FOR CHILD VISA APPLICATIONS 2016/051

(Subregulation 2.07(5), Items 1108, 1108A and 1211)

I, *ALEX HAWKE*, Assistant Minister for Immigration and Border Protection, acting under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations) for items 1108 Child (Migrant)(Class AH) , 1108A Child (Residence) (Class BT) and 1211 Extended Eligibility (Temporary) (Class TK) of Schedule 1 to the Regulations:

1. REVOKE Instrument IMMI 15/136 (F2015L01963), Arrangements for Child Visa Applications 2015, signed on 10 December 2015; and
2. SPECIFY that an application for a Child (Migrant)(Class AH) visa is not a valid visa application if the applicant seeks to meet the requirements in subclause 102.211(2) of Schedule 2 to the Regulations and by claiming to have been adopted in an overseas country at a particular time; and
 - a. for the purposes of subparagraph 1108(3)(c)(ii) of Schedule 1 to the Regulations, the country listed in Column A of the table in the Schedule to this Instrument; and
 - b. for the purposes of subparagraph 1108(3)(c)(iii) of Schedule 1 to the Regulations, the period specified in Column B of this Instrument in relation to the country, is the time referred to in paragraph 2 of the Instrument.
3. SPECIFY that an application for a Child (Residence)(Class BT) visa is not a valid visa application if the applicant seeks to meet the requirements in subclause 802.213(5) of Schedule 2 to the Regulations and by claiming to have been adopted in an overseas country at a particular time; and
 - a. for the purposes of subparagraph 1108A(3)(f)(ii) of Schedule 1 to the Regulations, the country listed in Column A of the table in the Schedule to this Instrument; and
 - b. for the purposes of subparagraph 1108A(3)(f)(iii) of Schedule 1 to the Regulations, the period specified in Column B of this Instrument in relation to the country, is the time referred to in paragraph 3 of the Instrument.
4. SPECIFY, under subregulation 2.07(5) of the Regulations, for the purposes of:
 - a. subitems 1108(1) and 1108A(1) of Schedule 1 to the Regulations, the approved form listed in following table; and
 - b. paragraphs 1108(3)(a) and 1108A(3)(a) of Schedule 1 to the Regulations, the

place and the manner in which an application must be made listed in the following table:

Item and Visa	Form	Place and Manner
Item 1108 <i>Child (Migrant) (Class AH)</i> Subclass 101 (Child) Subclass 102 (Adoption) Subclass 117 (Orphan Relative)	47CH	Application must be made outside Australia in accordance with the requirements set out in subregulation 2.10(2) of Part 2 of the Regulations.
Item 1108A <i>Child (Residence) (Class BT)</i> Subclass 802 (Child) Subclass 837 (Orphan Relative)	47CH	a) Application must be made in Australia but not in immigration clearance: b) Application must be made by: <ul style="list-style-type: none"> i) posting the application (with correct pre-paid postage) to: Department of Immigration and Border Protection Locked Bag 7 NORTHBRIDGE WA 6865 AUSTRALIA; or ii) having the application delivered by courier service to: Department of Immigration and Border Protection Wellington Central 836 Wellington Street WEST PERTH WA 6005 AUSTRALIA.

5. SPECIFY, under subregulation 2.07(5) of the Regulations, for the purposes of:
- a. subitem 1211(1) of Schedule 1 to the Regulations, the approved form listed in following table; and
 - b. paragraph 1211(3)(a) of Schedule 1 to the Regulations, the place and the manner in which an application must be made listed in the following table:

IMMI 16/051

Item and Visa	Form	Place and Manner
<p>Item 1211 <i>Extended Eligibility</i> <i>(Temporary)</i> <i>(Class TK)</i></p> <p>Subclass 445 (Dependent Child)</p>	918	<p>a) Application by the dependent child of a holder of a visa of Subclass 309, 310, 445, 820, or 826 in Australia must be made by:</p> <p>i) posting the application (with correct pre-paid postage) to:</p> <p>Department of Immigration and Border Protection Locked Bag 7 NORTHBRIDGE WA 6865 AUSTRALIA; or</p> <p>ii) having the application delivered by courier service to:</p> <p>Department of Immigration and Border Protection Wellington Central 836 Wellington Street WEST PERTH WA 6005 AUSTRALIA.</p> <p>b) Application by the dependent child of a holder of a visa of Subclass 309, 310, 445, 820 or 826 outside Australia must be made outside Australia.</p>

This Instrument, Arrangements for Child Visa Applications 2016/051, IMMI 16/051, commences the day after it is registered on the Federal Register of Legislation

Dated:

1 September

2016



THE HON ALEX HAWKE MP
 Assistant Minister for Immigration and Border Protection

Released by DIBP under the
 Freedom of Information Act 1982

IMMI 16/051

SCHEDULE

Column A COUNTRY	Column B SPECIFIED PERIOD
Pakistan	No limitation on time period

Released by DIBP under the
Freedom of Information Act 1982

IMMI 16/051

EXPLANATORY STATEMENT*Migration Regulations 1994***ARRANGEMENTS FOR CHILD VISA APPLICATIONS 2016/051***(Subregulation 2.07(5), Items 1108, 1108A and 1211)*

1. Instrument IMMI 16/051 is made under subregulation 2.07(5) of the Regulations, for the purposes of Items 1108, 1108A and 1211 of Schedule 1 to the *Migration Regulations 1994* (the Regulations).
2. The Instrument revokes IMMI 15/136 (F2015L01963) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, which states where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. The purpose of the Instrument is for the Minister to specify that Item 1211 – Extended Eligibility (Temporary) (Class TK) - Subclass 445 visa applications must be made by the dependent child of a holder of a visa of Subclass 309, 310, 445, 820, or 826 in the place and the manner specified in the Instrument.
4. The Instrument operates for the Minister to specify that an application for a Subclass 102 (Adoption) visa and a Subclass 802 (Child) visa under paragraph 1108A(3)(f) of Schedule 1 to the Regulations or paragraph 1108(3)(c) of Schedule 1 to the Regulations, cannot be a valid application if the applicant is claiming to have been adopted in the specified overseas country(ies) at the specified particular time(s).
5. The Instrument also operates for the Minister to specify under 2.07(5) of the Regulations:
 - a. the approved form for making an application for an item 1108 Child (Migrant) (Class AH) visa or an item 1108A Child (Residence) (Class BT) or an item 1211 Extended (Temporary) (Class TK) visa;

 Released by DIBP under the
 Freedom of Information Act 1982

IMMI 16/051

- b. the way in which an application for an item 1108 Child (Migrant) (Class AH) visa or an item 1108A Child (Residence) (Class BT) or an item 1211 Extended (Temporary) (Class TK) visa must be made; and
 - c. the place at which an application for an item 1108 Child (Migrant) (Class AH) visa or an item 1108A Child (Residence) (Class BT) or an item 1211 Extended (Temporary) (Class TK) visa must be made.
- 6. In accordance with paragraph 15J(2)(e) of the *Legislation Act 2003* consultation was not necessary. The Instrument is of a minor or machinery nature and does not substantially alter existing arrangements
 - 7. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 18945).
 - 8. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the Instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
 - 9. The Instrument commences on the day after registration on the Federal Register of Legislation.