

**EXPLANATORY STATEMENT***Migration Regulations 1994***Migration (IMMI 18/010: Evidence of financial capacity for Subclass 500 (Student) visas and Subclass 590 (Student Guardian) visas) Instrument 2018**

*(Subclauses 500.214(4), 500.313(4) and 590.216(4) of Schedule 2)*

1. Instrument IMMI 18/010 is made under subclauses 500.214(4), 500.313(4) and 590.216(4) of Schedule 2 to the Migration Regulations 1994 (the Regulations).
2. Instrument IMMI 18/010 repeals IMMI 17/012 (F2017L00267) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (Interpretation Act). Subsection 33(3) of the Interpretation Act 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. For an applicant seeking to satisfy: the primary criteria for a Subclass 500 (Student) visa (subclass 500 visa); the secondary criteria for a subclass 500 visa; or the primary criteria for a Subclass 590 (Student Guardian) visa (subclass 590 visa), the Minister may require the applicant to give to the Minister evidence of financial capacity that satisfies specified requirements. The operation of IMMI 18/010 is to specify requirements an applicant must meet.
4. The purpose of instrument IMMI 18/010 is to:
  - a. specify that an applicant seeking to satisfy the primary criteria for a subclass 590 visa must provide evidence of sufficient funds to meet the costs and expenses of the nominating student, including travel expenses, living costs and course fees; and
  - b. specify that, for an applicant for a primary subclass 500 visa, where the applicant's course is longer than 12 months, but the applicant has less than 12 months remaining, the applicant only needs to show evidence of unpaid course fees to cover the remaining components of the course of study; and

- c. update, in line with CPI increases, annual living costs to be:
  - i. for a primary applicant, AUD 20,290;
  - ii. for a spouse or de facto partner of the primary applicant, AUD 7,100; and
  - iii. for a dependent child, AUD 3,040.
  
- 5. In addition to this, the purpose of IMMI 18/010 is to present the requirements for subclauses 500.214(4), 500.313(4) and 590.216(4) of Schedule 2 to the Regulations, previously in IMMI 17/012, in a new structure and to provide greater clarification, including to:
  - a. clarify that evidence of sufficient funds to meet course fees is only required in relation to course fees that have not already been paid; and
  - b. clarify that, for a primary applicant for a subclass 500 visa, course fees are to be calculated in relation to the applicant's period of study, being the period commencing on either the first day of the applicant's first course of study or the date of application (whichever date is last) and ending on the final day of the applicant's final course of study; and
  - c. clarify that the primary applicant's or nominating student's course fees required to be shown by an applicant for a subsequent secondary subclass 500 visa or a primary subclass 590 visa are the unpaid course fees that will be incurred during the period that the subsequent secondary 500 visa applicant or primary subclass 590 visa applicant will be in Australia; and
  - d. clarify that an applicant for a subclass 500 visa or a subclass 590 visa, is required to provide evidence of sufficient funds to cover school fees for a 'school-age dependant' as defined by the Regulations;
  - e. clarify the evidence of financial capacity that is required to be provided to the Minister by the following applicants:

- i. a secondary applicant for a subclass 500 visa who is making a combined application with the primary student visa holder, where the primary student visa holder has not provided a letter of support from DFAT or Department of Defence, and the secondary applicant does not provide evidence of their parent, spouse or de facto partner's income; and
    - ii. a secondary applicant for a subclass 500 visa who is making an application that is not combined with the primary student visa holder's application, where the primary student visa holder has not provided a letter of support from DFAT or Department of Defence, and the secondary applicant does not provide evidence of their parent, spouse or de facto partner's income; and
    - iii. a secondary applicant for a subclass 500 visa who is making an application that is not combined with the primary student visa holder's application, where the primary student visa holder has provided a letter of support from DFAT or Department of Defence, but this letter of support does not indicate that the relevant department will meet the living costs and expenses of each secondary applicant, and the secondary applicant does not provide evidence of their parent, spouse or de facto partner's income; and
  - f. clarify that the evidence of annual income provided to the Minister must demonstrate that the annual income amount evidenced, is the annual income amount earned by the parent, spouse or de facto partner of the applicant in the 12 months immediately before the application was made.
6. Instrument IMMI 18/010 reflects the policy intention of the Australian Government's simplified student visa framework, which was implemented on 1 July 2016. In developing this framework, consultation was undertaken with key international education sector stakeholders. Stakeholders consulted included: Commonwealth agencies (the Department of Education and Training, Austrade, the Department of Foreign Affairs and Trade, the Department of Defence, the Australian Skills Quality Authority (ASQA), and the Tertiary Education Quality and Standards Agency (TEQSA)), State and Territory government agencies (including school regulators), as well as industry peak bodies (Australian Council for Private Education and Training,

Australian Government Schools International, Council of Private Higher Education, English Australia, Independent Schools Council of Australia, International Education Association of Australia, TAFE Directors Australia, and Universities Australia).

7. Further consultation was undertaken with stakeholders (except ASQA and TEQSA) at the Education Visa Consultative Committee on 18 August 2017, specifically noting updates to annual living cost amounts.
8. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 22595).
9. The Senior Executive Service, Band Two, Immigration and Citizenship Policy Division was delegated the powers in subclauses 500.214(4), 500.313(4) and 590.216(4) in instrument of delegation DEL 17/077, signed on 9 November 2017.
10. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance. A Statement of Compatibility with Human Rights is therefore not required.
11. The instrument IMMI 18/010 commences on 1 February 2018.