

EXPLANATORY STATEMENT*Migration Regulations 1994***EVIDENCE OF FINANCIAL CAPACITY FOR SUBCLASS 500 (STUDENT) VISAS
AND SUBCLASS 590 (STUDENT GUARDIAN) VISAS 2017/012**

(Subclauses 500.214(4), 500.313(4) and 590.216(4))

1. Instrument IMMI 17/012 is made under subclauses 500.214(4), 500.313(4) and 590.216(4) of the *Migration Regulations 1994* (the Regulations).
2. The Instrument revokes IMMI 16/018 (F2016L00639) under subitem 1222(5) of the Regulations and 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. Applicants seeking to satisfy the primary criteria of a Subclass 500 (Student) visas or a Subclass 590 (Student Guardian) visa must maintain genuine access to sufficient funds to meet the costs and expenses of the applicant during the applicant's intended stay in Australia and the costs and expenses of each member of the applicants family unit (if any) who will be in Australia. The operation of the Instrument is to specify evidence of this financial capacity.
4. The purpose of this new Instrument is for the Minister to further:
 - a. specify that the income of a primary applicant's de facto partner may be used as evidence of financial capacity;
 - b. specify that an applicant seeking to satisfy the primary criteria of Subclass 590 (Student Guardian) visa must provide evidence of financial capacity to meet the costs of the nominating student's course fees, travel expenses and living costs;

- c. allow for a pro rata equivalent of the specified annual amounts for living costs where an applicant's intended stay in Australia is for a period that is less than 12 months; and
 - d. specify that students sponsored by the Department of Foreign Affairs or the Department of Defence may provide evidence of having sufficient funds to meet the costs and expenses of the student and associated family members by providing a letter of support from the relevant department.
5. The Instrument reflects the policy intention of the Australian Government's simplified student visa framework (SSVF). 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, and the Tertiary Education Quality and Standards Agency), 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).
6. Prior to the Instrument being made, further consultation was undertaken with the Education Visa Consultative Committee (EVCC). EVCC facilitates consultation between the Department of Immigration and Border Protection and international education sector stakeholders, non-government peak bodies, states and territories, representatives of business and unions, and other Australian Government agencies.
7. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference 21118).
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 it is registered on the Federal Register of Legislation.