

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (LIN 19/198: Evidence of financial capacity—Subclass 500 Visa and Subclass 590 Visa) Instrument 2019

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

1. The instrument LIN 19/198 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. The instrument repeals IMMI 18/010 (F2018L00032) 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 LIN 19/198 is to specify requirements an applicant must meet.
4. The purpose of instrument LIN 19/198 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. specify 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

- d. specify 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 Subclass 500 visa applicant or primary Subclass 590 visa applicant will be in Australia; and
- e. specify 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;
- f. specify 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 Department of Foreign Affairs and Trade (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

- g. specify 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.
5. The instrument operates to update the following annual living costs and expenses from the previous instrument IMMI 18/010, in line with the Consumer Price Index (CPI) increases from June 2017 to June 2019. Adjustments in the CPI are provided by the Australian Bureau of Statistics:
 - a. for a primary applicant:
an increase from AUD20,290 to AUD21,041;
 - b. for a spouse or de facto partner of the primary applicant:
an increase from AUD7,100 to AUD7,362;
 - c. for a dependent child:
an increase from AUD3,040 to AUD3,152;
 - d. annual school costs:
an increase from AUD8,000 to AUD8,296;
 - e. personal annual income if there is no secondary applicant:
an increase from AUD60,000 to AUD62,222;
 - f. personal annual income where there is a secondary applicant:
an increase from AUD 70,000 to AUD72,592
6. Consultation was undertaken with the Australian Bureau of Statistics.
7. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25197).
8. The First Assistant Secretary, Senior Executive Service, Band Two of the Immigration and Community Protection Policy Division was delegated the powers in subclauses 500.214(4), 500.313(4) and 590.216(4) in *Instrument Making Powers (Minister) Instrument 2019* (LIN 19/022), signed on 1 July 2019.

9. Under paragraph 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is not subject to disallowance. A Statement of Compatibility with Human Rights is therefore not required.
10. The instrument commences on the day after registration on the Federal Register of Legislation.