



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

I, Michael Willard, Delegate of the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, make the following legislative instrument.

Dated 4 October 2019

Michael Willard
Michael Willard
Acting Senior Executive Service, Band Two and
Delegate of the Minister for Immigration, Citizenship, Migrant Services and Multicultural
Affairs

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Part 1- Preliminary

1 Name

- (1) This instrument is the *Migration (LIN 19/198: Evidence of financial capacity—Subclass 500 Visa and Subclass 590 Visa) Instrument 2019*.
- (2) This instrument may be cited as LIN 19/198.

2 Commencement

This instrument commences **on the day after registration** on the Federal Register of Legislation.

3 Authority

This instrument is made under the following subclauses of Schedule 2 to the Regulations:

- (a) 500.214(4);
- (b) 500.313(4);
- (c) 590.216(4).

4 Definitions

Note 1: A number of expressions used in this instrument are defined in the Regulations including the following:

AASES form;
course of study;
Defence student;
dependent child;
financial institution;
Foreign Affairs student;
nominating student;
school-age dependant;
student visa.

Note 2: A number of expressions used in this instrument are defined in the Act including the following:

de facto partner;
member of the family unit;
spouse.

In this instrument:

Act means the *Migration Act 1958*.

primary applicant means an applicant seeking to satisfy the primary criteria for a Subclass 500 (Student) visa.

primary Student Guardian applicant means an applicant seeking to satisfy the primary criteria for a Subclass 590 (Student Guardian) visa.

primary student visa holder means a person of whom the secondary applicant is a member of the family unit, and who holds a student visa on the basis of satisfying the primary criteria for that visa.

Regulations means the *Migration Regulations 1994*.

secondary applicant means an applicant seeking to satisfy the secondary criteria for a Subclass 500 (Student) visa.

secondary Student Guardian applicant means an applicant seeking to satisfy the secondary criteria for a Subclass 590 (Student Guardian) visa.

secondary student visa holder means a person who holds a student visa on the basis of satisfying the secondary criteria for that visa because they are a member of the family unit of the Primary Student Visa Holder.

5 Schedules

The instrument that is specified in Schedule 1 to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Part 2—Requirements for applicants

6 Subclause 500 (Student) visa—primary applicants

- (1) For the purposes of subclause 500.214(3) of Schedule 2 to the Regulations, a primary applicant must give to the Minister evidence of financial capacity that satisfies the requirements of subsections (2), (3), (4), (5) or (6).

Note: For *primary applicant*, see section 4 of Part 1 to this instrument.

- (2) The evidence of financial capacity
 - (a) is in the form specified in section 10; and
 - (b) demonstrates that the primary applicant has sufficient funds available to meet the following costs and expenses of the primary applicant:
 - (i) travel expenses; and
 - (ii) the following **living costs** and expenses:
 - (A) if the primary applicant intends to stay in Australia for a period of 12 months or more – **AUD21,041 (annual living costs)**; and
 - (B) if the primary applicant intends to stay in Australia for a period of less than 12 months – the pro rata equivalent of **annual living costs**, calculated as specified in section 11; and
 - (iii) the following course fees, minus any amount already paid:
 - (A) if the duration, or the remainder, of the primary applicant’s period of study in Australia is less than 12 months – the fees for the course of study or the remaining components of the course of study; or
 - (B) If the duration, or the remainder, of the primary applicant’s period of study in Australia is more than 12 months – course fees for the first 12 months of the period study in Australia; and

Note : The period of study is the period beginning at one of the following commencement periods and ending on the final day of the applicant’s final course of study:

- (a) if the applicant’s first course of study commenced after the date of application – on the first day of the first course of study; or
- (b) if the applicant’s first course of study commenced before the date of application – on the date of application.

() demonstrates that the primary applicant has sufficient funds available to meet the following costs and expenses of each secondary applicant making a combined application with the primary applicant:

- (i) travel expenses; and

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- (ii) for each secondary applicant who intends to stay in Australia for a period of 12 months or more – the following costs (**annual living costs**):
- (A) for a spouse or de facto partner - AUD7,362 and
 - (B) for a dependent child - AUD3,152; and
- (iii) for each secondary applicant who intends to stay in Australia for a period of less than 12 months – the pro rata equivalent of **annual living costs**, calculated as specified in section 11; and
- (iv) the following **school fees for each school-age dependant**:
- (A) if the school-age dependant intends to stay in Australia for more than 12 months - AUD8,296 (**annual school costs**); or
 - (B) if the school-age dependant intends to stay in Australia for less than 12 months – the pro rata equivalent of **annual school costs**, calculated as specified in section 11; or
 - (C) if the school-age dependant is enrolled in a course of study at a State or Territory government school where the fees have been waived, and **the Primary Applicant is enrolled in a course as a doctoral degree student**, a Foreign Affairs student, a Defence student or a Commonwealth sponsored student – **nil**.

Note: For **secondary applicant**, see section 4 of Part 1 to this instrument

- (3) The evidence of financial capacity:
- (a) is official Government documentation of **personal income that has been issued in the 12 months immediately before the application is made**; and
 - (b) demonstrates that the primary applicant's **parent, spouse or de facto partner** has a personal annual income, in the 12 months immediately before the application is made, that is:
 - (i) **if there is no secondary applicant – at least AUD62,222; or**
 - (ii) **if there is a secondary applicant – at least AUD72,592.**
- (4) The evidence of financial capacity is the primary applicant's completed AASES form.

Note: **AASES form** is defined in regulation 1.03 of the Regulations to mean for a secondary exchange student, an Acceptance Advice of Secondary Exchange Student form from the relevant State or Territory education authority, containing the following declarations:

- (a) a declaration made by the student's exchange organisation, accepting the student;
- (b) a declaration made by the student's parent, or the person or persons having custody of the student, agreeing to the exchange.

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- (5) If the primary applicant is a Foreign Affairs student – the evidence of financial capacity is a letter of support from the Department of Foreign Affairs and Trade.
 - (6) If the primary applicant is a Defence student – the evidence of financial capacity is a letter of support from the Department of Defence.

7 Subclause 500 (Student) visa—secondary applicants

- (1) For the purposes of subclause 500.313(3) of Schedule 2 to the Regulations, a secondary applicant who is included in the primary student visa holder's application, must give to the Minister evidence of financial capacity that satisfies the requirements of subsection (2), (3), (4), (5) or (6).
- (2) The evidence of financial capacity:
 - (a) is in the form specified in section 10; and
 - (b) demonstrates that sufficient funds are available to meet the costs and expenses of the primary student visa holder set out in subparagraphs 6(2)(b)(i) to (iii) of this Part; and
 - (c) demonstrates that sufficient funds are available to meet the costs and expenses of each secondary applicant making a combined application with the primary student visa holder specified in paragraphs 6(2)(c)(i) to (iv) of this Part.
- (3) **The evidence of financial capacity:**
 - (a) **is official Government documentation of personal income that has been issued in the 12 months immediately before the application is made; and**
 - (b) **demonstrates that the primary student visa holder's parent, spouse or de facto partner has a personal annual income that is at least AUD72,592.**
- (4) If the primary student visa holder is a Foreign Affairs student and has provided a letter of support mentioned in subsection 6(5) of this Part – the evidence of financial capacity is the letter of support if the letter of support indicates that the Department of Foreign Affairs and Trade will meet the living costs and expenses of each secondary applicant.
- (5) If the primary student visa holder is a Defence student and has provided a letter of support mentioned in subsection 6(6) of this Part – the evidence of financial capacity is the letter of support if the letter of support indicates that the Department of Defence will meet the living costs and expenses of each secondary applicant.

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- (6) If:
- (a) the primary student visa holder is a Foreign Affairs student or a Defence student and has provided a letter of support mentioned in subsection 6(5) or (6) of this Part; but
 - (b) the letter of support does not indicate that the relevant department will meet the living costs and expenses of each secondary applicant;
- then the evidence of financial capacity:
- (c) demonstrates that sufficient funds are available to meet the costs and expenses of the secondary applicant specified in paragraphs 6(2)(c)(i) to (iv) of this Part.

8 Subclass 500 (Student) visa – secondary applicants **not included in the primary student visa holder’s application**

- (1) For the purposes of subclause 500.313(3) of Schedule 2 to the Regulations, a secondary applicant (*the first secondary applicant*), who is not included in the primary student visa holder’s application, must give to the Minister evidence of financial capacity that satisfies the requirements of subsection (2), (3), (4), (5) or (6).
- (2) The evidence of financial capacity:
 - (a) is in the form specified in section 10; and
 - (b) demonstrates that sufficient funds are available to meet the costs and expenses of the primary student visa holder specified in subparagraph 6(2)(b)(ii) of this Part; and
 - (c) demonstrates that sufficient funds are available to meet course fees for any component of the primary student visa holder’s course of study which will be completed while *the first secondary applicant* is in Australia, up to an amount equivalent to fees for 12 months of the course of study, minus any amount already paid; and
 - (d) demonstrates that sufficient funds are available to meet the costs and expenses of each secondary student visa holder and that *the first secondary applicant* has sufficient funds available to meet their own costs and expenses, and the costs and expenses of each additional secondary applicant making a combined application with *the first secondary applicant*, specified in subparagraphs 6(2)(c)(ii) to (iv) of this Part; and
 - (e) demonstrates that *the first secondary applicant* has sufficient funds available to meet their own travel expenses and the travel expenses of all additional secondary applicants making a combined application with *the first secondary applicant*.

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- (3) The evidence of financial capacity:
- (a) is official Government documentation of personal income that has been issued in the 12 months immediately before the application is made; and
 - (b) demonstrates that **the primary student visa holder's parent, spouse or de facto partner has a personal annual income that is at least AUD72,592.**
- (4) If the primary student visa holder is a Foreign Affairs student and has provided a letter of support mentioned in subsection 6(5) of this Part – the evidence of financial capacity is the letter of support if the letter of support indicates that the Department of Foreign Affairs and Trade will meet the living costs and expenses of each secondary applicant.
- (5) If the primary student visa holder is a Defence student and has provided a letter of support mentioned in subsection 6(6) of this Part – the evidence of financial capacity is the letter of support if the letter of support indicates that the Department of Defence will meet the living costs and expenses of each secondary applicant.
- (6) If:
- (a) the primary student visa holder is a Foreign Affairs student or a Defence student and has provided a letter of support mentioned in subsection 6(5) or (6) of this Part; but
 - (b) the letter of support does not indicate that the relevant department will meet the living costs and expenses of each secondary applicant;
- then the evidence of financial capacity:
- (c) demonstrates that sufficient funds are available to meet the costs and expenses of each secondary student visa holder and that ***the first secondary applicant*** has sufficient funds available to meet their own costs and expenses, and the costs and expenses of each additional secondary applicant making a combined application with ***the first secondary applicant***, specified in subparagraphs 6(2)(c)(ii) to (iv) of this Part; and
 - (d) demonstrates that ***the first secondary applicant*** has sufficient funds available to meet their own travel expenses and the travel expenses of all secondary applicants making a combined application with the ***first secondary applicant***.

9 Subclass 590 (Student Guardian) visa – primary applicants

- (1) For the purposes of subclause 590.216(3) of Schedule 2 to the Regulations, a primary Student Guardian applicant must give to the Minister evidence of financial capacity that satisfies the requirements of subsection (2) or (3).

Note: *For primary Student Guardian applicant*, see section 4 of Part 1 of this instrument.

- (2) The evidence of financial capacity:
- (a) is in the form specified in section 10; and
 - (b) demonstrates that the primary Student Guardian applicant has sufficient funds available to meet the following costs and expenses of the primary Student Guardian applicant:
 - (i) travel expenses; and
 - (ii) the following living costs and expenses:
 - (A) if the primary Student Guardian applicant intends to stay in Australia for a period of 12 months or more – AUD21,041 (*annual living costs*); and
 - (B) if the primary Student Guardian applicant intends to stay in Australia for a period of less than 12 months – the pro rata equivalent of *annual living costs*, calculated as specified in section 11; and
 - (c) demonstrates that the primary Student Guardian applicant has sufficient funds available to meet the following costs and expenses of the nominating student:
 - (i) travel expenses; and
 - (ii) the following living costs and expenses:
 - (A) if the primary Student Guardian applicant intends to stay in Australia for a period of 12 months or more – AUD21,041 (*annual living costs*); and
 - (B) if the primary Student Guardian applicant intends to stay in Australia for a period of less than 12 months – the pro rata equivalent of *annual living costs*, calculated as specified in section 11; and
 - (iii) course fees for any component of the nominating student’s course of study which will be completed while the primary Student Guardian applicant is in Australia, up to an amount equivalent to fees for 12 months of the course of study, minus any amount already paid; and

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- (d) demonstrates that the primary Student Guardian applicant has sufficient funds available to meet the following costs and expenses of each secondary Student Guardian applicant:
- (i) travel expenses; and
 - (ii) for each secondary applicant who intends to stay in Australia for a period of 12 months or more – the following costs (**annual living costs**):
 - (A) for a spouse or de facto partner – AUD7,362; and
 - (B) for a dependent child – AUD3,152; and
 - (iii) for each secondary applicant who intends to stay in Australia for a period of less than 12 months – the pro rata equivalent of **annual living costs**, calculated as specified in section 11; and
 - (iv) the following school fees for each school-age dependant:
 - (A) if the school-age dependant intends to stay in Australia for more than 12 months – AUD8,296 (**annual school costs**); or
 - (B) if the school-age dependant intends to stay in Australia for less than 12 months – the pro rata equivalent of **annual school costs**, calculated as specified in section 11; or
 - (C) if the school-age dependant is enrolled in a course of study at a State or Territory government school where the fees have been waived, and the Primary Applicant is enrolled in a course as a doctoral degree student, a Foreign Affairs student, a Defence student or a Commonwealth sponsored student – nil.

Note: For **secondary Student Guardian applicant**, see section 4 of Part 1 of this instrument.

- (3) The evidence of financial capacity:
- (a) is official Government documentation of personal income that has been issued in the 12 months immediately before the application is made; and
 - (b) demonstrates that the primary Student Guardian applicant's spouse or de facto partner has a personal annual income that is at least AUD72,592.

10 Evidence of financial capacity

The following forms of evidence of financial capacity are specified:

- (a) **money deposit with a financial institution;**
- (b) loan with a financial institution;
- (c) government loans;

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- (d) scholarship or financial support.

11 Pro rata equivalent

In this Part, the pro rata equivalent of annual costs is calculated by:

- (a) dividing the annual amount by 365; and
- (b) multiplying the resulting number by the number of days the applicant is intending to stay in Australia.

Schedule 1—Repeals

Migration (IMMI 18/010: Evidence of financial capacity for Subclass 500 (Student) visas and Subclass 590 (Student Guardian) visas) Instrument 2018 (F2018L00032)

1 The whole of the instrument

Repeal the instrument

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.