

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment,
Education and Training

STATUTORY RULES 1987 NO. 305 STUDENT ASSISTANCE REGULATIONS (AMENDMENT)

OUTLINE

1. The Student Assistance Act 1973 ("the Act") provides the legislative basis for AUSTUDY and for Post-graduate Awards. The present Statutory Rules amend the Student Assistance Regulations ("the Regulations") that have been made under section 36 of the Act.
2. The amendments provide for the following changes:
 - (i) increase the AUSTUDY living allowance and income test levels;
 - (ii) provide that the AUSTUDY tests on spouse's and parental income are to apply on the basis of taxable income;
 - (iii) increase the dependent child deduction allowed under the AUSTUDY parental income test;
 - (iv) extend the cases in which the AUSTUDY parental income test is modified by the sibling concession;
 - (v) provide that dependent child allowance will no longer be payable under AUSTUDY;
 - (vi) include a concession to the AUSTUDY income test to apply where a spouse or parent becomes a pensioner;
 - (vii) remove the present requirement that AUSTUDY takes account of spouses' separation only if it continues for at least six months;
 - (viii) change the workforce criteria for AUSTUDY independence from two to three years' work;

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- (ix) increase the Post-graduate Award living allowance levels;
- (x) provide that dependent child allowance will no longer be payable under Post-graduate Awards;
- (xi) provide that recipients of a service wife's pension are not to qualify for normal AUSTUDY living allowance;
- (xii) remove anomalies in, and clarify aspects of, the AUSTUDY provisions relating to an applicant's previous studies;
- (xiii) relax the AUSTUDY workload provisions as they apply to students undertaking technical and further education courses of one year or less;
- (xiv) modify the eligibility criteria for fares allowance;
- (xv) require AUSTUDY recipients to advise the Department if they are granted a Social Security pension;
- (xvi) take account of the change in name of three educational institutions.

3. Items (i) to (x) implement decisions announced in the 1987 Budget context, including the Treasurer's May Economic Statement. Items (xi) to (xv) amend the Regulations to reflect more accurately existing policy.

COMMENCEMENT

4. The changes made by the amendments take effect from 1 January 1988. Provision is made, however, to preserve entitlement to fares allowance arising from studies undertaken in 1987 (see amending regulation 14(2)).

NOTES ON REGULATIONS

Regulation 1: Commencement

5. Regulation 1 provides that the changes take effect from 1 January 1988. (This is modified by amending regulation 14(2), which preserves entitlement to fares allowance arising from studies undertaken in 1987.)

Regulation 2: Principal Regulations

6. The Student Assistance Regulations are referred to as the "Principal Regulations".

Regulation 3: Interpretation - general

7. Regulation 3 amends existing regulation 3, which defines expressions used in the Regulations. The definition of "parents" is amended to remove the provision that a separation of the student's parents is taken into account only if it continues for at least six months.

Regulation 4: Interpretation - Part III

8. Regulation 4 amends existing regulation 29, which defines expressions used in Part III of the Regulations. This Part provides for the AUSTUDY scheme.

9. Paragraph 4(a) defines "income", in relation to a student's spouse or parent, as being taxable income and maintenance. The existing definition of "income" continues to apply in relation to a student (this definition covers assessable income less deductions under sections 51 to 54 of the Income Tax Assessment Act and less specific purpose Social Security and similar benefits).

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10. Paragraph 4(b) inserts a definition of "pension benefit". This expression refers to a range of Social Security and other Commonwealth allowances. It is used in the new regulations 41A(2) and 42A(5).

11. Paragraph 4(c) inserts a definition of "prescribed educational scheme". This expression is used to refer to several Commonwealth programs which provide living allowances to full-time students. The expression is used in the new definition of "pension benefit", contained in regulation 29(1), and in the new regulation 30(2)(e)(v).

12. Paragraphs 4(d), (e) and (f) provide for the maximum annual living allowance for 1988. The new rates are:

At-home rate:

16-17 years	\$2,614
18 and over	\$3,137

Away from home/independent rate:

16-17 years	\$3,974
18 and over	\$4,768

13. Paragraph 4(g) makes a drafting change consequential on the amendment made by paragraph 4(a).

Regulation 5: Independent status

14. Regulation 5 amends existing regulation 30, which sets out the criteria for qualifying as independent under AUSTUDY.

15. Paragraph 5(a) provides that a student may qualify as independent only if he or she is studying full-time and is eligible for assistance. Paragraph 5(b) makes a drafting change consequential on paragraph 5(a).

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16. Paragraph 5(c) changes the provision enabling a student to qualify as independent on the basis of participation in the workforce. It provides that a student may qualify as independent on the basis of having worked for three out of the last four years. Formerly a student could qualify on the basis of having worked for two out of the last three years.

17. Paragraph 5(d) is an anti-avoidance provision. It provides that, where a student met the independence criteria applicable in 1987 but was ineligible for assistance in that year, the independent status may not be carried over.

18. Paragraph 5(e) removes a provision that enabled part-time work to be taken into account on a pro rata basis.

19. Paragraph 5(f) changes the definition of a full-time week from one in which at least 25 hours were worked to one involving at least 35 hours' work. (A week is also regarded as full-time if the work met the requirements of the applicable industry award: see regulation 30(2)(b)(ii).)

20. Paragraphs 5(g), (h) and (i) deal with purely drafting matters. Paragraph 5(g) picks up changes in references to the Social Security Act and omits a reference to spent legislation. Paragraphs 5(h) and (i) reflect the change made by paragraph 5(d).

Regulation 6: Ineligibility - previous study and other reasons

21. Regulation 6 amends regulation 34, which tests whether an applicant for AUSTUDY is ineligible on the basis of previous studies or other academic reasons.

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22. Paragraph 6(a) inserts a new provision, subregulation 34(5F), which enables a student to qualify for assistance where a course is taken as the second of a sequence of two undergraduate courses.

23. Paragraph 6(a) also inserts a new provision, subregulation 34(6), which specifies that various rules concerning satisfactory progress in a course do not apply in relation to studies undertaken in a technical and further education (TAFE) course of one year or less in duration.

24. Paragraph 6(b) inserts a new provision in place of the former regulation 34(13)(a)(i), which allowed for subjects discontinued without failure in a previous course to be disregarded in testing a student's eligibility on transferring to another course of the same level. The new provision continues to provide for such subjects to be disregarded, while also providing for the disregarding of subjects taken in excess of the normal full-time workload of the previous course.

25. Paragraph 6(c) inserts new subregulations 34(15) and (16). These provide a basis for comparing the amount of work undertaken in a previous, part-time course with the stage the student has reached in his or her present course.

26. Paragraph 6(c) also inserts a new subregulation (18). This provides that, in testing eligibility after a change from one course to another of the same level, no account should be taken of work that was in excess of the minimum requirements for the previous course.

Regulation 7: Living allowance - students of independent status

27. Regulation 7 amends existing regulation 41, which provides for the AUSTUDY income test for independent students.

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28. Paragraph 7(a) is a drafting change, and reflects the renumbering of the Social Security Act.

29. Paragraph 7(b) raises the threshold for the spouse's income test from \$15,745 to \$16,000.

30. Paragraph 7(c) is a drafting change consequential on the amendment made by paragraph 4(a) to the existing definition of "income" in existing regulation 29(1).

31. Paragraph 7(d) is a drafting change consequential on the renumbering of the Social Security Act and the passing of the Veterans' Entitlements Act.

32. Paragraph 7(e) removes provision for the payment of additional living allowance for dependent children. Students are now able to seek assistance for dependent children under the Family Allowance Supplement (FAS).

Regulation 8: Living allowance - spouses' income concession

33. Regulation 8 amends existing regulation 41A, which modifies the AUSTUDY spouse's income test where there has been a fall in the spouse's income.

34. Paragraph 8(a) makes a drafting change consequential on the amendment of existing regulation 41.

35. Paragraph 8(b) inserts a new subregulation 41A(2), which provides for a new concession applicable where the spouse receives a Social Security benefit or pension, or a similar benefit or pension. Where this occurs, no account is to be taken of the spouse's income in determining the student's AUSTUDY entitlement after the change in the spouse's circumstances. (The expression "pension benefit", used in the amendment, is defined in an amendment to regulation 29(1).)

Regulation 9: Separation of grantee from his or her spouse

36. Regulation 9 inserts a new regulation 41B and repeals the former regulation 41B, which provided that the separation of a student from his or her spouse was taken into account for AUSTUDY purposes only where it continued for at least six months.

37. The new subregulation 41B(1) applies to a student who has a spouse by marriage, rather than a de facto partner. It provides that, if the student is separated from his or her husband or wife, the husband or wife is not to be regarded as the student's spouse in applying the spouse's income test. (Under the definition of "spouse" in regulation 3 of the Principal Regulations, a student who lives apart from a de facto spouse is no longer regarded as having a spouse.)

38. The new subregulation 41B(2) provides that, where a separation continues for more than six months in a year, the spouse's income will not be taken into account if the student and the spouse later reunite.

39. The new subregulation 41B(3) provides that, where the student was separated at the beginning of the year of study but the separation does not last six months, the spouse's income will be taken into account in determining the student's entitlement for the period after the separation.

Regulation 10: Living allowance - students not of independent status

40. Regulation 10 amends the existing regulation 42, which provides for the AUSTUDY income test for non-independent students.

41. Paragraphs 10(a), (b), (c) and (d) deal solely with drafting matters. Paragraph (a) clarifies that the income test provisions of regulation 42 are subject to the concessions provided for in regulation 42A. Paragraph (b) picks up a change in the numbering of the Social Security Act. Paragraphs (c) and (d) are consequential on the change made by paragraph 10(l).

42. Paragraph 10(e) inserts a new regulation 42(6)(a) in place of the former regulations 42(6)(a) and (aa). These dealt with the "sibling concession", which reduces the income test abatement rate where a family is supporting two or more full-time students who meet the AUSTUDY age requirements. Formerly the concession did not take into account a secondary sibling in determining a tertiary student's entitlement, or vice versa. The amendment modifies the concession, so that it no longer distinguishes between secondary and tertiary students. (The changes made by paragraphs 10(i), (j) and (k) also affect the operation of the sibling concession.)

43. Paragraph 10(f) raises the threshold for the parental income test from \$15,745 to \$16,000.

44. Paragraph 10(g) increases the dependent child deduction from \$450 for each child (other than the applicant) to \$1,200 for the first such child and \$2,500 for each subsequent child.

45. Paragraph 10(h) is a drafting change consequential on the new definition of "income" inserted in subregulation 29(1).

46. Paragraph 10(i) amends existing subregulation 42(11), which has the effect of limiting eligibility for the sibling concession. A condition is added that the concession does not operate in relation to a sibling who is receiving some other Commonwealth educational or vocational assistance, ie who is ineligible under regulation 33. (This condition applied to

secondary students, by reason of the former regulation 42(6)(a), but did not apply to tertiary students.) The amendment also replaces a reference to an existing disqualifying condition, of being a party to training agreement, with a reference to regulation 33A; this is a drafting matter only.

47. Paragraphs 10(j) and (k) modify the test of whether a student is to be regarded as full-time for the purposes of the sibling concession.

48. Paragraph (j) has the effect that the concessions to the normal workload test for tertiary students, contained in regulation 44B, are to apply in testing whether a sibling attracts the sibling concession.

49. Paragraph (k) provides that the normal workload tests for secondary students, contained in regulations 44F and 44G, are to apply in testing whether a sibling attracts the sibling concession.

50. Paragraph 10(l) omits the provision which enabled the payment of additional living allowance for dependent children.

Regulation 11: Living allowance - parental income concession

51. Regulation 11 amends existing regulation 42A, which modifies the AUSTUDY parental income test where there has been a fall in a parent's income or a person has ceased to be regarded as a student's "parent".

52. It omits the former subregulations 42A(3) and (4) so as to increase the dependent child deduction from \$450 for each dependent child (other than the applicant) to \$1,200 for the first such child and \$2,500 for each subsequent child.

53. It also corrects an anomaly in the former subregulation 42A(4), which applied where a student's parents separate. The

former subregulation 42(A) permitted the dependent child deduction to be deducted separately from the income of each of the student's parents, rather than from the aggregate of their incomes.

54. The amendment also inserts a new subregulation 42A(5), which provides for a new concession applicable where a parent receives a Social Security benefit or pension, or a similar benefit or pension. Where this occurs, no account is to be taken of parental income in determining the student's AUSTUDY entitlement after the change in the parent's circumstances. (The expression "pension benefit", used in the amendment, is defined in an amendment made to regulation 29(1).)

Regulation 12: Separation of the parents of a grantee

55. Regulation 12 repeals existing regulation 42B, which dealt with separation of a student's parents for AUSTUDY purposes, and inserts a new regulation in its place.

56. The new subregulation 42B(1) provides that, where a student's parents are separated for more than six months in a year, the departing parent's income will not be taken into account if the parents are later reunited.

57. The new subregulation 42B(2) provides that, where the parents were separated on 1 January but the separation does not last six months, both parents' incomes will be taken into account in determining the student's entitlement for the period after the separation.

Regulation 13: Work load - work deemed not to be undertaken

58. Regulation 13 amends existing regulation 44, which provides that certain work may not be counted in determining

whether a student is regarded under regulation 44B as undertaking a full-time workload for AUSTUDY purposes. Consistent with the amendments made by regulation 6(a) of these Statutory Rules, a student's workload is to take account of subjects that a student is currently undertaking but previously passed while undertaking a TAFE course of one year or less in duration. (Repeated subjects are generally excluded from a student's effective workload.)

Regulation 14: Fares allowance

59. Regulation 14 amends existing regulation 47, which provides for the payment of fares allowance under AUSTUDY.

60. Paragraph 14(1)(a) clarifies the policy that fares allowance should only be payable to an independent student if the student lives away from his or her spouse during the academic year. The amendment provides that fares allowance is not to be payable to a married student where the student lives with his or her spouse during the academic year. (The former regulation 47(2)(a) provided that fares allowance was not payable where the student's permanent home was not the same as his or her spouse's permanent home.)

61. Paragraph 14(1)(b) provides that fares allowance is not payable to pensioner students who qualify as independent and who are unmarried. (The existing regulation 47(2)(aa) already provided that fares allowance is not payable to students who qualify as independent and who are unmarried, but it does not extend to pensioner students.)

62. Subregulation 14(2) provides that the amendments to existing regulation 47 will not apply to a journey from the institution attended to a student's home at the end of the 1987 academic year.

Regulation 15: Living allowance

63. Regulation 15 amends existing regulation 70, which provides for the payment of living allowance under Post-graduate Awards.

64. Paragraph 15(a) makes drafting changes, reflecting the renumbering of the Social Security Act and the passing of the Veterans' Entitlements Act.

65. Paragraph 15(b) increases the basic rate of living allowance from \$8,126 a year to \$8,882 a year (and correspondingly raises the rate for a student with a dependent spouse from \$10,346.40 to \$11,102.40). The amendments also have the effect of providing that additional living allowance will not be payable for dependent children.

Regulation 16: Notice to be given of certain matters affecting Assistance

66. Regulation 16 amends existing regulation 85, which requires students receiving AUSTUDY to advise the Department if certain specified circumstances occur which would affect their AUSTUDY entitlement. The amendment requires students to advise if they receive a Social Security pension or benefit; formerly the obligation applied only in relation to a Social Security benefit.

Regulation 17: Schedule 1

67. Regulation 17 amends Schedule 1 of the Regulations, which lists various educational institutions that are to be treated as advanced education institutions. It reflects the change in the name of the Western Australian Institute of Technology to the Curtin University of Technology.

Regulation 17: Schedule 3

68. Regulation 17 amends Schedule 3 of the Regulations, which lists various educational institutions that are to be treated as technical and further education institutions. It reflects changes in the names of two business colleges.

Regulation 18: Schedule 3A

69. Regulation 19 repeals the existing Schedule 3A of the Regulations, which lists pensions which disqualify a student from receiving normal AUSTUDY living allowance, and inserts a new Schedule 3A in its place. The new Schedule 3A reflects the renumbering of the Social Security Act and also has the effect that normal AUSTUDY living allowance is not payable to a student who receives a wife's service pension. An education supplement of \$15 a week is, however, payable where the husband is receiving an invalid service pension or where the student is a widow and has dependent children.