

# **AUSTUDY/ABSTUDY Supplement Regulations (Amendment) 1995 No.394**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 1995 No. 394**

Issued by the Authority of the Minister for Schools, Vocational Education and Training

*Student and Youth Assistance Act 1973*

AUSTUDY/ABSTUDY Supplement Regulations (Amendment)

The *Student and Youth Assistance Act 1973* (the Act) provides the legislative authority for the AUSTUDY/ABSTUDY Supplement (the Supplement), which is a voluntary loans scheme for tertiary students. Section 56 of the Act provides that the Governor-General may make regulations for the purposes of the Act.

Supplement loans are available to two categories of students. Category 1 students are full time tertiary students who are eligible to receive either AUSTUDY or ABSTUDY benefits. To receive a Supplement loan they are required to trade in \$1 of their AUSTUDY or ABSTUDY benefits for every \$2 of Supplement. Category 1 students can trade in a maximum of \$3,500 of their benefits to receive a Supplement loan of \$7,000. A category 2 student is a full time tertiary student who would be eligible to receive AUSTUDY or ABSTUDY benefits, but for the parental income test. The maximum amount that a category 2 student can receive as a Supplement loan is \$2,000.

The AUSTUDY/ABSTUDY Supplement Regulations (Amendment):

- increase the prescribed parental income threshold, which is used to determine eligibility for Category 2 students, from \$50,850 to \$53,138. The threshold is indexed annually in accordance with movements in the Consumer Price Index (amending regulation 5);
- remove references to the AUSTUDY/ABSTUDY Dependent Spouse Allowance, which will be abolished from 1 January 1996 (amending subregulations 3.3 to 3.8 and regulation 4);
- provide for the recovery of AUSTUDY or ABSTUDY overpayments to be taken into account when calculating the maximum amount of Supplement a category 1 student is eligible to obtain (amending regulation 6); and
- make a number of editorial corrections and minor clarifications to the existing AUSTUDY/ABSTUDY Supplement Regulations.

The regulations commence, on the date of gazettal.

Attachment A contains a more detailed explanation of the amendments.

## Attachment A

### DETAILS OF THE AUSTUDY/ABSTUDY SUPPLEMENT REGULATIONS (AMENDMENT)

The detailed explanation of the changes to the AUSTUDY/ABSTUDY Supplement regulations is set out in amending regulation order. (For example, amending Regulation 5 amends regulation 7 of the AUSTUDY/ABSTUDY Supplement regulations.) To aid understanding, the AUSTUDY/ABSTUDY Supplement provision amended and the reason for the amendment are briefly outlined. Following the outline is an explanation of the amendment

#### **Regulation 1 Amendment**

**Subregulation 1.1** provides that the AUSTUDY/ABSTUDY Supplement Regulations are amended by these regulations.

These regulations commence on gazettal in accordance with section 48 of the Acts Interpretation Act 1901.

#### **Regulation 2 Application**

Subregulation 2.1 provides that the amendments to the regulations made by subregulations 3.3, 3.4, 3.5, 3.6, 3.7 and 3.8 and regulations 4 and 5 of these regulations apply only in relation to financial supplement for a year, or part of a year, commencing on or after 1 January 1996. This application provision is necessary because the processing of student assistance applications for the year, or part of the year, commencing 1 January 1996 began in November 1995.

#### **Regulation 3 Regulation 3 (Interpretation)**

##### **Background**

Regulation 3 provides the interpretation of words and expressions used in the regulations.

##### **Amendments**

**Subregulation 3.1.** amends the meaning of "Act" in regulation 3 from *Student Assistance Act 1973* to *Student and Youth Assistance Act 1973*. This change in the title of the Act was effected by the *Student Assistance (Youth Training Allowance) Amendment Act 1994* which commenced on 1 January 1995.

**Subregulation 3.2** amends regulation 3 by omitting the name of the Act and substituting the words "the Act" in the definition of "AUSTUDY". This is a housekeeping change which has no effect on the definition of "AUSTUDY" in the regulations.

**Subregulation 3.3** amends regulation 3 by omitting the current definition of a "category 1 student" and substituting a new definition. This change removes the previous reference to specific allowances and substitutes the expression "prescribed benefit". This has the effect of describing a category 1 student as one who qualifies for a "prescribed benefit under the AUSTUDY scheme or the ABSTUDY scheme". This is consistent with the terms of subparagraph 12C(1)(b)(1) of the Act.

**Subregulation 3.4** amends regulation 3 by omitting the current definition of a "category 2 student" and substituting a new definition. This change removes the previous reference to specific allowances and substitutes the expression "prescribed benefit". This has the effect of describing a category 2 student as one who would qualify for a "prescribed benefit under the AUSTUDY scheme or the ABSTUDY scheme" but for the parental income test, and whose

adjusted parental income is less than the amount prescribed by regulation 7. This is consistent with the terms of subparagraph 12C(1)(b)(ii) of the Act.

The AUSTUDY and ABSTUDY Dependent Spouse Allowances are to be abolished from 1 January 1996. Consistent with this, subregulation 3.5 amends regulation 3 by omitting the definition of "dependent spouse allowance". Similarly, subregulation 3.6 amends the definition of "grant eligibility period" and subregulations 3.7 and 3.8 the definition of "living allowance" by removing references to the dependent spouse allowance.

#### **Regulation 4      Regulation 6 (Prescribed benefits)**

##### **Background**

Regulation 6 provides that living allowance, dependent spouse allowance and pensioner education supplement are prescribed benefits for the purposes of subparagraph 12C(1)(b)(i) of the Act.

##### **Amendment**

The abolition of the dependent spouse allowance necessitates a redrafting of this provision. **Subregulation 4.1** amends regulation 6 by omitting the regulation and substituting a new regulation which provides that "living allowance" and the "pensioner education supplement" are "prescribed benefits" for the purposes of Part 4A of the Act.

#### **Regulation 5      Regulation 7 (Prescribed parental income)**

##### **Background**

Subparagraph 12C(1)(b)(ii) of the Act provides that a student who would qualify for either AUSTUDY or ABSTUDY but for the parental income test, will qualify for financial supplement if the student's adjusted parental income is less than the prescribed amount Regulation 7 provides that the amount of prescribed parental income for the purposes of subparagraph 12C(1)(b)(ii) is \$50,850. This amount is indexed annually in accordance with movements in the Consumer Price Index.

##### **Amendment**

**Subregulation 5.1** amends regulation 7 to increase the prescribed amount from \$50,850 to \$53,138.

#### **Regulation 6      Regulation 9 (Maximum amount of financial supplement for category 1 students)**

##### **Background**

Regulation 9 provides the mechanism for calculating the maximum amount of financial supplement that a category 1 student is eligible to obtain in relation to a grant eligibility period. Subregulation 9(1) provides that the maximum amount of financial supplement a category 1 student is eligible to obtain in relation to a grant eligibility period of one year is the lesser of \$7,000 or the amount worked out using the formula in subregulation 9(3). Subregulation 9(2) provides for the maximum amount of financial supplement a category 1 student is eligible to obtain where the grant eligibility period is less than one year. For the purposes of subregulations 9(1) and 9(2), subregulation 9(3) is applied to calculate the maximum amount of financial supplement that a category 1 student can obtain in relation to a grant eligibility period.

##### **Amendments**

**Subregulation 6.1** amends paragraph 9(1)(a) of the regulations by omitting the word "or" and substituting the word "and". This is a housekeeping amendment which does not alter the effect of the provision.

**Subregulation 6.2** omits subregulations 9(2) and 9(3) and substitutes new subregulations. New subregulation 9(2) changes the format of the subregulation to simplify referencing in subregulations 9(3) and 9(4); it does not alter the effect of the subregulation.

New subregulation 9(3) changes the formula that is used for the purposes of subregulations 9(1) and (2), to calculate the maximum amount of financial supplement that a category 1 student can obtain, to reflect current practice.

Section 38 of the Act provides for the recovery of certain overpayments arising from a previous year by offsetting an amount from a person's student assistance benefit for the current year. Subsection 38(3) provides that if the benefit is so reduced it is deemed to have been paid in full.

The maximum amount of financial supplement that a category 1 student can obtain is calculated on the net amount of AUSTUDY or ABSTUDY benefit that he or she actually receives during their period of eligibility, that is, the amount of benefit the student is deemed to have been paid under subsection 38(3) of the Act less any overpayment amount to be recovered. This is consistent with the requirement under section 12H of the Act that a person who applies for the financial supplement must make in \$1 of their benefit for every \$2 of financial supplement they receive.

Subregulation 6.2 includes a definition of "overpayment" that is consistent with the definition of "overpayment amount" in section 38 of the Act. An "overpayment" is the amount that is a student assistance overpayment, a special educational assistance scheme overpayment, a prescribed educational scheme overpayment, or a Social Security or Veterans' legislation overpayment that has been paid to the student and in relation to which there is an unsatisfied liability to the Commonwealth and the Secretary has determined is to be recovered from the student in the grant eligibility period.

Subregulation 6.2 also removes reference to specific allowances in the definitions of "annual benefit" and "actual benefit" and replaces them with references to "prescribed benefits" as defined in regulation 3 (see discussion above).

Subregulation 6.3 amends subregulation 9(4) by omitting the words "subregulation (2)" and substituting the words "paragraph (2)(b)". This is a housekeeping amendment that does not alter the effect of the provision.