



Student Assistance Regulations 2003

Statutory Rules 2003 No. 101 as amended

made under the

Student Assistance Act 1973

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taking into account amendments up to SLI 2005 No. 123

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Part 1 Preliminary

1 Name of Regulations [see Note 1]

These Regulations are the *Student Assistance Regulations 2003*.

2 Commencement [see Note 1]

These Regulations commence on gazettal.

3 Definitions

In these Regulations:

Act means the *Student Assistance Act 1973*.

Centrelink means the Commonwealth Services Delivery Agency established by subsection 6 (1) of the *Commonwealth Services Delivery Agency Act 1997*.

spouse has the same meaning as in Part 3.18 of the *Social Security Act 1991*.

student means a person to whom an amount under a current special educational assistance scheme relates.

4 Purpose of Regulations

For section 48 of the Act, these Regulations set out events which a person who is receiving, or entitled to receive, an amount under a financial supplement contract or a current special educational assistance scheme must notify to Centrelink within 14 days.

Note Centrelink acts on behalf of the Department for the purposes of section 48.

Regulation 5

Part 2 The ABSTUDY Scheme**5 Definitions for Part 2**

In this Part:

ABSTUDY payee means a person (including a new apprentice) who is receiving, or is entitled to receive, an amount under the ABSTUDY Scheme.

base tax year means the financial year ending on 30 June of the year before the calendar year to which an application for ABSTUDY relates.

dependent child has the meaning given by regulation 5A.

dependent student means a student, or a new apprentice, who:

- (a) does not have independent status; and
- (b) does not receive a pension under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986*; and
- (c) is not in the care of an authority of a State or a Territory; and
- (d) is not in lawful custody.

designated parent means a parent of an ABSTUDY payee who:

- (a) in the base tax year:
 - (i) had an interest in a trust, private company or unlisted public company; or
 - (ii) was self-employed otherwise than as a sole trader mainly or wholly engaged in a primary production business owned by the parent; or
 - (iii) was a partner in a business partnership; or
 - (iv) derived income of at least \$2 500 that did not consist solely of income from a pension or similar payment from a source in Norfolk Island or overseas; or
 - (v) derived income from a salary or wage, and claimed a tax deduction for a business loss for that year or a previous year that does not consist solely of a net passive business loss; or

Regulation 5A

- (b) has an interest of at least \$2 500 or more in assets located outside Australia and its external territories; or
- (c) entered Australia under:
 - (i) a permanent visa; or
 - (ii) a temporary visa relating to business skills;in the 10 years before the start of the calendar year in which the ABSTUDY payment period ends.

Guide to Australian Government Payments means the Commonwealth's guide booklet containing details of payment rates and eligibility criteria for all payments:

- (a) issued by Centrelink and the Family Assistance Office; and
- (b) dated 20 September 2004.

independent rate means the rate of payment to a student or a new apprentice of ABSTUDY or Youth Allowance worked out by reference to the independent status of the student or new apprentice.

independent status has the meaning given by regulation 5B.

new apprentice means a person who has a current Commonwealth registration number in relation to a full-time apprenticeship, traineeship or trainee apprenticeship under the scheme known as New Apprenticeships, but does not include a person whose registration number is suspended.

parent has the meaning given by regulation 5C.

partner has the meaning given by regulation 5D.

5A Meaning of *dependent child*

- (1) For all purposes relating to the ABSTUDY Scheme (other than the purposes mentioned in subregulations (2) and (3)), a person (***person 1***) is a ***dependent child*** of another person if person 1 meets the requirements of an item in the table.

Regulation 5A

Item	Person 1's age	Person 1's circumstances	Person 1's payment circumstances
1	Less than 16	Wholly or substantially in the care of the other person	Not eligible for the independent rate of ABSTUDY or Youth Allowance Not receiving Australian Government income support other than ABSTUDY, Assistance for Isolated Children or Youth Allowance
2	At least 16 but less than 25	Wholly or substantially in the care of the other person In full-time study or concessional study-load study Does not have independent status	Not receiving Australian Government income support other than ABSTUDY, Assistance for Isolated Children or Youth Allowance
3	At least 16 but less than 21	Wholly or substantially in the care of the other person Does not have independent status	Not receiving Australian Government income support other than ABSTUDY, Assistance for Isolated Children or Youth Allowance

(2) For the purposes of the ABSTUDY partner income test for an ABSTUDY payee who is at least 21, if an adjustment is made to the Partner Income Free Area for dependent children in the care of the ABSTUDY payee or the ABSTUDY payee's partner, a person (*person 1*) is a dependent child of the ABSTUDY payee or the ABSTUDY payee's partner if person 1 is wholly or substantially in the care of the ABSTUDY payee or the ABSTUDY payee's partner and either of the following exists:

- (a) person 1:
- (i) is less than 16; and
 - (ii) is not eligible for the independent rate of ABSTUDY or Youth Allowance; and

Regulation 5B

- (iii) is not receiving Australian Government income support other than ABSTUDY, Assistance for Isolated Children or Youth Allowance;
- (b) person 1:
 - (i) is at least 16 but less than 25; and
 - (ii) is in full-time study or concessional study-load study; and
 - (iii) does not have independent status; and
 - (iv) is not receiving Australian Government income support other than ABSTUDY, Assistance for Isolated Children or Youth Allowance.
- (3) For the purposes of a student's qualification for the ABSTUDY Pensioner Education Supplement, on the basis of receiving specified payments under the *Veterans' Entitlements Act 1986* and having a dependent child, a person is a dependent child of the student if the person:
 - (a) is wholly or substantially in the care of the student; and
 - (b) is in full-time education; and
 - (c) is not in receipt of an income support payment; and
 - (d) either:
 - (i) if the person is less than 16 — does not have personal income that exceeds \$152.15 per week; or
 - (ii) if the person is at least 16 but less than 22 — will not have personal income for the financial year that exceeds \$8 339.25.

5B Meaning of *independent status*

- (1) A student or new apprentice has *independent status* if:
 - (a) the student or new apprentice has:
 - (i) permanent independent status; or
 - (ii) reviewable independent status;in accordance with this regulation; and
 - (b) the student or new apprentice does not receive a pension under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986*; and

Regulation 5B

- (c) the student or new apprentice is not in the care of an authority of a State or Territory; and
 - (d) the student or new apprentice is not in lawful custody.
- (2) A student or new apprentice has permanent independent status if:
- (a) the student or new apprentice satisfies the criteria under the ABSTUDY Scheme relating to:
 - (i) the age of the student or new apprentice; or
 - (ii) the length of time the student or new apprentice has been a full-time member of the workforce; or
 - (b) the student or new apprentice is married or has been married; or
 - (c) the student or new apprentice has or has had a dependent child; or
 - (d) the student or new apprentice has been in lawful custody for at least 6 months, but is no longer in lawful custody; or
 - (e) the student or new apprentice is an orphan; or
 - (f) the student or new apprentice:
 - (i) is at least 15; and
 - (ii) has undergone and completed a traditional initiation ceremony; and
 - (iii) is living in the traditional community of the student or new apprentice, independently of family.
- (3) A student or new apprentice has reviewable independent status if:
- (a) the student or new apprentice is at least 16 and:
 - (i) has lived in a de facto relationship for at least 6 months; or
 - (ii) has a dependent child; or
 - (b) the student or new apprentice has the custody of the dependent child of another person; or
 - (c) the student or new apprentice is at least 15 and has parents who cannot exercise parental responsibilities; or
 - (d) the student or new apprentice:
 - (i) is at least 15; and

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- (ii) had been adopted or fostered by a non-Aboriginal family; and
 - (iii) had lived with that family for at least 2 years; and
 - (iv) is living in a discrete Aboriginal or Torres Strait Islander community; or
- (e) the student or new apprentice:
- (i) has attained the minimum school leaving age applicable to the student or new apprentice; and
 - (ii) satisfies the criteria under the ABSTUDY Scheme relating to circumstances in which it would be unreasonable for the student or new apprentice to live at home.

5C Meaning of *parent*

- (1) For the purposes of assessing a qualification for the Independent (Unreasonable to Live at Home) Homeless rate, the *parent* of a student or a new apprentice is either of the following:
- (a) a natural parent of the student or new apprentice;
 - (b) an adoptive parent.
- (2) For any other purpose, the *parent* of a student or a new apprentice is any of the following:
- (a) a natural or adoptive parent with whom the student or new apprentice normally lives;
 - (b) if a natural or adoptive parent with whom the student or new apprentice normally lives is a member of a couple, and normally lives with the other member of the couple — the other member of the couple;
 - (c) a person (other than a partner of the student or new apprentice) on whom the student or new apprentice is wholly or substantially dependent;
 - (d) if the care of the student or new apprentice is shared between parents, or the parents are separated under the same roof — the parent with primary care responsibility for the student or new apprentice;

Regulation 5D

- (e) if no other paragraph of this definition applies — the natural or adoptive parent with whom the student or new apprentice last lived.

5D Meaning of *partner*

- (1) For subregulation (1), a person is the *partner* of another person if:
- (a) the person:
- (i) is legally married to the other person; and
 - (ii) is not, in the Secretary's opinion, living separately and apart from the other person on a permanent or indefinite basis; or
- (b) all of the following conditions are met for the two persons:
- (i) they are of the opposite sex to each other;
 - (ii) they are not legally married to each other;
 - (iii) they have a relationship that is, in the Secretary's opinion, a marriage-like relationship;
 - (iv) the relationship is not a prohibited relationship for section 23B of the *Marriage Act 1961*;
 - (v) they are both at least the age of consent applicable in the State or Territory in which they live.

Note A prohibited relationship for section 23B of the *Marriage Act 1961* is a relationship between a person and his or her ancestor, descendant, brother or sister.

- (2) However, a person is not the partner of another person at a particular time if the persons:
- (a) have been partners; but
- (b) do not, at that time, comply with either of the descriptions in paragraphs (1) (a) and (b).

Note Former partners, whether legally married or not, are not treated as partners for this Part.

6 Prescribed events

- (1) For section 48 of the Act, each event set out in Schedule 1 is a prescribed event in relation to an ABSTUDY payee.

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- (2) However, an event mentioned in item 201, 202, 203, 204 or 206 of Schedule 1 is a prescribed event only if the ABSTUDY payee:
- (a) knows that the event has occurred; or
 - (b) ought reasonably to know that the event has occurred.

Note Some of the events described in Schedule 1 may occur without the ABSTUDY payee's knowledge.

For example, the ABSTUDY payee may not know that a person has become the partner of the payee's parent until after the person becomes the partner. The event would become a prescribed event under item 201 of Schedule 1 only when the ABSTUDY payee knows, or ought reasonably to know, that the person has become the partner.

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Part 3 The Assistance for Isolated Children Scheme

7 Definitions for Part 3

In this Part:

parent, in relation to a student to whom an amount under the Assistance for Isolated Children Scheme relates, means any of the following:

- (a) a natural or adoptive parent with whom the student normally lives;
- (b) if the student normally lives with a spouse of the student's parent — that spouse;
- (c) a legal guardian; and
- (d) any other adult who:
 - (i) has a primary or joint responsibility for the student; and
 - (ii) is not a person who resides at a boarding institution.

partner, in relation to the parent of a student, means either of the following:

- (a) a person who is:
 - (i) married to the parent; and
 - (ii) not separated from the parent;
- (b) a person who is:
 - (i) of the opposite sex to the parent; and
 - (ii) living with the parent in a de facto relationship.

8 Prescribed events

For section 48 of the Act, each of the following is a prescribed event in relation to a parent who is receiving, or entitled to receive, an amount under the Assistance for Isolated Children Scheme:

- (a) the student to whom the amount relates:

Regulation 8

- (i) does not enrol at the school or distance education course to which the amount relates by the end of the enrolment period; or
- (ii) does not begin school or the distance education course:
 - (A) within the first 2 weeks after the first day on which the course is offered; or
 - (B) on the day on which the student commences boarding; or
- (iii) discontinues the education to which the amount relates; or
- (iv) has his or her enrolment cancelled by the education institution; or
- (v) begins to receive a benefit for education or vocational training from the Commonwealth or a Commonwealth authority; or
- (vi) begins to receive ABSTUDY, Youth Allowance, sickness allowance or special benefit mentioned in Chapter 2 of the *Social Security Act 1991*; or
- (vii) begins a full-time apprenticeship or traineeship; or
- (viii) is taken into lawful custody; or
- (ix) changes the address of his or her place of residence or permanent home; or
- (x) is the subject of a change in foster care arrangements; or
- (xi) moves from one parent's residence to the other parent's residence as a result of the parents' divorce or separation; or
- (xii) is the subject of a change to the arrangements for travel to and from the principal family home to the school; or
- (xiii) ceases to board away from home, or live in a second family home, while undertaking study; or
- (xiv) ceases to be an Australian citizen, or
- (xv) ceases to be an Australian permanent resident under the *Migration Regulations 1994*; or
- (xvi) ceases to be the holder of a special category visa under the *Migration Act 1958*; or

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- (xvii) ceases to be the holder of a special purpose visa under the *Migration Act 1958*; or
- (xviii) is the subject of a variation of the amount of boarding costs for which an amount under the Assistance for Isolated Children Scheme is being claimed; or
- (xix) dies;
- (b) the geographic isolation reason, for which an amount under the Assistance for Isolated Children Scheme was granted, has ceased to apply;
- (c) a person:
 - (i) becomes a parent of the student to whom the amount relates; or
 - (ii) ceases to be the parent of the student to whom the amount relates; or
 - (iii) becomes the partner of the parent of the student to whom the amount relates; or
 - (iv) ceases to be the partner of the parent of the student to whom the amount relates;
- (d) the parent of the student to whom the amount relates:
 - (i) is taken into lawful custody; or
 - (ii) is admitted to a psychiatric institution; or
 - (iii) ceases to be an Australian citizen; or
 - (iv) ceases to be an Australian permanent resident under the *Migration Regulations 1994*; or
 - (v) ceases to be the holder of a special category visa under the *Migration Act 1958*; or
 - (vi) ceases to be the holder of a special purpose visa under the *Migration Act 1958*; or
 - (vii) begins to receive rent assistance under the *Social Security Act 1991* while receiving a second home allowance under the Assistance for Isolated Children Scheme; or
 - (viii) earns income that exceeds the last estimate of income given to Centrelink; or

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- (x) has a reduction in the number of dependent children for which the parent is responsible since the AIC application form was lodged, or the last notification of the number of dependent children was given to Centrelink; or
- (xi) has a spouse whose income varies from the last assessment of income given to Centrelink.

Schedule 1 ABSTUDY Scheme — prescribed events

(subregulation 6 (1))

Part 1 ABSTUDY payee

- 101 The ABSTUDY payee does not enrol in the course to which the ABSTUDY amount relates by the end of the enrolment period.
- 102 The ABSTUDY payee does not begin the course within the first 3 weeks of the first day it is offered.
- 103 The ABSTUDY payee cancels his or her enrolment in the course to which the amount relates.
- 104 The ABSTUDY payee's enrolment is cancelled by the education institution.
- 105 The ABSTUDY payee discontinues the course to which the ABSTUDY amount relates.
- 106 The ABSTUDY payee discontinues full-time study in the ABSTUDY course to which the amount relates.
- 107 The ABSTUDY payee reduces his or her approved 25%, or two-thirds, concessional study load under the ABSTUDY Scheme.
- 108 The ABSTUDY payee begins to receive a benefit for education or vocational training from:
- (a) the Commonwealth; or
 - (b) a Commonwealth authority; or
 - (c) a State or Territory Department; or
 - (d) a State or Territory authority.
- 109 The ABSTUDY payee begins to receive a pension or payment under the *Veterans' Entitlements Act 1986*.

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- 110 The ABSTUDY payee:
(a) becomes a new apprentice; or
(b) ceases to be a new apprentice.
- 111 The ABSTUDY payee ceases to receive an ABSTUDY Pensioner Education Supplement qualifying payment under the ABSTUDY Scheme.
- 112 The ABSTUDY payee ceases to qualify for an independent or away from home living allowance under the ABSTUDY Scheme.
- 113 The ABSTUDY payee stops living permanently with his or her partner.
- 114 The ABSTUDY payee is taken into lawful custody.
- 115 The ABSTUDY payee changes the address of his or her place of residence or permanent home.
- 116 The ABSTUDY payee earns an amount of income that is not the same as the last estimate of income given to Centrelink.
- 117 The ABSTUDY payee becomes aware that his or her assets have increased in value beyond the maximum value under the ABSTUDY Scheme.
- 118 A person:
(a) becomes the ABSTUDY payee's partner; or
(b) ceases to be the ABSTUDY payee's partner.
- 118A The ABSTUDY payee:
(a) changes address; or
(b) starts to share his or her accommodation with another person; or
(c) ceases to share his or her accommodation with another person; or
(d) moves to government housing for which he or she pays rent.
- 119 The ABSTUDY payee ceases to be an Australian citizen.

- 120 The ABSTUDY payee ceases to be recognised as an Australian Aboriginal or Torres Strait Islander following an investigation of his or her Aboriginality or Torres Strait Islander status.
- 121 A person becomes the ABSTUDY payee's parent, partner or spouse.
- 122 A person ceases to be the ABSTUDY payee's parent, partner or spouse.
Note The Guide to Australian Government Payments explains concepts used in this Part.
- 123 The ABSTUDY payee becomes aware of circumstances that may affect his or her entitlement to remote area allowance.
- 124 The ABSTUDY payee:
(a) will be, or is likely to be, absent from his or her permanent home, in relation to which remote area allowance is paid, for more than 8 weeks; but
(b) will remain in Australia.
- 125 The ABSTUDY payee intends to be overseas for any period.
- 126 The ABSTUDY payee relocates his or her permanent home.
- 127 The ABSTUDY payee's partner dies.
- 128 The ABSTUDY payee's dependent child dies.
- 129 The ABSTUDY payee's dependent child is, or intends to be, overseas.
- 130 The ABSTUDY payee permanently separates from his or her partner.
- 131 The ABSTUDY payee ceases work with his or her employer, either temporarily or permanently.
- 132 The ABSTUDY payee starts to receive, or is receiving, a payment:
(a) in relation to a compensation-related claim; or
(b) from an amount of money paid in relation to a compensation-related claim.

- 133 The ABSTUDY payee claims, or receives, a payment under the scheme known as New Apprenticeships, known as Living Away from Home Allowance.

Part 2 ABSTUDY payee's parent

- 201 A person becomes the partner of the ABSTUDY payee's parent.
- 202 A person ceases to be the partner of the ABSTUDY payee's parent.
- 203 The ABSTUDY payee's parent becomes aware the value of his or her assets for a period has increased above the maximum value under the ABSTUDY Scheme.
- 204 The ABSTUDY payee's parent becomes a designated parent.
- 205 The number of dependent children for which the ABSTUDY payee's parent is responsible has reduced since:
- (a) an ABSTUDY application form was lodged for the year of study; or
 - (b) the last notification of the number of dependent children was given to Centrelink.
- 206 The ABSTUDY payee's parent earns income for the current tax year that is at least 25% more than the estimate of income given in the ABSTUDY application form for the year of study.

Note The Guide to Australian Government Payments explains concepts used in this Part.

Part 3 ABSTUDY payee's partner

- 301 The ABSTUDY payee's partner dies.
- 302 The ABSTUDY payee's partner earns an amount of income for the current tax year that is not the same as the estimate of income given in the ABSTUDY application form for the year of study.
- 303 The ABSTUDY payee's partner becomes an ABSTUDY payee.

- 304 The ABSTUDY payee's partner begins to receive a pension or payment under the *Veterans' Entitlements Act 1986*.
- 305 The ABSTUDY payee's partner becomes aware that the value of his or her assets for a period has increased in value above the maximum value.

Note The Guide to Australian Government Payments explains concepts used in this Part.

Table of Instruments**Notes to the *Student Assistance Regulations 2003*****Note 1**

The *Student Assistance Regulations 2003* (in force under the *Student Assistance Act 1973*) as shown in this compilation comprise Statutory Rules 2003 No. 101 amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
2003 No. 101	4 June 2003	4 June 2003	
2003 No. 323	19 Dec 2003	19 Dec 2003	—
2004 No. 377	23 Dec 2004	23 Dec 2004	—
2005 No. 123	17 June 2005 (see F2005L01470)	1 July 2005	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 2	
R. 5.....	rs. 2004 No. 377 am. 2005 No. 123
R. 5A	ad. 2004 No. 377 am. 2005 No. 123
R. 5B	ad. 2004 No. 377 rs. 2005 No. 123
R. 5C	ad. 2005 No. 123
R. 5D	ad. 2005 No. 123
R. 6.....	rs. 2004 No. 377 am. 2005 No. 123
Part 3	
R. 7.....	am. 2003 No. 323; 2004 No. 377
R. 8.....	am. 2003 No. 323
Schedule 1	
Schedule 1.....	ad. 2004 No. 377 am. 2005 No. 123