



# Student Assistance Amendment Regulations 2004 (No. 1)<sup>1</sup>

**Statutory Rules 2004 No. 377<sup>2</sup>**

---

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Student Assistance Act 1973*.

Dated 16 December 2004

P. M. JEFFERY  
Governor-General

By His Excellency's Command

BRENDAN NELSON  
Minister for Education, Science and Training

---

**1 Name of Regulations**

These Regulations are the *Student Assistance Amendment Regulations 2004 (No. 1)*.

**2 Commencement**

These Regulations commence on the date of their notification in the *Gazette*.

**3 Amendment of *Student Assistance Regulations 2003***

Schedule 1 amends the *Student Assistance Regulations 2003*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Part 2**

*substitute*

**Part 2 The ABSTUDY Scheme**

**5 Definitions for Part 2**

In this Part:

***ABSTUDY payee*** means a person 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 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
- (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 of ABSTUDY or Youth Allowance worked out by reference to the student's independent status.

***independent status*** has the meaning given by regulation 5B.

***parent***, in relation to a student to whom an amount under the ABSTUDY Scheme relates, means any of the following:

- (a) a natural or adoptive parent with whom the student normally lives;
- (b) if a natural or adoptive parent with whom the student 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) on whom the student is wholly or substantially dependent;
- (d) if the care of the student is shared between parents, or the parents are separated under the same roof — the parent with primary care responsibility for the student;
- (e) if no other paragraph of this definition applies — the natural or adoptive parent with whom the student last lived.

***partner***, in relation to a student, means any of the following:

- (a) a person who:
  - (i) is married to the student; and
  - (ii) is not separated from the student;
- (b) a person who:
  - (i) is of the opposite sex to the student; and
  - (ii) is living with the student in a de facto relationship which is of at least 6 months duration;
- (c) a person who:
  - (i) is of the opposite sex to the student; and
  - (ii) is living with the student in a de facto relationship; and
  - (iii) has a dependent child, or a child with the student.

## 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.

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
    - (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 \$148.45 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 \$8 135.85.

**5B Meaning of *independent status***

- (1) A student has *independent status* if:
- (a) the student has:
    - (i) permanent independent status; or
    - (ii) reviewable independent status;in accordance with this regulation; and
  - (b) the student does not receive a pension under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986*; and
  - (c) the student is not in the care of an authority of a State or Territory; and
  - (d) the student is not in lawful custody.
- (2) A student has permanent independent status if:
- (a) the student satisfies the criteria under the ABSTUDY Scheme relating to:
    - (i) the student's age; or
    - (ii) the length of time the student has been a full-time member of the workforce; or
  - (b) the student is married or has been married; or
  - (c) the student has or has had a dependent child; or
  - (d) the student has been in lawful custody for at least 6 months, but is no longer in lawful custody; or
  - (e) the student is an orphan; or

- (f) the student:
  - (i) is at least 15; and
  - (ii) has undergone and completed a traditional initiation ceremony; and
  - (iii) is living in the student's traditional community, independently of family.
  
- (3) A student has reviewable independent status if:
  - (a) the student 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 has the custody of the dependant child of another person; or
  - (c) the student is at least 15 and has parents who cannot exercise parental responsibilities; or
  - (d) the student:
    - (i) is at least 15; and
    - (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:
    - (i) has attained the minimum school leaving age applicable to the student; and
    - (ii) satisfies the criteria under the ABSTUDY Scheme relating to circumstances in which it would be unreasonable for the student to live at home.



---

**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 recipient.
- (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.

**[2] Regulation 7, definition of *AIC Policy Manual***

*omit*

**[3] After regulation 8**

*insert*

**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*.
- 110 The ABSTUDY payee begins a full-time apprenticeship or traineeship.
- 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 exceeds 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 The ABSTUDY payee becomes aware of circumstances that may affect his or her entitlement to rent assistance.
- 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.

## **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 at least 25% more than 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.

---

#### **Notes**

1. These Regulations amend Statutory Rules 2003 No. 101, as amended by 2003 No. 323.
2. Notified in the *Commonwealth of Australia Gazette* on 23 December 2004.