



# Student Assistance Amendment Regulations 2005 (No. 1)<sup>1</sup>

**Select Legislative Instrument 2005 No. 123**

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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 15 June 2005

P. M. JEFFERY  
Governor-General

By His Excellency's Command

BRENDAN NELSON  
Minister for Education, Science and Training

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**1 Name of Regulations**

These Regulations are the *Student Assistance Amendment Regulations 2005 (No. 1)*.

**2 Commencement**

These Regulations commence on 1 July 2005.

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

Schedule 1 amends the *Student Assistance Regulations 2003*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Regulation 5, definition of *ABSTUDY payee***

*substitute*

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

**[2] Regulation 5, definition of *dependent student***

*omit*

a student who:

*insert*

a student, or a new apprentice, who:

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**[3] Regulation 5, definition of *independent rate***

*omit*

to a student

*insert*

to a student or a new apprentice

**[4] Regulation 5, definition of *independent rate***

*omit*

the student's independent status

*insert*

the independent status of the student or new apprentice

**[5] Regulation 5, after definition of *independent status***

*insert*

***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.

**[6] Regulation 5, definitions of *parent* and *partner***

*substitute*

***parent*** has the meaning given by regulation 5C.

***partner*** has the meaning given by regulation 5D.

**[7] Paragraph 5A (3) (d)**

*substitute*

(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.

**[8] Regulation 5B**

*substitute*

**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
  - (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

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- (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
    - (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.

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**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;
  - (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.

**[9] Subregulation 6 (1)**

*omit*

ABSTUDY recipient

*insert*

ABSTUDY payee

**[10] Schedule 1, item 110**

*substitute*

- 110 The ABSTUDY payee:
- (a) becomes a new apprentice; or
  - (b) ceases to be a new apprentice.

**[11] Schedule 1, item 116**

*substitute*

- 116 The ABSTUDY payee earns an amount of income that is not the same as the last estimate of income given to Centrelink.

**[12] Schedule 1, item 118**

*substitute*

- 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.

**[13] Schedule 1, after item 122**

*insert*

- 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.



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- 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.

**[14] Schedule 1, item 302**

*substitute*

- 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.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).