

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 20**

Issued by the authority of the Minister for Education

*Student Assistance Act 1973*

*Student Assistance Amendment Regulations 2009 (No. 1)*

Subsection 56(1) of the *Student Assistance Act 1973* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which, by the Act, are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The ABSTUDY Scheme (also known as the Aboriginal and Torres Strait Islander Study Scheme) provides benefits to Aboriginal and Torres Strait Islander people most in need of assistance to promote equity of educational opportunity. The Assistance for Isolated Children (AIC) Scheme helps the families of primary, secondary and certain tertiary students who are unable to attend an appropriate government school on a daily basis because of geographical isolation.

The ABSTUDY and AIC Schemes are schemes that have not been established under legislation but which have with statutory debt recovery and compliance provisions in the Act.

The *Student Assistance Regulations 2003* (the Principal Regulations) currently prescribe definitions and events for the administration of those schemes.

The purpose of these Regulations is to amend the Principal Regulations to ensure that definitions of relationships align with the changes made by the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008* ('the Same-Sex Act') and other related reforms to Commonwealth laws; that is, to place people in same-sex relationships and the children of those relationships on the same legal footing as people in opposite-sex relationships and the children of those relationships.

These Regulations also update references in the Principal Regulations to the national apprenticeships scheme, which has changed its name from 'New Apprenticeships' to 'Australian Apprenticeships'.

Details of the Regulations are set out in the Attachment.

These Regulations will commence on 1 July 2009.

## Explanation of Provisions

**Regulation 1** provides that the Regulations are the *Student Assistance Amendment Regulations 2009 (No. 1)*.

**Regulation 2** provides that the Regulations commenced on 1 July 2009. This is the date that amendments to the *A New Tax System (Family Assistance) Act 1999*, the *Social Security Act 1991* and other welfare-related laws are made by the Same-Sex Act.

**Regulation 3** provides that Schedule 1 to the Regulations amends the Principal Regulations.

**Item 1** in Schedule 1 will make a minor amendment to Regulation 3 to allow a new subregulation (2) to be inserted by item 3. Item 2 of Schedule 1 substitutes the definition of 'spouse' with a new definition, 'relationship parent.' As a result, **Items 21, 23 and 25** omit and replace all further references to 'spouse' with a reference to 'partner.' This will ensure that the proposed Regulations will extend to same sex de facto partners, in situations where one of those partners may not be a 'relationship parent.;

**Item 2** provides that 'Relationship parent' has the same meaning given by subsection 5(25) of the *Social Security Act 1991*. The term 'relationship parent' has been inserted as a definition in these regulations to ensure that both members of a couple, regardless of their sex, are recognised as parents of a child for the purposes of the ABSTUDY and AIC schemes. The inclusion of 'relationship parent' as a defined term in regulation 3 also serves the purpose of ensuring that the meaning of 'parent' in the Principal Regulations is not limited to a natural or adoptive parent of the student or new apprentice.

To give effect to this intention further, **items 14, 16, 18 and 20** omit references to a 'natural or adoptive parent' and replace these references with 'a natural, adoptive or relationship parent.' **Item 14** amends sub-regulation 5C(1) to ensure that a parent is 'any of' a 'natural, adoptive or relationship parent.'

**Item 3** inserts a further new subregulation 3(2) and provides that the definition for 'partner,' which includes same sex de facto partners. **Items 10, 19 and 22** remove all other existing definitions of 'partner' from regulation 5, regulation 5D and regulation 7. **Item 12** omits the reference in subparagraph 5B(3)(a)(i) to 'has lived in a de facto relationship' and replaces this reference with 'has had a de facto partner (within the meaning of the *Acts Interpretation Act 1901*).' This amendment further ensures that these Regulations extends to same sex de facto partners.

These Regulations also replace all references to 'new apprentice' with 'Australian Apprentice' in the Principal Regulations (see **Items 4, 6, 7, 8, 11, 13, 15, 17, 18 and 24 and 23**). **Item 9** omits the definition of 'new apprentice' and **item 5** effectively replaces this definition by inserting a new definition, 'Australian Apprentice' into these Regulations. **Item 26** replaces item 133 of Schedule 1 to the Principal Regulations to clarify its language and change the reference to New Apprenticeships scheme with the 'scheme known as Australian Apprenticeships.'