

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Student Assistance Act 1973

Student Assistance Regulations 2021

Purpose

The Student Assistance Regulations 2021 (this **instrument**) will replace the Student Assistance Regulations 2003 (the **2003 Regulations**), which are made under the *Student Assistance Act 1973* (the **Act**) and are due to sunset on 1 April 2021.

This instrument requires ABSTUDY or Assistance for Isolated Children (**AIC**) students to notify the Secretary of the Department of Social Services (the department) of the happening of prescribed events. This instrument also codifies certain prescribed circumstances, which are currently contained in administrative policy documents (that is, the ABSTUDY Policy Manual and the AIC Scheme Guidelines), to enable a benefit under the ABSTUDY Scheme or the AIC Scheme to be paid even though a tax file number, that is required to be given, has not been given to the Secretary. Codifying these prescribed circumstances will provide additional certainty to students and reflect current administrative practice.

This instrument has largely the same effect as the 2003 Regulations but has been revised and re-arranged to reflect modern drafting practice. Priority has been given to ensure that this instrument is consistent with the effect of the 2003 Regulations thereby guaranteeing operational continuity for ABSTUDY and AIC recipients.

This instrument will not affect the existing ability of ABSTUDY and AIC Scheme recipients to seek reviews of decisions made in accordance with the ABSTUDY Policy Manual and the AIC Scheme Guidelines. For decisions made in accordance with this instrument, ABSTUDY and AIC Scheme recipients would be able to seek internal review of decisions and may also be able to seek external review under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act).

Background

The main objective of ABSTUDY is to provide benefits to and remove some of the barriers faced by Aboriginal and Torres Strait Islander people in accessing education and apprenticeships. This is by assisting eligible students and apprentices with the costs associated with study, housing, living expenses and travelling. The AIC Scheme helps eligible families of primary, secondary and tertiary students who are unable to attend an appropriate government school on a daily basis because of geographical isolation, or where the student has special education needs due to disability or a health-related condition. The AIC Scheme provides financial assistance to alleviate costs incurred by these families to educate their children.

Pursuant to subsection 44A(1) of the Act, a benefit is not payable in respect of a person under the ABSTUDY Scheme or the AIC Scheme unless the Secretary is given the tax file numbers of certain persons.

Pursuant to subsection 48(1) of the Act, where a prescribed event happens in relation to a person who is receiving, or entitled to receive, a benefit under the ABSTUDY Scheme or the AIC Scheme, the person must notify the department, in accordance with this instrument, of the happening event within 14 days. This instrument prescribes events which must be reported by the person who is receiving, or entitled to receive a benefit under the schemes. The events need to be reported because these events might affect eligibility for, or the rate of payment of, benefits under the schemes.

Subsection 49(1) of the Act provides that a person must not contravene subsection 48(1) and the penalty for contravention is imprisonment for 12 months. Subsection 49(1A) of the Act creates an exception to the offence in subsection 49(1) where the person has a reasonable excuse for contravening the reporting requirements.

Authority

This instrument is made under section 56 of the Act, which provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to the Act. This instrument is made for the purposes of subsections 44A(4) and 48(1) of the Act.

Section 44A of the Act enables circumstances to be prescribed in which a benefit under the ABSTUDY Scheme or the AIC Scheme may be paid even though a tax file number, which is required to be given, has not been given to the Secretary.

Section 48 of the Act creates obligations for people who receive, or are entitled to receive, certain benefits to notify the department of prescribed events. The reporting obligations assist the Australian Government to determine the rate of ABSTUDY and AIC to be paid to recipients according to their individual circumstances.

In addition to the power to make this instrument under section 56 of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Commencement

Parts 1 and 2 and any other part of this instrument not covered by the table commence the day after this instrument is registered. Part 1 provides for the preliminary matters to this instrument while Part 2 deals with tax file numbers. Parts 3 (notification requirements) and 4 (transitional provisions) and Schedule 1 (repeal of the 2003 Regulations) commence on 1 April 2021.

Consultation

The department has consulted with the Office of Parliamentary Counsel, the Australian Government Solicitor, the Attorney-General's Department, the National Indigenous Australians Agency and Services Australia.

Consultations external to government were not undertaken as this instrument is broadly the same as the 2003 Regulations, does not differ from current administrative practice and does not have any regulatory or adverse effects on ABSTUDY and AIC Scheme recipients. In addition, this instrument merely codifies circumstances currently contained in the ABSTUDY Policy Manual and AIC Scheme Guidelines, which provides greater certainty and is beneficial in nature.

Regulation Impact Statement (RIS)

This instrument does not require a RIS. It is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact (OBPR ID: 26104).

Explanation of the provisions

Part 1 – Preliminary

Division 1 - Preliminary

Section 1 provides the name of this instrument is the Student Assistance Regulations 2021.

Section 2 provides that Parts 1 and 2 and any other part of this instrument not covered by the table commence the day after this instrument is registered, and Parts 3 and 4 and Schedule 1 commence on 1 April 2021.

Parts 1 and 2 commence at an earlier time than Parts 3 and 4 as these are operative provisions and the circumstances prescribed for the purposes of section 44A of the Act are not currently covered by the 2003 Regulations. Codifying the prescribed circumstances will provide greater certainty to ABSTUDY and AIC Scheme students and reflect current administrative practices.

Section 3 provides the authority for making this instrument is the *Student Assistance Act 1973*.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Division 2 – Definitions

Section 5 defines terms used in this instrument. Many of the terms have the same meaning as were used in the 2003 Regulations. However, new definitions have been included which will provide additional clarity to the operation of the ABSTUDY and AIC Schemes.

The note at the beginning of this section identifies a number of terms already defined in the Act, including ‘Australia’, ‘current special educational assistance scheme’, ‘education institution’, ‘income year’ and ‘Secretary’.

In this instrument:

ABSTUDY payee has the meaning set out in section 12.

ABSTUDY Pensioner Education Supplement qualifying payment means any of the payments, pensions or other benefits that, under the ABSTUDY Scheme, must be receivable in respect of a student in order for ABSTUDY Pensioner Education Supplement to also be receivable in respect of the student.

ABSTUDY Policy Manual means the document:

- (a) named ABSTUDY Policy Manual; and
- (b) published on the department’s website;

as existing from time to time. The ABSTUDY Policy Manual is available on the Guide to Social Policy Law website at <https://guides.dss.gov.au/abstudy-policy-manual>.

Act means the *Student Assistance Act 1973*.

actual boarding charges has the same meaning as in the Assistance for Isolated Children Scheme Guidelines.

AIC payee has the same meaning set out in section 22. The note to this definition clarifies that AIC is short for the Assistance for Isolated Children Scheme.

approved course has the same meaning as in the Assistance for Isolated Children Scheme Guidelines.

approved institution has the same meaning as in the Assistance for Isolated Children Scheme Guidelines.

assets has the meaning set out in subsection 20(3).

Assistance for Isolated Children Scheme Guidelines means the document:

- (a) named Assistance for Isolated Children Scheme Guidelines; and
- (b) published on the department's website;

as existing from time to time. The AIC Scheme Guidelines are available on the Guide to Social Policy Law website at <https://guides.dss.gov.au/assistance-isolated-children-scheme-guidelines>.

dependent child has the meaning given by section 15.

dependent status: a person has **dependent status** if the person is considered to have a dependent status under the ABSTUDY Policy Manual.

enrols: a student **enrols** in a course that is offered by a school if the student enrolls at the school for the purposes of undertaking the course. For the purposes of this definition, **enrols** has its ordinary meaning in relation to courses other than school courses. This is because school students enrol at a school, rather than in a course.

entitlement period has the same meaning as in the ABSTUDY Policy Manual.

first offered: a course is **first offered**, in relation to a student, on the latest of the following:

- (a) the day the student enrolls in the course;
- (b) if the course is run for a period in the calendar of an education institution (such as a term, semester or academic year)—the first day of that period;
- (c) otherwise—the first day on which the student could start the course.

illness separated couple: 2 persons are an illness separated couple if:

- (a) they are unable to live together in their home as a result of the illness or infirmity of either or both of them; and
- (b) because of that inability to live together, their living expenses are, or are likely to be, greater than they would otherwise be; and
- (c) that inability is likely to continue indefinitely.

income support payment has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

independent status: a person has **independent status** if the person is considered to be independent for the purposes of ABSTUDY under the ABSTUDY Policy Manual.

Indigenous person means:

- (a) an Aboriginal person (within the meaning of the *Aboriginal and Torres Strait Islander Act 2005*); or
- (b) a Torres Strait Islander (within the meaning of that Act).

nearest appropriate state school has the meaning given by the Assistance for Isolated Children Scheme Guidelines.

new apprentice has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

parent has the meaning in section 6.

partner: a person is the **partner** of another person if:

- (a) the person:
 - (i) is legally married to the other person; and
 - (ii) is not living separately and apart from the other person on a permanent or indefinite basis (unless they are an illness separated couple or a respite care couple); or
- (b) the person is the de facto partner (within the meaning of the *Acts Interpretation Act 1901*) of the other person.

permanent home has the meaning in subsection 16(2).

personal assets test limit has the same meaning as in the ABSTUDY Policy Manual.

principal family home has the same meaning as in the Assistance for Isolated Children Scheme Guidelines.

program of assistance means:

- (a) a program approved under section 28A of the *Social Security Act 1991*; or
- (b) a program offered as part of the competitive employment training and placement services as defined by section 7 of the *Disability Services Act 1986*.

receivable: an amount is **receivable** in respect of a person (the **first person**) if any person (whether or not the first person) is receiving, or entitled to receive, the amount in respect of the first person.

rehabilitation program means:

- (a) a rehabilitation program under Part III of the *Disability Services Act 1986*; or
- (b) a follow-up program in relation to which a determination under section 31 of the *Social Security Act 1991* is in force.

relationship parent has the meaning given by subsection 5(25) of the *Social Security Act 1991*.

respite care couple: 2 persons are a respite care couple if:

- (a) one of the persons has entered approved respite care (within the meaning of subsection 4(9) of the *Social Security Act 1991*); and
- (b) the person who has entered the approved respite care has remained, or is likely to remain, in that care for at least 14 consecutive days.

second family home has the same meaning as in the Assistance for Isolated Children Scheme Guidelines.

student means a person in respect of whom an amount under a current special educational assistance scheme is receivable.

youth allowance means a payment under Part 2.11 of the *Social Security Act 1991*.

The definitions for ‘ABSTUDY Policy Manual’ and ‘Assistance for Isolated Children Scheme Guidelines’ include references to documents that exist from time to time and inform operative sections of this instrument. Subsection 48(2) of the Act allows regulations made for the purposes of subsection 48(1) to incorporate any matter contained in any instrument or other writing as in force or existing from time to time, despite section 14 of the *Legislation Act 2003*.

Section 6 defines the term **parent**. The term has historically been applied differently in relation to the ABSTUDY Scheme and the AIC Scheme.

Subsection 6(1) provides that in respect of a student for which an amount is receivable under the ABSTUDY Scheme, each of the following is a **parent** (subject to subsection 6(3)):

- (a) a natural, adoptive or relationship parent of the student with whom the student normally lives;
- (b) a person (other than a partner of the student) on whom the student is wholly or substantially dependent;
- (c) where there is no person who meets either of the above descriptions, a natural, adoptive or relationship parent of the student with whom the student last lived.

Subsection 6(2) provides that in respect of a student for which an amount is receivable under the AIC Scheme, each of the following is a **parent** (subject to subsection 6(3)):

- (a) a natural, adoptive or relationship parent of the student, with whom the student normally lives;
- (b) a legal guardian of the student;
- (c) any other adult on whom the student is wholly or substantially dependent and who does not reside at a boarding institution.

Subsection 6(3) provides that if, under subsection 6(1) or 6(2), two or more persons would be parents of a student and those persons are not all partners of each other, the **parent** of the student is:

- a) whichever of those persons has primary care responsibility for the student; or
- b) if two or more of those persons have primary care responsibility for the student and are not partners of each other, the parent is whoever is a parent in accordance with either the ABSTUDY Policy Manual or AIC Guidelines for an amount receivable in respect of the student.

Subsection 6(4) provides that if a person is a parent under subsections 6(1) to 6(3) and they have a partner with whom the student normally lives, the partner is also a *parent* of the student.

Part 2 – Provision of tax file numbers

Division 1 – Preliminary

Section 7 sets out a simplified outline of Part 2 of this instrument.

Division 2 – ABSTUDY Scheme

Section 8 provides that for the purposes of subsection 44A(4) of the Act, a benefit under the ABSTUDY Scheme may be paid in respect of a person in prescribed circumstances even though the person's tax file number that is required to be given has not been given to the Secretary. This section prescribes the circumstances to be if:

- (a) the person is more than 80 years old; or
- (b) the person has lost all records of the person's tax file number because of flood or fire damage to the person's place of residence and the person has made a claim for the benefit within a six-month period that begins on the day that the flood or fire damage occurred; or
- (c) subsection 202EA of the *Income Tax Assessment Act 1936* (ITA Act 1936) applies in relation to the person. Subsection 202EA of the ITA Act 1936 provides that certain persons are not required under Part VA of that Act to make tax file number declarations or quote their tax file numbers; or
- (d) a determination under subsection 9(1) of this instrument is in force in relation to the person.

Subsection 44A(4) of the Act enables regulations to prescribe circumstances in which a benefit may be paid even though a tax file number required by subsection 44A(1) of the Act has not been given to the Secretary.

Section 9 outlines a framework which enables the Secretary to make determinations in prescribed circumstances to enable persons to be paid a benefit under the ABSTUDY Scheme even though the person's tax file number, which is required to be given, has not been given to the Secretary.

The provision relies on subsection 56(1) of the Act to make regulations, not inconsistent with the Act, to prescribe matters which are necessary or convenient for carrying out or giving effect to the Act. The framework is necessary to account for the variety of situations that may occur in relation to persons in respect of whom a benefit under the ABSTUDY Scheme may be paid but whose tax file number has not been given to the Secretary, thus ensuring that effect is given to this Act.

Subsection 9(1) provides that the Secretary has a discretion to make a determination in relation to a person if the Secretary is satisfied that subsection 9(4) applies to the person. The table to section 6 of the Legislation (Exemptions and Other Matters) Regulation 2015 (LEOM Regulation) prescribes that certain instruments are not legislative instruments. Item 19 of the table to section 6 of the LEOM Regulation provides that a decision that is reviewable under the ADJR Act is not a legislative instrument. Accordingly, as a determination made under subsection 9(1) is a decision reviewable under the ADJR Act, it is not a legislative instrument.

Subsection 9(2) states that a determination made under subsection 9(1) ceases to be in force at the end of the 28-day period beginning on the day the determination is made.

Subsection 9(3) provides that the Secretary may vary the determination made under subsection 9(1) to extend the period the determination is in force for a further period of up to 28 days, provided the Secretary is satisfied on the day of making the variation that subsection 9(4) still applies to the person.

Subsection 9(4) prescribes the following circumstances in relation to which the Secretary may make a determination under subsection 9(1):

- (a) the person is less than 16 years old; or
- (b) the person is attending a traditional ceremony; or
- (c) a physical impairment, a psychiatric impairment, an intellectual impairment, or two or more of such impairments, of the person make the person, without taking into account any other factor:
 - (i) totally unable to work; and
 - (ii) unable to benefit from participation in a program of assistance or a rehabilitation program; or
- (d) the person is permanently blind; or
- (e) the person is living at a nursing home, aged care facility or psychiatric institution; or
- (f) the person is homeless; or
- (g) the person is living in an area affected by a major disaster in respect of which a determination is in force under section 36 of the *Social Security Act 1991* (Social Security Act); or
- (h) both of the following apply:
 - (i) the person is outside Australia;
 - (ii) the person is not resident outside Australia.

Subsection 9(5) provides that subsection 9(3) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* (which provides relevantly, that a power to make an instrument of administrative power includes the power to repeal, rescind, revoke, amend or vary any such instrument) in relation to a determination made under subsection 9(1).

Division 3 – Assistance for Isolated Children Scheme

Section 10 provides that a benefit under the AIC Scheme may be paid in respect of a person who is a student, even though the AIC student's tax file number has not been given to the Secretary. The term 'student' is given its ordinary meaning and is intended to include persons undertaking a course at the primary, secondary, tertiary or ungraded level.

Subsection 44A(4) of the Act enables regulations to prescribe circumstances in which a benefit may be paid even though a tax file number required by subsection 44A(1) of the Act has not been given to the Secretary.

Part 3 – Obligation to notify happening of certain events

Division 1 – Preliminary

Section 11 sets out a simple outline of Part 3 of this instrument.

Division 2 – ABSTUDY Scheme

Section 12 provides that for the purposes of subsection 48(1) of the Act, this Division prescribes events in relation to a person (the *ABSTUDY payee*) who is receiving, or who is entitled to receive, an amount under the ABSTUDY Scheme in respect of a student regarding a course at an education institution.

Section 13 prescribes the following events in relation to courses that must be notified:

- (a) the enrolment period ends if the student does not enrol in the course before the end of the enrolment period for the course;
- (b) the three-week period that starts on the day a course is first offered to the student ends, where the student enrolls but does not start the course;
- (c) the student's enrolment in the course is cancelled, whether the cancellation is by the student or otherwise;
- (d) the student's participation in the course is discontinued without his or her enrolment being cancelled;
- (e) the student ceases to be considered to be studying a full-time study-load under the ABSTUDY Policy Manual (without ceasing to participate in the course);
- (f) where a study-load concession is approved for the student under the ABSTUDY Policy Manual, the student ceases to be able to be considered a concessional study-load student under the ABSTUDY Policy Manual.

Section 14 provides for prescribed events that must be notified in relation to personal relationships.

Subsection 14(1) prescribes the following events where the ABSTUDY payee is the student and the student has independent status:

- (a) a person becomes a partner of the student;
- (b) a person ceases to be a partner of the student;
- (c) the student becomes aware that a dependent child of the student is likely to be outside Australia for any period;
- (d) a person ceases to be a dependent child of the student.

Subsection 14(2) prescribes the following events where the ABSTUDY payee is the student and the student has dependent status:

- (a) the student becomes aware that a person has become a parent of the student;
- (b) the student becomes aware that a person (other than the student) has ceased to be a dependent child of a parent of the student.

Subsection 14(3) prescribes the following events where the ABSTUDY payee is a parent of the student:

- (a) another person becomes a parent of the student;
- (b) a person (other than the student) ceases to be a dependent child of the ABSTUDY payee.

Section 15 defines *dependent child*.

Subsection 15(1) provides that subject to subsection 15(2), a person (the **first person**) is a **dependent child** of another person if:

- (a) the first person is wholly or substantially in the care of the other person; and
- (b) the first person is less than 22 years old; and
- (c) an income support payment is not receivable in respect of the first person, other than youth allowance; and
- (d) the first person does not have independent status.

Subsection 15(2) provides that subsection 15(1) does not apply if:

- (a) the other person is the student; and
- (b) ABSTUDY Pensioner Education Supplement is receivable in respect of the student; and
- (c) the relevant ABSTUDY Pension Education Supplement qualifying payment is a pension or payment under the *Veterans' Entitlements Act 1986* (the Veterans' Entitlements Act).

Subsection 15(3) provides that, if, at a particular time, paragraphs 15(2)(b) and 15(2)(c) apply in relation to the student, a person is a **dependent child** of the student if:

- (a) the person is wholly or substantially in the care of the student; and
- (b) the person is less than 22 years old; and
- (c) an income support payment is not receivable in respect of the person, other than youth allowance; and
- (d) the person is not a partner of the student; and
- (e) if the person is less than 16 years old:
 - (i) the person is in full-time education; or
 - (ii) the person is not in receipt of income (within the meaning of the Social Security Act); or
 - (iii) the person is in receipt of income and the rate of that income does not exceed the amount mentioned in subsection 5(3)(c) of that Act per week; and
- (f) if the person is at least 16 years old, the person meets the requirement of paragraph 5(4)(b) of the Social Security Act at that time.

The note at the end of paragraph 15(3)(f) clarifies that paragraph 5(4)(b) of the Social Security Act is an income test. Paragraph 5(4)(b) provides that the person's income in the financial year will not be more than \$6,403.

Section 16 prescribes events that relate to the student's place of residence etc. that must be notified.

Subsection 16(1) sets prescribes the following events that must be notified:

- (a) the student changes his or her place of residence;
- (b) the student changes his or her permanent home;
- (c) if rent assistance under the ABSTUDY Scheme is receivable in respect of the ABSTUDY payee:
 - (i) the student starts residing with another person; or
 - (ii) the student starts residing in government housing for which rent is payable;
- (d) if remote area allowance under the ABSTUDY Scheme is receivable in respect of the student – the ABSTUDY payee becomes aware that the student is likely to be absent from the student’s permanent home for more than 8 weeks;
- (e) the ABSTUDY payee becomes aware that the student is likely to be outside Australia for any period.

Subsection 16(2) provides a definition of *permanent home* which is set out in the following table:

Meaning of <i>permanent home</i>		
Item	If ...	the <i>permanent home</i> of the student is the place where ...
1	the student has dependent status	the parent, or all of the parents, of the student normally reside.
2	the student: (a) under the ABSTUDY Policy Manual, is considered to be in State Care; and (b) has a foster carer;	the foster carer normally resides.
3	no other item of this table applies	the student normally resides.

Section 17 prescribes the following events which relate to benefits etc. that must be notified:

- (a) if any of the following becomes receivable in respect of the student:
 - (i) a benefit for education or vocational training paid by the Commonwealth, a Commonwealth authority, a state or territory, or a state or territory authority;
 - (ii) a pension or payment under the Veterans’ Entitlements Act;
 - (iii) Living Away from Home Allowance under the program known as the Australian Apprenticeships Incentives Program;
 - (iv) a payment in relation to a claim for compensation for economic loss relating to personal injury;
 - (v) a payment from an amount of money paid in relation to a claim for compensation of economic loss relating to personal injury;
- (b) an ABSTUDY Pensioner Education Supplement qualifying payment ceases to be receivable in respect of the student and no other such payment is receivable in respect of the student;
- (c) the student becomes a new apprentice;

(d) the student ceases to be a new apprentice.

Section 18 prescribes events which relate to income for entitlement periods that must be notified. Subsections 18(1) and 18(2) set out the scope of this section and subsection 18(3) prescribes the events. The objective of these provisions is to set out the circumstances under which a person's income or income estimate would be reportable to determine the person's ABSTUDY entitlement for a period.

Subsection 18(1) provides that this section applies if an estimate or statement of the amount of income (however defined or described) of a person has been given to Services Australia for purposes relating to the amount mentioned in section 12, and the income is income for the entitlement period for the amount mentioned in section 12. The person whose estimate or statement of amount of income is relevant for the purposes of this subsection is:

- a) if the ABSTUDY payee is the student (whether or not the student has independent status), the person is the student; or
- b) if the ABSTUDY payee is the student and the student has independent status, a partner of the student; or
- c) if the ABSTUDY payee is a parent of the student, the student is at least 16 and living allowance under the ABSTUDY Scheme is receivable in respect of the student, the person is the student.

Subsection 18(2) provides that this section only applies in relation to the latest estimate or statement, if more than one estimate or statement of the amount of income of the student or partner for the period has been given to Services Australia for those purposes.

Subsection 18(3) provides that the entitlement period ending is a prescribed event if the amount of income of the person for the period is greater than the estimated or stated amount and must be notified.

Section 19 prescribes events which relate to income for income years that must be notified. Subsections 19(1) and 19(2) set out the scope of this section and subsections 19(3), 19(4) and 19(5) prescribe the events.

Subsection 19(1) provides that this section applies if an estimate or statement of the amount of income (however defined or described) of a parent of the student has been given to Services Australia for purposes relating to the amount mentioned in section 12 and:

- (a) the income is income for either of the following income years:
 - (i) the current tax year (within the meaning of the ABSTUDY Policy Manual) in relation to the amount mentioned in section 12;
 - (ii) the base tax year (within the meaning of the ABSTUDY Policy Manual) in relation to that amount; and
- (b) the estimate or assessment has been given to Services Australia for purposes relating to the amount mentioned in section 12.

Subsection 19(2) provides that this section only applies in relation to the latest estimate or statement, if more than one estimate or statement of the amount of income of the parent for the income year has been given to Services Australia for those purposes.

Subsection 19(3) prescribes the event of the ABSTUDY payee becoming aware that it is reasonably likely that the amount of income of the parent for the year exceeded, or will exceed, the estimated or stated amount by at least 25 per cent, if:

- (a) the ABSTUDY payee is the student; and
- (b) the student has dependent status.

Example: This means that if Jane (whose permanent home is with her mother) provides an estimate of her mother's income to Services Australia for the purposes of applying the parental income test to determine the rate of payment, and her mother's income for the period is greater than 25 per cent of the estimate originally provided, Jane must advise Services Australia of the variation to the estimate of her mother's income.

Subsection 19(4) prescribes the event of the ABSTUDY payee becoming aware that it is reasonably likely that the amount of income of the ABSTUDY payee or of the other parent for the year exceeded, or will exceed, the estimated or stated amount by at least 25 per cent, if:

- (a) the ABSTUDY payee is a parent of the student; and
- (b) the income is the income of another parent of the student.

Subsection 19(5) provides that for the purposes of subsections 19(3) and 19(4) and without limiting when the ABSTUDY payee is aware of something, the ABSTUDY payee is taken to be aware of something if he or she ought reasonably to know of it.

Section 20 prescribes events related to assets that must be notified where the student has independent status.

Subsection 20(1) provides that this section applies if the student has independent status.

Subsection 20(2) prescribes the following events:

- (a) the student becomes aware that the value of his or her assets is greater than the relevant personal assets test limit;
- (b) if the student has a partner – the student becomes aware that the combined value of the assets of the student and of the student's partner is greater than the relevant personal assets test limit.

Subsection 20(3) clarifies that a person's *assets* are anything that, under the ABSTUDY Policy Manual, are the person's assets for the purposes of the Personal Assets Test.

Section 21 prescribes other events that must be notified.

Subsection 21(1) prescribes the following events:

- (a) the student ceases to be an Australian citizen;
- (b) the student ceases to be recognised as an Indigenous person;
- (c) the student ceases employment;
- (d) the student is taken into lawful custody.

Subsection 21(2) also prescribes the event of the student dying if the ABSTUDY payee is a parent of the student.

Division 3 – Assistance for Isolated Children Scheme

Section 22 provides that, for the purposes of subsection 48(1) of the Act, Division 3 prescribes events in relation to a person (the *AIC payee*) who is receiving, or who is entitled to receive, an amount under the AIC Scheme in respect of a student regarding an approved course offered by an approved institution.

Section 23 prescribes the following events in relation to courses that must be notified:

- (a) where the enrolment period ends and the student did not enrol in the course before the end of the enrolment period for the course;
- (b) the end of the 14-day period that starts on the day an approved course is first offered to the student and the student enrolls but does not start the approved course;
- (c) the end of the 14-day period, if:
 - (i) the approved course is offered by a school; and
 - (ii) the amount mentioned in section 22 is a boarding allowance; and
 - (iii) the student does not start boarding at the school before the end of the 14 days starting on the day the approved course is first offered in relation to the student;
- (d) the student's enrolment in the approved course is cancelled (whether by the student or otherwise);
- (e) the student's participation in the approved course is discontinued without his or her enrolment being cancelled;
- (f) if the amount mentioned in section 22 is a boarding allowance and there is a change in the actual boarding charges that are relevant to that amount, the event is the change in those charges.

Section 24 prescribes the following events that relate to personal relationships that must be notified:

- (a) a person (other than the AIC payee) becomes a parent of the student under subsection 6(4);
- (b) an AIC payee ceases to be a parent of the student;
- (c) a person (other than the student) ceases to be a dependent child (within the meaning of the AIC Guidelines) of the AIC payee;
- (d) the student enters into foster care;
- (e) if the student is in foster care and there is a change in the foster care arrangements that apply to the student or the student ceases to be in foster care.

Section 25 prescribes for the following events that relate to place of residence etc. that must be notified:

- (a) the student changes his or her place of residence;
- (b) the student changes his or her principal family home;
- (c) a place becomes a second family home of the student;
- (d) a place ceases to be a second family home of the student;
- (e) the student ceases to reside at the place of residence of a parent of the student and begins residing at the place of residence of another parent of the student;
- (f) the student ceases to board at the school that offers the approved course;
- (g) the student ceases residing at his or her second family home;

- (h) if the amount mentioned in section 22 is receivable because the student meets a rule relating to geographical isolation under the AIC Scheme Guidelines, the event is that the student ceases to meet that rule.

Section 26 prescribes the following events relating to benefits etc. that must be notified:

- (a) any of the following become receivable in respect of the student:
 - (i) a benefit for education or vocational training paid by the Commonwealth, a Commonwealth authority, a state or territory, or a state or territory authority;
 - (ii) an income support payment;
 - (iii) an amount under the ABSTUDY Scheme or the AIC Scheme;
- (b) if second home allowance is receivable in respect of the student under the AIC Scheme, the event is that rent assistance under the Social Security Act becomes receivable in respect of the AIC payee.

Section 27 prescribes events relating to income that must be notified. Subsections 27(1) and 27(2) set out the scope of this section, and subsection 27(3) prescribes the event.

Subsection 27(1) provide that this section applies if an estimate or statement of the amount of income (however defined or described) of the AIC payee, or a partner of the AIC payee, for either of the following income years that has been given to Services Australia for purposes relating to the amount mentioned in section 22:

- (a) the current tax year (within the meaning of the AIC Scheme Guidelines) in relation to the amount mentioned in section 22;
- (b) the base tax year (within the meaning of the AIC Scheme Guidelines) in relation to that amount.

Subsection 27(2) provides that this section only applies in relation to the latest estimate or statement, if more than one estimate or statement of the amount of income of the AIC payee or partner for the income year has been given to Services Australia for those purposes.

Subsection 27(3) prescribes the event of the AIC payee becoming aware that it is reasonably likely that the amount of income of the AIC payee or partner for the year exceeded, or will exceed, the estimated or stated amount by at least 25 per cent.

Example: This means that if Jack (the parent) provides an estimate of his income to Services Australia for the purposes of applying the parental income test to determine the rate of payment, and Jack's income for the period is greater than 25 per cent of the estimate originally provided, Jack must advise Services Australia of the variation to the estimate of his income.

Section 28 prescribes other events that must be notified.

Subsection 28(1) prescribes the following events that relate to the student:

- (a) the student begins a full-time apprenticeship or traineeship;
- (b) there is a change in:
 - (i) the distance between the student's principal family home and the nearest appropriate state school by the shortest practicable route (measured in accordance with the AIC Scheme Guidelines); or
 - (ii) the distance between the student's principal family home and the nearest available transport service (within the meaning of the AIC Scheme Guidelines) to the nearest appropriate state school by the shortest practicable route;
- (c) the student ceases to be an Australian citizen;
- (d) the student ceases to be an Australian permanent resident under the Migration Regulations 1994;
- (e) the student ceases to be the holder of a special category visa under the *Migration Act 1958*;
- (f) the student ceases to be the holder of a special purpose visa under the *Migration Act 1958*;
- (g) the student is taken into lawful custody;
- (h) the student dies.

Subsection 28(2) prescribes the following events that relation to the AIC payee:

- (a) the AIC payee ceases to be an Australian citizen;
- (b) the AIC payee ceases to be an Australian permanent resident under Migration Regulations 1994;
- (c) the AIC payee ceases to be the holder of a special category visa under the *Migration Act 1958*;
- (d) the AIC payee ceases to be the holder of a special purpose visa under the *Migration Act 1958*;
- (e) the AIC payee is taken into lawful custody;
- (f) the AIC payee is admitted to a psychiatric facility (whether or not part of a hospital).

Division 4 – Notifications must be given to Services Australia

Section 29 provides that a person who is required under subsection 48(1) of the Act to notify the Department of the happening of an event must do so by notifying Services Australia of the happening of the event.

Part 4 – Application and transitional provisions

Division 1 – Provisions relating to this instrument as originally made

Section 30 provides a transitional provision for the purposes of the provision of estimates and statements of income.

Subsection 30(1) provides that in this section *Human Services Department* has the same meaning as in the Act, as in force immediately before 1 February 2020.

Subsection 30(2) provides that for the purposes of this instrument, an estimate or statement of an amount of income (however defined or described) that was given to Services Australia (when it was a Department of State) before 1 February 2020 is taken to have been given to Services Australia (as an Executive Agency).

This transitional provision has been included to ensure consistency with the amendments made by the *Services Australia Governance Amendment Act 2020* as a result of the establishment of Services Australia as an Executive Agency under the *Public Service Act 1999* on 1 February 2020.

Schedule 1—Repeals

Student Assistance Regulations 2003

Item 1 repeals the whole of the 2003 Regulations.

Senator the Hon Anne Ruston, Minister for Families and Social Services

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

Student Assistance Regulations 2021

These Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulations

The *Student Assistance Act 1973* (the Act) was enacted to provide certain benefits to certain students, for example, to Indigenous students eligible for payments under the ABSTUDY Scheme and students eligible for payments under the Assistance for Isolated Children (AIC) Scheme.

The *Student Assistance Regulations 2003* (the 2003 Regulations) are due to sunset on 1 April 2021. The Student Assistance Regulations 2021 (this instrument) will repeal and replace the 2003 Regulations.

Subsection 56(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

This instrument largely has the same effect as the 2003 Regulations but has been revised and re-arranged to reflect modern drafting practice, and provide greater clarity around definitional inconsistencies between the Act, the regulations and the ABSTUDY Policy Manual and AIC Guidelines.

Section 44A of the Act specifies when the Secretary is required to collect tax file numbers (TFNs) in relation to a benefit that is payable in respect of a person under ABSTUDY Scheme and AIC Scheme. Under subsection 44A(1) of the Act, certain benefits, including benefits under ABSTUDY Scheme and AIC Scheme, are not payable in respect of a person unless the Secretary has been given certain TFNs. Subsection 44A(4) of the Act enables circumstances to be prescribed in which such a benefit may be paid in respect of a person even though a TFN required to be given has not been given to the Secretary. Part 2 of this instrument prescribes circumstances in which a TFN is not required to be collected in relation to the ABSTUDY and AIC Schemes.

Subsection 48(1) of the Act provides that regulations may prescribe events which happen in relation to a person receiving, or entitled to receive, an amount under the ABSTUDY Scheme or the AIC Scheme, that the person must notify the department within 14 days of the happening of the event. Part 3 of this instrument prescribes these events which are currently contained in the ABSTUDY Policy Manual and AIC Guidelines.

Part 4 of this instrument provides transitional provisions relating to the establishment of Services Australia as an Executive Agency under the *Public Services Act 1999*.

This instrument will not affect the existing ability of ABSTUDY and AIC Scheme recipients to seek reviews of decisions made in accordance with the ABSTUDY Policy Manual and the AIC Scheme Guidelines. For decisions made in accordance with this instrument, ABSTUDY and AIC Scheme recipients would be able to seek internal review of decisions and may also be able to seek external review under the *Administrative Decisions (Judicial Review) Act 1977*.

Human rights implications

This instrument engages the following human rights:

Right to social security

Article 9 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* recognises the right of everyone to social security.

The right to social security requires that a system be established under domestic law and that public authorities must take responsibility for the effective administration of the system. The social security system must provide a minimum essential level of benefits to all individuals and families that will enable them to cover essential living costs.

Article 4 of ICESCR provides that countries may limit the rights to social security in a way determined by law only in so far as this may be compatible with the nature of the rights contained within the ICESCR and solely for the purpose of promoting the general welfare in a democratic society. Such a limitation must be proportionate to the objective to be achieved.

Both Schemes increase access to social security for students through equity measures that provide financial assistance to help meet the costs associated with study. To qualify for either payment under the Schemes, a student must meet specified eligibility criteria and where their circumstances change, must advise the administrator of the Schemes of these changes.

This instrument is made under section 56 of the Act and is necessary for prescribing matters that give effect to the Act. This instrument sets out the events and circumstances that are notifiable under the ABSTUDY and AIC Schemes and reflect current administrative practice. Greater certainty is achieved by codifying the prescribed circumstances in this instrument, and will assist with increasing access to social security.

Right to education

Article 13 of the ICESCR recognises the right of everyone to education. It provides that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms, and that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means.

Both Schemes engage the right to education as they provide financial assistance to students to assist with meeting educational expenses. This instrument is made under section 56 of the Act and is necessary for prescribing matters that give effect to the Act. This instrument sets out the events and circumstances that are notifiable under the ABSTUDY and AIC Schemes and reflects current administrative practice. Greater certainty is achieved by codifying the prescribed circumstances in this instrument and will ultimately enable more students to access education.

Conclusion

This instrument largely has the same effect as the 2003 Regulations, however it provides greater clarity through codifying certain circumstances that are achieved through current administrative practice. This instrument is beneficial in that it increases access to social security and ultimately provide financial assistance to students with meeting educational expenses.

This instrument is compatible with human rights because it promotes access to social security and support the right to education. To the extent a human rights obligation is engaged or limited, the impact is for a legitimate objective and is reasonable, necessary and proportionate as outlined above.

Senator the Hon Anne Ruston, Minister for Families and Social Services